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| **Subcontract**  **Under a Federal Contract**  No. 20-18-01 (“Subaward/Subcontract”)  Under the Technology Investment Agreement between Advanced Regenerative Manufacturing Institute, Inc. (“ARMI”) and the Office of the Secretary of Defense (“Federal Awarding Agency”) pursuant to Contract No. W911NF-17-3-003 awarded on Dec. 19, 2016 (“Federal Award”), as modified and/or amended from time to time (hereinafter “TIA”).  This Subcontract is entered into between PTE (as defined below) and Subrecipient (as defined below) for the performance of certain services under the TIA. This Agreement is entered into between the parties, the PTE and Subrecipient, for the performance of a portion of the Statement of Work originally awarded to the PTE. The parties agree to the following terms and conditions: | | | | |
| **PTE** (“PTE” or “Contractor”) | | | | **Subrecipient** (“Subrecipient,” “Subawardee” or “Subcontractor”) |
| Name: UI Labs d/b/a MXD USA (“MxD”) | | | | Name: |
| Address: 1415 N. Cherry Ave., Chicago IL 60642 | | | | Address: |
| DUNS: 079084801 | | | | DUNS: |
| **PTE Principal Investigator Point of Contact:** | | | | **Subrecipient Principal Investigator Point of Contact:** |
| **Subaward Period of Performance:** | | | | **Subaward Value:** |
| Start: | End: | | | Subaward Funding:  Subaward Cost Share |
|  | | | | Total Subaward: |
|  |  | | |
| **Subaward Type:** [cost reimbursement, fixed price, etc.] | | | |  |
| **Project Title:** | | | | |
| 1. **Subrecipient's Work:** Subrecipient shall supply all personnel, equipment, and materials necessary to accomplish the tasks set forth in Attachment 4, “Subrecipient Statement of Work and Reporting Requirements,” which is hereby made part of this Subaward. 2. **Limitation on Price:** PTE is not liable for any payment in excess of the amount in listed above as “Total Amount Obligated” without prior formal modification to this Subaward. Attachment 5, “Payment Schedule,” is hereby made part of this Subaward. 3. **Payment:** Subrecipient shall invoice PTE in accordance with the Payment Schedule shown in Attachment 5. All invoices shall be submitted using PTE’s standard invoice, but at a minimum shall include the milestone/deliverable completed, all cost share and net milestone payment amount, Subaward number, and certification as to truth and accuracy of invoice. *Invoices that do not reference Subaward Number may be returned to Subrecipient.* Invoices and questions concerning invoice receipt or payments should be directed to [finance@mxdusa.](mailto:finance@mxdusa.)org, or the finance Contact as shown in Attachments 3A & 3B. PTE will pay conforming invoices within 10 business days of receipt of funds from the Government. 4. **Incorporation of Terms and Conditions:** In the performance of this Subaward, all terms and conditions in Attachment 1-7 listed below in section 5 “Order of Precedence,” are hereby made part of this Subaward. 5. **Order of Precedence:** Any inconsistencies in this Subaward shall be resolved by giving precedence in the following order: 6. This Document and Attachment 1, “Representations and Certifications”; 7. Attachment 2, “General Terms and Conditions”; 8. Attachment 6, “Federal Contract Terms and Conditions”; 9. Attachment 4, “Subrecipient Statement of Work and Reporting Requirements”; 10. Attachment 5, “Subrecipient’s Budget” *or “Payment Schedule”*; 11. Membership Agreement between MxD and Subrecipient 12. Other documents, exhibits, and Attachment 3 and 7 13. Subrecipient is a member of MxD as are other subrecipients under the Federal Award. Subrecipient agrees that as between it and MxD and as between it and other subrecipients that the terms and conditions of its Membership Agreement shall apply except as its terms and conditions are in conflict with the terms and conditions of this Agreement or the Federal Award. 14. **Key Personnel:** Subrecipient Principal Investigator, and any other Subrecipient personnel identified in the Federal Award (“Key Personnel”), is considered essential to the work to be performed under this Subaward. Substitution or substantial reduction in commitment requiring prior approval of the Federal Awarding Agency of Subrecipient Key Personnel requires the prior written approval of PTE. In the event that Subrecipient desires to replace its Key Personnel, Subrecipient shall notify PTE in writing within five business days of the date of such replacement and shall propose substitute Key Personnel, identifying the proposed substitute in the notice. PTE shall notify Subrecipient within five business days after receipt of the final decision by the appropriate party (either the PTE or Federal Awarding Agency) either to continue the Subaward with the substitute Key Personnel or to terminate the Subaward. 15. **Entire Agreement:** This Subaward constitutes the entire agreement between the parties regarding the subject matter herein. Any modification to this Subaward shall be made in writing and must be signed by an authorized representative of each party. | | | | |
| **IN WITNESS WHEREOF,** duly authorized representative of the parties have entered into this Subaward as of the date of the last signature set forth below: | | | | |
| **PTE Signature** | |  | **Subrecipient Signature** | |
| **Name:** | |  | **Name:** | |
| **Title:** | |  | **Title:** | |
| **Date:** | |  | **Date:** | |

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| **Subaward Under a Federal Contract**  **Attachment 1**  **Representations and Certifications**  **Subaward No. 20-18-01-0X** |

The following is incorporated into the Subaward by reference.

