

Sample Other Transaction for Prototypes Agreement

**(SBIR Fixed Support Approach with a Nontraditional Defense contractor –
No resource contribution)**

AGREEMENT

BETWEEN

(INSERT COMPANY NAME AND ADDRESS)

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
3701 NORTH FAIRFAX DRIVE
ARLINGTON, VA 22203-1714

CONCERNING

(INSERT RESEARCH AND DEVELOPMENT TITLE)

Agreement No.: HR0011-XX-9-XXXX

ARPA Order No.:

Total Amount of the Agreement: \$

Funds Obligated: \$

Authority: 10 U.S.C. § 2371 and Section 845, National Defense Authorization Act for Fiscal Year 1994, as amended.

Effective Date:

Line of Appropriation:

AA \$

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 (INSERT COMPANY NAME) pursuant to and under U.S. Federal law.

FOR (INSERT COMPANY NAME)

FOR THE UNITED STATES OF AMERICA
THE DEFENSE ADVANCED RESEARCH
PROJECTS AGENCY

(Signature)

(Signature)

(Name, Title)

(Date)

(Name, Title)

(Date)

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

This Agreement is a SBIR Phase II award. The program is as set forth in Contractor's proposal, dated *(Insert date)*, copies of which are in the possession of both parties.

B. Scope

1. This Agreement is an "other transaction" pursuant to 10 U.S.C. § 2371 and Section 845, National Defense Authorization Act for Fiscal Year 1994, as amended. The principal purpose of this Agreement is to conduct research and develop the prototype described in the Contractor's proposal, Section *(Insert section that describes the prototype to be developed)*.

2. Company ABC (hereafter "ABC") shall be responsible for performance of the work set forth in the Task Description Document (TDD)/Statement of Work (SOW) (hereafter, TDD/SOW), as set forth in the Contractor's proposal, Section *(Reference appropriate section number)*. ABC shall provide all documentation required by Attachment 1, Report Requirements.

3. ABC shall be paid a fixed amount for each Payable Milestone accomplished in accordance with the Schedule of Milestones and Payments set forth in Attachment 2 and the procedures of Article V.

C. Goals / Objectives

1. The goal(s) of this Agreement is/are outlined in the Contractor's proposal, section *(Reference Section that describes the goals of the Agreement)*.

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

ARTICLE II: TERM

A. Term of this Agreement

The Program commences upon the date of the last signature hereon and continues for *(NUMBER)* months. 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

The Government may terminate this Agreement by written notice to the Contractor, provided that such written notice is preceded by consultation between the Parties. The Contractor may request Agreement termination by giving the Government sixty (60) days written notification of their intent to do so. If the Contractor decides to request termination of this Agreement, the Government may, at its discretion, agree to terminate. The Government and the Contractor should negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments. In the event of a termination of the Agreement, the Government shall have

paid-up rights in Data as described in Article VIII, Data Rights. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article VI, Disputes.

C. Extending the Term

The Parties may extend by bilateral modification the term of this Agreement if research opportunities within the vision statement set forth in Article I reasonably warrant.

ARTICLE III: MANAGEMENT OF THE PROJECT

A. Management and Program Structure

ABC shall be responsible for the overall technical and program management, technical planning and execution of the Program. The DARPA Agreements Officer's Representative (AOR), in consultation with the DARPA Program Manager (PM), shall provide recommendations to Program developments and technical collaboration and be responsible for the review and verification of the completed Milestones.

B. Modifications

1. Recommendations for modifications, including justifications to support any changes to the TDD/SOW and prospective completed Milestones (Attachment 2) will be documented in a letter and submitted by ABC to the DARPA AOR/PM with a copy to the DARPA Agreements Officer. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. DARPA and ABC shall approve any Agreement modification. The Government is not obligated to pay for additional or revised future Payable Milestones until the Schedule of Milestones and Payments (Attachment 2) is formally revised by the DARPA Agreements Officer and made part of this Agreement.

2. The DARPA AOR/PM shall be responsible for the review and verification of any recommendations to modify the TDD/SOW, prospective Milestones, or other proposed changes to the terms and conditions of this Agreement.

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

4. The Government will be responsible for effecting all modifications to this Agreement.

ARTICLE IV: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by DARPA may be made only by the DARPA Agreements Officer. Administrative and contractual matters under this Agreement shall be referred the parties listed in Attachment 5, Agreement Administration. Each party may change its representatives named in this Attachment by written notification to the other party. The Government will effect the change as stated in Article III, subparagraph C.3. above.

