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

**TOPIC: SOCOM212-D003**

**Stand-Off Precision Guided Weapon Program Cruise Missile**

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

## TABLE OF CONTENTS

|  |  |
| --- | --- |
| **ARTICLE** | **TITLE** |
| ARTICLE I | Scope  |
| ARTICLE II | Purpose |
| ARTICLE III | Terms /Delivery |
| ARTICLE IV | Modifications |
| ARTICLE V | Administration and Payment |
| ARTICLE VI | Termination |
| ARTICLE VII | Dispute Resolution |
| ARTICLE VIII |  Proprietary Information |
| ARTICLE IX | Patent Rights |
| ARTICLE X | SBIR Data Rights |
| ARTICLE XI | Operational Security |
| ARTICLE XII | Cyber Security and Incident Reporting |
| ARTICLE XIII | Foreign Access to Technology |
| ARTICLE XIV | Hazardous Material Identification and Material Safety Data |
| ARTICLE XV | Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment |
| ARTICLE XVI | AMMUNITIONS AND EXPLOSIVES |
| ARTICLE XVII | Government Furnished Property/Information |
| ARTICLE XVIII | Execution |

## ATTACHMENTS

ATTACHMENT 1 Schedule Payments and Payable Milestone Exit Criteria

ATTACHMENT 2 Document Reporting Requirements

ATTACHMENT 3 Statement of Work

**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 and flight test an innovative long-range cruise missile that will fit in the SOPGM common launch tube, be compatible to the Battle Management System (BMS) and have a threshold range of 200 Nm and an objective range greater than 400 Nm, and have the ability to acquire and/or reacquire a target after employment. In accordance with the SOW (see attachment 3) |
| Delivery of eight (8) inert SOPGM Cruise Missiles prototypes and two (2) Captive Air Training Missile (CATM) SOPGM prototypes |
| 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 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.
* **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 a **Stand-Off Precision Guided Weapon Program Cruise Missile**  under SOCOM SBIR Topic **SOCOM212-D003**. 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 XXX 2021, 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. In accordance with the SBIR Program requirements**:**
	1. **Research and Analytical Work:** The Contractor shall accomplish at least 50% of the research and/or analytical work under this Agreement unless approved in advance by the AO.
	2. **Principlal Investigator (PI):** The PI primary employment must be with the Performer at the time of award and during the conduct of this contract.
	3. **Substitution of Personnel.** The Performer shall notify the Procuring Agreements Officer of any proposed change in the employment status of the Principal Investigator or any request to substitute for the principal investigator. Decisions regarding any changes will be based on whether the effort is substantially degraded by the removal/substitution of the Principal Investigator and will be evaluated on a case-by-case basis. The AO will subsequently notify the Performer in writing of approval or disapproval. Government approval of any Other personnel changes is not required.
	4. **US Business Utilization**. The research or R&D work contained in this agreement must be performed by the small business concern in the United States, meaning the 50 states, and any territories and/or possessions of the US, plus the District of Columbia. In addition, all entities awarded a contract/agreement under the SBIR program shall purchase only American-made products and equipment, to the extent practicable in keeping with the purposes of the program and the needs of the project. In the event an item or service is not available in the US, a waiver shall be requested to the AO prior to contracting for the foreign service and/or purchasing the foreign item. If a waiver is will be for a specific product or service and shall be kept in the file.
	5. **SBIR Funding Agreement Certification Requirement.** Prior to exercising the option(s) under this agreement (if applicable) or extend the agreement, the Performer will be required to submit the “SBIR Funding Agreement Certification” to the Agreements Officer (AO). A copy of the form can be requested from the Governments’s Agreements office.
	6. **SBIR Funding Agreement Certification** (Life Cycle Certification) . This certification must be submitted in the Wide Area Workflow Receipt and Acceptance (WAWF) system as an attachment to your invoice when reaches the 50% of the effort AND with the final invoice. A copy of each certification must be submitted to the Agreements Officer at the time it is submitted in the WAWF system. The "SBIR Funding Agreement Certification-Life Cycle Certification" form is provided with the award notification, additional copies may be requested from the Government’s Agreements office.
	7. **Commercialization Information.** The Performer shall update the Commercialization information on the award through the company’s account on www.SBIR.gov upon completion of the last deliverable under this contract. In addition, the Awardee is requested to voluntarily update the Commercialization information on that award annually thereafter for a minimum period of 5 years.
2. 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.
3. Period of Performance (PoP): The Program commences upon the date of the last signature herein and continues for **18 months.** 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.
4. Extending the Term: The Parties may extend by mutual written agreement the term of this Agreement if research opportunities within the purpose 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:

