

Federal Award Flow-Downs – DOD

(Applicable to Purchase Orders)

Albemarle U.S., Inc. (“Recipient”) and the United States of America through the USAF/AFMC (the “Government” or “Federal Awarding Agency”), have entered into a Technology Investment Agreement, Award No. FA8650-23-2-5514, with Effective Date of 11 September 2023, as may be modified from time to time, (“Federal Award”) for the Defense Production Act (“DPA”) Title III Kings Mountain Lithium Mine Restoration to Lithium Production Project (the “DOD Project”).

The Federal Award mandates that Recipient, as a federal funding recipient, flow down terms and conditions of the underlying Federal Award (the "Flow-Downs - DOD") to third-parties with whom Recipient enters into an agreement to support the Federal Award.

The recipient of the Purchase Order is referred to as “Contractor” for the purposes of these Flow Downs – DOD. Contractor acknowledges that if it is to perform any work in support of the Federal Award then it will need to comply with these Flow Downs - DOD. Contractor agrees to comply with the Flow-Downs – DOD, to the extent applicable, in its performance of work under the Purchase Order in support of the DOD Project.

In the event of any conflict or inconsistency between these Flow-Downs - DOD and the terms and conditions referenced in the Purchase Order, in all cases the Flow-Downs - DOD shall prevail over the Purchase Order. There may be instances where Contractor is performing work in support of the DOD Project as well as the “DOE Project,” which is defined in a separate document available on Recipient’s website entitled “Federal Award Flow-Downs – DOE.” The flow down terms and conditions contained in the Federal Award Flow-Downs – DOE are referred to as the "Flow-Downs - DOE." If Contractor is performing work in support of the DOD Project and the DOE Project, then both the Flow-Downs - DOD and the Flow-Downs - DOE will apply to Contractor. When the Flow-Downs - DOD and the Flow-Downs - DOE both apply, they shall, to the extent possible, be interpreted in a consistent, harmonious, and supplementary manner. If it is not possible to determine whether the Flow-Downs - DOD or the Flow-Downs - DOE applies to a specific scope of work or particular issue, or it is not possible to interpret them in a consistent, harmonious, and supplementary manner, then the flow downs imposing the more restrictive or stringent obligation on Contractor shall apply.

Required Flow Down Provisions. Contractor is subject to the terms and conditions included below. Where appropriate, the following modifications are made to the specific terms herein:

Some of the language of the Flow Downs - DOD has been adjusted for the parties to the Purchase Order; however, to the extent necessary for appropriate interpretation of a provision, wherever the terms "Government" or "Federal Awarding Agency" are used, "Recipient" shall be substituted; wherever the terms "Contracting Officer" are used, “Recipient Authorized Official” shall be substituted; wherever the word "Contract" or “agreement” is used, the word "Purchase Order” shall be substituted; wherever the word "Recipient" or “Awardee” or “contractor” is used, the word "Contractor" shall be substituted. Such substitutions shall not be made in clauses where it is clear, by the context of the provision itself or the conditions under which it is being applied, that the reference is intended to refer to the Government, its officers or agents, or the Recipient specifically. No provision herein shall be taken to imply any direct access on the part of the Contractor to the Government under the Federal Award.

1. **Compliance with Applicable Law.** Contractor agrees to comply with all applicable federal statutes, regulations, and executive order in performance of the work under the Purchase Order and shall require compliance by other parties in any agreements in enters into with other parties related to this award.
2. **Federally Required Contract Provisions.** The Federally required contract provisions found in DoDGAR Title 32 Part 34 Appendix A, are reproduced at Attachment 1 to these Flow-Downs - DOD and are hereby incorporated by reference as if fully set forth herein.

