

CUSTOMER CONTRACT REQUIREMENTS
AWACS Fifth to Fourth (5th to 4th) Rapid Risk Reduction Effort
CUSTOMER CONTRACT ACI-PLA-0013

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

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

ACI-PLA-0013 Special Provisions .

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/tower 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 Seller is prohibited from providing to the Buyer or 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.

(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. 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 Sellers 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 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 the Seller is notified of such by a subcontractor at any tier or by any other source, the Seller shall report the information in paragraph (d)(2) of this clause to the end-customer's Agreements Officer, via the Buyer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Seller shall also report to the website at <https://dibnet.dod.mil>.

(2) The Seller 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 agreement 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 Seller 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 Seller 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.

Foreign Access to Technology:

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

A. General

The Seller agrees that research findings and technology developments arising under this contract 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 contract 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.), the National Security Program Operating Manual (NISPO) (DoD 5220.22-M), 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 Seller for purposes related to this contract; 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 contract provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this contract.
2. The Seller shall provide timely notice to the Air Force Life Cycle Management Center, via the Buyer, of any proposed transfers from the performer of technology developed under this contract to foreign firms or institutions. If the Buyer or Air Force determines that the transfer may have adverse consequences to the national security interests of the United States, the Seller, its vendors, the Buyer, and Air Force Life Cycle Management Center 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 Seller.
3. In any event, the Seller shall provide written notice to the Air Force AO, via the Buyer, 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 Seller's written notification, the Air Force Life Cycle Management Center AO, via the Buyer, shall advise the Seller whether it consents to the proposed transfer.

4. In the event a transfer of technology to foreign firms or institutions which is NOT approved by the Air Force, via the Buyer, the Seller shall (a) refund to the Air Force, via the Buyer, 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 contract. Upon request of the Government, via the Buyer, the Seller shall provide written confirmation of such licenses.

C. Lower Tier Agreements

The Seller 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 - Intellectual Property

a. Definitions. As used in this Article-

"Background Invention" means any invention that is not a Foreground invention.

"Foreground Invention" means any invention that was conceived or first actually reduced to practice in the performance of this contract or Buyer's contract with Buyer's customer.

"Form, fit, and function data" means information related to "items, components, or processes (including software) that are sufficient to enable physical and functional interchangeability, to include information identifying source, size, configuration, mating and attachment characteristics, functional characteristics (including interfaces), performance requirements, and qualification requirements.

"Derivative Works" means any work, including, but not limited to, Software whether in Source or Object form), that is based on (or derived from) the Work and for which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship. For the purposes of this contract, Derivative Works shall not include works that remain separable from, or merely link (or bind by name) to the interfaces of, the Work and Derivative Works thereof.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the Government to foreign governments or international organizations, and includes competitive procurements and the activities of third parties carried out on the Government's behalf. Government Purpose includes additional Other Purposes when negotiated by the parties and memorialized in writing as part of a contract.

"Improvements" means all developments or modifications, to include derivative works, made in the performance of the contract to any, Intellectual Property, whether registered or unregistered, existing at any time prior to execution of this contract or, for R&D Stage work, prior to execution of the relevant contract and any associated subcontract. Improvements may be patentable or unpatentable, and if patentable, need not be patented; improvements may also be subject to protection under copyright, mask work, trade secret, unfair competition or other legal principles.

"Intellectual Property" or "IP" means all rights and related priority rights, whether protected, created or arising under the laws of the United States or any other jurisdiction or international convention, arising from or in respect to the following:

- i. Patents (including utility, design, and plant patents), utility model patents, and patent applications, whether published or unpublished, including all continuations, divisional, continuations-in part, and provisionals and patents issuing on any of the foregoing, and all reissues, reexaminations, substitutions, renewals and extensions of any of the foregoing ("Patents");
- ii. Trademarks, service marks, trade names, trade dress, logos, corporate names and other source or

business identifiers, together with the goodwill associated with any of the foregoing, and all applications, registrations, renewals and extensions of any of the foregoing ("Marks");

iii. Copyrights, works of authorship, and moral rights, and all registrations, applications, renewals, extensions and reversions of any of the foregoing ("Copyrights");

iv. Mask works, mask sets, layouts, topographies and other design features with respect to integrated circuits ("ICs" or, singular, "JC"), and all applications and registrations of any of the foregoing ("Mask Works");

v. Confidential and proprietary information, to include trade secrets and non-public discoveries, concepts, ideas, research and development, technology, know-how, formulae, inventions, compositions, processes, techniques, technical data and information, procedures, semiconductor device structures, circuit block libraries, designs (including circuit designs and layouts), drawings, proposals, and specifications, in each case excluding any rights of the foregoing that comprise or are protected by Patents ("Trade Secrets"); and

vi. Other intellectual property rights arising from or relating to the performance of a Prototype project, including the right to file for patent protection of any kind on any invention disclosed in an Invention Disclosure.

"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code.

"Object" means any form of Software resulting from mechanical transformation or translation of Source form, including, but not limited to, compiled object code, generated documentation, and conversions to other media types.

"Other Purposes" means any authorized activity agreed to by the Government and the Buyer as part of the Buyer's contract with Government or Buyer's customer.

"Pre-existing Software and Other Copyrighted Works" means Software and any other copyrighted. Work, whether registered or unregistered, subsisting at any time prior to execution of this contract or, for R&D Stage work, prior to execution of the contract and any associated subcontract.

"Software" means computer code of any length, intended for any purpose, and in any form, whether source or binary, including documentation and configuration files, any machine readable materials (including, but not limited to, libraries, source files, header files, and data files), any associated updates or error corrections, and any associated user manuals, programming guides and other documentation.