USSOCOM Detachment 1

103 S. Magnolia Street (Bldg 446)

Eglin AFB, FL 32542

Attn: Capt Christopher Mavron

DoDAAC: FA3254

(850) 882 8100

*NOTE: This delivery address is subject to change when the Government range is finally selected. For the purposes of the Phase II proposal, the Contractor shall proposal travel and per deim expenses to the San Diego, California range location.*

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. Incorporation of Representations and Certifications. All representations and certifications and other written statements made by the Performer in response to Section K incident to award of this contract are hereby incorporated by reference.
3. Proposal Pages with Proprietary Markings. The Government reserves the right to copy, use and/or disclose inside the Government, the technical portion of the SBIR proposal as needed to implement and administer the contract. This right is distinct from those rights established under Rights in Technical Data , Article X SBIR Program concerning data produced under the Agreement.
4. 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. The USSOCOM AO is the only person authorized to approve changes in the requirements for the Government. 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 **2:1 invoice** request for each milestone 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: All payments under this Agreement will be held until the PERFORMER.. 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. At a minimum, the Performer shall submit “Report of Inventions and Subcontracts” (DD Form 882) along with written disclosure of inventions to the designated Agreements Officer with a copy to the AOR within 3 months after completion of the contract.

**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 Agreements 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 information required for subcontractor performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the 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 Agreements 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 Agreements Officer for the indefinite delivery contract and the Agreements Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at [https://dibnet.dod.mil](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.** AMMUNITIONS AND EXPLOSIVES

1. SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES

(a) *Definition*. “Ammunition and explosives,” as used in this article—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk;

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Performer is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

(iii) Acids;

(iv) Oxidizers;

(v) Powdered metals; or

(vi) Other materials having fire or explosive characteristics.

(b) *Safety requirements*.

(1) The Performer shall comply with the requirements of the DoD Performers’ Safety Manual for Ammunition and Explosives, DoD 4145.26-M, hereafter referred to as “the manual,” in effect on the date of execution of this Agreement. The Performer shall also comply with any other additional requirements included in the schedule of this Agreement.

(2) The Performer shall allow the Government access to the Performer’s facilities, personnel, and safety program documentation. The Performer shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.*

(1) If the AO notifies the Performer of any noncompliance with the manual or schedule provisions, the Performer shall take immediate steps to correct the noncompliance. The Performer is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the agreement.

(2) The Performer has 30 days from the date of notification by the AO to correct the noncompliance and inform the AO of the actions taken. The AO may direct a different time period for the correction of noncompliances.

(3) If the Performer refuses or fails to correct noncompliances within the time period specified by the AO, the Government has the right to direct the Performer to cease performance on all or part of this Agreement. The Performer shall not resume performance until the AO is satisfied that the corrective action was effective and the AO so informs the Performer.

(4) The AO may remove Government personnel at any time the Performer is in noncompliance with any safety requirement of this article.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Performer, the Performer shall not be entitled to an adjustment in the agreement price or a change in the delivery or performance schedule unless the AO later determines that the Performer had in fact complied with the manual or schedule provisions.

(d) *Mishaps*. If a mishap involving ammunition or explosives occurs, the Performer shall—

(1) Notify the AO immediately;

(2) Conduct an investigation in accordance with other provisions of this Agreement or as required by the AO; and

(3) Submit a written report to the AO.

(e) *Performer responsibility for safety*.

(1) Nothing in this article, nor any Government action or failure to act in surveillance of this Agreement, shall relieve the Performer of its responsibility for the safety of—

(i) The Performer's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this article shall relieve the Performer of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this Agreement.