ARTICLE V: OBLIGATION AND PAYMENT

A. Obligation

1. The Government's liability to make payments to ABC is limited to only those funds obligated under the Agreement or by modification to the Agreement. DARPA may obligate funds to the Agreement incrementally. In accordance with 31 U.S.C. §1341 SUBTITLE II (Anti-Deficiency Act), an officer or employee of the United States Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation or involve the Government in a contract or obligation for the payment of money before an appropriation is made, unless authorized by law.

2. If modification becomes necessary in performance of this Agreement, pursuant to Article III, paragraph B, the DARPA Agreements Officer and ABC Administrator shall execute a revised Schedule of Milestones and Payments for prospective Milestones.

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. ABC shall document the accomplishments of each completed Milestone by submitting or otherwise providing the Milestone Report required by Attachment 1, Section A. After written verification of the accomplishment of the Milestone by the DARPA AOR/PM, and approval by the Agreements Officer, ABC will submit their invoice through Wide Area Work Flow, as detailed in Attachment 3.

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

4. Payments will be made by the cognizant Defense Agencies Financial Services office, as indicated below, within 30 (thirty) calendar days of an accepted invoice in Wide Area Workflow (WAWF). Attachment 3 details how to submit and process invoices through WAWF.

ABC is required to utilize the Wide Area Workflow system when processing invoices and receiving reports under this Agreement. ABC shall (i) ensure an Electronic Business Point of Contact is designated in Central Contractor Registration at <http://www.ccr.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. ABC is directed to use the "2-in-1" format when processing invoices.

5. Payments shall be made in the amounts set forth in Attachment 2, provided the DARPA AOR/PM has verified the completion of the Milestones.

6. ABC shall maintain adequate records to account for all funding under this Agreement. Upon completion or termination of this Agreement, whichever occurs earlier, ABC shall furnish to the Agreements Officer a copy of the Final Report required by Attachment 1, Section C.

ARTICLE VI: DISPUTES

A. General

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

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute between DARPA and ABC concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the 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 Agreements Officer or Consortium 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 ABC. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The 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 subparagraph B.3 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 TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY)* level) appointed by ABC. Following the review, the Deputy Director of DARPA or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is subject to further administrative review by the Director of DARPA, whose decision to the extent permitted by law, shall be final and binding.

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 disbursed as of the time the dispute arises. In no event shall DARPA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE VII: PATENT RIGHTS

A. Allocation of Principal Rights

Unless ABC shall have notified DARPA (in accordance with subparagraph B below) that ABC does not intend to retain title, ABC shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article and 35 U.S.C. § 202. With respect to any

subject invention in which ABC retains title, DARPA shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world, for Government, not commercial, purposes.

B. Invention Disclosure, Election of Title, and Filing of Patent Application

1. Attachment 1, Section B details ABC's submission of invention disclosure reports. ABC shall disclose each subject invention to DARPA within two (2) months after the inventor discloses it in writing to his company personnel responsible for patent matters or with submission of next milestone report, whichever comes first.

2. If ABC determines that it does not intend to retain title to any such invention, ABC shall notify DARPA, in writing, within eight (8) months of disclosure to DARPA. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

C. Conditions When the Government May Obtain Title

Upon DARPA's written request, ABC shall convey title to any subject invention to DARPA under any of the following conditions:

1. If ABC fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph B of this Article; provided, that DARPA may only request title within sixty (60) calendar days after learning of the failure of ABC to disclose or elect within the specified times.

2. In those countries in which ABC fails to file patent applications within the times specified in paragraph B of this Article; provided, that if ABC has filed a patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by DARPA, ABC shall continue to retain title in that country; or

3. In any country in which ABC decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

D. Minimum Rights to ABC and Protection of ABC's Right to File

1. ABC shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if ABC fails to disclose the invention within the times specified in paragraph C of this Article. The ABC license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which ABC is a party and includes the right to grant licenses of the same scope to the extent that ABC was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.

2. The ABC domestic license may be revoked or modified by DARPA to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which ABC has achieved practical

application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DARPA to the extent ABC, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, DARPA shall furnish ABC a written notice of its intention to revoke or modify the license, and ABC shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

E. Action to Protect the Government’s Interest

1. ABC agrees to execute or to have executed and promptly deliver to DARPA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which ABC elects to retain title, and (ii) convey title to DARPA when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. ABC agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by ABC each subject invention made under this Agreement in order that ABC can comply with the disclosure provisions of paragraph B of this Article and Attachment 1, Section B. ABC shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.

