Other Transaction Agreement for Prototypes

BETWEEN

*(INSERT COMPANY NAME AND PHYSICAL ADDRESS AS SHOWN IN SAM.GOV)*

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

675 NORTH RANDOLPH STREET

ARLINGTON, VA 22203-2114

CONCERNING

*(INSERT RESEARCH AND DEVELOPMENT TITLE)*

Agreement No.: HR0011XX9XXXX

Purchase Requisition No.: HR0011XXXXX

Total Amount of the Agreement: $ X,XXX,XXX (Phase 1 Base and Phase 2 Unexercised Option)

Phase 1 Base Effort: $ X,XXX,XXX

Phase 2 Option Effort: $ X,XXX,XXX (Unexercised)

Funds Obligated: $ X,XXX,XXX

Authority: 10 U.S.C. § 4022

Effective Date: TBD

Line of Appropriation:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **CLIN/SUBCLIN** | **ACRN** | **Accounting Line** | **CIN** | **Amount** |
| 0001/000101 |  |  |  | $ |

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. Note that by signing this Agreement, [INSERT PERFORMER] also attests to the accuracy and completion of the Certifications of the Agreement herein Attachment 7 Certifications for Agreement.

|  |  |
| --- | --- |
| **FOR (INSERT PERFORMER NAME)** | **FOR 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**

The Program is as set forth in Attachment 1 Task Description Document, Attachment 3 Schedule of Milestones and Payments, and the Volume 1 of the Performer’s proposal, *dated (INSERT DATE of Proposal Vol 1)*, 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. § 4022. The principal purpose of this Agreement is to conduct a research and development program for the development of a *(DESCRIBE PROTOTYPE).* This research shall be carried out in accordance with Attachment 1 Task Description Document and the Performer’s proposal.

2. 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 3 and the procedures of Article IV, Obligation and Payment.

**C. Goals / Objectives**

 1. The goal(s) and objectives of this Agreement are outlined in the Performer’s Attachment 1 Task Description Document, and Attachment 3 Schedule of Milestones and Payments.

 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, Patent Rights and Data Rights. DARPA and the Performer are bound to each other by a duty of good faith in achieving the Program objectives.

**ARTICLE II: TERM**

1. **Term of this Agreement**

The Program commences upon the effective date hereon and continues for *NUMBER OF MONTHS SPELLED OUT (INSERT NUMBER)* months. The Government may unilaterally exercise Phase 2 Option prior to the end of the base period through written modification. If exercised, Phase 2 Option extends the term of the Agreement for *NUMBER OF MONTHS SPELLED OUT (INSERT NUMBER)* months in the amount of $0.00 after the end of the base period. 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.

1. **Termination Provisions**

Subject to a reasonable determination that the program will not produce beneficial results, either Party may terminate this Agreement by written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. In the event of a termination of the Agreement, it is agreed that disposition of Data developed under this Agreement, shall be in accordance with the provisions set forth in Article VII, Data Rights. The Government and the Performer will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article V, Disputes. The Government has no obligation to pay the Performer beyond the last completed and paid milestone if the Performer decides to terminate.

1. **Extending the Term**

The Parties may extend, by mutual written agreement, the term of this Agreement if research opportunities set forth in Article I, Scope of the Agreement 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**

1. **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 Technical Representative (TR), 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.

1. **Modifications**
2. Recommendations for modifications, including justifications to support any changes to the Scope of Work, as described in the Performer’s proposal, and prospective completed milestones (Attachment 3) will be documented in a letter and submitted by the Performer to the DARPA PM, TR 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 3) is formally revised by the DARPA AO and made part of this Agreement.
3. The DARPA TR and PM 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.
4. For minor or administrative Agreement modifications (e.g. incremental funding, 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.
5. The DARPA AO will be responsible for instituting all modifications to this Agreement.