(f) *Performer responsibility for agreement performance*.

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Performer of its responsibility for agreement performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this agreement, this does not impose or add to any liability of the Government.

(g) *Subcontractors*.

(1) The Performer shall insert this article, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The article shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **NOTE:** The Government AO or authorized representative shall notify the prime Performer of all findings concerning subcontractor safety and compliance with the manual. The AO or authorized representative may furnish copies to the subcontractor. The Performer in turn shall communicate directly with the subcontractor, substituting its name for references to “the Government.” The Performer and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or agreement performance.

(2) The Performer agrees to ensure that the subcontractor complies with all agreement and agreement safety requirements. The Performer will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Performer shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's agreement interests.

(4) The Performer shall notify the AO or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Performer shall request approval for such change in accordance with the article of this Agreement entitled “Change in Place of Performance--Ammunition and Explosives.”

2. CHANGE IN PLACE OF PERFORMANCE**--**AMMUNITION AND EXPLOSIVES

(a) The Performer shall identify, in the “Place of Performance” prior to signing the agreement, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives article Failure to furnish this information with the offer may result in rejection of the offer and termination of this Agreement.

(b) The Performer agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives article contained in this solicitation after the date set for receipt of offers without the written approval of the AO. The AO shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) The Performer agrees not to change any place of performance previously cited without the advance written approval of the AO.(e) The Performer will include this article suitably modified, to identify the Parties, in all subcontracts or lower tear agreements, regardless of tier that will deal with ammunition and/or explosives.

*NOTE: Pre-award survey. Before awarding any agreement or contract, including purchase orders, involving ammunition and explosives a pre-award ammunition and explosives safety survey requires to be completed by the Government. If the PERFORMER proposes subcontracting any ammunitions or explosive work, the subcontractor’s facilities need to be identified and a safety survey conducted prior to signing the final agreement.*

3. SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)

(a) *Definition*. “Arms, ammunition, and explosives (AA&E),” as used in this article, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Performer as Government-furnished property under this agreement:

|  |  |  |
| --- | --- | --- |
| NOMENCLATURE | NATIONAL STOCK NUMBER | SENSITIVITY/CATEGORY |
|    |    |    |
|    |    |    |

(c) The Performer shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this agreement shall apply.

(d) The Performer shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this agreement.

(e) The Performer shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Performer shall ensure that the requirements of this article are included in all subcontracts, at every tier

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this article shall relieve the Performer of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this agreement.

**ARTICLE XVII: GOVERNMENT FURNISHED PROPERTY**

1. Definitions:
	1. Government-furnished property (GFP) means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.
	2. Government property means all property owned or leased by the Government. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.
	3. Loss of Government property means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects

1. The GFP is provided “as is” condition. The Perfomer will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for agreement performance. Any repairs, replacement, and/or refurbishment shall be at the Performer’s expense.Coordination with the Government AO or AOR for replacement of said GFP may be feasible. The Government will try to assist and find replacement when if at all possible.
2. Coordination and use of the Government testing sites shall be done within the guidelines that will be discussed during the kickoff meeting. Changes caused by the Government or unforeseen uncontrollable events not releated to the Performer or subcontractors, an equitable adjustment may be negotiated and the negative effects shall be mitigated by the Performer to the maximum extend possible.
3. The Performer shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this agreement (except where inconsistent with law or regulation).
4. The Contractor’s responsibility extends from the initial receipt of the said receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor’s accountability, stewardship, possession or control, including its vendors or subcontractors.
5. Loss of Government property shall be reported within 5 business days of the discovery of losses outside normal process variations. The shall use the property loss function in the Government-Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE) for reporting loss of Government property. Reporting value shall be at unit acquisition cost. Current PIEE users can access the GFP module by logging into their account. New users may register for access and obtain training on the PIEE home page at <https://piee.eb.mil/piee-landing> .
6. The Performer will not be held responsible for the loss of Government property as described above if the Performer took reasonable care of said property or normal wear and tear. However, if property is covered by insurance or the Performer is otherwise reimbursed (to the extent of such insurance or reimbursement), or if the loss of Government property is the result of willful misconduct or lack of good faith on the part of the Performer’s managerial personnel or the Performer failed to take timely corrective action, the Performer will be held responsible. If the Performer can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor’s failure to act/maintain adequate property management practices, the Contractor shall not be held liable.
7. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
8. The GFP is provided for exclusive use of this effort, any other use will have to be pre-approved in writing by the Agreements Officer and shall always be in a non-interference basis.
9. The GFP will be return once is not longer required and no later than 30 days after the end of the period of performance of this agreement. Return of GFP will be coordinated with the AOR. In the case of other method of disposal are indicated by the team or necessary, the instructions must be obtain in writing from the AO.
10. Unless disposition instructions are otherwise included in this agreement, the Contractor shall complete SF 1428, Inventory Schedule B, within the Plant Clearance Automated Reutilization Screening System (PCARSS). Information on PCARSS can be obtained from the plant clearance officer and at <http://www.dcma.mil/WBT/PCARSS/>
11. Subcontracts. The Performer shall insert the substance of this article, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial item if GFP will be used by the subcontractor/consultant.

