Other Transaction for Prototype Agreement

BETWEEN

<<Performer's Company Name >>
<<Address>>

AND

Space Development Agency
1670 Air Force Pentagon
Washington, DC 20330

CONCERNING

Program Title

Agreement No.: FA2401259XXXX
Total Amount of the Agreement (exercised): <<TBD>>
Government Funds Obligated: <<TBD>>
Options 1-X (unexercised): <<TBD>>
Authority: 10 U.S.C. §4022
Effective Date: <<TBD>>

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by the Space Development Agency (SDA), and <<Performer's Company Name >> pursuant to and under United States Federal law.

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.

FOR <<Performer's Company Name >>	FOR THE SPACE DEVELOPMENT AGENCY
<<Name>>	XXXXXXXXXXX
<<Title>>	Agreements Officer

Summary of Current Value and Funding of the Agreement

Mod	PR	CLIN	SubCLIN	ACRN	CLIN Value	Obligated Amount
BASIC		0001			TBD	
BASIC	TBD		000101	AA		TBD

Funding Information

AA TBD
Purchase Requisition: TBD
Line of Appropriation: TBD

Note for DFAS: Use oldest funds first.

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

SDA is responsible for defining and monitoring the Department of Defense's (DoD's) future threat-driven space architecture and accelerating the development and fielding of new military space capabilities necessary to ensure U.S. technological and military advantage in space for national defense. To achieve this mission, SDA is responsible for unifying and integrating next-generation space capabilities to deliver the PWSA, a resilient military sensing, custody and data transport capability via a proliferated space architecture in Low Earth Orbit (LEO). SDA will not necessarily develop and field all PWSA capabilities but rather orchestrate those efforts across DoD and fill in gaps in capabilities while providing the integrated architecture.

Definitions

In this Agreement, the following definitions apply:

Agreement: The body of this Agreement and its Attachments, which are expressly incorporated in and made a part of the Agreement.

Agreements Officer (AO): Means the SDA-warranted individual identified in Article IV(A) below who is authorized to sign this Agreement and approve modifications to it on behalf of the Government.

Agreements Officer Representative (AOR): AOR means the individual identified in Article IV(A), and who is an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government.

Commercial Computer Software: Software developed or regularly used for non-governmental purposes which: (1) Has been sold, leased, or licensed to the public; (2) Has been offered for sale, lease, or license to the public; (3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this agreement; or (4) would satisfy at least one of the above three criteria and would require only minor modification to meet the requirements of this agreement.

Computer Database: A collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

Computer Program: A set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer Software: 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 databases or computer software documentation.

Computer Software Documentation: Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Covered Government Support Contractor: A contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to the technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

Developed:

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or,

(iv) Computer software documentation required to be delivered under a contract or agreement has been written, in any medium, in sufficient detail to comply with requirements under that contract.

Developed Exclusively at Private Expense: Development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract or agreement, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts or agreements, when total costs are greater than the firm-fixed-price or ceiling price of the contract or agreement, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

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

Generated: Technical data or computer software first created in the performance of this contract.

Government: The United States of America, as represented by SDA.

Government Furnished Property: Means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Performer for performance of this Agreement.

Government Purpose: 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 or computer software for commercial purposes or authorize others to do so.

Government Purpose Rights: The rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction; and

(ii) Release or disclose technical data or computer software outside the Government and authorize persons to whom release, or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that technical data or computer software for United States Government purposes.

Invention: Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

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

Limited Rights: The rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the technical data by persons outside the Government if it is necessary for emergency repair and overhaul or if the release or disclosure is to—

(i) A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(ii) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes; and

(iii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data, and the Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

Made: Relates to any invention means the conception or first actual reduction to practice of such invention.

Noncommercial Computer Software: Software that does not qualify as Commercial Computer Software.

Party: Includes the Government (represented by SDA), or the Performer, or both.

Performer: <<Performer's Company Name, TBD>>

Performer Administrator: The individual identified in Article IV (B) below who holds the corporate authority to enter into contractually binding agreements on behalf of the Performer.

Person: An individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit.

Practical Application: To manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Program: Research and development being conducted by the Performer, as set forth in Article I, paragraph C.

Property: Any tangible personal property other than property actually consumed during the execution of work under this Agreement.

Prototype Project: The parties agree the effort to produce the deliverables shall be considered a Prototype Project. The term "Prototype Project" includes a project that addresses:

(A) a proof of concept, model, or process, including a business process;
(B) reverse engineering to address obsolescence;
(C) a pilot or novel application of commercial technologies for defense purposes;
(D) agile development activity;
(E) the creation, design, development, or demonstration of operational utility; or
(F) any combination of subparagraphs (A) through (E).

SBIR Data Rights: Rights in data and computer software as defined in DFARS 252.227-7018- Rights In Other Than Commercial Technical Data And Computer Software—Small Business Innovation Research (SBIR) Program (Aug 2025).

SDA Software Rights: Applies only to noncommercial computer software and means the Government's right to use, modify, reproduce, perform, display, release disclose or transfer computer software are restricted. The Government may use a computer program on a limited number of computers and make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes. The Government will not transfer the software outside of the Government or for any purpose other than the program, except that the Government may allow the use of the noncommercial computer software outside of the Government under a limited set of circumstances, including use by a Covered Government Support Contractor in performance of its covered Government support contract, and after the contractor or subcontractor asserting the restriction is notified in writing as far in advance as practicable that a release or disclosure to particular contractors or subcontractor is planned to be made.

Subject Invention: Any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

Technical Data: 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.

Technology: Discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks and copyrights developed under this Agreement.

Unlimited Rights: Rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

B. Scope

1. This Agreement is an Other Transaction pursuant to 10 U.S.C. § 4022. The principal purpose of this Agreement is to engage in a research and development program for the development of the INSERT PROGRAM NAME.

2. The Performer shall be responsible for performance of the work set forth in the Statement of Work (SOW) incorporated in this Agreement as Attachment 1a.

3. The Performer shall be paid a fixed amount for each milestone accomplished in accordance with the Schedule of Milestones and Payments set forth in Attachment 1c and the procedures of Article V. The Schedule of Milestones and Payments may be revised or updated in accordance with Article III.