**ARTICLE IV: OBLIGATION AND PAYMENT**

1. **Obligation**
2. The Government’s liability to make payments to the Performer is limited to only those funds obligated under the Agreement or by modification to the Agreement. DARPA may obligate funds to the Agreement incrementally.
3. 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.
4. **Payments**
5. 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.
6. The Performer shall document the accomplishments of each completed milestone by submitting or otherwise providing the milestone report required by Attachment 2, Section A. To the maximum extent practicable, the DARPA AOR shall review the deliverable(s)/milestone report(s) and either: 1) provide a written notice of rejection to the Performer which includes feedback regarding deficiencies requiring correction, or 2) written notice of acceptance to the DARPA PM, AO, and Performer within fifteen (15) calendar days of receipt of deliverable(s)/milestone report(s). Upon written approval from the DARPA AOR, the Performer will submit their invoice through Wide Area Workflow (WAWF), as detailed below, as detailed in Attachment 4.
7. Limitation of Funds: In no case shall the Government’s financial liability exceed the amount obligated under this Agreement.
8. Payments will be made by the cognizant Defense Finance and Accounting Service office, as indicated below, within thirty (30) calendar days of an accepted invoice in WAWF. Attachment 4 details how to submit and process invoices through WAWF.
9. Payments shall be made in the amounts set forth in Attachment 3, provided the DARPA TR or PM has verified the completion of the milestones.
10. 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 2, Section C.

**ARTICLE V: DISPUTES**

1. **General**

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

1. **Dispute Resolution Procedures**
2. 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.
3. 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.
4. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party in writing, through the DARPA AO, 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.
5. 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 will resolve the issue(s) and notify the Parties in writing. To the extent permitted by law, such resolution shall be final and binding, except that if not satisfied with the results of completing the administrative review process, either Party may pursue any right and remedy in the Court of Federal Claims.
6. **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**

1. **Allocation of Principal Rights**
2. 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.
3. 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.
4. **Invention Disclosure, Election of Title, and Filing of Patent Application**
5. The Performer shall disclose each Subject Invention to DARPA within four (4) months after the inventor discloses it in writing to their 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.
6. 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.
7. The Performer shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months after the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.
8. 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.
9. Requests for extension of the time for disclosure election, and filing under this Article, Patent Rights, may be granted at DARPA’s discretion after considering the circumstances of the Performer and the overall effect of the extension.
10. 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.
11. **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.
4. **Minimum Rights to the Performer and Protection of the Performer’s Right to File**
5. 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.
6. 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.
7. 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.
8. **Action to Protect the Government’s Interest**
9. 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.
10. 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.

1. 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. HR0011XX9XXXX, awarded by DARPA. The Government has certain rights in the invention.

1. **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.

1. **Reporting on Utilization of Subject Inventions**
2. 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.
3. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://www.nist.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), if one is appointed.
4. **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.

1. **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**

1. **Allocation of Principle Rights**
2. The Parties agree that in consideration for Government funding, the Performer intends to reduce to practical application items, components and processes developed under this Agreement.
3. With respect to Data developed or generated under this Agreement related to the Prototype, as described in Article I(B)(1), the Government shall receive Unlimited Rights, as defined in Attachment 5.
4. With respect to Data delivered pursuant to Attachment 3 under the Agreement, the Government shall receive Unlimited Rights. Notwithstanding the provision in A.4, with respect to data generated or developed under this Agreement, the Government may, within three (3) or *INSERT NUMBER OF YEARS)* years after completion or termination of this Agreement, require delivery of data and receive Unlimited Rights.
5. March-In Rights
6. In the event the Government chooses to exercise its March-in Rights, as defined in Article VI, Patent Rights, Section I of this Agreement, the Performer agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in Attachment 5 of this Agreement, to this delivered Data.
7. To facilitate any potential deliveries, the Performer agrees to retain and maintain in good condition until three (3) or *INSERT NUMBER OF YEARS)* years after completion or termination of this Agreement, all Data necessary to achieve practical application of any Subject Invention as defined in Attachment 5.
8. **Marking of Data**

Pursuant to paragraph A above, any Data delivered under this Agreement shall be marked with the following legend:

“Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011XX9XXXX between the Government and the Performer.”

1. **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) or *INSERT NUMBER OF YEARS*) years thereafter.