**ANNUAL REPRESENTATIONS AND CERTIFICATIONS**, FAR Clause 52.204-8, as modified by FAR 4.1202, including none of the sections at 52.204-8(c)(2) OR including 52.204-8(c)(2) [specify the section(s)]

**REPRESENTATIONS & CERTIFICATIONS,** FAR Subpart 4.12:

Subcontractor shall complete electronic annual representations and certifications at <https://www.sam.gov> (System for Award Management, or SAM) (see FAR [4.1102](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/04.htm#P536_61948)). SAM includes all registrations and certifications previously found in CCR/FedReg, ORCA, and EPLS.

(1) Subrecipient shall update the representations and certifications submitted to SAM as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from date of submission or update to SAM.

(2) When any of the conditions in paragraph (b) of the clause at [52.219-28](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/52_215.htm#P1647_289528), Post-Award Small Business Program representation, apply, if Subrecipient represented that it was a small business prior to award of this Subaward, it must update the representations and certifications in SAM as directed by the clause. If Subrecipient represented that it was other than a small business prior to award of this Subaward, it may update the representations and certifications in SAM as directed by the clause, if its size status has changed since the date of award.

<https://www.sam.gov/SAM/>

Has Subrecipient’s Online Representations and Certifications been completed within the last year? \_\_\_\_ YES \_\_\_\_ NO

**Debarment, Suspension, and Other Responsibility Matters (2 CFR 200.213 and 2 CFR 180)**

By signing this Subaward, the Subrecipient Authorized Official certifies, to the best of his/her knowledge and belief that neither the Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, in accordance with 2 CFR 200.213 and 2 CFR 180.

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| **Subaward Under a Federal Contract**  **Attachment 2**  **General Terms and Conditions**  **Subaward No. 20-18-01-0X** |

1. Independent Contractor. The Subrecipient is engaged as an independent contractor. Nothing in the Subaward is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties. No party has the authority to bind any other party in contract or to incur any debts or obligations on behalf of any other party, and no party (including any employee or other representative of a party with responsibility for program matters) shall take any action that attempts or purports to bind any other party in such a manner, without the affected party’s prior written approval.
2. Publicity/Use of Name. Neither party shall use the name of the other party, or the name of any member, employee, or student of the other party, in connection with any product, service, promotion, news release, or other publicity without the prior written permission of the other party and, if an individual’s name be concerned, of that individual. Notwithstanding the foregoing, the parties agree that each party may disclose factual information regarding the existence and purpose of the relationship that is the subject of this Subaward, including as required to satisfy applicable financial reporting obligations, without written permission from the other party. In any such statement, the relationship of the parties shall be accurately and appropriately described.
3. Intellectual Property. The parties shall be governed by the Federal Award. In addition, thereto the parties between themselves and other subrecipients are governed by the provisions of the Membership Agreement and the agreed upon IP Management Plan attached hereto as a part of paragraph 5.g. Other Documents and Exhibits.
4. Confidentiality. "Confidential Information" shall mean any business or proprietary information provided by one party to the other and clearly identified and marked as "Confidential" by the transmitting party at the time of disclosure. If such transmittal occurs orally, the transmitting party will within thirty (30) days reduce such transmittal to written form, mark and identify it as confidential, and provide such record to the other party.

In the event that a party discloses Confidential Information to the other during the Project, the receiving party agrees to disclose the Confidential Information only on a need-to-know basis to its employees, directors or other advisors or representatives who are subject to confidentiality obligations, to use the Confidential Information only for the purposes contemplated by this Subaward and to use reasonable efforts to prevent its disclosure to third parties.

However, the receiving party may disclose the Confidential Information if such information (i) was already in the public domain or becomes publicly available through no wrongful act of receiving party, (ii) was previously known or developed by the receiving party without any violation of existing confidentiality obligations, or was known by receiving party prior to disclosure by disclosing party, as evidenced by tangible records; (iii) is disclosed to the receiving party by an independent third party who, to the best of the receiving party’s knowledge, is not under an obligation of confidentiality for such information to the disclosing party(iv) is independently developed or discovered by receiving party without use of disclosing party’s Confidential Information, as evidenced by tangible records; or (v) was required to be disclosed by operation of law.