"Source" means the preferred form for creating Software or making modifications to Software, including but not limited to software source code (whether or not human readable), documentation source, and configuration files.

"Work" means a work of authorship, including, but not limited to, Software (whether in Source or Object form) made available under license, usually indicated by a copyright notice that is Included in or attached to the Work.

a. Methodology for Allocating Rights in Intellectual Property All IP furnished, exchanged, invented, used, or otherwise created under this contract shall be subject to all the paragraphs below in this Article.

b. General Terms

i. Background Inventions. Seller hereby grants to the Buyer and Buyer's customer a non-exclusive, non-transferable, royalty-free, worldwide license to practice or have practiced for or on its behalf any Background Inventions necessary for the performance of Buyer's contract with Buyer's Customer solely for the purposes of said performance. Unless expressly agreed to in writing, Buyer and the Government neither authorizes nor consents to the infringement of any

third party Background Inventions.

- ii. Specified Data and Other Itemized Information. Buyer shall have the unrestricted right to disclose, reproduce, distribute, modify, publicly perform and display, and permit others to do so, any data or other information that is:
 1. Publicly available or provided by the Parties without restriction;
 2. Form, fit, and function data; and
 3. Generated or used in the performance of this contract unless expressly agreed otherwise in writing and so long as the information is not restricted by federal law.
- iii. Third-Party Intellectual Property. Unless expressly agreed to in writing, Buyer and the Government neither authorizes nor consents to the infringement of any third-party intellectual property for the performance of this contract.

c. Additional Terms Associated with Research and Development.

i. Foreground Inventions.

1. License in Foreground Inventions. Seller hereby grants, to the Government, a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced on its behalf, all Foreground Inventions throughout the world.

A. Reporting of Foreground Inventions. Seller agrees:

- (1) To report any Foreground Inventions to the Government within a reasonable time of them becoming known (e.g., generally within 60 days) via written submission to the government via the Buyer;
- (2) To cooperate and execute all documents that are necessary for securing and recording the Government's interests therein; and
- (3) To notify the Government of whether the Government or Seller will retain ownership of the same.

B. Report Contents. Foreground Invention reports shall include, at a minimum, the following information:

- (1) The inventor(s) names and the Buyer customer contract number under which the invention was made;
- (2) Sufficient technical detail to convey a clear understanding of the invention; and
- (3) Any publication, on sale (i.e. sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication.

C. Dealings with Employees. Seller agrees to take all steps necessary to effectuate the Government's rights under this Article in dealings with employees, to include requiring employees to report Foreground Inventions and to execute all papers for filing patent applications and establishing the Government's rights in Foreground Inventions.

2. Agreement to Assign. Seller agrees to assign to the Government all rights in a Foreground Invention when the Seller and Buyer decide:

A. Not to elect ownership,

B. Not to prosecute, or

C. To discontinue prosecution of a Foreground Invention and to cooperate and execute all documents that are necessary for the filing, prosecution and maintenance of patent applications for any Foreground Inventions. In all such assignments, the assignor shall retain a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced on its behalf, all Foreground Inventions throughout the world.

ii. Software and Other Copyrighted Works. Ownership to Software and Other Copyrighted Works created in the performance of this contract shall be determined by U.S. copyright law. Seller hereby grants, to the Government, a non-exclusive, non-transferable, royalty-free, worldwide license to reproduce, distribute, and create derivative works from any Software and Other Copyrighted Works created in the performance of this contract and for any Government Purpose. Seller hereby agrees and shall deliver to Buyer a copy of all such Software and Other Copyrighted Works (including in Source and Object forms for Software) in one or more formats and at a time to be mutually agreed upon but no later than final payment.

iii. Improvements. Ownership to Improvements shall be determined by U.S. federal law. Seller shall keep the Buyer and Government informed about all Improvements arising from the performance of this contract, hereby grant, to the Government an unrestricted right to use, disclose, reproduce, distribute, modify, publicly perform and display, and permit others to do so, any Improvements for any Government Purpose and agree to deliver, in one or more formats and at a time to be mutually agreed upon but no later than final payment, such Improvements when requested by Buyer or the Government.

iv. Subcontracts. Seller agree to take all steps necessary to effectuate the Government's rights under this Article, to include incorporating the substance of this Article, in any subcontract for Research and Development purposes and regardless of tier.

d. Survival. Any confidentiality provisions associated with this Article shall survive termination or expiration of this contract for a minimum period of five years following the completion of this contract, without regard to any provision to the contrary elsewhere in this contract or associated therewith.

Article - Price Reasonableness

The Government must be able to determine that the Buyer's contract with customer and supporting subcontracts are fair and reasonable. The Buyer and Government may request data to help determine reasonableness. The Seller agrees to disclose pricing and costs data associated with this contract and to assist the Buyer and/or Government in obtaining the necessary pricing and cost data to determine whether contracts and subcontracts are fair and reasonable.

Article - Allowable Costs

A cost is allowable when the cost complies with all of the following:

a. *Reasonable* - A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

b. *Allocable* - A cost must meet one or more of the following objectives:

i. Is incurred specifically for the contract;

ii. Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received;

iii. Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

c. Standards of generally accepted accounting principles and practices appropriate to circumstances

d. Terms of the contract

e. *Is not an Unallowable Cost*- Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost that is generated solely as a result of incurring another cost, and that would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable. 48 CFR 31.201-6 accounting for Unallowable Costs describes the practices and presentation of accounting for unallowable Costs shall apply to this contract.