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NORTHROP GRUMMAN SYSTEMS CORPORATION

ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA)
FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF
THE HBTSS PROGRAM.

All of the additional terms and conditions set forth below are incorporated in and made part of this Order. Any conflict between any of the conditions contained in this addendum and those appearing on Northrop Grumman Purchase Order Terms and Conditions shall be resolved in favor of the conditions in the addendum.

This Agreement is an Other Transaction, and is therefore not a procurement contract, cooperative agreement or grant agreement. Accordingly, the provisions of the FAR or Department of Defense Federal Acquisition Regulations Supplement (DFARS) do not apply, unless explicitly included in this agreement.

ARTICLE 1 – DEFINITIONS

"Agreement" refers to the Other Transaction (OT) Agreement, pursuant to 10 U.S. Code § 2371b, between the Government and the Performer, including the Attachments, which are expressly incorporated in and made a part of the Agreement.

"Agreements Officer (AO)" means the Missile Defense Agency (MDA)-warranted Agreements Officer authorized to sign, modify this Agreement, and execute associated projects under this Agreement on behalf of the Government.

"Agreements Officer's Representative (AOR)" and "Agreements Officer's Technical Representative (AOTR)" mean an individual designated and authorized in writing by the AO to perform specific technical and/or administrative functions on behalf of the Government. At the Government's discretion, multiple AOR/AOTRs may be designated in writing.

"Covered Government Support Contractors" means contactors covered under Article 38, Enabling FFRDC/UARC Support and Article 39, Enabling Support Contractors.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include Subject Inventions.

"Days" means calendar days unless stated otherwise.

"Effective date" means the date when this Agreement is signed and executed by Northrop Grumman

"Equitable Adjustment" means relief in terms of cost, schedule or contract terms.

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the U.S., 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 owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Government" means the United States of America, as represented by a Northrop Grumman Agreements Officer.

"Invention," as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code.

"Made," as used in this Agreement in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

"Non-traditional defense contractor" means, per 10 U.S. C. § 2302(9), "an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. § 1502 and the regulations implementing such section."

"Performer" means the prime Industry entity(ies) issued an award by the Government to be funded under this Agreement. May also include Sub-awardees or vendors at any level, if applicable.

"Practical application," as used in this Agreement, 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 case of a machine or system; and, in each case, under such conditions as to establish that the Invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Government on reasonable terms.

"Proprietary Information" means information and materials which are designated as proprietary in writing by the Performer, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed to the Government. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the Performer, within 30 calendar days after such disclosure, delivers to the Government a written document or documents describing the material or information and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

"Prototype" means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

"Prototype Project" means research and development being conducted by the Performer, as set forth in Article 2 - Scope and Management of the Agreement.

"Sub-awardee" means lower-tier performing entity(ies) (e.g., sub-agreement holders, subcontractors, suppliers, vendors) issued an award by the Performer to be funded under this Agreement.

"Subject invention" means those inventions conceived or first actually reduced to practice under this Agreement.

"System for Award Management (SAM)" means the Federal repository into which an entity must provide information required for the conduct of business as a Performer. Additional information about registration procedures may be found at the SAM Internet site (http://www.sam.gov).

ARTICLE 5 – GENERAL PROVISIONS

(a) Waiver. No waiver of any rights shall be effective unless assented to in writing by the other Party. The waiver of any breach or default shall not constitute a waiver of any subsequent breach or default, whether or not related to the original breach or default.

(b) Headings. The headings and subheadings used in this Agreement are intended for convenience or reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

(c) Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, unless applying such remaining portions would frustrate the purpose of this Agreement.

(d) Force Majeure. No failure or omission by the Performer in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the failure or omission arises from a cause beyond the control of the Parties, including, but not limited to the following: acts of God; acts of Government in either its sovereign or contractual capacity; changes to any rules, regulations or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof, unless affected by modification to this agreement; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion, provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable.

(e) Right to Develop Independently. Nothing in this Agreement will impair any Party's right to independently acquire, license, develop or have developed, utilize or otherwise exploit information and technology with the same or similar uses or functions as the information or technology that is the subject of the Agreement's technical objectives.

ARTICLE 11 – GOVERNMENT PROPERTY AND AGREEMENT DELIVERABLES

(a) Definition(s). As used in this article –

(1) *Government-furnished property (GFP)* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Performer for performance of an agreement.

(2) *Unit acquisition cost* means-

a. For GFP, the dollar value assigned by the Government and identified in the agreement; and

b. For deliverables, the cost derived from the Performer's records that reflect consistently applied generally accepted accounting principles.

(b) Title to Property

(1) The Government retains title to all GFP.

(2) Under fixed priced agreement line item(s), the Performer retains title to all property acquired by the Performer except for property identified as a deliverable end item in the HBTSS Phase IIb RPP Attachment 4, Agreement Data Requirements List.

(3) Under cost or expenditure based agreement line item(s), the Performer retains title to all property acquired by the Performer except for property identified as a deliverable end item in the HBTSS Phase IIb RPP Attachment 4 - Agreement Data Requirements List.

(4) The Performer shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense.

(c) Agreement Deliverables

(1) The Performer shall submit Procurement Integrated Enterprise Environment – Wide Area Work Flow Module (PIEE/WAWF) Receiving Report to document the delivery of each end item.

(2) The following data elements shall be provided by the Performer for each deliverable and included as an attachment to the PIEE/WAWF Receiving Report:

a. Item Description

b. Part Number and/or Model Number

c. Serial Number, if applicable

d. Quantity

e. Unit of Measure

f. Acquisition Date or Date Placed in Service

g. Unit Acquisition Cost

h. Manufacturer Name

i. Manufacturer Cage Code

(3) If an item of Government-furnished material (GFM) with a unit acquisition cost of $250,000 or more is consumed into an end item being delivered, the Performer shall upload an attachment to the PIEE/WAWF Receiving Report with the following information:

a. MDA asset identification number of GFM (if known)

b. Item description of GFM

c. Serial number of GFM

d. Unique item identifier of GFM (if applicable)

e. Unit acquisition cost of GFM

f. Item description of end item

g. Serial number of end item

(d) Government-Furnished Property (GFP) (RESERVED UNLESS GFP IS PROVIDED TO THE PERFORMER)

(1) Definition(s). As used in paragraph (d) –

a. *Cannibalization* means the act of removing parts from GFP for use or for installation on other GFP.

b. *Loss of Government-furnished property* means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to-

1. Items that cannot be found after a reasonable search;
2. Theft;
3. Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition;

or

4. Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

c. Material means property that may be consumed or expended during the performance of an

agreement, component parts of a higher assembly, or items that lose their individual identity through incorporation into a deliverable end item.

d. Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

e. Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

(2) Property Management. The Performer shall:

a. Have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) GFP in its possession, including sub-awardees. The Performer's commercial property management system may be used to meet this requirement. The Performer shall create and maintain records of all GFP accountable to the agreement. Property records shall enable a complete, current, and auditable record of all transactions and shall contain the following:

1. Accountable agreement number
2. Item description
3. Part number
4. Model number (if applicable)
5. Serial number (if applicable)
6. MDA asset identification number
7. Quantity
8. Unit of measure
9. Unit acquisition cost
10. Unique item identifier
11. Location
12. Date of last inventory

b. Use reasonable care to avoid the loss, theft, damage, or destruction of GFP. If the Performer's failure to use reasonable care causes damage or loss to the any of the GFP, the Performer shall replace or repair at no expense to the Government as the Agreements Officer directs. If the Performer fails or refuses to make such repair or replacement, the Performer shall be liable for the unit acquisition cost of the property, which may be deducted from the agreement price.

c. Obtain Agreements Officer's written approval for the: 1) utilizing GFP outside of this agreement, 2) modification or alteration of GFP, 3) cannibalization of GFP, and 4) commingling of GFP material with material not owned by the Government.

d. Award sub-agreements that clearly identify items of GFP to be provided and properly flow-down the requirements within this Article.

e. Provide Government access to GFP upon request.

