This is a sample Other Transaction agreement with articles and language that are regularly used in ARPA-H OTs.

Any text highlighted in turquoise may be information the Government asks to be provided by Performers, and text highlighted in yellow is information usually provided by the Government, however, any final language will be determined by the cognizant ARPA-H Agreements Officer (AO) and agreed upon by both Performer and AO.

*Fixed milestone/no resource share sample*

**OTHER TRANSACTION AGREEMENT**

BETWEEN

 *INSERT PERFORMER AND ADDRESS, UEI*

AND

THE ADVANCED RESEARCH PROJECTS AGENCY FOR HEALTH (ARPA-H)

CONCERNING

*INSERT PROGRAM/PROJECT TITLE*

Agreement No.: 1AYSAX00000X

Authority: 42 U.S. Code § 290c(g)(1)(D)

Total Amount of the Agreement: $ X,XXX,XXX [*Base + Exercised Phases/Options*]

 Segment 1 (Base): $ X,XXX,XXX

 Segment 2 (Phase/Option, Exercised): $ X,XXX,XXX

 Segment 3 (Phase/Option, Unexercised): $ X,XXX,XXX

Funding Obligated:

Date of the Agreement:

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Advanced Research Projects Agency for Health (ARPA-H), and *INSERT PERFORMER NAME.* pursuant to and under United States Federal law.

FOR *INSERT PERFORMER NAME*

FOR THE GOVERNMENT

ADVANCED RESEARCH PROJECTS AGENCY FOR HEALTH



(Name, Title) (Name, Title)

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## ARTICLE I: SCOPE OF THE AGREEMENT

**A. Background and Scope**

*THIS PARAGRAPH(S) DESCRIBES THE VISION OF THE PROGRAM AND SHOULD ADDRESS THE FOLLOWING:*

* *THE PURPOSE OF THE AGREEMENT/PROJECT*
* *THE CURRENT TECHNOLOGICAL SITUATION OR CURRENT STATE OF THE ART*
* *WHAT MAKES THE PROGRAM/PROJECT A “CRITICAL” EFFORT*
* *WHY THE CURRENT STATE OF THE ART IS NOT SUFFICIENT (FOR THE US HEALTH CARE MARKET)*
* *WHAT IS THE PERCEIVED BENEFIT OF HAVING THE GOVERNMENT AS A PARTNER IN THIS PROGRAM AND/OR PROJECT? ADDRESSING THE ISSUES OF PARTICULAR IMPORTANCE TO BOTH INDUSTRY AND ARPA-H*
* *WHAT THE MARKET POTENTIAL IS IF SUCCESSFUL*
* *WHAT THE TECHNOLOGY TRANSITION GOALS ARE FOR ARPA-H, AND WHAT THE COMMERCIALIZATION GOALS ARE FOR THE PERFORMER*
* *WHAT WILL WE HAVE ACCOMPLISHED IF THIS PROJECT IS SUCCESSFUL*

[Approximately 1 page should be sufficient to disscuss/address the above topics. A few sentences should suffice to address each bullet. Present in integrated/concise narrative format ]

**B. Definitions**

*(Ensure that the terms below are actually used in the agreement. If they are not in the agreement, they don’t need to be in this section. Some suggested terms/definitions are listed, below)*

In this Agreement, the following definitions apply:

**Agreement:** The body of this Agreement and Attachments 1 – 4, which are expressly incorporated in and made a part of the Agreement.

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

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

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

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

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

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

**Covered Government Support Contractor:** A contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort. Such contractors may receive access to internal Government and performer data during the performance of a Government contract.

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

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

**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 ARPA-H.

**Government Purpose:** Any activity in which the United States Government is a party, including cooperative agreements with international or multi-national organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so.

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

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

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

**Know-How:** All information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

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

**Made:** When used in relation to any invention means the conception or first actual reduction to practice of such invention.

**Party:** Includes the Government (represented by ARPA-H), or the Performer, or both.

**Performer:** *COMPANY 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.

**Project:** Research and development being conducted by the Performer, as set forth in Article I, Section A.

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

**Research Description Document (RDD):** A document that outlines the proposed technical solution and may include details of technical tasks to be performed.

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

**Subperformer:** Any person or entity awarded by the Performer part of the work or services under this Agreement. In this Agreement, the term subperformer includes subawardees, subcontractors, and other team members.

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

**C. Scope of the Project**

 1. The Parties agree that the principal purpose of this Agreement is for the Government and the Performer to provide for a coordinated effort to advance research and technology goals of the [PROGRAM NAME] program. ARPA-H and the Performer are bound to each other by a duty of good faith and best research effort in achieving the goals of the Program. The Performer shall be responsible for performance of the work set forth in the Research Description Document (RDD), incorporated in this Agreement as Attachment 1, and shall submit or otherwise provide all deliverables as required by Attachment 2 and Attachment 3.

