**TECHNOLOGY INVESTMENT AGREEMENT**

BETWEEN

[*performer identification*]

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

675 NORTH RANDOLPH STREET

ARLINGTON, VA 22203-1714

CONCERNING

[*performer project name*]

[*DARPA PROGRAM NAME & SOLICITION #*]

Agreement No.: HR0011-20-3-00*XX*

Total Amount of the Agreement: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*Base + Exercised Options*]

Phase 1 (Base): $\_\_\_\_\_\_\_\_\_\_\_

Phase 2 (Option): $\_\_\_\_\_\_\_\_\_\_\_ [*Not Yet Exercised*]

Phase 3 (Option): $\_\_\_\_\_\_\_\_\_\_\_ [*Not Yet Exercised*]

Authority: 10 U.S.C. § 2371

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Defense Advanced Research Projects Agency (DARPA), and [*performer name*] pursuant to and under United States Federal law.

FOR [*PERFORMER NAME*] FOR THE GOVERNMENT

(Signature & Date) (Signature & Date)

(Name, Title) (Name, Title)

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

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## ARTICLE 1: SCOPE OF THE AGREEMENT

**A. Background**

*[THIS SECTION DESCRIBES THE VISION OF THE PROGRAM AND SHOULD GENERALLY ANSWER THE FOLLOWING QUESTIONS IN A NARRATIVE FORMAT:*

* *WHAT IS THE PURPOSE OF THE AGREEMENT?*
* *WHAT IS THE CURRENT TECHNOLOGICAL SITUATION?*
* *WHAT MAKES THIS PROGRAM A “CRITICAL TECHNOLOGY” EFFORT?*
* *WHY IS THE CURRENT TECHNOLOGY NOT SUFFICIENT?*
* *WHY IS IT NECESSARY FOR THE GOVERNMENT TO SUPPORT INDUSTRY IN ADDRESSING THIS SITUATION?*
* *WHAT ARE THE ISSUES OF PARTICULAR IMPORTANCE TO DARPA?*
* *WHAT ARE THE DUAL-USE (MILITARY AND COMMERCIAL) APPLICATIONS?*
* *WHAT IS THE MARKET POTENTIAL?*
* *WHAT ARE THE COMMERCIALIZATION GOALS?*
* *IF THE PROGRAM IS SUCCESSFUL, THEN WHAT? WHERE DO WE GO FROM HERE?*
* *IF THIS COLLABORATION IS SUCCESSFUL, WHAT WILL WE HAVE ACCOMPLISHED?]*

**B. Definitions**

In this Agreement, the following definitions apply:

**Agreement:** The body of this Agreement and Attachments 1 – 5, which are expressly incorporated in and made a part of the Agreement.

**Agreements Officer (AO):**  The Government’s principle point of contact for all contractual, administrative and financial issues arising under the Agreement. Notwithstanding any other provision of this Agreement, the Agreements Officer is the only individual within the Government authorized to redirect the effort or in any way amend or modify any of the terms of this Agreement. Legal notices, including notices of disputes, proposed technology transfers under Article 9, invention disclosures, patent and patent application notices, and any notices relating to any allegation or claim relating to intellectual property infringement shall be referred to the Agreements Officer.

**Agreements Officer’s Representative (AOR):** The Government’s technical representative charged with overall responsibility for review and verification of completion of Payable Milestones and the Technical

Description Document, including amendments or modifications thereto, as set forth herein. The

Agreements Officer’s Representative is not otherwise authorized to make any representations or

commitments of any kind on behalf of the Agreements Officer or the Government. The AOR does not

have the authority to alter the Performer’s obligations or to change the specifications of the Agreement.

**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. The most common type of CUI found in DARPA programs is For Official Use Only (FOUO). The use, marking, dissemination, and storage of CUI can be found in DoD Manual 5200.01 Volume 4 “Controlled Unclassified Information”.

**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. Such contractors receive access to data for performance of a Government contract that contains the clause at DFARS Subpart 252.227.7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

**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.

**Data:** Recorded information, regardless of form or method of recording, which includes, but is not limited to, copyrightable material; unpatentable computer software, including programs, code, documentation and databases; trademarks; and maskworks. The term does not include financial, administrative, cost, pricing, or management information and does not include Subject Inventions, as defined in this Article.

**Effective Date:** The date of the last signature hereon.

**For Official Use Only (FOUO):** A protective marking to be applied to controlled unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the FOIA. This includes information that qualifies for protection pursuant to the provisions of the Privacy Act of 1974, as amended. See DoD Manual 5400.07 “DoD Freedom of Information Act (FOIA) Program” for detailed information on categories of information that may qualify for exemption from public release.

**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.

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

**Government Purpose Rights:** The right to use, modify, reproduce, perform, display, release, or disclose, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only.

**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 Data for commercial purposes or authorize others to do so.

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

**Intellectual Property:** The intangible creations of the human mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. Such creations may be protected in the law as patents, copyrights, trademarks, or trade secrets.”

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

**Limited Rights:** The right to use, modify, reproduce, release, perform, display, or disclose, in whole or in part, within the Government. The Government may not, without the written permission of the Performer, release or disclose outside the Government, use for manufacture, or authorize use by another party. The Performer agrees that the Government may release or disclose to a covered Government support contractor in performance of its covered Government support contract.

**Made:** Any invention means the conception or first actual reduction to practice of such invention.

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

**Performer:** [*INSERT NAME OF PERFORMER*]

**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 1, Section C.

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

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

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

**Unlimited Rights:** The right to use, modify, reproduce, perform, display, release, or disclose, in whole or in part, in any manner and for any purposes whatsoever, and to have or permit other to do so as well.

**C. Scope**

1. The Performer shall perform a coordinated research and development Program designed to develop [*INSERT RESEARCH AND DEVELOPMENT EFFORT]*. The research shall be carried out in accordance with the Task Description Document (TDD) incorporated in this Agreement as Attachment 1. The Performer shall submit or otherwise provide all documentation required by Attachment 2, Report Requirements.

2. The Performer shall be paid a fixed amount for each milestone accomplished in accordance with the Payment Schedule set forth in Attachment 3 and the procedures of Article 5. The Payment Schedule may be revised or updated in accordance with Article 3.

3. The Government funding is estimated to represent approximately *XX*% of the overall amount necessary to accomplish the TDD. The Performer shall provide any remaining funding necessary to accomplish the TDD.

**D. Goals & Objectives**

1. The goals & objectives of this Agreement are as stipulated in Attachment 1.

2. The Government will have continuous involvement with the Performer. The Government will also obtain access to research results and certain rights Intellectual Property pursuant to Article 7. DARPA and the Performer are bound to each other by a duty of good faith and best research effort in achieving the goals of the Agreement.

3. This Agreement is an “other transaction” pursuant to 10 U.S.C. § 2371. The Parties agree that the principal purpose of this Agreement is for the Government and the Performer to provide for a coordinated effort to advance research and technology goals of the program and not primarily for the acquisition of property or services for the direct benefit or use of the Government. This Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

**ARTICLE 2: TERM**

**A. Term of this Agreement**

The term of this Agreement is set forth in Attachment 3. 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.

**B. Termination Provisions**

Subject to a reasonable determination that the program will not produce beneficial results, either Party may terminate this Agreement by written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. In the event of a termination of the Agreement, it is agreed that disposition of Data developed under this Agreement, shall be in accordance with the provisions set forth in Article 7. The Government and the Performer will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article 6. The Government has no obligation to pay the Performer beyond the last completed and paid milestone if the Performer decides to terminate. Should the Government terminate the Agreement for reasons other than breach of the Agreement by the Performer, the Performer shall be entitled to a pro-rata payment for partial completion of a funded milestone as determined by a good faith assessment of such partially completed milestone which shall be formalized through modification of the Agreement per Article 3.

**C. Extending the Term (Option Phases 2 and 3)**

The Parties may extend by mutual written agreement the term of this Agreement if funding availability and research opportunities reasonably warrant. Any extension shall be formalized through modification of the Agreement per Article 3.

(i) The term of this Agreement may be extended prior to the end of each phase per Attachment 3; provided that the Government gives the Performer a preliminary written notice of its intent to extend at least thirty (30) days before the Agreement expires. The preliminary notice does not commit the Government to an extension.

(ii) If this option is exercised, the extended Agreement shall be considered to include this Article.

(iii) The total duration of this Agreement, including the exercise of any options under this Article, shall not exceed the total Agreement term set forth in Attachment 3.

**ARTICLE 3: 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 DARPA AOR shall provide recommendations to Program developments and technical collaboration and be responsible for the review and verification of milestones.

**B. Program Management Planning Process**

Program planning will consist of an Program Plan with inputs and reviews from the Performer and DARPA management, containing a detailed schedule of research activities and milestones.

The Performer, with DARPA Program Manager (PM) participation and review, will prepare an overall Program Plan for the active phase that will be delivered to the Government within 10 business days prior to the phase kickoff meeting. The Program Plan may be presented and reviewed initially at the phase kickoff meeting, and subsequent program review meetings, at the discretion of the DARPA PM.

The Program Plan provides a detailed schedule of research activities, commits the Performer to meet specific performance objectives and describes the program/technical milestones. The Program Plan will consolidate all prior adjustments in the research schedule, including revisions/modifications to prospective milestones. Recommendations for changes and technical revisions or modifications to the Agreement which result from the phase kickoff meeting or subsequent program review meetings, shall be made in accordance with the provisions of Article 3, Section C.

**C. Modifications**

1. As a result of meetings, annual reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the TDD would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the TDD and prospective milestones, will be documented and submitted by the Performer to the DARPA PM and AOR with a copy to the AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the research program. The Performer shall approve any Agreement modification. The Government is not obligated to pay for additional or revised future milestones until the Schedule of Milestones and Payments (Attachment 3) is formally revised by the AO and made part of this Agreement.

