

**(TEMPLATE – SBIR Fixed Approach with a Nontraditional Defense Contractor
– No Resource Contribution)**

Other Transaction for Prototype Agreement

AGREEMENT

BETWEEN

(INSERT COMPANY NAME AND ADDRESS)

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
675 NORTH RANDOLPH STREET
ARLINGTON, VA 22203-2114

CONCERNING

(INSERT RESEARCH AND DEVELOPMENT TITLE)

Agreement No.: HR0011-XX-9-XXXX
Purchase Requisition No.:
Total Amount of the Agreement: \$
Funds Obligated: \$
Authority: 10 U.S.C. § 2371b, National Defense Authorization Act for Fiscal Year 2016.
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 United States Federal law.

FOR *(INSERT COMPANY NAME)*

FOR THE GOVERNMENT
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 Small Business Innovation Research (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. § 2371b, National Defense Authorization Act for Fiscal Year 2016. The principal purpose of this Agreement is to conduct a research and development program for the development of a (*DESCRIBE PROTOTYPE*).

2. COMPANY NAME (Performer) shall be responsible for performance of the work set forth in the Task Description Document (TDD), as set forth in the Contractor's proposal, Section (*REFERENCE APPROPRIATE SECTION NUMBER*). The Performer shall provide all documentation required by Attachment 1, Report Requirements.

3. The Performer shall be paid a fixed amount for each milestone accomplished in accordance with the Schedule of Milestones and Payments set forth in Attachment 2 and the procedures of Article IV.

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 the Performer. The Government will obtain access to Program results and rights in patents and data pursuant to Articles VI and VII. DARPA and the Performer are bound to each other by a duty of good faith in achieving the Program objectives.

ARTICLE II: TERM

A. Term of this Agreement

The Program commences upon the date of the last signature hereon and continues for (*INSERT 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 Performer, provided that such written notice is preceded by consultation between the Parties. The Performer may request Agreement termination by giving the Government sixty (60) days written notification of their intent to do so. If the Performer requests termination of this Agreement, the Government may, at its discretion, agree to terminate. The Government and the Performer 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 VII, Data Rights. Failure of the Parties to agree to terminate and/or an equitable adjustment shall be resolved pursuant to Article V, Disputes.

C. Extending the Term

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

ARTICLE III: MANAGEMENT OF THE PROJECT

A. Management and Program Structure

The Performer 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 and prospective completed milestones (Attachment 2) will be documented in a letter and submitted by the Performer to the DARPA AOR or the DARPA AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the research program. The DARPA AO and 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 2) is formally revised by the DARPA AO and made part of this Agreement.

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

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

4. The DARPA AO will be responsible for instituting all modifications to this Agreement.

ARTICLE IV: OBLIGATION AND PAYMENT

A. Obligation

If a modification becomes necessary in performance of this Agreement, pursuant to Article III, paragraph B, the DARPA AO and the Performer's 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. The Performer 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, and approval by the AO, the Performer will submit their invoice through Wide Area Workflow (WAWF), 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 Finance and Accounting Services office, as indicated below, within thirty (30) calendar days of an accepted invoice in WAWF. Attachment 3 details how to submit and process invoices through WAWF.

The Performer is required to utilize the WAWF system when processing invoices and receiving reports under this Agreement. The Performer shall (i) ensure an Electronic Business Point of Contact is designated within the 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.

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

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

ARTICLE V: 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.

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 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 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 the Performer. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The DARPA Senior Procurement Executive and the Performer's appointed 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 the Performer. Following the review, the Deputy Director of DARPA or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be 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 VI: PATENT RIGHTS

A. Allocation of Principal Rights

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

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

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

1. The Performer shall disclose each subject invention to DARPA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement and circumstances under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention. The disclosure shall also identify any publication, sale, or public use of

the invention and whether a manuscript describing the invention has been submitted and/or accepted for publication at the time of disclosure.

2. If the Performer determines that it does not intend to retain title to any such Invention, the Performer 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-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. The Performer shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

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

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

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

C. Conditions When the Government May Obtain Title

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

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

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

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

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

1. The Performer shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Performer fails to disclose the subject invention within the times specified in paragraph B of this Article. The Performer's license extends to its domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant licenses of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, 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. The Performer's 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 C.F.R. Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Performer has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DARPA to the extent the Performer, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

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

E. Action to Protect the Government's Interest

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

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

3. The Performer shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement:

This invention was made with Government support under Agreement No. HR0011-XX-9-XXXX, awarded by DARPA. The Government has certain rights in the invention.

