

**CUSTOMER CONTRACT REQUIREMENTS**  
**MSS - Kestrel KE2.1**  
**CUSTOMER CONTRACT FA8810-27-9-0001**

## 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. FAR Clauses** The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

**52.204-21 Basic Safeguarding of Covered Information Systems** (NOV 2021). This clause applies to the Contract if Seller may have Federal contract information residing in or transiting through its information system.

**52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment** (NOV 2021).

Paragraph (b)(2) is deleted. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller 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 contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email."

**52.245-1 Government Property** (SEP 2021). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**2. DoD FAR Supplement Clauses** DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

**252.204-7009 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information** (JAN 2023). This clause applies to contracts for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including contracts for commercial products and commercial services.

**252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting** (MAY 2024). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via abuse@Boeing.com with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives. Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

**252.227-7013 Rights In Technical Data -- Other Than Commercial Products and Commercial Services** (AUG 2025). This clause applies when technical data for other than commercial products or

commercial services, or for commercial products or commercial services developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7014 Rights In Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation** (AUG 2025). This clause applies when other than commercial computer software or computer software documentation is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends** (JAN 2025). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer."

**252.227-7037 Validation of Asserted Restrictions on Technical Data** (JAN 2025). This clause applies if Seller or Seller's subcontractors or suppliers at any tier will be delivering technical data under this Contract.

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

**FA8810-27-9-0001 MSS - Kestrel KE2.1 Special Provisions .**

#### **FA8810-27-9-0001 Special Provisions**

### **ARTICLE 2 - DEFINITIONS AND SCOPE**

#### **1. DEFINITIONS**

**Agreement:** Refers to the OT for Prototype Agreement between the Government and the Participant including the Attachments, which are expressly incorporated in and made a part of the Agreement.

**Agreements Officer (AO):** The SSC warranted AO authorized to sign, modify this Agreement, and execute associated projects under this Agreement on behalf of the Government.

**Administrative Agreements Officer (AAO):** The individual from an Administrative Contracting Office, that performs certain administrative responsibilities related to this Agreement, such as Government Property Administration, Wide Area Work Flow approval, and Agreement Closeout, and other specific duties, as delegated by the AO.

**Agreements Officer's Technical Representative (AOTR):** An individual designated and authorized in writing by the AO Government's discretion, multiple AOTRs may be designated in writing at either the Agreement level or on a per-project basis.

**Commercial Computer Software:** Software developed or regularly used for non-governmental purposes which: (1) Has been sold, leased, or licensed to the public; (2) Has been offered for sale, lease, or license to the public; (3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this agreement; or (4) would satisfy at least one of the above three criteria and would require only minor modification to meet the requirements of this agreement.

**Computer Database:** A collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

**Computer Program:** A set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

**Computer Software:** Computer programs, source code, source code listings, object code listings, design

details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

**Computer Software Documentation:** Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

**Covered Government Support:** Contractors covered under Article 34 - Enabling Aerospace Support and Article 35 - Enabling Government Support.

**Covered Government Support Contractor:** A contractor under an Agreement, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor –

- (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
- (ii) Receives access to the technical data or computer software for performance of a Government Agreement that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government- Furnished Information Marked with Restrictive Legends.

**Data:** Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include Subject Inventions included in Article 16 - Patent Rights.

**Days:** Calendar days unless stated otherwise.

**Developed:**

- (i) Applicable to technical data other than computer software documentation.  
An item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;
- (ii) Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.
  - a. A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;
  - b. Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or
  - c. Computer software documentation required to be delivered under a contract or Agreement has been written, in any medium, in sufficient detail to comply with requirements under this Agreement.

**Developed Exclusively at Private Expense:** Development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract or Agreement, or any combination thereof.

- (i) Private expense determinations should be made at the lowest practicable level.
- (ii) Under fixed-price contracts or Agreements, when total costs are greater than the firm-fixed-price or ceiling price of the contract or Agreement, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

**First Light:** The first instance the Contractor's plane of capability has successfully transmitted a series of 2D tracks to the ground system and packaged them into an Overhead Persistent InfraRed Geospatial Intelligence Architecture (OPGA) -79 product.

**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 Agreement, 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.

**Form, Fit, and Function Data:** Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For Computer Software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

**Generated:** Technical data or computer software first created in the performance of this Agreement.

**Government:** The United States of America, as represented by an SSC AO.

**Government Furnished Property:** Property in the possession of, or directly acquired by, the Government subsequently furnished to the Participant for performance of an Agreement. Includes but not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

**Government Property:** All property owned or leased by the Government. Government property includes both Government-furnished property and contractor-acquired property at delivery. Government property includes material, equipment, special tooling, special test equipment and real property. Government property does not include intellectual property and software.

**Government Purpose:** Any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

**Government Purpose Rights:** The rights to -

- (i) Use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction; and
- (ii) Release or disclose technical data or computer software outside the Government and authorize persons to whom release, or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that technical data or computer software for United States Government purposes.

**In Kind Contribution:** The nonfinancial resources expended by the Participant to perform the requirements of a Prototype Award, such as the prorated value of space used, the wear and tear on in-place capital assets like machinery, and the reasonable fair market value (appropriately prorated) of

equipment, materials, or other property used in the conduct of performing requirements of a Prototype Award.

**Invention:** Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

**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.

**Limited Rights:** The rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the technical data by persons outside the Government if it is necessary for emergency repair and overhaul or if the release or disclosure is to -

- (1) A covered Government support contractor in performance of its covered Government support Agreements for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or
- (2) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;

The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data, and the contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

**Made:** As used in this Agreement, relates to any invention and means the conception or first actual reduction to practice of such invention.

**Milestone:** A scheduled, previously negotiated event signifying the completion of a major deliverable or a set of related deliverables, with clearly defined success criteria. A milestone that has been completed will be approved by the AOTR for payment to [INSERT COMPANY NAME], the Participant. This approved payable milestone will represent a predetermined dollar amount in relation to performance of a particular Award under this OT for Prototype Agreement.

**Modification:** means the modification to this OT for Prototype Agreement in its terms and conditions and/or attachments.

**Noncommercial Computer Software:** Software that does not qualify as Commercial Computer Software.

**Nontraditional Defense Contractor:** for this Agreement and as defined per 10 U.S.C. §3014 "with respect to a procurement or with respect to a transaction authorized under section 4021(a) or 4022 of this title, it means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section".

**Operations, Maintenance, Installation, or Training Purposes (OMIT) Data:** Data that is necessary for operation, maintenance, installation, or training purposes (but not including detailed manufacturing or process data).

**Participant:** Is defined as Buyer, its parent companies, divisions, subsidiaries, affiliates, the assignees of each, and their respective directors, officers, employees, and agents. In certain contexts, Participant may also include Seller.

**Parties:** The Government and the Participant, the parties to this Agreement. In the singular, unless specified, "Party" refers to either the Government or Seller, the Participant, or both.

**Person:** An individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit.

**Prototype:** A physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

**Practical Application:** As used in this Agreement, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Government on reasonable terms.

**Proposal:** The proposal from a Participant in response to a solicitation request issued by and evaluated by the Government for award.

**Property:** Any tangible personal property other than property actually consumed during the execution of work under this agreement.

**Record:** Includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**Request for Prototype Proposal (RPP):** The Government's request for proposals based on requirements determined by the Government. Such requests will include the technical, management, and cost factors as appropriate that will be used as the Government's basis for award selection.

**SSC Software Rights:** Applies only to noncommercial computer software and means the Government's right to use, modify, reproduce, perform, display, release disclose, or transfer computer software are restricted. The Government may use a computer program on a limited number of computers and make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes. The Government will not transfer the software outside of the Government or for any purpose other than the program, except that the Government may allow the use of the noncommercial computer software outside of the Government under a limited set of circumstances, including use by a Covered Government Support Contractor in performance of its covered Government support contract, and after the contractor or subcontractor asserting the restriction is notified in writing as far in advance as practicable that a release or disclosure to particular contractors or subcontractor is planned to be made.

**Subject Invention:** Any inventions conceived or first actually reduced to practice in the performance of work under this Agreement.

**Technical Data:** Recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to Agreement administration, such as financial and/or management information.

**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, maskworks and copyrights developed under this Agreement.

**Under this OT for Prototype Agreement:** Means within the scope of work to be performed as described in the Statement of Work, Agreement Requirements and Payments.