(3) Physical Inventory. The Performer shall conduct a physical inventory of all GFP annually, at a minimum, to include GFP in the possession of sub-awardees.

(4) Reporting. The Performer shall:

a. Have a process to provide initial notification of loss of GFP to the government within five business days of an item being identified as a loss, to include losses that occur at sub-awardee or alternate site locations. Process shall include a follow-on report to the Government as soon as the following information, at a minimum, is known:

1. Date of incident (if known)
2. Summary of incident
3. The data elements required under paragraph (d)(2)a.
4. A statement indicating current or future need.
5. Cause and corrective action taken to be taken to prevent recurrence.
6. A statement that the Government will receive compensation covering the loss of GFP.
7. Copies of all supporting documentation.
8. A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material.

b. Report the physical inventory results within 30 days of completion in writing to the Agreements Officer. The report shall, at a minimum, contain the data elements required under paragraph (d)(2)a. for each item inventoried.

(5) Disposition: The Performer shall –

a. Not dispose of GFP without prior written authorization from the Agreements Officer.

b. Submit written requests for disposition to the Agreements Officer no later than:

1. 30 days following the Performer's or sub-awardee's determination that an item of GFP is no longer required for performance of this agreement.
2. 30 days, or such longer period as may be approved by the Agreements Officer, following completion of agreement deliveries or performance to include GFP at sub-awardee or alternate site locations.

ARTICLE 12 – INSPECTION AND ACCEPTANCE OF PROTOTYPE DEVELOPMENT

(a) The Government has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work or disrupt other work of the Performer. If the Government performs inspection or evaluation on the premises of the Performer, the Performer shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

ARTICLE 13 – QUALITY ASSURANCE / MISSION ASSURANCE

(a) Quality, Safety, and Mission Assurance (QSMA) Program

NORTHROP GRUMMAN SYSTEMS CORPORATION

ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA) FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF THE HBTSS PROGRAM.

(1) The Government and performer shall establish and maintain fundamental management disciplines to plan, establish, and monitor a Quality, Safety, and Mission Assurance (QSMA) Program. It shall include requirements for internal and external communication, sharing information, mitigating risk, and encouraging continual improvement. This is accomplished by effective management programs to execute the QSMA Program. The Government and performer shall have a Quality Management System (QMS) that is compliant with requirements of SAE AS9100, Quality Management Systems – Requirements for Aviation, Space and Defense Organizations.

(2) The Performer shall establish and maintain those policies, procedures, or command media necessary to fulfill Missile Defense Agency Assurance Provisions (MAP) requirements. The performer shall demonstrate how its internal QSMA practices align with the provided tailored MAP Requirements Applicability Matrix (RAM) and Parts, Materials, and Processes Mission Assurance Plan (PMAP) Rev. C Table 3.1, along with mitigations where no alignment exists. Where practical, MAP RAM requirements should be satisfied through application of the Performer's documented and approved standard processes and programs rather than creating a new, separate set of processes to meet the MAP RAM requirement's intent.

(b) Parts, Materials, and Processes Control Program (PMPCP)

(1) The Government and performer shall establish and maintain a Parts, Materials, and Processes Control Program (PMPCP) to ensure selection and use of parts, devices, and materials, including commercial and non-developmental items, meet specified performance, quality, reliability, safety, supportability, and configuration management requirements throughout the life cycle of the system. The program shall include provisions for mitigating the impact of counterfeit parts and parts obsolescence on product integrity.

(2) For safety or mission critical hardware, the program shall have a documented approach for approval, selection, acquisition, handling, packaging, screening, derating, qualification, traceability, standardization, and storage of parts and materials in development and fabrication.

(3) The PMPCP is intended to mitigate risk and enhance probability for mission success for all MDA systems, subsystems, and assemblies.

(c) Parts, Materials, and Processes (PMP) Plan

(1) The Government and performer shall develop and maintain a Parts, Materials, and Processes (PMP) Plan. The performer's PMP Plan shall be developed in coordination with the Northrop Grumman Program Office describing the approach and methodology for implementing the PMPCP.

(2) The detailed PMP requirements for new or modified safety or mission critical products and systems developed for the MDA shall be IAW the PMAP Rev C Table 3.1.

ARTICLE 14 – ASSIGNMENT OF AGENCY

Assignment. This Agreement may not be assigned or transferred by any of the Parties hereto without the prior written consent of the other Parties; provided, however, that the Performer may assign its rights and delegate its obligations to a purchaser of all or substantially all of the business of the Performer to which this Agreement relates by merger, sale of assets, or otherwise. Internal transfer of assets, consolidations, or name changes by the Performer shall not be considered an assignment for purposes of the Agreement.

ARTICLE 15 – STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS – COMMERCIAL

(a) The Performer shall maintain adequate records to account for the control and expenditure of Government funds received under this Agreement.

(b) The Performer shall establish and maintain accounting systems that:

(1) Comply with Generally Accepted Accounting Principles

(2) Control and properly document all cash receipts and disbursements

ARTICLE 16 – RETENTION AND ACCESS TO RECORDS

(a) Performer's financial records, supporting documents, statistical records, and all other records pertinent to this Agreement shall be retained and access to them permitted for a period not to exceed three years after expiration of the term of this Agreement, unless one of the following applies:

(1) If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action is taken, or as otherwise directed by an order of a court.

(2) Records for real property and equipment acquired with Federal funds shall be retained for three years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the three year retention requirement is not applicable to the Performer.

(b) If the information described is maintained on a computer, the Performer shall retain the computer data on a reliable medium for the time period prescribed. The Performer may transfer computer data in machine readable form from one reliable computer medium to another. The Performer's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. The Performer shall also maintain an audit trail describing the data transfer.

(c) Northrop Grumman shall request that the Performer transfer certain records to DoD component custody when he or she determines that the records possess long term retention value. The Performer shall comply with the request unless it can state why such records should not be transferred. Disputes shall be handled in accordance with Article 17, Disputes and Liability.

ARTICLE 17 – DISPUTES AND LIABILITY

(a) For the purposes of this Article, "Parties" means the Performer and the Government where collectively identified and "Party" where each entity is individually identified. The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

(1) Dispute Resolution Procedures

i. Any dispute between the Government and Performer concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may only be raised under this Article.

ii. Whenever disputes arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. The Parties agree that the notification under subparagraph iii of this Article shall not be made earlier than 30 days from when the dispute arose. In no event shall a dispute that arose more than 180 calendar days prior to the notification made under subparagraph iii of this Article constitute the basis for relief under this Article unless the AO waives this requirement in writing.

iii. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the AO) in writing of the relevant facts, identifying unresolved issues, specifying the

clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by Northrop Grumman. The other Party shall submit a written position on the matter(s) in dispute within 30 calendar days after being notified that a decision has been requested. The dispute will then be referred to the MDA/CR and an executive of the Performer, who shall meet in good faith to resolve the dispute and will conduct a review of the matter(s) in dispute and render a decision in writing within 30 calendar days of receipt of such a position. Any such decision is final and binding, unless a Party shall, within 30 calendar days, request a further review as provided by this Article.

iv. If Northrop Grumman and an executive of the Performer are not able to resolve the dispute within 30 calendar days of the date the notice under subparagraph iii is received, the dispute will be referred to the MDA Director of Acquisition (MDA/DA) and an executive of the Performer, who shall meet in good faith to resolve the dispute.

v. If Northrop Grumman and an executive of the Performer are not able to resolve the dispute within 60 calendar days of the date the notice under subparagraph iii is received, then either party may pursue any remedy under the law against any of the Parties, and this Disputes and Liability clause shall in no matter extinguish or waive any statute of limitations and/or ability of a party to pursue any remedy under the law.

vi. Pending resolution of any such dispute by settlement or by final judgment, the Parties shall each proceed diligently with performance, unless otherwise mutually agreed, or Northrop Grumman issues a Stop Work Order, pursuant to Article 8 – Termination Provisions.