**ARTICLE XVIII: 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 - 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 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 (CDRL A005).

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

All draft and final Developmental Test Plan for Performance Validation reports shall be submitted to the following email addresses:

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

sbir@socom.mil (Final)

ST\_CDRLS@socom.mil (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.

D. CDRL A004 -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/Work. 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 document shall be transmitted via email to the following email addresses:

Agreements Officer’s Representative (Final)

Technical Direction Agent (Final)

Subject Matter Expert (Final)

sbir@socom.mil (Final)

ST\_CDRLS@socom.mil (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.

E. CDRL A005- 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 email addresses:

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

sbir@socom.mil (Final)

ST\_CDRLS@socom.mil (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- 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 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 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 advise the Agreement Officer's Representative by email immediately after submitting the Final Technical Report to DTIC.

The Performer shall advise the Agreements Officer's Representative and the SBIR Program Manager (at sbir@socom.mil) by email immediately after submitting the Final Technical Report.

The documents shall be transmitted to the following email addresses:

Agreements Officer’s Representative (Draft and Final)

Technical Direction Agent (Draft and Final)

Subject Matter Expert (Draft and Final)

sbir@socom.mil (Final)

ST\_CDRLS@socom.mil (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.

1. CDRL A007 Technical Data Package (TDP)

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 MIL-STD 31000 located at <https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=276980> 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.

ATTACHMENT 3

*INSTRUCTIONS FOR THE STATEMENT OF WORK. The Statement of Work will follow the format of the Statement of Objectives (SOO) and will require the performer to add the taskings to meet the requirements included in the SOO*

**SMALL BUSINESS INNOVATION RESEARCH**

**phase ii statement of objectives**

**for**

**Stand-Off Precision Guided Weapon Program Cruise Missile**

**TOPIC: SOCOM212-D003**

**21 April 2021**

I. **INTERNATIONAL TRAFFIC AND ARMS REGULATION:** The technology within this topic is restricted under the International Traffic in Arms Regulation (ITAR), which controls the export and import of defense-related material and services. Offerors must disclose any proposed use of foreign nationals, their country of origin, and what tasks each would accomplish in the statement of work in accordance with section 5.4.c.(8) of the solicitation. Additionally, Offerors will describe compliance mechanisms offerors have in place or will put in place to address any ITAR issues that arise during the course of agreement administration.

II. **BACKGROUND**:

The objective of this topic is to develop an innovative approach to counter advances in enemy Anti-Access Area Denial (A2AD) capabilities, which has placed our military forces at considerable risk. We are looking to maximize the range of our current strike weapons inventory. There is a need for a small long-range precision air to ground cruise missile for the SOCOM Stand-Off Precision Guided Weapon Program Cruise Missile (SOPGM) Program.

III. **OVERALL OBJECTIVE**:

The objective of this Statement of Objectives is to develop and flight test an innovative long-range cruise missile that will fit in the SOPGM common launch tube, be compatible to the Battle Management System (BMS) and have a threshold range of 200 Nm and an objective range greater than 400 Nm, and have the ability to acquire and/or reacquire a target after employment.