F. Lower Tier Agreements

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

G. Reporting on Utilization of Subject Inventions

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

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

H. Preference for American Industry

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

I. March-in Rights

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

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

ARTICLE VII: DATA RIGHTS

A. Allocation of Principal Rights

1. The Performer grants or shall obtain for the Government SBIR Data Rights for all Data developed or generated under this agreement for a period commencing with the effective date of this Agreement and continuing through the SBIR data protection period. All rights not granted to the Government are retained by the Performer. All other data utilized in performance of this agreement shall be specifically identified in the Data Assertions List in Attachment 8 and the Performer shall grant the Government a Limited Rights license in this data.

2. For purposes of this Article, the SBIR data protection period is defined as the period commencing with this agreement award and ending upon the date five years after completion of the projects from which such data were generated. Upon expiration of the SBIR data protection period, the Government will have unlimited rights in the SBIR data

3. For purposes of this Article, the SBIR Data Rights given to the Government for all Data developed or generated under this agreement is Limited Rights, as that term is defined in Attachment 4 of this agreement.

4. The Government will refrain from disclosing SBIR data outside the Government and especially to competitors of the Performer, or from using the information to produce future technical procurement specifications that could harm the Performer.

5. The Government will protect from disclosure and non-governmental use all SBIR Data developed or generated from work performed under this agreement for the period in which it retains SBIR Data Rights unless the Government obtains permission to disclose such SBIR Data from the Performer. The Government is released from the obligation to protect SBIR Data upon the expiration of the SBIR data protection period except that any such SBIR Data is also protected and referenced through the SBIR data protection period of a subsequent SBIR award. The Government retains a royalty-free license for Government use of any technical data delivered under an SBIR award, whether patented or not. This protection does not apply to program evaluation.

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 the Performer'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 the Performer.

C. Lower Tier Agreements

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

ARTICLE VIII: FOREIGN ACCESS TO TECHNOLOGY

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

A. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, *et seq.*), the National Security Program Operating Manual (NISPOM) (DoD 5220.22-M), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, *et seq.*).

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

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

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

2. The Performer shall provide timely notice to DARPA of any proposed transfers from the Performer 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, the Performer, 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 the Performer.

3. In any event, the Performer shall provide written notice to the DARPA AOR and the DARPA AO of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Performer's written notification, the DARPA AO shall advise the Performer 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, the Performer may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, the Performer 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 to 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, the Performer shall provide written confirmation of such licenses.

C. Lower Tier Agreements

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

ARTICLE IX: TITLE TO AND DISPOSITION OF PROPERTY (IF THE PERFORMER WILL BE ACQUIRING PROPERTY VALUED AT MORE THAN \$5K, USE THE ALTERNATE CLAUSE)

A. Title to Property (USE THIS PARAGRAPH IF NO PROPERTY BEING ACQUIRED OVER \$5,000, AND DELETE ATTACHMENT 7 FROM TABLE OF CONTENTS AND AGREEMENT.)

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 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 is 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.

A. Title to Property (USE THIS PARAGRAPH IF THERE WILL BE PROPERTY ACQUIRED OVER \$5,000, AND USE ATTACHMENT 7 IN TABLE OF CONTENTS AND AGREEMENT.)

Items of property with an acquisition value of \$5,000 or greater are expected to be acquired under this Agreement, and are listed in Attachment 7. 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. Additional items of property with an acquisition value of \$5,000 or greater can only be obtained with prior written approval of the AO and modification of this Agreement. 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 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 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 X: 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 XI: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

1. There shall be no dissemination or publication, except within and between the Performer and any subcontractors, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the DARPA AOR or the DARPA 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 Performer. Unclassified patent related documents are exempt from prepublication controls and this review requirement. There shall be no dissemination or publication, except within and between the Performer and any subcontractor(s), of information developed under this effort without first obtaining approval for public release from the DARPA Public Release Center (PRC). Papers prepared in response to academic requirements which are not intended for public release outside the academic institution are exempt from prepublication controls.

2. The Performer shall submit all proposed public releases for review and approval as instructed at <http://www.darpa.mil/work-with-us/contract-management/public-release>. 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 XII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement, the language set forth in the Attachments, and the Performer'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) Performer's proposal.

ARTICLE XIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the Performer and the DARPA AO. 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. MILESTONE REPORTS

The Performer shall submit or otherwise provide to the DARPA AOR, DARPA PM, and DARPA AO 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 or the DARPA 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. The Performer 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 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. The Performer shall also submit to DARPA an annual listing of Subject Inventions.

2. If the Performer determines that it does not intend to retain title to any such Invention, the Performer 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-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. The Performer shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner for Patents 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 the Performer, be granted.

Reporting on Utilization of Subject Inventions

1. The Performer agrees to submit, during the term of the Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Performer or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Performer, and such other data and information as the agency may reasonably specify. The Performer also agrees to provide additional reports as may be requested by 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 the Performer.