 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. The Schedule of Milestones and Payments may be revised or updated in accordance with Article III.

## ARTICLE II: TERM

1. **Term of this Agreement**

The term of the Agreement commences on the effective date of the Agreement and continues for INSERT # OF MONTHS thereafter. 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. 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 Intellectual Property as described in Article VII. Failure of the Parties to agree to terminate or reach an equitable adjustment shall be resolved pursuant to Article VI, Disputes.

**C. Extending the Agreement**

 The Parties may extend by mutual written agreement the term of this Agreement if funding availability and research opportunities reasonably warrant. Any extension shall be formalized through modification of the Agreement by the Agreements Officer (AO) and the Performer Administrator.

## ARTICLE III: MANAGEMENT OF THE PROJECT

**A. Management and Project Structure**

 The Performer shall be responsible for the overall technical planning and performance, project management, and execution of the Project. The ARPA-H Program Manager (PM) is responsible for the monitoring of the progression of the project, and the oversight and acceptance of completed payable milestones and deliverables. The Agreements Officer’s Representative (AOR) may assist the AO and PM in the administration of the agreement terms. See Attachment 4 for the specific roles and responsibilities of the AOR.

**B. Project Management**

 Project management will require of the Performer, at a minimum, development, submission, and execution of an Annual Project Plan in accordance with Attachment 2, and participation in project kickoff and regularly scheduled project reviews and milestone activities in accordance with Attachment 1.

**C. Modifications**

 1. The parties may modify the Agreement by mutual agreement at any time. Recommendations by the Performer for modifications, including justifications to support any changes to the RDD and prospective milestones, will be documented and submitted by the Performer to the ARPA-H PM and AOR, with a copy to the AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the research project. The Government is not obligated to pay for additional or revised future milestones until Attachment 3 to this Agreement is formally amended via bilateral modification.

2. The ARPA-H PM, with assistance from the AOR as needed, will review and verify any recommendations to revise or otherwise modify Attachment 1, Attachment 3, or other proposed changes to the terms and conditions of this Agreement.

 3. The Government may execute 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.) unilaterally, with no signature from the Performer.

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

## ARTICLE IV: AGREEMENT ADMINISTRATION

The AQO is the only person with the authority to bind the Government or to authorize any changes. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the Parties:

**A.** **Government Points of Contact:**

 Agreements Officer (AO):

[INSERT NAME]

 [INSERT ORGANIZATIN/OFFICE]

 [INSERT PHONE NUMBER]

 [INSERT EMAIL ADDRESS]

ARPA-H Program Manager (PM):

[INSERT NAME]

 [INSERT ORGANIZATIN/OFFICE]

 [INSERT PHONE NUMBER]

 [INSERT EMAIL ADDRESS]

 Agreements Officer’s Representative (AOR):

[INSERT NAME]

 [INSERT ORGANIZATIN/OFFICE]

 [INSERT PHONE NUMBER]

 [INSERT EMAIL ADDRESS]

**B. Performer Points of Contact**

 Performer’s Administrative/Contracting:

[INSERT NAME]

 [INSERT ORGANIZATIN/OFFICE]

 [INSERT PHONE NUMBER]

 [INSERT EMAIL ADDRESS]

 Performer’s Project Manager/Principal Investigator:

 [INSERT NAME]

 [INSERT ORGANIZATIN/OFFICE]

 [INSERT PHONE NUMBER]

 [INSERT EMAIL ADDRESS]

## ARTICLE V: OBLIGATION AND PAYMENT

**A. Obligation**

 The Government’s liability to make payments to the Performer is limited to only those funds obligated under this Agreement or by modification to the Agreement. The amount of funds obligated to this Agreement will be recorded on the signatory page of the Agreement and updated as additional funds are added by the Government. ARPA-H may obligate funds to the Agreement incrementally.

**B. Payments**

 1. The Parties agree that fixed payments will be made for the completion of milestones. These payments reflect value received by the Government toward the accomplishment of the research goals of this Agreement.

 2. The Performer shall document the accomplishments of each milestone by submitting or otherwise providing the Milestone Reports required by Attachment 2. After written verification of the accomplishment of the milestone by the AOR, the Performer will submit their invoice to the AO for payment approval through the Payment Management Services (PMS), as detailed in Article 5(B)(3).

 3. The Performer is required to utilize the PMS when processing invoices under this Agreement. PMS is a centralized payment and cash management system. Payments are made by PMS, operated by the Program Support Center (PSC), in accordance with Department of the Treasury and Office of Management and Budget (OMB) requirements.