4. The Government will have continuous involvement with the Performer. The Government will obtain access to Program results and certain rights in patents and data pursuant to Articles VII and VIII. SDA and the Performer are bound to each other by a duty of good faith in achieving the Program objectives.

ARTICLE II: TERM

A. Term of this Agreement

The Program commences upon the date of the last signature hereon and continues until the delivery date for the last milestone in Attachment 1c Schedule of Milestones and Payments. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

Some milestones are currently unexercised. The Government has the right to unilaterally exercise these milestones prior to the end of the Agreement, adding them to the scope of the Agreement at the amounts listed in Attachment 1c Schedule of Milestones and Payments. The Government will provide Performer a written notice of intent to exercise milestones 30 days prior to the end of the Agreement.

B. Termination Provisions

Either Party may terminate this Agreement by written notice given at least sixty (60) days prior to termination. The Parties should negotiate in good faith a reasonable and timely equitable adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments, and shall be subject to the limitation in Article VII paragraph C.

In the event of a termination of the Agreement, the Government shall have paid-up rights in technical data or computer software as described in Article VIII, Data Rights. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article VII, Disputes.

C. Extending the Term

The Parties may extend by mutual written agreement the term of this Agreement if research opportunities within the vision statement set forth in Article I reasonably warrant. Any extension shall be formalized through modification of the Agreement by the Agreements Officer and the Performer Administrator.

D. Force Majeure

Performer shall not be responsible for any losses resulting if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, riots, wars, terrorism, acts of enemies, fires, snowstorms, floods, earthquakes, pandemics/epidemics/endemics, acts of God, or acts of any Government in its Sovereign capacity by the exercise of reasonable diligence, all items being hereinafter referred to as Force Majeure Events. Notice of an event giving rise to a purported event of Force Majeure shall be given to the Government within thirty (30) days after the occurrence of such event, or as soon as is reasonably practical in the event communications cannot be made in the 30-day period. The Performer shall use its best efforts to avoid, overcome, mitigate, and remove the cause of the event preventing or delaying performance, by using commercially reasonable alternate sources, workaround plans or other means, and the Performer shall continue to perform all of the remainder of its obligations under this Agreement where possible. The Government and Performer shall in good faith negotiate an equitable extension of time for completion, with price adjustment if any, of the whole or any part of the performance of this Agreement impacted by the occurrence of the Force Majeure Event, taking into account the reasons therefore and circumstances associated therewith.

ARTICLE III: MANAGEMENT OF THE PROJECT

A. Management and Program Structure

The Performer shall be responsible for the overall technical and program management of the Program, and technical planning and execution shall remain with the Performer. The SDA Agreements Officer's Representative (AOR) shall provide recommendations to program developments and technical collaboration and be responsible for the review and verification of the milestones. The Performer agrees to work closely with Government personnel and Covered Government support contractors in performance of this agreement.

B. Modifications

1. As a result of meetings, reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the SOW and/or the Schedule of Milestones and Payments would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the SOW and/or the Schedule of Milestones and Payments will be documented in writing and submitted by the Performer to the SDA Agreements Officer Representative with a copy to the SDA Agreements Officer. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the research program. The SDA Agreements Officer and the Performer shall approve any Agreement modification, except minor modifications pursuant to paragraph 3 below.

2. The SDA AOR shall be responsible for the review and verification of any recommendations to revise or otherwise modify the SOW, prospective milestones, or other proposed changes to the terms and conditions of this Agreement.

3. For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or the Performer's personnel identified in the Agreement, incremental funding, etc.) no signature is required by the Performer.

4. The SDA Agreements Officer will be responsible for executing all modifications to this Agreement.

C. Key Personnel [Edit where applicable]

1. The following Job Titles from the Performer and its Suppliers are designated as Key Personnel for the Agreement:

Job Title/Role	Company
Program Manager	Performer
Chief Engineer	Performer
Chief Software Engineer	Performer
IR Mission Payload Lead	Performer
Assembly, Integration and Test (AI&T) Lead	Performer
Information Security Certified Professional	Performer
Subsystem Lead(s)	Performer (If applicable)
Program Manager	Major Teammate
Chief Engineer	Major Teammate

2. The key personnel fulfilling the positions identified above shall be furnished for the entire term of the Agreement. Key Personnel names will be identified in writing to the AOR for each Job Title for the Performer at the award of the Agreement and for Suppliers as subcontracts are awarded. Performer shall request in writing substitution of the key personnel and demonstrate to the satisfaction of the AOR that the qualifications of the proposed substitute key personnel are comparable or better than the qualifications of the personnel being replaced. The AOR's approval for the substitution of key personnel shall not be unreasonably withheld.

ARTICLE IV: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by SDA may be made only by the SDA Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

A. Government Points of Contact:

Agreements Officer (AO):
Agreements Officer – SDA
Ph:
Email:

Agreements Officer's Representative (AOR):
<<AOR Name TBD>>
SDA, DoDAAC FA2401
<<AOR Phone Number>>
<<AOR Email>>

Administrative Agreements Officer (AAO):
<<AAO Name>>
Administrative Contracting Officer
DCMA <<DCMA Local>>, DoDAAC <<DCMA DoDAAC>>
<<AAO Phone Number>>>
<<AAO Email>>

B. Performer Points of Contact

Performer's Administrator:
<<Name>>
<<Title>>
<<Ph no>>
<<Email>>

Performer's Program Manager:
<<Name>>
<<Title>>
<<Ph no>>
<<Email>>

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE V: OBLIGATION AND PAYMENT

A. Obligation

1. The Government's liability to make payments to the Performer is limited to only those funds obligated under the Agreement at award or by modification to the Agreement. SDA may obligate funds to the Agreement incrementally.

2. If modification becomes necessary in performance of this Agreement, the Agreements Officer shall execute a revised Schedule of Milestones and Payment for prospective milestones consistent with Attachment 1c in accordance with Article III paragraph B.

B. Payments

1. The Parties agree that fixed payments will be made for the completion of milestones. These payments reflect value received by the Government toward the accomplishment of the research goals of this Agreement.

