

Exhibit A to Subcontract **TBD**
Other Transaction for Prototype Agreement

CONCERNING

Tranche 2 Transport Layer - Beta

Note: Substitute “SEAKR” for “SDA” and the “Government” throughout this Agreement except for where by a clause’s very nature the change would render the clause invalid.

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

With this Agreement SDA and the Performer seek to establish the foundation for Tranche 2 (T2) of the Proliferated Warfighter Space Architecture (PWSA). The PWSA's operational utility is predicated on the availability of a ubiquitous data and communications Transport Layer (TL) provided by a proliferated constellation of relatively small, mass-producible space vehicles (SVs) in low Earth orbit (LEO). The T2TL prototype will provide global communications access and deliver persistent regional encrypted connectivity in support of Warfighter missions around the globe.

B. Definitions

In this Agreement, the following definitions apply:

Agreement: The body of this Agreement.

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.

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.

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 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—

(1) 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

(2) 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 evaluational or informational purposes;

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: *(INSERT COMPANY NAME)*.

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.

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.

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.

C. 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 prototype program for the development of a Tranche 2 Transport Layer prototype constellation. This prototype will strengthen deterrence and warfighting capabilities in space to support a stressing regional conflict.

2. The Performer shall be responsible for performance of the work set forth in the Statement of Work (SOW).

3. The Performer shall be paid a fixed amount for each milestone accomplished in accordance with the Schedule of Milestones and Payments.

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

Milestones for Operations and Sustainment for years 3 – 5 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 the 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 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 VI 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 VI, 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, subject to the availability of funds. Any extension shall be formalized through modification of the Agreement by the Agreements Officer (AO) 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

RESERVED

B. Modifications

RESERVED

C. Key Personnel

RESERVED

ARTICLE IV: AGREEMENT ADMINISTRATION

RESERVED

A. Government Points of Contact:

RESERVED

B. Performer Points of Contact

RESERVED

ARTICLE V: OBLIGATION AND PAYMENT

A. Obligation

RESERVED

B. Payments

RESERVED

ARTICLE VI: 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.
2. 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 Director in the interests of justice waives this requirement.
3. 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 Tranche 2 Program Director and senior executive, no lower than the Director level, 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 Deputy Director and the senior 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.
4. In the absence of a joint decision, upon written request to the SDA 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 Director may elect to conduct this review personally or through a designee jointly with a senior executive, no lower than the Vice President/General Manager level, appointed by the Performer. Following the review, the SDA Director or designee and the executive appointed by the Performer will jointly resolve the issue(s) and the SDA Director or designee will 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.
5. 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 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 and unspent 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 Orbital Plane 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.

ARTICLE VII: 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, Election of Title, and Filing of Patent Application

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 HQ08502290001, 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 AO 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 VIII: 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 6) 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 which the Government shall have Unlimited Rights.

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.

3. With respect to technical data or computer software delivered pursuant to Attachment 1 under the Agreement, the Government shall receive Government Purpose Rights, with the exception of those items identified in the Data Assertions Table (Attachment 6) for which the Performer asserts other license restrictions, including (but not limited to) Limited Rights or SDA Software Rights. 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.

4. **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 FA2401239XXXX 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 IX: 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.*), DoD Manual 5220.22, Volume 2 (August 1, 2018), 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 AO 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 AO 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 VI, 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 X: SAFEGUARDING CONTROLLED UNCLASSIFIED INFORMATION AND CONTROLLED TECHNICAL INFORMATION AND CYBER INCIDENT REPORTING

A. Background

Protection of Controlled Unclassified Information (CUI) and Controlled Technical Information (CTI) is of paramount importance to SDA and can directly impact the ability of SDA to successfully conduct its mission. Therefore, this Article requires the performer to protect CUI and CTI that resides on the performer's information systems. This article also requires the performer to rapidly report any cyber incident involving CUI or CTI.

B. Safeguarding CUI and CTI

The performer shall implement the version of NIST Special Publication (SP) 800-171 in effect at the time the solicitation is issued or as authorized by the Agreements Officer for CUI and CTI that resides on the performer's information systems. Consistent with NIST SP 800-171, implementation may be tailored to facilitate equivalent safeguarding measures used in the performer systems and organization. Any suspected loss or compromise of CUI or CTI that resides on the performer's information systems shall be considered a cyber incident and require the performer to rapidly report the incident to SDA in accordance with paragraph C below.

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) (version in effect at the time the solicitation is issued or as authorized by the Agreements Officer) found at <https://dl.cyber.mil/cloud/SRG/index.html>, unless notified by the Agreements Officer that this requirement has been waived by the DoD Chief Information Officer.

C. Cyber Incident Reporting

Upon discovery of a cyber incident involving CUI or CTI, the performer shall take immediate steps to mitigate any further loss or compromise. The performer shall rapidly report the incident to SDA and provide sufficient details of the event—including identification of detected and isolated malicious software—to enable SDA to assess the situation and provide feedback to the performer regarding further reporting and potential mitigation actions. The performer shall preserve and protect images of all known affected information systems and all relevant monitoring/packet capture data for at least 90 days from reporting the cyber incident to enable SDA to assess the cyber incident. The performer agrees to rapidly implement security measures as recommended by SDA and to provide to SDA any additionally requested information to help the Parties resolve the cyber incident and to prevent future cyber incidents.

D. Public Release

All information and data covered by this Article must be reviewed and approved by SDA prior to any public release by the Provider. Submit any requests for review of information or data intended for public release to the SDA Strategic Engagement Cell.

E. Lower Tier Agreements

The performer shall include this Article in all subcontracts or lower tier agreements, regardless of tier, for work performed in support of this Agreement.

F. Definitions

Compromise: 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.

Controlled Technical Information (CTI): Technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents.

Controlled Unclassified Information (CUI): 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: 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.

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

Rapidly Report: Report to SDA within 72 hours of discovery of any cyber incident.

ARTICLE XI: 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 XII: 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 1 SOW shall vest in the Performer upon acquisition with no further obligation of the Parties. 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. Disposition of Property

At the completion of the term of this Agreement, Performer shall disposition property not identified as a deliverable in the Attachment 1 SOW.

ARTICLE XIII: 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 XIV: SECURITY

The Performer shall comply with the requirements contained in the Attachment 5 DD Form 254.

ARTICLE XV: 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 AO. 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 XVI: 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 Contractor 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 contractors 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 Contractor 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 Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor 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 Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 XVII: ASSOCIATE CONTRACTOR AGREEMENT

A. Applicability

A similar clause or article will be included in all awards made against SDA Tranche 2 (T2) solicitations. Contractors or Performers receiving an award under a T2 solicitation will be required to enter into an Associate Contractor Agreement (ACA) with all of the prime awardees from the T2 solicitations.

B. ACA Language

The text of the ACA is as follows:

“It is recognized that the success of the SDA Tranche 2 of the Proliferated Warfighter Space Architecture (PWSA) depends in part upon the open exchange of information between the various Associate Contractors involved in the Tranche 2 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 Contractor 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 Tranche 2 Transport Layer effort.

Information which is received from another Associate Contractor 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 Associate Contractor 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 or Agreements 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 AO immediately upon execution of the agreements. In the event that 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 XVIII: 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 XIX: ORDER OF PRECEDENCE

RESERVED

ARTICLE XX: EXECUTION

RESERVED