**Unlimited Rights:** Rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

**System for Award Management (SAM):** means the Federal repository into which an entity must provide information required for the conduct of business as a Consortium. Additional information about registration procedures may be found at the SAM Internet site (currently at [beta.sam.gov](http://beta.sam.gov))

**ARTICLE 6 - APPLICABLE LAW AND SEVERABILITY**

Applicable to all *contracts, subcontracts or lower-tier Agreements, regardless of tier, for developmental prototype work.*

**1. Applicable Laws to receive Federal Funds**

- a. Title V, Whistleblower Protection Act of 1989

DoD Hotline [https://www.dodig.mil/Components/Administrative-Investigations/DoD- Hotline/](https://www.dodig.mil/Components/Administrative-Investigations/DoD-Hotline/).  
The mission of the DoD Hotline is to provide a confidential, reliable means to report violations of law, rule, or regulation; fraud, waste, and abuse; mismanagement; trafficking in persons; serious security incidents; or other criminal or administrative misconduct that involve the DoD personnel and operations, without fear of reprisal.

- b. Environmental, Safety, and Health Responsibility

The Participant shall comply with all applicable Federal, State, and local environmental, safety, and health laws and regulations. The Participant is responsible for assuring all Government Facilities procedures are followed and necessary permits for performing projects under this OT for Prototype Agreement are in place before performing activities requiring such permits. Any cost resulting from the failure of the Participant to perform this duty shall be borne by the Participant.

**2. Laws Restricting Certain Activities**

- a. 22 U.S.C. Chapter 78, Trafficking Victims Protection
- b. 48 CFR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)
- c. 49 U.S.C. §41102, General, temporary, and charter air transportation certificates of air carriers
- d. 49 U.S.C. §40118, Government-financed air transportation
- e. 42 U.S.C. §2000d, Civil Rights Act of 1964 (Title VII)
- f. 41 U.S.C. Chapter 21, Restrictions on Obtaining and Disclosing Certain Information
- g. 15 U.S.C. §1-38, Sherman Antitrust Act of 1890
- h. 15 U.S.C. 12-27, The Clayton Antitrust Act of 1914
- i. Federal Trade Commission Act of 1914
- j. 10 U.S. Code § 4864, Miscellaneous limitations on the procurement of goods other than United States goods

**3. Federal Funding Accountability and Transparency Act of 2006**

- a. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires certain information regarding the Participant and the Agreement be made public.
- b. Nothing in this clause requires the disclosure of classified information.

**4. Lower-Tier Agreements**

The Participant shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier Agreements, regardless of tier, for developmental prototype work.

**5. System for Award Management and Unique Entity Identification Requirements**

- a. Requirement for System for Award Management (SAM): Unless exempted from this requirement under 2 CFR 25.110, the Participant Manager of Record must maintain the currency of information in the SAM until the Participant submits the final financial report required under this Agreement or receives the final payment, whichever is later. This requires that the Participant review and update the information at least annually after the initial registration, and more frequently if required by changes in information or another Article.
- b. Requirement for Unique Entity Identification (UEI) Numbers: Participant's must have a UEI number to receive a Follow-on Production Award.

**Severability** - If any portion of this Agreement is held invalid by a court of competent jurisdiction, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, unless applying such remaining portions would frustrate the purpose of this Agreement.

**ARTICLE 12 - ACCOUNTING AND AUDIT ADMINISTRATION**

Applicable to all Seller and all of Seller's subcontractors.

The Participant shall maintain adequate records to account for the control and expenditure of Government funds received under this Agreement, to include a separate accounting for funds expended on each deliverable.

**1. Accounting System Requirements**

The Participant shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds under this Agreement. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly, and which can generate a cost element summary.

- a. The Participant shall establish and maintain accounting systems that:
  - i. Comply with Generally Accepted Accounting Principles (GAAP)
  - ii. Control and properly document all cash receipts and disbursements.
- b. The Participant shall ensure and agree to maintain adequate records to account for the control and expenditure of Government funds received under this Agreement, to include a separate accounting for funds expended on each deliverable.
- c. The Participant shall ensure to establish and maintain accounting systems that:
  - i. Comply with Generally Accepted Accounting Principles
  - ii. Control and properly document all cash receipts and disbursements.
  - iii. Track cost-share contributions of the Government and the Participant, for those Prototype Projects that require cost-sharing.

**2. Comptroller General Review**

In accordance with 10 United States Code (U.S.C.) §4022(c)(1), to the extent that the total government payments under this Agreement exceeds \$5,000,000, the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records that directly pertain to, and involve transactions relating to, the agreement or a sub-Agreement/contract hereunder for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative Agreement, or "Other Transaction" Agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-Agreements /contracts to this Agreement.

**3. Audits**

The Agreements Officer, or an authorized representative, such as the Defense Contract Audit Agency (DCAA), shall have the right to examine or audit the Participant's financial records during the period of the Agreement and for three (3) years after final payment for the sole purpose of ensuring full accountability for all Government funding under this Agreement. The Agreements Officer, or an authorized representative, such as DCAA, shall have direct access only to sufficient financial records to ensure full accountability for all Government funding under this Agreement. Such examination or access

shall occur during business hours upon prior written notice. The financial records shall be provided to the Agreements Officer, or an authorized representative, such as DCAA, in the format in which the records have been maintained by the Participant.

4. **Flow-down**

The Participant shall flow down the requirements of this Article to any subcontractors.

**ARTICLE 16 - PATENT RIGHTS**

Applicable to all contracts, subcontracts or lower tier Agreements, regardless of tier, for experimental, *developmental*, or research work.

**1. Definitions**

**"Invention,"** as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code.

**"Made,"** As used in this Agreement, relates to any invention and means the conception or first actual reduction to practice of such invention.

**"Subject Invention"** Any inventions conceived or first actually reduced to practice in the performance of work under this Agreement.

**2. Allocation of Principal Rights**

- a. The Participant shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided the Participant has either timely pursued a patent application and maintained any awarded patent, or established trade secret protection, and has not notified the Government (in accordance with the paragraph 3 below) that the Participant does not intend to retain title.
- b. The Participant shall retain ownership throughout the world to background inventions. Any invention conceived of or first actually reduced to practice in support of a Participant's internal development milestone outside the funded effort shall be a background invention of the Participant and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first actually reduced to practice under this Agreement in support of other than internal development milestones shall be considered a Subject Invention
- c. The Government is granted a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

**3. Invention Disclosure, Election of Title, and Filing of Patent Application**

- a. The Participant shall disclose each Subject Invention to the Agreements Officer on a DD Form 882 within eight (8) months after the inventor discloses it in writing to the Participant's personnel responsible for patent matters. Upon submitting the disclosure, the Participant shall notify the Agreements Officer whether the Participant intends to retain title to such Subject Invention, and whether it will either maintain such Subject Invention as a trade secret or file for patent protection.
- b. If the Participant initially chooses to maintain such Subject Invention as a trade secret, the Participant may subsequently choose to file for patent protection after notice to the Agreements Officer. If the Participant initially chooses to file for patent protection, but prior to the publication of such application chooses to abandon the application and instead rely on trade secret protection, Participant shall notify the Agreements Officer.
- c. If at any time the Participant does not elect to both retain title and maintain a Subject Invention as a trade secret or fails to keep the Subject Invention a trade secret, Article 14 paragraphs 3d through paragraph 6d of this Article shall apply to the Subject Invention.

- d. If the Participant determines that it does not intend to retain title to any such Subject Invention, the Participant shall notify the Agreements Officer, in writing, within 8 months of disclosure to the Government. However, in any such case where publication, sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government to a date that is no more than (60) calendar days prior to the end of the statutory period.
- e. The Participant shall file its initial patent application 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. The Participant may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months after the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.
- f. The Participant shall notify SSC 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.
- g. Requests for extension of the time for disclosure election, and filing under Article 16 - Patent Rights, may be granted at Agreements Officer's discretion after considering the circumstances of the Participant and the overall effect of the extension.
- h. The Participant shall submit to the Government annual listings of Subject Inventions. At the completion of the Agreement, the Participant shall submit a comprehensive listing of all Subject Inventions identified during the course of the Agreement and the current status of each.

#### **4. Conditions When the Government May Obtain Title**

Upon the Agreements Officer's written request, the Participant shall convey title to any Subject Invention to the Government under any of the following conditions:

- a. If the Participant fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph 3 of this Article, provided that the Government may only request title within (60) calendar days after learning of the failure of the Participant to disclose or elect within the specified times.
- b. If patent protection is pursued, in those countries in which the Participant fails to file patent applications within the times specified in paragraph 3 of this Article, provided that, if the Participant has filed a patent application in a country after the times specified in paragraph 3 of this Article, but prior to its receipt of the written request by the Government, the Participant shall continue to retain title in that country.
- c. In any country in which the Participant 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, provided that Participant does not notify the Agreements Officer that trade secret protection is being sought instead.

#### **5. Minimum Rights to the Participant and Protection of the Participant's Right to File**

- a. The Participant shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Participant fails to disclose the Invention within the times specified in paragraph 3 of this Article. The Participant's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Participant is a party and includes the right to grant licenses of the same scope to the extent that the Participant was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
- b. The Participant's domestic license, as described above, may be revoked, or modified by the Government 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 Code of Federal Regulations (CFR) Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Participant has achieved practical application and continues to make the benefits of the Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Participant, 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, the Agreements Officer shall furnish the Participant a written notice of its intention to revoke or modify the license, and the Participant shall be allowed (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.

