

ACTION MEMO

December 5, 2020

FOR: ACTING PRINCIPAL DEPUTY ASSISTANT TO THE SECRETARY OF DEFENSE
FOR PUBLIC AFFAIRS (b)(6)

THROUGH: DIRECTOR, POLICY AND EXECUTIVE SERVICES (b)(6)

FROM: DIRECTOR, COMMUNITY ENGAGEMENT (b)(6)

SUBJECT: Request for Approval of Production Assistance Agreement – Don't Look Up

- Netflix, Inc., requests production assistance from the Department of Defense for the movie "Don't Look Up," through access to Westover Air Reserve Base, MA, to shoot several scenes on a C-5M aircraft, as well as the use of various vehicles, from December 7-11, 2020. (TAB A)
- The U.S. Air Force Entertainment Liaison Office has coordinated with Westover ARB, MA, to ensure COVID-19 screening procedures will be observed.
- The U.S. Air Force Entertainment Liaison Office has reviewed and concurs with the request.
- The U.S. Air Force Entertainment Liaison Office has verified the production company's funding and distribution plan.

RECOMMENDATION: A/PDATSD(PA) initial/sign the PAA as indicated at TAB A.

COORDINATION: None

Attachments:

As stated

Prepared by: (b)(6) OATSD(PA)/Community Engagement, (b)(6)

TAB

A

**U.S. DEPARTMENT OF DEFENSE
PRODUCTION ASSISTANCE AGREEMENT
AFTN TRACKING NUMBER 217-09-20**

The United States Department of Defense (DoD), acting on behalf of the United States of America, hereby expresses its intent, subject to the provisions herein, to provide to **Netflix Productions, LLC**, hereinafter referred to as the "production company," the assistance itemized in this Production Assistance Agreement (Agreement) in conjunction with the production of a **feature motion picture** known at this time as "**Don't Look Up**." This Agreement expresses the terms under which DoD intends to provide assistance. This Agreement does not authorize the obligation of any United States funding, nor should it be construed as a contract, grant, cooperative agreement, other transaction, or any other form of procurement agreement.

LIST OF MILITARY RESOURCES TO BE PROVIDED IN SUPPORT OF PRODUCTION

- Escorted access to Westover Air Reserve Base, Chicopee, Mass., on or about (o/a) 7-12 December for production crew, cast and associated support personnel to film selected scenes incorporating Air Force personnel, Westover ARB flight line buildings and equipment, 439th Airlift Wing aircraft and support vehicles included in selected scenes of "Don't Look Up."
- Escorted access and Public Affairs, Airfield Management and Security Forces assistance for pre-production scouting site survey, pre-production coordination and technical assistance related to logistical support to on-site filming at Westover Air Reserve Base.
- Escorted access to static C-5M Galaxy transport aircraft, with associated aircrew and loadmaster personnel. Assigned Air Force personnel will monitor and operate aircraft systems during interior/exterior filming of selected scenes at Westover Air Reserve Base o/a 7-12 December.
- All DoD personnel and production company crew members will be required to conform to all COVID-19 precautions indicated by the base.

The DoD will make reasonable efforts to provide the assistance requested in the request for production assistance, to the extent approved by DoD, and subject to the limitations contained herein.

This Agreement is subject to revocation due to non-compliance with the terms herein, with possible consequences including but not limited to temporary suspension or permanent withdrawal of the use of some or all of the military resources identified to assist this project, revocation of the general release for photography and sound recordings (see paragraph 9), and/or withholding of other approvals incident to this agreement. Requests for future support from DoD may also be denied. In the event of dispute, the production company will be given a written notice of non-compliance by the DoD project officer. The production company will have a 72-hour cure period after receipt of written notice of non-compliance. DoD may temporarily suspend support until the non-compliance has been cured or the 72-hour cure period has expired. After the cure period has expired, DoD may permanently withdraw its support for the production. If such Agreement is either suspended or terminated, the Production Company's only avenue of appealing such decision is to the DoD designee responsible for coordinating production assistance for entertainment media operations ("DoD Branch Chief for Entertainment Media"). The requirements in Department of Defense Instruction 5410.16 shall apply to this Agreement.

