CUSTOMER CONTRACT REQUIREMENTS
Cyber Physical Systems Executing in Real Time (CyPhER) Forge
CUSTOMER CONTRACT HR0011-27-9-E033

CUSTOMER CONTRACT REQUIREMENTS

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

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

HR0011-27-9-E033 Special Provisions .

B. Definitions

In this Agreement, the following definitions apply:

Agreement: This contract or Buyer's contract with Buyer's customer, depending on context.

AO: DARPA Agreements Officer

AOR: DARPA Agreements Officer's Representative

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 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.

Compromise: Disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Controlled Technical Information (CTI): Technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents.

Controlled Unclassified Information (CUI): Unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies. Instructions for the use, marking, dissemination, and storage of CUI can be found in DoD Instruction 5200.48, "Controlled Unclassified Information (CUI)."

Covered Contractor Information System: Unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

Covered Defense Information (CDI): Unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html, and specified in a Security Classification Guide incorporated into this Agreement, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is (1) Marked or otherwise identified in the agreement, task order, or delivery order and provided to the Performer by or on

behalf of DoD in support of the performance of the agreement; or (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Performer in support of the performance of the agreement.

Cyber Incident: Actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Rapidly Report: Report to DARPA within 72 hours of discovery of any cyber incident.

DARPA: Defense Advanced Research Projects Agency

Data: Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, mask works and trade secrets. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions, included in Article VII.

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.

Government: The United States of America, as represented by DARPA.

Government Purpose Rights: The rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purposes only in perpetuity, and to have or permit others to do so for Government purposes only.

Information System: A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

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 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 any non-Government entity.

Made: Relates to any invention means the conception or first actual reduction to practice of such invention.

Party: Includes the Government (represented by DARPA), Buyer, or the Performer, or combination thereof.

Performer: Seller unless defined specifically otherwise.

Practical application: To manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Program: Research and development being conducted by the Performer in support of this Agreement

Property: Any tangible personal property other than property actually consumed during the execution of work under this agreement. For purposes of this Agreement, "property" does not include the deliverable prototype which is the DT, AI Test Agent, and Integrated CyPhER software.

Subject Invention: Any invention conceived and first actually reduced to practice in the performance of work under this Agreement.

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.

Technical Data: Data of a scientific or technical nature (including computer software documentation. The term does not include computer software or data financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

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

ARTICLE VII: PATENT RIGHTS

Article applies to all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

A. Allocation of Principal Rights

1. Unless the Performer shall have notified DARPA, in accordance with Subparagraph B.2 below, that the Performer does not intend to retain title, the Performer shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.

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

B. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Performer shall disclose each Subject Invention to DARPA within four (4) months after the inventor discloses it in writing to their company personnel responsible for patent matters. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement and circumstances under which the Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the Invention has been submitted and/or accepted for publication at the time of disclosure.

2. If the Performer determines that it does not intend to retain title to any such Invention, the Performer shall notify DARPA, in writing, within eight (8) months of disclosure to DARPA. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. The Performer 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 Performer 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.

4. The Performer shall notify DARPA 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.

5. Requests for extension of the time for disclosure election, and filing under this Article, may be granted at DARPA's discretion after considering the circumstances of the Performer and the overall effect of the extension.

6. The Performer shall submit to DARPA annual listings of Subject Inventions during the execution of this Agreement. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all subject inventions identified during the course of the Agreement and the current status of each.

C. Conditions When the Government May Obtain Title

Upon DARPA's written request, the Performer shall convey title to any Subject Invention to DARPA under any of the following conditions:

1. If the Performer fails to disclose or elects not to retain title to the Subject Invention within the times specified in Paragraph B of this Article; however, DARPA may only request title within sixty (60) calendar days after learning of the failure of the Performer to disclose or elect within the specified times;

2. In those countries in which the Performer fails to file patent applications within the times specified in Paragraph B of this Article; however, if the Performer has filed a patent application in a country after the times specified in Paragraph B of this Article, but prior to its receipt of the written request by DARPA, the Performer shall continue to retain title in that country; or

3. In any country in which the Performer 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.

D. Minimum Rights to the Performer and Protection of the Performer's Right to File

1. The Performer shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Performer fails to disclose the Subject Invention within the times specified in Paragraph B of this Article. The Performer's license extends to its domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant licenses of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the Subject Invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.