2. The AOR shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement TDD, Schedule of Milestones and Payments, or other proposed changes to the terms and conditions of this Agreement.

3. A unilateral modification is a modification to the Agreement that is signed only by the AO. Unilateral modifications will be used for:

(a) Administrative changes (e.g., changes in the payment office or appropriation data, changes to Government or Performer’s personnel identified in the Agreement, etc.); and

(b) Adding incremental funding per Article 5.

4. A bilateral modification is a modification to the Agreement that is signed by the Performer and the AO. Bilateral modifications will be used for:

(a) All other changes to the Agreement not of the type identified in Section C.3 of this Article above – to include terminating the Agreement per Article 2.

**ARTICLE 4: AGREEMENT ADMINISTRATION**

Unless otherwise provided in this Agreement, approvals permitted or required to be made by DARPA may be made only by the DARPA AO. 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):

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

DARPA Program Manager (PM):

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

Agreements Officer’s Representative (AOR):

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

Note: See also Attachment 5.

Administrative Agreements Officer (AAO):

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

**B. Performer Points of Contact**

Performer’s Administrative/Contracting:

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

Performer’s Program Investigator (PI):

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

**ARTICLE 5: OBLIGATION AND PAYMENT**

**A. Obligation**

The Government’s liability to make payments to the Performer is limited to only those funds obligated under this Agreement or by modification to the Agreement. This Agreement will be subject to incremental funding, as indicated in Attachment 3, which is presently made available for performance under this Agreement. At the time each payable milestone is funded, it will be fully funded.

**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 by submitting or otherwise providing the Milestone Reports required by Attachment 2. After written verification of the accomplishment of the milestone by the AOR, the Performer will submit their invoice to the AO for payment approval through Wide Area Work Flow (WAWF), as detailed in Section B.3. of this Article.

3. The Performer is required to utilize the Wide Area Workflow system when processing invoices and receiving reports under this Agreement. Wide Area Workflow (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 the Department of Defense’s (DoD) 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-reputable 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.

The Performer shall (i) ensure an Electronic Business Point of Contact is designated in System for Award Management at <http://www.sam.gov> and (ii) register to use WAWF–RA at the <https://wawf.eb.mil> site, within ten (10) calendar days after award of this Agreement. Step by Step procedures to register are available at the <https://wawf.eb.mil> site. The Performer is directed to use the “2-in-1” format when processing invoices.

1. For the Issue By DoDAAC, enter HR0011.
2. For the Admin DoDAAC, enter [*INSERT DoDAAC FOR COGNIZANT DCMA OFFICE*].
3. For the Service Acceptor fields, enter HR0011, Extension [XX] (directs to AO).
4. Leave the Inspect by DoDAAC, Ship From Code DoDAAC, Service Approver, and LPO DoDAAC fields blank unless otherwise directed by the AO.
5. The following guidance is provided for invoicing processed under this Agreement through WAWF:

* The AOR identified in Article 4, "Agreement Administration" shall continue to formally inspect and accept the deliverables/ milestones. The AOR shall review the deliverable(s)/ milestone report(s) within fourteen (14) calendar days after submission of the applicable report 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 Performer, DARPA PM, AO, and AAO. The basis for rejection of a payable milestone shall be that such payable milestone, the accomplishment of which is captured in the associated Payable Milestone Report, fails to meet the acceptance criteria stipulated in Attachment 3 of the agreement. If the Government objects to the acceptance of a Payable Milestone (to include one or more of the deliverables thereunder), the Government will work with Performer so that the Performer has reasonable opportunities to cure/redeliver the associated Payable Milestone/Report.
* Acceptance within the WAWF system shall be performed by the AO upon receipt of a confirmation email, or other form of transmittal, from the AOR.
* 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 in the amounts set forth in Attachment 3 shall be made by the Defense Finance and Accounting Services (DFAS) office indicated below within thirty (30) calendar days of an accepted invoice in WAWF:

**DFAS-Columbus Center**

[INSERT NAME]

[INSERT ORGANIZATIN/OFFICE]

[INSERT PHONE NUMBER]

[INSERT EMAIL ADDRESS]

The Performer agrees, when entering invoices entered in WAWF to utilize the CLINs associated with each milestone as delineated at Attachment 3. The description of the CLIN shall include reference to the associated milestone number along with other necessary descriptive information. The Performer agrees that the Government may reject invoices not submitted in accordance with this provision. The Performer shall attach to the invoice a copy of the associated Payable Milestone Report acceptance notice from the AOR. The Performer shall not attach to the invoice a copy of the associated Payable Milestone Report. The Performer agrees that the Government may reject invoices not submitted in accordance with this provision.

**Note for DFAS: The Agreement shall be entered into the DFAS system by CLIN – Milestone association (MS)/ACRN as delineated at Attachment 3. The Agreement is to be paid out by CLIN (MS)/ACRN. Payments shall be made using the CLIN (MS)/ACRN association as delineated at Attachment 3.**

1. Payee Information: As identified at the System for Award Management.

* Cage Code: [*INSERT CODE*]
* DUNS: [*INSERT CODE*]

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

**C. Financial Records and Reports**

Upon completion or termination of this Agreement, whichever occurs earlier, the Performer shall furnish a copy of the Final Report required by Attachment 2. As indicated in Attachment 2, no financial reporting is required.

**D. Audits and Accounting System Compliance**

This is a fixed-support Technology Investment Agreement (TIA) utilizing a milestone payment method that is not subject to audit by the United States Government and the Performer is not required to include this Program in any governmental audits. Additionally, as such, this Agreement establishes no requirements pertaining to use of the Performer’s accounting or timekeeping system(s).

**E. Records Retention and Government Access**

The DoD, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of the Performer that are pertinent solely to the Performer’s technical performance under this Agreement, in order to make examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to the Performer’s personnel for the purpose of interview and discussion related to such records. Such access shall be performed during business hours on business days upon written notice and shall be subject to the security requirements of the audited party to the extent such security requirements do not conflict with the rights of access otherwise granted by this paragraph. The rights of access in this paragraph shall last as long as records are retained. The rights of access in this paragraph do not extend to the Performer’s financial records.

[This subparagraph will be deleted/marked “Reserved” during negotiations if the proposer confirms in writing to the Agreements Officer that it does not currently provide the Government access to records per the terms and conditions of another contractual instrument.]

**F. Accounting and Appropriation Data**

See Attachment 3.

**ARTICLE 6: 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 DARPA 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, which describes the applicable administrative review process. Completion of this process forecloses any further administrative review and must be pursued prior to any other dispute resolution process.

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 [*time period is negotiable but should be no more than 6 months*] from when the Party know or should have known the basis of the action prior to the notification made under Section B.3 of this Article, which constitutes the basis for relief under this Article unless the Director of DARPA 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 (through the DARPA AO or the Performer’s Administrator, as the case may be) 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 DARPA Senior Procurement Executive, and senior executive no lower than [*INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY]* 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. DARPA Senior Procurement Executive, and the senior executive shall conduct a review of the matter(s) in dispute and render a 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 Deputy Director of DARPA, made within thirty (30) calendar days of the expiration of the time for a decision under Section B.3 of the Article above, the dispute shall be further reviewed. The Deputy Director of DARPA may elect to conduct this review personally or through a designee or jointly with a senior executive no lower than [*INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM, AND ORGANZATIONALLY ABOVE THE PERSON IDENTIFIED AT SUBPARAGRAPH 3, TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY]* level appointed by the Performer. Following the review, the Deputy Director of DARPA or designee will resolve the issue(s) and notify the Parties in writing. To the extent permitted by law, such resolution shall be final and binding, except that if not satisfied with the results of completing the administrative review process, either party may pursue any right and remedy in the federal court.

**C. Limitation of Damages**

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of DARPA funding obligated as of the time the dispute arises. In no event shall either party be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

**ARTICLE 7: INTELLECTUAL PROPERTY RIGHTS**

1. **Patent Rights**
   1. **Allocation of Principal Rights – Performer**
      1. Unless the Performer shall have notified DARPA in writing 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. For each Subject Invention to which the Government obtains title, the Performer shall retain a nonexclusive, royalty-free license throughout the world to said Subject Invention. This license extends to the Performer’s domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant license of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. Said license is transferable only with the approval of the DARPA AO, except when transferred to the successor of that part of the business to which the Subject Invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.
   2. **Allocation of Principal Rights – DARPA**
      1. With respect to any Subject Invention in which the Performer retains title, DARPA shall retain a nonexclusive, nontransferable, irrevocable, paid-up Government Purpose license in the Subject Invention throughout the world, regardless of the protection method chosen.
      2. Upon DARPA’s written request, the Performer shall convey title to any Subject Invention to DARPA under the following conditions. DARPA may only request title within sixty (60) calendar days after learning of the Performer’s actions.
         1. The Performer fails to disclose a Subject Invention prior to the completion of the Agreement, or
         2. The Performer elects not to retain title to a Subject Invention.
      3. Regarding Section A.2(b)(1) above, DARPA shall not make any such request in an arbitrary or capricious manner and/or not in abuse of its discretion, and all such requests shall be subject to Article 6, “Disputes,” in this Agreement.
   3. **Invention Disclosure, Election of Title, and Election of Protection Method**
      1. The Performer shall disclose each Subject Invention to DARPA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure shall be made to the DARPA AO and shall be in the form of a written report sufficiently complete in technical detail. The report shall identify the Agreement number, the circumstances under which the invention was made, the identity of the inventor, and any publication, sale or public use of the invention. DARPA may, at its discretion, approve requests for an extension of time for the disclosure of a Subject Invention, and such a request will not be unreasonably withheld. Such requests may be made within or after the four month deadline.
      2. If the Performer determines that it does not intend to retain title to any Subject Invention, the Performer shall notify DARPA in writing no more than sixty (60) calendar days prior to the end of the one (1) year statutory United States patent protection period.
      3. If the Performer chooses to retain title to any Subject Invention, the Performer shall inform the DARPA AO of its corporate determination how to best protect any Subject Invention. The Performer shall choose one of the following two options to protect any Subject Invention.
         1. Protection of the Subject Invention through the patent process
            1. If the Performer chooses to file a patent application in the United States or other countries or forums throughout the world, the Performer shall notify DARPA of this decision, the dates on which the patent applications were filed and where.
            2. The Performer shall notify DARPA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding 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.
            3. The Performer shall include, within the specification of any United States patent application and any patent issued covering a subjection invention, the following statement:

“This invention was made with U.S. Government support under Agreement No. HR0011-20-3-XXXX, awarded by Defense Advanced Research Projects Agency. The U.S. Government has certain rights in the invention.”