2. The Performer shall document the accomplishments of each milestone (consistent with SOW and Schedule of Milestone and Payments) and submit one (1) copy of all invoices for payment approval. After written verification of the accomplishment of the milestone by the SDA AOR, the Performer will submit their invoice through Wide Area Work Flow (WAWF), as detailed in paragraph B.5. of this Article.

3. Limitation of Funds: In no case shall the Government's financial liability exceed the amount obligated under this Agreement.

4. Payments will be made by the Defense Finance and Accounting Services office, as indicated below, within thirty (30) calendar days of an accepted invoice in WAWF. WAWF is a secure web-based system for electronic invoicing, receipt and acceptance. The WAWF application enables electronic form submission of invoices, government inspection, and acceptance documents in order to support DoD's goal of moving to a paperless acquisition process. Authorized DoD users are notified of pending actions by e-mail and are presented with a collection of documents required to process the contracting or financial action. It uses Public Key Infrastructure (PKI) to electronically bind the digital signature to provide non-refutable proof that

the user electronically signed the document with the contents. Benefits include online access and full spectrum view of document status, minimized re-keying and improving data accuracy, eliminating unmatched disbursements and making all documentation required for payment easily accessible.

5. The Performer is required to utilize the WAWF system when processing invoices and receiving reports under this Agreement. The Performer shall (i) ensure an Electronic Business Point of Contact is designated in System for Award Management (SAM) at http://www.sam.gov and (ii) register to use WAWF at the https://piee.eb.mil site, within ten (10) calendar days after award of this Agreement. Step-by-step procedures to register are available at the https://piee.eb.mil site. The Performer should submit a copy of the AOR approval of the milestone with each invoice.

   a. Contract Type: Non-DoD Contract (Non-FAR)
   b. Invoice Type: 2 in 1 Invoice (Services Only)
   c. For the Issue By DoDAAC, enter FA2401
   d. For the Admin DoDAAC, enter <<DCMA DoDAAC>>
   e. For the Service Acceptor fields, enter FA2401 or DCMA DoDAAC **[CO PICK ONE]**
   f. Leave the Inspect by DoDAAC, Ship To Code, Ship From Code, Mark For Code, Service Approver DoDAAC, Accept at Other DoDAAC and LPO DoDAAC fields blank unless otherwise directed by the Agreements Officer.
   g. The following guidance is provided for invoicing processed under this Agreement through WAWF:
      - The AOR identified in Article IV, "Agreement Administration" shall continue to formally inspect and accept the deliverables/ milestones. To the maximum extent practicable, the AOR shall review the deliverable(s)/ milestone report(s) and either: 1) provide a written notice of rejection to the Performer which includes feedback regarding deficiencies requiring correction, or 2) written notice of acceptance to the AAO and Agreements Officer.
      - The Performer shall send an email notice to the AOR and upload the AOR approval as an attachment upon submission of an invoice in WAWF (this can be done from within WAWF).
      - Payments shall be made by DFAS – <<Paying Office DoDAAC>>.
      - The Performer agrees, when entering invoices entered in WAWF, to utilize the contracting line-item number (CLIN) and accounting classification reference number (ACRN) associated with each milestone as delineated at Attachment 1c. The Performer agrees that the Government may reject invoices not submitted in accordance with this provision.
   h. Payee Information:
      - Cage Code: <<CAGE Code>>
      - Unique Entity ID: <<UEID>>

6. Payments shall be made in the amounts set forth in Attachment 1c, provided the SDA AOR has verified the accomplishment of the milestones.

7. Financial Records and Reports:

   a. The Performer shall maintain adequate records to account for all funding under this Agreement. The Performer's relevant financial records are subject to examination or audit on behalf of SDA by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The Agreements Officer or designee shall have direct access to sufficient records and information of the Performer, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security

requirements of the audited party.

b. To the extent that the total government payments under the Agreement exceed $5,000,000, 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 (3) 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 VI: AGREEMENT CHANGE PROPOSALS

1. The Agreements Officer may ask the Performer to prepare proposals for technical, engineering, or other agreement changes within the scope of this agreement. Upon receipt of a written request from the Agreements Officer and in accordance with the Agreements Officer's instructions, the Performer shall prepare and submit a proposal for the application of agreement change. The Performer may initiate change proposals for Government consideration when appropriate and PRIOR to incurring a change. Proposals submitted as a result of this Article shall not be considered an authorization to the Performer to exceed the value in the Agreement. Additionally, the Performer shall provide prompt written notice to the Agreement's Officer in the event of Government conduct it believes constitutes a change to the Agreement terms and conditions that will impact performance hereunder, and in so doing, state the nature of the conduct and provide recommended options and a request for direction. The notification shall identify the specific Government conduct (including actions, inactions, and written or oral communications) and include any documentation detailing the Government conduct (if any) that the Performer regards as a change to the Agreement terms and conditions.
2. Agreement changes initiated by the Agreements Officer will, to the maximum extent practicable, be coordinated with the Performer prior to submission of the price proposal. The price of the development of a requested change proposal shall be authorized by the Agreements Officer prior to development.

3. Subject to a change in scope, the Agreements Officer may require re-submission of price proposals due to redirection after initial submission. Otherwise, the parties will negotiate the changes affixing the price proposal during negotiations or as changes to the original change proposal.

4. If time will not permit the submission of a price proposal for the contemplated change, the Agreements Officer may request the Performer to submit a written ceiling rough order of magnitude (CROM) amount for the change. Subject to the applicable change assumptions, the Performer agrees that the CROM is the maximum adjustment to be made in the total agreement price (i.e. all price/fee), or in the delivery schedule (or time of performance) by reason of the change. The Agreements Officer may issue an authorization to proceed based on the CROM, which will be followed by a price proposal and negotiation of the same. Upon negotiation, a definitized change modification shall be issued. In no instances shall the definitive change exceed the limitations of an authorization under a undefinitized agreement change. The

subsequent definitized Agreement must include the final modified technical parameters of the Agreement (e.g. statement of work, specifications, milestone payments) to reflect the totality of the change, including price and schedule, as appropriate.