3. **3.002 MODIFICATIONS.** Contractor agrees to work with Recipient in good faith to make any additional amendments to the Purchase Order or Flow-Downs DOD as may be required from time to time.
4. **3.004 INSURANCE COVERAGE.** The Federal Awarding Agency shall be added as an Additional Insured on the Commercial General Liability, the Business Automobile Liability, and the Excess/Umbrella Policy provided by Contractor.
5. **4.005 RETENTION AND ACCESS TO RECORDS – INCORPORATED BY REFERENCE (AUG 2001).** Contractor’s financial records, supporting documentation, statistical records, and all other records pertinent to the Federal Award shall be retained and access to them permitted in accordance with DoDGARs 34.42.
6. **6.000 PATENT INFRINGEMENT (APR 2000).** Contractor agrees not to hold Recipient or the Federal Awarding Agency responsible for any and all patent infringement cases that may arise under any research projects conducted under the Federal Award. In addition, the Contractor shall indemnify Recipient and the Government against any and all proceeds for actual or alleged direct or contributory infringement of, or inducement to infringe, any U.S. or foreign patent, trademark, or copyright arising under the Federal Award and the Purchase Order and the Contractor shall hold Recipient and the Government harmless from any resulting liabilities losses provided the Contractor is reasonably notified of such claims and proceedings.
7. **6.001 INVENTIONS (JUN 2001)** [This Section is applicable to contracts involving experimental, developmental, or research work. The terminology has not been adjusted in this Section, adjustments should be made as necessary for appropriate interpretation of the provision.]

A. Definitions

- a. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.)
- b. “Subject invention” means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under the Purchase Order, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C 2402(d)) must occur during the period of agreement performance.
- c. “Practical Application” means to manufacture in the case of a composition or 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 being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- d. “Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- e. “Small Business Firm” means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this article, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- f. “Nonprofit Organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (23 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

B. Allocation of Principal Rights.

- a. The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this article and 35 U.S.C. 203. With respect to any subject invention which the recipient retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

C. Invention Disclosure, Election of Title and Filing of Patent Application by Recipient.

- a. The Recipient will disclose each subject invention to the Government within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the agreement under which the invention was made and 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, the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication, and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Government, the Recipient will promptly notify the Government of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
- b. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the Government within 2 years of disclosure to the Government. However, in any case where publication, on sale or public use as initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Government to a date that is no more than 60 days prior to the end of the statutory period.
- c. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- d. Requests for any extension of time for disclosure, election, and filing under subparagraphs (a), (b), and (c) may, at the discretion of the Government, be granted.

D. Conditions when the Government May Obtain Title. The Recipient will convey to the Government, upon written request, title to any subject invention -

- a. If the Recipient fails to disclose or elect title to the subject invention within the times specified in (C) above, or elects not to retain title; provided that the Government may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
- b. In those countries in which Recipient fails to file patent applications within the times specified in (C) above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in (C) above, but prior to its receipt of the written request of the Government, the Recipient shall continue to retain title in that country.
- c. In any country in which the Recipient decides not to continue to prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

E. Minimum Rights to Recipient and Protection of the Recipient Right to File.

- a. The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in (C), above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the Government except when transferred to the successor of that party of the recipient's business to which the invention pertains.
- b. The Recipient's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and Government licensing regulations (if any). The license will not be revoked in that field of use or the geographical areas in which the recipient 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 the Government to extent the recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- c. Before revocation or modification of the license, the Government will furnish the recipient a written notice of its intention to revoke or modify the license, and the recipient will be allowed 30 days (or such other time as may be authorized by the Government for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and Government regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

F. Recipient Action to Protect the Government's Interest.

- a. The Recipient agrees to execute or to have executed and promptly deliver to the Government instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and (ii) convey title to the Government when requested under paragraph (D) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- b. The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personal identify as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under an agreement in order that the Recipient can comply with the disclosure provisions of paragraph (C) above, and to execute all papers necessary to file patent applications on subject inventions to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (C)(a), above. The Recipient shall instruct such employees through employee agreements or other suitable education 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.
- c. The Recipient will notify the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of their response period required by the relevant patent office.
- d. The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the agreement) awarded by (identify the Federal Agency). The Government has certain rights in the invention."