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It is understood between DoD and the production company that:

1. The DoD project officer, (b)(6) is the official DoD representative responsible for ensuring that the terms of this Agreement are met. The DoD project officer or his or her designee will be present each day the U.S. military is being portrayed, photographed, or otherwise involved in any aspect of **"Don't Look Up."** The DoD project officer is the military technical advisor, and all military coordination must go through him or her. The production company will consult with the DoD project officer in all phases of pre-production, production, and post-production that involves or depicts the U.S. military.
2. The production company will use reasonable efforts to cast actors, extras, doubles, and stunt personnel portraying Service members who conform to individual Military Service regulations governing age, height and weight, uniform, grooming, appearance, and conduct standards (the "Regulations"), except to the extent such roles, in production company's creative discretion, require that the portrayals are non-conforming to the Regulations; production company shall consult with DoD if such roles require nonconformity with the Regulations. DoD reserves the right to suspend support in the event that disagreement regarding the military aspects of these portrayals cannot be resolved in good faith negotiation between the production company and DoD within the 72-hour cure period. The DoD project officer will provide written guidance specific to each Military Service being portrayed.
3. DoD has approved production assistance as in the best interest of DoD, based on the 15 Oct 2020 version of the script to the extent agreed upon by DoD. The production company must obtain, in advance, DoD concurrence for any subsequent changes proposed to the military depictions made to either the picture or the sound portions of the production before these changes are undertaken.
4. The operational capability and readiness of the Military Components will not be impaired. Unforeseen contingencies affecting national security or other emergency circumstances such as disaster relief may temporarily or permanently preclude the use of military resources. In these circumstances, DoD will not be liable, financially or otherwise, for any resulting negative impact or prejudice to the production caused by the premature withdrawal or change in support to the production company.
5. There will be no deviation from established DoD safety and conduct standards. The DoD project officer or his or her designee will coordinate such standards and compliance therewith. DoD will provide the production company advance notice of such safety or conduct standards upon request.

Specific safety requirements due to COVID-19 will include: wearing of masks and/or face coverings by all DoD individuals and production company crew members present, provided by the applicable party; social distancing between base personnel, production crew, and cast of a minimum of six (6) feet; testing of DoD personnel in accordance with DoD policy; a requirement that individuals feeling sick, showing symptoms, or have been in contact with anyone else testing positive not enter DoD facilities; and any other requirements instituted by the base personnel

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during the time of filming.

6. All DoD property or facilities damaged, used, or altered by the production company in connection with the production will be restored by the production company to the same or better condition, cleaned and free of trash, normal wear and tear excepted, as when they were made available for the production company's use.

7. The production company will reimburse the U.S. Government for any additional expenses incurred as a result of the assistance rendered for the production of **"Don't Look Up."** The estimated amount will be detailed and included (e.g., "see Attachment 2," etc.). Unless otherwise agreed upon, the production company agrees to post advance payment or a letter of credit in the amount estimated to comprise the total additional DoD expenses or deposit such funds that may be reasonably necessary. The payment or letter of credit will be submitted to the military component(s) designated to provide the assistance, or to another DoD agency, as deemed appropriate by DoD.

- a. DoD agrees to provide statements of charges assessed by each installation or DoD component providing assets to assist in the production within 45 days from the last day of the month in which filming is completed.
- b. The production company will be charged for only those expenses that are considered to be additional costs to DoD in excess of those that would otherwise have been incurred, including, but not limited to fuel, resultant depot maintenance, expendable supplies, travel and per diem, civilian overtime, and lost or damaged equipment.
- c. If the final aggregate of such costs and charges is less than previously anticipated, DoD agrees to remit the exact amount of the difference of any funds posted within 45 days from the last day of the month in which filming is completed.
- d. To the extent that production company has an outstanding balance following project completion, it shall pay DoD the balance owed within 45 days after receiving a statement of charges.

8. The production company will be charged for the verifiable expenses for travel, lodging, and incidental expenses, as well as per diem at the federal rate, for the DoD project officer, the DoD Branch Chief for Entertainment Media or his or her designee, and any other assigned military technical and safety advisor(s) whose presence may be required by DoD.