5. The Performer agrees that price proposals submitted pursuant to this Article shall remain valid for a period of 90 days after submission and the CROMs submitted pursuant to this clause shall remain valid for a period of 30 days after submission. To support the negotiation of a change, the Agreements Officer may request other than cost or pricing data to support a determination of price reasonableness. The type and amount of data requested will depend on the nature of the change and whether the prime Performer is a Nontraditional Defense Contractor as defined at 10 U.S.C. §3014.

ARTICLE VII: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute between SDA and the 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 be raised only under this Article. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the SDA Contracts Director waives this requirement.

2. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the SDA Agreements Officer and the Performer's Representative/Executive, appointed by the Performer. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The SDA Agreements Officer and the Performer Representative/Executive shall conduct a review of the matter(s) in dispute and render a bilaterally agreed upon decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.

3. In the absence of a joint decision, upon written request to the SDA Contracts Director, made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The SDA Contracts Director may elect to conduct this review personally or through a designee or jointly with a senior executive appointed by the Performer. Following the review, the SDA Contracts Director or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law shall be the final and binding decision of the SDA.

4. For avoidance of doubt, nothing in this Agreement shall prohibit the Performer from bringing any legal action in a court of competent jurisdiction, to include an action challenging the resolution issued by the SDA Contracts Director or designee.

C. Limitation of Damages

1. To the extent consistent with federal law and regulations, claims by the Government for damages of any nature whatsoever pursued under this agreement shall be limited to direct damages and only up to the aggregate amount of Government funding for prototype development disbursed, pursuant to this agreement as of the time the dispute arises. Claims by the Performer for damages of any nature whatsoever pursued under this agreement shall be limited to direct damages only up to the aggregate amount of Government funding for prototype development obligated to this agreement as of the time the dispute arises. In no event shall either party be liable to the 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.

2. SDA assumes risk of loss for SVs while the Launch Services Provider has full control of the SVs until Launch Vehicle separation command initiation, at which point the Performer resumes risk of loss through acceptance of each plane at its respective Functional Acceptance Review. SDA acknowledges that the Agreement calls for a Class C mission and that on-orbit performance is not guaranteed. There is no requirement for warranty replacement for SVs.

3. In the event of a launch failure resulting from no fault of the Performer that prevents the Performer from executing to the Agreement, the Government and the Performer should negotiate a reasonable and timely adjustment of all outstanding issues between the Parties, which may include non-cancelable commitments.

D. Warranty

Performer makes no express or implied warranties whatsoever with respect to the deliverables hereunder, including any (a) implied warranty of fitness for a particular purpose or (b) implied warranty of merchantability.

ARTICLE VIII: PATENT RIGHTS

A. Allocation of Principal Rights

1. Unless the Performer shall have notified SDA, in accordance with subparagraph B.2 below, that the Performer does not intend to retain title, the Performer shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.

2. With respect to any Subject Invention in which the Performer retains title, SDA shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world.

B. Invention Disclosure

1. The Performer shall disclose each Subject Invention to SDA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to SDA shall be in the form of a written report and shall identify the Agreement and circumstances under which the Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at

the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Subject Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the Invention has been submitted and/or accepted for publication at the time of disclosure.

2. If the Performer determines that it does not intend to retain title to any such Subject Invention, the Performer shall notify SDA, in writing, within eight (8) months of disclosure to SDA. 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 may be shortened by SDA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. The Performer shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months after the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.

4. The Performer shall notify SDA 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 (30) calendar days before the expiration of the response period required by the relevant patent office.

5. Requests for extension of the time for disclosure election, and filing under Article VII, may be granted at SDA's discretion after considering the circumstances of the Performer and the overall effect of the extension.

6. The Performer shall submit to SDA annual listings of Subject Inventions. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all Subject Inventions identified during the course of the Agreement and the current status of each.

C. Conditions When the Government May Obtain Title

Upon SDA's written request, the Performer shall convey title to any Subject Invention to SDA 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 Paragraph B of this Article; however, SDA may only request title within sixty (60) 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 Paragraph B of this Article; however, if the Performer has filed a patent application in a country after the times specified in Paragraph B of this Article, but prior to its receipt of the written request by SDA, 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 its domestic subsidiaries and affiliates, including Canada, if any, 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 Agreement was awarded. The license is transferable only with the approval of SDA, except when transferred to the successor of that part of the business to which the Subject Invention pertains. SDA approval for license transfer shall not be unreasonably withheld.

2. The Performer's domestic license may be revoked or modified by SDA 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 C.F.R. 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 SDA 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, SDA shall furnish the Performer a written notice of its intention to revoke or modify the license, and the Performer shall be allowed thirty (30) 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 SDA 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 SDA 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 with 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 inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

3. 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 <<Agreement Number>>, awarded by SDA. The Government has certain rights in the invention.

F. Lower Tier Agreements

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

G. Reporting on Utilization of Subject Inventions

1. The Performer agrees to submit, during the term of the Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Performer or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Performer, and such other data and information as the agency may reasonably specify. The Performer also agrees to provide additional reports as may be requested by SDA in connection with any march-in proceedings undertaken by SDA in accordance with Paragraph I of this Article. SDA agrees it shall not disclose such information to persons outside the Government without permission of the Performer, unless required by law.

2. All required reporting shall be submitted to the Agreements Officer and Administrative Agreements Officer (AAO), where one is appointed.

H. Preference for American Industry

Notwithstanding any other provision of this clause, the Performer agrees that it shall not grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirements for such an agreement may be waived by SDA upon a showing by the Performer that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

I. March-in Rights

The Performer agrees that, with respect to any Subject Invention in which it has retained title, SDA has the right to require the Performer, 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, SDA has the right to grant such a license itself if SDA 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;

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

4. Such action is necessary because the agreement required by Paragraph H of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement.

J. 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 contract or any subcontract at any tier.

ARTICLE IX: DATA RIGHTS

A. Allocation of Principal Rights

1. The Parties agree that in consideration for Government funding, the Performer intends to reduce to practical application items, components and processes developed under this Agreement.