## **6. Action to Protect the Government's Interest**

- a. The Participant agrees to execute or to have executed and promptly deliver to the Agreements Officer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Participant elects to retain title, and (ii) convey title to the Government when requested under paragraph 4 of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
- b. The Participant agrees to require, by written Agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Participant each Subject Invention in order that the Participant can comply with the disclosure provisions of paragraph 3 of this Article. The Participant 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 U.S. or foreign statutory bars.
- c. The Participant shall notify the Agreements Officer 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 (30) calendar days before the expiration of the response period required by the relevant patent office.
- d. The Participant 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. FA8810-27-9-0001, awarded by SSC/SNK. The Government has certain rights in the Invention."

## **7. Reporting on Utilization of Subject Inventions**

- a. The Participant agrees to submit, during the term of the Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Participant or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Participant, and such other data and information as the agency may reasonably specify. The Participant also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with Paragraph I of this Article. The Government agrees it shall not disclose such information to persons outside the Government without permission of the Participant, unless required by law.
- b. All required reporting shall be submitted to the AO and Administrative Agreements Officer (AAO), where one is appointed.

## **8. Preference for American Industry**

Notwithstanding any other provision of this clause, the Participant agrees that it shall not 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 the Government upon a showing by the Participant 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.

## **9. March-in Rights**

The Participant agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Participant, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Participant, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Agreements Officer determines that:

- a. Such action is necessary because the Participant or assignee has not taken effective steps, consistent with the intent of this Agreement, 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 the Participant, assignee, or their licensees.
- c. Such action is necessary to meet requirements for public use, and such requirements are not reasonably satisfied by the Participant, assignee, or licensees.

- d. Such action is necessary because the Agreement required by Paragraph 8 of this Article 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.

#### **10. Authorization and Consent**

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Agreement.

#### **11. Notice and Assistance**

- a. The Participant shall report to the Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Participant has knowledge.
- b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed Under this Agreement, the Participant shall furnish to the Government, when requested by the Agreements Officer, all evidence and information in the Participant's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Participant has agreed to indemnify the Government.

#### **12. Lower-Tier Agreements**

The Participant shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier Agreements, regardless of tier, for experimental, developmental, or research work.

#### **13. Survival Rights**

The obligations of the Government and the Participant under this Article shall survive after the expiration or termination of this Agreement.

#### **14. Patent Infringement Indemnification**

In the case where the Participant elects to use trade secret protection for a subject invention, the following applies:

- a. The Participant shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Agreement, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- b. This indemnity shall not apply unless the Participant shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense.

**ARTICLE 17 - DATA RIGHTS**

Applicable to all contracts, subcontracts or lower-tier Agreements, regardless of tier, for experimental, developmental, or research work.

**1. Definitions**

"Commercial Computer Software" as used in the Article is defined in DFARS 252- 227- 7014(a)(1) (Jun 1995).

"Commercial Computer Software License" means the license terms under which commercial computer software and Data (as defined in this OT for Prototype Agreement) is sold or offered for sale, lease, or license to the general public.

"Computer Data Base" as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

"Computer program" as used in this Agreement means a set of instructions, rules, or routines in a form capable of causing a computer to perform a specific operation or series of operations.

"Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of the form or media on which it is recorded. The term includes technical data and computer software. The term does not include information incidental to Agreement administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government purpose" means any activity in which the United States Government is a party, including cooperative Agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

"Government purpose rights" means the rights to:

- a. Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- b. Release or disclose technical data outside the Government and authorize persons to whom release, or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

"Limited rights" as used in this Article is as defined in DFARS 252.227-7013(a)(14) (MAR 2023).

"Restricted rights" as used in this Article is as defined in DFARS 252.227-7014(a)(15) (MAR 2023).

"Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the Participant whose proposal is selected by the Government under a call for proposals issued under the OT for Prototype Agreement.

"Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software.

"Unlimited rights" means rights use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

## 2. Data Categories

- a. **Category A** - Data developed and paid for totally by private funds, or the IR&D funds of the Participant or its subcontractor. A Participant (or its subcontractor) retains all rights to Category A Data. Category A Data shall include, but not be limited to:
  - i. Data or other material provided by Participant for a Prototype Project under this Agreement which was not developed in the performance of work under that project, and for which the Participant retains all rights.
  - ii. Any initial Data or technical, marketing, or financial Data provided at the onset of a proposal by the Participant. Such Data shall be marked "Category A" and any rights to be provided to the Government for such Data under a specific Prototype Project shall be as identified in the proposal submitted to the Government and included into the Prototype modification and Government issued Prototype Awards.
- b. **Category B** - Any data developed under this Agreement with mixed funding, i.e., development was accomplished partially with costs charged to a Participant's indirect cost pools and/or costs not allocated to a Participant Prototype Award under this Agreement and partially with Government funding under this Agreement, the Government will have Government Purpose Rights. Any Data developed outside of this Agreement whether or not developed with any Government funding in whole or in part under a Government Agreement, contract or subcontract shall have the rights negotiated under such prior Agreement, contract, or subcontract; the Government shall get no additional rights in such Data.
- c. **Category C** – Any data developed exclusively with Government funds under this Agreement. Research and Development performed was not accomplished exclusively or partially at private expense. Under this category:
  - i. The Government will have Government Purpose Rights in Data developed exclusively with Government funds under a Prototype Project funded by the Government under this Agreement that is:
    - A. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
    - B. Studies, analyses, test data, or similar data produced for this Agreement, when the study, analysis, test, or similar work was specified as an element of performance;

- C. Data created in the performance of the Agreement that does not require the development, manufacture, construction, or production of items, components, or processes;
  - D. Form, fit, and function data;
  - E. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
  - F. Corrections or changes to technical data furnished to the Participant by the Government.
- ii. The Government shall have unlimited rights in Data that is:
- A. Otherwise publicly available or that has been released or disclosed by Participant without restrictions on further use, release, or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
  - B. Data in which the Government has obtained unlimited rights under another Government contract, or Agreement, or as a result of negotiations; or
  - C. Data furnished to the Government, under this Agreement or any other Government contract or subcontract/ sub-Agreement thereunder, with:
    - Government Purpose Rights or limited rights and the restrictive condition(s) has/ have expired; or
    - Government purpose rights and the Participant's exclusive right to use such Data for commercial purposes under such contract/ Agreement or subcontract/ sub-Agreement has expired.
  - D. However, any Data developed outside of this Agreement whether or not developed with any Government funding in whole or in part under a Government Agreement, contract or subcontract shall have the rights negotiated under such prior Agreement, contract, or subcontract; the Government shall get no additional rights in such Data.
    - **Exception:** Where a traditional defense contractor Participant in a cost-sharing relationship with the Government has identified and used new or concurrent IR&D funds on the conduct of a Prototype Award SOW, that contractor grants the Government the same level of Data Rights as negotiated under the Prototype Modification/ Prototype Award, even if those rights are additional to, or greater than those rights normally attributed to works funded by IR&D.

- E. Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under this Agreement, and the treatment of Data relating thereto, shall be as set forth in the Commercial Computer Software License.
- d. The parties to this Agreement understand and agree that the Government shall have its Participant(s) stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to Data.

### **3. Allocation of Principal Rights**

- a. The Parties agree that in consideration for Government funding, the Participant intends to reduce to practical application items, components and processes developed under this Agreement.
- b. With respect to technical data or computer software developed or generated under this Agreement, the Government shall receive Government Purpose Rights. Limited Rights or SSC Software Rights may be asserted for technical data related to items or process developed exclusively at private expense or computer software developed exclusively at private expense. Government Purpose Rights shall be applicable for a period of five (5) years, after which the Government shall have Unlimited Rights.
- c. With respect to technical data or computer software delivered pursuant to Attachment 1 under the Agreement, the Government shall receive Government Purpose Rights. Limited Rights or SSC Software Rights may be asserted for technical data related to items or process developed exclusively at private expense or computer software developed exclusively at private expense.
- d. The Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked Technical Data.
- e. The Government shall have immediate Government Purpose Rights to Category B or C Data upon delivery or project or Agreement completion (whichever is earlier), except that
  - i. The Participant may request a delay of the start of Government Purpose Rights in Category B Data for a period not to exceed five (5) years from project or Agreement completion (whichever is earlier). Such requests will only be made in those cases where the Participant has provided information demonstrating the need for this additional restriction on Government use and shall be submitted to the AO for approval, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval of this request, the parties agree to treat this as a dispute and shall follow the provisions of Article 11, Disputes and Liability.
  - ii. For Article 15 Category C Data of this Agreement, the Government shall have only the rights established under prior Agreements, unless it falls under the exception at Article 15 in which case the Government shall have the same level of Data Rights negotiated under the Prototype Modification. For Category C data, the Government shall only have the rights set forth in the Commercial Computer Software Data License Agreement.
- f. Data that will be delivered, furnished, or otherwise provided to the Government as specified in a specific prototype award funded under this Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the Parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

- g. Each Proposal submitted by the Participant in response to a Government call for proposal under this Agreement shall include a list of the Category A, B and C Data to be used or developed under the prototype award if selected. Any proposal that includes information to be provided with Limited Rights, Restricted Rights, or Specially Negotiated License Rights shall include supporting detail and rationale. Rights in such Data shall be as established under the terms of this Agreement, unless otherwise asserted in the proposal and agreed to by the Government in the Prototype modification. The AO will incorporate the list of Category A, B and C Data and the identified rights therefore in the award document.
- h. Following issuance of a prototype award to the Participant, the Participant shall update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Agreement, unless otherwise asserted in a supplemental listing and agreed to by the Government.