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 AO and/or Administrative Agreements Officer.

C. FINAL REPORT

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

1. 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 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 AO, and one (1) copy shall be submitted to the DARPA Closeout team at CMO_closeout@darpa.mil. 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. Prior to delivery, the Performer shall consult with the AO to determine the proper distribution statement to be included on the front page of the final report in a conspicuous place.

D. 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. § 2371b, National Defense Authorization Act for Fiscal Year 2016 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.

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

(NOTE: THIS DESCRIPTION IS INFORMATIONAL TO ADDRESS WHAT IS NECESSARY TO HAVE IN THE MILESTONE SCHEDULE. DELETE PRIOR TO AWARD, AND LEAVE ONLY THE SCHEDULE HERE. 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>TASK</u>	<u>MONTH AFTER CONTRACT AWARD</u>	<u>MILESTONE</u>	<u>PAYMENT</u>	<u>EXIT CRITERIA</u>

ATTACHMENT 3: WIDE AREA WORK FLOW INSTRUCTIONS

Payments will be made by the Defense Finance and Accounting Service office, as indicated below, within thirty (30) calendar days of an accepted invoice in Wide Area Workflow (WAWF). WAWF is a secure web-based system for electronic invoicing, receipt and acceptance. The WAWF application enables electronic form submission of invoices, government inspection, and acceptance documents in order to support DoD's goal of moving to a paperless acquisition process. Authorized DoD users are notified of pending actions by e-mail and are presented with a collection of documents required to process the contracting or financial action. It uses Public Key Infrastructure (PKI) to electronically bind the digital signature to provide non-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 is required to utilize the WAWF system when processing invoices and receiving reports under this Agreement. The Performer shall ensure an Electronic Business Point of Contact is designated in Central Contractor Registration at <http://www.ccr.gov>, and 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. The Performer should submit a copy of the DARPA AOR or the DARPA 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, Extension (*INSERT AO'S EXTENSION*).
- b. For the Admin DoDAAC, and Service Acceptor fields, enter HR0011.
- c. Leave the Inspect by DoDAAC, Ship From Code DoDAAC and LPO DoDAAC fields blank unless otherwise directed by the AO.
- d. The following guidance is provided for invoicing processed under this Agreement through WAWF:
 - The AOR/PM identified in Attachment 5, "Agreement Administration" shall continue to formally inspect and accept the deliverables/milestones. To the maximum extent practicable, the DARPA AOR or the DARPA PM shall review the deliverable(s)/milestone report(s) and either: 1) provide a written notice of rejection to the Performer which includes feedback regarding deficiencies requiring correction or 2) written notice of acceptance to the DARPA PM and the DARPA AO.
 - Acceptance within the WAWF system shall be performed by the AO or AOR upon receipt of a confirmation email, or other form of transmittal, from the DARPA AOR or the DARPA PM.
 - The Performer shall send an email notice to the DARPA AOR or the DARPA PM upon submission of an invoice in WAWF (this can be done from within WAWF).
 - Payments shall be made by DFAS-*(INSERT APPROPRIATE DFAS OFFICE'S NAME AND DODAAC)*.
 - The Performer agrees, when entering invoices entered in WAWF to utilize the contract line item number (CLIN) and accounting classification reference number (ACRN) associated with each 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. 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 2. 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 2.

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

- Cage Code:
- DUNS:
- TIN:

f. Payments shall be made in the amounts set forth in Attachment 2, provided the DARPA AOR has verified the completion of the milestones.

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.

Data: Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, maskworks 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.

Government Purpose Rights: The rights to use, duplicate, or disclose Data, 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.

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. 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: Relates to 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: The Contractor.

Practical application: To manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such

conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

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

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.

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

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

Unlimited Rights: Rights to use, duplicate, release, or disclose, 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 the Performer and DARPA. Each Party may change its representatives named below by written notification to the other party. The Government will affect 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 (AO):
(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

DARPA Program Manager (PM):
(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. Performer’s Points of Contact

Administrative/Contracting:
(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

Program Manager:
(NAME)
(TITLE)
(PHONE NUMBER)
(EMAIL)

**ATTACHMENT 6:
AGREEMENT OFFICER'S REPRESENTATIVE**

(INSERT IMAGES OF AOR APPOINTMENT MEMO HERE.)

**ATTACHMENT 7:
EQUIPMENT**

Below is a list of equipment proposed to be purchased by the Performer with an acquisition value of greater than \$5,000. The Government will the Disposition of Property to all equipment purchased under this Agreement in accordance with the terms and conditions of Article IX.

Item Description	Unit Price	Quantity	Total Projected Cost
	\$		\$
	\$		\$
	\$		\$