

**ENTERPRISE AWARD AGREEMENT**

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| --- | --- |
| **Project Team Lead** | **[ ]** |
| **Project Title** | **[ ]** |
| **Project Designation** | **[ ]** |
| **MxD Contract Number** | **[Request from Compliance]** |
| **TIA Funded Costs** | **[ ]** |
| **Project Team Cost Share** | **[ ]** |
| **EAA Effective Date** | **[Must be on or after the TIA Mod execution date]** |
| **Project End Date** | **[Must be before the end of the PoP as noted in the TIA Mod]** |

**Enterprise Award Agreement**

1. **STRUCTURE**
   1. Parties. This Enterprise Award Agreement (“**Agreement**”) is entered into by and among UI LABS, d/b/a MXD USA, a corporation organized under the Illinois General Not for Profit Corporation Act (“MxD”) and the Project Team Lead(the “**Project Team Lead**”) identified on the cover page of this Agreement (“**Cover Page**”) solely for purposes of executing the project identified on the Cover Page and described herein (the “**Project**”). The Project Team Lead is a Member of the MxD consortium pursuant to the Membership Agreement, as amended from time to time, by and between MxD and Project Team Lead (“**Membership Agreement**”) and will be responsible for ensuring that it and the Project Participants identified in Exhibit A fulfill all responsibilities required to complete the Project in accordance with the Membership Agreement, this Agreement, and any sub-agreements entered into between the Project Team Lead and the other Project Participants (the “**Sub-Agreements**”). Except as otherwise specified, references to Project Participants include the Project Team Lead. This Agreement will be effective as of EAA Effective Date set forth on the Cover Page (“**EAA Effective Date**”).
   2. Membership Agreement. This Agreement incorporates by reference all terms, obligations and conditions of the Membership Agreement (including, but not limited to, Article VII (Confidential Information), Article VIII (Intellectual Property), Article IX (Foreign Access), Article X (Export Compliance), and Article XI (Publications)). This is an Enterprise Award Agreement under the Membership Agreement and sets forth details related to an Enterprise Project. Except as specifically provided below, capitalized terms used in this Agreement will have the meaning set forth in the Membership Agreement.

The Project Team Lead shall flow down Articles VII, VIII, IX and X of the Membership Agreement to its subcontractors or subagreement awardees.

* 1. Department of Defense Requirements. MxD has been granted an Award pursuant to Technology Investment Agreement number W15QKN-19-3-0003 (“**TIA**”), between MxD and US Army Contracting Command—Picatinny, the U.S. federal awarding agency on behalf of the United States of America (“**Government**”) and is subject to certain federal laws and other regulatory requirements associated with Government expenditures as reflected in the TIA and its Exhibits and Attachments.
  2. Project Participants. All Project Participants, including their technical and contractual representatives are identified in Exhibit A.
  3. Project IP Management Plan. The Project IP Management Plan is attached to this Agreement as Exhibit B.
  4. Statement of Work. The statement of work attached as Exhibit C (“**SOW**”) provides a detailed description of the work to be accomplished including milestones, deliverables and reports required by this Agreement. Any changes to the SOW will be effective only if incorporated via written modification to this Agreement executed by MxD and all Project Participants affected by such change.
  5. Export Control and Security Administration. Participants under this Agreement remain subject to a number of federal laws and regulations related to U.S. Export Control, foreign participation and classified information as set forth in Exhibit D. Unless disclosed and agreed to by MxD in writing using the form of “Notice of Export Controlled or Classified Information” attached as Exhibit D, this Agreement will not involve or make use of classified information. Written concurrence from MxD must be obtained prior to disclosure of any such information.
  6. Use of MxD Equipment. If any Project Participant will use or access any premises or equipment of MxD, the Project Team Lead will cause such Project Participant to execute a Shop Floor Agreement in form to be negotiated by the parties prior to accessing such premises or equipment.
  7. Title to Property and Equipment. All equipment being purchased under this Agreement will be listed as exempt property with conditional title throughout the performance of this Agreement. Exempt property is defined as tangible personal property acquired in whole or in part with Federal funds, where the Government has statutory authority to vest title in the Project Participant without further obligation to the Government. If the Government does not elect to retain title, 2 CFR 200.313 “Equipment” will apply. The Government will not elect to retain title to equipment under this Agreement that the Project Participant has shown will continue to contribute toward the sustainability of MxD.

Supplies will be managed in accordance with 2 CFR 200.314. The Project Participant is permitted to use their existing policies and procedures to account for and manage supplies.

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

* 1. Equipment Priority of Use.
     1. The Project Participant shall not use equipment acquired with Federal funds to provide services to non-Federal entities that are not performing under this Agreement, for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the federal government retains an interest in the equipment.
     2. The Project Participant shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Government.
     3. When no longer needed for the original project or program, the Project Participant shall use the equipment in the following order of priority:
        1. First, activities sponsored by the Government that funded the original project;
        2. Second, activities sponsored by other Governments;
        3. Third, activities sponsored by other Government agencies; and
        4. Fourth, other activities that promote MxD’s sustainability goals.
     4. Project Participant Acquired Property.
        1. In this article “property” means any tangible nonexpendable personal property charged directly to this agreement having a useful life of more than one year and an acquisition cost of $5,000.00 or more per unit, and defined as “equipment” in DGARS 34.2.
        2. The Project Participant may purchase real property or equipment in whole or in part with Federal funds in whole or in part with recipient funding under an award only with the prior approval of the Government (except that additional approval is not required for such items included in the proposed/negotiated budget at the time of award).
        3. Property Management - The Project Participant’s property management system shall comply with DGARS 34.23 or the Recipient’s Defense Contract Management Agency (DCMA) approved Government Property Management System.
        4. Title - Title to, management of, and disposition of tangible property. Use DGARS 37.685 through 37.700.
           1. Title. Title to such real property or equipment shall conditionally vest in the Project Participant upon acquisition. The Project Participant shall:

Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;

Not encumber the property without approval of the Government; and

Use the property in accordance with DGARS paragraph 34.21(d).