For each of these individuals, the production company will provide:

- a. Round-trip air transportation and ground transfers to the production location(s) at which there is a military portrayal or involvement, at times deemed appropriate by the DoD project officer and DoD Branch Chief for Entertainment Media.
- b. A full-size vehicle (with fuel and with loss, damage, and collision automobile insurance paid for by the production company) for his or her personal use during the filming.

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- including for his or her stay at the production location(s). If parking at the location(s) is not available, transportation to and from the lodging location to the production site will be provided.
- c. Hotel accommodations equivalent to those provided to the production company's crew.
 - d. A dedicated, on-location trailer room or other comparable work space with full Internet access, desk, seating, and ensuite toilet.
9. By approving DoD production assistance for "**Don't Look Up**", DoD hereby provides a general release to the production company for the use of any and all photography and sound recordings of any and all Service members, equipment, and real estate, subject to the limitations in this Agreement (e.g. Paragraphs 12-13).
10. As a condition of DoD assistance, the production company will:
- a. Indemnify and hold harmless DoD, its agencies, officers, and employees against any claims (including claims for personal injury and death, damage to property, and attorneys' fees) arising from the production company's possession or use of DoD property or other assistance in connection with this production of "**Don't Look Up**", to include pre-production, post-production, and DoD-provided orientation or training. This provision will not in any event require production company to indemnify or hold harmless DoD, its agencies, officers and or employees from or against any claims arising from defects in DoD property or negligence on the part of DoD, its agencies, officers, or employees.
 - b. Provide proof of adequate industry standard liability insurance, naming DoD as an additional insured entity prior to the commencement of production involving DoD. The production company will maintain, at its sole expense, insurance in such amounts and under such terms and conditions as may be reasonably required by DoD to protect its interests in the property involved.
 - c. Not carry onto DoD property any non-prescription narcotic, hallucinogenic, or other controlled substance; or alcoholic beverage without prior coordination with the DoD project officer or his or her designee.
 - d. Not carry onto DoD property any real or prop firearms, weapons, explosives, or any special effects devices or equipment that cause or simulate explosions, flashes, flares, fire, loud noises, etc., without the prior approval of the DoD project officer and the supporting installation. Additionally, the use of Unmanned Aerial Systems (UAS) (i.e. drones) on or over military installations or vessels is not authorized unless a specific exception to policy has been obtained in writing from the local installation POC, Combatant Commander or Agency POC by the production company.
 - e. Upon request, production company shall provide DoD the use of production company-generated publicity and marketing materials, such as production stills and electronic press

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kits. These materials may be used in accordance with production company's specific instructions, time schedules, and release dates to show DoD viewers how DoD is assisting in the production; such materials may be viewed by the general public if posted on an open DoD web site or other publicly-accessible media source only in accordance with production company's publicity/marketing guidelines. Therefore, no DoD personnel will photograph actual filming, talent, or sets without the prior approval of the production company.

11. The production company will provide the DoD project officer with whatever internal communications equipment it is supplying to production company crew members to communicate on the set during production of military-themed sequences. The production company will also supply the DoD project officer with earphones to monitor dialogue and other sound recording during these periods.

12. On a non-precedential basis, the production company will screen or provide a screener via an encrypted file transfer protocol ("FTP") for the DoD project officer and the DoD Branch Chief for Entertainment Media, or their designees, the roughly edited version of the production at a stage in editing when changes can be accommodated to allow DoD to confirm the military sequences reasonably conform to the agreed script, treatment, or narrative description provided to the DoD in accordance with Paragraph 3 above; to preclude release or disclosure of sensitive, security-related, or classified information; and to ensure that the privacy of DoD personnel is not violated. Should DoD reasonably determine that material in the production compromises any of the preceding concerns, DoD will alert the production company, within three (3) business dates from receipt of the screener, of the material, and the production company will remove the compromising material from the production. The production company will bear the travel, lodging, per diem, and incidental expenses, if any, incurred in transporting the DoD project officer and the DoD Branch Chief for Entertainment Media, or their designees, to the location where the screening is held.