* + - 1. Protection of the Subject Invention as a trade secret
         1. If the Performer chooses not to patent the Subject Invention but instead protect it as a trade secret, the Performer shall notify the DARPA AO of this decision in writing within eight (8) months of the Performer’s disclosure of the invention to DARPA.

DARPA may, at its discretion, approve requests for an extension of time for electing to protect a Subject Invention as a trade secret, and such a request will not be unreasonably withheld. Such requests may be made within or after the eight month deadline.

* + - * 1. In that notification, the Performer shall state the applicable law that will govern protection of the trade secret as well as any special protection methods or actions that the Performer will take to ensure secrecy.
        2. If the Government discloses a Subject Invention which is protected as a trade secret to a Covered Government Support Contractor, the Government will ensure trade secrets remain protected under an obligation of confidentiality with respect to such Covered Government Support Contractors. In order to ensure necessary confidentiality is maintained, Performer will negotiate in good faith with the goal of entering into a non-use and-disclosure agreement with a third party at the Government's request to cover information developed under this Agreement that discloses a Subject Invention that is maintained as a trade secret and is to be used by the third party solely for Government Purposes. Performer will disclose such information to the third party within fifteen (15) calendar days of entering into a non-use and -disclosure agreement.
  1. **Administrative Actions**
     1. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all Subject Inventions disclosed under Section A.1(3) of this Article during the course of the Agreement and the current status of each.
        1. All required reporting shall be done, to the extent possible, using the i-Edison reporting website: https//s-edison.info.nih.gov/iEdison/. To the extent that the reporting cannot be accomplished by use of i-Edison, any required documentation will be submitted to the DARPA AO.
     2. The Performer agrees to execute or have executed and promptly deliver to DARPA all instruments necessary to:
        1. Establish or confirm the rights the Government has throughout the world in any Subject Invention to which the Performer elects to retain title, and
        2. Convey title to DARPA when requested under Section A.2(b) of the Article and to enable the Government to obtain patent protection throughout the world in the Subject Invention.
     3. The Performer agrees to instruct and educate its employees of the importance of disclosing inventions promptly to corporate personnel responsible for the administration of patent matters to permit sufficient time to satisfy its notification responsibilities under this Agreement.
  2. **Exceptional Circumstances**
     1. The Parties recognize that the Government is making a significant investment in the Subject Inventions under this Agreement. To protect the Government’s interests, the Parties agree to the following in the event that the Performer goes out of business or otherwise exits the [INSERT DESCRIPTION] industry; or otherwise makes the Subject Inventions unavailable to the Government:
        1. Upon DARPA’s request and an adequate showing of need, the Performer, assignee or exclusive licensee will provide a non-exclusive license to a responsible applicant or applicants, under terms that are reasonable under the circumstances, and
        2. If the Performer, assignee or exclusive licensee refuses a reasonable request from the Government, DARPA has the right to grant such a license itself if DARPA makes a reasonable determination that such action is necessary to alleviate societal health or safety needs or national security needs, which are not reasonably satisfied, by the Performer, assignee, or exclusive licensees.

1. **Data Rights**
   1. **Allocation of Principal Rights**
      1. The Parties agree that in consideration for Government funding, the Performer intends to utilize in commercial business the Intellectual Property developed under this Agreement.

b) With respect to Data delivered pursuant to Attachments 1 through 3 of this Agreement, the Government shall receive rights as stipulated below and in Attachment 3 except as noted in the following two subparagraphs:

|  |  |  |
| --- | --- | --- |
| Data Rights Identifier\* | Data Rights Type | Term |
| GPR | Government Purpose Rights | In perpetuity |
| ULR | Unlimited Rights | In perpetuity |
| LR | Limited Rights | In perpetuity |

[*6 which of the above data rights types apply will be negotiated based on the final Milestone Plan – any not used will also be deleted from the definitions section in Article I as well as the markings section below*]

c) With respect to the following Data deliverables, the Government shall received Limited Rights:

1. Technical Status Reports
2. Milestone Reports
3. Final Report(s)

d) The Government may require delivery of Data developed or generated under this Agreement, which is not identified in Attachment 3, within two (2) years after completion or termination of this Agreement. Any request for delivery of Data will be made in writing with at least sixty (60) days notice. Upon the Government making such a request, the parties will negotiate in good faith the applicable Data rights for the requested Data prior to delivery, and the Government will reimburse the Performer for reasonably incurred costs for gathering and delivery of the Data.

* 1. **Exceptional Circumstances**

1. Notwithstanding any other provision of this Section, in the event the Government chooses to exercise its rights under Section A.5 of this Article, the Performer agrees to deliver at no additional cost to the Government all Data necessary to achieve practical application of a specified Subject Invention. The Government shall retain Unlimited Rights, as defined in Article I, Section B of this Agreement, to this delivered Data.
2. To facilitate any future requests and deliveries, the Performer agrees to retain and maintain in good condition for three (3) years after completion or termination of this Agreement all Data necessary to achieve practical application of any Subject Invention as defined in Article I, Section B of this Agreement.
3. The Government is required to execute this exercise of rights in writing and the Performer agrees to deliver the Data within sixty (60) calendar days from the date of the written request. The Performer may request an extension of this time period by making a written justification to the Government and such a request will not be unreasonably withheld.
   1. **Marking of Data** 
      1. Any Data delivered under this Agreement shall be marked with the following legends, as applicable (no legend is required for Data delivered with Unlimited Rights):

“GOVERNMENT PURPOSE RIGHTS

Agreement Number: HR0011-20-3-00XX

Contractor Name: [*INSERT PERFORMER NAME*]

In accordance with Article 7, as applicable, contained in the above identified Agreement, the Government has the right to: (a) use, modify, reproduce, perform, display, release, or disclose, in whole or in part and in any manner, for

Government Purposes only, and to have or permit others to do so for Government purposes only. Government Purposes includes 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 Data for commercial purposes or authorize others to do so. Any reproduction of this Data or portions thereof marked with this legend must also reproduce the markings.”

“LIMITED RIGHTS

Prime Agreement No.: HR0011-20-3-00XX

Performer Name: [*INSERT PERFORMER NAME*]

In accordance with Article 7, as applicable, contained in the above identified Agreement, the Government has the right to use, modify, reproduce, release, perform, display, or disclose, in whole or in part, within the Government. The Government may not, without the written permission of the Performer, release or disclose outside the Government, use for manufacture, or authorize use by another party. The Government may release to a covered Government support contractor in performance of its Government support contract. Any reproduction of this Data or portions thereof marked with this legend must also reproduce the markings.”

“UNLIMITED RIGHTS

Prime Agreement No.: HR0011-20-3-00XX

Performer Name: [*INSERT PERFORMER NAME*]

In accordance with Article 7, as applicable, contained in the above identified Agreement, the Government has the right to use, duplicate, release, or disclose, Data in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so. Any reproduction of this Data or portions thereof marked with this legend must also reproduce the markings.”

1. **Lower Tier Agreements** 
   * 1. The Performer shall include this Article, suitably modified, in all subcontracts or lower tier agreements, for experimental, developmental, or research work.

## ARTICLE 8: FOREIGN ACCESS TO INTELLECTUAL PROPERTY

This Article shall remain in effect during the term of the Agreement and for three (3) years thereafter.

**A. General**

The Parties agree that intellectual property developed and/or generated 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 intellectual property developments under this Agreement by foreign entities 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 (ITAR)( 22 CFR Parts 120-130) and the Department of Commerce’s Export Administration Regulations (EAR)(15 CFR Parts 730-774) regarding export-controlled items, or the National Security Program Operating Manual (NISPOM) (DoD 5220.22-M). The Performer's responsibility to comply with all applicable laws and regulations regarding export-controlled items and the handling of classified information exists independent of, and is not established or limited by, the information provided by this article. The Performer shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

**B. Restrictions on Sale or Transfer of Intellectual Property to Foreign Entities**

1. In order to best capitalize on the financial investment by the Government in the program and promote the national security interests of the United States, DARPA reserves the right to be notified and discuss options with the Performer before Performer’s transfer of intellectual property developed or generated under this Agreement to a foreign entity. It is not DARPA’s intention to unduly restrict the Performer’s ability to promote and sell its products and services in the global market. DARPA’s intention is to protect the Government’s investment and ability to fully utilize its licenses to the intellectual property in the future. For purposes of this Article, a transfer includes the sale of the Performer and all its assets, or the sale or exclusive licensing of the Intellectual Property developed or generated under this Agreement. A transfer does not include:

(a) sales of products or components, and licenses of intellectual property related to sales of products or components (i.e. software, documentation),

(b) non-exclusive licenses of intellectual property given in the normal course of business practices,

(c) transfers to foreign affiliates or subsidiaries of the Performer for purposes related to the performance of this Agreement,

(d) permissible access to intellectual property to a foreign entity which is an approved source of supply or source of research services under this Agreement, provided that the access is limited to that necessary to allow the entity to perform its agreed upon role under this Agreement,

(e) any activities that have been designated by DARPA in this Agreement as fundamental research, or

(f) any circumstances that have been included in Section D of this Article.

