21 Apr 26

MEMORANDUM FOR AEDC VELOCITY ALLIANCE CONSORTIUM MEMBERS

FROM: AFMC/AFTC/PZIA (Arnold)
100 Kindel Drive
Arnold AFB, TN 37389-1332

SUBJECT: Base Agreement Article: AEDC Velocity Alliance Consortium

Article Definitions

As used throughout this Agreement, the following terms shall have the meanings set forth below:

- Acceptance: The Government's formal, written acknowledgement that a prototype, deliverable, or milestone has been successfully demonstrated to meet the pre-defined Acceptance Criteria.
- Acceptance Criteria: The specific, measurable, and testable requirements that a prototype, deliverable, or milestone must meet to be accepted by the Government, as detailed in the Acceptance Test Plan or Statement of Work.
- Agreement: This Other Transaction (OT) Agreement, executed under the authority of 10 U.S.C. § 4022, including all attachments and subsequent modifications.
- Agreements Officer (AO): The Government official with the authority to enter into, administer, and modify this Other Transaction Agreement on behalf of the Government.
- Consequential Damages: Indirect, special, incidental, or punitive damages, including but not limited to, lost profits, loss of use, loss of revenue, or loss of data.
- Contractor / Performer/ Vendor: The non-government party to this Agreement.
- Controlled Unclassified Information (CUI): Information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls.
- Cure Notice: A written notice from the non-breaching Party that details a material failure of performance and provides the breaching Party with a specified period to correct the failure.
- Cyber Incident: An action taken through the use of computer networks that results in a compromise or an actual or potentially adverse effect on an information system or the Controlled Unclassified Information (CUI) residing therein.
- Cybersecurity Maturity Model Certification (CMMC): The DoD's framework for verifying that a Performer has implemented the required cybersecurity standards to protect CUI.

- Direct Damages: The damages that arise naturally and foreseeably from a breach of this Agreement in the usual course of events. This does not include Consequential Damages as defined above.
- Equitable Settlement: A negotiated amount intended to fairly compensate a Party for work performed and costs incurred, particularly in the event of a termination.
- Force Majeure: An event beyond the reasonable control of a Party and without their fault or negligence that delays or prevents performance of an obligation under this Agreement. Such events may include, but are not limited to, acts of God, acts of a public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes.
- Government-Furnished Property (GFP): Property in the possession of, or directly acquired by, the Government and subsequently furnished to the Performer for the performance of this Agreement.
- Government Purpose Rights: The right for the Government to use, modify, reproduce, and disclose technical data or computer software within the Government without restriction; and to release or disclose it outside the Government and permit its use *for U.S. Government purposes only*.
- Latent Defect: A hidden defect in a delivered item that existed at the time of acceptance but was not discoverable through a reasonable inspection or the execution of the Acceptance Criteria.
- Limited Rights (for Technical Data): The right for the Government to use, modify, and reproduce technical data within the Government only. The Government may not disclose the data outside the Government or use it for manufacturing without the Performer's express written permission.
- Milestone: A specific, demonstrable event or accomplishment defined in the "Milestone and Payment Schedule" that, upon successful completion and acceptance, triggers a payment to the Performer.
- Milestone and Payment Schedule: The structure to this Agreement that details all payable milestones, the specific completion criteria for each, and the corresponding payment amounts.
- Modification: A formal, written change to this Agreement that is signed by the authorized representatives of both Parties.
- Party / Parties: The Government and the Performer, individually or collectively.
- Restricted Rights (for Computer Software): The right for the Government to use computer software within the Government only. The Government may not decompile, reverse engineer, or disclose the software outside the Government without the Performer's express written permission.
- Statement of Objectives (SOO) / Statement of Work (SOW): The attachment to this Agreement that describes the scope of work, tasks, and deliverables required of the Performer.
- Unlimited Rights: The right for the Government to use, modify, reproduce, disclose, perform, display, or release technical data or computer software in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

Article: Demonstration and Acceptance

This Article defines the process by which all major prototype deliverables under this Agreement are demonstrated, reviewed, and formally accepted by the Government.

A. Basis for Acceptance

The "Key Elements to Address for Success" detailed within each of the three Prototype Definitions (Business Process, Proof of Concept, and Operational Utility) shall serve as the definitive acceptance criteria for this Agreement. Acceptance of each prototype is contingent upon the vendor's successful delivery and verification of every item identified in the corresponding definition. No separate or post-award acceptance test plan is required, as the criteria are fully established herein.

B. The Acceptance Process

1. Demonstration through Delivery: The Performer shall "demonstrate" a prototype by providing written notification to the Agreements Officer that all required deliverables for a given phase are complete and have been submitted to the Government for review.
    - For the Business Process and Proof of Concept prototypes, this constitutes the submission of the required documentation packages.
    - For the Operational Utility prototype, this constitutes the completion of the physical installation and the submission of the Final Validation Report, which documents the results of the final performance testing.
2. Government Verification: The Government will review the submitted deliverables against the specific "Key Elements for Success" listed in the relevant Prototype Definition.
3. Formal Acceptance: Acceptance shall occur only upon the Government’s issuance of a formal written acknowledgement that the Performer has successfully delivered and verified all required elements for that phase. This written acceptance is the official event that concludes a project phase.