## **1. Validation of Restrictive Marking**

- a. The Validation of Contractor's Restrictive Markings on Technical Data will be determined in accordance with the delineation of Data Rights under this Agreement. The Government and the Participant agree to use the process outlined in DFARS clause 252.227-7037 Validation of Restrictive Markings on Technical Data excluding (b)(1) and (2), with all mention of Contractor understood to mean the Participant and all mention of Contracting Officer understood to mean Agreements Officer.
- b. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Data furnished or to be furnished under this Agreement are contained in the Validation of Restrictive Markings on Technical Data provision of this Agreement. Notwithstanding any provision of this Agreement concerning inspection and acceptance, the Government may ignore or, at the Participant's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data provision of this Agreement, a restrictive marking is determined to be Unjustified.
- c. Nonconforming Data markings: A nonconforming marking is a marking placed on Data delivered or otherwise furnished to the Government under this Agreement that is not in the format authorized by this Agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data provision of this Agreement. If the Agreements Officer notifies the Participant of a nonconforming marking and the Participant fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Participant's expense, remove or correct any nonconforming marking.

## **2. Marking of Data**

- a. Except for Data delivered with unlimited rights, Data to be delivered under this Agreement subject to restrictions on use, duplication, or disclosure shall be marked with a suitable notice (company proprietary statement to be handled in accordance with Article 19 – Proprietary and Controlled Unclassified Information) or legend in accordance with DFARS 252.227-7013(f)(2-4).
- b. In the event the Government chooses to exercise its March-in Rights, as defined in Article 16 – Patent Rights of this Agreement, the Participant agrees, upon written request from the Government, to deliver at no additional cost to the Government, all technical data or computer software 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 Article 2 – Definitions and Scope of this Agreement, to this delivered technical data or computer software.
- c. The Government shall have unlimited rights in all unmarked Data. In the event that Participant

learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Participant will have the opportunity to cure such omission going forward by providing written notice to the AO within three (3) months of the erroneous release.

- d. To facilitate any potential deliveries, the Participant agrees to retain and maintain in good condition until three (3) years after completion or termination of this Agreement, all technical data or computer software necessary to achieve practical application of any Subject Invention as defined in Article I, Section B of this Agreement.

### 3. Copyright

- a. The Participant reserves the right to protect by copyright Data delivered, first developed, produced, or created under this Agreement. All such copyrights will be in the name of the Participant. For copyrighted materials other than Data delivered with Category A, B or C rights as specified above, the Participant hereby grants to the U.S. Government a non-exclusive, nontransferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Agreement, and to authorize others to do so. The Government's license is co-extensive with the other rights and licenses under Articles 16 – Patent Rights and 17 – Data Rights.
- b. For copyrighted materials other than Data delivered with Category A, B or C rights as specified above, in the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement with the written permission of the Copyright holder.
- c. Third-party copyrighted Data: The Participant shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the Data to be delivered under this Agreement unless the Participant is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable Data of the appropriate scope set forth in this Article, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
- d. Except that copyrighted Data that existed or was produced outside of this Agreement and is unpublished having only been provided under licensing Agreement with restrictions on its use and disclosure-and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use and treated in accordance with such license rights legend markings restricting its use.
- e. The Participant is responsible for affixing appropriate markings indicating the licenses of the Government on all Data delivered under this Agreement. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

### 4. Prior Technology

- a. Government Prior Technology: In the event it is necessary for the Government to furnish the Participant, with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, compliance with Article 19 – Proprietary and Controlled

- i. Unclassified Information, and the signing of Nondisclosure agreements by the Participants to whom such Data is provided for use under the OT for Prototype Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.
- b. Government Prior Technology: In the event it is necessary for the Government to furnish the Participant to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of Nondisclosure agreements by such Government Contractors or contract employees. The Participant shall not be obligated to provide Data that existed prior to or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, compliance with Article 19 - Proprietary and Controlled Unclassified Information, and the signing of Nondisclosure agreements by the Participant to whom such Data is provided for use under the Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.
- c. Oral and Visual Information: If information which Participant, their subcontractors of any tier and their respective employees) considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.
- d. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:
  - i. Data not identified with a suitable notice or legend as set forth in this Article; nor
  - ii. Information contained in any Data for which disclosure and use is restricted under Article 19 - Proprietary and Controlled Unclassified Information, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the Participant has furnished, or is required to furnish to the Government without restriction on disclosure and use.
  - iii. Marking of Data: Any Data delivered under this Agreement shall be marked with a suitable notice or legend.

## 5. Data First Produced by the Government

As to Data first produced by the Government in carrying out the Government's responsibilities under this Agreement and which Data is privileged or confidential if obtained from the Participant, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and

maintained in confidence by the Participant to whom disclosed for three (3) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by the Participant, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

#### **6. Ordering of Data**

The Government can only order such Data as is developed under this Agreement where the order request is made within one (1) year following Agreement completion or for an alternate duration specified in the prototype award. In the event the Government orders such Data, it shall pay the Participant the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs.

#### **7. Deferred Ordering of Data**

In addition to Data specified in this Agreement to be delivered hereunder, the Government may, at any time during the performance of this Agreement or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under this Agreement or the termination of this Agreement, order any Data generated in the performance of this Agreement or any subcontract hereunder. When the Data is ordered, the Participant shall only be compensated for the costs of 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 the subcontractor shall expire three (3) years after the date the Participant accepts the last delivery of that item from that subcontractor under this Agreement. The Government's rights to use said Data shall be pursuant to Article 15 of this Agreement.

#### **8. Specifically Negotiated License Rights**

Notwithstanding the terms of this Article, differing rights in data may be negotiated on a case-by-case basis if not already negotiated under the Resilient Missile Warning and Tracking (MWT) Medium Earth Orbit (MEO) Epoch 2 Vendor 2 (E2V2) SVs OT for Prototype Agreement. Specially negotiated license rights must be negotiated and incorporated via modification to be applicable.

#### **9. Disclosure of Data to Covered Government Support Participants**

The Participant acknowledges that data are authorized to be released or disclosed to Enabled Aerospace Support and Covered Government Support in accordance with Article 34 - Enabling Aerospace Support, and Article 35 -Enabling Government Support.

#### **10. Rights in derivative computer software or computer software documentation**

The Government shall retain its rights in the unchanged portions of any Government furnished computer software or computer software documentation delivered under this Agreement that the Participant uses to prepare, or includes in, derivative computer software or computer software documentation under this Agreement.

#### **11. Lower-Tier Agreements**

The Participant shall include this Article, suitably modified to identify the parties, in all subcontracts or lower-tier Agreements, regardless of tier, for experimental, developmental, or research work. Nontraditional contractor sub-awardees, commercial suppliers to an awardee or sub-awardee are allowed to submit any applicable intellectual property licenses directly to the Government after notification to the Agreement holder.

#### **12. Survival Rights**

The obligations of the Government and the Participant under this Article shall survive after the expiration or termination of this Agreement.

**13. Government Purpose Rights - Duration**

Under this Agreement, the period of a Government Purpose Rights license shall be no less than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Prototype Project during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years starting from completion of the additional Prototype project.

**ARTICLE 18 - FOREIGN ACCESS TO TECHNOLOGY**

Applicable to all contracts, subcontracts, sub- Agreements or lower tier Agreements, regardless of tier, for *developmental* prototype work.

**1. General**

- a. The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled.
- b. The Participant shall comply with the International Traffic in Arms Regulation (22 CFR part 121 et seq.), the Department of Defense (DoD) Industrial Security Regulation (DoD 5220.22-R), the Department of Commerce Export Administration Regulation (15 CFR part 770 et seq.), and U.S. Code for Miscellaneous limitations on the procurement of goods other than United States goods (10 U.S. Code § 4864).