(2) Limitations of Damages

i. Claims by either Party for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the unpaid balance of the aggregate amount of Government funding for this Agreement, unless such dispute resulted from a negotiated settlement of a request for equitable adjustment relating to a change in the performance or scope of the Agreement or for termination settlement expenses.

ii. In no event shall either Party be liable to any other Party for consequential, punitive,

special, and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct or gross negligence; provided, however that liability for misuse or unauthorized disclosure of intellectual property shall be excluded for the limitation set forth in this subparagraph (ii).

iii. With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the others, employees of others, the others' related entities (e.g. contractors, subcontractors, etc.) or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct or gross negligence.

iv. Reserved

v. Under no circumstances will the above enumerated exceptions to the Waiver of Liability be interpreted to apply the Contract Disputes Act to this Agreement or in any way cause this Agreement to be subject to any terms or regulations related to the Contract Disputes Act.

vi. Extension of Limitations of Damages. The Performer agrees to extend the limitation of damages, as set forth above, in all lower-tier sub-contractors and/or sub-agreements.

ARTICLE 20 – ADMINISTRATIVE AND MANAGERIAL STANDARDS

(a) The Performer shall comply with and flow down to Sub-awardees the Federal statutes, Executive Orders, regulations, Articles, and other legal requirements applicable to awards entered into under this Agreement.

(b) The FAR and its supplements shall not apply to this Agreement except as specifically referenced.

CUI
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**ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA)
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THE HBTSS PROGRAM.**

ARTICLE 25 – SYSTEM FOR AWARD MANAGEMENT AND DATA UNIVERSAL NUMBERING SYSTEM REQUIREMENTS

(a) Requirement for System for Award Management (SAM): Unless exempted from this requirement under 2 CFR 25.110, the Performer must maintain the currency of information in the SAM until the Performer submits the final financial report required under this Agreement or receives the final payment, whichever is later. This requires that the Performer review and update the information at least annually after the initial registration, and more frequently if required by changes in information or another Article.

(b) The Performer is required to have a Data Universal Numbering System (DUNS) number.

ARTICLE 27 – COMPTROLLER GENERAL ACCESS TO RECORDS

The AO or representative, and the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of three years after final payment is made. This requirement shall not apply with respect to any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative agreement, or "Other Transaction" agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements/contracts to the Agreement.

ARTICLE 28 – DATA RIGHTS

(a) This Data Rights Article is specifically tailored for this Agreement to address respective rights of the Government and Performers to such Data as is owned, developed, to be developed or used by the Performer. For Phase IIb, the Government requirement for data developed under HBTSS Phase IIb is Government Purpose Rights for Category B and C Data. The obligations of the Government and the Performer under this Article and Attachment 4 – Proprietary Data/Data Rights Assertions shall survive after the expiration or termination of this Agreement and into follow-on prototyping and/or production activities.

CUI
NORTHROP GRUMMAN SYSTEMS CORPORATION

ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA) FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF THE HBTSS PROGRAM.

(1) Definitions:

i. "Commercial Computer Software" as used in the Article is defined in DFARS 252-227-7014(a)(1)(June 1995).

ii. "Commercial Computer Software License" means the license terms under which commercial computer software and Data (as defined in this OTA) is sold or offered for sale, lease, or license to the general public.

iii. "Computer Data Base" as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

iv. "Computer program" as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.

v. "Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

vi. "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, which is in a human readable format, that explain the capabilities of the computer software or provide instructions for using the software.

vii. "Data," means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing, or management information and does not include subject inventions included in Article 30, Inventions and Patents.

viii. "Form, fit, and function data" means technical data that describes the overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable

items.

ix. "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national 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 technical data for commercial purposes or authorize others to do so.

x. "Government purpose rights" means the rights 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.

   Under this Agreement, the period of a Government Purpose Rights license shall be no less than five years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional MDA follow-on prototyping and/or production activities during this five year period, the Government Purpose Rights license shall be extended an additional five year starting from completion of the additional Prototype project.

xi. "Limited rights" as used in this Article is defined in DFARS 252.227-7013(a)(14)(Feb 2014).

xii. "Restricted rights" as used in this Article is defined as DFARS 252.227-7014(a)(15)(Feb 2014).

xiii. "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and Performer.

xiv. "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software

documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

xv. "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(2) Data Categories

i. Category A is the Data developed and paid for totally by private funds, or the Performer's (or its subcontractor's) IR&D and private funds and it is Data to which Performer (or its subcontractor) retains all rights. Category A Data shall include, but not be limited to:

1. Data as defined in this Article and any designs or other material provided by the Performer for a project under this Agreement, which was not developed in the performance of work under that project, and for which the Performer retains all rights.

2. Any initial Data or technical, marketing, or financial Data provided at the onset of the project by the Performer. Such Data shall be marked "Category A" and any rights to be provided to the Government for such Data under a specific project shall be as identified in the Agreement.

ii. Category B is any Data developed under this Agreement with mixed funding, (i.e., development was accomplished partially with costs charged to the Performers indirect cost pools and/or costs not allocated to the Performers Award under this Agreement, and partially with Government funding under this Agreement).

iii. Category C is any Data developed exclusively with Government funds under this Agreement. Research and Development performed was not accomplished exclusively or partially at private expense. Under this category,

1. The Government will have Government Purpose Rights in Data developed exclusively with Government funds under a project funded by the Government under this Agreement that is:

a. Data pertaining to an item, component, or process which has been or will

be developed exclusively with Government funds;

b. Studies, analyzes, test data, or similar data produced for this Agreement, when the study, analysis, test, or similar work was specified as an element of performance;

c. Data created in the performance of the Agreement that does not require the development, manufacture, construction, or production of items, components, or processes;

d. Form, fit, and function data;

e. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

f. Corrections or changes to technical data furnished to the Performer by the Government;

The Government can only order such Data as is developed under the Agreement project where the order request is made within 36 months following Agreement project completion or for an alternate duration specified in the Agreement. In the event the Government orders such Data, it shall pay the Performer the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs.

2. The Government shall have unlimited rights in Data that is:

a. Otherwise publicly available or that has been released or disclosed by the Performer without restrictions on further use, release, or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

b. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

c. Data furnished to the Government, under this Agreement or any other Government contract or subcontract thereunder, with-

i. Government Purpose Rights or limited rights and the restrictive condition(s) has/have expired; or

ii. Government purpose rights and the Performer's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired.

3. However, any Data developed outside of this Agreement whether or not developed with any Government funding in whole or in part under a Government agreement, contract, or subcontract shall have the rights negotiated under such prior agreement, contract, or subcontract; the Government shall get no additional rights in such Data.

4. Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under this Agreement, and the treatment of Data relating thereto, shall be as set forth in the Commercial Computer Software License.

iv. The parties to this Agreement understand and agree that the Performer shall stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to Data.

(3) Allocation of Principal Rights

i. The Government shall have no rights to Category A Data, unless otherwise negotiated.

ii. The Government shall have immediate Government Purpose Rights to Category B and C Data upon delivery or project or Agreement completion (whichever is earlier), except that:

1. The Performer, at the request of small business or an other than small business Sub-Awardee , may request a delay of the start of Government Purpose Rights in Category B or C Data for a period not to exceed five years from project or Agreement completion (whichever is earlier). Such requests will only be made in those cases where the Performer has provided information from the affected actual or prospective Sub-awardee demonstrating the need for this additional restriction on Government use and shall be submitted to Northrop Grumman for approval, which approval shall not be unreasonably withheld. In the event

of any dispute regarding approval of this request, the parties agree to treat this as a dispute and shall follow the provisions of Article 17 - Disputes and Liability.

2. For Article 28(2)(iii)(C) Category C Data, the Government shall have only the rights established under prior agreements.

3. For Article 28(2)(iii)(D) Category C Data, the Government shall only have the rights set forth in the Commercial Computer Software Data license agreement.

iii. Data that will be delivered, furnished, or otherwise provided to the Government as specified in a specific project award funded under this Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

i. Each proposal submitted by the Performer in response to a Government call for proposals under this Agreement shall include a list of the Category A, B, and C Data to be used or developed under the proposal. Any proposal that includes information to be provided with Limited Rights, Restricted Rights, or Specially Negotiated License Rights shall include supporting details and rationale. Rights in such Data shall be established under the terms of this Agreement, unless otherwise asserted in the proposal and agreed to by the Government in the Prototype modification. The AO will incorporate the list of Category A, B, and C Data and the identified rights therefor in the award document or modification.

Following issuance of a modification, the Performer shall update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Agreement, unless otherwise asserted in a supplemental listing and agreed to by the Government.

Marking of Data

ii. Except for Data delivered with unlimited rights, Data to be delivered under this Agreement subject to restrictions on use, duplication, or disclosure shall be marked with the following legend:

iii. Category A use company proprietary statement.

iv. Category B and C use legend at DFARS 252.227-7013 (f)(2).

v. It is not anticipated that any Category A Data will be delivered to the Government under this Agreement. In the event commercial computer software and Data is licensed under a commercial computer software license under this OTA, a Special License rights marking legend shall be used as agreed to by the parties.

vi. The Government shall have unlimited rights in all unmarked Data. In the event that Performer learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Performer will have the opportunity to cure such omission going forward by providing written notice to Northrop Grumman within three months of the erroneous release.

(1) Copyright

i. The Performer reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Performer. The Performer hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Agreement and to authorize others to do so.

ii. In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement with the written permission of the Copyright holder.

iii. Copyrighted Data that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.

iv. The Performer is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Agreement.

v. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

(2) Data First Produced by the Government:

i. As to Data first produced by the Government in carrying out the Government's responsibilities under this Agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the Performer, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the Parties to whom disclosed for three years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by the Parties, including its respective employees or Sub-awardees of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

(3) Prior Technology

i. Government Prior Technology: In the event it is necessary for the Government to furnish the Performer, including their respective employees or their Sub-awardees of any tier, with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by the Performer to whom such Data is provided for use under the Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.

ii. Performer and Sub-awardee Prior Technology: In the event it is necessary for the Performer and Sub-awardee to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such conflict-free Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data

protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. Neither the Performer or Sub- awardee shall be obligated to provide Data that existed prior to, or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Performer or Sub-awardee.

iii. Oral and Visual Information: If information which the Performer considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, record form and marked with a suitable notice or legend, and furnished to the Government within 30 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.

iv. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

1. Data not identified with a suitable notice or legend as set forth in this Article; nor

    a. Information contained in any Data for which disclosure and use is restricted under Article 29 - Proprietary Information, if such information is or becomes generally known without breach of the above, is properly known to the Government, or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the Performer or any Sub-awardee has furnished, or is required to furnish to the Government without restriction on disclosure and use.

2. Marking of Data: Any Data delivered under this Agreement shall be marked with a suitable notice or legend.

(4) Notwithstanding the Paragraphs in this Article, differing rights in Data may be negotiated among the Parties on a case-by-case basis.

(5) Lower Tier Agreements
The Performer shall include this Article, suitably modified to identify the parties, in all

awards, subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

(6) Survival Rights
Provisions of this Article shall survive termination of this Agreement under Article 7 – Term of the Agreement.

ARTICLE 29 – PROPRIETARY INFORMATION

Definitions

(a) "Disclosing Party" means the party who discloses the Proprietary Information as contemplated by the subsequent Paragraphs.

(b) "Receiving Party" means the party who receives Proprietary Information disclosed by a Disclosing Party.

(c) "Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information or a Trade Secret if such Disclosing Party, within 30 calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Proprietary Information" includes any information and materials considered a Trade Secret by the Performer. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if –

(1) The owner thereof has taken reasonable measures to keep such information secret; and

(2) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

CUI
NORTHROP GRUMMAN SYSTEMS CORPORATION

ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA) FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF THE HBTSS PROGRAM.

Proprietary and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Proprietary Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Proprietary Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties (including without limitation, other HBTSS Performers) or used by it for any purposes other than in connection with the HBTSS prototype and the licenses granted in Article 28 - Data Rights, and Article 30 - Inventions and Patents, but shall exclude materials or information that:

(1) Are received or become available without restriction to the receiving party under separate agreement,

(2) Are not identified with a suitable notice or legend per Paragraph (c) herein,

(3) Are in possession of the Receiving Party without restriction at the time of disclosure thereof as demonstrated by prior written records,

(4) Are or later become a part of the public domain through no fault of the Receiving Party,

(5) Are received by the Receiving Party from a third party without restriction and having no obligation of confidentiality to the Disclosing Party that made the disclosure,

(6) Are developed independently by the Receiving Party without use of Proprietary Information or Trade Secrets as evidenced by written records,

(7) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Return of Proprietary Information

Upon request by a Disclosing Party that made a disclosure of Trade Secrets to the Government or another organization, the Government or the other organization shall promptly return all copies and other tangible manifestations of the Trade Secrets disclosed. Upon request by the Government, a Receiving Party shall promptly return all copies and other tangible manifestations of the Proprietary Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

Term

The obligations of the Receiving Party under this Article shall continue for a period of seven years after the expiration or termination of this Agreement.

ARTICLE 30 – INVENTIONS AND PATENTS

(a) Allocation of Principal Rights

(1) The Performer shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided the Performer has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with the subparagraph b below) that the Performer does not intend to retain title.

(2) The Performer shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of a Performer's internal development milestone shall be a background invention of Performer and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under this Agreement in support of other than internal development milestones shall be considered a Subject Invention.

(3) The Government is granted 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.

(b) Invention Disclosure, Election of Title, and Filing of Patent Application

(1) The Performer shall disclose each Subject Invention to Northrop Grumman on a DD Form 882 within eight months after the inventor discloses it in writing to the Prototype Inventor's personnel responsible for patent matters.

(2) If the Performer determines that it does not intend to retain title to any Subject Invention, the Performer shall notify Northrop Grumman, in writing, within eight months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty

calendar days prior to the end of the statutory period.

