OTHER TRANSACTION for PROTOTYPE AGREEMENT

BETWEEN

UNITED STATES SPECIAL OPERATIONS COMMAND – SPECIAL OPERATION FORCES, ACQUISITION, TECHNOLOGY AND LOGISTICS (SOF AT&L)

7701 Tampa Point Blvd, MacDill AFB 33621

AND

COMPANY NAME

Company Address,

City, State ZIP

 CONCERNING

 PROJECT TITLE

USSOCOM Agreement No.: H92405XX9PXXX

Total Amount of the Agreement: $XXXX

Authority: 10 U.S.C. § 2371b,

Effective Date: XX

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by the U.S. Special Operations Command (USSOCOM), and XXXXX pursuant to and under U.S. Federal law, 10 U.S.C. § 2371b .

FOR (INSERT COMPANY NAME (Performer)) FOR THE UNITED STATES. SPECIAL OPERATIONS COMMAND (USSOCOM)

(Signature) (Signature)

(Name, Title) (Date) (Name, Title) (Date)

Funding Data:

Purchase Request No.: F2VUxxxx

Total Amount of the Agreement: $XXXX

Total Funded Amount: $xxxxx

Line of Accounting: xx

AA

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**ARTICLE I.**  SCOPE:

1. DESCRIPTION

This Agreement entered into on the date indicated on the cover page, by ENTER FULL PERFORMER NAME, hereinafter referred to as “PERFORMER” or “ENTER SHORT NAME FOR PERFORMER” and, SOF AT&L Contracting, hereinafter referred to as “GOVERNMENT”, reflects the agreement associated with the following:

|  |
| --- |
| Description |
| The PERFORMER shall develop, fabricate and demonstrate a prototype system of |
| Delivery of # prototype/s system payload |
| Documents Deliverable, See Attachment 2 |

1. DEFINITIONS:
* **Agreement:** The body of this Agreement and Attachments 1-4, which are expressly incorporated in and made a part of the Agreement
* **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 Proprietary Information, 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 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 government of the United States of America.
* **Government Purpose Rights:** The right to use, modify, reproduce, release, perform, display, or disclose data pertaining to a particular item within the Government without restriction, but may release or disclose the data outside the Government only for government purposes.
* **Invention:** Any process, machine, software, manufacture, or composition of matter, or any new and useful improvement thereof, which is or may be patentable or otherwise protectable under title 35 of the United States Code.
* **Party:** The Government or the Performer.
* **Parties:** The Government and the Performer, collectively.
* **Performer:** XXX
* **Practical Application:** To manufacture, in the case of a composition of product; to practice, in the caseof 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.
* **Project:** Research and development being conducted by the Performer, as set forth in Article I.
* **Proprietary Information:** Information owned by the Performer and marked by the Performer as

“Proprietary Information”. The validity of the Performer’s ownership of such information is subject to review and agreement by the Government.

* **Subject Invention:** Any Invention conceived or first actually reduced to practice in the performance of work under this Agreement.
* **Technology:** Discoveries, innovations, Know-How and Inventions, including computer software,

recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works and copyrights developed under this 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.

**ARTICLE II**. PURPOSE:

This agreement is for a Small Business Innovation Research (SBIR) Phase II effort for XXX under SOCOM SBIR Topic XX-XXX. The principal purpose of this Agreement is to conduct research and to develop the prototype described in the PERFORMER’s proposal. The Project is as set forth in the PERFORMER’s proposal, dated X January 2019, copies of which are in the possession of both parties and included in attached Statement of Work (attachment 3).

The parties agree that this Agreement is for SBIR II research and development, manufacturing and test of a prototype as described in the PERFORMER’s proposal and defined within this agreement.

**ARTICLE III.** TERMS/DELIVERY:

1. Order of Preference: In the event of any inconsistency between the terms of this Agreement and language set forth in the Attachments, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, and (2) all Attachments to the Agreement.
2. Period of Performance (PoP): The Program commences upon the date of the last signature herein and continues for xxxxx. Provisions of this Agreement that, by their express terms or by necessary implication, apply for periods of time other than specified herein shall be given effect notwithstanding this Article.
3. Extending the Term: The Parties may extend by mutual written agreement the term of this Agreement if research opportunities within the spurpose of this agreement set forth in Article II reasonably warrant. Any extension shall be formalized through modification of the Agreement by the Agreements Officer (AO) and the PERFORMER Administrator.

1. **Limitation of Funds:** This effort may be incrementally funded. Not all funds are presently available for this agreement. Funds are not presently available for performance under this agreement beyond the funding amount shown on Page 2 of this agreement and the funded milestone under attachment 1*.* The Government’s obligation for performance of this agreement beyond that milestone is contingent upon the availability of appropriated funds from which payment for agreement purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this agreement beyond the funding listed under page 2 of the agreement, and until funds are made available to the Agreements Officer for performance and the PERFORMER receives notice of availability in writing by the Agreements Officer.

1. Delivery: The PERFORMER agrees to deliver to the Government the prototypes resulting from the work defined under Article I and II prior to the end of the PoP, as well as any required approvals and releases. All risk of loss with respect to the prototypes to be transferred hereunder shall remain with the PERFORMER until delivery to and acceptance by the Government. The PERFORMER will also deliver all required documents listed in attachment 2, following the instructions set out in the attachment.