**2. Reporting**

In addition to meeting NISPOM reporting requirements to report changed conditions impacting Facility Security Clearance (FCL) that may result in Foreign Ownership, Control, or Influence (FOCI), in the event of such a changed condition the Participant must also promptly report that information to the Agreements Officer.

**3. Lower-Tier Agreements**

The Participant shall include this Article, suitably modified to identify the parties, in all sub- Agreements or lower tier Agreements, regardless of tier, for developmental prototype work.

**4. Survival Rights**

The obligations of the Government and the Participant under this Article shall survive after the expiration or termination of this Agreement.

**ARTICLE 19 - PROPRIETARY AND CONTROLLED UNCLASSIFIED INFORMATION**

Applicable to contracts, subcontracts, or sub-agreements involving Controlled Unclassified Information under this *Agreement*.

**1. Definitions**

"Disclosing Party" means the party who discloses Proprietary Information as contemplated by the subsequent Paragraphs.

"Receiving Party" means the party who receives Proprietary Information disclosed by a Disclosing Party.

"Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party.

Notwithstanding the foregoing, materials and other information which are orally, visually or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret. During this thirty (30) calendar day period, such information so disclosed shall be provided the same protection as provided for Proprietary Information marked with a restrictive stamp or legend in accordance with this OT for Prototype Agreement, however any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. Proprietary Information includes any information and materials considered a Trade Secret by the Participant.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- a. The owner thereof has taken reasonable measures to keep such information secret; and
- b. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

**2. Compliance**

- a. Protection of Controlled Unclassified Information (CUI) is Government's top priority and can directly impact the Government's ability to successfully conduct and complete its mission. The Participant shall implement the version of National Institute of Standards and Technology (NIST) Special Publication (SP) 800-71 in effect at the time the solicitation is issued or as authorized by the Agreements Officer for the CUI that resides on the Participant's information system. The Participant is required and shall protect controlled unclassified information (CUI) and implement all security requirements specified in NIST SP 800-171 Rev 2 "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" or other identified best practices within six (6) months of Agreement award.

**3. Applicability**

Except paragraph 6 below, this Article, applies to information other than Data, which is addressed in Article 17 - Data Rights. Paragraph 6 below, applies to all Controlled Unclassified Information (CUI).

**4. Exchange of Information**

The Government or Buyer may from time to time disclose Controlled Unclassified Information to the Participant, and the Participant may from time to time disclose Proprietary Information to the Government in connection with the Agreement. Neither the Government nor Participant shall be obligated to transfer Controlled Unclassified Information nor Proprietary Information independently developed by either Party to any Party to this Agreement.

#### **5. Proprietary Information and Authorized Disclosure**

The Government will use any Proprietary Information received consistent with its obligations under federal law or as otherwise specified in Article 14 "Patent Rights" and Article 15 "Data Rights". "Proprietary Information" shall not extend to materials or information that: Are received or become available without restriction to the Government under this Agreement or a proper, separate Agreement or contract;

- a. Are not identified with a suitable notice or legend per the definition of Proprietary Information;
- b. Are lawfully in possession of the Government without restriction at the time of disclosure thereof as demonstrated by prior written records;
- c. Are or later become part of the public domain through no fault of the Government;
- d. Are received by the Government from a third party having no obligation of confidentiality to the Participant;
- e. Are developed independently by the Government without use of Proprietary Information as evidenced by written records; and/or
- f. Consist solely of Government funding or expenditure information regarding execution of this Agreement.
- g. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

#### **6. Return of Proprietary Information**

Upon request by a Disclosing Party that made a disclosure of Proprietary Information or Trade Secrets to the Government, the Government shall promptly return all copies and other tangible manifestations of the Proprietary Information or Trade Secrets disclosed. Upon request by the Government, a Receiving Party shall promptly return all copies and other tangible manifestations of the Proprietary Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

#### **7. Treatment of Controlled Unclassified Information**

The Participant is required to treat Controlled Unclassified Information in accordance with DD Form 254 Contract Security Classification Specification Attachments of this Agreement.

#### **8. Improper Use of Proprietary Markings**

In the event there is a disagreement regarding the application of a proprietary marking, the Agreements Officer may challenge its validity in writing. The participant shall acknowledge receipt within five (5) and provide a written response within ten (10) business days in an effort to resolve the disagreement.

#### **9. Third-Party Support**

The Government anticipates third-party support from Covered Government Support on this Agreement. Interactions with Covered Government Support and their access to Proprietary Information are subject to Article 34 - Enabling Aerospace Support, and Article 35 - Enabling Government Support.

#### 10. **Survival Rights**

The obligations of the Government and the Participant under this Article shall survive after the expiration or termination of this Agreement to ensure the protection of proprietary and/or controlled unclassified information. The extent of survival will terminate once all proprietary and/or controlled unclassified information is secured by Disclosing Party and/or properly destroyed/disposed of by Receiving party.

#### 11. **Flow-down**

The Participant shall flow down the requirements of this Article to its respective personnel, subcontractors, and agents receiving such Controlled Unclassified Information under this Agreement.

**ARTICLE 20 - SECURITY REQUIREMENTS**

Applies to all contracts, subcontracts, or sub-Agreements that involve access to classified information.

1. This Article applies to the extent that this OT for Prototype Agreement involves access to information classified that may fall within one (or more) of the following levels:
  - a. "Confidential"
  - b. "Secret"
  - c. "Top Secret"
  - d. "Top Secret/ Sensitive Compartmented Information (TS/SCI)"
  - e. "Special Access Program (SAP)"
2. The Participant shall comply with the applicable DD Form 254 for the prime agreement with the USG at the time of award and with:
  - a. The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and
  - b. Any revisions to that manual, notice of which has been furnished to the Participant.
3. The Participant agrees to insert terms that conform substantially to the language of this Article, including this paragraph, in all sub-Agreements under this Agreement that involve access to classified information.

**ARTICLE 21 - CYBERSECURITY AND INFORMATION PROTECTION**

Applicable to contracts, subcontracts, sub-Agreements, or Agreements for which performance will involve *covered defense information, including contracts, subcontracts, agreements, or sub-Agreements for commercial items.*

1. Purpose: The purpose of this Article is to:
  - a. Require the Participant and all subcontractors to implement cybersecurity practices throughout their respective supply chains; and
  - b. Provide the Government visibility into the effectiveness of those practices in protecting the unauthorized exfiltration and use of Controlled Technical Information (CTI) residing within a covered Participant or subcontractor's information system.
2. Compliance with this Article is required by the Participant and shall:
  - a. Protect controlled unclassified information (CUI) and implement all security requirements specified in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 Rev 1 "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" or other identified best practices within six (6) months of Agreement award.
  - b. Establish, maintain, and resource a plan demonstrating the management of activities to implement NIST 800-171 Rev 2 or identified best practices and report to the Government program office in the quarterly cybersecurity report.
  - c. Include 48 CFR 52.204-21 "Basic Safeguarding of Covered Contractor Information Systems" in subcontracts with Participants and the ability for the Government to perform an assessment through SSC cyber assessment teams, Government Partner cyber assessment teams, or through a third-party assessor.
3. Definitions

"Covered system" means a national security system, as that term is defined at 44 U.S.C. 3552(b) (see 10 U.S.C. 3252). It is any information system, including any telecommunications system, used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency:

  - a. The function, operation, or use of which:
    - i. Involves intelligence activities;
    - ii. Involves cryptologic activities related to national security;
    - iii. Involves command and control of military forces;
    - iv. Involves equipment that is an integral part of a weapon or weapons system; or
    - v. Is critical to the direct fulfillment of military or intelligence missions, but this does not include a system that is to be used for routine administrative and business applications, including payroll, finance, logistics, and personnel management applications; or
  - b. Is protected at all times by procedures established for information that have been specifically

authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

All definitions other applicable to this Article can be found in DFARS clause 252.204-7012 "Safeguarding Covered Defense Information and Cyber Incident Reporting."

4. The Government intends to make use of a Space Systems Command (SSC) cyber assessment team, Government Partner cyber assessment team, or an agreed upon third party assessor to ensure compliance with cybersecurity requirements. The Participant may be subject to this assessment. The Government will provide a written notification at least (30) days prior to performing an assessment. At receipt of a notice, the Participant will send their preference for which party to perform the assessment. The Government will make the final decision as to the assessment type.
5. This Article applies to the extent that this Agreement involves a covered Participant information system that processes, stores, or transmits Covered Defense Information (CDI) as determined by the AO.
  - a. By submission of an offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" that are in effect at the time the solicitation is issued or as authorized by the Agreements Officer (AO).
  - b. If the Offeror proposes to vary from any of the security requirements specified by NIST 800-171 Rev 2 that are in effect at the time the solicitation is issued or as authorized by the AO, the Offeror shall submit to the AO, for consideration by the DoD Chief Information Officer (CIO) or other authoritative party, a written explanation of why a particular security requirement is not applicable; or how an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection. An authorized representative of the DoD CIO or other party will adjudicate offeror requests to vary from NIST SP 800-171 Rev 2 requirements in writing prior to Agreement award. Any accepted variance from NIST SP 800-171 Rev 2 shall be incorporated into the resulting Agreement.