(c) Conditions When the Government May Obtain the Title

Upon Northrop Grummans written request, the Performer shall convey title to any Subject Invention to the Government under any of the following conditions:

(1) If the Performer fails to disclose or elects not to retain title to the Subject Invention within the times specified in subparagraph b of this Article; provided that the Government may only request title within sixty calendar days after learning of the failure of the Performer to disclose or elect within the specified times.

(2) In those countries in which the Performer fails to file patent applications within the times specified in subparagraph b of this Article; provided, that if the Performer has filed a patent application in a country after the times specified in subparagraph b of this Article, but prior to its receipt of the written request by the Government, the Performer shall continue to retain title in that country; or

(3) In any country in which the Performer decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

(d) Minimum Rights to the Performer and Protection of the Performer's Right to File

(1) The Performer shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Performer fails to disclose the Subject Invention within the times specified in paragraph B of this Article. The Performer's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Performer is a party and includes the right to grant licenses of the same scope to the extent that the Performer was legally obligated to do so at the time the OT Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.

(2) The Performer's domestic license, as described above, 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 consistent with appropriate provisions at 37 CFR Part 404. This license shall not be

revoked in that field of use or the geographical areas in which the Performer has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Performer, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, Northrop Grumman shall furnish the Performer a written notice of its intention to revoke or modify the license, and the Performer shall be allowed thirty calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

(e) Action to Protect the Government's Interest

(1) The Performer agrees to execute or to have executed and promptly deliver to Northrop Grumman all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Performer elects to retain title, and (ii) convey title to the Government when requested under Paragraph C of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

(2) The Performer agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Performer each Subject Invention made under this Agreement in order that the Performer can comply with the disclosure provisions of paragraph B of this Article. The Performer shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Performer shall notify Northrop Grumman of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.

(4) The Performer shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No.

HQ0857-20-9-0003, awarded by MDA. The Government has certain rights in the Invention."

(f) March-in Rights

The Performer agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Prototype Inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Performer, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the AO determines that:

(1) Such action is necessary because the Performer or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;

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

(3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Performer, assignee, or licensees.

(g) Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Agreement.

(h) Notice and Assistance

(1) The Performer shall report to Northrop Grumman promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which Performer has knowledge.

(2) 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, the Performer shall furnish to the Government, when requested by Northrop Grumman, all evidence and information in the Performer's possession pertaining to such

claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Performer has agreed to indemnify the Government.

(i) Lower Tier Agreements

The Performer shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

(j) Survival Rights

The obligations of the Government and the Performer under this Article shall survive after the expiration or termination of this Agreement.

ARTICLE 31 – SECURITY REQUIREMENTS

(a) This Article applies to the extent that this Agreement involves access to information classified that may fall within one (or more) of the following levels:

(1) "Confidential,"

(2) "Secret,"

(3) "Top Secret,"

(4) "Top Secret/Sensitive Compartmented Information (TS/SCI),"

(5) "Special Access Program (SAP)"

(b) In the event that a prototype under this Agreement requires the Performer to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254) and attach it to this Agreement.

(c) The Performer shall comply with the DD Form 254 attached to the OT Agreement at the time of award and with –

(1) The Security Agreement (DD Form 441), including the National Industry Security Program Operating Manual (DoD 5220.22-M); and

(2) Any revisions to that manual, notice of which has been furnished to the Performer.

(d) The Performer agrees to insert terms that conform substantially to the language of this Article, including this paragraph (d), in all Sub-agreements under this Agreement that involve access to classified information.

ARTICLE 32 – CYBERSECURITY AND INFORMATION PROTECTION

(a) Definitions applicable to 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.

"Cloud computing," means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"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.

"Performer attributional/proprietary information" means information that identifies the Performer, whether directly or indirectly, by the grouping of information that can be traced back to the Performer (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.

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

"Covered defense information" 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—

(1) Marked or otherwise identified in the Agreement and provided to the Performer by or on behalf of DoD in support of the performance of the agreement; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Performer in support of the performance of the Agreement.

"Cyber incident" means actions taken using 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 contractor 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.

"Safeguarding" means measures or controls that are prescribed to protect information systems.

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or 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) Compliance with this Article is required. The Government will clearly mark solicitations where the resulting prototype is anticipated to include covered defense information. In such instances, Performers will confirm in their proposal either compliance or requirement to comply prior to award.

(c) This Article applies to the extent that this Agreement involves a covered contractor information system that processes, stores, or transmits Covered Defense Information (CDI) as determined by the AO.

(1) By submission of an offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations (see http://dx.doi.org/10.6028/NIST.SP.800-171) that are in effect at the time the solicitation is issued or as authorized by the AO.

(2) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in effect at the time the solicitation is issued or as authorized by Northrop Grumman, the Offeror shall submit to Northrop Grumman, for consideration by the DoD Chief Information Officer (CIO), a written explanation of why a particular security requirement is not applicable; or how an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection. An authorized representative of the DoD CIO will adjudicate Offeror requests to vary from NIST SP 800-171 requirements in writing prior to agreement award. Any accepted variance from NIST SP 800-171 shall be incorporated into the Agreement.

(3) The Offeror shall indicate in its proposal whether the use of cloud computing is anticipated at any level under the Agreement. If the Performer proposes to use cloud-computing services in the performance of the Agreement at any level, the Performer shall obtain approval from Northrop Grumman prior to utilizing cloud-computing services.

(d) The Performer shall provide adequate security on all covered contractor information systems. To provide adequate security, the Performer shall implement at a minimum, the following safeguarding and information security protections:

(1) The Performer shall apply the following basic safeguarding requirements and procedures:

i. Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

ii. Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

iii. Verify and control/limit connections to and use of external information systems.

iv. Control information posted or processed on publicly accessible information systems.

v. Identify information system users, processes acting on behalf of users, and devices.

vi. Authenticate (or verify) the identities of those users, processes, and devices as a prerequisite to allowing access to organizational information systems.

vii. Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

viii. Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

ix. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

x. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

xi. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

xii. Identify, report, and correct information and information system flaws in a timely manner.

xiii. Provide protection from malicious code at appropriate locations within organizational information systems.

xiv. Update malicious code protection mechanisms when new releases are available.

xv. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) 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 within thirty days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

(3) Apply additional information systems security measures when the Performer reasonably determines that information systems security measures 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.

(e) The Performer shall notify the DoD Chief Information officer (CIO) via email at osd.dibcsia@mail.mil, within thirty (30) days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

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

(2) If the DoD CIO has previously adjudicated the Performer's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to Northrop Grumman when requesting its

recognition under this agreement.

(3) If the Performer intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this Agreement, the Performer shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/resources/documents/) and that the cloud service provider complies with requirements 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.

(f) When the Performer discovers a cyber incident that affects a covered contractor information system (including internal or external cloud computing services) or the covered defense information residing therein, or that affects the Performer's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, the Performer shall –

(1) 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 contractor information system(s) that were part of the cyber incident, as well as other information systems on the Performer's network(s) that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Performer's ability to provide operationally critical support; and

(2) Rapidly report cyber incidents to DoD at http://dibnet.dod.mil. 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. To report cyber incidents in accordance with this Article, the Performer or sub-awardee 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.

(g) When the Performer or sub-awardees 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 Northrop Grumman. Do not send the malicious software to Northrop Grumman.

(h) When the Performer discovers a cyber incident has occurred, the Performer shall preserve and protect images of all known affected information systems identified 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.

(i) Upon request by DoD, the Performer shall provide DoD with access to additional information or equipment necessary to conduct a forensic analysis.