 4. The Performer shall (i) maintain an active registration for ‘All Awards’ in System for Award Management (SAM) throughout the life of the award, (ii) ensure an Electronic Business Point of Contact is designated in System for Award Management at <http://www.sam.gov>, and (iii) register to use PMS, within ten (10) calendar days after award of this Agreement. PMS guidance can be found here: <https://pms.psc.gov/training/grant-recipient-training.html> .

5. The ARPA-H PM, with assistance from the AOR as needed, is responsible for formally inspecting and accepting deliverables/milestones. The ARPA-H PM, with assistance from the AOR as needed, is responsible for reviewing the deliverable(s)/ milestone report(s) within fourteen (14) calendar days after submission of the applicable report and either: 1) providing a written notice of rejection to the Performer which includes feedback regarding deficiencies requiring correction, or 2) providing a written notice of acceptance to the Performer, AOR, and AO. Deliverable(s)/milestone reports may be rejected if they fail to meet the acceptance criteria stipulated in Attachment 3 of the Agreement. If the Government rejects the deliverable(s)/milestone report, the Government will afford the Performer reasonable opportunities to cure/redeliver the deliverable(s)/milestone report.

6. The Performer will receive payment via PMS for amounts set forth in Attachment 3.

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

* Cage Code: <<<Enter CAGE>>
* UEI: <<<Enter UEI>>>

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

**C. Financial Records and Reports**

 The Performer shall maintain adequate records to account for all activities funded under this agreement. Upon completion or termination of this Agreement, whichever occurs earlier, the Performer shall furnish a copy of the Final Report required by Attachment 2.

**D. Records Retention and Government Access**

The Performer’s relevant financial records are subject to examination or audit on behalf of ARPA-H by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The AO or designee shall have direct access to sufficient records and information of the Performer, to ensure full accountability for all funding under this Agreement. This right also includes timely and reasonable access to the Performer’s personnel for the purpose of interview and discussion related to such records. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

## ARTICLE VI: DISPUTES

**A. General**

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

**B. Dispute Resolution Procedures**

 1. Any disagreement, claim or dispute between ARPA-H 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. This Article describes the applicable administrative review process that must be completed by the parties before any other dispute resolution process or legal action pertaining to the terms of this Agreement may be taken. Completion of this process forecloses any further administrative review.

 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 Article 6 (B)(3), constitute the basis for relief under this Article unless the Director of ARPA-H in the interests of justice waives this requirement.

 3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the ARPA-H AO or the Performer’s Administrator, as the case may be) in writing of the relevant facts, unresolved issues, and 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 ARPA-H Head of Contracting Activity, 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 ARPA-H Head of Contracting Activity, and the senior executive shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.

 4. In the absence of a joint decision, upon written request to the Deputy Director of ARPA-H, made within thirty (30) calendar days of the expiration of the time for a decision under Article 6 (B)(3), the dispute shall be further reviewed. The Deputy Director of ARPA-H may elect to conduct this review jointly with a senior executive no lower than [*INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM AND ABOVE THE PERSON IDENTIFIED AT SUBPARAGRAPH 3 TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY]* level appointed by the Performer. Following the review, the Deputy Director of ARPA-H will reach a decision 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 a court of competent jurisdiction.

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

## ARTICLE VII: INTELLECTUAL PROPERTY RIGHTS

1. **Patent Rights**
	1. **Allocation of Principal Rights – Performer**
		1. Unless the Performer shall have notified ARPA-H in writing that the Performer does not intend to retain title, the Performer shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.
		2. For each Subject Invention to which the Government obtains title, the Performer shall retain a nonexclusive, royalty-free license throughout the world to said Subject Invention. This license extends to the Performer’s domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant license of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. Said license is transferable only with the approval of the ARPA-H AO, except when transferred to the successor of that part of the business to which the Subject Invention pertains. ARPA-H approval for license transfer shall not be unreasonably withheld.
	2. **Allocation of Principal Rights – ARPA-H**
		1. With respect to any Subject Invention in which the Performer retains title, ARPA-H shall retain a nonexclusive, nontransferable, irrevocable, paid-up Government Purpose license in the Subject Invention throughout the world, regardless of the protection method chosen.
		2. Upon ARPA-H’s written request, the Performer shall convey title to any Subject Invention to ARPA-H under the following conditions. ARPA-H may only request title within sixty (60) calendar days after learning of the Performer’s actions.
			1. The Performer fails to disclose a Subject Invention prior to the completion of the Agreement, or
			2. The Performer elects not to retain title to a Subject Invention.
		3. Regarding Article 7(A)(2)(b)(1), ARPA-H shall not make any such request in an arbitrary or capricious manner and/or not in abuse of its discretion, and all such requests shall be subject to Article 6, “Disputes,” in this Agreement.
	3. **Invention Disclosure, Election of Title, and Election of Protection Method**
		1. The Performer shall disclose each Subject Invention to ARPA-H within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure shall be made to the ARPA-H AO and shall be in the form of a written report sufficiently complete in technical detail. The report shall identify the Agreement number, the circumstances under which the invention was made, the identity of the inventor, and any publication, sale or public use of the invention.
		2. If the Performer determines that it does not intend to retain title to any Subject Invention, the Performer shall notify ARPA-H in writing no more than sixty (60) calendar days prior to the end of the one (1) year statutory United States patent protection period.
		3. If the Performer chooses to retain title to any Subject Invention, the Performer shall inform the ARPA-H AO of its corporate determination how to best protect any Subject Invention. The Performer shall choose one of the following two options to protect any Subject Invention.
			1. Protection of the Subject Invention through the patent process
				1. If the Performer chooses to file a patent application in the United States or other countries or forums throughout the world, the Performer shall notify ARPA-H of this decision, the dates on which the patent applications were filed and where.
				2. The Performer shall notify ARPA-H of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
				3. The Performer shall include, within the specification of any United States patent application and any patent issued covering a subjection invention, the following statement:

