

## **Flowdown Attachment**

### **FDA-2019.274**

**Contract No.:** W911W6-19-R-0006

**DPAS Rating:** None

**SAS DUNS number:** 799855812

***The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by reference:***

In all clauses listed herein terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (2) when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS clauses in accordance with the flow down requirements specified in such clauses.

#### **ARTICLE XII, INVENTIONS AND PATENT RIGHTS**

##### **A. Definitions**

1. 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.).
2. Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. 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 (26 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.
4. 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.
5. 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 subcontracts at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

6. Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this Agreement, 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. 2401(d)) must also occur during the period of Agreement performance.

**B. Allocation of Principal Rights**

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 in which the Recipient retains title, the Federal 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**

1. The Recipient will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency 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, of 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 agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

2. The Recipient will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

3. The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one 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 ten months of the corresponding initial patent application or six 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.

4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the agency, be granted.

**D. Conditions When the Government May Obtain Title**

The Recipient will convey to the Federal agency, upon written request, title to any subject invention—

1. 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 agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

2. In those countries in which the 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 Federal agency, the Recipient shall continue to retain title in that country.

3. In any country in which the Recipient decides not to continue the 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**

1. 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 Federal agency except when transferred to the successor of that party of the Recipient's business to which the invention pertains.

2. The Recipient's domestic license may be revoked or modified by the funding Federal agency 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 agency licensing regulations (if any). This 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 funding Federal agency to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by the funding Federal agency 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 agency 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**

1. The Recipient agrees to execute or to have executed and promptly deliver to the Federal agency all 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 Federal agency when requested under paragraph D. above and to enable the government to obtain patent protection throughout the world in that subject invention.

2. The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under 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 and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by C. 1. above. The Recipient shall instruct such 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 Recipient will notify the Federal agency 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 thirty days before the expiration of the response period required by the relevant patent office.

4. 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. Subawards

1. The Recipient will include this article, suitably modified to identify the parties, in all subawards, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subrecipient will retain all rights provided for the Recipient in this article, and the

Recipient will not, as part of the consideration for awarding the subawards, obtain rights in the subrecipient's subject inventions.

2. The Recipient will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights article required by 32 CFR 37.860(c)(3).

#### 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 agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this article. As required by 35 U.S.C. 202(c)(5), the agency 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 Federal agency 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 Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency 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 Federal agency has the right to grant such a license itself if the Federal agency determines that:

1. 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.

2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee or their licensees;

3. 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

4. Such action is necessary because the agreement required by paragraph (i) of CFR 401.6 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.

**K. Communication**

The Recipient will send reports and notifications required by this Article to the Agreements Officer identified in this Agreement.

**ARTICLE XIII. INTELLECTUAL PROPERTY RIGHTS OTHER THAN INVENTIONS AND PATENTS**

A. Definitions. For the purposes of this Agreement, the following terms have the meanings indicated:

1. "Background Data" means Technical Data produced by Recipient at private expense prior to performance of or outside the scope of this Agreement and is considered by Recipient to be proprietary. Such Background Data may include any modifications, derivatives to previously conceived, designed, developed, and resultant revisions to software, processes, qualification data, and manufacturing plans.

2. "Background Software" means any Software developed by Recipient at Private expense prior to the performance of this Agreement or outside the scope of work performed under this Agreement and is considered by Recipient to be proprietary.

3. "Computer Software" as defined in Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7014.

4. "Computer Software Documentation" as defined in DFARS 252.227-7014.

5. "Copyright". A form of protection provided by the laws of the United States under Title 17 of the U.S. Code for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright.

6. "Government Data" means Data that has been delivered to the Government prior to or outside the terms of this Agreement. The Government's pre-existing rights in that Data govern disclosure and use of such Government Data.

7. "Government Purpose" as defined in Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7013, 252.227-7014, and 252.227-7018.

8. "Government Purpose Rights" as defined in DFARS 252.227-7013, 252.227-7014, and 252.227-7018.

9. "Limited Rights" as defined in DFARS 252.227-7013 and 252.227-7018.

10. "Proprietary Information" means information which embodies trade secrets or which is privileged or confidential technical, business or financial information provided that such information:

a. is not generally known, or is not available from other sources without obligations concerning its confidentiality;

b. has not been made available by the owners to others without obligation concerning its confidentiality;

c. is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or

d. can be withheld from disclosure under 15 U.S.C. § 3710a(c)(7)(A) & (B) and the Freedom of Information Act, 5 U.S.C. § 552 et seq; and

e. is identified as such by labels or markings designating the information as proprietary.