3. ABC 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 proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. ABC shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: “This invention was made with Government support under Agreement No. HR0011-XX-9-XXXX, awarded by DARPA. The Government has certain rights in the invention.”

F. Lower Tier Agreements

ABC shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

G. Reporting on Utilization of Subject Inventions

ABC agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by ABC or its licensees or assignees, as detailed in Attachment 1, Section B.

H. Preference for American Industry

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

I. March-in Rights

ABC agrees that, with respect to any subject invention in which it has retained title, DARPA has the right to require ABC, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if ABC, assignee, or exclusive licensee refuses such a request, DARPA has the right to grant such a license itself if DARPA determines that:

1. Such action is necessary because ABC or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by ABC, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by ABC, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (H) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

ARTICLE VIII: DATA RIGHTS

A. Allocation of Principal Rights

1. ABC grants or shall obtain for the Government a royalty-free, world-wide, nonexclusive, irrevocable license rights to SBIR Data developed or generated under this Agreement only for Government (not commercial) purposes for a period commencing with contract award and ending five years after completion of this Agreement. All rights not granted to the Government are retained by ABC. All other data shall be retained with Limited Rights.
2. Upon expiration of the five-year restrictive license, the Government has Unlimited Rights in the SBIR data.
3. The Government will refrain from disclosing SBIR data outside the Government (except reviewers) and especially to competitors of ABC, or from using the information to produce future technical procurement specifications that could harm ABC.
4. The Government will protect from disclosure and non-governmental use all SBIR data developed or generated from work performed under this agreement for a period of not less than the period in which it retains SBIR rights in Data unless the Government obtains permission to disclose such SBIR

data from ABC. The Government is released from the obligation to protect SBIR data upon expiration of the protection period except that any such SBIR data is also protected through the protection period of a subsequent SBIR award. This protection does not extend to the evaluation of the Program.

B. Marking of Data

Pursuant to paragraph A. above, any Data delivered under this Agreement shall be marked with the appropriate data rights markings and ABC's name and address and include the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-XX-9-XXXX between the Government and ABC.

C. Lower Tier Agreements

ABC shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY

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

A. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

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

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

- (a) sales of products or components, or
 - (b) licenses of software or documentation related to sales of products or components,
- or
- (c) transfer to foreign subsidiaries of ABC for purposes related to this Agreement, or
 - (d) transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. ABC shall provide timely notice to DARPA of any proposed transfers from ABC of Technology developed under this Agreement to Foreign Firms or Institutions. If DARPA determines that the transfer may have adverse consequences to the national security interests of the United States, ABC,

its vendors, and DARPA shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to ABC.

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

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, ABC shall (a) refund to DARPA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government ABC shall provide written confirmation of such licenses.

C. Lower Tier Agreements

ABC shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE X: TITLE TO AND DISPOSITION OF PROPERTY *(IF ABC WILL BE ACQUIRING PROPERTY VALUED AT MORE THAN \$5K, USE THE ALTERNATE CLAUSE IN ATTACHMENT 6)*

A. Title to Property

No significant items of property are expected to be acquired under this Agreement. Title to each item of property acquired under this Agreement with an acquisition value of \$5,000 or less shall vest in ABC upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. Should any item of property with an acquisition value greater than \$5,000 be required, ABC shall obtain prior written approval of the Agreements Officer. Title to this property shall also vest in ABC upon acquisition. ABC 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 the term 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 ABC 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 XI: 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. 2000-d) relating to nondiscrimination in Federally assisted programs. ABC has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act.

ARTICLE XII: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

1. There shall be no dissemination or publication, except within and between ABC and any subcontractors, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the AOR/PM. All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Contractor. Unclassified patent related documents are exempt from prepublication controls and this review requirement. Papers resulting from unclassified fundamental research are exempt from prepublication controls and this review requirement, pursuant to DoD Instruction 5230.27 dated October 6, 1987.

2. ABC shall submit all proposed public releases for review and approval as instructed at <http://www.darpa.mil/prc/>. Public releases include press releases, specific publicity or advertisement, and publication or presentation, but exclude those relating to the open sourcing or licensing, sales or other commercial exploitation of products, services or technologies. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

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

ARTICLE XIII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement, the language set forth in the Attachments, and the Contractor’s proposal, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, (2) all Attachments to the Agreement, and (3) Contractor’s proposal

ARTICLE XIV: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of ABC and the DARPA Agreements Officer. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

ATTACHMENT 1: REPORT REQUIREMENTS

A. PAYABLE MILESTONES REPORTS

ABC shall submit or otherwise provide to the DARPA AOR, DARPA PM, and DARPA Agreements Officer documentation describing the extent of accomplishment of Milestones. This information shall be as required by Article V, paragraph B and shall be sufficient for the DARPA AOR/PM to reasonably verify the completion of the milestone in accordance with the Schedule of Milestones and Payments (Attachment 2).