“This invention was made with U.S. Government support under Agreement No. (INSERT AWARD NUMBER) awarded by the Advanced Research Projects Agency for Health. The U.S. Government has certain rights in the invention.”

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

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

* + - * 1. In that notification, the Performer shall state the applicable law that will govern protection of the trade secret as well as any special protection methods or actions that the Performer will take to ensure secrecy.
				2. If the Government discloses a Subject Invention which is protected as a trade secret to a third party Covered Government Support Contractor, the Government will ensure trade secrets remain protected under an obligation of confidentiality with respect to such Covered Government Support Contractors. In order to ensure necessary confidentiality is maintained, Performer will negotiate in good faith with the goal of entering into a non-use and-disclosure agreement with that third party at the Government's request to cover information developed under this Agreement that discloses a Subject Invention that is maintained as a trade secret and is to be used by the third party solely for Government Purposes. Performer will disclose such information to the third party within fifteen (15) calendar days of entering into a non-use and -disclosure agreement.
	1. **Administrative Actions**
		1. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all Subject Inventions disclosed under Article 7 (A)(1)(3) during the course of the Agreement and the current status of each.
			1. All required reporting shall be done, to the extent possible, using the i-Edison reporting website: <https://nist.gov/iedison>. To the extent that the reporting cannot be accomplished by use of i-Edison, any required documentation will be submitted to the ARPA-H AO.
		2. The Performer agrees to execute or have executed and promptly deliver to ARPA-H all instruments necessary to:
			1. Establish or confirm the rights the Government has throughout the world in any Subject Invention to which the Performer elects to retain title, and
			2. Convey title to ARPA-H when requested under Article 7(A)(2)(b) and to enable the Government to obtain patent protection throughout the world in the Subject Invention.
		3. The Performer agrees to instruct and educate its employees of the importance of disclosing inventions promptly to corporate personnel responsible for the administration of patent matters to permit sufficient time to satisfy its notification responsibilities under this Agreement.
	2. **Exceptional Circumstances**
1. The Parties recognize that the Government is making a significant investment in the Subject Inventions under this Agreement. To protect the Government’s interests, the Parties agree to the following in the event the Performer goes out of business, exits the [INSERT DESCRIPTION] industry; or otherwise makes the Subject Inventions commercially unavailable or unavailable to the Government:
	* + 1. Upon ARPA-H’s request and an adequate showing of need, the Performer, assignee or exclusive licensee will provide a non-exclusive license to a responsible applicant or applicants, under terms that are reasonable under the circumstances, and
			2. If the Performer, assignee or exclusive licensee refuses a reasonable request from the Government, ARPA-H has the right to grant such a license itself if ARPA-H makes a reasonable determination that such action is necessary to alleviate societal health or safety needs or national security needs, which are not reasonably satisfied, by the Performer, assignee, or exclusive licensees.
2. **Data Rights**
	1. **Allocation of Principal Rights**
3. With respect to Data developed, generated and/or delivered pursuant to Attachments 1 through 3 of this Agreement, the Government shall and hereby receives rights as stipulated below and in Attachment 3 except as noted in the following two subparagraphs:

*[data rights will be negotiated based on the final Milestone Plan AND CAN BE CREATED, DEFINED, AND INCLUDED IN THE AGREEMENT BASED ON THE CIRCUMSTANCES AND THE NEEDS OF THE PARTIES*]

1. With respect to the following Data deliverables, the Government shall receive Unlimited Rights (this may be modified by the AO depending on the rights asserted by the performer and agreed to by the Government):
2. Technical Status Reports
3. Milestone Reports
4. Final Report(s)