2. In addition, to fully facilitate the Government’s investment in the intellectual property developed or generated under this Agreement, the Performer agrees take reasonable steps to license the exclusive right to use or sell the intellectual property in the United States only to a person or entity that agrees that any product utilizing the intellectual property will be manufactured substantially in the United States. If the Performer has made reasonable but unsuccessful efforts to identify and license to potential licensees to manufacture in the United States or if the Performer, after reasonable efforts, has determined that domestic manufacturing is not commercially feasible, the Performer shall notify DARPA in writing of its specific determination and request a waiver. DARPA may waive this requirement and the Government will not unreasonably deny such a request by the Performer without a specific and detailed written determination. The Government shall not unreasonably delay or withhold such a waiver.

3. The Performer agrees to provide timely written notice to DARPA no less than 45 days prior to any proposed transfers of intellectual property developed under this Agreement to a foreign entity. The written waiver request will cite this Article and specifically state what is to be transferred, to whom, and the general terms of the transfer. DARPA will respond within 30 days of receipt of the waiver request whether the DARPA agrees with the proposed transfer, if it would like to have further discussions about the transfer terms, or if it intends to invoke its rights under Section 5 of this Article. If DARPA does not respond within 30 days of the receipt of the waiver request, the Performer may assume that DARPA does not object to the transfer. If DARPA does respond timely and in a manner with which the Performer disagrees, the Performer may utilize the procedures under Article 6, Disputes.

4. If DARPA determines that the transfer may have adverse consequences to the furtherance of its investment in the program or to the national security interests of the United States, the Parties agree to jointly discuss the goal of the transfer and discuss alternative options that would obviate or mitigate the potential adverse consequences to the United States, but which would provide substantially equivalent and acceptable benefits to the Performer.

5. In the event the Performer transfers the intellectual property developed or generated under this Agreement without DARPA’s written assent -

(a) the Performer shall refund to DARPA the full amount of Government funds paid under the Agreement for the development of the intellectual property, and

(b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the intellectual property, regardless of form or protection method, throughout the world for Government 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, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

**D. Exceptions**

[*Include here any pre-negotiated circumstances that have been agreed by the parties as exceptions to this Article]*

*[proposer can identify here any such exceptions for negotiation*]

**ARTICLE 9: TITLE TO AND DISPOSITION OF PROPERTY**

**A. Title to Property**

Title to each item of property acquired under this Agreement with an acquisition value of $5,000 or less shall vest in the Performer upon acquisition with no further obligation of the Parties unless otherwise determined by the AO. Should any item of property with an acquisition value greater than $5,000 be required, the Performer shall obtain prior written approval of the AO. Title to this property shall also vest in the Performer upon acquisition. The Performer shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense.

**B. Disposition of Property**

At the completion of this Agreement, items of property with an acquisition value greater than $5,000 shall be disposed of in the following manner:

1. Purchased by the Performer at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to DARPA; or

2. Transferred to a Government research facility with title and ownership being transferred to the Government; or

3. Donated to a mutually agreed University or technical learning center for research purposes; or

4. Any other DARPA-approved disposition procedure.

**ARTICLE 10: SAFEGUARDING CONTROLLED UNCLASSIFIED INFORMATION AND CONTROLLED TECHNICAL INFORMATION AND CYBER INCIDENT REPORTING**

1. **Background**

Protection of Controlled Unclassified Information (CUI) and Controlled Technical Information (CTI) is of paramount importance to DARPA and can directly impact the ability of DARPA 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.

1. **Safeguarding CUI and CTI**

The performer shall implement NIST Special Publication (SP) 800-171 Rev 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations (Dec. 2016), as revised, for DARPA CUI and CTI that resides on the performer’s information systems. Consistent with Chapter 2 of NIST SP 800-171 Rev 1, 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 DARPA in accordance with paragraph C below.

1. **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 DARPA and provide sufficient details of the event—including identification of detected and isolated malicious software—to enable DARPA 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 DARPA to assess the cyber incident. The performer agrees to rapidly implement security measures as recommended by DARPA and to provide to DARPA any additionally requested information to help the Parties resolve the cyber incident and to prevent future cyber incidents.

1. **Public Release**

All information and data covered by this Article must be reviewed and approved by DARPA prior to any public release. The DARPA public release process is governed by DARPA Instruction 65. An online form is available to support those requests at: https://www.darpa.mil/attachments/PublicReleaseSubmissionForm\_042816.pdf

1. **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.

1. **Identification of Covered Defense Information**

Listed below is the CTI and CUI pertaining to this Agreement:

(i) CTI and CUI provided by the Government:

See Attachment 5 “Controlled Unclassified Information (CUI) Guide” date XXX.

(ii) CTI and CUI developed/delivered by the Performer:

See Attachment 5 “Controlled Unclassified Information (CUI) Guide” date XXX.

(iii) CTI and CUI provided by other DARPA performers

Associate Contractor information disclosed in accordance with the terms and conditions of the particular Associate Contractor Agreement marked as CUI per Attachment 5 “Controlled Unclassified Information (CUI) Guide” date XXX.

\*Any references in the CUI Guide to DFARS Clauses are superseded by the guidance provided in Article 10.

1. **Accepted NIST SP 800-171 Rev 1 Compliance Variances**

[*APPLICABLE ONLY IF: 1) THE RESEARCH STIPULATED AT aTTACHMENT 1 INVOLVES HE CREATION OF/HANDLING OF cui PER aTTACHMENT 5, AND 2) THE PROPOSER HAS IDENTIFIED ITEMS OF NON-COMPLIANCE WITH nist sp 800-171 rEV 1 IN THEIR COMPLIANCE PLAN]*

*[proposer should SUBMIT TO THE AGREEMENTS OFFICER DURING NEGOTIATIONS A nist SP-171 rEV 1 COMPLIANCE PLAN IF NOT FULLY COMPLIANT AT THE TIME OF AGREEMENT AWARD*]

[THE MUTUALLY AGREED TO COMPLIANCE PLAN WILL BE REFERENCED HEREIN ALONG WITH ANY ASSOCIATED CONDITIIONS STIPULATED BY THE GOVERNMENT. IF THE PROPOSER IS FULLY COMPLIANT AT TIME OF AWARD, “NOT APPLICABLE” WILL BE NOTED HERE INSTEAD.]

**Article 11: Public Release or Dissemination of Information**

1. Except with regard to subcontractors, team members, or other program participants, the Performer agrees to restrict dissemination or publication of information developed or generated under this Agreement without prior written approval by DARPA.

2. The following information or documents will not be subject to requirements of Section 1 of this Article.

(a) Unclassified information or documents used in the patent process, copyright approval process, or trademark approval process,

(b) Papers prepared in response to academic requirements which are not intended for public release outside the academic institution, or

(c) Information or documents related to program activities that have been determined to be fundamental research.

3. The Performer shall submit any proposed public releases that reference the United States Government, the Department of Defense, or DARPA in any form or references the program name or the names of any government staff for review and approval as instructed at <http://www.darpa.mil/work-with-us/contract-management/public-release>. Public releases may include press releases, specific publicity or advertisement, and publication or presentation, but excludes those relating to open sourcing or licensing, sales or other commercial exploitation of products, services, or technologies. In addition, articles for publication or presentation that mention DARPA in any form or the name of the program will contain a statement on the title page worded substantially as follows:\

“This research was funded, in part, 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.”

**[**THIS ARTICLE MAY BE AMENDED TO IDENTIFY FUNDAMENTAL RESEARCH BEING CONDUCTED BY UNVERSITY SUBCONTRACTORS, IF APPLICABLE, AND THAT SUCH EFFORTS WILL BE SUBJECT TO GOVERNMENT PUBLICATION REVIEW AND APPROVAL]

**ARTICLE 12: 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. The Performer has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act.

**ARTICLE 13: SECURITY**

The Performer shall not develop and/or handle classified information in the performance of this Agreement. No DD254 is currently required for this Agreement.

**ARTICLE 14: KEY PERSONNEL**

A. The Performer shall notify the AO in writing prior to making any change in key

personnel. The following individuals are designated as key personnel for the purposes of this

Agreement:

**Name Role/Title**

[*INSERT NAME*] [*PRINCIPAL INVESTIGATOR*]

[*INSERT NAME*] [*INSERT ROLE/TITLE*]

[*INSERT NAME*] [*INSERT ROLE/TITLE*]

B. When replacing any of the personnel identified above, the Performer must demonstrate that the

qualifications of the prospective personnel are acceptable to the Government as reasonably determined

by the Program Manager. Substitution of key personnel shall be documented by modification to the

Agreement made in accordance with the procedures outlined in Article III, Section C.

**ARTICLE 15: APPLICABLE LAW**

United States Federal law will apply to the construction, interpretation, and resolution of any disputes arising out of or in connection with this Agreement.

**ARTICLE 16: SEVERABILITY**

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

**ARTICLE 17: 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 18: 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 modification thereto per Article 3(C). 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 19: EXPORT CONTROL**

(a) *Definition.* “Export-controlled items,” as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

1) “Defense items,” defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

2) “Items,” defined in the EAR as “commodities”, “software”, and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Performer shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Performer shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Performer's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations,

including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq*.);

(2) The Arms Export Control Act (22 U.S.C. 2751, *et* *seq*.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130);

and

(6) Executive Order 13222, as extended;

(e) The Performer shall include the substance of this clause, including this paragraph (e), in all subawards.