The Offeror shall indicate in its proposal whether the use of cloud computing is anticipated at any level under the resultant Agreement. If the Offeror's proposal did not indicate the anticipated use of cloud computing services in performance of the resulting Agreement, or if after the award, the Participant proposes to use different cloud computing services than that which had originally been proposed, the Participant shall obtain approval from the AO prior to utilizing cloud computing services in performance of the Agreement. Additionally, during the RPP process, the Participant shall identify which cloud computing services in performance of a prototype project under this Agreement is being proposed. If the Participant proposes to use a cloud computing service differently than one that has already been approved by the AO, the Participant shall notify the AO, and the Participant shall obtain approval from the AO prior to utilizing the cloud computing services.

6. Per this Agreement, the Government may have additional cybersecurity requirements beyond 48 CFR 52.204-21 "Basic Safeguarding of Covered Contractor Information Systems". The Participant shall:
  - a. Flow down additional cybersecurity requirements in subcontracts.
  - b. Ensure terms & conditions exist in agreements with Participant for an SSC cyber assessment team, Government Partner cyber assessment team, or third-party cyber assessment team, to perform audits as deemed necessary by the government program office.
  - c. Provide a mechanism to enforce recommended corrective actions by the Government or third-party assessment team.

7. Following completion of the cyber assessment, the Government or third-party assessor will generate a notice of completion, along with any recommended corrective actions that must be taken and transmit it to the assessed. If corrective actions are recommended, the assessed must implement the recommended corrective actions within six (6) months of the notice of completion date and notify the Government that corrective action has been completed. The Government reserves the right to verify compliance. Additionally, the Government reserves the right to terminate an Agreement with the Participant if the results of an initial or subsequent cybersecurity assessment show that either party has not implemented the specific cybersecurity standards as outlined in this Agreement or other applicable documentation.
8. The Participant shall provide adequate security on all covered Participant information systems. To provide adequate security, the Participant shall implement, at a minimum, the following safeguarding and information security protections as outlined in 48 CFR 52.204-21 "Basic Safeguarding of Covered Contractor Information Systems":
  - a. The Participant shall apply the following basic safeguarding requirements and procedures:
    - i. Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
    - ii. Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
    - iii. Verify and control/limit connections to and use of external information systems.
    - iv. Control information posted or processed on publicly accessible information systems.
    - v. Identify information system users, processes acting on behalf of users, and devices.
    - vi. Authenticate (or verify) the identities of those users, processes, and devices, as a prerequisite to allowing access to organizational information systems.
    - vii. Sanitize or destroy information system media containing Federal Contract (Agreement) Information before disposal or release for reuse.
    - viii. Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
    - ix. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
    - x. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
    - xi. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
    - xii. Identify, report, and correct information and information system flaws in a timely manner.
    - xiii. Provide protection from malicious code at appropriate locations within organizational information systems.
    - xiv. Update malicious code protection mechanisms when new releases are available.



- xv. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.
  - b. The covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800- 171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at [x.doi.org/10.6028/NIST.SP.800-171](https://x.doi.org/10.6028/NIST.SP.800-171)) within (30) days of Agreement award, of any security requirements specified by NIST SP 800-171 Rev 2 not implemented at the time of Agreement award.
  - c. Apply additional information systems security measures when the Participant reasonably determines that information systems security measures may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability.
9. The Participant shall notify the DoD Chief Information Officer (CIO) and this Agreement AO via email at ([osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil)) and [cognizant AO] [@spaceforce.mil](mailto:@spaceforce.mil) within (30) days of Agreement award, of any security requirements specified by NIST SP 800-171 Rev 2 not implemented at the time of Agreement award.
- a. The Participant shall submit requests that vary from NIST SP 800-171 Rev 2 in writing to the AO, for consideration by the DoD CIO. The Participant need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non- applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.
  - b. If the DoD CIO has previously adjudicated the Participant's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the AO when requesting its recognition under this Agreement.
  - c. If the Participant intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this Agreement, the Participant shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline and that the cloud service provider complies with requirements of this Article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.
10. When the Participant discovers a cyber incident that affects a covered contractor information system (including internal or external cloud computing services) or the covered defense information residing therein, or that affects the Participant's ability to perform the requirements of the Agreement that are designated as operationally critical support and identified in the Agreement, the Participant shall:
- a. Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Participant's network(s), that may have been accessed because of the incident in

order to identify compromised covered defense information, or that affect the Participant's ability to provide operationally critical support; and

- b. Rapidly report cyber incidents to DoD at [dibnet.dod.mil/](http://dibnet.dod.mil/) > [net.dod.mil/](http://net.dod.mil/) > . [Net.dod.mil/](http://Net.dod.mil/) > The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements in order to report cyber incidents in accordance with this Article, the Participant or subcontractor shall have or acquire a DoD- approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see [ase. Ase.disa.mil/pki/eca/Pages/index.aspx](http://ase.disa.mil/pki/eca/Pages/index.aspx) > [disa.mil/pki/eca/Pages/index.aspx](http://disa.mil/pki/eca/Pages/index.aspx) [ase.disa.mil/pki/eca/Pages/index.aspx](http://ase.disa.mil/pki/eca/Pages/index.aspx) > > .
11. When the Participant or subcontractor(s) discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the AO. Do not send the malicious software to the AO.
12. When the Participant discovers a cyber incident has occurred, the Participant shall preserve and protect images of all known affected information systems identified in this Article and all relevant monitoring/ packet capture data for at least (90) days from the submission of the cyber incident report to allow DoD to request the media or decline interest.
13. Upon request by DoD, the Participant shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.
14. If DoD elects to conduct a damage assessment, the AO will request that the Participant provide a full damage assessment information gathered in accordance with this Article.
15. The Government shall protect against the unauthorized use or release of information obtained from the Participant (or derived from information obtained from the Participant) under this Article that includes Participant attributional/ proprietary information, including such information submitted in accordance with this Article. To the maximum extent practicable, the Participant shall identify and mark attributional/ proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Participant attributional/ proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.
16. Information that is obtained from the Participant (or derived from information obtained from the Participant) under this Article that is not created by or for DoD is authorized to be released outside of DoD:
  - a. To entities with missions that may be affected by such information.
  - b. To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents.
  - c. To Government entities that conduct counterintelligence or law enforcement investigations;
  - d. For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
  - e. To a support services contract ("recipient"), or Agreement, that is directly supporting Government activities under a contract, or Agreement, that includes the clause at DFARS 252.204-7009, Limitations on the Use or Disclosure of Third-Party Participant Reported Cyber Incident Information.

17. Information that is obtained from the Participant (or derived from information obtained from the Participant) under this clause that is created by or for DoD (including the information submitted pursuant to this Article) is authorized to be used and released outside of DoD for purposes and activities authorized by this Article, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.
18. The Participant shall conduct activities under this Article in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.
19. The safeguarding and cyber incident reporting required by this Article in no way abrogates the Participant's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable Articles of this Agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.
20. The Participant shall include this Article, including this paragraph (22), in sub-Agreements, or Agreements for which subcontractor performance will involve covered defense information, including sub-Agreements for commercial items, without alteration, except to identify the parties. The Participant shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this Article, and, if necessary, consult with the AO; and require subcontractor to notify the prime Participant (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 Rev 2 security requirement to the AO, in accordance with this Article; and provide the incident report number, automatically assigned by DoD, to the prime Participant (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in this Article.

**ARTICLE 33 - ORGANIZATIONAL CONFLICT OF INTEREST (OCI)**

1. The Government maintains an active position in avoiding potential, real, or perceived conflicts of interest as described in FAR Part 9.5. Throughout performance, the Participant shall monitor all potential conflicts of interest, to include conflicts between the Participants currently developing for and operating the targeted prototype or information systems.
2. The Participant shall ensure the performance of this Agreement does not conflict with system development or enhancement being performed under other Agreements or contracts.
3. The Participant shall immediately report any and all types of conflicts of interest to the Government. The Participant agrees to include in all sub-Agreements an Article requiring subcontractors to report all potential, perceived, or real Organizational Conflict of Interests to the Participant and Government and provide an OCI mitigation plan & action within 10 days.
4. The Government has the right to limit Participant's involvement under this Agreement or other action to mitigate Organizational Conflicts of Interest. In the event the Participant believes that the OCI can be mitigated, the Participant shall submit to the AO an OCI mitigation plan for the AO's consideration.