(j) If DoD elects to conduct a damage assessment, Northrop Grumman will request that the Performer provide all of the damage assessment information gathered in accordance with paragraph (f) of this Article.

(k) The Government shall protect against the unauthorized use or release of information obtained from the Performer (or derived from information obtained from the Performer) under this Article that includes Performer attributional/proprietary information, including such information submitted in accordance with paragraph (f). To the maximum extent practicable, the Performer shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Performer attributional/proprietary information that is included in such authorized release, seeking to include only that information necessary for the authorized purpose(s) for which the information is being released.

(l) Information obtained from the Performer (or derived from information obtained from the Performer) 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 contract ("recipient") directly supporting Government activities under a contract that includes the clause at DFARS 252.204-7009, Limitations on the Use or Disclosure of Third-Party Performer Reported Cyber Incident Information.

(m) Information obtained from the Performer (or derived from information obtained from the

Performer) under this Article created by or for DoD (including the information submitted pursuant to paragraph (f) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (j) of this clause, 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.

(n) The Performer 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.

(o) The safeguarding and cyber incident reporting required by this Article in no way abrogates the Performer'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.

(p) Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information - The Performer agrees that the following conditions apply to any information it receives or creates in the performance of this Agreement that is information obtained from a third-party's reporting of a cyber incident pursuant to this Article (or derived from such information obtained under that clause):

(1) The Performer shall access and use the information only for furnishing advice or technical assistance directly to the Government in support of the Government's activities related to this Article, and shall not be used for any other purpose.

(2) The Performer shall protect the information against unauthorized release or disclosure.

(3) The Performer shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(4) The third-party Performer that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Performer, as required by paragraph (p)(3) of this Article.

(q) The Performer shall not release to anyone outside the Performer's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this Agreement or any program related to this Agreement, unless the AO has given prior written approval; the information is otherwise in the public domain before the date of release; or the information results from or arises during the performance of a project that

involves no covered defense information and has been scoped and negotiated by the contracting activity with the Performer and research performer and determined in writing by the AO to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of agreement award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4 (DFARS/PGI view)).

(r) The Performer shall include this Article, including this paragraph (r), in sub-agreements, or agreements for which sub-awardee performance will involve covered defense information, including sub-agreements for commercial items, without alteration, except to identify the parties. The Performer shall determine if the information required for sub-performer performance retains its identity as covered defense information and will require protection under this Article, and, if necessary, consult with Northrop Grumman; and require sub-performers to notify the Performer (or next higher-tier sub-awardee) when submitting a request to vary from a NIST SP 800-171 security requirement to Northrop Grumman, in accordance with paragraph (c)(2) of this Article; and provide the incident report number, automatically assigned by DoD, to the prime Performer (or next higher-tier sub-awardee) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (d) of this Article.

ARTICLE 33 – EXPORT CONTROL AND FOREIGN ACCESS TO TECHNOLOGY

(a) General

(1) The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled.

(2) The Performer shall comply with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

(3) The Government anticipates technology used or developed under this agreement may be restricted by the International Traffic in Arms Regulation (ITAR).

(b) Lower Tier Agreements

(1) The Performer shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

ARTICLE 34 – PUBLIC RELEASE OF INFORMATION

(a) In addition to the requirements of National Industrial Security Program Operations Manual (DoD 5220.22-M), all Performers and sub-awardees are required to comply with the following:

(1) Any official MDA information/materials that a Performer/sub-awardee intends to release to the public that pertains to any work under performance of this Agreement, the MDA will perform a pre-publication review prior to authorizing any release of information/materials.

(2) At a minimum, these information/materials may be technical papers, presentations, articles for publication, key messages, talking points, speeches, and social media or digital media, such as press releases, photographs, fact sheets, advertising, posters, videos, etc.

(b) Sub-awardee public information/materials must be submitted for approval through the prime Performer to MDA.

(c) Upon request to Northrop Grumman, Performers shall be provided the "Request for Industry Media Engagement" form (or any superseding MDA form).

(d) At least 45 calendar days prior to the desired release date, the Performer must submit the required form and information/materials to be reviewed for public release to Northrop Grumman. . (Additional distribution emails can be added by the Program Office to ensure proper internal coordination and tracking of PR requests.)

(e) All information/materials submitted for Northrop Grumman review must be an exact copy of the intended item(s) to be released, must be of high quality and are free of tracked changes and/or comments. Photographs must have captions, and videos must have the intended narration included. All items must be marked with the applicable month, day, and year.

(f) No documents or media shall be publically released by the Performer without Northrop Grumman Public Release approval.

(g) Once information has been cleared for public release, it resides in the public domain and must always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be re-submitted.

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NORTHROP GRUMMAN SYSTEMS CORPORATION

ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA) FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF THE HBTSS PROGRAM.

ARTICLE 35 – CLOSEOUT

(a) The Performer shall, at least 60 days prior to the expiration date of the Agreement, contact Northrop Grumman to establish:

(1) All steps needed to close out the Agreement;

(2) A schedule for completing those steps.

(b) The following provisions shall apply to the closeout:

(1) Northrop Grumman and Payment Office shall expedite completion of steps needed to close out this Agreement and make prompt final payments to the Performer.

(2) The Performer shall account for any real property and personal property acquired with Federal funds or received from the Federal Government in accordance with the terms of the Agreement.

(c) The closeout of this Agreement does not affect any of the following:

(1) Any specified audit requirements.

(2) Any specified property management requirements.

(3) Records retention as required by the Agreement.

ARTICLE 36 – REPRESENTATIONS AND WARRANTIES

(a) Representations and Warranties of All Parties. Each Party to this Agreement represents and warrants to the other Party(ies) that: (1) it is free to enter into this Agreement; (2) in so doing, it will not violate any other agreement to which it is a party; and (3) it has taken all action(s) necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement.

(b) Limitations. Except as expressly provided herein, no Party to this Agreement makes any warranty, express or implied, either in fact or by operation of law, by statute or otherwise, relating to: (1) any research conducted under this Agreement, or (2) any invention conceived and/or reduced to practice under this Agreement, or (3) any other intellectual property developed under this Agreement, and each Party to this Agreement specifically disclaims any implied warranty of merchantability or warranty of fitness for a particular purpose.

(c) Incorporation by Reference of Representations and Certifications. The Performer's

representations and certifications, including those completed electronically via the System for Award management (SAM), are hereby incorporated by reference into this Agreement.

ARTICLE 37 – ORGANIZATIONAL CONFLICT OF INTEREST

(a) The Government is concerned with avoiding potential real or perceived conflicts of interest as described in FAR Subpart 3.1 and 9.5. Throughout performance, the Performer shall monitor all potential team conflicts of interest.

(b) The Performer shall ensure performance does not conflict with system development or enhancements being performed under other agreements or contracts.

(c) The Performer shall immediately report all potential conflicts of interest to Northrop Grumman. All proposals will address potential conflicts of interest and any proposed mitigation. The Performer agrees to include in all sub-agreements an Article requiring sub-agreement holders to report all potential or real Organizational Conflict of Interests (OCI) to the Performer and the Government.

(d) The Government has the right to limit Performer or sub-awardees involvement under this Agreement or other actions to mitigate OCIs. In the event that Performer believes that the OCI can be mitigated, the Performer shall submit to Northrop Grumman an OCI mitigation plan for Northrop Grumman's consideration.