C. Correction of Deficiencies

Should any submitted deliverable fail to meet the acceptance criteria during Government verification, the Performer shall correct all identified deficiencies at no additional cost to the Government and shall re-submit the deliverable for evaluation. If the Government, at its sole discretion, agrees to accept a prototype with minor, non-critical deficiencies, the Parties may negotiate an equitable adjustment to the Agreement price.

D. Latent Defects

The Performer’s responsibility for the quality of the final, physical Operational Utility Prototype extends beyond initial acceptance. A latent defect is a hidden flaw, not discoverable through reasonable inspection during final verification, which causes the prototype to fail to meet its performance or structural

requirements after acceptance. The Performer shall be responsible for correcting such defects at its own expense, provided the Government provides notice:

1. Within a reasonable time after the defect was discovered or should have been discovered; and
2. Before any substantial change or modification occurs in the condition of the prototype, unless the change is a direct result of the defect itself.

Article: Assignment of Payments

The Performer may assign its rights to receive payments due under this Agreement to a bank, trust company, or other financing institution. Any such assignment must be made in writing and provided to the Agreements Officer and the designated payment office.

However, the Performer may not assign its rights to receive payment if such payment is made directly by a third party.

Article: Agreement Modifications

A. Mutual Agreement for Changes
Either Party may propose changes to the scope, schedule, price, or other material terms of this Agreement. All such changes shall be subject to negotiation between the Parties.

B. Formalization of Changes
No change shall be effective until it is captured in a formal, written modification to this Agreement, signed by the authorized representatives of both the Government and the Performer.

C. Administrative Changes
Purely administrative changes, such as updating points of contact or correcting accounting information, may be made unilaterally by the Government's Agreements Officer via written notice to the Performer.

Article: Collaborative Dispute Resolution

A. Guiding Principles
The Parties shall engage in timely, cooperative, and good-faith communication to resolve any dispute, claim, or disagreement arising from or related to this Agreement. All disputes, including but not limited to allegations of breach, shall be first resolved exclusively under the procedures set forth in this Article.

B. Resolution Process

1. Initial Resolution: When disputes, misunderstandings, or disagreements arise, the Parties agree to make reasonable efforts to resolve them through discussion and mutual agreement at the earliest opportunity between their respective Project Managers.

2. Senior-Level Escalation: If the Parties are unable to reach a mutually agreed solution within fifteen (15) business days, the matter shall be considered a conflict to be resolved between the Government's Agreements Officer and Legal Team and the Performer's designated senior leadership and Legal Team.
3. Formal Notice: If the conflict remains unresolved by mutual agreement, the aggrieved Party shall formally document the dispute by notifying the other Party through the cognizant Agreements Officer. The notification shall include the relevant facts, the unresolved issues, the clarification or remedy sought, and the rationale for why the requested remedy is appropriate.
4. Written Response: The Party receiving the notice shall provide a written response detailing its position and a proposed resolution within thirty (30) business days.
5. Seeking Further Relief: Upon the issuance of the final decision, and only after the escalation procedures above have been exhausted, the aggrieved Party may pursue any available relief. The Performer acknowledges that state courts and agencies lack jurisdiction over the Federal Government. Therefore, any litigation shall be brought exclusively in a United States Federal Court of competent jurisdiction. The Contract Disputes Act shall not apply to this Agreement. Nothing in this Agreement shall be construed as a waiver of the Government's sovereign immunity or consent to suit except as otherwise authorized by law

C. Alternative Dispute Resolution (ADR)
At any stage, the Parties may mutually agree in writing to utilize an ADR procedure to resolve a dispute.

- Selection of Neutral: Any appointed mediator or arbitrator shall be mutually agreed upon by both Parties. If the Parties cannot agree on a neutral party within thirty (30) days, they shall request a list of qualified neutrals from a reputable ADR organization (such as the American Arbitration Association or JAMS) to facilitate the selection.
- Costs: Unless otherwise agreed to in writing, the costs of arbitration or mediation shall be shared equally by both Parties.

Article: Excusable Delays

A. Definition
Neither the Government nor the Performer shall be considered in breach or default of this Agreement for a failure or delay in performance caused by an event beyond their reasonable control and without their fault or negligence. Such events, often referred to as Force Majeure, may include, but are not limited to: acts of God, acts of a public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

B. Notification and Mitigation
The Party affected by such an event shall provide prompt written notice to the other Party, describing the event, its cause, and its anticipated impact on performance. The affected Party shall also make all reasonable efforts to mitigate the effects of the event and minimize any delay.

C. Agreement Adjustment
Upon receipt of the notice, the Parties shall promptly consult to determine the appropriate path forward. If the event results in a material impact on the Agreement's cost or schedule, the Parties shall negotiate an equitable adjustment to the relevant terms of the Agreement, to be captured in a formal modification.

Article: Intellectual Property Indemnification

A. Indemnification
The Performer shall defend and indemnify the Government and its officers, employees, and agents against liability, including costs, for any claim of patent, trademark, or copyright infringement arising from the prototype or services delivered under this Agreement (the "Claim").

B. Exceptions to Indemnification
This indemnification shall not apply to any Claim to the extent it arises from:

1. The Performer's compliance with specific, detailed written specifications or design direction provided by the Government;
2. The use of Government-Furnished Information, software, or property; or
3. A modification to the prototype or service made by the Government without the Performer's consent.