**ARTICLE 20: FORCE MAJEURE**

The Performer shall not be liable for delays or non-performance hereunder if such delay or non-performance is from causes beyond the control and without the fault or negligence of the Performer or its subcontractors, and is due, directly, to fire or other casualty; act of God; strike or labor dispute; war or other violence, or to acts of the Government in either its sovereign or contractual capacity.

## ARTICLE 21: SURVIVAL

The Articles covering Definitions, Payments, Records Retention and Government Access,Disputes,Limitation of Damages,Intellectual Property Rights, Foreign Access To Intellectual Property, Public Release Or Dissemination Of Information, Applicable Law, Order of Precedence, Public Release or Dissemination of Information, and Survival shall survive the completion, termination, or expiration of this Agreement.

**(OPTIONAL)**

**ARTICLE 22: ASSOCIATE CONTRACTOR AGREEMENT (ACA)**

1. It is recognized that success of the Program depends in part upon the open exchange of information between the various Associate Contractors involved in the effort. This Article is intended to insure that there will be 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 Article, the term Contractor includes subsidiaries, affiliates, and organizations under the control of the Contractor (e.g. subcontractors).
2. Work under this contract may involve access to proprietary or confidential data from an Associate Contractor. To the extent that such data is received by the Contractor from any Associate Contractor for the performance of this Agreement, the Contractor 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 Program. Only that information which is received from another contractor in writing and which is clearly identified as proprietary or confidential shall be protected in accordance with this Article. The obligation to retain such information in confidence will be satisfied if the Contractor receiving such information utilizes the same controls as it employs to avoid disclosure, publication, or dissemination of its own proprietary information. The receiving 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.
3. The Contractor hereby agrees to closely cooperate as an Associate Contractor with the other Associate Contractors on this research effort. This involves as a minimum:
4. Maintenance of a close liaison and working relationship;
5. Maintenance of a free and open information network with all Government-identified Associate Contractors;
6. Delineation of detailed interface responsibilities;
7. Entering into a written agreement with the other Associate Contractors setting forth the substance and procedures relating to the foregoing, and promptly providing the Agreements Officer/Procuring Contracting Officer with a copy of same; and,
8. Receipt of proprietary information from the Associate Contractor 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.
9. In the event that the Contractor and the Associate Contractor are unable to agree upon any such interface matter of substance, or if the technical data identified is not provided as scheduled, the Contractor shall promptly notify the AO, AOR and DARPA PM. The Government will determine the appropriate corrective action and will issue guidance to the affected Contractor.
10. The Contractor agrees to insert in all subcontracts hereunder which require access to proprietary information belonging to the Associate Contractor, a provision which shall conform substantially to the language of this Article, including this Section (E).
11. Associate Contractors for the Program include:

Performer Technical Area (TA)

[*IDENTIFY APPLICABLE PERFORMERS AND TA/S*]

1. The information exchanged under an ACA per this Article shall not be considered government furnished property/information for any purposes whatsoever.

**(OPTIONAL)**

**ARTICLE 23: GOVERNMENT FURNISHED PROPERTY/INFORMATION**

1. Government furnished property/information will not be provided to the Performer in performance of this Agreement.

*OR*

1. The Government Furnished Property/Information identified in Attachment 1 will be provided to the Performer as stipulated therein in performance of this Agreement.

**TASK DESCRIPTION DOCUMENT**

**For**

**<<Enter Title Of Project, Identify Technical AREA(s)>>**

**(A Darpa \_\_\_\_\_\_\_\_\_\_ Project)**

**By**

**<<ENTER Prime Organization>>**

**<<EnTER Date>>**

1. **Program Background** *(Taken from BAA HR001120S00XX)*

<<Enter Information>>

Notes:

* Use appropriate program background information from the BAA – this is the big-picture view so it should capture all Technical Areas (TAs) to establish context for the below “Project Overview.”

1. Project Overview

<<Enter Information>>

Notes:

* Use appropriate project description/background information that aligns with the technical proposal. This section is focused on defining this specific project – what’s it about and why it matters, goals/objectives, and metrics (Government Defined, and Performer Defined).
* Two to three paragraphs that describe what the performer is doing under the umbrella of the program is typically sufficient.
* Include applicable metrics by Phase – must be consistent with the BAA, metrics tables from the BAA can be pasted in this section
* There should be no proposal speak (i.e., do not include any references to the proposal, do not use the words “proposal,” “proposed,” “we,” etc.). This document is part of the Agreement – it’s purpose is to summarize the project, not to propose it.
* Throughout this entire document the performer should be referred to as “The Performer.” “Performer” is a defined term in Agreement.

1. Technical Tasks & Deliverables

The Performer shall accomplish the below described research tasks.

* 1. Phase 1:
     1. Technical Area 1
        1. Task 1
     2. Technical Area 2
        1. Task 1
  2. Phase 2:
     1. Technical Area 1
        1. Task 1
     2. Technical Area 2
        1. Task 1
  3. Phase 3:
     1. Technical Area 1
        1. Task 1
     2. Technical Area 2
        1. Task 1

Notes:

* Ensure all tasks are clearly and accurately identified and defined.
* Should be broken out by Phase, then Technical Area (if selected for more than one TA), then Task.
* Include a full description for each task. Task should describe what the Performer is doing, not how they’re doing it.
* Best practice to provide deliverable(s) for each task or a deliverables (material and data/software) table at the end of each phase/technical area
* With exception of a deliverables table and metrics table/s, this section should be in narrative form (do not use table format) and should not include charts/graphics.
* Do not use the Prime or Subcontractor company name, or “we.” Refer to the Prime as “The Performer.” No need (contractually speaking) to refer to the subs – the Agreement is with the prime (the research tasks defined herein, no matter which team member is performing them, are the prime’s responsibility (contractually speaking). It’s ok to do so only if it’s absolutely necessary in order to acurately describe a task/deliverable.
* Remove any information related to period of performance. Specifying deliverable due dates is acceptable (which should appear as “X months (or days) after agreement award.”
* Please be sure to review the BAA and capture in the TDD any firm tasks, deliverables, travel events, etc. defined therein.

1. Program Management

<<Enter Information>>

Notes:

* Include applicable program management tasks (to include subcontractor management, status reports, final report/s, etc.).

1. Meeting & Travel Requirements

<<Enter Information>>

Notes:

* At a minimum, capture firm requirements set forth in the BAA, if applicable.

1. **Government Furnished Information (GFI)/Government Furnished Property (GFP)**

|  |  |
| --- | --- |
| Item Identification | When Item Will Be Provided To Performer |
| <<Enter Information>> | <<Enter Information>> |
| <<Enter Information>> | <<Enter Information>> |
| <<Enter Information>> | <<Enter Information>> |

Notes:

* If no GFP/GFI is proposed or noted as being provied in the BAA, simply state “None.”

**REPORT REQUIREMENTS**

This contract will utilize the DARPA TFIMS-2 website for electronically uploading **all required reports** listed below. It can be accessed at <https://tfims.darpa.mil>

New users must be registered prior to using the website. The registration process will be initiated by the TFIMS help desk, who will email the performer’s contracting point of contact via email.

Once registration has been completed, system related questions/issues can be addressed by referring to the TFIMS-2 User’s Manual available on the website. Additional assistance can be obtain by contacting [tfims-help@darpa.mil](mailto:tfims-help@darpa.mil) .

The Technical-Financial Information Management System-2 (TFIMS-2) is an enterprise system that will provide a means for performers to more easily report contractually required technical and financial information. The system is a centralized location for DARPA staff and agents to access contract documentation and performer deliverables.

**A. STATUS REPORTS**

On or before ninety (90) calendar days after the effective date of the Agreement and thereafter throughout the term of the Agreement, the Performer shall submit or otherwise provide a technical status report. One (1) copy shall be submitted or otherwise provided to the individuals listed at Article 4(A). The report will detail technical progress to date and report on all problems, technical issues, major developments, and the status of external collaborations during the reporting period.

“DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government

Agencies; Critical Technology, Proprietary Information and Premature Dissemination; 24 June 2019. Other requests for this document shall be referred to DARPA Public

Release Center (PRC) via email at public\_release\_center@darpa.mil.”

**B. PROGRAM PLAN DOCUMENT**

The Performer shall submit or otherwise provide to the individuals listed at Article 4(A) the Program Plan document as described in Article 3.

**C. SPECIAL TECHNICAL REPORTS**

As agreed to by the Performer and the AOR, the Performer shall submit or otherwise provide to the individuals listed at Article 4(A) one (1) copy each of special reports on significant events such as significant target accomplishments by the Performer, significant tests, experiments, or symposia.

Email submissions are encouraged and maybe password protected if deemed necessary.

“DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government

agencies; Critical Technology, Proprietary Information and Premature Dissemination; 24 June 2019. Other requests for this document shall be referred to DARPA Public

Release Center (PRC) via email at public\_release\_center@darpa.mil.”

**D. MILESTONE REPORTS**

The Performer shall submit or otherwise provide to the individuals listed at Article 4(A) documentation describing the accomplishment of Attachment 3 payment milestones. This information shall be as required by Article 5, paragraph B and shall be sufficient for the DARPA AOR to reasonably verify the accomplishment of the milestone in accordance with the TDD.

“DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government

agencies; Critical Technology, Proprietary Information and Premature Dissemination; 24 June 2019. Other requests for this document shall be referred to DARPA Public

Release Center (PRC) via email at public\_release\_center@darpa.mil.”

**E. FINAL REPORT**

**(NOTE: The Final Report is included in the last milestone for the completed Agreement)**

The Performer shall submit or otherwise provide a Final Report making full disclosure of all major developments by the Performer upon completion of the Agreement or within sixty (60) calendar days of termination of this Agreement. One (1) copy shall be uploaded to T-FIMS-2; and one (1) electronic copy shall be submitted or otherwise provided to:

1. The DARPA Closeout team at CMO\_closeout@darpa.mil.
2. The Defense Technical Information Center (DTIC), Attn: DTIC-BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-0944. Information regarding submission to DTIC, including electronic submission, is provided at <http://www.dtic.mil/dtic/submit/submit.html>.

“DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government

agencies; Critical Technology, Proprietary Information and Premature Dissemination; 24 June 2019. Other requests for this document shall be referred to DARPA Public

Release Center (PRC) via email at public\_release\_center@darpa.mil.”

**F. EXECUTIVE SUMMARY**

The Performer shall submit a one to two page executive-level summary of the major accomplishments of the Agreement and the benefits of using the “other transactions” authority pursuant to 10 U.S.C. § 2371 upon completion of the Agreement. This summary shall include a discussion of the actual or planned benefits of the technologies for both the military and commercial sectors. One (1) copy shall be submitted to the DARPA AO via T-FIMS-2

1. **Patent and Invention Disclosure and Reporting**

See Article 7.

For all reports/communications not submitted via I-Edison, email submission is encouraged and maybe password protected if deemed necessary.

***Note: The above data deliverables shall also be marked per Article 7(B), as applicable.***

1. **PROPERTY REPORT**

See Article 9.

The performer shall submit a report identifying all items of property procured with an acquisition value greater than $5,000 upon completion of the Agreement.

**AGREEMENT TERM, DELIVERABLES AND PAYMENT SCHEDULE**

**[Document Date]**

1. **Agreement Term:**

The term of the Agreement commences on the effective date of the Agreement and continues for INSERT # OF MONTHS thereafter.

1. **Deliverables and Payment Schedule:**

**Phase 1 (Base)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | | | |
| Milestone | Task(s) | Due Date (Months after award) | Milestone Definition | DARPA Payment |
| 1 | 1.1 | 3 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*   * Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0001  **ACRN**: XX  **Funding Line:** <<FUNDING LINE TO BE INSERTED>>  **PR:** TBD  **Funding Date:** At time of award | | | | |
|  | | | | |
| 2 | 1.2 | 6 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0002  **ACRN**: XX  **Funding Line:** <<FUNDING LINE TO BE INSERTED>>  **PR:** TBD  **Funding Date:** At time of award | | | | |
|  | | | | |
| 3 | 1.3 | 9 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0003  **ACRN**: XX  **Funding Line:** <<FUNDING LINE TO BE INSERTED>>  **PR:** TBD  **Funding Date:** Six months after effective date of Agreement | | | | |
|  | | | | |
| 4 | 1.4 | 12 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0004  **ACRN**: XX  **Funding Line:** <<FUNDING LINE TO BE INSERTED>>  **PR:** TBD  **Funding Date:** Six months after effective date of Agreement | | | | |

**Phase 2 (Option 1)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Phase Term:** Months XX-XX  **Exercise Date:** No later than 14 days prior to the end of Phase 1 Term  **Status:** Not Exercised | | | | |
|  | | | | |
| Milestone | Task(s) | Due Date (Months after award) | Milestone Definition | DARPA Payment |
| 5 | 1.5 | 15 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*   * Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0005  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** At Option Exercise | | | | |
|  | | | | |
| 6 | 1.6 | 18 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0006  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** At Option Exercise | | | | |
|  | | | | |
| 7 | 1.7 | 21 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0007  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** Within six months of Option Exercise | | | | |
|  | | | | |
| 8 | 1.8 | 24 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0008  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** Within six months of Option Exercise | | | | |

**Phase 3 (Option 2)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Phase Term:** Months XX-XX  **Exercise Date:** No later than 14 days prior to the end of Phase 2 Term  **Status:** Not Exercised | | | | |
|  | | | | |
| Milestone | Task(s) | Due Date (Months after award) | Milestone Definition | DARPA Payment |
| 9 | 1.9 | 27 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*   * Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0009  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** At Option Exercise | | | | |
|  | | | | |
| 10 | 1.10 | 30 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0010  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** At Option Exercise | | | | |
|  | | | | |
| 11 | 1.11 | 33 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0011  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** Within six months of Option Exercise | | | | |
|  | | | | |
| 12 | 1.12 | 36 | **Milestone Name/Description**  *Exit Criteria:*   * Bulleted List   *Deliverables:*  Bulleted List **(DATA RIGHTS)** | **$** |
| **CLIN:** 0012  **ACRN**: TBD  **Funding Line:** TBD  **PR:** TBD  **Funding Date:** Within six months of Option Exercise | | | | |

**For Information Only – Not For Inclusion In The Agreement**

When developing data rights assignments for each data/software deliverable, the following should be taken in to consideration regarding how the Government will need to use each item to ensure the overall goals and objectives of the project are met (to include tech transition):

1. Is it sufficient/necessary to provide access to the deliverable soley within the Gov’t?
   1. This typically equates to Limited Rights (LR) as shown in Model Agreement body.
2. Is it sufficient/necessary to provide access to the deliverable to within the Gov’t and to Government performers (entities under contract with the federal government)?
   1. This typically equates to Government Purpose Rights (GPR) as shown in Model Agreement body.
   2. In some cases, when deemed appropriate by both parties, the definition of Government Purpose Rights can be altered during negotiations to exclude one or more of the performers direct competitors (typically defined as Limited Government Purpose Rights (LGPR)).
3. Is it sufficient/necessary to provide access to the deliverable to anybody without restriction (inside and outside the Gov’t)?
   1. This typically equates to Unlimited Rights (ULR) as shown in Model Agreement body.
4. Is it sufficient/necessary to provide access to the deliverable to the open source community under a commonaly available open source license (e.g., Apache 2.0, BSD, GNU, etc.)?
   1. This typically equates to Commercial Open Source License Rights (COSLR) as defined below:

***Commercial Open Source License Rights:*** *The rights to use, modify, reproduce, release, perform, display, or disclose Data, and to permit others to do so in accordance with the applicable (e.g., Apache 2.0, BSD, GNU, etc.) commercial computer software license.*

1. Is it sufficient/necessary to provide access to existing commercially available software items to Government users (members of the Government’s program team) during the term of the Agreement solely in support of the program/project?
   1. This typically equates to Commercial End User License Rights (CEULR) as definted below:

***Commercial End User License Rights (CEULR):*** *The rights to use, duplicate, or disclose Data, as specified in the applicable commercial license offered to the public.*

1. *To the extent the Performer will provide Data or related services subject to a commercial license in support of this Agreement, the following applies:*

* *Applicability. The license is an agreement between the Performer (commercial supplier) and the Government (end user); however, it shall not bind a Government employee or person acting on behalf of the Government in his or her personal capacity.*
* *Law and disputes. The license shall be governed by Federal law. (A) Any language*

*purporting to subject the 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. (B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted. (C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.*

* *Continued performance. The Performer shall not unilaterally revoke, terminate or suspend any rights grant to the Government except as allowed by this Agreement. If the Performer believes the Government to be in breach of the license, it shall pursue its rights under Article 6 Disputes of this Agreement while continuing performance thereunder.*
* *Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising*

*under or relating to the license, a binding arbitration shall not be used, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).*

* *Updating terms.*

*(A) After award, the Performer may unilaterally revise terms of the license if they are not material. A material change is defined as:*

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

*(2) Terms that increase Government prices; or*

*(3) Terms that decrease overall level of service; or*

*(4) Terms that limit any other Government right addressed elsewhere in the Agreement.*

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

* *No automatic renewals. If any license or service tied to periodic payment is provided*

*under the license (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.*

* *Indemnification. Any clause of the license requiring the Performer to defend or indemnify the Government is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the Government in any such action, in accordance with 28 U.S.C. § 516.*
* *Audits. Any clause of the license permitting the Performer to audit Government’s compliance with the license is hereby amended as follows: (A) 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 Agreement. (B) This charge, if disputed by the Government, will be resolved through Article 6 Disputes of this Agreement; no payment obligation shall arise on the part of the Government until the conclusion of the dispute process. (C) Any audit requested by the Performer will be performed at the Performer’s expense, without reimbursement by the Government.*
* *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 Agreement and, in any event, must be submitted to the Agreement Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Agreement.*
* *Non-assignment. The license may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, not to be unreasonably withheld, except that Performer may assign the license in connection with a merger, acquisition, corporate reorganization, change of control or similar such transaction, or sale of all or substantially all of its assets related to this Agreement.*
* *Confidential information. If the license includes a confidentiality clause, such*

*clause is hereby amended to state that neither the license nor this Agreement shall be deemed “confidential information.” Notwithstanding anything in the license 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 the license.*

1. *If any language, provision or clause of the commercial license conflicts or is inconsistent with the Paragraph A above, the provisions of Paragraph A above shall prevail to the extent of such inconsistency.*
2. *Any Data or related services supplied under the commercial license in support of this Agreement shall be provided for the term stipulated in Article 7 Intellectual Property Rights.*
3. *The entirety of this definition applies to licenses which are made a part of this Agreement by reference.*
4. Is it sufficient/necessary to provide access to an existing or modified (under the Agreement) commercially available Process Design Kit (PDK) to Government users (members of the Government’s program team) during the term of the Agreement solely in support of the program/project?
   1. This typically equates to a Design Kit License Agreement as definted below:

***Design Kit License Agreement:*** *Standard commercial agreement between (i) the Performer and each Participant, and (ii) the Performer and Government personnel required per the Performer’s standard procedures. Pertaining to the Design Kit License Agreement between the Performer and each Participant, the Government will not be: (i) a signatory to any such Design Kit License Agreements, (ii) a beneficiary under the Design Kit License Agreements; or (iii) empowered to act on Participants’ or Performer’s behalf. For clarity, any Design Kit License Agreement between the Performer and a Participant is not a part of Agreement No. HR0011-20-3-0002. Pertaining to the Design Kit License Agreement between the Performer and the Government, Commercial End User License Rights will apply.*