2. The Performer's domestic license may be revoked or modified by DARPA to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Performer has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DARPA to the extent the Performer, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, DARPA shall furnish the Performer a written notice of its intention to revoke or modify the license, and the Performer shall be allowed thirty(30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

E. Action to Protect the Government's Interest

1. The Performer agrees to execute or to have executed and promptly deliver to DARPA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Performer elects to retain title, and (ii) convey title to DARPA when requested under Paragraph C of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. The Performer agrees to require by written agreement with its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Performer each Subject Invention made under this Agreement in order that the Performer can comply with the disclosure provisions of Paragraph B of this Article. The Performer shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

3. The Performer 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. HR0011-27-9-E033, awarded by DARPA. The Government has certain rights in the invention."*

F. Lower Tier Agreements

The Performer shall include this Article, suitably modified, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

G. Reporting on Utilization of Subject Inventions

1. The Performer 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 Performer 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 Performer, and such other data and information as the agency may reasonably

specify. The Performer also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with Paragraph I of this Article. DARPA agrees it shall not disclose such information to persons outside the Government without permission of the Performer, unless required by law.

2. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: https://www.nist.gov/iedison. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the AO and the AOR.

H. Preference for American Industry

Notwithstanding any other provision of this clause, the Performer 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 DARPA upon a showing by the Performer 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.

I. March-in Rights

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

1. Such action is necessary because the Performer or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;

2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Performer, assignee, or their licensees;

3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Performer, assignee, or licensees; or

4. Such action is necessary because the agreement required by Paragraph H 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.

ARTICLE VIII: DATA RIGHTS

Article applies to all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

A. Allocation of Principal Rights

1. The Parties agree that in consideration for Government funding, the Performer intends to reduce to practical application items, components and processes developed under this Agreement.

2. The Government shall have Government Purpose Rights in perpetuity for Data delivered pursuant to this Agreement except for Data identified with less than Government Purpose Rights. Notwithstanding the provision in A.3, the Performer agrees, with respect to Data generated or developed exclusively under this Agreement, the Government may, within two (2) years after completion or termination of this Agreement, require delivery of such Data.

3. March-In Rights

(a) In the event the Government chooses to exercise its March-in Rights, as defined in Article VII, Paragraph I of this Agreement, the Performer agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in Article I, Paragraph B of this Agreement, to this delivered Data.

(b) To facilitate any potential deliveries, the Performer agrees to retain and maintain in good condition until (2 years) after completion or termination of this Agreement, all Data necessary to achieve practical application of any Subject Invention as defined in Article I, Paragraph B of this Agreement.

B. Marking of Data

Pursuant to Paragraph A above, any Data delivered under this Agreement shall be marked with the following legend in addition any applicable data rights legends as identified the Agreement for asserted Technical Data and Computer Software respectively:

> *"Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-27-9-E033 between the Government and the Buyer."*

C. Lower Tier Agreements

The Performer 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.

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY

Article applies to all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

This Article shall remain in effect during the term of the Agreement and for five (5) years thereafter.

A. General

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. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), National Industrial Security Program Operating Manual (NISPOM) (32 C.F.R. Part 117, et seq.), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.).

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

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in Subparagraphs B.2, B.3, and B.4 below shall apply to any transfer of Technology. For purposes of this Paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

a. Sales of products or components; or

b. Licenses of software or documentation related to sales of products or components; or

c. Transfer to foreign subsidiaries of the Performer for purposes related to this Agreement; or

d. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. The Performer shall provide timely notice to DARPA of any proposed transfers from the Performer of Technology developed under this Agreement to Foreign Firms or Institutions. If DARPA determines that the transfer may have adverse consequences to the national security interests of the United States, the Performer, its vendors, and DARPA shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Performer.

3. In any event, the Performer shall provide written notice to the DARPA AOR and the DARPA AO of any proposed transfer to a Foreign Firm or Institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Performer's written notification, the DARPA AO shall advise the Performer whether it consents to the proposed transfer. In cases where DARPA does not concur or sixty (60) calendar days after receipt and DARPA provides no decision, the Performer may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, the Performer shall (a) refund to DARPA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States, the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government the Performer shall provide written confirmation of such licenses.