13. No photography or sound recordings made with DoD assistance and no DoD photography and sound recordings released for this production will be reused or sold for use in other productions without DoD approval which shall not be unreasonably withheld, conditioned or delayed. The foregoing will not prohibit the production company (or its successors, licensees, and assigns) from exploiting the production in any and all manner and media, now known or hereafter devised, in perpetuity throughout the universe, (including, without limitation, television, web content, home video and theme parks) or from using clips, photographs, or sound recordings obtained with DoD assistance in promotional material relative thereto.

- a. The DoD and its component agencies and military branches use and own all rights, title, and interest in and to various DoD names, trademarks, service marks, certification marks, collective marks, collective membership marks, and/or other words, symbols, seals, emblems, crests, logos, insignia, patches, images, colors, uniform designs, names of battles, names of ships, aircraft, and other weapons platforms (individually and collectively "DoD Indicators"). The Production Company may display DoD Indicators in the footage of the production for purposes of depicting costumes, props, and/or scenes. However, nothing in this agreement grants or is intended to grant the Production

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Company any ownership rights or licenses or other permissions to use any DoD Indicators in any other context, including but not limited to theme park rides.

14. DELETED BY MUTUAL AGREEMENT

15. The production company understands and agrees to the following terms with respect to acknowledging and highlighting DoD assistance.

- a. The production company will place a credit in the end titles in the "Special Thanks" section (if any), substantially in the form of "Special Thanks to the United States Department of Defense," with no less than one clear line above and one clear line below such credit acknowledging the DoD assistance provided. Such acknowledgment(s) will be in keeping with industry customs and practices, and will be of the same size and font used for other similar credits in the end titles.
- b. The Department of Defense and **U.S. Air Force** may choose to promote the project via its owned and operated social media accounts. If the Department of Defense and/or **U.S. Air Force** decide to originate a social media post, specific details, timing and tactics will be coordinated with the production company.
- c. The production company will use best efforts to arrange opportunities for DoD public affairs personnel (e.g. Defense Media Activity/DoD News reporters) to interview selected key individuals associated with the production (e.g. producer, executive producer or director,) for use in DoD public affairs efforts. Opportune interviews are to be coordinated with the production company in advance to highlight DoD locations, personnel and the cooperative nature of DoD production assistance support.

16. The production company will provide DoD with five copies of all promotional and marketing materials (e.g., electronic press kits, one-sheets, and television advertisements) for internal information and historical purposes in documenting DoD assistance to the production.

17. Following the initial exhibition of the production and upon request, the production company will provide up to ten digital videodisc (DVD/Blu-Ray/digital file) copies of the completed production to DoD for internal briefings and for historical purposes, by overnight shipment. DoD will not exhibit these DVDs publicly or copy them; however, DoD is allowed to use short clips from them in official presentations by Service members and DoD civilian personnel who were directly involved in providing DoD assistance, for the sole purpose of illustrating DoD support to the production. However, DoD is prohibited from making these clips available to any other party for any other purpose.

18. Official activities of DoD personnel in assisting the production must be within the scope of normal military activities, with the exception of the DoD project officer and assigned official technical advisor(s), whose activities must be consistent with their authorized additional duties. DoD personnel in an off-duty, non-official status may be hired by the production company to perform as actors, extras, etc., provided there is no conflict with existing Service or Department regulations. In such cases, these conditions apply:

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- a. Contractual agreements are solely between those individuals and the production company; however, they should be consistent with industry standards.
- b. The DoD project officer will ensure that DoD personnel will comply with standards of conduct regulations in accepting employment.
- c. The production company is responsible for any disputes with unions governing the hiring of non-union actors or extras.

19. The production company may make donations or gifts in-kind to morale, welfare, and recreation programs of the military unit(s) involved; however, donations of this kind are not at all required, and are not in any manner a consideration in the determination of whether or not a production should receive DoD assistance. These donations must be coordinated through the DoD project officer and must comply with law and DoD policies.

20. The undersigned parties warrant that they have the authority to enter into this Agreement and that the consent of no other party is necessary to effectuate the full and complete satisfaction of the provisions contained herein.

21. This Agreement and other records relating to DoD assistance may be subject to disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

22. This Agreement consists of **nine (9)** pages including **one (1) Attachment: Certificate of Insurance**. Each page will be initialed by the undersigned DoD and production company representatives.

