CUSTOMER CONTRACT REQUIREMENTS
SPeed and Runway INdependent Technologies (SPRINT) Phases 2
CUSTOMER CONTRACT OFFLOAD 145855 (HR001123S0031)

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

OFFLOAD 145855 (HR001123S0031) Special Provisions .

DEFINITIONS:

In this Agreement, the following definitions apply:

Agreement: Top level agreement with USG and supporting sub-tier and lower agreements.

Background Invention: Any invention made by the Performer, or their subcontractors of any tier, prior to performance of the Agreement or outside the scope of work performed under this Agreement. Background Inventions include inventions conceived or first actually reduced to practice in the performance of independent research and development (IR&D) projects during performance of this Agreement provided the conception or reduction to practice occurs in performance of the IR&D project prior to conception or reduction to practice in performance of this Agreement.

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

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

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.

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

Performer: Seller

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.

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

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.

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.

Financial Records and Reports:

The Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain, to and involve transactions relating to, the Agreement 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 the Agreement.

Ground and Flight Risk

(*1) Paragraph (f) of this clause in does not apply to subcontracts for commercial products or commercial services;*

(2) This clause does not apply to Federal Aviation Administration (FAA) part 145 repair stations performing work pursuant to their FAA license.

(a) As used in this clause—

"Aircraft" means, unless otherwise provided in the Agreement, any item, other than a rocket or missile, intended for flight (e.g., fixed-winged aircraft, blended wing/lifting bodies, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, and unmanned aerial vehicles), including emerging technologies that would commonly be considered aircraft. New production articles become aircraft at a stage of manufacture or production when a wing, portion of a wing, or engine is attached to a fuselage. Blended wing/lifting bodies become aircraft at a stage of manufacture or production when the center portion and a lifting surface become attached.

"Contractor's managerial personnel" means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All, or substantially all, of the Contractor's business;

(2) All, or substantially all, of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

"Contractor's premises" means those premises, including subcontractors' premises, designated in the Agreement or in writing by the Agreements Officer, and any other place the aircraft is moved for safeguarding.

"Contractor" means Seller or Buyer depending on context

"Covered aircraft" means an aircraft owned by or to be delivered to the Government and, when determined by the Agreements Officer and specifically identified as such in the Agreement, contract, or subcontract may include contractor-furnished aircraft that are not intended for induction into the DoD inventory, including—

(1) Aircraft furnished by the Government to the Contractor under this Agreement while in the Contractor's possession, care, custody, or control regardless of their location or state of disassembly or reassembly;

(2) Items removed from a Government-furnished aircraft that are—

(i) Intended for reinstallation on that particular aircraft, which retain their status as covered aircraft while awaiting installation; and

(ii) Not intended for reinstallation on that particular aircraft, which lose their status as covered aircraft once removal is complete;

(3) New production aircraft when wholly outside of buildings on the Contractor's

premises or other places described in the Agreement (e.g., hush houses, run stations, and paint facilities); and

(4) Commercial aircraft, to include commercially available off-the-shelf aircraft, become covered aircraft when the commercial aircraft arrives at the Contractor's place of performance for modification under the terms of the Agreement.

"Crewmember" means, unless otherwise provided in the Agreement, personnel required in the flight manual, assigned for the purpose of conducting any flight on behalf of the Contractor. It also includes any operator of an unmanned aerial vehicle.

"Flight" means any flight approved in writing by the Government Flight Representative (GFR), to include taxi test made in the performance of this Agreement, or flight for the purpose of safeguarding the aircraft. All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of the Agreement, or landings approved in writing by the Agreements Officer.

"Workmanship error" means damage to the aircraft that is the result of an incorrectly performed skill-based task, operation, or action that was originally planned or intended.

(b) Combined regulation/instruction. The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled "Contractor's Flight and Ground Operations" (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 , and Defense Contract Management Agency Instruction 8210 - 1 (Series)) in effect on the date of Agreement award. Compliance with the combined regulation/instruction is required from the time of Agreement award throughout the period of performance of the Agreement, regardless of the Government's assumption of risk under the Agreement.

(c) Government as self-insurer. The Government self-insures and assumes the risk of damage to, or loss or destruction of, covered aircraft subject to the following conditions:

(1) The Contractor's liability to the Government for damage, loss, or destruction of covered aircraft is limited to the Contractor's share of loss as defined at paragraph (h) of this clause, except when one of the exclusions at paragraph (d) applies.

(2) The liability provisions of this clause take precedence over other liability provisions of this Agreement, with respect to covered aircraft.

(3) The Contractor is not liable for loss, damage, or destruction of covered aircraft as the result of normal wear and tear, or intentional damage or destruction as required in the Agreement.