C. Lower Tier Agreements

The Performer 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.

ARTICLE X: CYBER INCIDENT REPORTING AND PUBLIC RELEASE

This Article applies all subcontractors and lower-tier Performers that will receive, generate, access, process, transmit, or store CDI in performance of this Agreement. The Performer remains responsible for ensuring that such lower tier Performers comply with the applicable requirements of this Article.

A. Background

Protection of Covered Defense Information (CDI), to include Controlled Unclassified Information (CUI) and Controlled Technical Information (CTI), is of paramount importance to DARPA and can directly impact the ability of DARPA to successfully conduct its mission. The cybersecurity safeguarding requirements applicable to information systems used in performance of this Agreement are established in Article XIX, Cybersecurity Maturity Model Certification (CMMC). This Article addresses the Performer's obligations to report and respond to cyber incidents involving CDI, and to control the public release of information under this Agreement.

B. Relationship to Article XIX, Cybersecurity Maturity Model Certification

This Article supplements, and does not replace, the safeguarding requirements established in Article XIX, CMMC. To the extent any provision of this Article addresses the implementation of security requirements for information systems, the requirements of Article XIX, CMMC shall govern. Nothing in this Article relieves the Performer of any obligation under that Article.

C. Information Categories

This Agreement uses several related categories of protected information across this Article and Article XIX, CMMC. These categories are intended to operate together, not in conflict, and are understood as follows:

1. Federal Contract Information (FCI) is information provided by or generated for the Government under this Agreement that is not intended for public release. It is addressed under Article XIX, CMMC.

2. Controlled Unclassified Information (CUI) is the broader category of unclassified information requiring safeguarding or dissemination controls and is addressed under both Articles.

3. Controlled Technical Information (CTI) is a subset of CUI consisting of technical information with military or space application subject to dissemination controls (distribution statements B through F).

4. Covered Defense Information (CDI) is used in this Article as a collective reference to CUI and CTI residing on information systems used in performance of this Agreement.

The cybersecurity safeguarding and certification requirements applicable to FCI and CUI are established in Article XIX, CMMC. The cyber incident reporting and public release requirements of this Article apply to cyber incidents involving CDI (i.e., CUI and CTI). The use of differing category terms between the two Articles does not create separate or conflicting obligations; where the same information falls within more than one category, the requirements of each Article apply concurrently to that information.

D. Cyber Incident Reporting

Any actual or reasonably suspected unauthorized access to, disclosure of, loss of, or compromise of CDI residing on an information system used in performance of this Agreement that could reasonably affect the confidentiality, integrity, or availability of such information, or otherwise affect performance under this Agreement, shall be considered a reportable cyber incident.

Upon discovery of a reportable cyber incident involving CUI or CTI, the Performer shall promptly take reasonable measures to contain, mitigate, and investigate the incident and to prevent any further loss or compromise of CDI. The Performer shall rapidly report the cyber incident to DARPA. The initial report shall include, to the extent known at the time of reporting, the nature of the incident, the date and time of discovery, affected information systems, the categories of CDI potentially affected, known indicators of compromise (including identified malicious software, if applicable), and the containment measures implemented. The Performer shall provide supplemental reports as material information becomes available until the incident has been resolved. The Performer shall preserve and protect forensic evidence relating to the cyber incident, including system images, audit logs, authentication records, relevant monitoring or packet

capture data (where available), and other relevant forensic artifacts, for at least ninety (90) days following submission of the initial incident report, or longer if requested by DARPA in support of an ongoing assessment. The Performer shall cooperate with DARPA in assessing the cyber incident and shall provide additional technical information reasonably requested to support the Government's assessment. The Performer shall consider Government recommended mitigation measures in good faith and promptly notify the Agreements Officer of the actions taken or, where applicable, the basis for implementing an alternative mitigation approach.

The Performer shall promptly notify DARPA if the cyber incident materially affects performance under this Agreement, including impacts to technical performance, schedule, cost, or delivery of Agreement milestones, and shall identify planned mitigation measures.