1. **General**

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, *et seq.*), National Industrial Security Program Operating Manual (NISPOM) (32 C.F.R. Part 117, *et seq.*), and the Department of Commerce’s Export Administration Regulations (15 C.F.R. Part 730, *et seq.*).

1. **Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions**
2. 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:
3. Sales of products or components; or
4. Licenses of software or documentation related to sales of products or components; or
5. Transfer to foreign subsidiaries of the Performer for purposes related to this Agreement; or
6. 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; or,
7. The results of fundamental research conducted under this agreement, which may be published in accordance with the terms of Article XIII.
8. 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.
9. In any event, the Performer shall provide written notice to the DARPA TR 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 V, Disputes. No transfer shall take place until a decision is rendered.
10. 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.
11. **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 $10K, USE THE ALTERNATE CLAUSE)*

1. **Title to Property** (*USE THIS PARAGRAPH IF NO PROPERTY BEING ACQUIRED OVER $10,000, AND DELETE ATTACHMENT 9 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 $10,000 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 $10,000 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. The performer’s deliverable prototype shall not be classified as property.

**A. Title to Property** (*USE THIS PARAGRAPH IF THERE WILL BE PROPERTY ACQUIRED OVER $10,000, AND USE ATTACHMENT 9 IN TABLE OF CONTENTS AND AGREEMENT.)*

Items of property with an acquisition value greater than $10,000 are expected to be acquired under this Agreement and are listed in Attachment 9 - Property/Equipment*)*. Title to each item of property acquired under this Agreement with an acquisition value of $10,000 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 greater than $10,000 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. The performer’s deliverable prototype shall not be classified as property.

**B. Disposition of Property**

At the completion of the term of this Agreement, items of property with an acquisition value greater than $10,000 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: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING**

1. **Applicability**

*(THE FOLLOWING TEXT APPLIES TO PERFORMERS PERFORMING FUNDAMENTAL RESEARCH)*

This Article applies if the Performer or its subcontractors anticipate receiving, developing, collecting,

transmitting, using, or storing Controlled Unclassified Information (CUI) or Controlled Technical Information (CTI) as part of executing this agreement. At this time, DARPA expects the work performed under this agreement to be fundamental research and does not consider the scope of research under this agreement to include receiving, developing, collecting, transmitting, using, or storing CUI or CTI. Therefore, the requirements of this Article do not apply to this agreement. Should the research scope under the agreement change and the Performer will be required to receive, develop, collect, transmit, use, or store CUI or CTI, the requirements of this Article will apply to the agreement.

*(THE FOLLOWING TEXT APPLIES WHEN THE PERFORMER IS NOT PERFORMING FUNDAMENTAL RESEARCH, BUT THERE IS NO CUI/CTI INVOLVED)*

This Article applies if the Performer or its subcontractors anticipate receiving, developing, collecting,

transmitting, using, or storing Controlled Unclassified Information (CUI) or Controlled Technical Information (CTI) as part of executing this agreement. At this time, DARPA does not consider the scope of research under this agreement to include receiving, developing, collecting, transmitting, using, or storing CUI or CTI. Should the research scope under the agreement change and the Performer will be required to receive, develop, collect, transmit, use, or store CUI or CTI, the requirements of this Article will apply to the agreement.

*(THE FOLLOWING TEXT APPLIES IF THE PRIME PERFORMER IS NOT PERFORMING FUNDAMENTAL RESEARCH AND CUI/CTI IS NOT INVOLVED, BUT HAS A UNIVERSITY SUBCONTRACTOR WHO WILL BE PERFORMING FUNDAMENTAL RESEARCH)*

This Article applies because the Performer and/or its subcontractors anticipate to receive, develop, collect, transmit, use, or store Controlled Unclassified Information (CUI) or Controlled Technical Information (CTI) as part of executing this agreement. However, at this time, DARPA expects the work performed under this agreement by the proposed subcontractor [University of .........................] to be fundamental research, and, therefore, the requirements of this Article do not apply to the research scope performed by the [University of ............]. Further, at this time, DARPA does not consider the scope of research under this agreement to receive, develop, collect, transmit, use, or store CUI or CTI. Should the research scope under the agreement change and the Performer will be required to receive, develop, collect, transmit, use, or store CUI or CTI, the requirements of this Article will apply to the agreement.

