

**CUSTOMER CONTRACT REQUIREMENTS**  
**ALMMII LIFT**  
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CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**ALMII LIFT ALMII LIFT Special Provisions .**

For the following clauses the following definitions will apply unless expressly stated otherwise in the clause.

- Subaward = contract between Buyer and Seller
- Subrecipient = Seller
- Recipient = Buyer

**E.1 Rights in Inventions and Patents.**

E.1.1 Definitions. The following definitions apply to Clauses E.1, E.2, and E.3:

- A. **Data:** All recorded information, regardless of the form or method of recording or the media on which it may be recorded. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information. The term includes Computer Software and Computer Software Documentation.
- B. **Foreign Firm or Institution:** A firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Subaward, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals. The term "foreign individual" means any natural person who is not a lawful permanent resident as defined in 8 U.S.C. § 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. § 1324b(a)(3).
- C. **Invention:** Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

- D. **Know-How:** All information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.
- E. **Made:** As it relates to any invention means the conception or first actual reduction to practice of such invention.
- F. **ONR AO:** An individual with authority to enter into, administer, or terminate OTs on behalf of the Government. Subrecipient shall contact Recipient to obtain the ONR AO's contact information, as required hereunder.
- G. **ONR AOR:** An Individual appointed by the Agreements Officer to provide technical direction and monitor performance. Subrecipient shall contact Recipient to obtain the ONR AOR's contact information, as required hereunder.
- H. **ONR POC for Patent Matters:** John Forrest, Patent Counsel of the Navy, Office of Naval Research, Corporate Counsel (Code OOCC), 875 North Randolph Street, Arlington, VA 22203- 1995, Phone: (703) 696-4000, Email: [ONR.NCR.BDCC.list.invention.reports@navy.mil](mailto:ONR.NCR.BDCC.list.invention.reports@navy.mil).
- I. **Practical application:** To manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- J. **Subject Invention:** Any invention conceived or first actually reduced to practice in the performance of work under this Subaward.
- K. **Technology:** Discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works and copyrights developed under this Subaward.
- L. **Unlimited Rights:** Rights to use, modify, perform, display, duplicate, release, or disclose, Data in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

E.1.2 Allocation of Principal Rights.

- A. Subrecipient has the option of electing to retain title to each Subject Invention consistent with the provisions of this Section.

- B. With respect to any Subject Invention in which Subrecipient retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world.

E.1.3 Invention Disclosure, Election of Title, and Filing of Patent Application.

- A. Subrecipient shall disclose each Subject Invention to Recipient and the ONR POC for Patent Matters within two (2) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to Recipient and ONR shall be in the form of a written report and shall identify the Subaward and circumstances under which the Subject Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Subject Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the Subject Invention has been submitted and/or accepted for publication at the time of disclosure.
- B. Subrecipient shall notify Recipient and the ONR POC for Patent Matters, in writing, within eight (8) months of disclosure to Recipient and ONR whether it elects to retain title to such Subject Invention. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by ONR to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.
- C. Subrecipient shall file either a provisional or non-provisional patent application in the United States on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. If Subrecipient files a U.S. provisional application, it shall file a U.S. non-provisional application within 10 months of the filing of the U.S. provisional application. Subrecipient may elect to file patent applications in additional jurisdictions, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application (whether provisional or non-provisional) or six (6) months from the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
- D. Subrecipient shall notify the ONR POC for Patent Matters of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or

defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

- E. Requests for extension of the time for disclosure election, and filing under Section E.1.3, may be granted at ONR's discretion after considering the circumstances of Subrecipient and the overall effect of the extension.
- F. Subrecipient shall submit to Recipient and the ONR POC for Patent Matters annual listings of Subject Inventions. At the completion of the Subaward, Subrecipient shall submit a comprehensive listing of all Subject Inventions identified during the course of the Subaward and the current status of each.

E.1.4 Conditions When the Government May Obtain Title.