E. Public Release

The Performer shall not publicly release information concerning any cyber incident arising under this Agreement except in accordance with the Article XV, Public Release of this Agreement and DARPA Instruction 65.

F. Lower Tier Agreements

The Performer shall flow down this Article to all subcontractors and lower-tier Performers that will receive, generate, access, process, transmit, or store CDI in performance of this Agreement. The Performer remains responsible for ensuring that such lower tier Performers comply with the applicable requirements of this Article.

ARTICLE XIII: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d) relating to nondiscrimination in Federally assisted programs. The Performer has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act.

ARTICLE XIV: SECURITY

Performance under this Agreement shall be no higher than Controlled Unclassified Information (CUI).

ARTICLE XV: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

A. Prohibition

There shall be no dissemination or publication, except within and between the Performer and any actual or perspective subcontractors, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the AOR. All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Performer. Unclassified patent related documents are exempt from prepublication controls and this review requirement. There shall be no dissemination or publication, except within and between the Performer and any actual or prospective subcontractor(s) of information developed under this effort without first obtaining approval for public release from the DARPA Public Release Center (PRC). Papers prepared in response to academic requirements which are not intended for public release outside the academic institution are exempt from prepublication controls.

B. Public Release

The Performer shall submit all proposed public releases for review and approval as instructed at http://www.darpa.mil/work-with-us/contract-management/public-release. Public releases include press releases, specific publicity or advertisement, and publication or presentation, but exclude those relating to the open sourcing or licensing, sales or other commercial exploitation of products, services or technologies. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

This research was, in part, funded by the U.S. Government. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the U.S. Government.

ARTICLE XVIII: PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

Covered foreign country means The People's Republic of China.
Covered telecommunications equipment or services means—
(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
(2) 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);
(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
Critical technology means—
(1) 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;

(2) 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—
(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
(ii) For reasons relating to regional stability or surreptitious listening;
(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
(4) 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);
(5) 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

(6) Emerging and foundational technologies controlled pursuant to Section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).
Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.
Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.
(b) Prohibition.
(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Performer 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 (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.
(2) 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 extending or renewing a contract, 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.
(c) Exceptions. This clause does not prohibit contractors from providing—
(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
(2) 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.
(d) Reporting requirement.
(1) In the event the Performer 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 the Performer is notified of such by a subcontractor at any tier or by any other source, the Performer shall report the information in Paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Performer shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Performer 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.

(2) The Performer shall report the following information pursuant to Paragraph (d)(1) of this clause:

(i) Within one 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 10 business days of submitting the information in Paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Performer shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Performer shall insert the substance of this clause, including this Paragraph (e) and excluding Paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of article)

ARTICLE XIX: CYBERSECURITY MATURITY MODEL CERTIFICATION (CMMC)

This Article applies to all subawards, subcontracts, and lower-tier agreements, regardless of tier, under which the lower-tier entity will process, store, or transmit FCI or CUI in performance of this Agreement.

A. Background

As codified in 32 CFR Part 170, the Cybersecurity Maturity Model Certification (CMMC) Program is designed to ensure Department of Defense (DoW) Performers are properly safeguarding Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) that is processed, stored, or transmitted on Performer information systems. The CMMC Program provides a consistent methodology to assess a Performer's implementation of required cybersecurity requirements. Performers are encouraged to visit the DoW Chief Information Officer CMMC Resources and Documentation site for more information on CMMC located at https://dodcio.defense.gov/cmmc/Resources-Documentation/. The information categories used in this Article (FCI and CUI) and in the Cyber Incident Reporting and Public Release (CUI, CTI, and CDI) are intended to operate together; the relationship among these categories is described in the Cyber Incident Reporting and Public Release.

B. CMMC Level Requirement

(1) The CMMC Level required for performance under this Agreement is CMMC Level 2 (Self-Assessment) (Final or Conditional), applicable to the information system(s) that will process, store, or transmit FCI or CUI in performance of this Agreement.

(2) The Performer shall not process, store, or transmit FCI or CUI on any information system used in performance of this Agreement unless that system has achieved and maintains a current CMMC status at the level identified in paragraph (1).