*(THE FOLLOWING TEXT APPLIES IF THE PRIME PERFORMER IS NOT PERFORMING FUNDAMENTAL RESEARCH AND CUI/CTI IS INVOLVED, BUT HAS A UNIVERSITY SUBCONTRACTOR WHO WILL BE PERFORMING FUNDAMENTAL RESEARCH)*

This Article applies because the Performer and/or its subcontractors are expected to receive, develop, collect, transmit, use, or store Controlled Unclassified Information (CUI) or Controlled Technical Information (CTI) as part of executing this agreement. However, at this time, DARPA expects the work performed under this agreement by the proposed subcontractor [University of .........................] to be fundamental research, and, therefore, the requirements of this Article do not apply to the research scope performed by the [University of ............]. Should the research scope under the agreement change and the Performer will be required to receive, develop, collect, transmit, use, or store CUI or CTI, the requirements of this Article will apply to the agreement.

*(IF CUI/CTI IS INVOLVED AND THERE ARE NO UNIVERSITY SUBCONTRACTORS PERFORMING FUNDAMENTAL RESEARCH SECTION A WILL BE DELETED)*

1. **Background**

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

1. **Safeguarding CDI**

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

1. **Cyber Incident Reporting**

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

1. **Public Release**

All information and data covered by this Article must be reviewed and approved by DARPA prior to any public release. The DARPA public release process is governed by DARPA Instruction 65. An online form is available to support those requests at: <https://www.darpa.mil/work-with-us/contract-management/public-release>

1. **Lower Tier Agreements**

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

1. **Definitions**

Reference Attachment 5

**ARTICLE XI: FOLLOW-ON PRODUCTION CONTRACTS OR OTHER TRANSACTIONS**

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

**ARTICLE XII: 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 XIII: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION**

*(IF PROPOSED EFFORT IS FUNDAMENTAL RESEARCH, THE FOLLOWING TEXT APPLIES)*

1. At this time, DARPA expects the work performed under this agreement to be fundamental research, and it is, therefore, not subject to publication restrictions. Papers resulting from unclassified contracted fundamental research are exempt from prepublication controls and requirements, pursuant to DoD Instruction 5230.27 dated November 18, 2016.
2. Papers resulting from this agreement will include the following distribution statement: “Approved for public release; distribution is unlimited.”
3. Should the character of the research change during award performance so that the research is no longer considered fundamental, the agreement will be modified to impose the restrictions on public release and dissemination of information that apply to those research efforts that are not considered fundamental research.
4. Acknowledgment of Support and Disclaimer: The Performer shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this Agreement, stated in the following terms: This material is based upon work supported by the Defense Advanced Research Projects Agency (DARPA) under Agreement No. HR0011XXXXXX.

*(IF PROPOSED EFFORT IS NOT FUNDAMENTAL RESEARCH, THE FOLLOWING TEXT APPLIES)*

1. **Prohibition**

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 TR 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.

1. **Public Release**

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.

*(IF THE PROPOSED EFFORT IS NOT FUNDAMENTAL RESEARCH BUT THE PERFORMER HAS A UNIVERSITY SUBCONTRACTOR THAT WILL BE PERFORMING FUNDAMENTAL RESEARCH THE FOLLOWING TEXT APPLIES)*

At this time, DARPA expects the work performed under this contract by the below listed University subcontractor(s) to be fundamental research, and it is, therefore, not subject to publication restrictions. Papers resulting from unclassified contracted fundamental research are exempt from prepublication controls and requirements, pursuant to DoD Instruction 5230.27 dated October 6, 1987. Should the character of the research change during performance of this subaward so that the research is no longer considered fundamental, the contract between the prime and University subcontractor listed below will be modified to impose the restrictions on public release and dissemination of information that apply to those research efforts that are not considered fundamental research.

Subcontractor Statement of Work Title and Date

 [List Subcontractor] [List Statement of Work Title and Date]

**ARTICLE XIV: 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 XV: 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.