- A. Upon ONR's written request directly, or provided via the Recipient, Subrecipient shall convey title to any Subject Invention to "the United States Government, as represented by the Secretary of the Navy" under any of the following conditions:
  - i. If Subrecipient fails to disclose or elects not to retain title to the Subject Invention within the times specified in Section E.1.3 of this Subaward; however, ONR may only request title within sixty (60) calendar days after learning of the failure of Recipient to disclose or elect within the specified times;
  - ii. In those countries in which Recipient fails to file patent applications within the times specified in Section E.1.3 of this Subaward; however, if Subrecipient has filed a patent application in a country after the times specified in Section E.1.3 of this Subaward, but prior to its receipt of the written request by ONR, Subrecipient shall continue to retain title in that country; or
  - iii. In any country in which Subrecipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

E.1.5 Minimum Rights to Subrecipient and Protection of Subrecipient's Right to File.

- A. Subrecipient shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if Recipient fails to disclose the Subject Invention within the times specified in Section E.1.3 of this Subaward. Subrecipient's license extends to its domestic and Canadian subsidiaries and affiliates within the corporate structure of

which Subrecipient is a part, if any, and includes the right to grant licenses of the same scope to the extent that Subrecipient was legally obligated to do so at the time the Subaward was awarded. The license is transferable only with the approval of ONR, except when transferred to the successor of that part of the business to which the Subject Invention pertains. ONR approval for license transfer shall not be unreasonably withheld.

- B. Subrecipient's domestic license may be revoked or modified by ONR to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked in that field of use or the geographical areas in which Subrecipient has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of ONR to the extent Subrecipient, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- C. Before revocation or modification of the license, ONR shall furnish Recipient, and Recipient shall furnish Subrecipient, a written notice of its intention to revoke or modify the license, and Subrecipient shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

E.1.6 Action to Protect the Government's Interest.

- A. Subrecipient agrees to execute or to have executed and promptly deliver to ONR all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which Subrecipient elects to retain title, and (ii) convey title to the United States Government, as represented by the Secretary of the Navy when requested under Section E.1.4 of this Subaward and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
- B. Subrecipient agrees to require by written agreement with its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by Subrecipient each Subject Invention in order that Subrecipient can comply with the disclosure provisions of Section E.1.3 of this Subaward. Subrecipient shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

- C. Subrecipient shall require, by written agreement with its employees performing work under this Subaward, other than clerical and non-technical employees, pre-assignment of all Subject Inventions.
  
- D. Subrecipient shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with Government support under Agreement No. N00014-21-9-0006, awarded by ONR. The Government has certain rights in the invention.

E.1.7 Lower Tier Agreements.

Subrecipient shall include this Section E.1, suitably modified to identify the parties, in all subawards, subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

E.1.8 Reporting on Utilization of Subject Inventions.

- A. Subrecipient agrees to submit, during the term of the Subaward, upon request by ONR, a report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by Subrecipient or its licensees or assignees. Such reports shall not be requested more frequently than annually. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by Subrecipient, and such other data and information as the agency may reasonably specify. Subrecipient also agrees to provide additional reports as may be requested by ONR in connection with any march-in proceedings undertaken by ONR in accordance with Section E.1.10 of this Subaward. ONR agrees it shall not disclose such information to persons outside the Government without permission of Subrecipient, unless required by law.
- B. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://s-edison.info.nih.gov/iEdison/>. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the ONR POC for Patent Matters.

E.1.9 Preference for American Industry.

Notwithstanding any other provision of this clause, neither Subrecipient nor any assignee shall grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirements for such an agreement may be waived by ONR upon a showing by Subrecipient that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

E.1.10 March-in Rights.