C. Procedure
In the event of a Claim:

1. The Government shall provide prompt written notice of the Claim to the Performer.
2. Once the Performer has indemnified the Government, the Performer shall have the right to control the defense and settlement of the Claim.
3. The Government shall provide reasonable information and assistance to the Performer, at the Performer's expense, in the defense of the Claim.
4. The Performer shall not agree to any settlement that imposes a financial obligation or admits liability on the part of the Government without the Government's prior written consent, which shall not be unreasonably withheld.

Article: Payment and Invoicing

A. Payment Based on Milestones
Payments shall be made upon the successful completion and acceptance of the milestones detailed in the "Milestone and Payment Schedule," which is attached to and made a part of this Agreement. Partial payment for partially completed milestones is not authorized unless otherwise specified in the schedule.

B. Invoicing
Upon the acceptance of a payable milestone, the Performer shall submit a proper invoice in accordance with the "Invoicing" article of this Agreement. A proper invoice must include, at a minimum, the Agreement number, a description of the completed milestone, and the corresponding payment amount.

C. Payment Terms
The Government shall make payment within thirty (30) days of receiving a proper and accurate invoice.

D. Overpayments and Other Debts

1. Overpayments: If the Government has made an overpayment or duplicate payment, the Performer shall promptly remit the excess amount to the payment office cited in this Agreement. The remittance shall include a description of the overpayment, the Agreement number, and the affected milestone.

2. Other Debts: Any amount payable from the Performer to the Government shall be considered a debt. The Parties shall first seek to resolve any debts by mutual agreement. If unresolved, amounts due to the Government may accrue interest in accordance with applicable U.S. Treasury regulations.

E. Final Payment
The final payment under this Agreement shall be made after the successful completion, demonstration, and Government acceptance of all obligations set forth herein.

F. Invoicing
The contractor shall submit invoices through Wide Area Workflow (WAWF), https://wawf.eb.mil/, and incorporate the data from the table below:

Invoice Type:	Combo
Pay Official DoDAAC:	F03000
Issue By DoDAAC:	FA9101
Admin DoDAAC:	FA9101
Inspect By DoDAAC:	F1EEPM
Ship To Code:	FY1476
WAWF POC:	disa.global.servicedesk.mbx.eb - ticket-requests@mail.mil
Contact the WAWF helpdesk at 866-618-5988, if assistance is needed.	

Article: Risk of Loss

The Performer shall bear all risk of loss or damage to the prototype and any other items delivered under this Agreement until they are formally accepted by the Government, as defined in the "Testing, Demonstration, and Acceptance" article.

The Performer's responsibility includes the safe transport and delivery of all items to the destination(s) specified in this Agreement, including Arnold Air Force Base, TN.

Article: Taxes and Duties

The Performer is responsible for identifying and paying all applicable Federal, State, and local taxes and duties associated with its performance under this Agreement.

The mutually agreed-upon price of this Agreement is all-inclusive, and the Government shall not be responsible for, nor shall the price be adjusted to accommodate, such taxes or duties.

Article: Termination for Convenience

A. Government's Right to Terminate
The Government may terminate this Agreement, in whole or in part, for its convenience by providing written notice to the Performer.

B. Performer's Obligations
Upon receipt of the termination notice, the Performer shall:

1. Immediately cease all work as directed in the notice.
2. Place no further subcontracts or orders for materials or services, except as necessary for completing the non-terminated portion of the Agreement.
3. Take all reasonable steps to minimize costs allocable to the work covered by the notice.

C. Settlement and Payment
Following termination, the Parties shall negotiate a fair and equitable settlement. The Government shall pay the Performer for:

1. All work acceptably performed and milestones completed prior to the effective date of termination.
2. Reasonable, demonstrable costs incurred by the Performer as a direct result of the termination, such as costs for settling subcontracts.

For the purpose of this settlement, the Performer is not required to comply with the Cost Accounting Standards or the cost principles of the Federal Acquisition Regulation (FAR). However, the Government reserves the right to audit only those records necessary to verify the specific costs claimed as part of the termination settlement. The Performer shall not be paid for any costs that could have been reasonably avoided.

Article: Termination for Default

A. General Default and Cure Notice
For any failure by a Party to perform a material obligation under this Agreement, the non-breaching Party may provide a written "cure notice" to the breaching Party. The notice shall describe the failure in reasonable detail and state the intent to terminate if the failure is not corrected. The breaching Party shall have thirty (30) days from receipt of the notice (or a longer period if mutually agreed) to cure the failure to the non-breaching Party's reasonable satisfaction. If the breaching Party fails to cure the material failure within the specified period, the non-breaching Party may terminate this Agreement for default.

B. Termination for Failure to Maintain Good Standing
Notwithstanding the cure period described in Section A, the Government may terminate this Agreement for default, effective immediately upon written notice, for a Member's failure to maintain "Good Standing." A failure to maintain Good Standing includes, but is not limited to:

1. Failure to maintain a current and valid Joint Certification Program (JCP) certification.
2. Failure to maintain a compliant cybersecurity posture (including failure to maintain annual SPRS affirmations, failure to achieve CMMC Level 2 C3PAO certification by the November 2026 deadline, or failure to flow down requirements to subcontractors).
3. A material breach of the Cyber Incident Reporting requirements (e.g., failure to rapidly report an incident within 72 hours).

These specific requirements are foundational to Alliance membership, and their lapse constitutes a non-curable material breach, making the standard 30-day cure period inapplicable.