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

(a) Definitions. As used in this clause—

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

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

 Covered telecommunications equipment or services means—

 (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

 (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

 (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

 (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

 Critical technology means—

 (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

 (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

 (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

 (ii) For reasons relating to regional stability or surreptitious listening;

 (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

 (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

 (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

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

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

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

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

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

 (b) Prohibition.

 (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Performer is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

 (2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

 (c) Exceptions. This clause does not prohibit contractors from providing—

 (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

 (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

 (d) Reporting requirement.

 (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Performer is notified of such by a subcontractor at any tier or by any other source, the Performer shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

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

 (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

 (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Performer shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

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

(End of clause)

**ARTICLE XVII: APPLICABLE LAW**

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

**ARTICLE XVIII: SEVERABILITY**

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

**ARTICLE XIX: KEY PERSONNEL**

A. The key person for this project is the Principal Investigator(s) and/or Program Manager(s) identified in Attachment 6.

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

C. When replacing any of the personnel identified above, the Performer must demonstrate that the qualifications of the prospective personnel are acceptable to the Government as reasonably determined by the Program Manager. Substitution of key personnel shall be documented by modification to the

Agreement made in accordance with the procedures outlined in Article 3.

**ATTACHMENT 1:**

**TASK DESCRIPTION DOCUMENT**

(The Performers proposed Task Description Document will be placed here)

**ATTACHMENT 2:**

**REPORT REQUIREMENTS**

All required reports shall be digitally uploaded into the DARPA Vault tool, which can be accessed at <https://vault.darpa.mil>

1. **MILESTONE REPORTS**

The Performer shall submit or otherwise provide to the DARPA TR, DARPA PM, and DARPA AO,

documentation describing the extent of accomplishment of milestones. This information shall be as

required by Article IV, Obligation and Payment, paragraph Band shall be sufficient for the DARPA TR

or the DARPA PM to reasonably verify the completion of the milestone in accordance with the Schedule

of Milestones and Payments (Attachment 3).

1. **DATA MANAGEMENT PLAN**

**(NOTE: This is a one-time submittal due NLT 30 days after award)**

1. A Data Management Plan (DMP) is required for science and technology programs consisting of basic research, applied research, and advanced technology development programs. DMP is a document that describes which data generated through the course of the proposed research will be shared and preserved and how it will be done. It may explain why data sharing or preservation is not possible or scientifically appropriate, or why the costs of sharing or preservation are incommensurate with the value of doing so. The DMP may be in the Performer’s format but shall conform at a minimum to the outline of Section 3.c of Enclosure 3 of Department of Defense Instruction (DoDI) 3200.12, “DoD Scientific and Technical Information Program (STIP).” DoDI 3200.12 is available at the Washington Headquarters Services, Executive Services Directorate website: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/320012p.pdf?ver=2018-12-17-130508-423>.
2. The Performer shall submit an electronic copy of their DMP no later than 30 calendar days after award of this Agreement to the DARPA TR, DARPA PM, DARPA AO. One (1) copy shall be submitted either via the DTIC Multi-Agency Submission Portal at <https://discover.dtic.mil/submit-documents/> or via First Class Mail to the Defense Technical Information Center, Attn: Information Support Division, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-0944.
3. **PATENT REPORTS**

*Invention Disclosure Reports:*

1. The Performer shall disclose each Subject Invention to DARPA within four (4) months after the inventor discloses it in writing to their 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 disclosure must also be digitally uploaded into the DARPA Vault tool. 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.

1. 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 (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.
2. 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.
3. Requests for extension of the time for disclosure election, and filing under Article VI, Patent Rights, Paragraph B and 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 VI, Patent Rights, 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://www.nist.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, if one is appointed. In addition, digitally upload all required reports to the DARPA Vault tool.
3. **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 pursuant to Article II, subparagraph B. One (1) copy shall be submitted or otherwise provided to the DARPA TR, 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 either via the DTIC Multi-Agency Submission Portal at <https://discover.dtic.mil/submit-documents/> or via First Class Mail, Attn: DTIC-BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-0944. One (1) copy shall be digitally uploaded into the DARPA Vault tool.