**ARTICLE 34 - ENABLING AEROSPACE SUPPORT**

Applies to all contracts, subcontracts, sub-Agreements, and agreements except for contracts, subcontracts, sub-Agreements, or Agreements for commercial items or commercial services

1. This Agreement is under the general program management of the Space Systems Command (SSC). The Space Force has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center, for the services of a technical group that will support the DoD/ U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, or Technical Support, including informing the commander or director of the various DoD organizations it supports and any U.S. Government program office of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.
  - a. **General Systems Engineering and Integration (GSE&I)** deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review, and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of technical performance through meetings with Participants and subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk providing comments and recommendations in writing to the applicable DoD System Program Manager or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.
  - b. **Technical Review (TR)** includes the process of appraising the technical performance of the Participant through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to Agreement technical objectives, and providing comments and recommendations in writing to the applicable Space Force Program Manager as an independent technical assessment for consideration for modifying the program or redirecting efforts to assure timely and economical accomplishment of program objectives.
  - c. **Technical Support (TS)** deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which The Aerospace Corporation is uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The categories of TS tasks are Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.
2. In the performance of this Agreement, the Participant agrees to cooperate with The Aerospace Corporation by (1) responding to invitations to attend meetings; (2) providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and progression data, all in their original form or reproduced form and including top-level life cycle cost\* data, where available; (3) delivering Data as specified in the Agreement; (4) discussing technical matters relating to this program; (5) providing access to Participant facilities utilized in the performance of this Agreement; (6) and allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, or TS efforts: (i) are authorized access to all

such technical information (including Proprietary Information) pertaining to this Agreement and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including Proprietary Information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) The Aerospace Corporation shall make the technical information (including Proprietary Information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.

3. The Participant further agrees to include in all subcontracts a clause requiring compliance by subcontractor and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of this Enabling Clause, subject to coordination with the Participant, except for subcontracts for commercial items or commercial services. This Agreement does not relieve the Participant of its responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph (4) below.
4. The Aerospace Corporation shall protect the Proprietary Information of the Participant and its subcontractors and suppliers in accordance with the Nondisclosure Agreement The Aerospace Corporation entered into with the Space Force, a copy of which is available upon request. This Nondisclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B) and provides that the Participant and its subcontractors and suppliers are intended third-party beneficiaries under the Nondisclosure Agreement and shall have the full rights to enforce the terms and conditions of the Nondisclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. The Participant, and each of its subcontractors and suppliers, hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other Nondisclosure Agreements.
5. The Aerospace Corporation shall make the technical information (including Proprietary Information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know, and The Aerospace Corporation shall maintain between itself and the foregoing binding Agreements of general application as may be necessary to fulfill their obligations under the Nondisclosure Agreement referred to herein, and The Aerospace Corporation agrees that it will inform Participants, subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of such Participant, subcontractor, or supplier, to have its consultants and contract labor personnel execute non-disclosure Agreements directly therewith.
6. The Aerospace Corporation personnel are not authorized to direct the Participant in any manner. Participant personnel are not authorized to direct The Aerospace Corporation. The Participant agrees to accept technical direction as follows:
  - a. Technical direction under this Agreement will be given to the contractor solely by Space Systems Command (SSC).
  - b. Whenever it becomes necessary to modify the Agreement and redirect effort, a change order signed by the Agreement Officer, or a Supplemental Agreement signed by both the Agreement Officer and the Participant will be issued.

\*Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/ program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a program or program.

**ARTICLE 35 - ENABLING GOVERNMENT SUPPORT**

Applies to all contracts, subcontracts, sub-Agreements, and agreements except for contracts, subcontracts, sub-Agreements, or Agreements for commercial items or commercial services

1. This Agreement is under the general program management of the United States Space Force, Space Systems Command (SSC). The Space Force has or may enter into contracts, or Agreements, with one or more of the following companies, or successor(s), to provide Advisory and Assistance Services (A&AS) or Systems Engineering and Technical Assistance (SETA), or Systems Engineering and Integration (SE&I):
  - a. Axient
  - b. Booz Allen Hamilton
  - c. ExoAnalytic Solutions
  - d. Gemini Technologies LLC
  - e. Huntington Ingalls Industries (HII)
  - f. InSPIRE Corporation
  - g. Johns Hopkins University/Applied Physics Laboratory (JHU/APL)
  - h. KSH Engineering
  - i. LinQuest Corporation
  - j. New Bridge Partners, Inc
  - k. Odyssey Systems
  - l. Sandia National Labs
  - m. Software Engineering Services
  - n. Sierra Nevada Corporation
  - o. Space Dynamics Laboratory
  - p. Stellar Solutions
  - q. Tecolote Research, Inc.
  - r. The Tech 7 Company
  - s. The Aerospace Corporation (FFRDC)
  - t. The MITRE Corporation
2. In the performance of this Agreement, the Participant agrees to cooperate with the companies listed above (hereafter referred to as A&AS/SETA/SE&I). Cooperation includes allowing observation of technical activities by appropriate A&AS/SETA/SE&I technical personnel, discussing technical matters related to this Agreement; delivering Data as specified in the Agreement, providing access to Participant facilities utilized in the performance of this Agreement, responding to invitations from authorized A&AS/SETA/SE&I personnel to attend meetings, and providing access to technical and development planning data. The Participant shall provide A&AS/ SETA/ SE&I personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and progression data, needed by such personnel in order to perform their required Agreement related support activities.
3. The Participant further agrees to include in all sub-Agreements a clause requiring compliance by the sub-Agreement holder and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of paragraph 2 above, subject to coordination with the Participant, except for subcontracts for commercial items or commercial services. This Agreement does not relieve the Participant of its responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or A&AS/SETA/SE&I and such subcontractors or suppliers.
4. A&AS/SETA/SE&I personnel are not authorized to direct the Participant in any manner. Participant personnel are not authorized to direct A&AS/SETA/SE&I personnel.

A&AS/SETA/SE&I shall make the technical information (including Proprietary Information) available only to its trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know. A&AS/SETA/SE&I shall maintain between itself and the foregoing binding Agreements of general application as may be necessary to fulfill their obligations under the Non-Disclosure Agreement established under paragraph 1 above, and A&AS/SETA/SE&I agree that it will inform the participant and its Participants, subcontractors, and suppliers if it plans to use consultants or contract labor

personnel and, upon the request of the Participant or such Participant, subcontractor, or supplier, to have its consultants and contract labor personnel execute non-disclosure Agreements directly therewith.

**ARTICLE 36 – ASSOCIATE CONTRACTOR AGREEMENT**

Applicable to all contracts, subcontracts, agreements, sub-agreements hereunder which require access to *proprietary information* belonging to the Associate Participant/Contractor(s).

**1. Applicability**

A similar clause or Article will be included in all awards made against Resilient MWT MEO Epochs solicitations. Associate Participant/ Contractor(s) receiving an award under a Resilient MWT MEO E2 solicitation will be required to enter into an Associate Contractor Agreement (ACA) with all of the prime awardees from the Resilient MWT MEO Epochs solicitations; this currently includes Epoch 1 SV, Epoch 1 Operations & Integration, Epoch 2 SV Vendor 1, and Ground Mission Integrator (GMI) providers.

**2. ACA Language**

The text of the ACA is as follows:

"It is recognized that the success of the SSC MEO Epoch 2 Full Warfighting Capability (FWC) depends in part upon the open exchange of information between the various Associate Contractors involved in the MEO Epochs FWC effort. This article is intended to ensure appropriate coordination and integration of work by the Associate Contractors to achieve complete compatibility and to prevent unnecessary duplication of effort. By executing this agreement, the Participant/Contractor assumes the responsibilities of an Associate Participant/Contractor. For the purpose of this article/clause, the term Participant/Contractor includes subsidiaries, affiliates, and organizations under the control of the contractor (e.g., subcontractors).

Work under this agreement may involve access to proprietary or confidential data from an Associate Participant/Contractor. To the extent that such data is received by the Participant from any Associate Participant/Contractor for the performance of this contract, the Participant hereby agrees that any proprietary information received shall remain the property of the Associate Participant/Contractor and shall be used solely for the purpose of the SSC MEO Epochs effort.

Information which is received from another Associate Participant/Contractor in writing or electronically and which is clearly identified as proprietary or confidential shall be protected in accordance with this provision. The obligation to retain such information in confidence will be satisfied if the Associate Participant/Contractor receiving such information utilizes the same controls as it employs to avoid disclosure, publication, or dissemination of its own proprietary information. The receiving Associate Participant/Contractor agrees to hold such information in confidence as provided herein so long as such information is of a proprietary/confidential or Limited Rights nature.