- A. Subrecipient agrees that, with respect to any Subject Invention in which it has retained title, ONR has the right to require Subrecipient, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license in an identified field of use to a responsible applicant or applicants, upon terms that are

reasonable under the circumstances, and if Subrecipient, assignee, or exclusive licensee refuses such a request, ONR has the right to grant such a license itself if ONR determines that:

- a. Such action is necessary because Subrecipient or assignee has not taken effective steps, consistent with the intent of this Subaward, to achieve practical application of the Subject Invention;
- b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Subrecipient, assignee, or their licensees;



- c. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Subrecipient, assignee, or licensees; or
    - d. Such action is necessary because the agreement required by Section E.1.9 of this Subaward has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.
- B. Whenever ONR receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify Subrecipient in writing of the information and request informal written or oral comments from Subrecipient as well as information relevant to the matter. In the absence of any comments from Subrecipient within 30 days, ONR may, at its discretion, proceed with the procedures below. If a comment is received within 30 days, or later if ONR has not initiated the procedures below, then ONR shall, within 60 days after it receives the comment, either initiate the procedures below or notify Subrecipient, in writing, that it will not pursue march-in rights on the basis of the available information.
- C. A march-in proceeding shall be initiated by the issuance of a written notice by ONR to Subrecipient and its assignee or exclusive licensee, as applicable and if known to ONR, stating that ONR is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put Subrecipient on notice of the facts upon which the action would be based and shall specify the field or fields of use in which ONR is considering requiring licensing. The notice shall advise Subrecipient (assignee or exclusive licensee) of its rights, as set forth in this section and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of ONR or his or her designee.
- D. Within 30 days after the receipt of the written notice of march-in, Subrecipient (assignee or exclusive licensee) may submit in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of ONR or designee shall undertake or refer the matter to another official for fact-finding.
- E. Fact-finding shall be conducted in accordance with the procedures established by ONR. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford Subrecipient the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as ONR may present.

- F. The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of ONR or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to Subrecipient (assignee or exclusive licensee) by registered or certified mail. Subrecipient (assignee or exclusive licensee) and ONR representatives will be given 30 days to submit written arguments to the head of ONR or designee; and, upon request by Subrecipient oral arguments will be held before the ONR head or designee that will make the final determination.
  
- G. In cases in which fact-finding has been conducted, the head of ONR or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by Subrecipient (assignee or exclusive licensee) and agency

representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for factfinding, the head of ONR or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. Written notice of the determination whether march-in rights will be exercised shall be made by the head of ONR or designee and sent to Subrecipient (assignee of exclusive licensee) by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercised.

- H. ONR may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

## **E.2 Data Rights.**

### **E.2.1 Allocation of Principal Rights.**

- A. The Parties agree that in consideration for Government funding, Subrecipient intends to reduce to practical application items, components and processes developed under this Subaward.
- B. With respect to Data developed or generated under this Subaward and delivered to Recipient, the Government shall receive Unlimited Rights as defined in Section E.1.1 of this Subaward.

## **D. March-In Rights**

(1) In the event the Government chooses to exercise its March-in Rights, as defined in Section E.1.10 of this Subaward, Subrecipient agrees, upon written request from the Recipient or Government, to deliver at no additional cost to the Government or Buyer, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in Section E.1.1 of this Subaward, to this delivered Data.

(2) To facilitate any potential deliveries, Subrecipient agrees to retain and maintain in good condition until two years after completion or termination of the Prime Award, all Data necessary to achieve practical application of any Subject Invention as defined in Section E.1.1 of this Subaward.

E.2.2 Marking of Data.

Pursuant to Section E.2.1 above, any Data delivered under this Subaward shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement N00014-21-9-0006 between the Government and the Performer.

All technical data and computer software delivered under this Subaward without this legend is delivered with Unlimited Rights.

Subrecipient may, without prior approval of the Government, assert copyright in any Data delivered under the Subaward and may affix the applicable copyright notices of 17 U.S.C. § 401 or 402, and an acknowledgement of Government sponsorship (including Agreement number). The Government will not remove any copyright notices placed on Data pursuant to this Section E.2.2 and will include such notices on all reproductions of the Data.

E.2.3 Deferred Ordering of Data.