* + - * 1. If the Project Participant purchases real property (other than land) or equipment with its own funding, and designates the real property or equipment as recipient cost share, the Government will have a financial interest in the real property or equipment. The financial interest of the Government is determined by the Federal participation in the project.
      1. Disposition of Property - At the completion of the term of this Agreement, items of property acquired under this Agreement shall be disposed of in accordance with DGARS paragraph 34.21(e).

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

1.11 Purchasing System. The Project Team Lead purchasing system is subject to 32 CFR 37.705 [or 32 CFR 37.710 if applicable] and shall flow down to its subcontractors or subagreement awardees.

1. **FINANCIAL ADMINISTRATION, INVOICES AND PAYMENTS**
   1. This EAA for the undersigned Project Participant is for a Firm Fixed Price. In consideration for the Work to be performed by the Project Participant (see SOW), MxD agrees to pay the Project Participant the following firm fixed price of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_). The firm fixed price includes interim amounts payable following MxD’s acceptance of each Milestone Deliverable.
   2. For purposes of this Section 2 Financial Administration, Invoices and Payments, the references to the Code of Federal Regulations (CFR) shall, in all instances, be read as “As applicable to fixed price agreements.
   3. Financial Management System Compliance. The Project Team Lead and all Project Participants financial management system shall comply with the standards identified in 2 CFR 200.302.
   4. Estimated Cost

All Project Participants will follow the Standard Operating Procedures related to cost analysis and financial reporting attached hereto as Exhibit E (the “**Financial SOPs**”). Subject to the Project Team Lead deciding to reallocate costs, within a reasonable amount, between Project Participants (without, for the avoidance of doubt, modifying the overall Budget), the anticipated cost for the supplies/services (“**Budget**”) to be provided by the Project Participants, are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Organization | TIA Funded Cost | Project Team  Cost Share | Total |
| [Project Lead] | [ ] | [ ] | [ ] |
|  | | | |

* 1. Limitation of Cost. The total amount of funding currently available for reimbursement by MxD in accordance with the TIA is the amount indicated on the cover page as TIA Funded Cost (the “**TIA Funded Cost**”).

The TIA Funded Cost will cover the work to be performed in accordance with the SOW. Any costs in excess of the TIA Funded Cost will not be paid by MxD unless authorized in a writing signed by the parties to this Agreement.

* 1. Cost Principles.

2 CFR 200, Subpart E, Cost Principles will apply and describes the cost principles for determining allowability of costs applicable to lower tier performing, cost type contracts or awards under this Agreement.

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

* 1. Audit Requirements.
     1. The Project Team Lead will comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements. The Project Participant’s relevant financial records are subject to examination or audit by the Government for a period not to exceed three (3) years after payment of the final invoice. MxD and the Government shall have direct access to sufficient records and information of the Project Participant, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access will be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.
     2. Subawardee(s) will comply with the audit requirements appropriate for the type of entity receiving the award as required:
        1. For-profit entities will grant access to its records to the DCAA or other Government auditors and will provide standard access-to records requirements at 2 CFR 200, Subpart F Audit Requirements; grant the Government direct access to their records and/or allow the Government to examine independent auditor’s audit report and working papers for three (3) years after final payment.
        2. Non-profit sub-awardees will comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements.

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

2.6 Record Retention and Access. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement will be retained and access to them permitted in accordance with 2 CFR 200.333-337.

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

* 1. Prior Costs. Unless there is an executed Pre-Enterprise Award Agreement Cost Authorization, costs incurred by Project Participants will not be TIA Funded Costs unless such costs are authorized and incurred after the later of the (a) EAA Effective Date or b) the Project Effective Date set forth in the SOW.
  2. Invoicing Instructions. Payments will be requested monthly by the Project Team Lead in accordance with the Financial SOPs.
  3. Closeout Actions and Reports
     1. *Closeout.* Subject to any modifications required by the Sub-Agreements with Project Participants, upon completion of a Project, Project Team Lead will provide all closeout documentation required in the SOW and Financial SOPs within sixty (60) calendar days after the Project End Date (as defined below)(“Closeout”).
     2. *Unilateral Closeout*. MxD may unilaterally terminate this Agreement in the event a Project Participant fails to submit the closeout information required herein within sixty (60) days following the Project End Date (“Unilateral Closeout”) unless such failure is substantially due to the actions of the Government. MxD shall have no liability as a result of a Unilateral Closeout and Project Team Lead expressly agrees that amounts paid prior to the Unilateral Closeout constitute full payment of all financial obligations of MxD. Further, Project Team Lead releases and discharges MxD, its Members and their respective officers, agents and employees and contractors from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to a Unilateral Closeout. Project Team Lead further agrees to include the foregoing as a flow down provision in the Sub-Agreement.
     3. *Final Invoice*. Project Team Lead will submit a final invoice, designated as such, promptly upon completion of this Agreement, but no later than sixty (60) days from the Project End Date. Upon approval of that final invoice and upon the Project Team Lead’s compliance with all terms of this Agreement, MxD will promptly pay the balance of allowable TIA Funded Costs. The Project Team Lead will remit to MxD any refunds, rebates, credits or other amounts (including interest, if any) accruing to or received by any Project Participant or any assignee under this Agreement (or Sub-Agreement) to the extent that those amounts are properly allocable as TIA Funded Costs. Reasonable expenses incurred by the Project Team Lead or a Project Participant for securing refunds, rebates, credits or other amounts will be allowable costs if approved by MxD.