C. Settlement
In the event of a termination for default under either Section A or B, the Parties shall negotiate an equitable settlement. The Government shall pay for any work acceptably performed and delivered prior to termination. The settlement shall also account for any demonstrable damages incurred by the non-breaching Party as a direct result of the default. Any rights or remedies provided by law shall be preserved.

Article: Title and Ownership

A. Title to Deliverables
Title to the prototype and any other physical items delivered by the Performer under this Agreement shall pass to the Government upon the Government's formal written acceptance of those items. This transfer of title is effective regardless of when or where the Government takes physical possession.

B. Title to Government Property
Title to any property furnished by the Government to the Performer for use under this Agreement ("Government-Furnished Property") shall remain with the Government at all times.

Article: Limited Warranty

A. Express Limited Warranty
The Performer warrants that for a period of TBD from the date of Government acceptance, the prototype will be free from defects in materials and workmanship and will conform to the mutually agreed-upon design specifications detailed in this Agreement.

B. Disclaimer of Other Warranties
THE EXPRESS LIMITED WARRANTY IN PARAGRAPH (A) IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED. THE PERFORMER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

C. Exclusive Remedy
The Government shall provide prompt written notice to the Performer of any breach of the limited warranty. The Performer's sole obligation, and the Government's exclusive remedy, shall be for the Performer, at its own expense, to either repair or replace the defective item.

D. Exclusions
This warranty shall not apply to any defect arising from: (1) normal wear and tear; (2) modifications made by the Government without the Performer’s consent; or (3) damage caused by accident, abuse, or use of the prototype in a manner for which it was not designed after it has been accepted by the Government.

Article: Limitation of Liability

A. Disclaimer of Consequential Damages
IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT...

B. Cap on Direct Damages
Except for the obligations set forth in the "Intellectual Property Indemnification" article and liability for willful misconduct, each Party's total cumulative liability to the other for direct damages arising from or related to this Agreement shall not exceed the total price of this Agreement. For the purposes of this article, the "total price" is defined as the sum of all funds paid or obligated to be paid by the Government for the base effort and any options that have been formally exercised.

Article: Compliance with Law and Agreement Status

A. General Compliance
The Performer shall comply with all Federal, State, and local laws that are generally applicable to commercial businesses operating within the United States.

B. Status of this Agreement
The Parties agree and acknowledge that this Agreement is an Other Transaction executed under the authority of 10 U.S.C. § 4022. It is not a procurement contract and is therefore not subject to the Federal

Acquisition Regulation (FAR) or its supplements, except for any law or regulation that is made specifically applicable to Other Transactions by Federal statute.

Article: Specific Statutory Requirements

A. Agreement Status
The Parties acknowledge that this Agreement is an Other Transaction executed under the authority of 10 U.S.C. § 4022 and is not a Federal procurement contract. As such, it is not subject to the laws and regulations specifically applicable to procurement contracts.

B. Applicable Statute
The Performer agrees to comply with 31 U.S.C. § 1352, “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,” which is made applicable to this Agreement by law. This statute requires the Performer to certify that it has not and will not use federally appropriated funds to lobby any Federal agency or Congress in connection with the award or modification of this Agreement.

Article: Third-Party Terms of Service (TOS) and End User License Agreements (EULAs)

A. Context
The Parties acknowledge that performance under this Agreement may require the use of commercial products or services (e.g., software, cloud services) that are subject to a provider’s standard EULA or TOS.

B. Unenforceable Provisions
The U.S. Government is prohibited by Federal law (including the Anti-Deficiency Act, 31 U.S.C. § 1341) from agreeing to certain terms commonly found in commercial EULAs and TOS. Accordingly, any provision that would create an open-ended or undefined financial obligation for the Government, including but not limited to clauses requiring indemnification of the provider, is unenforceable against the Government and shall be deemed stricken from such EULA or TOS.

C. Acceptance of Terms
No action by a Government employee or authorized end-user, including the act of clicking "I agree" to a "click-wrap" or "browse-wrap" agreement, shall be construed as binding the Government to any unenforceable provision as described in Paragraph B.

D. Exception
This article does not apply to any indemnification by the Government that is expressly authorized by a separate Federal statute.

Article: Limitation of Obligation and Milestone Funding

A. Incremental Funding
This Agreement is/may be incrementally funded. The total estimated value of the Agreement is $[Total

Estimated Value]; however, only a portion of this amount is currently available for performance. The Government's total liability under this Agreement is limited to the amount of funds allotted.

B. Funds Currently Allotted
The total amount of funds currently allotted and available for payment by the Government under this Agreement is $[Amount Currently Allotted].

C. Performer's Obligation to Limit Work
The Performer is authorized to perform work and incur costs up to the total amount of funds currently allotted. The Performer is not authorized, and agrees it shall not, continue work or incur costs beyond this point. The Government will not be obligated to reimburse the Performer for any costs incurred in excess of the funds allotted.

D. Notification Requirement
The Performer shall monitor its expenditures and shall notify the Agreements Officer in writing at least sixty (60) days before it anticipates that its costs will exceed 80% of the currently allotted funds. This notification shall include an estimate of the additional funding and the date required to continue performance without interruption.

E. Funding of Future Work
The Government anticipates allotting additional funds for subsequent milestones as work progresses and subject to the availability of appropriations. The allotment of any additional funds shall be made via a formal, written modification to this Agreement signed by both Parties. Nothing in this Article shall be construed as obligating the Government to allot additional funds at any time.