1. The Government may require delivery of Data developed or generated under this Agreement within two (2) years after completion or termination of this Agreement. Any request for delivery of data will be made in writing with at least sixty (60) days’ notice. Upon the Government making such a request, the parties will negotiate in good faith the applicable Data rights for the requested Data prior to delivery, and the Government will reimburse the Performer for reasonably incurred costs for gathering and delivery of the Data.
	1. **Exceptional Circumstances**
2. Notwithstanding any other provision of this Section, in the event the Government chooses to exercise its rights under Article 7(A)(5), the Performer agrees to deliver at no additional cost to the Government all Data necessary to achieve practical application of a specified Subject Invention. The Government shall retain Unlimited Rights, as defined in Article 1(B) of this Agreement, to this delivered Data.
3. To facilitate any future requests and deliveries, the Performer agrees to retain and maintain in good condition for three (3) years after completion or termination of this Agreement all Data necessary to achieve practical application of any Subject Invention as defined in Article 1(B) of this Agreement.
4. The Government is required to execute this exercise of rights in writing and the Performer agrees to deliver the Data within sixty (60) calendar days from the date of the written request. The Performer may request an extension of this time period by making a written justification to the Government and such a request will not be unreasonably withheld.
	1. **Marking of Data**
5. Any Data delivered under this Agreement shall be marked with the following legends, as applicable:

“GOVERNMENT PURPOSE RIGHTS

Agreement Number: I1AYSAX00000X

Performer Name: [*INSERT PERFORMER NAME*]

In accordance with Article 7, as applicable, contained in the above identified Agreement, the Government has the right to: (a) use, modify, reproduce, perform, display, release, or disclose, in whole or in part and in any manner, for Government Purposes only, and to have or permit others to do so for Government purposes only. Government Purposes includes any activity in which the United States Government is a party, including cooperative agreements with international or multi-national organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so. Any reproduction of this Data or portions thereof marked with this legend must also reproduce the markings.”

“LIMITED RIGHTS

Prime Agreement No.: 1AYSAX00000X

Performer Name: [*INSERT PERFORMER NAME*]

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

“UNLIMITED RIGHTS

Agreement Number: 1AYSAX00000X

Performer Name: [*INSERT PERFORMER NAME*]

In accordance with Article 7, as applicable, contained in the above identified Agreement, the Government has the right to use, modify, reproduce, perform, display, release, or disclose, in whole or in part, in any manner and for any purposes whatsoever, and to have or permit other to do so as well.”

1. **Lower Tier Agreements**

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

## ARTICLE VIII: FOREIGN ACCESS TO INTELLECTUAL PROPERTY

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

**A. General**

The Parties agree that intellectual property developed and/or generated under this Agreement may constitute a significant enhancement to the security and economic vitality of the United States. Accordingly, access to important intellectual property developments under this Agreement by foreign entities must be carefully controlled. The controls contemplated in this Article are in addition to and are not intended to change or supersede the provisions of the International Traffic in Arms Regulations (ITAR)( 22 CFR Parts 120-130) and the Department of Commerce’s Export Administration Regulations (EAR)(15 CFR Parts 730-774) regarding export-controlled items. The Performer's responsibility to comply with all applicable laws and regulations regarding export-controlled items and the handling of classified information exists independent of, and is not established or limited by, the information provided by this article. The Performer shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

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

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

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

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

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

 (d) research published in the public domain; or

 (e) any circumstances that have been included in an attachment to this agreement.

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

3. The Performer agrees to provide timely written notice to the AO no less than 45 days prior to any proposed transfers of intellectual property developed under this Agreement to a foreign entity. The written waiver request will cite this Article and specifically state what is to be transferred, to whom, and the general terms of the transfer. The Government will respond within 30 days of receipt of the waiver request whether it agrees with the proposed transfer, if it would like to have further discussions about the transfer terms, or if it intends to invoke its rights under Article 8(B)(5). If the Government does not respond within 30 days of the receipt of the waiver request, the Performer may assume that there are no objections to the transfer. If the Government does respond in a manner with which the Performer disagrees, the Performer may utilize the procedures under Article 6, Disputes.

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

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

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

 (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the intellectual property, regardless of form or protection method, throughout the world for Government Purposes. Upon request of the Government, the Performer shall provide written confirmation of such licenses.

**C. Lower Tier Agreements**

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

## ARTICLE IX: TITLE TO AND DISPOSITION OF TANGIBLE PROPERTY

**[*USE THIS LANGUAGE IF NO ITEMS OF PROPERTY ARE EXPECTED TO BE ACQUIRED]***

**A. Title to Property**

No significant items of tangible 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 be required, the Performer shall obtain prior written approval of the AO. Title to this property shall vest in the Performer upon acquisition, but the Government will retain an ownership interest in the property and will participate in the disposition of property at the conclusion of the Agreement. The Performer shall be responsible for the inventory, maintenance, repair, protection, and preservation of all property at its own expense.