ARTICLE 38 – ENABLING FFRDC/UARC SUPPORT

(a) This Agreement covers space prototypes under the general program management of MDA, Space Systems Directorate (MDA/SS). MDA/SS has contractual relationships with Federally Funded Research and Development Centers (FFRDC) and University Associated Research Centers (UARC), identified in the below table, for the services of a technical group that will support the MDA/SS Program Office by performing General Systems Engineering and Integration, Technical Review, and/or Technical Support including informing the HBTSS Program Office, of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.

Table 1 – FFRDC/UARC Support

Company/Organization	Type	Location
The Aerospace Corporation	FFRDC	El Segundo, CA

NORTHROP GRUMMAN SYSTEMS CORPORATION

**ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA)
FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF
THE HBTSS PROGRAM.**

Sandia National Laboratories (SNL)	FFRDC/National Lab	Albuquerque, NM
Utah State University/Space Dynamics Lab (SDL)	UARC	Logan, UT
The MITRE Corporation	FFRDC	Bedford, Massachusetts and McLean, Virginia
Los Alamos National Lab (LANL)	UARC	Los Alamos, NM
Massachusetts Institute of Technology, Lincoln Labs (MIT/LL)	FFRDC/National Lab	Lexington, MA

(1) General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review, and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the Performers' technical performance through meetings with Performers, exchange, and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced project risk; providing comments and recommendations in writing to the applicable DoD Program Office as an independent technical assessment for consideration for modifying the prototype project or redirecting the Performer's efforts; all to the extent necessary to assure timely and economical accomplishment of prototype project objectives consistent with mission requirements.

(2) Technical Review (TR) includes the process of appraising the technical performance of the Performer through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to prototype technical objectives, and providing comments and recommendations in writing to the Program Office as an independent technical assessment for consideration for modifying the prototype project or redirecting the Performer's efforts to assure timely and economical accomplishment of prototype project objectives.

(3) Technical Support (TS) deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which the listed FFRDCs/UARCs are uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The

categories of TS tasks are: Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.

(b) In the performance of this Agreement, the Performer agrees to cooperate with the listed FFRDCs/UARCs by:

(1) Responding to invitations from authorized U. S. Government personnel to attend meetings.

(2) Providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost data, where available

(3) Delivering data as specified in the Agreement

(4) Discussing technical matters relating to this prototype project

(5) Providing access to Performer facilities utilized in the performance of this Agreement

(6) Allowing observation of technical activities by appropriate technical personnel of the listed FFRDCs/UARCs. The FFRDC/UARC personnel engaged in GSE&I, TR, and/or TS efforts:

i. Are authorized access to all such technical information (including proprietary information) pertaining to this Agreement and may discuss and disclose it to the applicable DoD personnel in a project/program office

ii. Are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a project/program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government project/program

iii. Shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know

(c) The Performer further agrees to include in all sub-agreements, an Article/clause requiring

compliance by Performers and supplier, and succeeding levels of Performers and suppliers with the response and access and disclosure provisions of this Enabling Article, except for commercial items or commercial services. This Agreement does not relieve the Performer of its responsibility to manage the sub-agreements effectively and efficiently nor is it intended to establish privity of contract between the Government or the listed FFRDCs/UARCs and such subcontractors or suppliers, except as indicated in paragraph D.

(d) The listed FFRDCs/UARCs shall protect the proprietary information of Performers and suppliers in accordance with the Non-disclosure Agreements (NDA) the listed FFRDCs/UARCs entered into with MDA. A copy is available upon request. This Master NDA satisfies the NDA requirements set forth in 10 U.S.C. § 2320 (f)(2)(B) and provides that Performers and suppliers are intended third-party beneficiaries under the NDAs and have the full rights to enforce the terms and conditions of the NDA directly against the listed FFRDCs/UARCs, as if they had been signatory party hereto. Each Performer or supplier hereby waives any requirement for the listed FFRDCs/UARCs to enter into any separate company-to-company confidentiality or other NDAs.

(e) The listed FFRDCs/UARCs shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know, and shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the NDA referred to herein, and the listed FFRDCs/UARCs agree to inform the Performer and suppliers if they plan to use consultants, or contract labor personnel and, upon the request of such Performer or supplier, to have consultants and contract labor personnel execute NDAs directly therewith.

(f) The listed FFRDCs/UARCs personnel are not authorized to direct the Performers in any manner. The Performers agree to accept technical direction as follows:

(1) Technical direction under this Agreement will be given to the Performer solely by MDA/SS Government personnel.

(2) Whenever it becomes necessary to modify the Agreement and redirect the effort, a modification signed by Northrop Grumman and the Performer will be issued.

ARTICLE 39 – ENABLING SUPPORT CONTRACTORS

(a) This Agreement is under the general program management of MDA/SS. MDA/SS has or may enter into contracts with one or more of the following companies, or successor(s), to provide Advisory and Assistance Services (A&AS) and/or Systems Engineering and Technical Assistance (SETA). Non-Disclosure Agreements (NDAs) shall be executed within

30 days after signature of the Agreement or the award of a contract to a successor of the contractors listed in Table 2.

Table 2 – A&AS/SETA Contractors

Company/Organization	Type	Location
Booz Allen Hamilton	SETA/A&AS	Colorado Springs
Exigo Corporation	SETA/A&AS	Colorado Springs, CO
Modern Technology Solutions, Inc. (MTSI)	SETA/A&AS	Alexandria, VA
MDW Associates	SETA/A&AS	Huntsville, AL
Tanist Technologies, LLC	SETA/A&AS	Falcon, CO
Kepler Research	SETA/A&AS	Huntsville, AL
Boston Consulting Group (BCG)	SETA/A&AS	Bethesda, MD
BCF Solutions, Inc.	SETA/A&AS	Chantilly, VA
Yorktown Systems Group Inc.	SETA/A&AS	Colorado Springs, CO

(b) In the performance of this Agreement, the Performer agrees to cooperate with the companies listed above (hereafter referred to as A&AS/SETA). Cooperation includes: allowing observation of technical activities by appropriate A&AS/SETA technical personnel; discussing technical matters related to this Agreement; delivering Data as specified in the Agreement; providing access to Performer facilities utilized in the performance of this Agreement; responding to invitations from authorized A&AS/SETA personnel to attend meetings; and providing access to technical and development planning data. The Performer shall provide A&AS/SETA personnel access to data such as, but not limited to, design and development analyses; test data and results; software and technical data; equipment and process specifications; test and test equipment specifications; procedures, parts, and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data needed by such personnel to perform their required Agreement related support activities.

(c) The Performer further agrees to include in all sub-agreements an Article requiring compliance by the sub-agreement holder and supplier and succeeding levels of sub-agreement holders and suppliers with the response and access and disclosure provisions of paragraph B, subject to coordination with the Performer, except for sub-agreements or sub- contracts for commercial items or commercial services. This Agreement does not relieve the Performer of its responsibility to manage the Sub-awardees under this Agreement effectively and efficiently nor is it intended to establish privity of contract or agreement between the Government or A&AS/SETA and such Sub-awardees, sub-agreement holders, subcontractors, or suppliers.

(d) A&AS/SETA personnel are not authorized to direct the Performer, Sub-awardees, sub-agreement holders, subcontractors, or suppliers in any manner. The Performer, Sub-

awardees, sub-agreement holders, subcontractor, or supplier personnel are not authorized to direct A&AS/SETA personnel.

A&AS/SETA shall make the technical information (including proprietary information) available only to its trustees, officers, employees, contractor labor, consultants, and attorneys who have a need to know. A&AS/SETA contractors shall maintain between itself and the foregoing binding agreements of general application as necessary to fulfill their obligations under the NDA established under paragraph A. A&AS/SETA agree to inform the Performer if it plans to use consultants or contract labor personnel and, upon the request of the Performer, to have its consultants and contract labor personnel execute NDAs directly therewith.