In addition to Data specified elsewhere in this Subaward to be delivered hereunder, ONR may, at any time during the performance of the Prime Award or within a period of six (6) months after acceptance of all items (other than Data) to be delivered under the Prime Award or the termination of the Prime Award, require delivery of any technical data or computer software generated in the performance of this Subaward or any subcontract hereunder. Subrecipient shall be compensated for converting the Data into the prescribed form, for reproduction and delivery. The obligation to deliver the Data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Government accepts the last delivery of that item from that subcontractor or the termination of the Prime Award, whichever is later. The Government's rights to use said Data shall be pursuant to Section E.2 of this Subaward.

E.2.4 Lower Tier Agreements.

Subrecipient shall include this Section E.2, suitably modified to identify the parties, in all subawards, subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

**E.3 Export Control and Foreign Access To Technology.**

This Section E.3 shall remain in effect during the term of the Subaward and for five (5) years thereafter.

E.3.1 Compliance.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50

U.S.C. app. § 2401-2420, including the Export Administration Regulations (15 C.F.R. Part 730, *et seq.*). Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Subaward.

Accordingly, Subrecipient shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

E.3.2 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

- A. The procedures stated in paragraphs B, C and D below shall apply to any transfer of Technology. These requirements are in addition to, and are not intended to change or supersede the laws and regulations cited in Section E.3.1 of this Subaward. For purposes of this Section, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:
- i. Sales of products or components; or

- ii. Licenses of software or documentation related to sales of products or components; or
  - iii. Transfer to foreign subsidiaries of Subrecipient for purposes related to this Subaward; or
  - iv. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Subaward provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Subaward.
- B. Subrecipient shall provide notice to Recipient and ONR of any proposed transfers from Subrecipient of Technology developed under this Subaward to Foreign Firms or Institutions at least sixty (60) calendar days prior to the proposed date of transfer. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, Subrecipient, its vendors, and ONR shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to Subrecipient.
- C. Subrecipient's notice required by Paragraph B above must be in writing and submitted to Recipient, the ONR AOR and the ONR AO. Such notice shall cite this Section E.3.2, include any relevant Department of State or Department of Commerce licenses/approvals/determinations, or cite any applicable exemptions or exclusions, and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of Subrecipient's written notification, the ONR AO shall advise Subrecipient whether it consents to the proposed transfer. If ONR provides no decision within sixty (60) calendar days after receipt, the transfer is deemed approved by ONR and Subrecipient may proceed with the transfer.
- D. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by or deemed approved by ONR takes place, Subrecipient shall (a) refund to ONR funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States, the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Subaward. Upon request of the Government, Subrecipient shall provide written confirmation of such licenses.

### E.3.3 Lower Tier Agreements.

Subrecipient shall include this Section E.3, suitably modified to identify the parties, in all subawards, subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

**E.25 Prohibition on Contracting For Certain Telecommunications and Video Surveillance Services or Equipment.**

E.25.1 Definitions. As used in this clause:

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

- i. Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;



- ii. Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
  - 1. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - 2. For reasons relating to regional stability or surreptitious listening;
- iii. Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- iv. Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- v. Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- vi. Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

#### E.25.2 Prohibition.

a. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Subrecipient is prohibited from providing to Recipient any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph E.25.3 of this clause applies or the covered telecommunication equipment or services are covered by a waiver issued by the head of executive agency.

E.25.3 Exceptions. This clause does not prohibit Subrecipient from providing:

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

E.25.4 Reporting Requirement.

a. In the event Subrecipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of this Subaward, or Subrecipient is notified of such by a subcontractor at any tier or by any other source, Subrecipient shall report the information in paragraph E.25.4(b) to Recipient, unless elsewhere in this Subaward are established procedures for reporting the information; in the case of the Department of Defense, Subrecipient shall report to the website at <https://dibnet.dod.mil>.

b. Subrecipient shall report the following information pursuant to paragraph E.25.4(a):

1. Within one business day from the date of such identification or notification: the Prime Award number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

2. Within 10 business days of submitting the information in

paragraph E.25.4(b)(1): any further available information about mitigation actions undertaken or recommended. In addition, Subrecipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E.25.5 Subcontracts. Subrecipient shall insert the substance of this clause, including this paragraph E.25.5, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.