The PERFORMER shall deliver the Prototypes to the point of delivery in accordance with the delivery provisions in this Agreement and the cost of the delivery are included in the agreement amount. Delivery shall be made to:

XXXX

ATTN: XXXX

Address

The PERFORMER shall arrange for the packaging, shipment and insurance against damage to the prototype in transit.

*NOTE: (i) Transportation considerations. If shipment of ammunition and explosives is involved in the agreement,, address in the Schedule of the agreement the applicable Department of Transportation or Military Surface Deployment and Distribution Command requirements and any other requirements for transportation, packaging, marking, and labeling.*

*(ii) Disposition of excess. Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.*

1. Rights and obligations of the parties hereto shall be governed by, and this Agreement shall be interpreted in accordance with, Federal law.
2. Follow on Agreements: In accordance with 10 U.S.C. § 2371b (f), the Government may award a follow-on production contract or Other Transaction (OT) to the Performer, or a recognized successor in interest to the Performer, following the successful completion of this entire Agreement, as modified.

Successful completion of this agreement is defined as delivering a prototype that meets one or more threshold requirements identified within the Statement of Work (SOW) (Attachment 3).

**ARTICLE IV.** MODIFICATIONS

1. As a result of weekly telecons, meetings, periodic reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the SOW would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the SOW and prospective Payable Milestones will be documented in writing and submitted by the PERFORMER to the USSOCOM AO with a copy to the AOR. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. USSOCOM and the PERFORMER shall approve any Agreement modification. The Government is not obligated to pay for additional or revised future Payable Milestones until the Schedule of Payments and Payable Milestones Exit Criteria (Attachment 1) is formally revised by the AO and made part of this Agreement.
2. The AOR shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Statement of Work, prospective Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.
3. For minor or administrative Agreement modifications (e.g., changes in the paying office or appropriation data, changes to Government or the PERFORMER’s personnel identified in the Agreement, funding action etc.) no signature is required by the PERFORMER.
4. The Government will be responsible for effecting all modifications to this Agreement.

**ARTICLE V.** ADMINISTRATION AND PAYMENT

1. Unless otherwise provided in this Agreement, approvals permitted or required to be made by the GOVERNMENT may be made only by the Agreements Officer (AO). Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

GOVERNMENT:

John Doe 1 Agreement Officer

United States Special Operations Command – SOF A&L KX

(813) 826-1111

Email address

John Doe 2

Agreement Specialist

United States Special Operations Command – SOF A&L KX

(813) 826-5555

Email address

TPoC: John Tech

Technical Point of Contact (TPoC)

SOF AT&L

(813) 826-5555

Email address

PERFORMER’S POC John Tech

PERFORMER’S ADMINISTRATOR

ADDRESS

(XXX) XXX-5555

Email address

Each party may change its representatives named in this Article by written notification to the other party. The Government will make the change as stated in Article IV.

Cognizant Defense Finance and Accounting Service Office:

DFAS-Columbus Center

South Entitlement Operations

P O BOX 182317

Columbus, OH 43218-226

1. Obligation: Except as specified in Article VII, Dispute Resolution, the Government’s liability to make payments to the PERFORMER is limited only to those funds obligated under this Agreement or by modification to the Agreement. USSOCOM may obligate funds to the Agreement incrementally. In accordance with 31 U.S.C. 1341, an officer or employee of the United States Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation, or involve the Government in a contract or obligation for the payment of money before an appropriation is made, unless authorized by law.

1. Payments: Payments shall be made to the PERFORMER by the Defense Finance & Accounting Service (DFAS) through Electronic Fund Transfer. Payment shall be made upon successful completion of each milestone and acceptance in accordance with this Agreement. Items are to be delivered as FOB Destination.
2. The PERFORMER shall be paid a fixed amount for each Payable Milestone accomplished in accordance with the Schedule of Payments and Payable Milestones set forth in Attachment 1 and the procedures of this article. The AOR, in consultation with the Government’s Program Manager, shall provide recommendations to Program developments and technical collaboration and be responsible for the review and verification of the Payable Milestones.
3. The WAWF system is the method to electronically process vendor payment requests and receiving reports. To access WAWF, the PERFORMER shall have a designated electronic business point of contact in the System for Award Management at https://[www.sam.gov/portal/SAM/;](http://www.sam.gov/portal/SAM/) and be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this website. The Awardee shall follow the training instructions of the WAWF Web-Based Training Course and use the practice training site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>.
4. The PERFORMER shall submit a **COMBO** request through WAWF utilizing the following Routing Data to fill in the applicable fields in WAWF when creating payment requests in the system.
5. The PERFORMER shall submit a payment request through WAWF utilizing the following Routing Data to fill in the applicable fields in WAWF when creating payment requests in the system :

**Payment Routing Data Table**

|  |  |
| --- | --- |
| 1. *Field Name in WAWF*
 | *Data to be entered in WAWF* |
| Pay Official DoDAAC |  |
| Issue By DoDAAC |  |
| Admin DoDAAC |  |
| Inspect By DoDAAC |  |
| Accept at Other DoDAAC |  |

1. All payment requests shall include an invoice (PERFORMER’s format is acceptable) to include at a minimum, invoice number, milestone payment number and agreement number. Please, contact your administration office for review of your invoice prior to your first submittal. Note, all invoices shall be for the exact payment amount as per established milestone Payments of this Agreement. Partial milestones shall not be submitted.
2. The PERFORMER shall include the following WAWF email notifications when submitting invoices to assure payment approval to:

|  |  |
| --- | --- |
| Administrative Agreements Officer: |  |
| Agreements Officer: |  |
| Agreements Specialist:  |  |
| Technical Representative:  |  |
| Technical Representative:  |  |

* 1. For technical WAWF help, contact the WAWF helpdesk at 866-618-5988
1. Electronic Fund Transfer: PERFORMER must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting Form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the PERFORMER and the PERFORMER's financial institution, and returned to the paying office. The paying office will complete the process and notify the PERFORMER that EFT enrollment is complete. All payments under this Agreement will be held until the PERFORMER provides the required EFT enrollment information. The CAGE Code and DUNS number for the PERFORMER are as follows: CAGE Code: XXXX; DUNS number: 000000000. Registration in the System Award for Management (SAM) is mandatory.