(4) Conditions for Government assumption of risk in flight are as follows:

(i) The Contractor's crewmembers are approved in writing by the GFR.

(ii) The flight is approved in writing by the GFR.

(d) Exclusions from the Government's assumption of risk. The Government's assumption of risk under this clause shall not extend to damage, loss, or destruction of covered aircraft which—

(1) Is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, including the Contractor's oversight of subcontractors;

(2) Is sustained during flight if either the flight or the crewmembers have not been approved in advance and writing by the GFR, who has been authorized in accordance with the combined regulation/instruction entitled "Contractor's Flight and Ground Operations";

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, unless the transportation is limited to the vicinity of the Contractor's premises, and incidental to work performed under the contract as described in the Agreement;

(4) Is covered by insurance;

(5) Occurs after the Agreements Officer has, in writing, revoked the Government's assumption of risk in accordance with paragraph (e)(3) of this clause; or

(6) Is sustained due to workmanship errors.

(e) Revoking the Government's assumption of risk .

(1) The Agreements Officer, when finding that the Contractor's managerial personnel have failed to comply with paragraph (b) of this clause, will issue a preliminary notice of revocation

requiring the Contractor to comply with Agreement requirements within a timeframe specified by the Agreements Officer. In determining exposure to unreasonable conditions, the Agreements Officer will consider factors including, but not limited to, the following: lack of adequate hangar fire suppression or firefighting vehicles, failure to provide adequate procedures to the GFR, or systemic failure to comply with approved procedures.

(2) Upon receipt of the preliminary notice of revocation, the Contractor shall promptly correct the noncompliance or cited conditions, regardless of whether there is agreement that the conditions are unreasonable.

(3) If the Agreements Officer finds that the Contractor failed to correct the cited noncompliance or conditions within the specified timeframe, the Agreements Officer will issue a notice of revocation of the Government's assumption of risk for any covered aircraft.

(4) If the Agreements Officer issues a notice of revocation pursuant to the terms of this clause—

(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the previously covered aircraft;

(ii) Any costs incurred by the Contractor (including the costs of the Contractor's self-insurance, insurance premiums paid to insure the Contractor's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its risk are unallowable costs; and

(5) The Contractor shall promptly notify the Agreements Officer when the noncompliance or cited conditions have been corrected. Within 3 days of receipt of the Contractor's notice of correction, the Agreements Officer will notify the Contractor whether the Government will resume risk of loss. The Agreements Officer will determine that the noncompliance or cited conditions have been corrected prior to resuming assumption of risk.

(6) The notice of revocation does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled "Contractor's Flight and Ground Operations."

(7) Any disputes regarding the Agreements Officer's notice of revocation shall be subject Section B. of this Article.

(f) Contractor's exclusion of insurance costs. The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance (including the Contractor's share of loss) covering damage, loss, or destruction of covered aircraft when the risk has been assumed by the Government, even if the assumption may be terminated for covered aircraft.

(g) Procedures in the event of damage, loss, or destruction .

(1) In the event of damage, loss, or destruction of covered aircraft the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft and to put all aircraft in the best possible order. Except in cases covered by paragraph (h)(2) of this clause, the Contractor shall furnish to the Agreements Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) If a new production aircraft is damaged, lost, or destroyed before it has become a covered aircraft, the Government bears no responsibility for risk of loss.

(3) If a new production aircraft is damaged, lost, or destroyed after it has become a covered aircraft, the Contractor shall take action in accordance with the Agreements Officer's written direction that the aircraft shall be—

(i) Replaced;

(ii) Repaired to the condition immediately prior to the damage; or

(iii) Considered beyond economic repair. The Agreements Officer will decide whether

further actions are required under the Agreement.

(4) If a covered aircraft that has been furnished by the Government to the Contractor is damaged, lost, or destroyed while covered, the Contractor shall take action in accordance with the Agreements Officer's written direction that the aircraft shall be—

(i) Repaired; or

(ii) Considered beyond economic repair. The Agreements Officer will decide further actions required under the Agreement.

(5) The Agreements Officer will make an equitable adjustment for expenditures made in performing the obligations under this paragraph (g).

(h) Contractor's share of loss.

(1) The Contractor's share of loss or damage to covered aircraft, except for loss or damage caused by negligence of Government personnel, is the least of—

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the Agreement.

(2) If the Government requires covered aircraft be replaced or repaired by the Contractor, any resulting equitable adjustment shall not include reimbursement of the Contractor's share of loss.

(3) In the event the Government does not decide to replace or repair, the Contractor agrees to credit the Agreement price or pay the Government, as directed by the Agreements Officer, the least of—

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the Agreement.