1. **REPORTING**
   1. Reports. All Reports will be completed by and submitted to the appropriate party as outlined in the SOW.
2. **TERM AND TERMINATION.**
   1. Term. Absent termination or extension, Project Participants will perform all work under this Agreement from the EAA Effective Date until the Project is projected to be completed as set forth on the Cover Page (“**Project End Date**”). Any extension of the performance period requires prior written approval of MxD and, if required, the Government. Suspension. MxD may suspend the performance of this Agreement for up to ninety (90) days by providing written notice to the Project Team Lead setting forth the effective date of suspension, stating the reasons for suspension and providing the Project Team Lead thirty (30) days to take corrective action (if corrective action is possible to cure the issue). After the suspension period, MxD may terminate this Agreement if it determines, in its sole discretion, that the reason for suspension has not been corrected to the satisfaction of MxD. If work resumes following the suspension period, MxD will make an equitable adjustment in the delivery schedule and/or the estimated cost (as applicable) or a combination thereof, and in any other terms of the subcontract that may be affected by the suspension as agreed to in writing by MxD and the Project Participants.
   2. Termination.
      1. *Termination*. With or without prior suspension, this Agreement may be terminated in whole or in part (including with respect to an individual Project Participant which will be acknowledged in the Sub-Agreement):
         1. By MxD, with or without prior notice, if MxD determines that the Project Team Lead or any Project Participant materially fails to comply with the terms and conditions of this Agreement;
         2. By MxD for convenience on at least thirty (30) days’ prior written notice;
         3. By Project Team Lead in the event MxD materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days of receipt of a notice from Project Team Lead or if a Project Participant is terminated and Project Team Lead is unable to find a suitable replacement within such thirty (30) day period;
         4. By mutual agreement of MxD and the Project Team Lead, in which case the parties will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion or Project Participant to be terminated; or
         5. By MxD if insufficient funds are available from the Government.
      2. *Notice of Termination.* In the event that MxD terminates this Agreement, MxD will notify the Project Team Lead in writing of the termination and its effective date and the Project Team Lead (or relevant Project Participants if the Project is being terminated with respect to an individual Project Participant) will cooperate with MxD to ensure the Project is transitioned as smoothly as possible to other Project Participants or Members as directed by MxD.
      3. *Reduced Scope.* If MxD determines that a reduced or modified portion of the award will not accomplish the purpose for which this Agreement was executed, MxD may terminate the award in its entirety.
      4. *Effect of Termination.* Upon any termination of this Agreement, each Project Participant will abide by all obligations set forth in the Membership Agreement. Upon a termination for convenience by MxD, MxD, if permitted by the Government, will reimburse reasonable costs (i.e., non-cancelable obligations made prior to the effective date of termination) resulting from such termination for convenience.

4.3 Other Remedies. In addition to the remedies outlined herein, MxD may use any of the remedies identified in 2 CFR 200.338 “Remedies for noncompliance” when determined appropriate.

* 1. Claims Arising from Suspension or Termination. In the event of suspension or termination, any claim by a Project Team Lead for costs incurred under this Agreement must be received within ninety (90) days after the date of suspension or termination. Subject to obtaining any required approvals from the Government, no termination costs (other than non-cancelable obligations made prior to the effective date of termination) are payable in the event of a termination based on a Project Team Lead’s (or a Project Participant’s) failure to materially comply with the terms and conditions of this Agreement. Subject to any required Government approvals, allowability of costs under any termination claim will be determined in accordance with DoDGARs 32.62(c).
  2. Liability. Under no circumstances will MxD’s total liability under this Agreement for any claims for expenses incurred pursuant to this Agreement, including suspension or termination claims, exceed the lesser of the (i) amount approved by the Government or (ii) TIA Funded Costs obligated under this Agreement.

1. **SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING.**
   1. The Project Participant will develop and implement policies and procedures for accepting information and data covered by DFARS clause 252.204-7012 that complies with such clause. The policy will, at a minimum, provide that the Project Participant will report cyber incidents in accordance with the following instructions:

* Do not shut off the workstation;
* Disconnect from the network;
* Do not alter or change anything on the system;
* Do not remotely connect to the system;
* Notify MxD immediately and await further instructions;
* At no time should malicious software be sent over the network; if requested for a copy of the malicious software, it should be burnt to a disc and physically mailed or carried.

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

1. **OPSEC**.