**Note for DFAS: The Agreement shall be entered into the DFAS system by CLIN – Milestone association as delineated at Attachment 1. The Agreement is to be paid out by CLIN – Milestone association. Payments shall be made using the CLIN (MS)/ACRN association as delineated at Attachment 1**

**ARTICLE VI.**  TERMINATION:

The GOVERNMENT may terminate this Agreement by written notice to the PERFORMER, provided that such written notice is preceded by consultation between the Parties. The PERFORMER may request Agreement termination by giving the Government sixty (60) days written notification of their intent to do so. If the PERFORMER decides to request termination of this Agreement, the Government may, at its discretion, agree to terminate wit0hin 60 calendar days. The Government and the PERFORMER should negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments. In the event of a termination of the Agreement, the Government shall have paid-up rights in Data as described in Article X, SBIR Data Rights. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article VII, Dispute Resolution.

**ARTICLE VII**  DISPUTE RESOLUTION

1. **General**

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

1. **Dispute Resolution Procedures**
2. Any disagreement, claim or dispute between the Government and the Performer concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.
3. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the USSOCOM Director of Procurement in the interests of justice waives this requirement.
4. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the USSOCOM Deputy Director of Procurement and Chief Executive Officer of the Performer. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The USSOCOM Deputy Director of Procurement and the Performer’s designated representative shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.
5. In the absence of a joint decision, upon written request to USSOCOM Director of Procurement, made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The USSOCOM Director of Procurement may elect to conduct this review personally or through a designee or jointly with the Performer’s designated representative. Following the review, the USSOCOM Director of Procurement or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.
6. **Limitation of Damages**

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of USSOCOM funding disbursed as of the time the dispute arises. In no event shall either Party be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

**ARTICLE VIII** PROPRIETARY INFORMATION

1. **Exchange of Information:**

 The Performer may from time to time disclose Proprietary Information to the Government in connection with the Agreement. Neither the Government nor Performer shall be obligated to transfer Proprietary Information independently developed by either Party to any Party to this Agreement unless required as a part of a deliverable, or to otherwise satisfy the terms and conditions of this Agreement.

1. **Treatment of Proprietary Information and Authorized Disclosure:**

The Government agrees, to the extent permitted by law, that Proprietary Information shall remain the

property of the Performer. Unless otherwise agreed to in writing by the Performer, the Government shall not use Proprietary Information for any purposes other than in connection with the Agreement or as otherwise specified in Article IX, Patent Rights, and Article X, Data Rights. “Proprietary Information” shall not extend to materials or information that:

1. Are received or become available without restriction to the Government under this Agreement or a proper, separate agreement,
2. Are not identified with a suitable notice or legend per the definition of Proprietary Information,
3. Are lawfully in possession of the Government without restriction at the time of disclosure thereof as demonstrated by prior written records,
4. Are or later become part of the public domain through no fault of the Government,
5. Are received by the Government from a third party having no obligation of confidentiality to the Performer, or

6. Are developed independently by the Government without use of Proprietary Information as

 evidenced by written records, or

7. Are required by law or regulation to be disclosed; provided, however, that the Government shall provide written notice to the Performer promptly so as to enable the Performer to seek a protective order or otherwise prevent disclosure of such information.

**ARTICLE IX** PATENT RIGHTS

1. **Allocation of Principal Rights**

Unless the PERFORMER shall have notified USSOCOM (in accordance with subparagraph B 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 and 35 U.S.C. § 202. With respect to any Subject Invention in which the PERFORMER retains title, USSOCOM 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, for Government, not commercial, purposes.

1. **Invention Disclosure, Election of Title, and Filing of Patent Application**
2. The PERFORMER shall disclose each Subject Invention to USSOCOM within two (2) months after the inventor discloses it in writing to his performer personnel responsible for patent matters or with submission of next milestone report, whichever comes first. The disclosure to USSOCOM 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.
3. If the PERFORMER determines that it does not intend to retain title to any such Invention, the PERFORMER shall notify USSOCOM, in writing, within eight (8) months of disclosure to USSOCOM. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by USSOCOM to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.
4. 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 from the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
5. The Performer shall notify USSOCOM 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.
6. Requests for extension of the time for disclosure election, and filing under Article VII, may be granted at USSOCOM’s discretion after considering the circumstances of the Performer and the overall effect of the extension.
7. The Performer shall submit to USSOCOMannual 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 USSOCOM’s written request, the PERFORMER shall convey title to any Subject Invention to USSOCOM 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; provided, that USSOCOM 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; provided, that if the PERFORMER has filed a patent application in a country after the times specified in this paragraph C1 of this Article, but prior to its receipt of the written request by USSOCOM, 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 Invention within the times specified in paragraph B of this Article. The PERFORMER’s license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the PERFORMER is a party 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 USSOCOM, except when transferred to the successor of that part of the business to which the Invention pertains. USSOCOM approval for license transfer shall not be unreasonably withheld.
2. The PERFORMER’s domestic license may be revoked or modified by USSOCOM 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 CFR 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 Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of USSOCOM 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, USSOCOM 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 USSOCOM 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 USSOCOM 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, 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. he 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 U. S. or foreign statutory bars.
3. The PERFORMER shall notify USSOCOM 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.
4. 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. **H92405-xx-9-Pxxx**, awarded by USSOCOM. The Government has certain rights in the Invention.”