**B. Disposition of Property**

 At the completion of this Agreement, items of property with an acquisition value greater than $5,000 may be handled in one of the following approaches:

 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 the Government; 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 Government-approved disposition approach.

***[****THIS ARTICLE MAY BE AMENDED IF THERE IS A UNIVERSIY PERFORMER (PRIME OR SUB LEVEL)]*

**[*USE THIS LANGUAGE IF THERE WILL BE PROPERTY ACQUIRED OVER $5,000]***

Items of property with an acquisition value of $5,000 or greater 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. 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, but the Government will retain an ownership interest in the property and will participate in the disposition of property at the conclusion of the Agreement. The Performer shall be responsible for the inventory, 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 handled in the following approaches:

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 the Government; 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 Government-approved disposition approach.

## ARTICLE X: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

**A. Publication and Dissemination of Research**

1. The Performer agrees to coordinate with ARPA-H prior to any public release or dissemination of information or research developed, generated, or delivered under this Agreement. The Performer must provide draft documents or publications to the ARPA-H Division of Communication (DOC) at media@arpa-h.gov at least twenty-one (21) calendar days in advance of intended publication or dissemination. ARPA-H recognizes the Performer and any subperformers as supporting entities of educational entities or other research institutions that may wish to publish certain information of the project results publicly (in a lecture, scientific journal, or other means). ARPA-H may suggest revisions to the relevant draft, but ARPA-H agrees that it will not, after being given the opportunity to examine the relevant draft, prevent such publication in accordance with normal academic custom. The Performer will consider all ARPA-H suggestions and comments, and will coordinate a meeting to discuss any outstanding suggestions and/or concerns at least five (5) business days prior to submission to a journal or initial peer-review and/or to any open-source repository (e.g., biorxiv, medrxiv).

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

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

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

**B. ARPA-H Branding and Press Releases**

1. The Performer shall submit all proposed public releases that reference the United States Government, or ARPA-H, in any form or references the program name or the names of any government staff for review and approval to DOC at media@arpa-h.gov at least twenty-one (21) calendar days in advance of intended publication. Public releases may include press releases, specific publicity or advertisement, and publication or presentation, but do not include those relating to open sourcing or licensing, sales or other commercial exploitation of products, services, or technologies. The Performer will consider all ARPA-H suggestions and comments, and address them in writing at least two (2) business days prior to release. Public releases will not be restricted based on scientific differences between Performer and ARPA-H in the interpretation of the research data and final conclusions. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

“This research was funded, in part, by the Advanced Research Projects Agency for Health (ARPA-H). 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.”

 2. Notwithstanding the aforementioned, the Performer may include ARPA-H’s name and the Program title in published listings of research sponsors.

 3. The ARPA-H logos are for the official use of the agency and not for the use of Performers on their materials (print or electronic). As such, Performers are strictly prohibited from using the ARPA-H logos without written authorization from ARPA-H. To the public, such use may send a message that the Government favors or endorses an organization and/or its activities, its products, its services, and/or its personnel (either overtly or tacitly), which ARPA-H, as a government entity, does not and cannot do. Additional guidance is available here: https://arpa-h.gov/logo

## ARTICLE XI: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d) relating to nondiscrimination in Federally assisted programs.

## ARTICLE XII: SECURITY

The Performer, and any applicable subperformer, will be required to follow all applicable HHS Policy for Information Technology Procurements (i.e., Security and Privacy), National Institute of Standards and Technology (NIST) Special Publications (e.g., 800 series) and are bound by the Federal Information Modernization Act (FISMA) if and when accessing, creating, maintain a federal information system or otherwise accessing Federal Data in the performance of the Project. Additionally, the *Federal Information Processing Standards Publication 201-3 Personal Identify Verification of Federal Employees and Contractors* will apply to any Performer personnel that requires logical or physical access to ARPA-H.

## ARTICLE XIII: 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 XIV: ORDER OF PRECEDENCE

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

## ARTICLE 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 modification thereto per Article 3(C).

## ARTICLE XVI: SURVIVAL

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

## ARTICLE XVII: PROHIBITION ON 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 or agreement.

 (c) Exceptions. This clause does not prohibit performers 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 Performer 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 performance of an agreement, or the Performer is notified of such by a subperformer at any tier or by any other source, the Performer shall report the information in Paragraph (d)(2) of this clause to the Agreements Officer.