B. PATENT REPORTS

Invention Disclosure Reports:

1. ABC shall disclose each subject invention to DARPA within (2) two months after the inventor discloses it in writing to his company personnel responsible for patent matters or with submission of the next milestone report, whichever comes first. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). The invention disclosures shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. ABC shall also submit to DARPA an annual listing of subject inventions.

2. If ABC determines that it does not intend to retain title to any such invention, ABC shall notify DARPA, in writing, within eight (8) months of disclosure to DARPA. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

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

4. Requests for extension of the time for disclosure election, and filing under Article VII, paragraph C, may, at the discretion of DARPA, and after considering the position of ABC, be granted.

Reporting on Utilization of Subject Inventions

1. ABC agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by ABC or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by ABC, and such other data and information as the agency may reasonably specify. ABC also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with Article VII, paragraph I. Consistent with 35 U.S.C. § 202(c)(5), DARPA agrees it shall not disclose such information to persons outside the Government without permission of ABC.

2. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://s-edison.info.nih.gov/iEdison/>. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the Agreements Officer and Administrative Agreements Officer.

C. FINAL REPORT (NOTE: The Final Report is the last Milestone for the completed Agreement)

1. ABC shall submit or otherwise provide a Final Report making full disclosure of all major developments by ABC upon completion of the Agreement or within sixty (60) calendar days of termination of this Agreement. With the approval of the DARPA AOR/PM, reprints of published articles may be attached to the Final Report. One (1) copy shall be submitted or otherwise provided to the DARPA AOR, one (1) copy shall be submitted or otherwise provided to the DARPA PM, one (1) copy shall be submitted or otherwise provided to the DARPA Agreements Officer, and one (1) copy shall be submitted or otherwise provided to DARPA/(INSERT PROGRAM OFFICE), Attn: Assistant Director for Program Management. One (1) copy shall be submitted to the Defense Technical Information Center, Attn: DTIC-BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-0944.

2. The Final Report shall be marked with a distribution statement to denote the extent of its availability for distribution, release, and disclosure without additional approvals or authorizations. The Final Report shall be marked on the front page in a conspicuous place with the following marking:

“DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government agencies only to protect information not owned by the U.S. Government and protected by a contractor’s “limited rights” statement, or received with the understanding that it not be routinely transmitted outside the U.S. Government. Other requests for this document shall be referred to DARPA/Technical Information Officer.”

D. EXECUTIVE SUMMARY

ABC 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 and Section 845, National Defense Authorization Act for Fiscal Year 1994, as amended, 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. Two (2) copies shall be submitted to the DARPA Agreements Officer.

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**ATTACHMENT 2:
SCHEDULE OF MILESTONES AND PAYMENTS**

NOTE: The following chart will detail the list of 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 and submitting the final report, etc). Status reports cannot be milestones. The Milestone description will show how the Milestone will be demonstrably completed. Payments associated with each Milestone must reflect the actual comprehensive costs to achieve milestone completion.

<u>MILESTONE</u>	<u>MONTH AFTER CONTRACT AWARD</u>	<u>PAYMENT</u>	<u>TDD/SOW REFERENCE</u>

ATTACHMENT 3: **WIDE AREA WORK FLOW INSTRUCTIONS**

Payments will be made by the cognizant Defense Agencies Financial Services office, as indicated below, within 30 (thirty) calendar days of an accepted invoice in Wide Area Workflow (WAWF). 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 DoD's goal of moving to a paperless acquisition process. Authorized DoD users are notified of pending actions by e-mail and are presented with a collection of documents required to process the contracting or financial action. It uses Public Key Infrastructure (PKI) to electronically bind the digital signature to provide non-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.

ABC is required to utilize the Wide Area Workflow system when processing invoices and receiving reports under this Agreement. ABC shall (i) ensure an Electronic Business Point of Contact is designated in Central Contractor Registration at <http://www.ccr.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. ABC is directed to use the "2-in-1" format when processing invoices. ABC should submit a copy of the AOR/PM approval of the milestone, as well as a copy of the milestone report, with each invoice.