6.1 As applicable, the following OPSEC security applies.

A.  AT LEVEL 1 TRAINING:

This provision/contract text is for contractor employees with an area of performance within an Army controlled installation, facility or area. All contractor employees, to include subcontractor employees, requiring access to government installations, facilities and controlled access areas shall complete AT Level I awareness training within 30 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever is applicable. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee, to the COR or to the contracting officer, if a COR is not assigned, within 30 calendar days after completion of training by all employees and subcontractor personnel. AT level I awareness training is available at the following website: https://jkodirect.jten.mil

B.  iWATCH TRAINING:

This standard language is for contractor employees with an area of performance within an Army controlled installation, facility or area. The contractor and all associated sub-contractors shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the COR. This training shall be completed within 30 calendar days of contract award and within 30 calendar days of new employees commencing performance with the results reported to the COR NLT 30 calendar days after contract award.

C.  THREAT AWARENESS REPORTING PROGRAM TRAINING: For all DoD contractors with active security clearances. Per AR 381-12 Threat Awareness and Reporting Program (TARP), contractor employees must receive annual TARP training presented by a Counterintelligence Special Agent. Contact the Redstone Arsenal MI Detachment at 256-313-5186 for scheduling.

D.  CONTRACTORS THAT DO NOT REQUIRE CAC, BUT REQUIRE ACCESS TO A DOD FACILITY OR INSTALLATION: Contractor and all associated sub- contractors employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (TSDB) (Army Directive 2014-05/AR 190-13), applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative), or, at OCONUS locations, in accordance with status of forces agreements and other theater regulations.

E.  OPSEC SOP / PLAN REQUIREMENTS: The provision/contract text is for contractor employees with an area of performance within an Army controlled installation, facility or area. The contractor shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within 90 calendar days of contract award, to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. This SOP/Plan will include the government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it.

F.   OPSEC TRAINING:  The provision/contract text is for contractor employees with an area of performance within an Army controlled installation, facility or area.  Level I OPSEC awareness Training:  Per AR 530-1, Operations Security, contractor employees, to include subcontractor employees shall complete Level I OPSEC Awareness Training within 30 calendar days of their reporting for duty.  Subcontractors shall take the Level 1 OPSEC Awareness Training located at the below website and print the certificates demonstrating completion.  The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee, to the COR, within 10 calendar days after completion of training by all employees and subcontractor personnel.  OPSEC awareness training is available at the following website:

https://securityawareness.usalearning.gov/opsec/index.htm

G.  ACCESS AND GENERAL PROTECTION / SECURITY POLICY AND PROCEDURES:  This standard language text is for contractor employees with an area of performance within an Army controlled installation, facility or area. All contractor employees, to include associated sub-contractors employees shall comply with applicable installation, facility and area Commander Installation and facility access and local security policies and procedures (provided by the Government representative).  The contractor shall also provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office.  The contractor workforce shall comply with all personal identity verification requirements as directed by DoD, Department of the Army Headquarters, and/or local policy.  In addition to the changes otherwise authorized by the changes clause of this contract, should the Force Protection Condition at any individual facility or installation change, the Government may require changes in contractor security matters or processes. The prime contractor Human Resources/Security Officer is responsible for the collection of all Redstone Badges and CAC cards issued to their employees. The Human Resources/Security Officer will then turn over these credentials to the COR. This applies when the contract expires; as well as, when a contractor resigns or is terminated. After accounting for all badges/CACs, the COR will turn in the credentials at the One Stop Badging Office or CAC Office (MILPO).  All contract employees, including subcontractor employees who are not in possession of the appropriate security clearance or access privileges, will be escorted in areas where they may be exposed to classified and/or sensitive materials and/or sensitive or restricted areas.

1. **CONFLICT OF INTEREST**
   1. All Project Participant must disclose in writing any potential conflict of interest to MxD or the Government and will maintain an appropriate written and enforced policy on conflict of interest in accordance with the following:
      1. An institutional conflict of interest policy should require that each investigator disclose to a responsible representative of the institution all significant financial interests of the investigator (including those of the investigator’s spouse and dependent children) (i) that would reasonably appear to be affected by the research or educational activities funded or proposed for funding under this Agreement; or (ii) in entities whose financial interests would reasonably appear to be affected by such activities.
      2. Terms:
         1. The term “investigator” means the principal investigator, co-principal investigators, and any other person at the institution who is responsible for the design, conduct, or reporting of research or educational activities funded or proposed for funding under this Agreement.

The term “significant financial interest” means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interest (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include:

* + - * 1. Salary, royalties or other remuneration from the institution proposing or conducting research or educational activities funded or proposed for funding under this Agreement;
        2. Any ownership interests in the institution, if the institution is an applicant under the Small Business Innovation Research Program or Small Business Technology Transfer Program;
        3. Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;
        4. Income from service on advisory committees or review panels for public or nonprofit entities;
        5. An equity interest that, when aggregated for the investigator and the investigator’s spouse and dependent children, meets both of the following tests: does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a 5% ownership interest in any single entity; or
        6. Salary, royalties or other payments that, when aggregated for the investigator and the investigator’s spouse and dependent children, are not expected to exceed $10,000 during the twelve (12) month period.
    1. The institutional policy must include adequate enforcement mechanisms, and provide for sanctions where appropriate.
    2. The institutional policy must include arrangements for keeping MxD appropriately informed if the institution finds that it is unable to satisfactorily manage a conflict of interest.
    3. Project Participants must maintain records of all financial disclosures and of all actions taken to resolve conflicts of interest for at least three years beyond the termination or completion of this Agreement to which they relate, or until the resolution of any Government action involving those records, whichever is longer.