 (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 agreement number; 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) Subawards. The Performer shall insert the substance of this article, including this Paragraph (e) and excluding Paragraph (b)(2), in all subawards and other contractual instruments, including subawards for the acquisition of commercial items.

## ARTICLE XVIII: SPECIAL TERMS & CONDITIONS

[Use this article to include any additional necessary information applicable to the project. Examples may include, but are not limited to, language concerning Animal Subject Research, Human Subject Research, HHS Salary Cap, Research Misconduct, and Office of Inspector General reporting.]

**AtTACHMENT 1**

**RESEARCH DESCRIPTION DOCUMENT**

 **For**

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

**(A ARPA-H \_\_\_\_\_\_\_\_\_\_ Project)**

 **By**

**<<ENTER Prime Organization>>**

**<<EnTER Date>>**

1. Technical Tasks & Deliverables

The Performer shall accomplish the below described research tasks.

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

Notes:

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

<<Enter Information>>

Notes:

* Include applicable program management tasks (to include subperformer management, status reports, final report/s, etc.).
1. **Meeting & Travel Requirements**

<<Enter Information>>

Notes:

Include, if necessary, to capture firm requirements.

**ATTACHMENT 2**

**REPORT REQUIREMENTS**

**All reporting requirements under this Agreement, and in accordance with Attachment 2, shall be provided, electronically, to the Government individuals identified in Article 4A. One (1) copy of the report shall be provided.**

1. **TECHNICAL STATUS REPORTS**

On or before ninety (90) calendar days after the effective date of the Agreement and thereafter throughout the term of the Agreement, the Performer shall submit or otherwise provide a technical status report. The report will detail technical progress to date and report on all problems, technical issues, major developments, and the status of external collaborations during the reporting period.

1. **PROGRAM PLAN DOCUMENT**

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

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

1. **SPECIAL TECHNICAL REPORTS**

As agreed to by the Performer and the AOR, the Performer shall submit special technical reports on significant events such as significant target accomplishments by the Performer, significant tests, experiments, or symposia.

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

1. **MILESTONE REPORTS**

The Performer shall submit documentation describing the accomplishment of Attachment 3 payment milestones. This information shall be as required by Article 5, paragraph B and shall be sufficient for the ARPA-H AOR to reasonably verify the accomplishment of the milestone in accordance with the RDD (Attachment 1).

1. **FINAL REPORT**

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

The Performer shall submit or otherwise provide a Final Report making full disclosure of all major developments by the Performer upon completion of the Agreement or within sixty (60) calendar days of termination of this Agreement.

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

See Article 7.

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

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

1. **PROPERTY REPORT**

See Article 9.

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

**ATTACHMENT 3**

**MILESTONE PAYMENT SCHEDULE WITH ASSOCIATED DELIVERABLES**

**[Document Date]**

**Phase 1**

|  |  |
| --- | --- |
|  |  |
| Milestone | Task(s) | Due Date (Months after award) | Milestone Description | ARPA-H Payment | Amount Funded |
| 1 | 1.1 | 3 | **Milestone Name/Description** *Exit Criteria:* * Brief explanation of what technical event needs to be achieved or completed to accomplish this milestone

*Deliverables:* * Bulleted List (add in DATA rights assignment as applicable)
 | **$**  | **$** |
|  |  |
|  |  |
| 2 | 1.2 | 6 | **Milestone Name/Description** *Exit Criteria:* * Brief explanation of what technical event needs to be achieved or completed to accomplish this milestone

*Deliverables:* Bulleted List  | **$**  | **$** |
|  |  |
|  |  |
| 3 | 1.3 | 10 | **Milestone Name/Description** *Exit Criteria:* * Brief explanation of what technical event needs to be achieved or completed to accomplish this milestone

*Deliverables:* * Bulleted List
 | **$**  | **$** |
|  |  |
|  |  |
| 4 | 1.4 | 12 | **Milestone Name/Description** *Exit Criteria:* * Brief explanation of what technical event needs to be achieved or completed to accomplish this milestone

*Deliverables:* * Bulleted List
 | **$**  | **$** |
|  |  |

**ATTACHMENT 4**

 

**AGREEMENTS OFFICER’S REPRESENTATIVE APPOINTMENT MEMO**

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

**Advanced Research Projects Agency for Health**

MEMORANDUM TO: [Name of Applicant]

 [Mission/Program Office and/or Division]

FROM: [Name]

Agreements Officer (AO), ARPA-H, BID

SUBJECT: Agreements Officer Representative (AOR) Appointment and Delegation of Authority [Award No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

1. Appointment. With this Appointment letter, and upon your acknowledgement (see Enclosure (1)), you are formally designated as the Agreements Officer’s Representative (AOR) for the subject award. As AOR, your duties are to assist the Agreements Officer (AO) in the administration of the subject award through performance and close-out.