(3) The Performer shall maintain the required CMMC status for the duration of performance of this Agreement and shall complete and maintain the annual affirmation of continuous compliance in the Supplier Performance Risk System (SPRS) in accordance with 32 C.F.R. § 170.22.

(4) Plans of Action and Milestones (POA&M): Where the applicable CMMC Level permits conditional status, any POA&M shall be closed out within 180 days of the conditional assessment date, consistent with 32 C.F.R. § 170.21. Failure to achieve final status within that period renders the conditional status void.

(5) Failure to Maintain Compliance: Failure to maintain the CMMC status required by this Article, including the failure to close out a POA&M within the required timeframe or maintain a current annual affirmation in SPRS, may be grounds for the Government to, at its sole discretion:

a. Withhold payments;

b. Prohibit the Performer from processing, storing, or transmitting FCI or CUI under this Agreement until compliance is restored; and/or

c. Terminate this Agreement for non-compliance.

C. Change in Information Handling Requirements

(1) The CMMC level identified in paragraph B reflects the information handling requirements anticipated at the time of award. The parties acknowledge that, in the course of research under this Agreement, the categories of information processed, stored, or transmitted on Performer information systems may change, including the introduction of CUI on an information system previously assessed only for FCI.

(2) If the Performer determines, reasonably anticipates, or is informed by the PM or AOR that performance will require processing, storing, or transmitting CUI on an information system that does not hold a CMMC status sufficient for CUI, the Performer shall promptly notify the Agreement Officer before such CUI is introduced to that system, and shall not process, store, or transmit the CUI on that system until the requirements of this paragraph are met.

(3) Upon such notification, the parties shall confer in good faith to determine the appropriate CMMC level, the timeframe for the Performer to achieve the required CMMC status, any interim safeguarding or data-handling measures, and any corresponding modification to this Agreement. Any change to the required CMMC Level shall be effected by

modification of this Agreement.

(4) Pending achievement of the required CMMC status, the Performer shall implement interim measures as agreed with the Agreement Officer, which may include deferring CUI-generating activities, segregating or restricting the affected information, or handling the CUI on an alternative information system that holds a sufficient CMMC status.

D. Lower Tier Agreements (Flow-Down)

(1) The Performer shall include the substance of this Article in all subawards, subcontracts, and lower-tier agreements, regardless of tier, under which the lower-tier entity will process, store, or transmit FCI or CUI in performance of this Agreement.

(2) The Performer shall not award, and shall ensure no lower-tier entity awards, any such instrument to an entity that has not achieved and does not maintain the CMMC status appropriate to the FCI/CUI it will handle, consistent with the flow-down requirements of 32 C.F.R. § 170.23.

(3) The Performer remains responsible to DARPA for ensuring lower-tier compliance with this Article.

(4) Verification of Lower-Tier Status: Upon request by the AO, the Performer shall provide evidence demonstrating how it has verified that its lower-tier entities meet the CMMC requirements flowed down pursuant to this Article. Such evidence may include, for example, confirmation of the subcontractor's status in SPRS.

E. Definitions

CMMC (Cybersecurity Maturity Model Certification): The DoD program established under 32 C.F.R. Part 170 that verifies a performer's implementation of cybersecurity requirements through self-assessment or third-party/government assessment, expressed as a CMMC level and status.

CMMC Status: The result of an assessment reflecting the degree to which a performer has implemented the required security requirements at a given CMMC level, as recorded in SPRS.

Controlled Unclassified Information(CUI): Unclassified information the United States Government creates or possesses that requires safeguarding or dissemination controls limiting its distribution to those with a lawful government purpose. CUI may not be released to the public absent further review.

Federal Contract Information (FCI): Information, not intended for public release, that is provided by or generated for the Government under a contractual agreement to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as that on public Web sites) or simple transactional information, such as that necessary to process payments.

Plan of Action and Milestones (POA&M): A document that identifies tasks to be accomplished, the resources required to accomplish the elements of the plan, any milestones in meeting the tasks, and scheduled completion dates for the milestones, consistent with 32 C.F.R. § 170.21.

SPRS (Supplier Performance Risk System): The authoritative DoD system of record for posting assessment scores, CMMC results, and affirmations.