Article: Intellectual Property Rights

A. Guiding Principles
The Parties agree to a fair allocation of rights in intellectual property that reflects each Party's contribution to its development. The goal is to provide the Government with the rights it needs for its purposes while preserving the Performer's ability to commercialize its technology.

B. Definitions

1. "Unlimited Rights": The right for the Government to use, disclose, reproduce, prepare derivative works, distribute, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

2. "Government Purpose Rights": The right to use, modify, reproduce, release, or disclose the technical data or computer software within the Government without restriction; and to release or disclose the data/software outside the Government and permit its use for U.S. Government purposes only. This includes the right to authorize a third party to use the data/software to manufacture an item for the direct use of the U.S. Government.

3. "Limited Rights" (for Technical Data) / "Restricted Rights" (for Computer Software): The right to use, modify, and reproduce the data/software within the Government only. This right does not

include permission to disclose the data/software outside the Government or use it for manufacturing without the Performer's express written permission.

C. Allocation of Rights

1. Exclusively with Government Funds: The Government shall receive Unlimited Rights in all technical data and computer software developed exclusively with Government funds under this Agreement.
2. Exclusively at Private Expense: The Government shall receive Limited/Restricted Rights in all technical data and computer software that was developed exclusively at the Performer's private expense (i.e., background IP).
3. With Mixed Funding: The Government shall receive Government Purpose Rights in all technical data and computer software developed with a mix of Government and Performer funding under this Agreement. The Performer's cost-share contribution under this Agreement qualifies its developments for this category.

D. Marking of Data and Software
To claim any rights other than Unlimited Rights, the Performer must mark all technical data and computer software with an appropriate restrictive legend identifying the rights asserted. Any data or software delivered without a restrictive legend shall be presumed to have been delivered with Unlimited Rights.

E. Invention Disclosure
The Performer shall promptly disclose in writing to the Agreements Officer each invention conceived or first actually reduced to practice in the performance of this Agreement. Title to all such inventions shall remain with the Performer, subject to the Government's license rights as described herein.

F. Sub-agreements
The Performer shall include this Article, suitably modified to identify the parties, in its sub-agreements. The Performer remains responsible for ensuring the Government acquires all the rights it is entitled to under this Article.

Article: Stop-Work Order

A. Issuance of Order
The Agreements Officer (AO) may, at any time, by written order to the Performer, require the Performer to stop all, or any part, of the work required by this Agreement for a specified period. Upon receipt of the order, the Performer shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order.

B. Action Following Stoppage
Upon the conclusion of the stop-work period, the AO shall either:

1. Cancel the Stop-Work Order and direct the Performer to resume work; or

2. Terminate the work covered by the order in accordance with the "Termination" article of this Agreement.

C. Equitable Adjustment
If a Stop-Work Order is canceled and the Performer resumes work, the Parties shall negotiate an equitable adjustment to the delivery schedule, price, or any other term of the Agreement affected by the work stoppage, provided that:

1. The stop-work order resulted in an increase in the time or cost required for the performance of any part of this Agreement; and
2. The Performer notifies the AO of its intent to seek an adjustment within thirty (30) days after the work resumes.

Article: Delivery

A. Delivery Responsibility
The Performer shall be responsible for all costs and arrangements related to the packaging, transportation, and delivery of all items and deliverables to the destination(s) specified in this Agreement, including Arnold Air Force Base, TN.

B. Risk of Loss
Risk of loss or damage to all items and deliverables shall remain with the Performer until the Government's formal written acceptance of those items, as further defined in the "Testing, Demonstration, and Acceptance" article.

C. Good Order and Condition
All items shall be delivered in good order and condition, conforming to the requirements of this Agreement. The Performer shall provide the Government with a delivery schedule and necessary shipping documentation.

Article: Defense Priorities and Allocation System (DPAS)

This Agreement is a rated order, certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS). The Performer shall comply with all applicable requirements of the DPAS regulation (15 CFR Part 700).

Article: System for Award Management (SAM)

The Performer shall maintain an active registration in the System for Award Management (SAM) for the purposes of entity validation and electronic payment processing. This registration must be maintained throughout the entire period of performance of this Agreement, including through final payment.

The Parties agree that this requirement is for administrative and payment purposes only and does not incorporate the standard Federal Acquisition Regulation (FAR) "Representations and Certifications" from the SAM.gov portal into this Other Transaction Agreement. The Performer's binding representations for this Agreement are exclusively those stated in the "Performer Representations" article.

Article: Joint Certification Program (JCP)

The Performer shall obtain and maintain a valid certification under the Joint Certification Program (JCP) as a prerequisite to receive any export-controlled technical data under this Agreement, if applicable.

The Performer is responsible for managing its own certification status.

Article: Cybersecurity Requirements (CUI and CMMC)

A. Baseline Security and NIST SP 800-171 Implementation

1. Adequate Security: The Member shall provide adequate security on all covered information systems used in the performance of any Project-Level Agreement. The Member shall only process, store, or transmit Controlled Unclassified Information (CUI) or Federal Contract Information (FCI) on information systems that meet the security requirements established in this Article.
2. NIST SP 800-171: The Member shall implement and maintain the 110 security controls detailed in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171. Implementation shall be documented in a System Security Plan (SSP) and, where applicable, a Plan of Action and Milestones (POA&M).
3. Cloud Computing: If the Member utilizes an external cloud service provider to store, process, or transmit CUI, the Member shall ensure the cloud service provider meets security requirements equivalent to the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline and complies with the incident reporting and media preservation requirements of this Article.