**F. 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.

**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 is 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 USSOCOM in connection with any march-in proceedings undertaken by USSOCOM in accordance with Paragraph I of this Article. USSOCOM 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 DD882 form or on a written form as per section B of this article and 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 article, 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 USSOCOM 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.

1. **March-in Rights**

The PERFORMER agrees that, with respect to any Subject Invention in which it has retained title, DoD 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, DoD has the right to grant such a license itself if DoD 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 X** SBIR DATA RIGHTS

**A. Allocation of Principal Rights**

1. The PERFORMER grants or shall obtain for the Government a royalty-free, world-wide, nonexclusive, irrevocable license to SBIR Data developed or generated under this Agreement only for Government (not commercial) purposes for a period commencing with the agreement award and ending twenty years after issuance of the first SBIR award on the technology being develop under this Agreement. All rights not granted to the Government are retained by the PERFORMER. All other data shall be retained with Limited Rights except for data where the Government had pre-existing rights or limitations/protections have expired or no longer apply. The PERFORMER acknowledges that Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to Government support contractors working in an advisory/ support role with Government personnel as necessary during the performance of their duties.
2. Upon expiration of the twenty-year restrictive license from the first SBIR contract award on the technology being developed, the Government has Government Rights to the SBIR data.
3. The Government will refrain from disclosing SBIR data outside the Government (except support contractors working in an advice and assistance role) and especially to competitors of the PERFORMER, or from using the information to produce future technical procurement specifications that could harm the PERFORMER.
4. The Government will protect from disclosure and non-governmental use all SBIR data developed or generated from work performed under this agreement for a period of not less than the period in which it retains SBIR rights in Data unless the Government obtains permission to disclose such SBIR data from the PERFORMER. The Government is released from the obligation to protect SBIR data upon expiration of the protection period except that any such SBIR data is also protected through the protection period of a subsequent SBIR award. This protection does not extend to the evaluation of the Program.

**B. Marking of Data**

Pursuant to paragraph A above, any Process Data delivered under this Agreement for which the Government is entitled to Limited Rights shall be marked with the following legend:

“These data are submitted with limited rights under Agreement No. H92405-XX-9-Pxxx. These data may be reproduced and used by the Government with the express limitation that they will not, except for specific situations detailed in the Agreement, without written permission of the PERFORMER, be used for purposes of manufacture/reproduce nor disclosed outside the Government.”

*SBIR data rights markings*. Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph 1 of this article where the Government had previous rights, or negotiated special license rights, technical data or computer software generated under this agreement shall be marked with the following legend. The PERFORMER shall enter the expiration date for the SBIR data rights period on the legend:

SBIR DATA RIGHTS Marking:

|  |
| --- |
|  |
|  | Agreement No. |  |  |
|  | PERFORMER Name |  |  |
|  | PERFORMER Address |  |  |
|  |
|  | Expiration of SBIR Data Rights Period |  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in Article X of the listed agreement—Small Business Innovation Research (SBIR) Data Rights. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

The PERFORMER shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the table below. This does not apply to technical data or computer software that were or will be generated under this agreement or to restrictions based solely on copyright:

|  |  |  |  |
| --- | --- | --- | --- |
| Technical Data or |  |  |  |
| Computer Software |  |  | Name of Person |
| to be Furnished | Basis for | Asserted Rights | Asserting |
| With Restrictions\* | Assertion\*\* | Category\*\*\* | Restrictions\*\*\*\* |
| (LIST) | (LIST) | (LIST) | (LIST) |

 *\*If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.*

 *\*\*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.*

 *\*\*\*Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).*

 *\*\*\*\*Corporation, individual, or other person, as appropriate.*

|  |  |
| --- | --- |
| *Date* |  |
| *Printed Name and Title* |  |
|  |
|  |  |
| *Signature* |  |

 *(End of identification and assertion)*

When requested by the AO, the Performer shall provide sufficient information to enable the Agreements Officer to evaluate the PERFORMER's assertions. The AO reserves the right to add the PERFORMER's assertions to the agreement and validate any listed assertions.