2. Prior to delivery, the Performer shall consult with the PM to determine the proper distribution statement to be included on the front page of the final report in a conspicuous place.

1. **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. § 4022 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, TR, and PM.

**ATTACHMENT 3:**

**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.)*

(The Performer’s proposed Schedule of Milestones and Payments will be placed here)

**ATTACHMENT 4:**

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

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 (SAM) at <http://www.sam.gov> and (ii) register to use WAWF 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 shall maintain an active registration for “All Awards” in System for Award Management (SAM) throughout the life of the award. For WAWF Payment and Invoicing Support, email DARPAInvoices@darpa.mil or contact WAWF help desk at 866-618-5988 or email disa.global.servicedesk.mbx.eb-ticket-requests@mail.mil.

1. For the Issue-By DoDAAC, enter HR0011.
2. For the Admin DoDAAC, enter HR0011.
3. For the Service Acceptor TR fields, enter the Service Acceptor TR DoDAAC (INSERT TR DoDAAC).
4. Leave the Inspect by DoDAAC, Ship-From Code DoDAAC, Service Approver, and LPO DoDAAC fields blank unless otherwise directed by the AO.
5. The following guidance is provided for invoicing processed under this Agreement through WAWF:
* The TR or PM identified in Attachment 6, "Agreement Administration" shall continue to formally inspect and accept the deliverables/milestones. To the maximum extent practicable, the TR or 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 TR upon receipt of a confirmation email, or other form of transmittal, from the TR.
* The Performer shall send an email notice to the TR and upload the TR approval as an attachment upon submission of an invoice in WAWF (this can be done from within WAWF).
* Payments shall be made by DFAS-(*INSERT APPROPRIATE DFAS DODAAC*).
* The Performer agrees, when entering invoices entered in WAWF to utilize the contracting line-item number (CLIN) and accounting classification reference number (ACRN) associated with each milestone as delineated at Attachment 3. The description of the CLIN shall include reference to the associated milestone number along with other necessary descriptive information. The Performer agrees that the Government may reject invoices not submitted in accordance with this provision.

**Note for DFAS: The Agreement shall be entered into the DFAS system by CLIN – milestone association (MS)/ACRN as delineated at Attachment 3. The Agreement is to be paid out by CLIN (MS)/ACRN. Payments shall be made using the CLIN (MS)/ACRN association as delineated at Attachment 3.2.**

 f. Payee Information: As identified at SAM.

* CAGE: XXXXX
* SAM UEI: XXXXXXXXXXXX
* TIN: XX-XXXXXXX

Payments shall be made in the amounts set forth in Attachment 3, provided the DARPA TR has verified the completion of the milestones.

**ATTACHMENT 5:**

**DEFINITIONS**

In this Agreement, the following definitions apply:

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

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

**Covered Contractor Information System**: Unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

**Covered Defense Information (CDI)**: Unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is (1) Marked or otherwise identified in the agreement, task order, or delivery order and provided to the performer by or on behalf of DoD in support of the performance of the agreement; or (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the performer in support of the performance of the agreement.

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

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

**Cyber Incident**: Actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

**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 VI, Patent Rights.

**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.

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

**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.

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

**Performer:** (PERFORMER NAME)

**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 definition, "property" does not include the deliverable prototype as described in Article 1(B)(1).

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

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

**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 6:**

**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 III, subparagraph B.3. of the main text of the Agreement.

A. Government Points of Contact:

 Agreements Officer (AO):

 (NAME), (TITLE)

 (PHONE NUMBER)

 (EMAIL) **(use this email for AO correspondence only)**

 DARPA Program Manager (PM):

 (NAME), (TITLE)

 (PHONE NUMBER)

 (EMAIL)

 Assistant Director, Program Management (ADPM):

 (NAME), (TITLE)

 (PHONE NUMBER)

 (EMAIL)

 Technical Representative (TR):

 (NAME), (TITLE)

 (PHONE NUMBER)

 (EMAIL)

B. Performer’s Points of Contact

 Administrative/Contracting:

(NAME), (TITLE)

 (PHONE NUMBER)

 (EMAIL)

 Principle Investigator/Program Manager:

 (NAME), (TITLE)

 (PHONE NUMBER)

 (EMAIL)

**ATTACHMENT 7:**

**CERTIFICATIONS FOR AGREEMENT**

1. The signatory for the Performer certifies, to the best of his or her knowledge and belief, that this institution, organization, and its principals:
	1. Pursuant to E.O. 12549 and implementing rule, are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency
	2. Pursuant to the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, will provide a drug-free workplace. The place of performance is:

(Street Address) (City, County, State) (Zip Code)

* 1. Complies with the provisions of DoD Directive 5500.11 “Nondiscrimination in Federally Assisted Programs,” which implements Title VI of the Civil Rights Act of 1964.
1. The following certification applies only to actions exceeding $100,000.00:
	1. Per 31 U.S.C. § 1352, “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.”
		* 1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an Officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, cooperative agreement, or other transaction.
			2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, cooperative agreement, or other transaction, the undersigned shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
			3. The Performer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, cooperative agreements, and other transactions) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when your transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

1. Representation by corporations regarding an unpaid delinquent tax liability or a felony conviction under any Federal law.
	1. In accordance with Section 101(a) of the Continuing Appropriations Act, 2016, Pub. L. 114-53, and any subsequent FY2016 appropriations act that extends to FY2016 funds the same restrictions as are contained in Sections 744 and 745 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds made available by this or any other Act may be used to enter into a contract with any corporation that—
		* 1. Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that is further action is not necessary to protect the interests of the Government; or
			2. Was convicted of a felony criminal violation under any Federal law within the preceding twenty-four (24) months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.
	2. The Performer represents that—
		* 1. It is [ ] is not [ ] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to agreement with the authority responsible for collecting the tax liability.
			2. It is [ ] is not [ ] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding twenty-four (24) months.

**ATTACHMENT 8**

**TECHNICAL REPRESENTATIVE APPOINTMENT MEMORANDUM**

(IMAGES OF THE TR APPOINTMENT MEMO WILL BE PLACED HERE.)

*(if applicable)* **ATTACHMENT 9:**

**PROPERTY/EQUIPMENT**

Below is a list of property 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 property purchased under this Agreement in accordance with the terms and conditions of Article IX.

|  |  |  |  |
| --- | --- | --- | --- |
| **Item Description** | **Unit Price** | **Quantity** | **Total Projected Cost** |
|  | $ |  | $ |
|  | $ |  | $ |
|  | $ |  | $ |

*(if applicable)* **ATTACHMENT 10:**

**INTELLECTUAL PROPERTY ASSERTIONS**

**LIST OF INTELLECTUAL PROPERTY ASSERTIONS BY THE PERFORMER**

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offer asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted.

**Enter “NONE”** when all technical data or computer software will be submitted without restrictions:

**Noncommercial Items (Technical Data and Computer Software)**

|  |
| --- |
| **NONCOMMERCIAL** |
| **Technical Data and/or Computer Software To be Delivered With Restrictions \*** | **Basis for Assertion \*\*** | **Asserted Rights Category \*\*\*** | **Name of Person Asserting Restrictions \*\*\*\***  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

|  |
| --- |
| **COMMERCIAL** |
| **Technical Data and/or Computer Software To be Delivered With Restrictions \*** | **Summary of Intended Use in the Conduct of the Research** | **Basis for Assertion \*\*** | **Asserted Rights Category \*\*\*** | **Name of Person Asserting Restrictions \*\*\*\*** |
|  |  |  |  |  |

\*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

\*\*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

\*\*\*Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

\*\*\*\*Corporation, individual, or other person, as appropriate.

\*\*\*\*\***Enter “NONE”** when all data or software will be submitted without restrictions.

Additionally, the Performer asserts for itself, or the persons identified below, all commercial technical data and commercial computer software that may be embedded in any noncommercial deliverables contemplated under the research effort, along with any applicable restrictions on the Government’s use of such commercial technical data and/or commercial computer software.