G. Lower Tier Agreements. The Recipient will include this article, suitably modified to identify the parties, in all lower tier agreements, regardless of tier, for experimental, developmental or research work. Each subrecipient will retain all rights provided for the Recipient in this article, and the Recipient will not, as part of the consideration for awarding a subrecipient award, obtain rights in a subrecipient's subject inventions.

H. Reporting on Utilization of Subject Inventions. The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient 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 Recipient, and such other data and information as the Government may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceeding undertaken by the Government in accordance with paragraph (J) of this article. As required by 35 U.S.C. 202(c)(5), the Government agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

I. Preference for United States Industry. Notwithstanding any other provision of this article, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Government upon a showing by the Recipient or its assignee 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.

J. March-in Rights. The Recipient agrees that with respect to any subject invention in which it has acquired title, the Government has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Government to require the recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are

reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the Government has the right to grant such a license itself if the Government determines that:

- a. Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee or their licensees;
- c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
- d. Such action is necessary because the agreement required by paragraph (I) 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 U.S. is in breach of such agreement.
- e. Special Provisions for Agreements with Nonprofit Organizations.

K. Communication. The point of contact on matters relating to this article will be the servicing Staff Judge Advocate's office identified in the article entitled Administrative Responsibilities.

8. 6.002 DATA RIGHTS (AUG 2001) [This Section is applicable to contracts involving experimental, developmental, or research work. The terminology has not been adjusted in this Section, adjustments should be made as necessary for appropriate interpretation of the provision.]

A. Definitions:

- a. "**Government Purposes**", as used in this article, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.
- b. "**Government Purpose Rights**", as used in this article, means the right to – (1) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and (2) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.
- c. "**Limited rights**", means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture; or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use of reproduction of the data by persons outside the Government if –
 - i. The reproduction, release, disclosure, or use is –
 - a. Necessary for emergency repair and overhaul; or
 - b. A release or disclosure to – (1) A covered government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or (2) A foreign government, of technical data, other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the government and is required for evaluation or information purposes;
 - ii. The recipient of the technical data is subject to a prohibition on the further reduction, release, disclosure, or use of the technical data; and
 - iii. The contractor or subcontractor asserting the resection is notified of such reproduction, release, disclosure, or use.
- d. "**Unlimited Rights**", as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

- e. **"Data"**, as used in this article, means recorded information, regardless of form or method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled Inventions.
- f. **"Practical Application"**, as used in this article, means to manufacture in the case of a composition or 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 being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

B. Allocation of Principal Rights:

- a. Ownership rights to data generated under the Federal Award shall vest in the Recipient. This Federal Award shall be performed with mixed Government and Recipient funding and the parties agree that in consideration for Government funding, the Recipient and its contractors (including Contractor) intend to reduce to practical application items, components and processes developed under the Federal Award.
- b. Contractor agrees to retain and maintain in good condition until 3 years after completion or termination of the Federal Award, all data necessary to achieve practical application. In the event of exercise of the Government's march-in rights as set forth under the Article entitled Inventions, the recipient agrees, upon written request from the Government, to deliver at no additional cost to the Government, all data necessary to achieve practical application within 60 days from the date of the written request. The Government shall have unlimited rights to this delivered data.
- c. With respect to data generated under the Federal Award (and the Purchase Order), the Government shall receive "Government Purpose rights." In the event Contractor asserts "Limited Rights" on any data, the Government may need to add a "Limited Rights" marking under paragraph (c) of this article.

C. Marking of Data:

- a. Pursuant to subparagraph (B)(c) above, any data delivered under the Federal Award shall be marked with the following legend:

Government Purpose Rights
Agreement No.:
Recipient's Name:
Recipient's Address:

The Government may use, modify, reproduce, release, perform, display or disclose these data within the Government without restriction, and may release or disclose outside the Government and authorize persons to whom such release or disclosure has been made to use, modify, reproduce, release, perform, display or disclose that data for United States Government purposes, including competitive procurement.