**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 XI** Operational Security

1. Operational Security (OPSEC) is a preventive approach to ensuring U.S. interests are protected from enemy intelligence or actions. The Performer shall incorporate OPSEC measures expressed by the Center for Development of Security Excellence, Defense Security Service in the OPSEC Awareness for Military Members, DoD Employees and Contractors accessed at <https://securityawareness.usalearning.gov/opsec/> when discussing this contract, customer, prototype, or information contained within the SOW.
2. On September 21, 2001, the DoD designated Headquarters USSOCOM a sensitive unit, as defined by Title 10 United States Code (USC) Section 552 (10 USC §552). In keeping with this designation, unclassified information related to USSOCOM military technology acquisitions managed by USSOCOM or any of its component commands, will be designated Controlled Unclassified Information (CUI). As such, the Performer hereby unequivocally agrees that it shall not release to anyone outside the Performer's organization any unclassified information, regardless of medium (e.g., film, tape, document, PERFORMER’s external website, newspaper, magazine, journal, corporate annual report, etc.), pertaining to any part of this agreement, unless the AO has given prior written approval. Therefore, any release of information which associates USSOCOM, SOF, or any component command with an acquisition program, performer, or this agreement is prohibited unless specifically authorized by USSOCOM. Notwithstanding the above, technical content under Attachments 1 or 2 are excluded from this designation, providing that the performer provides a copy of the unclassified information for release to the AO at least 45 days before the proposed date for release.
3. Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Performer shall submit its request to the AO at least 45 days before the proposed date for release for approval. No release of any restricted information shall be made without specific written authorization by the AO.
4. The Performer further understands that Title 18 USC Section 701 specifically prohibits the use of the USSOCOM emblem or logo in any medium (e.g., corporate website, marketing brochure, newspaper, magazine, etc.) unless authorized in writing by USSOCOM. Forward any requests to use the USSOCOM emblem or logo through the Contracting Officer.
5. Furthermore, by entering into this Agreement, the Government neither directly nor indirectly endorses any product or service provided, or to be provided, by PERFORMER, whether directly or indirectly related to this Agreement. PERFORMER will not state or imply that this Agreement is either an endorsement by the Government or its employees. Any article approved for released by the Government shall contain a statement on the title page 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.”*

1. The PERFORMER shall include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime Performer to the Agreements Officer.

**ARTICLE XII** CYBER SECURITY AND INCIDENT REPORTING

1. **CYBER SECURITY**

The PERFORMER shall provide adequate security for all USSOCOM information on PERFORMER information systems. To provide adequate security, the PERFORMER shall implement, at a minimum, the following information security protections:

(1) For covered PERFORMER information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements of this agreement See guide at <https://public.cyber.mil/dccs/>.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this agreement.

(2) For covered PERFORMER information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this agreement, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this agreement, the covered PERFORMER information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, ``Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'' (available via the internet at http://dx.doi.org/10.6028/NIST.SP.800-171) in effect at the time the solicitation is issued or as authorized by the Agreements Officer.

(ii)(A) The PERFORMER shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the PERFORMER shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The PERFORMER shall submit requests to vary from NIST SP 800-171 in writing to the Agreements Officer, for consideration by the DoD CIO. The PERFORMER need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non-applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the PERFORMER's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Agreements Officer when requesting its recognition under this agreement.

(D) If the PERFORMER intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this agreement, the PERFORMER shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/resources/documents/) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the PERFORMER reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and

(2) of this article, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

**B. CYBER REPORTING REQUIREMENTS**

(1) When the PERFORMER discovers a cyber-incident that affects a covered PERFORMER information system or the covered defense information residing therein, or that affects the PERFORMER's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, the PERFORMER shall--

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered PERFORMER information system(s) that were part of the cyber incident, as well as other information systems on the PERFORMER's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the PERFORMER's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at http://dibnet.dod.mil.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at http://dibnet.dod.mil.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this article, the PERFORMER or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(4) Subcontracts. The PERFORMER shall--

(i) Include this article including this paragraph, in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The PERFORMER shall determine if the nformation required for subcontractor performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the Agreements Officer; and

(ii) Require subcontractors to—

(a) Notify the prime PERFORMER (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Agreements Officer; and

(b) Provide the incident report number, automatically assigned by DoD, to the prime PERFORMER (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber-incident to DoD.

**ARTICLE XIII**  FOREIGN ACCESS TO TECHNOLOGY

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 Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 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 of this Article below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the performer, and sales or licensing of Technology. Transfers do not include:
	1. sales of products or components, or
	2. licenses of software or documentation related to sales of products or components, or
	3. transfer to foreign subsidiaries of the PERFORMER for purposes related to this Agreement, or
	4. 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 USSOCOM of any proposed transfers from the PERFORMER of Technology developed under this Agreement to Foreign Firms or Institutions. If USSOCOM determines that the transfer may have adverse consequences to the national security interests of the United States, the PERFORMER, its vendors, and USSOCOM 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 AOR and 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 AO shall advise the PERFORMER whether it consents to the proposed transfer. In cases where USSOCOM does not concur or sixty (60) calendar days after receipt and USSOCOM provides no decision, the PERFORMER may utilize the procedures under Article VII, 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 USSOCOM takes place, the PERFORMER shall (a) refund to USSOCOM 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 have practiced on behalf of the United States the Technology throughout the world for the 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 XIV**. HAZARDOUS MATERIAL IDENTIFICATIONAND MATERIAL SAFETY DATA

(a) “Hazardous material,” as used in this article, is defined in the Hazardous Material Identification hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the agreement).

(b) The Performer shall label the item package (unit container) of any hazardous material to be delivered under this Agreement in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Performer shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data article of this Agreement will be labelled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this article instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|    | MATERIAL (If None, Insert “None.”) |    |    | ACT |    |
|    |    |    |    |    |    |
|    |    |    |    |    |    |
|    |    |    |    |    |    |

(d) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this article, the PERFORMER shall promptly notify the AO and resubmit the data.

(e) Neither the requirements of this article nor any act or failure to act by the Government shall relieve the PERFORMER of any responsibility or liability for the safety of Government, PERFORMER, or subcontractor personnel or property

(f) The Performer agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this article. The Performer shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data article of this Agreement.