(4) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to—

(i) The Contractor's share of loss under the Government's self-insurance;

(ii) The costs of the Contractor's self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor's liability.

(i) Reimbursement from a third party. In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of covered aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Agreements Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(j) Liability to third parties. Unless the flight and crewmembers have been approved in writing by the GFR, the Contractor shall not be reimbursed for liability to third parties for loss or damage to property or for death or bodily injury caused by covered aircraft during flight, even if the Government has accepted such liability under any other provisions of the Agreement.

(k) Subcontracts. The Contractor shall incorporate the requirements of this clause, including this paragraph (k), in subcontracts to include subcontracts for commercial products and commercial services, except—

(1) The Contractor shall not include paragraph (f) of this clause in subcontracts for commercial products or commercial services; and

(2) The Contractor shall not incorporate the requirements of this clause in subcontracts with Federal Aviation Administration (FAA) part 145 repair stations performing work pursuant to their FAA license.

PATENT RIGHTS

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 Limited Rights 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 his 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. 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.

5. The Performer shall submit to DARPA annual listings of Subject Inventions. 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-XX-9-XXXX, 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 Administrative Agreements Officer (AAO), where one is appointed.

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.

DATA RIGHTS

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 the requirements of this Agreement except for Data identified with less than Government Purpose Rights as defined in the Definitions of this Agreement.

3. Notwithstanding the provision in A.4, the Performer agrees, with respect to Data generated or developed under this Agreement, the Government may, within two (2) years after completion or termination of this Agreement, require delivery of such Data. Any request for delivery of Data shall be made in writing with at least sixty (60) days' notice. Upon the Government making such a request, the Parties will negotiate in good faith the applicable Data Rights for the requested Data prior to delivery, and the Government shall reimburse the Performer for costs associated with the compilation and delivery of the Data.

4. March-In Rights

(a) In the event the Government chooses to exercise its March-in Rights, 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 the Definitions of this Agreement, to this delivered Data.

(b) To facilitate any potential deliveries, the Performer agrees to retain and maintain in good condition until two (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:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-XX-9-XXXX between the Government and the Performer.

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.

FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for (TBD) 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.

SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

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. Therefore, this Article requires the performer to protect CDI that resides on the performer's information systems. This article also requires the performer to rapidly report any cyber incident involving CDI.

B. Safeguarding CDI

The performer shall implement the version of NIST Special Publication (SP) 800-171, Rev B in effect at the time the solicitation is issued or as authorized by the Agreements Officer for CUI and CTI that resides on the performer's information systems. Consistent with NIST SP 800-171, Rev B, implementation may be tailored to facilitate equivalent safeguarding measures used in the performer systems and organization. Any suspected loss or compromise of CDI that resides on the performer's information systems shall be considered a cyber incident and require the performer to rapidly report the incident to DARPA in accordance with Paragraph C below.

C. Cyber Incident Reporting

Upon discovery of a cyber incident involving CUI or CTI, the performer shall take immediate steps to mitigate any further loss or compromise. The performer shall rapidly report the incident to DARPA and provide sufficient details of the event—including identification of detected and isolated malicious software—to enable DARPA to assess the situation and provide feedback to the performer regarding further reporting and potential mitigation actions. The performer shall preserve and protect images of all known affected information systems and all relevant monitoring/packet capture data for at least 90 days from reporting the cyber incident to enable DARPA to assess the cyber incident. The performer agrees to rapidly implement security measures as recommended by DARPA and to provide to DARPA any additionally requested information to help the Parties resolve the cyber incident and to prevent future cyber incidents.

D. Public Release

All information and data covered by this Article must be reviewed and approved by DARPA prior to any public release, defined as a release not under obligation of confidentiality. The DARPA public release process is governed by DARPA Instruction 65. An online form is available to support those requests at: https://www.darpa.mil/work-with-us/contract-management/public-release

E. Lower Tier Agreements

The performer shall include this Article in all subcontracts or lower tier agreements, regardless of tier, for work performed in support of this Agreement.

F. Definitions

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.

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 contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

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)."

For avoidance of doubt, CDI, CTI, and CUI each expressly exclude data and software pertaining to commercial products and commercial services as defined in FAR 2.101.

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.

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

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

PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

A. Prohibition

There shall be no dissemination or publication, except within and between the Performer and any 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, provided via the Buyer. 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) under this Agreement (including wholly owned subsidiaries), Performer and the Department of Defense, Performer and other actual or prospective subcontractors after the Agreement for purposes of continued product or technology development, of information developed under this effort without first obtaining approval for public release from the DARPA Public Release Center (PRC). In any event, and unless otherwise authorized by DARPA, all authorized disclosures of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement shall be subject to confidentiality obligation by recipient. 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.

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.