- b. Any trade secrets and commercial or financial information Contractor wishes to protect from release under Freedom of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

D. Lower Tier Agreements: Contractor 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.

9. 6.003 INVENTIONS (NOV 2011) (TAILORED) [This Section is applicable to contracts involving experimental, developmental, or research work. The terminology has not been adjusted in this Section, adjustments should be made as necessary for appropriate interpretation of the provision.]

- A. The clause entitled Patent Rights (Small Business Firms and Nonprofit Organizations, (37 CFR 401 .14(a)) is hereby incorporated by reference and is modified as follows: replace the word "contractor" with "recipient"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "Government"; replace the word "contract" with "agreement"; delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic

nonprofit organization" from paragraph (g)(1). Paragraph (I), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office.

- B. Interim or final Invention Reports 1) listing subject invention(s) and stating that all subject inventions have been disclosed, or 2) stating that there are no such inventions, shall be sent to both the Administrative Agreements Officer at the address located in the agreement and to the Contracting Officer / patent administrator at det1.afrl.pk.patents@wpafb.af.mil, with a courtesy copy (cc:) to the government Program Manager/Project Engineer. Please include in the subject line of the e-mail the contract number followed by the words "Invention Reporting." Also include in the body of the e-mail the names of the Government Project Engineer/Program Manager and his/her office symbol. The recipient shall file Invention (Patent) Reports on the DD Form 882, Report of Inventions and Subcontracts, as of the close of each performance year and at the end of the term for this agreement. Annual reports are due 90 days after the end of each year of performance and final reports are due 90 days after the expiration of the final performance period. Negative reports are also required annually.
- C. The DD Form 882 may also be used for the notification of any subaward(s) for experimental, developmental or research work which contain a "Patent Rights" clause, with a cc: to the Government Program Manager/Project Engineer.
- D. All other notifications (e.g., disclosure of each subject invention to the Contracting Officer within 2 months after the inventor discloses it) shall also be sent to the e-mail address above, with a cc: to the
- E. Government Program Manager/Project Engineer. This provision also constitutes the request for the following information for any subject invention for which the recipient has retained ownership: 1) the filing date, 2) serial number and title, 3) a copy of the patent application and 4) patent number and issue date. Submittal shall be to the Contracting Officer / patent administrator e-mail address listed above, with a cc: to the government Program Manager/Project Engineer.

10. 6.004 FOREIGN ACCESS TO TECHNOLOGY (APR 2000) [This Section applies to contracts involving experimental, developmental, or research work.]

A. Definitions:

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

- B. **General:** The parties agree that research findings and technology developments in *King's Mountain Lithium Mine Restoration to Lithium Production* 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 the Federal 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. 120 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).
- C. **Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.**
 - a. 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 C.2, C.3, and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the Recipient, and sales or licensing of technology. Transfers do not include:

- i. Sales of products or components, or
 - ii. Licenses of software or documentation related to sales of products or components, or
 - iii. Transfer to foreign subsidiaries of the recipient (recipient participants) for purposes related to this agreement, or
 - iv. 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.
- b. Contractor shall provide timely notice to Recipient of any proposed transfer from the Contractor of technology developed under the Federal Award (including under this Agreement) to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, Recipient, Contractor, its vendors, and the Government 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 recipient.
 - c. In any event, Contractor shall provide written notice to Recipient of any proposed transfer to a foreign firm or institution at least 60 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 30 days of receipt of Contractor's written notification, Recipient shall inform Contractor of the Contract Officer determination of whether it consents to the proposed transfer. In cases where the Government does not concur or 60 days after receipt and the Government provides no decision, Contractor, through Recipient, may utilize the procedures under the article entitled Claims, Disputes and Appeals. No transfer shall take place until a decision is rendered.
 - d. Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, Contractor shall (a) refund to Recipient the funds paid for the development of the technology and (b) negotiate a license with Recipient to the technology under terms that are reasonable under the circumstances.