(g) The Performer shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this Agreement).

**ARTICLE XV.** PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMUNICATIONS AND VIDEO SUVEILLANCE SERVICES OR EQUIPMENT

      (a) Definitions. As used in this article—

      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 article applies or the covered telecommunication equipment or services are covered by a waiver granted by the Head of the Executive Agency or the Director of the National Intelligence.

           (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 article applies or the covered telecommunication equipment or services are covered by a waiver reference in the above paragraph (b)(1). 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 article does not prohibit performers 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 article 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](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](https://dibnet.dod.mil/).

           (2) The Performer shall report the following information pursuant to paragraph (d)(1) of this article

                (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 article: 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 article, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

**ARTICLE XVI : EXECUTION**

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be modified only by written agreement of the Performer and the AO. This Agreement and any modifications thereof may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument..

ATTACHMENT 1

SCHEDULE OF PAYMENTS AND

PAYABLE MILESTONES EXIT CRITERIA

The following schedule of performance events is required to obtain milestone-based payments applicable to this Agreement. The PERFORMER shall successfully accomplish each event and the event must be verified in order to receive the appropriate milestone payment amount.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **CLIN** | **Milestone** | **Statement of work Reference/Required Accomplishments****(Reference paragraphs are in Attachment 1 of this Agreement)** | **Method of Verification** | **Payment Percent \*** | **Actual Amount** |
| 0001 |  |  |  | % | $  |
| 0002 |  |  |  | % | $  |

ATTACHMENT 2

DOCUMENT REPORTING REQUIREMENTS

1. All reports below will be submitted to the following email addresses:

Distribution emails:

* Agreements Officer’s Representative: t
* Subject Matter Experts (SME):
* SOCOM SBIR OFFICE: sbir@socom.mil
* Contracting: ST\_CDRLS@socom.mil

A. CDRL A001 PHASE II KICK-OFF MEETING/SYSTEM REQUIREMENTS REVIEW READ-AHEAD BRIEFING

The Performer shall submit a Phase II Kick-Off Meeting/Systems Requirements Review Read-Ahead Briefing no less than seven (7) calendar days prior to the Phase II Kick-Off Meeting/System Requirements Review Meeting. The Performer shall provide a meeting agenda, any applicable documents to be reviewed, and highlight any key issues that are to be discussed. The Performer shall use the latest revision of DI-ADMN-81373 located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=205854> as a guide for the report content.

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Document shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

1. CDRL A002 MONTHLY PROGRESS REPORTS

The Performer shall use the latest revision of DI-MGMT-80368A located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=205804> as a guide for the report content, except paragraph 3.2.3.

On or before thirty (30) calendar days after the effective date of the Agreement and monthly thereafter throughout the term of the Agreement, the Performer shall submit a final Monthly Progress Report. Each Monthly Status Report shall describe the overall status of the Phase II project by addressing the project’s financial and schedule status, technical risks and management issues. Additionally, each Monthly Progress Report shall detail the technical progress to date and describe all problems, technical issues, major developments that occurred during reporting period. Minutes for all meetings as well as the status of external collaborations that occurred during the reporting period shall be included in each Monthly Progress Report as should the status of all action items requested by the Government to preclude programmatic or technical problems.

Additionally, the Performer shall include an Integrated Master Schedule for the entire project as part of the Monthly Progress Report with the progress by task as per 3.2.1 of DI-MGMT-80368A. As part of the Integrated Master Schedule, the Performer shall develop and provide a Project Management Plan (Microsoft Project for example). The Performer shall include in the Project Management Plan a list of all major tasks and their associated start and completion dates for all project milestones, and show work completed and work to be performed in monthly increments. Also as part of the Integrated Master Schedule, the Performer shall include an Expenditure Plan in sufficient detail to show the expenditures of both the work completed as well as the work to be performed in monthly increments.

A Monthly Progress Report will not be submitted for the last month of the Agreement. The accomplishments that occurred during the last month of the Agreement shall be included in the Final Technical Report.

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Documents shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

C. CDRL A003 - PRELIMINARY DESIGN REVIEW AND MATERIALS READ AHEAD BRIEFING

 The Performer shall submit a Preliminary Design Review (PDR) and Materials Read-Ahead Briefing no less than ten (10) calendar days prior to the PDR Meeting. This document shall contain a meeting agenda, any applicable documents to be reviewed, and highlight any key issues that are to be discussed.

The Performer shall use the latest revision of DI-SESS-81757A located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=276168> as a guide for the report content.

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Final)

Technical Direction Agent (Final)

Subject Matter Expert (Final)

SOCOM SBIR Office (Final)

Contracting (Final)

 The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Document shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

D. CDRL A004 - CRITICAL DESIGN REVIEW AND MATERIALS READ AHEAD BRIEFING

The Performer shall submit a Critical Design Review (CDR) and Materials Read-Ahead Briefing no less than ten (10) calendar days prior to the CDR Meeting.

The Performer shall use the latest revision of DI-SESS-81757A located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=276168> as a guide for the report format.