- a. For the Issue By DoDAAC enter HR0011
- b. For the Admin DoDAAC, Ship To and Service Acceptor fields, enter (INSERT APPROPRIATE FIELD)
- c. Leave the Inspect by DoDAAC, Ship From Code DoDAAC and LPO DoDAAC fields blank unless otherwise directed by the Agreements Officer or Administrative Agreements Officer.
- d. The following guidance is provided for invoicing processed under this Agreement through WAWF:
 - The AOR/PM identified at Article IV "Agreement Administration" shall continue to formally inspect and accept the deliverables/payable milestones. To the maximum extent practicable, the AOR/PM shall review the deliverable(s)/payable milestone report(s) and either: 1) provide a written notice of rejection to SUN which includes feedback regarding deficiencies requiring correction or 2) written notice of acceptance to the Administrative Agreements Officer (AAO), DARPA PM and Agreements Officer.
 - Acceptance within the WAWF system shall be performed by the cognizant AAO upon receipt of a confirmation email, or other form of transmittal, from the AOR/PM.
 - ABC shall send an email notice to the AOR/PM upon submission of an invoice in WAWF (this can be done from within WAWF).
 - The AAO will have WAWF forward copies of the processed acceptance to the Agreements Officer at the email address indicated at Article IV (this can be done from within WAWF).
 - Payments shall be made by DFAS--(INSERT APPROPRIATE DFAS OFFICE).
 - ABC agrees, when entering invoices entered in WAWF to utilize the CLINs associated with each payable milestone as delineated at Attachment 2. The description of the CLIN shall include reference to the associated milestone number along with other necessary

descriptive information. ABC 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 as delineated at Attachment 2. The Agreement is to be paid out by CLIN – Milestone association. Payments shall be made using the CLIN (MS)/ACRN association as delineated at Attachment 2.

5. Payee Information: As identified at Central Contractor Registration.

- Cage Code:
- DUNS:
- TIN:

6. Payments shall be made in the amounts set forth in Attachment 2, provided the DARPA AOR/PM has verified the completion of the Milestones.

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ATTACHMENT 4: DEFINITIONS

In this Agreement, the following definitions apply:

- Agreement:** The body of this Agreement and Attachments 1 – 6, which are expressly incorporated in and made a part of the Agreement.
- Contractor:** Company ABC.
- Data:** Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, and trade secrets. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions, included in Article VII.
- 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.
- Invention:** Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- Know-How:** All information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.
- Limited Rights:** Rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government.
- Made:** Relates to any invention means the conception or first actual reduction to practice of such invention.
- 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 ABC, as set forth in Article I., paragraph C.

Property: Any tangible personal property other than property actually consumed during the execution of work under this agreement. For purposes of this article, "property" does not include the deliverable prototype which is the (*INSERT DELIVERABLE*).

SBIR Data: Data first produced by a Contractor that is a small business concern in performance of a small business innovation research award.

SBIR Data Rights: A royalty-free license for the Government, including its support service contractors, to use, modify, reproduce, release, perform, display, or disclose Data developed or generated under this agreement for any United States government purpose.

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

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

Unlimited Rights: Rights 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.

ATTACHMENT 5: AGREEMENT ADMINISTRATION

Below is a list of the Points of Contact for ABC and DARPA. Each Party may change its representatives named below by written notification to the other party. The Government will effect the change following the procedures in Article II, subparagraph C.3. of the main text of the Agreement.

A. Government Points of Contact:

Agreements Officer:

(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

DARPA Program Manager:

(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

Agreements Officer's Representative (AOR):

(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

Administrative Agreements Officer (AAO):

(NAME)
(ADDRESS)
(TITLE)
(PHONE NUMBER)
(EMAIL)

B. Contractor Points of Contact

ABC Administrative/Contracting:

(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

ABC Program Manager:

(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

ATTACHMENT 6: ALTERNATIVE CLAUSES

ARTICLE XI: TITLE TO AND DISPOSITION OF PROPERTY *(USE IF CONTRACTOR WILL BE ACQUIRING PROPERTY VALUED AT MORE THAN \$5,000)*

A. Title to Property

ABC will acquire property with an acquisition value greater than \$5,000 under this Agreement as set forth in this Agreement which is necessary to further the research and development goals of this Program and is not for the direct benefit of the Government. Title to this property shall vest in ABC upon acquisition. Title to any other items of property acquired under this Agreement with an acquisition value of \$5,000 or less shall vest in ABC upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. Should any other item of property with an acquisition value greater than \$5,000 be required, ABC shall obtain prior written approval of the Agreements Officer. Title to this property shall also vest in ABC upon acquisition. ABC 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 the term of this Agreement, items of property set forth in this Agreement or any other items of property with an acquisition value greater than \$5,000 shall be disposed of in the following manner:

1. Purchased by ABC 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.