D. Lower Tier Agreements: Contractor shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

E. This article shall remain in effect during the term of the Purchase Order and for 5 years thereafter.

11. 6.005 EXPORT-CONTROLLED DATA RESTRICTIONS (AUG 2013)

- A. For the purpose of this article,
 - a. Foreign person is any person who is not a citizen or national of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;
 - b. Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influence firm, corporation or person;
 - c. Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.
- B. Contractor shall place an article/clause in subawards/subcontracts containing appropriate export control restrictions, set forth in this article.
- C. Nothing in this article waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.
- D. All information generated and delivered under the Federal Award (and any relevant agreement) is subject to the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license may be required before assigning any foreign source to perform work under this agreement or before granting access to foreign persons to any information generated or delivered during performance (see 22 CFR Section 125).

12. 7.009 DISCLOSURE OF INFORMATION

- A. The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of the medium (e.g., film, tape, document, media announcements, etc.) pertaining to any part of this agreement or any program related to this agreement unless –
 - a. The Recipient has given prior written approval; or
 - b. The information is otherwise in the public domain before the date of release.
- B. Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose of the release. The Contractor shall submit its request to the Recipient at least 65 days before the proposed date for release.
- C. The Contractor agrees to include a similar requirement in each subcontract under this agreement. Subcontractors shall submit requests for authorization to release through the Recipient.

13. 9.000 ASSURANCES (FEB 2001)

- A. By signing or accepting funds under the agreement, Contractor assures that it will comply with applicable provisions of the following National policies on:
 - a. Prohibiting discrimination:
 - i. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;
 - ii. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;
 - iii. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56;
 - b. The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S. 1251, et seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799).
 - c. Contractor shall obtain assurances of compliance from contractors and recipients at lower tiers.

14. 9.001 U.S. FLAG AIR CARRIERS

Travel supported by U.S. government funds under this agreement shall use US-flag air carriers (air carriers holding certificates under 49 U.S.C. 41002) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to the Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol 63, No. 219, 63417-63421.))

15. 9.002 PROHIBITION ON USING FUNDS UNDER GRANTS AND COOPERATIVE AGREEMENTS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (JUN 2015)

- A. Contractor may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- B. Contractor must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this provision are no longer in effect.
- C. The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- D. If the Recipient determines that Contractor is not in compliance with this provision it:

- a. Will prohibit Contractor's use of funds under this award, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113- 235) or any successor provision of law; and
- b. May pursue other remedies available for Contractor's material failure to comply with these terms and conditions.

16. 9.003 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019)

A. Definitions. As used in this article -

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

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

Recipient attributional/proprietary information means information that identifies the recipients(s), whether directly or indirectly, by the grouping of information that can be traced back to the recipient(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the Recipient.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Covered recipient information system means an unclassified information system that is owned, or operated by or for, a recipient and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is -

- a. Marked or otherwise identified in the agreement and provided to the recipient by or on behalf of DoD in support of the performance of the agreement; or
- b. Collected, developed, received, transmitted, used, or stored by or on behalf of the recipient in support of the performance of the agreement.

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

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered recipient information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapidly report means within 72 hours of discovery of any cyber incident.

Technical information means technical data or computer software. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

- B. Adequate security.** Contractor shall provide adequate security on all covered Contractor information systems. To provide adequate security, Contractor shall implement, at a minimum, the following information security protections:
- a. For covered Contractor 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 specified in the 48 CFR §252.239-7010, Cloud Computing Services.
 - 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.
 - b. For covered recipient 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 article, the following security requirements apply:
 - i. Except as provided in paragraph (b)(2)(ii) of this article, the covered Contractor 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 Recipient.
 1. Contractor shall implement NIST SP 800-171, as soon as practical.
 2. Contractor shall submit requests to vary from NIST SP 800-171 in writing to Recipient, for consideration by the DoD CIO. Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.
 3. If the DoD CIO has previously adjudicated Contractor’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 Recipient to provide to the Agreements officer when requesting its recognition under this Federal Award.
 4. If Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in support of this Federal Award, Contractor 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.

- c. Apply other information systems security measures when Contractor 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.