IV. **Requirements**

1. **General:** The Performer shall develop and deliver SOPGM Cruise Missiles prototypes and support a Performer conducted demonstration of the SOPGM Cruise Missiles.

1. **Detailed Requirements**: The Performer shall design, develop, fabricate, test, and deliver eight (8) inert SOPGM Cruise Missiles prototypes and two (2) Captive Air Training Missile (CATM) SOPGM prototypes that meet the following performance requirements:

1. Threshold range of 200 Nm and objective range greater than 400Nm
2. Compatible with the SOPGM Common Launch Tube (CLT) and Battle Management System (BMS)
3. Type-1 data link connection to Situational Awareness Data Link (SADL) (threshold) and SADL/Link-16 (objective).
4. Threshold M-Code Global Positioning System (GPS)/Inertial Navigation System (INS), with an objective to incorporate resilient navigation capabilities for operation in a denied or degraded GPS environment.
5. This system will include at a minimum (threshold) an Electro-Optical/Infra-Red (EO/IR) seeker and as an objective, incorporate a multi-mode seeker package able to acquire and/or reacquire targets in flight.
6. Removable payload section that can accept a minimum (threshold) of 13lbs of warhead or other desired payload with an objective of 37 lbs.
7. Meets a Technology Readiness Level 7 defined as: system prototyping demonstration in an operational environment. Prototype near or at planned operational system. Represents a major step up from TRL 6 by requiring demonstration of an actual system prototype in an operational environment (e.g., in an aircraft, in a vehicle, or in space).
8. The two (2) Captive Air Training Missiles (CATM) shall also fully represent an inert munition (electrical, power draw, weight and center of gravity) to enable simulated launches through the full launch sequence without releasing the weapon. The two CATMs are required for System Integration Lab (SIL) testing and ground and captive carry testing.

2. **COMPONENT REQUIREMENTS: N/A**

3. **Unique Item Identification:** The Performer shall include the DoD unique item identifications or a DoD recognized unique identification equivalent for the prototypes delivered. This includes a description and cost breakout as applicable. Information on unique item identifier types is at <http://www.acq.osd.mil/dpap/UID/uid_types.html>. The guide is at <http://www.acq.osd.mil/dpap/UID/guides.htm>. This is in accordance with DFARS 252.211-7003.

4. **SHIPPING COSTS:** The Performer shall pay all costs to ship all product deliverables to and from the validation testing / demonstration sites and to the final delivery location.

B. **DOCUMENT DELIVERABLES:** The Performer shall provide the following documents to the respective specified addresses during the Phase II Period of Performance:

1. Kick-Off Meeting and System Requirements Review: CDRL A001
2. Monthly Progress Reports: CDRL A002
3. Developmental Test Plan for Performance Validation: CDRL A003
4. Developmental Test Report for Performance Validation: CDRL A004
5. Business Plans: CDRL A005
6. Final Technical Report: CDRL A006
7. Technical Data Package: CDRL A007

V. **TESTS AND DEMONSTRATIONS:** The Performer shall conduct tests and demonstrations to validate that SOPGM Cruise Missiles meet or exceed all the performance parameters specified in this Statement of Objectives.

VI. **ENVIRONMENTAL AND SAFETY:** The Performer shall ensure the SOPGM Cruise Missile developed under this Statement of Objectives are designed to meet the following environmental and safety standards:

1. MIL-Handbook-240A Hazards of Electromagnetic Radiation Ordnance Assessment; Version A 10 Mar 2011; <http://everyspec.com/MIL-HDBK/MIL-HDBK-0200-0299/MIL-HDBK-240A_32066/>
2. MIL-C-21215A Military Specification: Crates, Pallets, Ammunition; 13 Mar 1991

<http://everyspec.com/MIL-SPECS/MIL-SPECS-MIL-C/MIL-C-21215A_NOTICE-1_53858/>

1. MIL Handbook-757 DoD handbook: Fuzes 13 Sept 2018; <http://everyspec.com/MIL-SPECS/MIL-SPECS-MIL-C/MIL-C-21215A_NOTICE-1_53858/>
2. Safe Disposal of Munitions, Design Principles and Requirements, and Safety Assessment; 15 Jun 2001; http://everyspec.com/NATO/NATO-STANAG/STANAG-4518\_ED-1\_7615/
3. Performer shall provide approved shipping containers to move assets to and from testing facilities and ranges.