2. With respect to technical data or computer software developed or generated under this Agreement, the Government shall receive Government Purpose Rights, with the exception of those items identified in the Data Assertions Table (Attachment 1d) for which the Performer asserts other license restrictions, including (but not limited to) Limited Rights or SDA Software Rights, as defined in Article I, Paragraph B. Limited Rights or SDA Software Rights may be asserted for technical data related to items or process developed exclusively at private expense or computer software developed exclusively at private expense. Government Purpose Rights shall be applicable for a period of five (5) years after contract completion, after which the Government shall have Unlimited Rights.

3. Notwithstanding the provision in A.4, the performer agrees, with respect to technical data or computer software-generated or developed under this Agreement, that the Government may, within three (3) years after completion or termination of this Agreement, require delivery of data in accordance with the terms of this Agreement; and the Contractor shall be compensated only for converting the technical data or computer software into the prescribed form, and for delivery.

4. With respect to technical data or computer software delivered pursuant to Attachment 1a under the Agreement, the Government shall receive Unlimited Rights, with the exception of those identified in the Data Assertions Table (Attachment 1d) which shall be delivered with the rights identified in the Attachment 1d.

5. March-In Rights

(a.) In the event the Government chooses to exercise its March-in Rights, as defined in Article VII, Section I of this Agreement, the Performer agrees, upon written request from the Government, to deliver at no additional cost to the Government, all technical data or computer software necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in Article I, Section B of this Agreement, to this delivered technical data or computer software.

(b.) To facilitate any potential deliveries, the Performer agrees to retain and maintain in good condition until three (3) years after completion or termination of this Agreement, all technical data or computer software necessary to achieve practical application of any Subject Invention as defined in Article I, Section B of this Agreement.

B. Marking of Data

Pursuant to Paragraph A above, any technical data or computer software delivered under this Agreement shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement <<Agreement

Number>> between the Government and the Performer.

C. 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.

ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for five (5) years thereafter.

A. General

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. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, *et seq.*), National Industrial Security Program Operating Manual (NISPOM) (32 C.F.R. Part 117, *et seq.*), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, *et seq.*)

B. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs B.2, B.3, and B.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

   a. Sales of products or components; or

   b. Licenses of software or documentation related to sales of products or components; or

   c. Transfer to foreign subsidiaries of the Performer for purposes related to this Agreement; or

   d. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. The Performer shall provide timely notice to SDA of any proposed transfers from the Performer of Technology developed under this Agreement to Foreign Firms or Institutions. If SDA determines that the transfer may have adverse consequences to the national security interests of the United States, the Performer, its vendors, and SDA shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Performer.

3. In any event, the Performer shall provide written notice to the SDA AOR and the SDA Agreements Officer of any proposed transfer to a Foreign Firm or Institution at least sixty (60)

calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Performer's written notification, the SDA Agreements Officer shall advise the Performer whether it consents to the proposed transfer. In cases where SDA does not concur or sixty (60) calendar days after receipt and SDA provides no decision, the Performer may utilize the procedures under Article VII, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to a Foreign Firm or Institution NOT approved by SDA takes place, the Performer shall (a) refund to SDA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States, the Technology throughout the world for Government and any and all other purposes. Upon request of the Government, the Performer shall provide written confirmation of such licenses.

C. 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.

ARTICLE XI: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

A. Adequate Security

The Performer shall provide adequate security on all Covered Performer information systems. To provide adequate security, the Performer shall implement, at a minimum, the following information security protections:

1. For covered Performer information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

   a. Cloud computing services shall be subject to the security requirements specified:

      i. The Performer shall implement and maintain administrative, technical, and physical safeguards and controls with the security level and services required in accordance with the Cloud Computing Security Requirements Guide (SRG) found at https://public.cyber.mil/dccs unless notified by the Agreements Officer Representative (AOR) that this requirement has been waived by the DoD Chief Information Officer (CIO).

      ii. The Performer shall maintain within the U.S. or outlying areas all Government data that is not physically located on Government premises, unless the Performer receives written notification from the AOR to use another location.

   b. Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this agreement.

2. For covered Performer information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph A.1. of this Article, the following security requirements apply:

a. Except as provided in paragraph 2.b. of this Article, the covered Performer 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 (CUI) in Nonfederal Information Systems and Organizations, Revision 2" (available via the internet at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171r2.pdf*)

b. The NIST Considerations:

i. The Performer shall implement NIST SP 800-171, as soon as practical.
ii. The Performer shall submit requests to vary from NIST SP 800-171 in writing to the Agreements Officer, 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 measures that may be implemented in its place.
iii. 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 the Agreements Officer or AOR when requesting its recognition under this agreement.
iv. 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/documents-templates/*) and that the cloud service provider complies with requirements in paragraphs C through F 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.

3. Apply other information systems security measures when the Performer reasonably determines that information systems security measures, in addition to those identified in paragraphs A.1 and A.2 of this Article, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

B. Cyber Incident Reporting

1. When the Performer discovers a cyber incident that affects a covered Performer information system 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—

a. Conduct a review for evidence of compromise of Covered Defense Information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered Performer 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

b. Rapidly report (within 72-hours of discovery) cyber incidents to DoD at https://dibnet.dod.mil.

2. Cyber Incident report. The Cyber Incident Report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at https://dibnet.dod.mil.

3. Medium assurance certificate requirement. To report cyber incidents in accordance with this Article, the Performer or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see https://public.cyber.mil/eca/assurance-levels.

C. Malicious Software.

When the Performer or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) at this website: https://www.dc3.mil/ or in accordance with additional instructions provided by DC3 or the Agreements Officer or the AOR. Do not send the malicious software to the Agreements Officer or AOR.

D. Media preservation and protection.

When a Performer discovers a cyber incident has occurred, the Performer shall preserve and protect images of all known affected information systems identified in paragraph B.1.a. of this Article and all relevant monitoring/packet capture data for at least 90 calendar days from the submission of the Cyber Incident Report to allow DoD to request the media or decline interest.

E. Access to additional information or equipment necessary for forensic analysis.

Upon request by DoD (and in conjunction with SDA), the Performer shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis. SDA will work with the Performer to mitigate confidentiality concerns.

F. Cyber Incident damage assessment activities.

If DoD elects to conduct a damage assessment, the Agreements Officer will request that the Performer provide all of the damage assessment information gathered in accordance with paragraph D of this Article.