C. Cyber incident reporting requirement.

- a. When Contractor discovers a cyber incident that affects a covered Contractor information system or the covered defense information residing therein, or that affects the Contractor's ability to perform the requirements of the Purchase Order that are designated as operationally critical support and identified in the Purchase Order, Contractor 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 recipient information system(s) that were part of the cyber incident, as well as other information systems on the Recipient'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 Contractor's ability to provide operationally critical support; and
 - ii. Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.
- E. Malicious software.** When Contractor or subrecipients/subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the contracts officer. Do not send the malicious software to the contracts officer.
- F. Media preservation and protection.** When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this article and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.
- G. Access to additional information or equipment necessary for forensic analysis.** Upon request by DoD, the Recipient and Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.
- H. Cyber incident damage assessment activities.** If DoD elects to conduct a damage assessment, the Contract Officer will request that the Recipient and Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this article.
- I. DoD safeguarding and use of recipient attributional/proprietary information.** The Government shall protect against the unauthorized use or release of information obtained from the Recipient and Contractor (or derived from information obtained from the recipient) under this article that includes recipient attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.
- J. Use and release of recipient attributional/proprietary information not created by or for DoD.** Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this article that is not created by or for DoD is authorized to be released outside of DoD -
 - a. To entities with missions that may be affected by such information;
 - b. To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
 - c. To Government entities that conduct counterintelligence or law enforcement investigations;
 - d. For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
 - e. To a support services contractor ("recipient") that is directly supporting Government activities under a contract/agreement that includes 48 CFR §252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

- K. Use and release of recipient attributional/proprietary information created by or for DoD.** Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this article that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this article) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this article, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.
- L.** The Contractor shall conduct activities under this article in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.
- M. Other safeguarding or reporting requirements.** The safeguarding and cyber incident reporting required by this article in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable articles of the agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

M. Subrecipients/Subcontracts. Contractor shall -

- a. Include this article, including this paragraph (m), to subrecipient or subcontracts or similar contractual instruments, for operationally critical support, or for which subrecipient/subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Recipient shall determine if the information required for subrecipient/subcontractor performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the Contracting Officer; and
- b. Require subrecipients/subcontractors to -
 - i. Notify the prime Recipient (or next higher-tier subrecipient/subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this article; and
 - ii. Provide the incident report number, automatically assigned by DoD, to the prime Recipient (or next higher-tier subrecipient/subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this article.

17. 9.004 RECIPIENT COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016)

[This Section applies to contracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.]

A. This article applies only to recipients and agreements that are subject to Cost Accounting Standards as stated in 41 U.S.C §1502(c).

B. **Definitions.** As used in this article—

“Authorized aftermarket manufacturer” means an organization that fabricates a part under a contract or agreement with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

“Contract manufacturer” means a Recipient that produces goods under contract for another Recipient under the label or brand name of that Recipient.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Electronic part” means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

“Obsolete electronic part” means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

"Original component manufacturer" means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a Recipient that manufactures products that it has designed from purchased components and sells those products under the Recipient's brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

C. Acceptable counterfeit electronic part detection and avoidance system. Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this article, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts (see 48 CFR §231.205-71).

D. System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

1. The training of personnel.
2. The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.
3. Processes to abolish counterfeit parts proliferation.
4. Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of the clause at 252.246-7008, Sources of Electronic Parts (also see paragraph (c)(2) of this article).
5. Use of suppliers in accordance with the clause at 48 CFR §252.246-7008.
6. Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor

becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

7. Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.
8. Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. Contractor may elect to use current Government- or industry-recognized standards to meet this requirement.
9. Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors/subrecipients at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.
10. Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.
11. Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.
12. Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

E. Contractor shall include the substance of this article in subcontracts and subrecipients, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

18. 9.005 PROHIBITION ON MAKING AWARDS FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

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—

- a. Telecommunications equipment produced by Huawei Technologies Recipient or ZTE Corporation (or any subsidiary or affiliate of such entities);
- b. 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 Recipient, or Dahua Technology Recipient (or any subsidiary or affiliate of such entities);
- c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- d. 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—

- a. 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;
- b. 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;
- c. 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);
- d. 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);
- e. 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
- f. 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 Recipient 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.