B. Cybersecurity Maturity Model Certification (CMMC)

1. Required Status: Because performance under this Alliance involves CUI, the Member shall achieve and maintain a CMMC Level 2 Certification Assessment conducted by a Certified Third-Party Assessment Organization (C3PAO).
2. November 2026 Deadline & Alternative Path: Members accepted into the Alliance via the Alternative Compliance Path (possessing a current NIST SP 800-171 DoD Assessment in SPRS no older than 3 years and a compliance roadmap) must successfully close out any valid POA&Ms (within the strict 180-day limitation) and achieve full CMMC Level 2 C3PAO Certification no later than November 2026.

3. Annual Affirmations: The Member shall complete and maintain an annual affirmation of continuous compliance in the Supplier Performance Risk System (SPRS). This affirmation must be submitted by a senior company affirming official for each applicable CMMC Unique Identifier (UID) associated with the systems used in performance of Alliance projects.

C. Cyber Incident Reporting and Response

1. 72-Hour Reporting: When the Member discovers a cyber incident that affects a covered information system, affects CUI residing therein, or affects the Member's ability to perform operationally critical support, the Member shall rapidly report the incident to DoD at https://dibnet.dod.mil within 72 hours of discovery.

2. Medium Assurance Certificate: The Member shall acquire and maintain a DoD-approved medium assurance certificate to report cyber incidents.

3. Malicious Software: If malicious software is discovered and isolated in connection with a reported cyber incident, the Member shall submit the malicious software directly to the DoD Cyber Crime Center (DC3) in accordance with DC3 instructions.

4. Media Preservation: The Member shall preserve and protect images of all known affected information systems and relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow the Government to request the media or decline interest.

5. Forensic and Damage Assessment Access: Upon request, the Member shall provide the Government with access to additional information, equipment, and all damage assessment information necessary to conduct forensic analysis.

6. Information Protection: The Government will protect against the unauthorized use or release of Contractor attributional/proprietary information reported under this section, releasing it outside DoD only for authorized national security, law enforcement, or incident mitigation purposes.

D. Government Assessments (Medium and High)

1. Assessment Rights: The Government reserves the right to conduct a Medium or High NIST SP 800-171 DoD Assessment (e.g., via the Defense Contract Management Agency (DCMA) or other authorized personnel) to verify the security controls described in the Member's SSP. The Member shall provide necessary access to facilities, systems, and personnel.

2. Precedence and Rebuttal: The results of a Government-conducted Medium or High Assessment will take precedence over self-assessments. Upon completion of an assessment, the Member shall have 14 business days to provide additional information to rebut findings prior to the Government posting the summary level scores to SPRS.

E. Sub-agreement Flow-Down Requirements

The Member is responsible for ensuring the security of CUI flowed down to its subcontractors. The Member shall:

1. Include the substance of this entire Cybersecurity Article in all sub-agreements (including those for commercial products or services) that involve the processing, storing, or transmitting of FCI or CUI.
2. Prior to awarding a sub-agreement, verify that the subcontractor has the current, appropriate CMMC status (or NIST SP 800-171 SPRS score if operating under the pre-November 2026 alternative path timeline) required for the information being flowed down.
3. Ensure subcontractors complete and maintain their own annual SPRS affirmations of continuous compliance.
4. Require subcontractors to rapidly report cyber incidents to DoD and provide the incident report number to the prime Member.

Article: Country of Origin

A. Policy
It is the policy of the Department of Defense to prioritize products and components manufactured in the United States or its qualifying countries.

B. Performer Representation
The Performer represents that, to the best of its ability and knowledge, the end products delivered under this Agreement will be manufactured in the United States or a "qualifying country." For the purposes of this article, a "qualifying country" is defined as a country that has a reciprocal defense procurement memorandum of understanding or international agreement with the United States. As of the date of this Agreement, these countries include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

C. Waiver
The Government's Agreements Officer may authorize the acquisition of products from other countries if it is determined to be in the Government's best interest for the successful execution of this prototype project.

Article: Cyber Incident Reporting and Response

A. Definition of Cyber Incident
For the purposes of this article, a "Cyber Incident" is an action taken through the use of computer networks that results in a compromise or an actual or potentially adverse effect on the Performer's information system or the Controlled Unclassified Information (CUI) residing therein.

B. Incident Reporting Requirement

1. Rapid Reporting: When the Performer discovers a Cyber Incident, it shall rapidly report the incident (within 72 hours) to the Department of Defense at the DIBNet portal: https://dibnet.dod.mil.

2. Access Certificate: The Performer is responsible for obtaining and maintaining the required DoD-approved medium assurance certificate to access the DIBNet portal for reporting.

C. Post-Incident Cooperation
Following a Cyber Incident report, the Performer shall:

1. Preserve Data: Preserve and protect images of all known affected information systems and all relevant monitoring and packet capture data for at least 90 days from the submission of the report.

2. Provide Access: Upon request from the Agreements Officer, provide the Government with access to additional information or equipment necessary to conduct a forensic analysis and damage assessment.

3. Submit Malicious Software: Submit any malicious software discovered in connection with the incident to the DoD Cyber Crime Center (DC3) in accordance with their instructions.