11. "Restricted Rights" shall have the same definition as that contained in DFARS clause 252.227-7014 and 252.227-7018.

12. "Subject Technical Data", "Subject Computer Software", and "Subject Computer Software Documentation", as used in this article, means any Technical Data, Computer Software, or Computer Software Documentation first developed during performance of this Agreement and modifications to Background Data developed during performance of this Agreement.

13. "Technical Data" as defined in DFARS 252.227-7013 and 252.227-7018.

14. "Unlimited Rights" as defined in DFARS 252.227-7013, DFARS 252.227-7014, and 252.227-7018.

B. Allocation of Principal Rights. This Agreement shall be performed with a mix of Government and Recipient funding. Unless otherwise stated in this article, or agreed upon in Attachment 2, Report Requirements/Agreement Deliverables, the Government will receive at a minimum, Government Purpose Rights to any technical data, computer software, and computer software documentation developed with agreement funding, including modifications to Background Data and Software. Technical data, computer software, and computer software documentation developed and/or Background Data modified under this Agreement will be considered "Subject Technical Data", "Subject Computer Software", and/or "Subject Computer Software Documentation". In consideration of Government funding and Attachment 6, Identification of Background Intellectual Property and Proprietary Information the Parties agree as follows:

1. Background Data and Software provided to the Government shall be limited to that information normally shared with commercial customers or that information specifically negotiated under this Agreement and shall be subject to Limited or Restricted Rights. Recipient retains all right, title, and interest in such unmodified Background Data. Certain deliverable reports/documentation may, by necessity, incorporate Background Data. If so, such report/documentation will be supplied with Limited Rights for Technical Data and Restricted Rights for non-commercial software and software documentation. Furnishing of "Background Data" and "Background Software" by incorporating it into a deliverable report/documentation/Software shall not affect any preexisting Government Rights in such Technical Data and Software/Software Documentation. Recipient's Background Data and Software is identified in Attachment 6, Identification of Background Intellectual Property and Proprietary Information.

In addition to the items identified in Attachment 6, Identification of Background Intellectual Property and Proprietary Information other assertions meeting the definition of Background Data/Background Software may be identified after award. Such identification shall be submitted to the Agreements Officer as soon as practical, but in no case shall the additional Background Data be included in any data deliverable until the Agreement is bilaterally amended to reflect such addition. Attachment 2, Report Requirements/Agreement Deliverables includes a description of all technical data, software, and software documentation deliverables under this Agreement.

2. The following reports are administrative/management documentation and not considered technical data. The reports contain Recipient proprietary information and may be marked "Proprietary" or contain a Proprietary Appendix in accordance with Attachment 2, Report Requirements/Agreement Deliverables: Business/Financial Status Report and Program Management Plan.

3. The Government shall obtain an Unlimited Rights the Final Report in accordance with Attachment 2, Report Requirements/Agreement Deliverables.

4. The technical reports/documentation delivered under this agreement may include Background Data and the Government may have less than Unlimited Rights in accordance with Attachment 2, Report Requirements/Agreement Deliverables. When Background Data is included and subject to more restrictive license rights to the Government, that Background Data shall be submitted in a Limited Rights appendix to the report/document such that the Government may have the rights in accordance with Attachment 2, Report Requirements/Agreement Deliverables in the primary portion of the report/document. The Limited Rights Appendix will clearly identify to what technical data the Recipient is asserting Limited Rights.

5. To the extent that Government Data is used in the performance of this Agreement, the Government shall retain its preexisting rights in such Data, including modifications or changes made to such Data as part of the performance under this Agreement.

C. Recipient shall include the obligations of the Recipient under this Article, suitably modified to identify the Parties, in all subawards or lower-tier agreements, regardless of tier, for experimental, developmental, or research work.

D. Marking of Data will be in accordance with Attachment 2, Report Requirements/Agreement Deliverables.

1. Further, the deliverable proprietary non-technical data information (namely the Business Status Report and Program Management Plan) not subject to Unlimited Rights, Government Purpose Rights or Limited Rights, shall be marked with the proprietary notice customarily used by Recipient to identify data and information that is subject to restrictions regarding disclosure and/or use. The proprietary notice shall also include notation of this Agreement Number "W911W6-19-2-0005" and a statement that the Government has the right to use the report for purposes of administration of this Agreement.