- a. 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 an award 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 Recipient 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 by the Secretary of the Air Force in consultation with the Office of the Director of National Intelligence (ODNI).
- b. 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 an award, or extending or renewing an award, 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 by the Secretary of the Air Force in consultation with the Office of the Director of National Intelligence (ODNI). 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 award.

C. Exceptions. This article does not prohibit Contractor from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. 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.

- a. In the event the Contractor 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 award performance, or the Recipient is notified of such by a subrecipient at any tier or by any other source, the Recipient shall report the information in paragraph (d)(2) of this article to the Contracting Officer, unless elsewhere in this award are established procedures for reporting the information; in the case of the Department of Defense, the Recipient shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery agreements, the Recipient shall report to the Contracting Officer for the indefinite delivery agreement and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery award and any affected orders in the report provided at <https://dibnet.dod.mil>.
- b. The Contractor 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 award 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 Contractor 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. Subawards. The Contractor shall insert the substance of this article, including this paragraph (e) and excluding paragraph (b)(2), in all subawards and other contractual instruments, including awards for the acquisition of commercial items.

19. 9.006 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)

A. Definitions. As used in this article—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

- a. Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by an awardee under an award with the executive agency that requires the use—
 - i. Of that equipment; or
 - ii. Of that equipment to a significant extent in the performance of a service or the furnishing of a product;
- b. Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but
- c. Does not include any equipment acquired by a Federal awardee incidental to a Federal award.

B. Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including

certain equipment used by Federal awardee(s). The Awardee is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Awardee under this award, including equipment provided by the Awardee's employees; however, this prohibition does not apply if the Grants Office/Contracting Officer provides written notification to the Awardee that an exception has been granted in accordance with OMB Memorandum M-23-13.

C. Subcontracts/Subrecipients. Contractor shall insert the substance of this article, including this paragraph (c), in all subawards, including subawards for the acquisition of commercial products or commercial services.

20. **Encouraging Seat Belt Use and Reduced Text Messaging While Driving.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to, and to encourage its Contractors to, adopt and enforce on-the-job seat belt policies and programs for their employees when operating Recipient-owned, rented or personally owned vehicles. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce, and encourage its employees and Contractors to adopt and enforce, policies that ban text messaging while driving.
21. **Site Visits.** The Government's and the Recipient's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Contractor must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the Services.
22. **Permitting.** Contractor must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed in support of the Federal Award.
23. **Reporting Requirements.** Upon notification from Recipient of a reporting requirement involving Contractor or Contractor work, Contractor shall respond as requested. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards.
24. **Invoicing.** Contractor agrees to cooperate with Recipient in providing reasonably requested information in support of Recipient's invoicing obligations to the Federal Awarding Agency to support expenditures in connection with the relevant Purchase Order.
25. **Termination.** In addition to the termination provisions in a Purchase Order, the following termination provisions apply:
 - A. **Immediate Termination.**
 - a. Recipient reserves the right of immediate termination of the Purchase Order, with such termination to be effectuated as of Contractor's receipt of written notice which may be delivered as provided in the Purchase Order.
 - b. Immediate Termination pursuant to this provision shall be permitted for any number of the following reasons:
 - i. The Federal Awarding Agency terminates the Federal Award;
 - ii. Any circumstance under which Recipient is no longer receiving the federal award funds to reimburse Contractor occurs;
 - iii. The amount invoiced by Contractor exceeds the amount provided for in the Purchase Order;
 - iv. Contractor files bankruptcy or otherwise becomes insolvent;
 - v. Contractor is determined to be ineligible to do business with or for any federal, state, or county government agency; or
 - vi. As otherwise expressly provided for in Purchase Order.
 - B. **Opportunity to Cure.** Without creating an obligation to provide an opportunity to cure or accept the proposed cure if such an opportunity is provided, Recipient reserves the right to provide Contractor the opportunity to cure any stated breach. If Recipient provides such opportunity to cure, it shall so state in its notice to Contractor and identify the appropriate deadline by which Contractor must provide its proposed cure.