G. DoD safeguarding and use of Performer attributional/proprietary information.

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 B. 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 that is necessary for the authorized purpose(s) for which the information is being released.

H. Use and release of Performer attributional/proprietary information not created by or for DoD.

Information that is obtained from the Performer (or derived from information obtained from the Performer) under this Article that is not created by or for the DoD is authorized to be released outside of the 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 C.F.R. Part 236).

5. To a support services contractor that is directly supporting Government activities under a federal procurement contract subject to the Defense Federal Acquisition Regulation Supplement (DFARS) that includes the clause at 252.204-7009, *Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.*

I. Use and release of Performer attributional/proprietary information created by or for DoD.

Information that is obtained from the Performer (or derived from information obtained from the Performer) under this Article that is created by or for the DoD (including the information submitted pursuant to paragraph B of this Article) is authorized to be used and released outside of the DoD for purposes and activities authorized by paragraph H. of this Article, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

J. Other safeguarding or reporting requirements.

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.

K. Lower Tier Agreements

The Performer shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements entered into solely in connection with this Agreement.

L. Definitions as used in this Article

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

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

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

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

a. Marked or otherwise identified in the agreement, task order, or delivery order and provided to the Performer by or on behalf of DoD in support of the performance of the agreement; or

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

"Controlled Unclassified Information (CUI)" means unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies. Instructions for the use, marking, dissemination, and storage of CUI can be found in DoD Instruction 5200.48, "Controlled Unclassified Information (CUI)."

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

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

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

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

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

ARTICLE XII: FOLLOW-ON PRODUCTION CONTRACTS OR OTHER TRANSACTIONS

In accordance with 10 U.S.C. § 4022(f), the Government may award a follow-on production contract or Other Transaction (OT) to the Performer, or a recognized successor in interest to the OT, following the successful completion of this entire Agreement, including any modifications, if modified.

ARTICLE XIII: TITLE TO AND DISPOSITION OF PROPERTY

A. Title to Property

Title to each item of property acquired under this Agreement not identified as a deliverable in the Attachment 1a SOW shall vest in the Performer upon acquisition with no further obligation of the Parties. Notwithstanding the foregoing, in the event of termination, Performer retains title to all property acquired by the Performer for use in performing the fixed price scope of work in the Agreement. Performer shall

be responsible for the maintenance, repair, protection, and preservation of all Performer acquired property and Government Furnished Property, with the exception of Government Furnished Property that is delivered to the Performer in a condition that is unsuitable for its intended purpose.

B. Management and Disposition of Property

1. In the performance of this agreement the Performer shall adhere to the below outlined FAR and DFARS clause(s) when managing and interacting with Government Furnished Property (GFP). The Performer shall work with the appointed AAO and plant clearance official to properly disposition the GFP identified in Attachment 1e: Government Furnished Items/GFX.

2. The following clauses are incorporated by reference to this agreement:

   i. FAR 52.245-1 Government Property. (Sep 2021)

   ii. FAR 52.245-9 Use and Charges. (Apr 2012)

   iii. DFARS 252.245-7005 Management and Reporting of Government Property. (Jan 2024)

3. At the completion of the term of this Agreement, the Performer shall disposition all other property not identified as a deliverable in the Attachment 1a SOW or identified as "GFP" in the applicable Government Furnish Items/GFX Attachment.

ARTICLE XIV: 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. § 2000d) relating to nondiscrimination in Federally assisted programs.

ARTICLE XV: SECURITY

The Performer shall comply with the requirements contained in the DD Form 254 (Attachment 1f).

Or

No DD254 is required.

ARTICLE XVI: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

(1) There shall be no dissemination or publication, except within and between the Performer and any subcontractors, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the Agreements Officer. All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Performer. Unclassified patent related documents are exempt from prepublication controls and this review requirement. There shall be no dissemination or publication, except within and between the Performer and any subcontractor(s), of information developed under this effort without first obtaining approval for public release from SDA.

(2) The Performer shall submit all proposed public releases for review and approval to the SDA Strategic Engagement Cell. Public releases include press releases, specific publicity or advertisement, and publication or presentation, but exclude those relating to the open sourcing or licensing, sales or other

commercial exploitation of products, services or technologies. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

This research was, in part, funded by the U.S. Government. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the U.S. Government.

ARTICLE XVII: PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) Definitions. As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
(2) 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);
(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) 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;

(2) 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;

(3) 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);

(4) 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);

(5) 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

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

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

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

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

(b) Prohibition.

(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. The Performer is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. 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) Exceptions. This clause does not prohibit Performers from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(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 contract 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 (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Performer shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Performer shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil

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

(i) Within one business day from the date of such identification or notification: The 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.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: 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.

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

(End of article)

ARTICLE XVIII: PROHIBITION ON A BYTEDANCE COVERED APPLICATION

(a) Definitions. As used in this Article—

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

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

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor or performer under a contract or agreement with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor or performer incidental to a Federal contract or agreement.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, "No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Performer is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Performer under this agreement, including equipment provided by the Performer's employees; however, this prohibition does not apply if the Agreements Officer provides written notification to the Performer that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts or Sub-agreements. The Performer shall insert the substance of this article, including this paragraph (c), in all subcontracts or sub-agreements, including subcontracts or sub-agreements for the acquisition of commercial products or commercial services.

ARTICLE XIX: ASSOCIATE CONTRACTOR AGREEMENT

A. Applicability

A similar clause or article will be included in all awards made against SDA STEC BAA awards. Contractors or Performers receiving an award under a STEC BAA may be required to enter into an Associate Contractor Agreement (ACA) with some or all of the prime awardees from the PWSA existing awardees. Note: SDA Advisory and Assistance Services (A&AS) contractors, as well as SDA Federally Funded Research and Development Center (FFRDC) and University Affiliated Research Center (UARC) support personnel, are covered by separate, non-disclosure agreements with the U.S. Government and are exempt from entering into an ACA with the PWSA Performers.