D. Protection of Performer Information
The Government shall protect any of the Performer's confidential or proprietary information that is shared during an incident investigation to the maximum extent permitted by law, including through the exercise of applicable Freedom of Information Act (FOIA) exemptions.

E. Sub-agreements
The Performer shall flow down the substance of these reporting and cooperation requirements to all sub-agreements where CUI is handled. The Performer shall require its subcontractors to rapidly report any Cyber Incident directly to the Performer, who is then responsible for reporting to the DoD in accordance with this article.

Article: Prohibited Sources

A. Prohibition on Certain Telecommunications and Video Surveillance Equipment (Section 889)
In accordance with Section 889 of the National Defense Authorization Act for Fiscal Year 2019, the Performer is prohibited from providing or using telecommunications or video surveillance equipment or services produced or provided by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or their subsidiaries.

B. Prohibition on Covered Defense Telecommunications Equipment or Services (Section 1656)
In accordance with Section 1656 of the National Defense Authorization Act for Fiscal Year 2018, the Performer is prohibited from providing any equipment, system, or service that uses telecommunications equipment or services from The People’s Republic of China or The Russian Federation in systems supporting DoD's nuclear deterrence or homeland defense missions.

C. Prohibition on Kaspersky Lab Products and Services (Section 1634)
In accordance with Section 1634 of the National Defense Authorization Act for Fiscal Year 2018, the Performer is prohibited from providing to the Government, or using in the performance of this Agreement, any hardware, software, or service developed or provided, in whole or in part, by Kaspersky Lab or its affiliates.

D. Prohibition on Certain Items from Communist Chinese Military Companies (Section 1261)
In accordance with Section 1261 of the National Defense Authorization Act for Fiscal Year 2021, the Performer is prohibited from acquiring any items covered by the United States Munitions List (USML) or the "600 series" of the Commerce Control List (CCL), directly or indirectly, from any entity identified as a "Communist Chinese military company" by the Department of Defense.

E. Performer Representation
By executing this Agreement, the Performer represents that it will not provide or use any items, equipment, or services prohibited by the statutes referenced in Paragraphs A, B, C, and D.

F. Reporting and Flowdown
The Performer shall promptly report any discovery of such prohibited equipment, products, or services to the Agreements Officer and shall flow down the substance of this entire article to all sub-agreements.

Article: Prohibition on ByteDance Covered Applications

A. Prohibition
In accordance with the "No TikTok on Government Devices Act," the Performer is prohibited from having or using a "covered application" on any "project information technology."

B. Definitions

1. Covered Application: Means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or its affiliates.

2. Project Information Technology: Means any information technology (including computers, mobile devices, and software) used by the Performer or its employees in the performance of this Agreement. This also includes any information technology owned or managed by the Government that the Performer may use.

C. Exception
This prohibition does not apply if the Agreements Officer provides prior written notification to the Performer that a mission-critical exception has been granted in accordance with Federal policy.

D. Sub-agreements
The Performer shall flow down the substance of this article to all sub-agreements at any tier.

Article: Comptroller General Access to Records

In accordance with 10 U.S.C. § 4022(c)(1), the Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any records of the Performer, or any of its subcontractors, that directly pertain to this Agreement. This right of access shall exist for a period of three (3) years after final payment under this Agreement.

Article: Phased Execution and Optional Milestones

A. Phased Approach
The Parties anticipate that this prototype effort may be accomplished in multiple, sequential phases. The initial scope of work and funding under this Agreement cover the "base" phase(s) as detailed in the Statement of Work. Future phases of work are referred to herein as "Options."

B. Definition and Exercise of Options

1. Definition for This Agreement: For the purposes of this Agreement, an "Option" is defined as a potential future phase of work that is not yet authorized or funded. It is explicitly understood that an "Option" under this Agreement is not an "option" as defined in the Federal Acquisition Regulation (FAR).
2. Not a Unilateral Right: The existence of an Option does not grant the Government a unilateral right to exercise it.
3. Mutual Agreement Required: The exercise of any Option shall be accomplished only through a formal, bilateral written modification to this Agreement, signed by the authorized representatives of both Parties following a mutual agreement on the Option's scope, schedule, price, and any other relevant terms.

C. Consideration and Evaluation
Upon the successful completion of the base phase, and subject to the availability of funds and a determination that it is in the Government’s best interest, the Parties may negotiate the terms for one or more Options. The Government is under no obligation to propose, negotiate, or fund any Option.

Article: Duty-Free Entry

A. Policy and Purpose
To reduce the cost of performance, the Government will assist the Performer in obtaining duty-free entry for qualifying foreign supplies that are imported into the United States for the sole purpose of performing work under this Agreement.

B. Performer Responsibilities

1. Pricing: The Performer represents that the price of this Agreement excludes any U.S. customs duties for items it intends to import under this provision.

2. Notification: The Performer shall provide written notification to the Agreements Officer (AO) for any foreign supplies it intends to import duty-free. This notification must be provided with sufficient lead time for the Government to execute the necessary documentation.

3. Administration: The Performer is responsible for preparing and processing all necessary U.S. Customs and shipping documentation. When shipping items directly to a U.S. military installation, then at least two elements are required related to Duty-Free Entry, as follows:

   - Duty-Free Entry should be listed in the shipping documents

   - Include the notation "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA), St. Louis, MO, ATTN: Duty Free Entry Team, 1222 Spruce Street, Room 9.300, St. Louis, MO 63103-2812, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

C. Government Responsibilities
Upon request from the Performer, the Government's authorized representative will execute the necessary Duty-Free Entry Certificates and provide reasonable assistance to the Performer in coordinating with U.S. Customs.