- C. **In the Event of Wrongful Termination for Cause.** If a court of competent jurisdiction determines that this Purchase Order was wrongfully terminated for cause, then Contractor's damages for such termination, if any, shall be the same as if Recipient terminated the Purchase Order for convenience.
- D. **Reporting to Federal Awarding Agency.** If Recipient determines that termination of the Purchase Order was due to Contractor's material failure to comply with the relevant terms and conditions, Recipient reserves the right to report Contractor to the Federal Awarding Agency so that it may report the termination to the OMB-designated integrity and performance system accessible through the federal System of Award Management (“SAM”).
- E. **In the Event of Termination.** After receipt of a notice of termination under the terms of the Purchase Order, except as otherwise directed, Contractor shall take all of the following actions:
- a. Within fourteen (14) calendar days, remit to Recipient any advanced funds paid that have not yet been recouped by Recipient (if any);
 - b. Stop working under the Purchase Order on the date of receipt of the notice of termination unless otherwise stated in such notice;
 - c. Place no further orders and enter into no further agreements to the extent that either relate to the performance of the work which was terminated and direct any subcontractors to do the same;
 - d. Terminate all orders and subcontracts to the extent that they relate to the performance of the terminated work;
 - e. Finalize all necessary reports, invoices, and other documentation required under the terms of the Purchase Order up to the date of termination, up to and including the final invoice due at the end of the project without reimbursement beyond that due as of the date of termination for services rendered to the termination date; and
 - f. Take any other actions as reasonably directed in writing by Recipient.
26. **Subcontracts.** Contractor shall ensure that these Flow-Downs – DOD and such other clauses as the Federal Awarding Agency may by appropriate instructions require are included in any subcontracts; and also include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

Attachment 1 - DoDGAR Title 32 Part 34 Appendix A
(on next page)

Title 32

PART 34 APPENDIX A

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/ Chapter I (<https://ecfr.io/Title-32/Volume-1/Chapter-I>) ›
/ Subchapter C (<https://ecfr.io/Title-32/Volume-1/Chapter-I/Subchapter-C>) ›
/ Part 34 (<https://ecfr.io/Title-32/Part-34>) › / Appendix A (<https://ecfr.io/Title-32/Part-34/Appendix-A>)

Appendix A to Part 34 - Contract Provisions

32:1.1.1.3.9.5.6.1.5 : Appendix A

Appendix A to Part 34 - Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

- Equal Employment Opportunity* - All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145)* - All contracts and subawards in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.
- Contract Work Hours and Safety Standards Act (40 U.S.C., chapter 37)* - Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety

Standards Act (40 U.S.C., chapter 37), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement* - Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

5. *Clean Air Act* (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended - Contracts and subawards of amounts in excess of \$150,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment* (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension* (E.O.s 12549 and 12689) - A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being currently debarred, suspended, or otherwise excluded. This restriction is in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension."

8. *Wage Rate Requirements (Construction), formerly the Davis Bacon Act*. When required by Federal program legislation, you must take the following actions with respect to each construction contract for more than \$2,000 to be awarded using funding provided under this award:

- a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;
- b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;
- c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction") to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141-44, 3146, and 3147); and
- d. Report all suspected or reported violations to the award administration office identified in this award.

9. *Fly America requirements.* In each contract under which funds provided under this award might be used to participate in costs of international air travel or transportation for people or property, you must include a clause to require the contractor to:

- a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the “Fly America” Act), as implemented by the General Services Administration at 41 CFR 301-10.131 through 301-10.143, which provides that U.S Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available; and
- b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

10. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.

[63 FR 12204, Mar. 12, 1998, as amended at 70 FR 49477, Aug. 23, 2005; 72 FR 34998, June 26, 2007; 85 FR 51245, Aug. 19, 2020]