B. ACA Language [Modify as required]

The text of the ACA is as follows:

"It is recognized that the success of the SDA Proliferated Warfighter Space Architecture Systems, Technologies, and Emerging Capabilities program depends in part upon the open exchange of information between the various Associate Contractors involved in the Proliferated Warfighter Space Architecture (PWSA) effort. This article is intended to ensure appropriate coordination and integration of work by the Associate Contractors to achieve complete compatibility and to prevent unnecessary duplication of effort. By executing this agreement, the Performer assumes the responsibilities of an Associate Contractor. For the purpose of this clause, the term Contractor includes subsidiaries, affiliates, and organizations under the control of the contractor (e.g., subcontractors).

Work under this agreement may involve access to proprietary or confidential data from an Associate Contractor. To the extent that such data is received by the Performer from any Associate

Contractor for the performance of this contract, the Performer hereby agrees that any proprietary information received shall remain the property of the Associate Contractor and shall be used solely for the purpose of the SDA Proliferated Warfighter Space Architecture, Systems, Technologies, and Emerging Capabilities efforts.

Information which is received from another Performer in writing or electronically and which is clearly identified as proprietary or confidential shall be protected in accordance with this provision. The obligation to retain such information in confidence will be satisfied if the Performer receiving such information utilizes the same controls as it employs to avoid disclosure, publication, or dissemination of its own proprietary information. The receiving Associate Contractor agrees to hold such information in confidence as provided herein so long as such information is of a proprietary/confidential or Limited Rights nature.

The Performer hereby agrees to closely cooperate as an Associate Contractor with the other Associate Contractors on this effort. This involves as a minimum:

- *Maintenance of a close liaison and working relationship*
- *Maintenance of a free and open information network with all Government-identified Associate Contractors*
- *Delineation of detailed interface responsibilities*
- *Entering into a written agreement with the other Associate Contractors setting forth the substance and procedures relating to the foregoing, and promptly providing the Procuring Contracting Officer with a copy of same*

Receipt of proprietary information from the Associate Contractors and transmittal of Contractor proprietary information to the Associate Contractors subject to any applicable proprietary information exchange agreements between Associate Contractors when, in either case, those actions are necessary for the performance of either."

C. ACA Execution

The Performer shall furnish copies of all ACAs to the Agreements Officer immediately upon execution of the agreements. If the Performer and the Associate Contractor(s) are unable to reach an agreement, or if the technical data identified is not provided as scheduled, the Performer shall promptly notify the SDA Program Manager and Contracting or Agreements Officer. The Government will determine the appropriate corrective action and will issue guidance to the affected Contractor.

D. ACA Subcontracts

The Performer agrees to insert in all subcontracts hereunder which require access to proprietary information belonging to the Associate Contractors a provision which shall conform substantially to the language of this clause, including this paragraph.

ARTICLE XX: DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS) RATING

This is a rated order certified for national defense use, and you are required to follow all provisions of the Defense Priorities and Allocations System regulation (15 CFR 700).

DPAS Priority Rating: DO-A7
DPAS Category: Electronic & Communications Equipment

ARTICLE XXI: DUTY FREE ENTRY

The following DFARS clauses are incorporated by reference to this agreement:

i. DFARS 252.225-70001 Buy American and Balance of Payments Program – Basic (Feb 2024)

ii. DFARS 252.225-7002 Qualifying Country Sources as Subcontractors (Mar 2022)

iii. DFARS 252.225-7013 Duty Free Entry (Aug 2025)

ARTICLE XXII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and language set forth in the Attachments, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, and (2) all Attachments to the Agreement.

ARTICLE XXIII: EXECUTION

This 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 the SDA Agreements Officer. 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 one and the same instrument.

ARTICLE XXIV: SPONSORED PERFORMER'S AUTHORIZED USE OF IC COMMERCIAL CLOUD ENTERPRISE (C2E) ENVIRONMENT [if Applicable]

A. Authorization

This Agreement includes scope, as identified in this Agreement's Statement of Work, Attachment 1a, attached hereto, requiring the utilization of cloud services otherwise available to the Government via the Intelligence Community (IC) Commercial Cloud Enterprise (C2E) contracts. To increase efficiency and reduce overall cost to the Government, the Performer is hereby authorized to place orders for cloud services under C2E under one or more of the following Contracts:

Authorized C2E Cloud Service Provider (CSP)	C2E IDIQ Contracts(s)
Amazon Web Services	2021-20101900401
Google	2021-20101900402
IBM	2021-20101900403
Microsoft	2021-20101900404
Oracle	2021-20101900405

B. Use and Payment

1. The Performer shall only use the C2E cloud environments and services necessary for performing the requirements of this Agreement. To perform these requirements, the Performer has selected the following CSP(s): Amazon Web Services. Upon Agreement award, the Government will issue a Letter of Authorization enabling the Performer to place orders under C2E for this Agreement.

2. The Performer shall set up a direct billing mechanism with the Performer-selected CSP(s). The Government is not responsible for billing or customer support issues. The Performer shall be billed directly by the CSP(s) for cloud services consumed by the account(s). The Performer shall pay these bills in a timely fashion (NLT 30 days after the billing office receives a proper invoice). Failure to provide timely payment may be considered a failure to perform a requirement of this Agreement.

3. The Performer may bill the cloud consumption amounts back to the Government in accordance with the terms of this Agreement, however, the Performer shall not apply any fees, profit, taxes, or markups on the C2E CSP cloud services. Items must be invoiced at the price for which they were procured from the C2E CSP(s).

4. The Performer will work with the IC element responsible for issuing this Agreement to ensure proper account creation within the C2E Environments. That IC element retains ultimate ownership of the C2E account(s) and the data within the account(s); unless the issuing IC element and Performer have agreed to special data right terms and conditions within this Agreement. When this Agreement ends, the C2E accounts created for this Contract either will be terminated as directed by the Government or the Government will Assume control, monitoring, and payment of the account(s); the Government will determine which method is used.

5. The Performer is required to promptly provide all C2E account data or metrics requested by the C2E Agreements Officer/AOR or the issuing IC Element's Agreements Officer/AOR.