D. Improper Use
The Performer shall be solely responsible for and agrees to pay any and all customs duties if items imported duty-free under this provision are used for any purpose other than the performance of this Agreement.

E. Flowdown
The Performer shall flow down the substance of this article to all sub-agreements where foreign supplies may be imported for the performance of this Agreement.

Article: Membership and Good Standing

Membership in the AEDC Velocity Alliance is contingent upon the execution of a Membership Agreement. To remain a member in "Good Standing," a member must adhere to all provisions of the Governing Articles.

A. Conditions for Good Standing
A Member shall be considered in "Good Standing" and eligible to participate in Project Opportunity Announcements provided they maintain, at all times:

1. A current and valid Joint Certification Program (JCP) certification.
2. A compliant cybersecurity posture, defined as either:
   a. Possessing a current and valid CMMC Level 2 C3PAO Certification and maintaining required annual SPRS affirmations; OR
   b. If accepted via the Alternative Compliance Path, maintaining a current NIST SP 800-171

Assessment in SPRS (no older than 3 years), actively executing a CMMC compliance roadmap, and achieving full CMMC Level 2 C3PAO Certification by the November 2026 deadline.

B. Loss of Good Standing and Conditional Status

1. Certification Lapses: A Member whose required certifications lapse, who fails to submit annual SPRS affirmations, or who fails to achieve full CMMC Level 2 C3PAO certification by the November 2026 deadline shall notify the Government Agreements Officer immediately and will cease to be in Good Standing.
2. Conditional Status: If a Member provides satisfactory evidence that a CMMC certification lapse (or failure to meet the November 2026 deadline) is due to systemic issues strictly outside their direct control (e.g., a documented, Government-verified lack of available C3PAO assessors despite early engagement), the Government may, at its sole discretion, place the Member in "Conditional Good Standing."
3. Restrictions: While in Conditional Good Standing, the Member is ineligible to submit proposals for new Project Opportunity Announcements. Failure to regain full compliance by the end of a Government-defined conditional period will result in an immediate Termination for Default.

Article: Project Process

All projects executed under the authority of the AEDC Velocity Alliance will be competed exclusively among the members of the Alliance. The Government will initiate projects by issuing a Project Opportunity Announcement (POA) to the Alliance members.

Only Alliance members who are in "Good Standing" at the time a POA is issued are eligible to submit a proposal in response to that POA. The Government reserves the right to reject a proposal from any member not in Good Standing.

Members may submit a proposal in the form and manner, and by the date and time, specified in the POA. The Government is not responsible for any costs incurred by a member in the preparation of a proposal.

Article: Project Suspension

The Government reserves the right to suspend performance on any active Project-Level Agreement, in whole or in part, if the Member performing the work ceases to be in Good Standing, experiences a severe cyber incident indicating a compromise of adequate security, or fails to meet a material security or compliance requirement applicable to that project.

Specifically, should the Government issue a stop-work order on a project because the performing Member has failed to maintain their cybersecurity posture or failed to achieve the required CMMC Level 2 C3PAO certification by the November 2026 deadline, the Member explicitly agrees that this action is taken at no cost to the Government. Any and all costs, schedule impacts, or delays resulting from such a cybersecurity or CMMC-related stop-work order are the Member's sole responsibility and will not form the basis of a request for equitable adjustment or claim against the Government. Performance may be suspended until the Member has verifiably cured the deficiency to the Government's satisfaction.

Article: Operational Security and Public Release of Information

a. Public Release Restrictions: The Member shall not publicly release any information, oral or written, regarding the work performed under this Alliance without the prior written approval of the designated Government representative. This restriction includes, but is not limited to, press releases, marketing materials, social media posts, conference presentations, and any other form of public disclosure that references the Alliance or any specific project conducted under it.

b. OPSEC Training: The Government reserves the right to require Member personnel participating in projects under this Alliance to complete Government-provided Operational Security (OPSEC) awareness training.

c. Consequence of Violation: The Member acknowledges that the unauthorized release of information may cause harm to national security interests by revealing sensitive information about defense capabilities. Therefore, any violation of the provisions in this article may be considered a material failure to comply with the terms of the Membership Agreement and may be grounds for remedies up to and including termination of membership for cause.

Article: Order of Precedence

In the event of any inconsistency, ambiguity, or conflict among the documents comprising this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. The Body of this Agreement: The terms and conditions contained within the main body of this Other Transaction Agreement (i.e., the Articles themselves) shall take precedence over all other documents.

2. Formal Modifications to the Agreement: Any bilateral, signed modifications shall take precedence over the original Agreement body and all lower-tier documents, but only to the extent of the specific change articulated in the modification.

3. The Milestone and Payment Schedule: This attachment, defining the specific events for payment, shall take precedence over the Statement of Objectives / Statement of Work and the proposal.

4. The Statement of Objectives / Statement of Work and its Attachments: This includes the main Statement of Objectives / Statement of Work document and its attachments, such as the Performance Parameters.

5. The Performer's Final Proposal: The Performer's proposal, as accepted by the Government and incorporated by reference into this Agreement, shall have the lowest precedence. It shall be used to provide context and clarification but shall not override any of the documents listed above.