***Participant:*** *An organization under contract with the Department of Defense (DoD) as a [identify project] performer who will develop designs per [identify commercial foundry] Process Design Kits (PDK) (i.e., XXXXX PDK, XXXXX PDK, etc.) pursuant to mutually agreed to standard commercial [identify commercial foundry] Design Kit License Agreements (DKLA).*

# MICROSYSTEMS TECHNOLOGY OFFICE

# ELECTRONICS RESURGENCE INITIATIVE

# MODEL TECHNOLOGY INVESTMENT AGREEMENT

# COMPANION GUIDE

# February 2020

# Foreword

In June 2017, DARPA announced the Electronics Resurgence Initiative (ERI) as a bold response to several critical emerging trends. Among them, the cost and complexity of advanced microelectronics design and manufacture has increased rapidly, challenging Gordon Moore’s economic premise that future machines would require lower costs and shorter turnaround times. For the first time, the defense community faces few or no options for accessing leading-edge electronics, the result of cost-driven foundry consolidation. Meanwhile, non-market foreign forces are working to shift the electronics innovation engine overseas, challenging U.S. economic and security advantages. In addition, the nation is gaining a new appreciation for electronics security – a longtime defense concern – following publicized challenges to our digital backbone in sectors as diverse as automotive, cybersecurity, and voting. ERI envisioned a unified national response marked by research collaborations between DARPA, the defense community, academia, and the commercial sector.

There is significant historical precedent to suggest the viability of this approach; each wave of modern electronics development has benefitted from the combination of defense-funded academic research and commercial sector investment. In the 1980s, when geometric scaling started to make low-volume integrated circuit fabrication unaffordable, DARPA’s investment in the Metal Oxide Silicon Implementation Service (MOSIS) opened the door to rapid, low-cost chip manufacture, laying the foundation for the nation’s world-leading fabless design industry. In the 1990’s, a combination of defense, academic, and commercial partners pioneered 193 nm lithography, which became the industry-critical fabrication process. Then, as Dennard scaling ended in the 2000’s, the semiconductor industry adopted Fin Field Effect Transistors (FinFETs), another DARPA-funded innovation that drove to low power computing and led to the era of 3D devices.

The nation now stands ready to innovate a fourth wave of electronics progress. The state of the industry indicates that the fourth wave will be defined by three-dimensional heterogeneous integration. Through integration, innovators will add new materials and devices to the silicon foundation and enable intelligence and specialized functions precisely designed to meet the diversifying needs of the commercial and defense sectors. 3D heterogeneous integration will also demand new architectures and design tools, developed to manage the complexity of working in three dimensions while enabling rapid system upgrades and integrating security as a primary design concern. These areas – 3D heterogeneous integration, new materials and devices, specialized functions, and design and security – have been central to ERI since its inception and will continue to guide the initiative as it enters its third year.

The fourth wave of electronics progress, however, is neither inevitable nor inevitably beneficial to the United States. As a community, the collective challenge faced by DARPA and its ERI partners will be to ensure that benefits differentially accrue to the U.S. commercial and defense base, which is aggressively investing in continued progress. To meet our national security needs, fourth wave technologies must enable more capable systems that process data locally, extract actionable information, and make decisions at “the edge.” To address new security concerns, fourth wave technologies must integrate security considerations into microsystem design in a way that is both effective and easy to implement. To address the rapid rise of devices operating at the edge, the glut of information those devices will collect, and the growing cyber-driven threats those devices will encounter, fourth wave technologies must find ready adoption by the commercial and defense sectors. New and existing ERI programs will therefore increasingly address the challenge of transitioning fourth wave technologies to the domestic sectors that need them.

Together with the ongoing ERI programs, the programs addressed in MTOs recent (ERI Phase 2) Broad Agency Announcements (BAAs) will continue to provide a foundational contribution both to U.S. national security and to the needs and ambitions of the domestic commercial sector.

# Other Transactions (in general)

**When are OTs used?**

Companies and organizations that do not often do business with the Government but have or are conducting research on technology that could have DoD applications are ideal candidates for OTs. Other entities, such as traditional defense contractors or universities, may also benefit from the use of OTs as an award vehicle under circumstances detailed below.

The two most common types of Other Transactions (OTs) are Technology Investment Agreements (TIAs) and Other Transactions for Prototypes (OTs for Prototypes). TIAs are typically used for when the primary goal of the agreement is to perform a research effort, even if items are required to be created to test the credibility of the research, commonly referred to as dual-use research, and this is the most likely type of OT that will be used for MTO ERI programs. OTs for Prototypes are used when the main focus of the agreement is to create a prototype (although not as likely to be the type of OT used for the MTO ERI programs, that should not be taken to mean such an instrument cannot be used – the choice of instrument type is made by the Contracting Officer during negotiations based on the unique situation at hand).

**How are OTs different from FAR-based procurement contracts or grants and cooperative agreements?**

FAR-based procurement contracts are governed by the Federal Acquisition Regulation (FAR) and the DoD supplement (DFARS). These awards include standard FAR and DFARS clauses and are subject to the FAR cost accounting standards.

Grants and cooperative agreements are governed by the cost principles and requirements in 2 C.F.R. 200 and any subsequent DoD regulation and DARPA specific terms and conditions, which will be included in all awards.

OTs are not subject to the FAR or applicable grant and cooperative agreement regulations, and the clauses in OT awards can be negotiated between the awardee and the Government. Further, OT awardees are not subject to the FAR cost accounting standards.

# Technology Investment Agreements (TIAs)

Because a TIA is not considered a procurement instrument, it is not subject to procurement regulations, such as the Federal Acquisition Regulation (FAR) or any of its supplements. Instead, TIAs are used in accordance with 10 U.S.C. § 2371 and Part 37 of the DoD Grant and Agreement Regulations (DoDGARs). TIAs are assistance instruments used to stimulate or support research designed to: (a) reduce barriers to commercial firm’s participating in defense research, to give the DoD access to the broadest possible technology and industrial base; (b) promote new relationships among performers in both the defense and commercial sectors of that technology and industrial base; and (c) stimulate performers to develop, use, and disseminate improved performance and contracting practices. As a matter of DoD policy, a TIA may be awarded only when one or more for-profit firms are to be involved either in the: (1) performance of the research project; or (2) the commercial application of the research results (i.e., commercial transition partner).

In addition, the statute requires that, to the maximum extent practicable, the non-Federal parties carrying out a research project under a TIA are to provide at least half of the costs of the project. This statutory cost-sharing requirement is not absolute but Performers having legitimate issues with the cost-sharing requirement should include clear and specific rationale for lessening this requirement in their proposal keeping in mind the overall program goals and objectives (to include the Performers level of commitment and contribution to the overall program goals and objectives). Generally Accepted Accounting Principles (GAAP) apply rather than the FAR or DFARS cost principles or cost accounting standards, although this is only a requirement in cases where a fixed price payable milestone agreement is not used. The MTO ERI TIA “Model” has been developed assuming use of a fixed price payable milestone type agreement and, as such, there are no cost accounting standards or financial reporting requirements.

It is important to note that the MTO ERI TIA “Model” provided assumes the standard prime/subcontractor relationship among proposal team members. It is also possible to structure a TIA as a formal consortium arrangement – where the proposal team members are operating more as equals (but with one of them taking the lead for administrative purposes). Such Consortium TIA’s typically include an additional attachment that is referred to as the “Articles of Collaboration” (the ground rules agreed to amongst the team members regarding roles and responsibilities, IP, payments, etc.). It may prove beneficial when attempting to form teaming relationships with organizations who are not particularly interested in being one level removed from the Government, or under a standard prime/subcontractor relationship, especially if there is no agreement on who would serve as the prime contractor, or if the team simply feels such an arrangement best suits the overall project goals and objectives, to consider use of such a TIA. An “Articles of Collaboration” Model is not available for review as these documents are very specific to the team and project they apply to, and having them to review is unnecessary as a proposer (team) wishing to propose such an instrument need only clearly articulate this in their proposal and the details will be worked out during negotiation, if the subject proposal is selected.

More information regarding instrument types, to include information pertaining to OTs for Prototypes, can be found at <https://www.darpa.mil/work-with-us/contract-management#OtherTransactions> and <https://acquisitioninnovation.darpa.mil/>.

# The MTO ERI TIA “Model”

The MTO ERI TIA “Model” is provided solely so that potential proposers can get a general understanding of the terms and conditions that are typically found in such an award instrument. The Model is not intended to be a first draft of the agreement as the Agreements Officer may choose to make changes prior to presenting a first draft of the agreement for review and comment/edit by the Proposer. Such changes may include revisions to the Data Rights section of the Intellectual Property article. For example, inputting information in the fill-in sections, or adding/deleting defined terms based on discussions between the parties that will start after proposal selection, typically during the Informal Feedback Session, and continue through finalization of the Task Description Document (TDD)(OT version of a Statement of Work) and Payable Milestone Plan (Agreement Attachment 3).

Every project is different, every proposal is different, including the amount of performer cost share involved, and every proposer is different. Because of these realities, negotiation of the each OT is unique and will take time (how much time is most often driven by the nature of the proposer – i.e., how many edits to the first draft of the agreement are requested). When it comes to negotiating an OT, one of the key components to minimizing the time it takes to negotiate the agreement terms and conditions, especially those associated with Intellectual Property, is finalizing the TDD and Payable Milestone Plan – a process that will be conducted primarily by the DARPA Program Manager and the Proposer Principal Investigator along with the Agreement Officer’s Representative (a technical subject matter expert/representative from one of DARPA’s DoD transition partners).