C. Security and Monitoring

1. The Performer developing or deploying systems and applications connecting to and using C2Eservices shall work with the Government to ensure proper assessment and authorization of such systems/applications, cloud configurations, and to obtain Authority to Operate (ATO) for any Information Technology (IT) systems or applications that will be placed on C2E consistent with the risk mitigation framework provided in IC policies and directives.

2. The Performer is responsible for monitoring and auditing the activities of its users (including its system administrators and privileged users, or equivalent individuals) of C2E services in accordance with ICD 503. The Performer shall ensure its users of C2E services are authorized users, and that such persons utilize the C2E services for official or authorized purposes only. The Performer shall also ensure that its users comply with all license requirements associated with their use of C2E, including software licenses.

3. The Performer shall comply with all applicable legal and policy reporting and notification requirements related to any security incident in the C2E environments, including any cyber incidents, threats, or attacks, or data spills, system or data breaches (e.g., unauthorized disclosure of personally identifiable information), and for the identification of vulnerabilities involving the CSPs' service responsibilities so that the CSP can contain, eradicate, respond to, and mitigate or resolve the incident and re-secure the environment.

4. The Performer will have the capability to control access, delete, purge or otherwise remove its data from the CSP cloud environments (including backup data), or to prevent its data from being deleted, purged or otherwise removed from the commercial cloud. Should the CIA's (serving as the C2E

Service of Common Concern (SoCC) provider) technical or cybersecurity team identify an actual or potential security incident or vulnerability, it may, consistent with the terms and conditions of the C2E Agreements, take limited unilateral action to temporarily deny or block C2E access to IC data or systems, but only after first attempting to inform the affected customer(s)(Performer and/or issuing IC Element). In its role as the SoCC provider of C2E for the IC, the CIA will not access the actual content of any data, or associated metadata that belongs to another customer. However, in the event of a security incident (including any counterintelligence incident) that involves either the C2E Commercial or Regulated Environments, CIA, in its role to provide continuous monitoring of security compliance for the C2E infrastructure, will work with its CSP(s) and the affected customer(s) to address or resolve the incident.

5. The Performer understands that in the Government's role of administering the C2E contracts, the Government will receive reports and information from the CSP(s) on the Performer's utilization of C2E services and further acknowledges that the Government may report such information as necessary to meet the Government's contract management requirements and to respond to appropriate oversight entities. Furthermore, any violations of these provisions by the Performer may be reported by the Government to the appropriate officials (including the IC Chief Information (CIO), the IC Procurement Executive, the DNI Chief Financial Officer (CFO), the DNI General Counsel, and the IC Inspector General), and other offices and entities as the Government deems necessary and appropriate.

D. Access Control

Identity, Credential, and Access Management (ICAM) (also known as Identity, Authentication, and Authorization (IA&A) services) is a critical component and fundamental to the security of the IC Information Technology Enterprise (IC ITE). The Performer will have certain capability for identity management, credential management, attributes services, and authorization services. Separate capabilities will also exist above the infrastructure layer, whether built into individual applications, provided by the ICAM Service Provider, or otherwise. Whether utilizing the C2E CSP's services or otherwise, the Performer always remains responsible for managing its authorized users and system credentials, and access to its data, applications, and to C2E services, by requesting, creating, documenting, monitoring, implementing, and utilizing appropriate access rules and processes, all in compliance with applicable Agreement terms, and IC directives and law.

ARTICLE XXV: END USER LICENSE AGREEMENT - UNENFORCEABLE CLAUSES [if Applicable]

When any supply or service acquired under the Agreement is subject to an End User License Agreement (EULA), the following language shall be deemed incorporated into the EULA:
(a) Notwithstanding any other provision of the EULA, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(1) *Applicability.* The EULA is part of the Agreement between the Performer and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument.

(2) *End user.* The EULA shall bind the Government as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(3) *Law and disputes.* The EULA is governed by Federal law and the Disputes provisions of this Agreement (Article VII).

(i) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory,

district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(ii) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by this Agreement and applicable Federal law is hereby deleted.

(iii) Any language prescribing a different time period for bringing an action other than that prescribed by this Agreement and applicable Federal law in relation to a dispute is hereby deleted.

(4) *Continued performance.* The Performer shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by the EULA. If the Performer believes the Government to be in breach of the EULA, it shall pursue its rights under the Article VII "Disputes" or other applicable Federal statute while continuing performance.

(5) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this EULA, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(6) *Updating terms.*

(i) After award, the Performer may unilaterally revise the EULA terms if the changes are not material. A material change is defined as:

(A) Terms that significantly change Government rights or obligations; and

(B) Terms that increase Government prices;

(C) Terms that decrease overall level of service; or

(D) Terms that limit any other Government right addressed elsewhere in this Agreement.

(ii) For revisions that will materially change the terms of the EULA, the revised EULA must be incorporated into the Agreement using a bilateral modification.

(iii) Any EULA terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this Agreement shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(7) *No automatic renewals.* If any license or service tied to periodic payment is provided under this EULA (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(8) *Indemnification.* Any clause of this EULA requiring the Performer to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(9) *Audits.* Any clause of this EULA permitting the Performer to audit the end user's compliance with this EULA is hereby amended as follows:

(i) Discrepancies found in an audit may result in a charge by the Performer to the Government. Any

resulting invoice must comply with the proper invoicing requirements specified in the underlying Agreement.

(ii) This charge, if disputed by the Government, will be resolved through Agreement Article VII - Disputes; no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(iii) Any audit requested by the Performer will be performed at the Performer's expense, without reimbursement by the Government.

(10) *Taxes or surcharges.* Any taxes or surcharges which the Performer seeks to pass along to the Government as end user will be governed by the terms of the underlying Agreement and, in any event, must be submitted to the Agreements Officer for a determination of applicability prior to invoicing.

(11) *Non-assignment.* This EULA may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under FAR clause 52.232-23, Assignment of Claims.

(12) *Confidential information*. If this EULA includes a confidentiality clause, such clause is hereby amended to state that neither the EULA nor the Agreement price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this EULA to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this EULA.

(b) If any language, provision or clause of this EULA conflicts or is inconsistent with the preceding paragraph (a), the language, provisions, or clause of paragraph (a) shall prevail to the extent of such inconsistency.