2. Except for Technical Data, Computer Software, Computer Software Documentation or Proprietary Information delivered under this Agreement, the parties agree that Recipient will appropriately advise the Government regarding any limitation or restriction to Technical Data or Computer Software to which the Government may have access. Limitations and restrictions will be subject to the appropriate Recipient or third party markings and legends including any copyright notice to assure proper handling and shall bear notation to this Agreement Number "W911W6-19-2-0005".

E. Disclosure to Government Support Contractors. The Government may utilize contractor support, as required, for the duration of the Agreement. Information, including business sensitive/confidential or proprietary data, the Recipient provides to the Government with restrictions may be viewed and utilized by the support contractor in the course of its contract performance. The Recipient and its subrecipients/contractors consent to a release of their business sensitive/confidential, proprietary, and/or restricted data to the Government's support contractor. The Government will require the support contractor to protect Recipient information and to enter into a nondisclosure agreement with Recipient.

The Recipient may execute its own Non-Disclosure Agreement with the Government support contractor(s) listed below:

Company:

1) Colsa

2) CrI

3) Adventium

4) Sei

5) Peopletech

In addition, the Government utilizes USFalcon for IT support services. Contract number W911W6-17-F-0007 with USFalcon contains DFARS clause 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends. The Government requires USFalcon to provide non-disclosure agreements. The employees performing these services completed non-disclosure agreements and the Government has obtained these forms.

F. Disclosure of Unmarked Data. The United States Government is not responsible for any disclosure or transfer of proprietary data or software that was not marked by the data owner in accordance with this Agreement.

G. Ownership to copyrights for original works of authorship created by employees of Recipient or for hire by Recipient in the course of performance of work under this Agreement is retained by Recipient. Recipient grants to the Government a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display worldwide copyrighted works delivered under this Agreement, by or on behalf of the Government for Government purposes. Notwithstanding the foregoing, for works prepared and delivered pursuant to this Article and the attachments referenced therein, the Government does not obtain any greater or lesser rights than the rights described in this Article.

#### **ARTICLE XIV: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING**

A. Definitions. For the purposes of this Agreement, the following terms have the meanings indicated:

1. "Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.
2. "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.
3. "Recipient attributional/proprietary information" means information that identifies the recipient(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 company.
4. "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.
5. "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.
6. "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 this 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.

7. "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.

8. "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.

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

10. "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.

11. "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.

12. "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.

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

14. "Technical information" means technical data or computer software, as those terms are defined in Article XIII of this Agreement. 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. The Recipient shall provide adequate security on all covered recipient information systems. To provide adequate security, the Recipient shall implement, at a minimum, the following information security protections:

1. The covered recipient 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 except as follows in subparagraphs a through d.

a. The Recipient shall submit requests to vary from NIST SP 800-171 in writing to the Agreements Officer, for consideration by the DoD Chief Information Officer (CIO). The Recipient 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.

b. If the DoD CIO has previously adjudicated the Recipient'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.

c. If the Recipient intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this Agreement, the Recipient 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.

2. Apply other information systems security measures when the Recipient reasonably determines that information systems security measures, in addition to those required in 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.**

1. When the Recipient discovers a cyber incident that affects a covered recipient information system or the covered defense information residing therein, or that affects the recipient's ability to perform the requirements of the Agreement that are designated as operationally critical support and identified in the Agreement, the Recipient shall—

a. 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 Recipient's ability to provide operationally critical support; and

b. Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

3. 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>.

4. Medium assurance certificate requirement. In order to report cyber incidents in accordance with this Article, the Recipient or subawardee/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>.

D. Malicious software. When the Recipient or subawardee/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 Agreements Officer. Do not send the malicious software to the Agreements Officer.

E. Media preservation and protection. When a Recipient discovers a cyber incident has occurred, the Recipient shall preserve and protect images of all known affected information systems identified in paragraph C.1.a. 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.

F. Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Recipient shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

G. Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Agreements Officer will request that the Recipient provide all of the damage assessment information gathered in accordance with paragraph E of this Article.

H. 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 (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 Recipient shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement

appropriate procedures to minimize the recipient 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.

I. Use and release of recipient attributional/proprietary information not created by or for DoD. Information that is obtained from the recipient (or derived from information obtained from the recipient) under this Article that is not created by or for DoD is authorized to be released outside of DoD—

1. To entities with missions that may be affected by such information;
2. To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
3. To Government entities that conduct counterintelligence or law enforcement investigations.
4. 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
5. To a support services recipient (“recipient”) that is directly supporting Government activities under an Agreement that includes the DFARS clause 252.204-7009, Limitations on the Use or Disclosure of Third-Party Recipient Reported Cyber Incident Information.