 The documents shall be transmitted to the following (Emails listed in section I): :

Agreements Officer’s Representative (Final)

Technical Direction Agent (Final)

Subject Matter Expert (Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

 The documents submittal shall be in electronic format (MS Word or Adobe PDF file). Document shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

E. CDRL A005 - DEVELOPMENTAL TEST PLAN FOR PERFORMANCE VALIDATION

The Performer shall submit a draft Developmental Test Plan for Performance Validation for Government approval not less than thirty (30) days prior to the beginning of verification testing. The Performer shall include as part of this test plan all tests (internal, verification, validation and demonstration, etc.) required to verify and validate that the technology will be suitable for its intended use. The Performer shall document the test results in a Developmental Test Report for Performance Validation. (See paragraph F. below). The Performer shall use the latest revision of DI-NDTI-80566A located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=205041> as a guide for the report content.

The draft Developmental Test Plan for Performance Validation shall also include tests to ensure system performance against the Specific Objectives specified in the Statement of Work. The Performer shall detail any conclusions regarding technology maturity and applicability identified during testing.

The Government requires ten (10) calendar days to review the draft Developmental Test Plan for Performance Validation to provide comments. The Performer shall submit the final Developmental Test Plan for Performance Validation including and resolving all Government comments not less than ten (10) calendar days prior to the first test.

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Documents shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

F. CDRL A006 -DEVELOPMENTAL TEST REPORT FOR PERFORMANCE VALIDATION

The Performer shall submit a Developmental Test Report for Performance Validation documenting the results of all tests and demonstrations required by the Government approved Developmental Test Plan for Performance Validation (See paragraph E above) not later than thirty (30) calendar days after the last planned test or demonstration event is satisfactorily completed. This Report shall reflect how the prototype met, or failed to meet, thresholds and objectives laid out in the Statement of Objectives. The Performer shall use the latest revision of DI-NDTI-80809B located at https://quicksearch.dla.mil/qsDocDetails.aspx?ident\_number=206263 as a guide for the report content.

 The documents shall be transmitted to the following (Emails listed in section I): :

Agreements Officer’s Representative (Final)

Technical Direction Agent (Final)

Subject Matter Expert (Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Documents shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

G. CDRL A007- FINAL TECHNICAL REPORT

# Standard Form 298 entitled “Report Documentation Page”: The first page of the Final Technical Report shall be the Standard Form 298. Block 12 shall state: “Distribution B: The report is authorized for distribution to U. S. Government agencies only, as it may contain proprietary information (specify date of determination). Other requests for this document shall be referred to USSOCOM, ATTN: SOF AT&L-ST, SBIR Program Manager.”

# The Final Technical Report will not be acceptable to the Government unless the Standard Form 298 is included as the first page and is satisfactorily completed. At the same time, it shall be consistent with best commercial practices.

Performer's format is acceptable. The Final Technical Report shall capture all technical progress accomplished during the Agreement period of performance and shall synopsize all management and financial results. The Performer shall use the latest revision of DI-MISC-80508B located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=204915> as a guide for the report content.

# The Government has 15 days after initial receipt to request changes, and the Performer shall submit a revised report within 15 days of receipt of the Government request. The finished Final Technical Report is due on the last day of the Agreement.

# The Final Technical Report with proprietary data included and appropriately marked shall be submitted via CD/DVD by parcel to:

# Defense Technical Information Center

#  ATTN: Enterprise Content Management, DTIC-C

#  8725 John J. Kingman Road

#  Fort Belvoir, Virginia 22060-6218

 The draft and Final Technical Reports with proprietary data included and appropriately marked shall be transmitted electronically to all other email addresses listed below either by encrypted email or via US Army Aviation and Missile Research, Development and Engineering Center (AMRDEC).

# The Performer shall advise the Agreement Officer's Representative by email immediately after submitting the Final Technical Report to DTIC.

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

 The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Hard copies will not be accepted. The Government retains approval rights.

H. CDRL A008- BUSINESS PLANS

 The Performer shall submit a draft of their comprehensive Business Plan to sell the technology developed under this topic no later than ninety (90) calendar days after agreement award.

The Final Business Plan is due ninety (90) calendar days prior to the last day of the Phase II agreement completion date.

The Performer shall use the latest revision of DI-MGMT-800004A located at https://quicksearch.dla.mil/qsDocDetails.aspx?ident\_number=204762 as a guide for the report content.

Final Business Plans shall identify expected military and private industry customers and describe all business disciplines and resources needed to market and sell the innovative technology. As a minimum, the Performer shall address the following business disciplines with the below index as a representative format:

I. Executive Summary

II. Table of Contents

III. Market Opportunity

 A. Market Need

 B. Product Innovation

 C. Industry Overview

 D. Market

 E. Commercialization and Exit Strategy

IV. The Performer

 A. Performer Origins

 B. Performer Description

 C. Revenues

 D. Vision

V. Management Team and Organization

VI. Product/Technology and Competition

 A. Product/Technology

 B. Competition

 C. Intellectual Property Landscape

VII. Finance and Revenue Model

 A. Estimate of Funding Need

 B. Revenue Projections

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

The documents shall be submitted in electronic format (MS Word or Adobe PDF file). Documents shall be transmitted via e-mail. Hard copies will not be accepted. The Government retains approval rights.

1. CDRL A009 PROTOTYPE OPERATOR MAINTENANCE MANUAL *(If applicable)\_*

The Performer shall submit a Prototype Operator/Maintenance Manual containing instructions for placing the prototype Light Weight Wide Field of View Aviation Goggles into operation, performance characteristics, operational warning and cautions, and field level maintenance procedures. The Prototype Operator/Maintenance Manual shall be delivered no later than the contract close out date.

Document shall be in electronic format (MS Word or Adobe PDF file). Document shall be transmitted via e-mail.