The OT negotiation is significantly easier for the Agreements Officer and the Proposer’s Contracting/Legal staff when there is agreement between the DARPA PM and the Proposer PI regarding the scope of work with primary focus being, in this context, what data is being delivered to the Government and what the Government intends to do with each item of data (during and after the project). Disagreement between the DARPA PM and Proposer PI on such an important element of the project when the terms and conditions of the OT itself are being negotiated will most certainly increase the time it takes to finalize the OT and make an award.

The Performers can get a good start to this process by reading and following the proposal preparation instructions provided in the BAA – to include developing an articulate first draft TDD and Payable Milestone Plan (understanding that the Government will need an adequate level of rights to data deliverables in order to carry out the MTO ERI program goals and objectives, to include technology transition as stipulated in each of the program BAAs – allowing for a reasonable return on our investment).

It is important to note that the purpose of the OT is not to serve as a commercial license. It is intended to set forth the legal terms and conditions by which the parties will be bound during conduct of the subject research project and their obligations thereafter. Requesting that the Performer’s standard license arrangement (terms and conditions) be used in place of the OT (terms and conditions) will not be accepted – the OT is solely for research projects (not for licensing of technology).

**Highlighted Text Color Codes**

Text highlighted in turquoise indicates information to be provided by the proposer during negotiations.

Text highlighted in yellow indicates information to be provided by DARPA during negotiations.

**Narrative Explanation of Key OT Articles, Attachments, and Associated Performer Fill-ins**

**Article I: Scope of Agreement**

**Subparagraph A, Background**

Unlike the background section in the TDD (Attachment 1 of the agreement), this background section is meant to clearly succinctly articulate the overall goals/objectives and importance of the project to both the DoD and the Performer, given its dual-use nature, so that the rationale for the program/agreement is clearly understood by non-technical people. Some of this discussion typically comes directly from the Performer’s technical proposal, while some may need to be original based on negotiations. During negotiations, the Agreement’s Officer will request that the performer input the initial draft of this section after which the DARPA Program Manager, Agreement Officer’s Representative, and the Agreements Officer will edit as necessary. It is noted that the questions provided in the Model are simply a guide and are not intended to be answered directly – instead, the narrative should be a seamless discussion that touches on such issues. On average, this section is typically between a half to full page in length depending on the complexity of the project and the intended uses of the resulting technology by the Performer and the DoD.

**Disputes Clause**

The standard OT disputes clause is a form of alternative dispute resolution (ADR). Traditional Government procurement contracts have a formal disputes process that is driven by statute and can be complex and time-consuming. In drafting the OT language, the intention is to have OTs mirror common commercial practice when handling disputes. There are a multitude of common ADR tools and methods, including mediation and arbitration. The standard OT disputes process is a three-tiered administrative process and the goal is to resolve the issue at an administrative level and avoid a more protracted and expensive legal action.

The process begins at the lowest level with joint discussions between the Performer and the AO. If these parties cannot come to resolution, it is elevated to senior people at the Agency and Performer who will review the information gathered at the lower tier, collect additional information, and have additional discussions. If resolution is not reached at the second level, it is elevated to the highest managerial levels within both parties. Ultimately, if a compromise cannot be reached at any level, the DARPA Director will make the final decision, which will end the administrative process. DARPA realizes that having the decision made this way is different from most commercial ADR procedures. Unfortunately, the Government is restricted in some ways and can generally not agree to third party binding arbitration. The Government cannot have a non-Government entity make decisions that would affect federal funds. Only a Government employee can do that.

Having said that, DARPA recognizes that having the Government make the final decision may not sit well with the Performer. While the administrative process is closed with this decision, this would not keep the Performer from being able to pursue an action in Federal court.

**Intellectual Property**

DARPA recognizes that intellectual property is an incredibly important and valuable asset to most Performers. The Performers may have made significant prior investment and complex commercialization plans may be contemplated for the intellectual property that will be created under the OT. While DARPA is cognizant of those concerns, it must also protect the Government’s investment and stake in the creation of the intellectual property. In most DARPA OTs, the Government is acting like an investor or partner and expects to receive some return for its investment like any investor. The goal with the OT provisions is to balance the needs of both parties so everyone can accomplish the program goals, now and in the future.

Historically, intellectual property has been a difficult negotiation in traditional Government contracts. The license rights the Government would receive was set by statute and the Government rarely chose to negotiate the standard data clauses. With OTs, all that is different. All aspects of intellectual property are negotiable and DARPA is open to discussing any and all intellectual property positions that will facilitate the program goals. Having said that, there are some important considerations to keep in mind:

* Each program, agreement, and Performer is different. DARPA’s initial intellectual property position has been tailored for the situation at hand and will be open-minded to the Performer’s unique issues. DARPA avoids cookie cutter approaches as much as possible.
* DARPA is investing significantly in the program and will generally expect to receive some level of license rights for its investment. What that level will be will depend on many factors, including on the maturity of the technology; the commercial and military uses for it; the levels of investment by the Parties, both before and during the agreement. As a result, it is extremely unlikely that DARPA would ever agree to receive no rights at all.
* DARPA has included within its standard clause the option for the Performer to choose to protect its subject inventions as a trade secret instead by patent. This is a dramatic departure from traditional procurement contracts. DARPA does caution Performers who choose this option, however. DARPA will still expect a level of license rights in subject inventions protected as a trade secret and will be up to the Performer to assess whether providing the negotiated license to the Government would impact any later secrecy argument they may have to defend.
* In the vast majority of negotiations, the Performer will retains all commercial rights to the intellectual property and DARPA wants the Performer to be as successful as possible in future business endeavors. However, DARPA does have an obligation to the taxpayers to ensure that the Government investment is not wasted if the Performer chooses not to pursue the technology. To facilitate that, DARPA has included a clause that allows the Government to take action to ensure that the technology is utilized in very exceptional circumstances. These circumstances are very unlikely and the Government’s ability to take this action is narrowly proscribed.
* For those MTO ERI projects where the development of open-source software and/or data is a project goal/objective the issue if data rights (rights to data/software developed under the project specifically for the US Government) would typically still apply. The open-source aspect of such a project is focused on public accessibility of the resulting software and/or data. Whereas, data rights is focused solely on the Government’s use rights to the resulting software and/or data (to include, in some instances, access to such software/data by Government performers).

**Foreign Access to Intellectual Property**

In the fast changing world of today, most companies have to consider global implications and markets in order to remain viable and successful. DARPA recognizes this reality and understands that it is more common than not for companies today to have foreign subsidiaries, partners, vendors, and investors and those relationships are critical to growth and success. With that realization, however, comes the concurrent concern about the access unfriendly foreign entities might get to technologies with critical military uses or implementations that have been developed, wholly or partially, with taxpayer investment. DARPA is part of the Department of Defense with a mission to help the U.S. military maintain capabilities and a level of superiority over our enemies and must balance that with its complementary mission of supporting the advancement of science and technology.

To those ends, the standard DARPA OT contains a clause requiring Performers to notify DARPA when they intend to provide foreign access to intellectual property covered under the agreement and discuss the situation with the Government before the transfer occurs. This requirement is for a limited period of time and exempts certain standard business arrangements from the notification and discussion requirements. The goal of the clause to give the Government greater awareness of foreign access to technology with potential military implications and allow the Parties the chance to talk about ways to effectuate the access while protecting the Government’s interests.

For those MTO ERI projects where the development of open-source software and/or data is a project goal/objective it is very likely that material changes to the TIA Model Foreign Access to Technology article would be appropriate. In such instances, the negotiation would likely center on the extent to which any program technology would not be subject to open-source standards and ensuring these specific items/areas of technology are, as such, subject to foreign transfer controls.

**Attachment 1 – TDD**

This attachment is the same thing as a Statement of Work found in a standard FAR-based contract (we just refer to it as a TDD for our OTs). As noted in the Model the TDD should include both program and project background sections that can be understood by a reader who does not understand technical-speak (if there are specific technical metrics they can be depicted in this section, by phase or technical area if necessary), a task description section that narratively describes each task to be performed (by Phase), and a deliverables section that identifies all data and/or material deliverables (by Phase). Each data deliverable identified should include a general description of its content (this helps both the PM and PI from the project management perspective, as well as making the payable milestone acceptance process much easier to manage).

**Attachment 3 – Schedule of Milestones and Payments**

The table within the Schedule of Milestones and Payments will detail the list of payable milestones. Each milestone will mark the completion of a measurable event (i.e., completing a baseline execution plan, completing development of a part of the prototype, completing a test plan, completing production of the prototype, completing tape out of a design, completing fabrication of a design, completing and submitting the final report, etc.). Interim technical status reports are not appropriate as payable milestones (although as indicated above, the final report is typically included as part of the final payable milestone for either each phase or for the entire project – as applicable). The milestone description will show how the milestone will be demonstrably completed.

There are generally two approaches to pricing a payable milestone (assuming a fixed price agreement for this discussion as this is the nature of the MTO ERI TIA “Model”): 1) pricing each milestone independently based on the estimated costs associated with its completion, or 2) pricing each milestone so that the amount captures all of the estimated project costs up through that point in time (or the time between two consecutive payable milestones). What should be avoided when pricing payable milestones is a situation where the payment amounts are imbalanced – such as when the amounts reflect a front-loading of the project costs/price (resulting in what is typically referred to as advanced payments). What should be avoided when defining the payable milestone descriptions and exit criteria is a situation where payment is tied specifically to meeting a technical metric given that such metrics on a DARPA project are typically very difficult to achieve. Instead, as previously discussed, payable milestones descriptions and exit criteria should focus on the accomplishment of programmatic goals and objectives that show technical progress towards meeting the overall project goals and objectives (completing trades, completing a design, completing tape out of a design, fabrication of a design, testing and characterization of a design, etc.).