The Project Team Lead shall flow down this requirement to its subcontractors or subagreement awardees.

1. **GENERAL PROVISIONS.**
   1. Entire Agreement. This Agreement along with the Membership Agreement, and all Exhibits, attachments and amendments thereto embody the entire understandings of the Project Team Lead and MxD with respect to the subject matter of this Agreement and will supersede all previous communications, representations or understandings, either oral or written between and among Project Team Lead and MxD relating to the Project.
   2. Effective Date. The Effective Date of this Agreement shall be the date of the signature of MxD and that date shall be inserted on the cover page of this Agreement. The parties intend that the project participants shall execute this Agreement substantially before the Effective Date.
   3. Disputes. Any dispute under this Agreement will be a dispute under the Membership Agreement and Article XVI of the Membership Agreement will apply.
   4. Modifications. This Agreement may only be modified in writing and modifications will not be effective until a written modification is signed by each party (or its successor). MxD may unilaterally make administrative modifications that do not materially alter the obligations of the Project Team Lead.
   5. Notices. All notices and prior approvals required hereunder will be in writing and will be addressed to the parties identified in Exhibit A. The mechanics of delivering an effective notice shall be governed by Article XX of the Membership Agreement.
   6. Supplemental Terms and Conditions. The Supplemental Terms and Conditions and Participant Certifications attached hereto as Exhibit F are hereby incorporated into and made part of this Agreement. The parties contemplate that the Sub-Agreement will have a substantially similar exhibit for Project Participants that is incorporated into the Sub-Agreement.
   7. Force Majeure. No party will be in breach of this Agreement for any failure to perform caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform will promptly notify the other party in accordance with Section 8.4.
   8. Ensuring Adequate COVID-19 Protocols.

8.8.1. This Section 8.8 is applicable only to contracts in the amount of $250,000.00 or more or contracts that exceed the Simplified Acquisition Threshold as it may be adjusted from time-to-time.

8.8.2 The Project Team Lead shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at https:/www.saferfederalworkforce.gov/contractors/.

8.8.3. Subcontracts. The Project Team Lead shall include the substance of this clause, including this subsection 8.7.3 in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF**,** the parties have caused this Agreement to be executed and delivered as of the date last signed below.

|  |
| --- |
| **MxD** |
| **By:** |
| **Name:** Berardino Baratta |
| **Title:** Chief Executive Officer |
| **Date:** |

|  |
| --- |
| **{XXXXXXXXXX}** |
| **By:** |
| **Name:** |
| **Title:** |
| **Date:** |

**Exhibit A**

**Representatives**

**Representatives.** The following technical and contractual representatives of MxD and Project Team Lead are hereby designated for this Agreement.

Project Team Lead Representatives are: [Fill out in document or in DocuSign]

Technical Representative:

Email:

Phone:

Contract Representative:

Email:

Phone:

MxD Representatives are:

Technical Representative: [Project Manager]

Email: [ ]

Phone: [ ]

Contract Representative: Amy Janney

Email: compliance@mxdusa.org

Phone: 312-281-6845

Either party may change any of its representatives by providing written notice to the other party, as set forth in Section 8.4 Notices.

**Exhibit B**

**Project Intellectual Property (IP) Management Plan**

**Duty to Update.** The Project Team Lead is required to keep the information provided in this IP Management Plan up-to-date. Please promptly provide an updated copy to MxD within fifteen (15) business days of any change. The IP Management plan catalogs the Project IP that is anticipated to be developed by this Project and Background Intellectual Property required to utilize the Project IP, and identifies any enhanced rights granted post-Project in that IP, beyond the base rights granted under the MxD Membership Agreement.

**Intellectual Property Register.** The Project Team Lead will or will cause the Project IP Owners and BIP IP Owners to keep MxD and the Executive Committee apprised of Project IP created, filing status, and any claims against the Project IP and BIP licensed to other Members under this Agreement in an IP Register. In the event of a conflict between the rights identified in the IP Register and those identified in the IP Management Plan, the information contained herein shall control. In addition, the Project Team Lead will or will cause the Project IP Owner to fulfill the obligations set forth in Exhibit B of the Membership Agreement. Project Team Lead and/or the Project IP owner agree to keep the attached table up-to-date by submitting a notice of IP Creation to the Project Team Lead Technical Representative and MxD Technical Representative within fifteen (15) business days’ of such IP’s creation.

**Minimum Rights.** Project Team Lead acknowledges and will cause each Project Participant to acknowledge the license grants to Project IP and BIP set forth in Article VIII, Section 2 of the Membership Agreement. Additional license grants beyond such grants pursuant to the Membership Agreement are set forth herein.

[INSERT IPMP TABLES HERE]

**License Grants.**

[Insert additional license grants here]

**Exhibit C**

**Statement of Work**

**[INSERT STATEMENT OF WORK except for the BIP, IP and Data Assertions Tables]**

**EXHIBIT D**

**RESPONSIBILITIES REGARDING EXPORT CONTROLS, FOREIGN PARTICIPATION AND CONFIDENTIAL INFORMATION**

**EXPORT CONTROL.** To Project Team Lead’s actual knowledge, the following materials, including without limitation BIP which will be used in this Project and shared with other Project Participants, are subject to the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations of the United States Department of Commerce or any other applicable export control laws or regulations as per Article X in the Membership Agreement. Please list applicable export classifications (i.e. ECCN), if known. If none, please write “None” below:

**[INSERT RESPONSE]**

**FOREIGN PARTICIPATION.** The Project Team Lead will provide the MxD notice of proposed participation of any instrumentality of a non-US citizen, foreign government or any foreign company, firm, organization, institution or other entity and written notice of whether or not the notice required by Article IX of the Membership Agreement has been submitted. Project Team Lead acknowledges that participation by those foreign entities in this Project will only be granted on a case-by-case basis at the sole discretion of the Executive Committee and upon approval of the Government.