FOR THE DEPARTMENT OF DEFENSE

FOR NETFLIX PRODUCTIONS, LLC

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DoD (b)(6)

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CERTIFICATE OF LIABILITY INSURANCEDate (MM/DD/YYYY)
12/05/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

(b)(6)

Contact Name: (b)(6)

Phone:

(A/C, No. Ext): (b)(6)

Fax:

(A/C, No.):

Email Address: (b)(6)

INSURED

(b)(6)

Insurer's Affording Coverage**NAIC #**

INSURER A: AMERICAN INSURANCE COMPANY

INSURER B: FIREMAN'S FUND INSURANCE COMPANY

INSURER C: ZURICH AMERICAN INSURANCE COMPANY

INSURER D: AMERICAN ZURICH INSURANCE COMPANY

INSURER E:

INSURER F:

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN ARE AS REQUESTED. LIMITS SHOWN ARE AS REQUESTED.

LIMITS SHOWN ARE AS REQUESTED.											
INSR LTR	TYPE OF INSURANCE		ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS			
A	X	COMMERCIAL GENERAL LIABILITY	X		XXC80517662	08/01/2020	08/01/2021	EACH OCCURRENCE	\$1,000,000		
		CLAIMS-MADE						X	OCCUR	DAMAGE TO RENTED PREMISES (Ea Occurrence)	\$1,000,000
										MED EXP (Any one person)	\$10,000
										PERSONAL & ADV INJURY	\$1,000,000
										GENERAL AGGREGATE	\$2,000,000
										PRODUCTS – COMP/OP AGG	\$2,000,000
A	AUTOMOBILE LIABILITY		X		XXC80517662 AUTO PHYSICAL DAMAGE LIMIT INCLUDED IN MISC EQUIPMENT LIMIT	08/01/2020	08/01/2021	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000		
		ANY AUTO							SCHEDULED AUTOS	BODILY INJURY (Per person)	\$
		OWNED AUTOS ONLY								BODILY INJURY (Per accident)	\$
	X	HIRED AUTOS ONLY						X	NON-OWNED AUTOS ONLY	PROPERTY DAMAGE (Per accident)	\$
											\$
											\$
											\$
B	X	UMBRELLA LIAB	X	OCCUR	XAU32425159	08/01/2020	08/01/2021	EACH OCCURRENCE	\$10,000,000		
		EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$10,000,000		
		DED		RETENTION \$					\$		
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		N/A		EWS4319148-02 (CA) EWS4457549-02 (GA) EWS4453361-02 (NY) WC4228188-03 (FL,MA,OR,TX,WI) WC4228189-03 (AOS) (EVIDENCE ONLY)	08/01/2020 08/01/2020 08/01/2020 08/01/2020 08/01/2020	08/01/2021 08/01/2021 08/01/2021 08/01/2021 08/01/2021	PER STATUTE	Other		
C	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)							Y / N	E.L. Each Accident	\$1,000,000	
C	If yes, describe under DESCRIPTION OF OPERATIONS below								E.L. Disease – EA Employee	\$1,000,000	
D									E.L. Disease – Policy Limit	\$1,000,000	
B	PRODUCTION PACKAGE									RMP190014	07/01/2019
	PROPS/SETS/WARDROBE THIRD PARTY PROPERTY DAMAGE MISCELLANEOUS EQUIPMENT										

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: "DON'T LOOK UP"

THE CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED (BY "BLANKET" ENDORSEMENT) WITH RESPECT TO THE GENERAL AND AUTO LIABILITY POLICIES AND LOSS PAYEE AS RESPECT TO THE PRODUCTION PACKAGE, BUT ONLY TO THE EXTENT REQUIRED IN THE CONTRACTUAL AGREEMENT WITH THE NAMED INSURED AND ONLY FOR THE ABOVE REFERENCED PROJECT. ALL COVERAGE IS SUBJECT TO TERMS AND CONDITIONS OF THE INSURANCE POLICIES. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES ABOVE.

CERTIFICATE HOLDER**CANCELLATION**

Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

(b)(6)

ACORD 25 (2016/03)

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DoD

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Production Company

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