Award Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title of Award: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Performer Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Award: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Authority. As AOR, you are delegated the following authorities:

***[AO is required to select (or delete, as needed) if any of the below applies for this project]***

1. Provide technical direction to the Performer.
2. Perform inspection(s) and acceptance for the government, ensuring performance/delivery is in accordance with the award’s requirements.
3. Make recommendations to the AO when there is a need for a change to the award or if there are any failures, delays, or significant deviations of performance, quality, costs, or other actions which might jeopardize performance.

3. Responsibilities. As AOR, the performance of various administrative functions is delegated to you, but the legal responsibility for the awards remains with the AO. As the AOR you are required to:

***[AO is required to select (or delete, as needed) if any oqf the below applies for this project]***

1. Be familiar with and understand the award’s requirements, and implications of performance in relation to the terms of the award.
2. Complete training as prescribed by the AO.
3. If you become aware of any actual or potential conflict(s) of interest (or the appearance of a conflict) that could affect your ability to impartially discharge your duties, you must inform the AO immediately.
4. Maintain liaison and direct communications with both the Performer and the AO. Serve as the primary point of contact through which the Performer can relay questions and problems.
5. Recommend and/or discuss award changes with the AO.
6. Review all Performer-furnished reports.
7. Maintain a file of correspondence (or data) in connection with the subject award, and forward technical correspondence to the AO.
8. Maintain an AOR file in accordance with AO and agency records requirements, to include a copy of the award and all modifications, correspondence, meeting minutes, milestone performance, invoices, financial tracking, travel requests and approvals, performance information, etc. The AOR file must include a copy of this letter, and documentation of all AOR actions taken in accordance with this delegation. This file is subject to review on a periodic basis by the AO. Upon expiration of the award or termination of this appointment, you must forward your complete file to the AO.
9. Inspect the Performer’s award deliverables and accept or reject them after PM concurrence.
10. Evaluate milestone payment requests in accordance with the award’s terms, report any discrepancies in payments to the AO, and provide supporting documentation.
11. Assist with award closeout activities, which may include review of audits, review of final invoices, documentation of successful performance completion, and documentation regarding property and/or patents.

4. Training. Continuation of your appointment is contingent upon continued timely completion of required training and filing of the annual Office of Government Ethics (OGE) Form 450, “Confidential Financial Disclosure Report.”

5. Limitations. As an AOR, you may not:

1. Make (or give the appearance of being able to make) commitments outside of your authority, nor execute or agree to execute, any award modification. Nor may you take action(s) that would commit the government to a change in the award’s price, the quality of item(s)/service(s), the quantity of item(s)/service(s), or the delivery/performance schedule.
2. Solicit proposals.
3. Provide direction to begin work before the AO signs the award or provides the Performer with a Notice to Proceed.
4. Sign or direct any award change, modification, or stop-work order.
5. Make determinations regarding issues of Performer liability that arise during the award’s performance. All such issues are referred to the AO.
6. Direct the Performer how to perform the award’s work.
7. Approve costs that are not specifically authorized by the award.
8. Direct changes (oral or written) or provide guidance to the Performer that contradict the award’s terms and conditions.
9. Supervise Performer employees either implicitly or explicitly, which could constitute personal services.

It is important for you to note that you may be held personally and financially liable for your unauthorized acts.

6. Confidentiality. All matters pertaining to the stated award are confidential. Release of any information relative to any aspect of the award to outside parties is subject to prior review and clearance by the AO.

7. Redelegation Not Authorized. This delegation of authority may not be re-delegated. It is understood that the staff of your office may assist you in the functions described in this memorandum; however, you will remain the single, responsible point of contact appointed as AOR.

8. Termination. Your appointment as the AOR under the award is terminated upon its completion, your departure from the position that includes these AOR responsibilities, or upon receipt of a written notice of termination from the relevant AO (or higher-level of authority).

9. The duties and responsibilities set forth herein are not all-inclusive. As an AOR, you are required to consult with the AO when you have questions regarding your authority, responsibilities, or limitations.

Please sign the enclosed Acknowledgement and return it to me at your earliest convenience. Should you have any questions concerning your role as AOR, please contact me directly at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or at \_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature] Date

Agreements Officer (AO)

**ACKNOWLEDGEMENT**

I have reviewed the contents of the Appointment of Agreements Officer’s Representative (AOR) memorandum. I understand and will comply with:

* The authorities and limitations as the AOR,
* My AOR responsibilities,
* Training required to maintain my appointment, and
* The requirement for me to file, and provide annual updates to, an OGE Form 450.

I understand that I cannot give direction to any OT award Performer that makes any changes to the requirements of any award.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name] Date

Agreements Officer Representative (AOR)