**CONFIDENTIALITY.** The Project Team Lead shall flow down Article VII of the Membership Agreement to their respective personnel, agents, partners and team members receiving such Confidential Information or Trade Secrets under this Agreement.In addition to the provisions of Article VII of the Membership Agreement, the following non-disclosure provisions (if any) will apply to this Agreement. If none, please write “None” below:

**[INSERT RESPONSE]**

**EXHIBIT E**

Project Participant Invoicing Guide

## **PURPOSE**

This guide assists Project Participants completion of invoicing to MxD for costs incurred and reporting cost share on approved MxD projects. The contract type and cost principles will determine what supporting documentation is required for payment.

This guide covers the following:

* Reimbursement Process
* Allowable Costs
* Approved Costs
* Substantiated Costs
* Rate/Budget Changes
* Invoice Preparation/Submission
* Final Invoice

## **BACKGROUND**

MxD projects are governed by the applicable prime contract and are generally funded on a cost reimbursement basis. Some contracts allow fee or profit margin, but most do not.

MxD utilizes two contract types:

* Cost Reimbursement (CR) - reimbursement for actual costs incurred that are allowable, approved, and substantiated.
* Firm Fixed Price (FFP) – a milestone-based, pre-approved fixed payment schedule.

Table 1 includes a non-exhaustive list of acceptable substantiating documentation.

## **REIMBURSEMENT PROCESS**

**MxD requires ALL Project Participants to use the MxD standard invoice template** (Attachment 1).

Invoices and supporting documentation should be submitted to [finance@mxdusa.org](mailto:finance@mxdusa.org).

* CR Project Participants must submit invoices by the 15th day following the month that the costs are incurred (e.g., January invoices are submitted by February 15th).
* FFP Project Participants must submit invoices within 15 days of deliverable completion. Exceptions must be pre-approved.

Project Participants are required to submit the following:

1. Technical reports and/or deliverables.
2. Monthly invoices on MxD standard invoice template for:
   1. Reimbursement of costs incurred/milestone payment schedule.
   2. Cost share claimed.
3. Appropriate cost substantiation per contract type.

***Payment terms applicable to the contract are contingent upon receipt of a fully complete invoice submission****.* ***Invoices are 'received' once MxD internally confirms it is fully substantiated. Payment terms are based on receipt confirmation date.***

## **ALLOWABLE COSTS**

The guiding cost principles define what costs are allowable, generally, the Code of Federal Regulations (2 CFR 200) or Federal Acquisitions Regulations (FAR). Unallowable costs include, but are not limited to, alcoholic beverages, fines and penalties, and lobbying. Unallowable costs may not be claimed as cost share.

Costs resulting from obligations incurred by Project Participants during a suspension or after termination of an award are not allowable unless MxD expressly authorizes them in notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

* + The costs result from obligations which were properly incurred by Project Participants before the effective date of suspension or termination.
  + Are not anticipating the suspension.
  + The agreement was not suspended or expired normally at the end of the estimated term in which the termination takes effect.

## **APPROVED COSTS**

The final budget that was authorized by MxD and/or U.S. Government during cost analysis is what determines if a cost is approved for reimbursement. Project Participants should follow the procedures outlined in the “Rate/Budget Changes” section of this guide if actual costs depart from the approved budget.

## **SUBSTANTIATING COSTS (N/A for FFP type contracts)**

Payments for FFP contracts are based on the contracted milestone schedule determined by the authorized budget.

CR type contracts require Project Participants to provide supporting documentation for costs over $75.

Project Participants should coordinate with MxD if items in Table 1 are not readily available. MxD will work with the Project Participants, to the extent possible, to identify acceptable alternatives.

|  |  |
| --- | --- |
| **Element of cost** | **Recommended Sources of Cost Information/Substantiation** |
| **Direct Labor**   * **Fringe** * **Direct** | * Direct labor rate agreement with the Government * Labor distribution reports * Payroll data   + - Identify annual hours worked     - Support escalation factors over typical 3-5% |
| **Travel** | * Actual itemized receipts/invoices for airlines, hotels, etc.; reservation confirmation is not sufficient |
| **Consultants** | * Receipts/invoices of actual costs from consultants; broken down by cost element, i.e., hours, rate, etc. |
| **Other Direct Costs** | * Invoices/receipts from actual expenditures * Policies identifying standard costs, e.g., tuition reimbursement rates or equipment use rates |
| **Indirect Costs** | * Forward Pricing Rate Agreement (FPRA) * Negotiated Indirect Cost Rate Agreement (NICRA) * Forward Pricing Rate Recommendation (FPRR) * De minimis rate |
| **Subrecipient** | * Subrecipient invoice |

The following are best practices to consider:

* If not clear from support, provide a detailed explanation of the methodology used to derive or calculate costs, e.g., highlighting fringe costs on a labor report that tie to the approved fringe rate.
* If using screenshots, save the full screen shot including address, date, and other relevant information that can be tied to the source.
* Invoices should be an official vendor document.