The Performer shall use the latest revision of DI-TMSS-81667, DI-TMSS-81675 located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=276168> as a guide for the report format.

 The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Final)

Technical Direction Agent (Final)

Subject Matter Expert (Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

Hard copies will not be accepted.

1. CDRL A010 PROTOTYPE SYSTEM SPECIFICATION *(If applicable)*

The Performer shall submit a Prototype System Specification containing details on system design, system interfaces, and environmental certifications of critical components. This document will support an air worthiness determination for the delivered prototype design.

The draft Prototype System Specification shall be delivered no later than 30 calendar days prior to the contract close out date and included in the Critical Design Review presentation. Government comments on the draft will be provided within 15 calendar days and final version of the Prototype System Specification is due by contract close out date. The Government retains approval rights.

Document shall be in electronic format (MS Word or Adobe PDF file).

The Performer shall use the latest revision of DI-IPSC-81431A located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=276168> as a guide for the report format.

 The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft, Final)

Technical Direction Agent (Draft, Final)

Subject Matter Expert (Draft, Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

Hard copies will not be accepted.

1. CDRL A011 COMPUTER SOFTWARE PRODUCT END ITEMS *(If applicable)*

The Performer shall submit a Computer Sofware Prototype end Product as necessary and required. The data produced will be used during the life cycle for development, operations and maintenance.

The Performer shall submit a Computer Software Product End Items System prototype. The data shall be formatted for review or maintenance to assure significant milestones are met. The data produced will be used during the life cycle for development, operations and maintenance. containing details on system design, system interfaces, and environmental certifications of critical components

The draft Computer SoftwareProduct End Item shall be delivered as required, no later than 30 business days prior to the contract close out date and included in the Critical Design Review presentation. Government comments on the draft will be provided within 20 business calendar days and final version of the Computer Software Product End Item is due by contract close out date. The Government retains approval rights.

Document shall be in electronic format (MS Word 2003 or newer).

The Performer shall use the latest revision of DI-AVCS-80700A located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=204928> as a guide for the report format.

The documents shall be transmitted to the following (Emails listed in section I):

Agreements Officer’s Representative (Draft, Final)

Technical Direction Agent (Draft, Final)

Subject Matter Expert (Draft, Final)

SOCOM SBIR OFFICE (Final)

Contracting (Final)

Hard copies will not be accepted.

L. *If applicable* Human and Animal Use Reporting

CDRL A009 HUMAN USE REGULATORY PROTOCOLS

TOTAL PROTOCOL(S): State the total number of human use protocols required to complete this project (e.g., “5 human subject research protocols will be required to complete the Statement of Work”). If not applicable, write “No human subjects research will be performed to complete the Statement of Work.”

PROTOCOL(S): List the identifier and title for all human use protocols needed to complete the project. Include information about the approved target number for clinical significance, type of submission, type of approval with associated dates, and performance status.

The following format shall be used:

Protocol \_of\_ total:

Human Research Protection Office (HRPO) assigned A-number:

Title:

Target required for clinical significance:

Target approved for clinical significance:

Submitted to and Approved by: Provide a bullet point list of protocol development, submission, amendments, and approvals (include IRB in addition to HRPO).

Status: Report on activity status: (i) progress on subject recruitment, screening, enrollment, completion, and numbers of each compared to original planned target(s), e.g., number of subjects enrolled versus total number proposed (ii) amendments submitted to the IRB and USAMRMC HRPO for review; and (iii) any adverse event/unanticipated problems involving risks to subjects or others and actions or plans for mitigation.

ANIMAL USE REGULATORY PROTOCOLS

TOTAL PROTOCOL(S): State the total number of animal use protocols required to complete this project (e.g., “2 animal use research protocols will be required to complete the Statement of Work”). If not applicable, write “No animal use research will be performed to complete the Statement of Work.”

PROTOCOL(S): List the identifier and title for all animal use protocols needed to complete the project. Include information about the approved target number for statistical significance, type of submission, type of approval with associated dates, and performance status.

The following format shall be used:

Protocol\_ of\_ total:

USSOCOM Animal Use Oversight Office or Contact Number:

Title:

Target required for statistical significance:

Target approved for statistical significance:

Submitted to and Approved by: Provide a bullet point list of protocol development, submission, amendments, and approvals (include Institutional Animal Care and Use Committee (IACUC) in addition to USSOCOM Animal Use Oversight Office.

Status: Provide a bullet point list of performance and/or progress status relating to the above protocol and discuss any administrative, technical, or logistical issues that may impact performance or progress of the study (e.g., animal use protocol needs revision to minimize animal suffering, animal protocol modification to include additional staff) for the above USSOCOM Animal Use Oversight Office approved protocol.

CHANGES/PROBLEMS: The Project Director/Principal Investigator (PD/PI) is reminded that the contract organization is required to obtain prior written approval from the awarding agency Contracts Officer whenever there are significant changes in the project or its direction. If not previously reported in writing, provide the following additional information or state, “Nothing to Report,” if applicable:

Significant changes in use or care of human subjects, vertebrate animals, biohazards, and/or select agents

Describe significant deviations, unexpected outcomes, or changes in approved protocols for the use or care of human subjects, vertebrate animals, biohazards, and/or select agents during the reporting period. If required, were these changes approved by the applicable institution committee (or equivalent) and reported to the agency? Also specify the applicable Institutional Review Board/Institutional Animal Care and Use Committee approval dates.

ATTACHMENT 3

STATEMENT OF WORK