J. Use and release of recipient attributional/proprietary information created by or for DoD. Information that is obtained from the recipient (or derived from information obtained from the recipient) 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.

K. The Recipient 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.

L. Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this Article in no way abrogates the Recipient’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable articles of this Agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

M. Sub-awards and Subcontracts. The Recipient shall—

1. Include this Article, including this paragraph M, in subawards, 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 Recipient shall determine if the information required for subawardee/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
2. Require subawardees/subcontractors to—
  - a. Notify the prime Recipient (or next higher-tier subawardee/subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Agreements Officer, in accordance with paragraph B 1.b. of this Article; and
  - b. Provide the incident report number, automatically assigned by DoD, to the prime Recipient (or next higher-tier subawardee/subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph C of this Article.

**ARTICLE XXVII: NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

A. Recipient shall report to the Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which Recipient has knowledge.

B. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this agreement, Recipient shall furnish to the Government when requested by the Agreements Officer, all evidence and information in possession of Recipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where Recipient has agreed to indemnify the Government.

C. Recipient agrees to include, and require inclusion of, this Article (suitably modified to identify the parties) in all sub-agreements at any tier.

**ARTICLE XXVIII: TRAFFICKING IN PERSONS**

A. Recipient, its employees, sub recipients under this Agreement, and sub recipients' employees shall not:

1. Engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect;
2. Procure a commercial sex act during the period of time that this Agreement is in effect; or
3. Use forced labor in the performance of the Agreement or sub awards under this Agreement.

B. The Government may unilaterally terminate the Agreement in its entirety, without penalty, if Recipient or subrecipient that is a private entity –

1. Is determined to have violated a prohibition in paragraph A of this Article; or
2. Has an employee who is determined by the Agreement Officer to have violated a prohibition in paragraph A of this Article through conduct that is either—

a. Associated with performance under this Agreement; or

b. Imputed to Recipient or the sub recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at DoD Grant and Agreement Regulations, DOD 3210.6 – R# Part 1125 – Nonprocurement Debarment and Suspension.

C. Recipient shall inform the Government immediately of any information received from any source alleging a violation of a prohibition in paragraph A of this Agreement.

D. The Government’s right to terminate unilaterally that is described in paragraph B of this Article:

1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

2. Is in addition to all other remedies for noncompliance that are available to the Government under this Agreement.

E. Recipient agrees to include the requirements of paragraph A of this Article in any subaward made to a private entity.

F. Definitions.

1. “Employee” means either:

**Raytheon**  
**Space and Airborne Systems**

a. An individual employed by Recipient or a subrecipient who is engaged in the performance of the project or program under this award; or

b. Another person engaged in the performance of the project or program under this award and not compensated by Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

a. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

b. Includes:

(1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(2) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**The following clauses apply to all Purchase Orders, including those for "Commercial Item(s)", as defined in FAR 2.101:**

Contract Provisions	Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)	Applicable to all purchase orders in excess of \$2,000 for construction or repair (sub-tier recipients 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).
Contract Provisions	Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)	Applicable to purchase orders in excess of \$100,000.
Contract Provisions	Debarment and Suspension (E.O.s 12549 and 12689)	Applicable to purchase orders exceeding the Simplified Acquisition Threshold.
DFARS 252.204-7009	Limitations on the use or disclosure of third-party contractor reported cyber incident information (Oct 2016)	Applicable to Purchase Orders for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items.
DFARS 252.227-7013	Rights in Technical Data-- Noncommercial Items. (Feb 2014)	Applicable to solicitations and resulting Purchase Orders when Buyer will be required to deliver to the Government Seller's technical data pertaining to noncommercial items, or pertaining to commercial items for which the Government will have paid for any portion of the development costs.

**Raytheon**  
**Space and Airborne Systems**

**In addition to the clauses listed above, the following clauses apply to all Purchase Orders for goods or services not meeting the definition of a “Commercial Item” in FAR 2.101:**

DFARS 252.227-7018	Rights in Noncommercial Technical Data and Computer Software-- Small Business Innovation Research (SBIR) Program (FEB 2014)	Applicable whenever any noncommercial technical data or computer software is to be delivered under this Purchase Order.
DFARS 252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. (Feb 2014)	Applicable to solicitations and resulting Purchase Orders when Seller’s performance will require delivery of non-commercial computer software or computer software documentation. Not applicable to Purchase Orders for commercial goods.
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions.	Applicable to solicitations and resulting Purchase Orders that will include DFARS clause 252.227-7013, 252.227-7014, or 252.227-7018.
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.	