**NOTE: Project Participants must retain relevant documentation and financial records for a period of three (3) years after the date of the project closeout to support an audit or examination by MxD and/or US Government.**

## **RATE/BUDGET CHANGES (N/A for FFP type contracts)**

For CR type contracts, MxD reviews costs to ensure they are within the approved budget. Project Participants should notify MxD when they become aware of changes that meet the cost and technical factors below:

* Cost amounts:
  + Direct Labor Rates: changes that exceed the agreed upon/approved escalation factor(s).
  + All other costs: changes that affect a cost element (Direct labor, materials, ODCs, consultants, etc.) by more than 5%.
  + Indirect rates: changes to rate agreements with the Government.
* Technical factors:
  + Direct Labor: changes in labor categories, role of employees, and/or hours mix.
  + Consultants: changes to scope of work or consultant.
  + Travel: changes in the number of trips, personnel, nights, or location.
  + Materials/Equipment/ODCs: changes to materials or equipment where impact is not negligible or equivalent replacement is not clear. Changes to indicated purpose or use must be approved by MxD and the government

Communicating changes in budget are especially important if they alter the Federal/MxD vs. cost share ratio.

## **INVOICE PREPARATION/SUBMISSION**

A **signed** version of the MxD Invoice template is required. Follow the steps below to complete the invoice (Excel column/row reference):

**Step 1**: Provide basic invoice information

* Invoice ID: "Invoice Number" and “Invoice Date” (Rows 4-5).
* Invoice Period of Performance: "Invoice Period" in the following format: MM/DD/YYYY - MM/DD/YYYY (Row 6).
* MxD Contract No.: Found in the Enterprise Award Agreement.
* Project ID: The MxD project number and project title (Rows 8-9).
* Project Participant: Contact information for which payment of the invoice should be sent in the: “REMIT TO:” section (Rows 12-16).

**FFP Contracts**: Total expenses for Federal/MxD funds and cost share must match deliverable payment schedule (Row 45).

**CR Contracts**:

**Step 2**: Labor Costs

* Identify labor rates/hours for each employee or salary band (Rows 23-28). Add rows as needed.
* Fringe: Enter the fringe rate approved during cost analysis in the row for *Applied Fringe* (Row 31).

**Step 3**: Non-Labor Costs

* Enter non-labor for the period in accordance with how the expenditures were classified in the project award (Rows 34-40 & 44).
* Itemize contributions by subrecipient (Rows 38-40 & 44). Add rows as needed.

**Step 4:** Indirect Cost Rates

* Rate(s) Input: Enter the rate(s) approved during cost analysis for Overhead and G&A (Rows 32 & 43).
* Additional Rates: As necessary, Project Participants may insert additional rows for other indirect rates beyond the standard Overhead and G&A rates only if identified in the authorized project budget. Changing calculations to align with Project Participants methodology may be required.

Segregate costs between Federal/MxD funds (Columns D-F) and cost share (Columns G-I) contributions. Itemize cost share contribution by expense category.

**Final Indirect Rates:** Project Participants may invoice unsettled costs as part of the final invoice and true-up process for up to 60 calendar days after award end date.

**Certifications**

Any applicable updates should be made to the certifications in the template based on the contract type and guiding cost principles, i.e., change “[Insert Project Participant Name]” to the name of the invoicing organization.

## **FINAL INVOICE**

Project Participants submit the following to MxD within 60 days of physical completion of the project for closeout:

1. Final Invoice: Final invoices should contain any unbilled costs incurred for project completion and be identified as “Final Invoice”, in addition to containing the same details applicable to all invoices.

For CR type contracts:

* 1. Project Participants without an indirect rate agreement with the Government will provide their actual indirect cost rates for the period detailing the cost pools and bases used. MxD will analyze that the rates are fair and reasonable. Updated rates will be accounted for during the true-up process contingent upon MxD’s unilateral approval.
  2. Project Participants with Government approved finalized indirect rate agreements will provide the agreement(s) covering the period of performance.

1. Project Summary: Include cumulative total of all costs incurred and billed to date (not including the final invoice) by cost element for both Federal/MxD and cost share.

MxD reviews the above materials and coordinates with Project Participants to true-up any costs not yet reimbursed. MxD notifies the Project Participant to submit the Project Participant Release Form (Attachment 2) to MxD once all claims settled.

MxD may request an audit to close-out a project in accordance with the contract. Project Participants must comply with the audit requirements appropriate for the type of entity receiving the award as required.

**NOTE: Final payment will only be made by MxD if the ratio or percentage of Cost Share specified in the approved budget has been provided by the Project Team. When Federal reimbursement reaches 75% of commitment, Cost Share should be at commensurate level, per the approved budget and SOW.**

## **EXHIBITS**

Attachment 1: MxD Invoice Template

Attachment 2: Project Participant Release Form

**EXHIBIT F**

**MxD - SUPPLEMENTAL TERMS AND CONDITIONS**

**AND PARTICIPANT CERTIFICATIONS**

The following MxD General Terms and Conditions apply to each Enterprise Award Agreement. Terms not defined in this document will have the meaning assigned in the Enterprise Award Agreement.