VII. **GOVERNMENT FURNISHED PROPERTY (GFP) / GOVERNMENT FURNISHED PROPERTY (GFE) / GOVERNMENT FURNISHED INFORMATION (GFI):** The Government will provide the following GFP/GFE to the Performer to support the Performer conducted demonstration:

1. Access to a Test Range
2. Access to Range Support
3. Access to a Launch Platform
4. SOPGM Common Launch Tubes (estimated at 3) (GFP) – The Performer shall return all Common Launch Tubes to the Government at the above “Ship To address” immediately after the Phase II close-out meeting.
5. Interface Control Document (GFI) – Will be provided to the Performer at the Phase II Kick-Off Meeting and returned to the Government at the Phase II Close-Out Meeting.

VIII. **MEETINGS AND REVIEWS**: The Performer shall attend the following meetings and reviews:

1. Phase II Kick-Off meeting shall be conducted not later than thirty (30) calendar days after contract award and shall be conducted in Fort Walton Beach, Florida or virtually. The Performer shall provide teleconference capability for those participants unable to travel. The Performer shall provide the Government:

1. A Phase II Kick-Off Meeting / System Requirements Review Read-Ahead no less than seven (7) calendar days prior to the Phase II Kick-Off Meeting / System Requirements Review Meeting (CDRL A001).

2. An initial Program Management Plan for accomplishing all objectives specified in this Statement of Objectives. (CDRLs A002).

3. Conceptual Design Drawings no less than seven (7) calendar days prior to the Phase II Kick-Off/System Requirements Review Meeting (CDRL A001).

1. Phase II Technical Interchange Meetings (TIM) shall be conducted quarterly and shall be held at the Performer’s facility or virtually. The Performer shall provide teleconference capability for those participants unable to travel. The Performer shall provide the Government:
2. A final test plan shall be delivered ninety calendar (90) days prior to the test event. A draft test plan is required ten (10) calendar days prior to submission of the final test plan for Government review and approval. (CDRL A001).

C. Phase II Close-Out Meeting: The Phase II Close-Out Meeting shall be conducted in

 no earlier than seven (7) calendar days prior to the conclusion of the Phase II Period of Performance and shall be held at Fort Walton Beach, Florida or virtually. The Performer shall provide teleconference capability for those participants unable to travel. The Performer shall provide the Government a briefing on the following.

 1. A briefing on the Final Technical Report (CDRL A006).

2. An update of the progress to date. (CDRL A002)

 3. Resolution to any Performer/Government issues or concerns.

IX. **NOTIFICATION:** The Performer shall notify USSOCOM no less than thirty (30) calendar days prior to tests, demonstrations and reviews at the Performer’s facilities to ensure USSOCOM representatives can attend should they desire to do so.

X. **TRAVEL REQUIREMENTS:** The Performer shall comply with the Federal Acquisition Regulation 31.205-46 (<http://www.gsa.gov/perdiem>) on proposing all travel related costs. The Performer shall include the costs associated with the following travel requirements in the proposal:

*NOTE: This delivery address is subject to change when the Government range is finally selected. For the purposes of the Phase II proposal, the Contractor shall proposal travel and per deim expenses to the San Diego, California range location.*

A. Phase II Kick-Off Meeting: Fort Walton Beach, Florida; one more than two (2) overnight, no more than three (3) Performer representatives.

B. Phase II Close-Out Meeting: Fort Walton Beach, Florida; no more than two (2) overnights, no more than three (3) Performer representatives.

C: Integration Testing: As part of the Phase II proposal, the Performer shall propose two (2) potential trips to the Naval Systems Warfare Center, Dahlgren, Virginia to support Battle Management System hardware and software integration (Software Integration Laboratory testing). Two (2) overnights, no more than two (2) Performer representatives.