The Participant hereby agrees to closely cooperate as an Associate Contractor with the other Associate Participants/Contractors on this effort. This involves as a minimum:

- Maintenance of a close liaison and working relationship
- Maintenance of a free and open information network with all Government-identified Associate Contractors
- Delineation of detailed interface responsibilities
- Entering into a written agreement with the other Associate Contractors setting forth the substance and procedures relating to the foregoing, and promptly providing the Procuring Contracting Officer or Agreements Officer with a copy of same
- Receipt of proprietary information from the Associate Contractors and transmittal of Contractor proprietary information to the Associate Contractors subject to any applicable proprietary information exchange agreements between Associate Contractors when, in either case, those actions are necessary for the performance of either"

**3. ACA Execution**

The Participant shall furnish copies of all ACAs to the AO immediately upon execution of the agreements. In the event that the Participant and the Associate Participant/Contractor(s) are unable to

reach an agreement, or if the technical data identified is not provided as scheduled, the Participant shall promptly notify the SSC Program Manager and Contracting or Agreements Officer. The Government will determine the appropriate corrective action and will issue guidance to the affected Contractor.

#### 4. **ACA Subcontracts**

The Performer agrees to insert in all subcontracts hereunder which require access to proprietary information belonging to the Associate Participant/Contractor(s) a provision which shall conform substantially to the language of this clause, including this paragraph.

**ARTICLE 37 - PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Applicable to contracts, subcontracts, Agreements, sub-Agreements and other contractual instruments, including *contracts*, subcontracts, Agreements, sub-Agreements for the acquisition of commercial items

**1. Definitions as used in this Article:**

- a. Covered foreign country means The People's Republic of China
- b. 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.
- c. 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 –
    - A. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
    - B. For reasons relating to regional stability or surreptitious listening.
  - iii. Specifically 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)
- vii. Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

## 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, or Agreement, 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. The Participant is prohibited from providing to the Government 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 (1)(c) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation (FAR) 4.2104.
- b. Section 889(a)(1)(B) 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, 2020, from entering into a contract, or Agreement, or extending or renewing a contract, or Agreement, with an entity that uses 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 (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

## 3. Exceptions

This Article does not prohibit contractors 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.

## 4. Reporting requirement

- a. In the event the Participant identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as a critical technology as part of any system, during Agreement performance, or the Participant is notified of such by a subcontractor at any tier or by any other source, the Participant shall report the information in paragraph (d)(2) of this Article to the Agreements Officer, unless elsewhere in this Agreement are established procedures for reporting the information; in the case of the Department of Defense, the Participant shall report to the website at <<https://dibnet.dod.mil>>. For indefinite delivery contract and the Agreements Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <<https://dibnet.dod.mil>>.
- b. The Participant shall report the following information pursuant to paragraph (4)(a) of this Article:

- i. Within one (1) business day from the date of such identification or notification: the contract 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.
- ii. Within ten (10) business days of submitting the information in paragraph (4)(b)(i) of this Article: any further available information about mitigation actions undertaken or recommended. In addition, the Participant 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.

#### **5. Subcontracts/ Sub-Agreements**

The Participant shall insert the substance of this Article, including this paragraph, in all subcontracts/ sub-Agreements and other contractual instruments, including subcontracts for the acquisition of commercial items.

**ARTICLE 38 - PROHIBITION ON A BYTEDANCE COVERED APPLICATION**

Applicable to contracts, subcontracts, Agreements, sub-Agreements and other contractual instruments, including *contracts*, subcontracts, Agreements, sub-Agreements for the acquisition of commercial items

Definitions as used in this Article:

- a. Covered application *means the social networking service TikTok or any successor application* or service developed or provided by ByteDance Limited, or an entity owned by ByteDance Limited.
- b. Information *technology*, as defined in 40 U.S.C. 11101(6)
  - i. Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract, or Agreement, with the executive agency that requires the use.
    - A. Of that equipment; or
    - B. Of that equipment to a significant extent in the performance of a service or the furnishing of a product;
  - ii. Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but
  - iii. Does not include any equipment acquired by a federal contractor incidental to a Federal contract, or Agreement.
- c. Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, "No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Participant is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Participant under this Agreement, including equipment provided by the Participant's employees; however, this prohibition does not apply if the Agreement Officer provides written notification to the Participant that an exception has been granted in accordance with OMB Memorandum M-23-13.
- d. Subcontracts/ Sub-Agreements. The Participant shall insert the substance of this clause, including this paragraph (c), in all subcontracts/ sub-Agreements, including subcontracts/ sub-Agreements for the acquisition of commercial products or commercial services.

**ARTICLE 39 – PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB COVERED ENTITIES (DEC 2023)**

Applicable to contracts, subcontracts, Agreements, sub-Agreements and other contractual instruments, including *contracts*, subcontracts, Agreements, sub-Agreements for the acquisition of commercial items

**1. Definitions as used in this article:**

*Kaspersky Lab covered article means* any hardware, software, or service that:

- a. Is developed or provided by a Kaspersky Lab covered entity;
- b. Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or
- c. Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

*Kaspersky Lab covered entity means:*

- a. Kaspersky Lab;
  - b. Any successor entity to Kaspersky Lab, including any change in name, e.g., “Kaspersky”;
  - c. Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- 2.** Any entity of which Kaspersky Lab has a majority ownership.

**Prohibition**

Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any Kaspersky Lab covered article. The Contractor is prohibited from:

- a. Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and
- b. Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

**3. Reporting requirement.**

- a. In the event the Contractor identifies a Kaspersky Lab covered article provided to the Government during Agreement performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.
- b. The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:
  - i. Within 3 business days from the date of such identification or notification: the contract

number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended

- ii. Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a Kaspersky Lab covered article, any reasons that led to the use or submission of the Kaspersky Lab covered article, and any additional efforts that will be incorporated to prevent future use or submission of Kaspersky Lab covered articles.
- c. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

**ARTICLE 40 – PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES**

Applies to subcontracts, contracts, sub-Agreements, Agreements for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

1. Definitions as used in this article:

- a. "600 series of the Commerce Control List" means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement No. 1. that have a "6" as the third character. The 600 series constitutes the munitions and munitions related ECCNs within the larger Commerce Control List. (See definition of "600 series" in 15 CFR 772.)
- b. "Communist Chinese military company" means any entity, regardless of geographic location that is:
  - i. A part of the commercial or defense industrial base of the People's Republic of China including a subsidiary or affiliate of such entity; or
  - ii. Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.
- c. "Item" means:
  - i. A USML defense article, as defined at 22 CFR 120.6;
  - ii. A USML defense service, as defined at 22 CFR 120.9; or
  - iii. A 600 series item, as defined at 15 CFR 772.1.
- d. "United States Munitions List" means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

- 2. Any items covered by the United States Munitions List or the 600 series of the Commerce Control List that are delivered under this Agreement may not be acquired, directly or indirectly, from a Communist Chinese military company.
- 3. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

**Article 41 - Contractor Responsibility Watch List (CRWL)**

1. As an RDT&E Space Program, Section 1601 of Public Law 118-159, the National Defense Authorization Act (NDAA) for Fiscal Year 2025 (FY25), Space Contractor Responsibility Watch List (CRWL) and DAFGM 2025-63-01, Space CRWL, apply to this agreement.
2. Accordingly, if at any time during the performance of this agreement the contractor is placed on the CRWL, before awarding a prototype project, executing a modification resulting from an engineering change proposal, or exercising an option on this agreement, the Agreement Officer must determine whether to recommend proceeding with the modification or option exercise and if so, obtain approval to proceed from the SSC Commander. To support the Agreement Officer's determination on whether to proceed with the modification or option, the contractor must submit documentation describing how it has addressed the conditions that resulted in its inclusion on the CRWL and why those conditions will not impact performance on this agreement. The Agreement Officer will consider this information as well as other available information in making a determination.
3. In addition, in accordance with Section 1601 of Public Law 118-159, the National Defense Authorization Act (NDAA) for Fiscal Year 2025 (FY25), Space Contractor Responsibility Watch List (CRWL) and DAFGM 2025-63-01, Space CRWL, the contractor must receive written consent of the Agreement Officer prior to subcontracting with proposed subcontractors included on the CRWL when the subcontracts are valued in excess of \$3M or 5% of the prime contract value, whichever is lesser. Before providing this consent, the Agreement Officer must determine whether to recommend granting consent and if so, obtain approval to proceed from the SSC Commander. Prime contractors must inform their proposed subcontractors that they must notify the prime contractor if the subcontractor has been notified by the SSC Commander that they have been included on the CRWL. The prime contractor must submit a written consent to subcontract request to the Agreement Officer, the prime contractor's determination of subcontractor responsibility in accordance with FAR 9.104-4(a), and documentation describing how the proposed subcontractor has addressed the conditions that resulted in its inclusion on the CRWL and why those conditions will not impact its performance on a subcontract to this contract. The proposed subcontractor may submit information related to its CRWL inclusion through the prime contractor or directly to the Agreement Officer. The Agreement Officer will consider information provided by the prime contractor and the proposed subcontractor as well as other available information in making a determination. The contractor is encouraged to inform the Agreement Officer of any subcontractor concerns or issues that may jeopardize successful contract performance.