**I. SUPPLEMENTAL TERMS AND CONDITIONS**

**1. Officials Not to Benefit.** No member of or delegate to Congress, or resident commissioner, will be admitted to any share or part of this Agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

**2. Reporting Executive Compensation.** Project Team Lead will report on its executive compensation in accordance with the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and associated 2008 amendments. Reporting is required for Agreements equal to or over $25,000. If the initial award is below $25,000 but subsequent Agreement modifications result in a total award equal to or over $25,000, the award will be subject to the reporting requirements, as of the date the award exceeds $25,000. If the initial award equals or exceeds $25,000 but funding is subsequently deobligated such that the total award amount falls below $25,000, the award continues to be subject to the reporting requirements of the Transparency Act.

**3. Financial Assistance Universal Identifier and SAM Registration.** Project Team Lead will have Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registrations in the SAM data base.

**4. Resource Conservation and Recovery Act.** In accordance with the Resource Conservation and Recovery Act (section 6002, Pub. L94-580, 42 U.S.C. 6962), State and local institutions of higher education, hospitals, and non-profit organizations that receive Government awards or other federal funds will give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the guidelines developed by the Environmental Protection Agency.

**5. Freedom of Information Act (FOIA) Access to Researcher’s Data.** Upon MxD’s or the Government’s request, pursuant to DoDGARs 32.36(d), the Project Team Lead will provide, within a reasonable time, research data as defined in DoDGARs 32.36(d)(2)(i).

**6. Activities Abroad.** Project Team Lead will assure that project activities carried on outside the United States are coordinated as necessary with appropriate Government authorities and that appropriate licenses, permits, or approvals are obtained prior to undertaking proposed activities. MxD does not assume responsibility for any Project Participant’s compliance with the laws and regulations of the country in which the activities are to be conducted.

**7. Cargo Preference.** Each Project Participant agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which requires that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with Government funds under this Agreement, and which may be transported by ocean vessel, will be transported on privately owned U.S.-flag commercial vessels, if available.

**8. Preference for U.S. Flag Air Carriers***.*Travel supported by Government funds under this Agreement will use U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to the Comptroller General’s Decision B-138942. Such Act and guidelines are incorporated in this Agreement by reference.

**9. Governing Laws & Regulations***.* This Agreement will be enforced and interpreted in accordance with applicable federal laws and regulations, directives, circulars or other guidance. Federal laws and regulations will govern in the event of any conflict with the provisions of this Agreement. When signed, this Agreement will become binding on the Project Participants and MxD to be administered in accordance with the Office of Management and Budget Guidance for Grants and Agreements, 2 CFR 200 (Uniform Guidance) In the event of a conflict between the provisions of this Agreement and the Uniform Guidance the Uniform Guidance will govern.

**10. Performance of Work.** The performance of effort is to be exclusively conducted within the U.S.

**II. PARTICIPANT CERTIFICATIONS.**

**1. Lobbying and Taxes**. The following Certifications and Representations are hereby incorporated herein by reference: (1) Certification Regarding Lobbying, Appendix A to 32 CFR Part 28 and (2) Representation Regarding an Unpaid Delinquent Tax Liability or Felony Conviction under any Federal Law – DoD Appropriations.

**2. Drug Free Workplace.** By signing this Agreement or accepting funds under this Agreement, each Project Participant agrees to comply with the “Government-Wide Drug-Free Workplace (Grants)” requirements specified by DoDGARs Part 26, Subpart B (or Subpart C, if the Project Participant is an individual) of 32 CFR Part 26 (2004), which implements sec. 5151-5160 of Drug-Free Workplace Act of 1988 (41 USC 701, et seq.).

**3. No Discrimination.** By signing this Agreement or accepting funds under this Agreement, each Project Participant assures that it will comply with applicable provisions of the following U.S. national policies prohibiting discrimination:

(*a)* On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195.

*(b)* On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. p. 339), as implemented by Department of Labor regulations at 41 CFR part 60.

*(c)* On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.)

*(d)* On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

*(e)* On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

**4. Clean Air Act.** By signing this Agreement or accepting funds under this Agreement, each Project Participant agrees that it will comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401 et seq.), as amended and the Clean Water Act (33 U.S.C. 1251 et seq.), as implemented by Executive Order No. 11738 (3 CFR, 1971-1975 Comp. P. 799), and the related regulations of the Environmental Protection Agency (EPA) (40 CFR part 15). Said regulations, Executive Order, and Acts are incorporated in this Agreement by reference.

**5. EPA Violating Facilities List.** By signing this Agreement or accepting funds under this Agreement, each Project Participant assures that it will not use any facility on the EPA’s List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5, as long as the facility remains on the list. If, in performing this Agreement, a Project Participant intends to use a facility that is on the List of Violating Facilities or that the Project Participant knows has been recommended to be placed on the List of Violating Facilities, the Project Team Lead will notify MxD.

**6. No Human Trafficking.** By signing this Agreement or accepting funds under this Agreement, each Project Participant assures that it will comply with section 106 (g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104). If any Project Participant (i) engages in trafficking in persons or has procured a commercial sex act during the period of time this Agreement is in effect or (ii) uses forced labor in the performance of this Agreement, the Government shall be authorized to terminate this Agreement without penalty.

**EXHIBIT G**

**DATA RIGHTS TABLE**

The following list of deliverable(s) and the respective right set forth to such deliverable(s) is/are hereby granted to the government.

**[INSERT DATA ASSERTIONS]**