ARTICLE 40 – ANTITRUST

The Performer agrees to comply with all applicable U.S. laws, including U.S. antitrust laws.

ARTICLE 41 – OTHER APPLICABLE LAWS AND REGULATIONS

(a) Civil Rights Act

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000-d) relating to nondiscrimination in Federally-assisted programs. The Performer agrees to comply with the nondiscriminatory provisions of the Act.

(b) Whistleblower Protection Act

This Agreement is subject to the compliance with Title V of the Whistleblower Protection Act of 1989 relating to the protections available to Federal employees against prohibited personnel practices, and for other purposes. The Performer agrees to comply with the provisions of the Act.

(c) Environmental, Safety, and Health Responsibility

The Performer shall comply with all applicable Federal, State, and local environmental, safety, and health laws and regulations. The Performer is responsible for assuring all Government Facilities procedures are followed and necessary permits for performing projects under this Agreement are in place before performing activities requiring such permits. Any cost resulting from the failure of the Performer to perform this duty shall be borne by the Performer.

(d) U.S. Flag Air Carriers

Travel supported by U.S. Government funds under this Agreement shall use U.S.-flag air

carriers (air carriers holding certificates under 49 U.S.C. § 41102) 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 Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (63 FR 63417-63421.))

(e) Combating Trafficking in Persons

(1) Policy. In accordance with 22 U.S.C. Chapter 78, the U.S. Government has adopted a policy prohibiting trafficking in persons.

(2) In accordance with this statute, this Agreement may be terminated by the Government, without penalty, if the Performer or sub-awardees engage in, or use labor recruiters, brokers, or other agents who engage in:

i. severe forms of trafficking in persons;

ii. the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;

iii. the use of forced labor in the performance of the grant, contract, or cooperative agreement; or

iv. acts that directly support or advance trafficking in persons, including the following acts:

1. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.

2. Failing to provide return transportation, or pay for return transportation costs, to an employee from a country outside the U.S. to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

a. exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative agreement; or

b. the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human

trafficking enforcement action.

3. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.

4. Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.

5. Providing or arranging housing that fails to meet the host country housing and safety standards.

(f) Procurement Ethics Requirements

For the purposes of 41 U.S.C. Chapter 21 only, this OT Agreement shall be treated as a Federal agency procurement.

ARTICLE 42 – COST REPORTS

The Performer shall systematically collect and report actual Agreement costs segregated by non-recurring and recurring, functional category, and by unit and/or lot as designated by the Cost and Software Data Reporting (CSDR) Plan to provide DoD cost analysts with needed data to estimate future costs (ADRL 28, ADRL 29, ADRL 30, and ADRL 31).

The Performer will identify any sub-awardee at any tier with a subcontract/sub-award that exceeds $20 million, by providing comments identifying the sub-awardee. The Performer shall require and flow down the requirements for CSDR reporting to sub-awardees at any tier with a subcontract/sub-award that exceeds $50 million or any subcontracts/sub-awards valued between $20 million and $49 million that are designated by the Government as being high risk, high value, or high technical interest. This requirement excludes SpaceX for CSDR cost reporting as required by ADRL 28 and ADRL 31. The Performer shall continue to require and flow down the requirement for CSDR reporting, including reporting required by ADRL 28 and ADRL 31 to all other sub-awardees that fall within the CSDR reporting requirements identified in this Article.

The Performer shall support the Government-led Collaborative Cost Working Group meetings scheduled by Common Cost Methodologies (CCM) Government Lead (Up to quarterly meetings). Sub-awardees shall attend as required by the CCM Government Lead.

ARTICLE 43 – CYBER ASSISTANCE TEAM (CAT)

NORTHROP GRUMMAN SYSTEMS CORPORATION

**ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA)
FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF
THE HBTSS PROGRAM.**

In addition to other Cybersecurity measures, Performers agree to participate in MDA's CAT program to assess corporate risk posture and provide feedback to protect against or mitigate threats to unclassified Defense Industrial Base (DIB) networks. The CAT mission, in accordance with Department of Defense Instruction (DoDI) 5205.13, is to strengthen the BMDS Technical Advantage by partnering with the MDA DIB to protect critical MDA and BMDS data; improve DIB Cybersecurity posture through threat-based assessments of company networks and creation of tailored mitigation strategies; and share DoD Cyber threat information, unclassified and classified (when able) with BMDS DIB partners.

Participating Performers agree to sufficiently collaborate with the CAT and allow CATs adequate access to facilities and unclassified networks to perform effective assessments. For pre-award or routine assessments, the Government will provide a minimum of 30-day notice prior to arriving on site to conduct an assessment. In the case of a reported or suspected Cyber Incident, the Performer agrees to provide immediate access to the CATs.

The Performer agrees to insert terms that conform substantially to the language of this project requirement, including this paragraph, in all Sub-agreements under this Agreement where MDA or BMDS data is processed, stored, displayed, or transmitted on a covered Performer information system.

ARTICLE 46 – PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this Article—

(1) *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).

(2) *Covered foreign country* means The People's Republic of China.

(3) *Covered telecommunications equipment or services* means--

a. Telecommunications equipment produced by Huawei Technologies Company 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 Company, or Dahua Technology Company (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.

(4) *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).

(5) *Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

(6) *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.

(7) *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.

(8) *Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) The Offeror 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 listed below applies or the covered telecommunication equipment or services are covered by a

waiver. Offerors should refer to Northrop Grumman for guidance on waiver applicability and approval.

(1) *Exceptions.* This Article does not prohibit Offerors 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) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for "covered telecommunications equipment or services."

(e) Reporting requirement.

(1) In the event the Performer identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Agreement performance, or the Performer is notified of such by a subcontractor at any tier or by any other source, the Performer shall report the information in paragraph (e)(2) of this Article to the Agreements Officer, unless elsewhere in this RPP or resultant Agreement are established procedures for reporting the information. The Performer shall also report to the website at https://dibnet.dod.mil.

(2) The Performer shall report the following information pursuant to paragraph (e)(1) of this Article:

a. Within one business day from the date of such identification or notification: The Agreement or contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (e)(2)(a) of this Article: Any further available information about mitigation actions undertaken or recommended. In addition, the Performer shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(f) Subcontracts. The Performer shall insert the substance of this Article, including this paragraph (f) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

ARTICLE 48 – ENTIRE AGREEMENT

This OT Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the Performer and Northrop Grumman as described in Article 10 - Modifications. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute the same instrument.

ARTICLE 51 – ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRATORS (OCT 2O21)

(a) Definitions. As used in this Article—

United States or its outlying areas means—

(1) The fifty States;
(2) The District of Columbia;
(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
(4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
(5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This article implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the *Federal Register* on September 14, 2021, 86 FR50985).

(c) *Compliance.* The Performer shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this agreement, for Performer or sub-awardee workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at *https:/www.saferfederalworkforce.gov/contractors/.*

NORTHROP GRUMMAN SYSTEMS CORPORATION

ADDENDUM TO USE WITH TERMS FOR OTHER TRANSACTION AGREEMENT (OTA) FIRM FIXED-PRICE SUBCONTRACTS IN SUPPORT OF THE HBTSS PROGRAM.

(d) *Sub-Awards.* The Performer shall include the substance of this article, including this paragraph (d), in sub-awards at any tier that exceed $250,000 and are for services, including construction, performed in whole or in part within the United States or its outlying areas.