The parties agree that each party retains ownership of the Confidential Information it provides to the other. The receiving party shall promptly return the disclosing party’s Confidential Information upon request. The obligations of this clause shall survive for a period of three (3) years following termination of this Subaward. Notwithstanding the forgoing, the parties agree that any personally identifiable health information shall be considered confidential.

1. Export Controls. The parties understand that the export of goods and/or technical data from the United States may require some form of export control license from the U.S. Government in accordance with Export Administration Regulations, Title 15 CFR, sections 730-774. The parties agree that they will not disclose, export or re-export any materials or technical data received under this Subaward to any countries for which the U.S. Government requires an export license unless it has obtained prior written authorization first from the cognizant government agency or other authority responsible for such matters. The parties further agree that in the event that export license is required, the party requiring such a license shall be responsible for the cost of obtaining such license.
2. Limitation of Liability/Responsibility. As between the parties, each party acknowledges that it will, to the extent authorized by relevant law, be responsible for claims or damages to the other party to the extent they result from the negligence or breach of contract of its employees or agents.
3. Insurance. Subrecipient represents that it carries sufficient insurance coverage to comply with the applicable requirements of federal, state and local laws as well as its obligations under this Subaward.

10. Termination and Stop Work Order. Either party shall have the right to terminate this Subaward with 30 days’ written notice to the other party for any reason. In the event that Federal Awarding Agency terminates the Federal Award, PTE shall terminate this Subaward in accordance with the terms of the Federal Award. Upon termination, Subrecipient shall be reimbursed for allowable costs and non-cancelable obligations incurred prior to the date of termination and shall furnish all necessary data, deliverables, and final reports, in accordance with Attachment[s] 4 [and 5], on the research completed or in progress through the date of termination. In the event of a Stop Work Order issued by the Federal Awarding Agency, Subrecipient shall immediately comply upon receiving such notice by the PTE.

11. Closeout. Along with any other reports or deliverables required hereunder, Subrecipient shall submit its final invoice and any requested release and assignment forms to PTE within 30 calendar days following completion of the period of performance of this Subaward. In the event that quick closeout is requested by PTE, Subrecipient shall comply with FAR Part 42.708 to complete Subaward closeout. Payment of the final invoice will be withheld pending:

• Completion, submission, and acceptance by PTE of all work performed under the Statement of Work;

• Completion by Subrecipient of any requested release forms, including patent/invention report, and property report;

and

• Clear, visible, and proper marking of “final invoice” on the actual final invoice.

12. HIPAA/PHI. There will not be personal health information (PHI) or personally identifiable information (PII) involved in this project.

13. Audit.

Subrecipient assures PTE that it complies with Single Audit requirements under 2 CFR 200 (“Uniform Guidance”), Subpart F and that it will notify PTE of completion of required audits and of any adverse findings which impact this subaward. For a period of three (3) years after date of receipt of final payment, PTE, Federal Awarding Agency or an authorized representative shall have the right to audit, at its own expense and upon reasonable notice at a mutually agreeable time, all financial books, accounts, and records of funds received and costs and commitments incurred under this Subaward. If any audit reveals a material discrepancy or error in reporting, Subrecipient will reimburse PTE upon request for the disallowed costs and expenses associated with such audit.

In the event that Subrecipient cannot make the previous assurances then it meets the requirements for non-Federal audits of for-profit organizations. A for-profit organization is required to have a non-Federal audit if, during its fiscal year, it expended a total of USD $750,000 or more under one or more federal award (as a direct grantee and/or under a consortium participant). 45 CFR part 75.501(h) incorporates the thresholds and deadlines of the Single Audit requirements of Uniform Guidance but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Subrecipient either may have (1) a financial-related audit (as defined in, and in accordance with, the Government Auditing Standards (commonly known as the "Yellow Book"), GPO stock 020-000-00-265-4, of a particular award in accordance with Government Auditing Standards, in those cases where the Subrecipient receives awards under only one federal program, or (2) an audit that meets the requirements of the Single Audit requirements of Uniform Guidance. On an annual basis, the Subrecipient shall provide a copy of any research-related audits to the PTE for review.

14. Disputes. The parties shall make good faith efforts to attempt to resolve all disputes through informal means. Each party agrees that, prior to resorting to litigation to resolve any dispute, it will confer with the other party to determine whether other procedures that are less expensive or less time-consuming can be adopted to resolve the dispute.

15. Anti-kickback. Subrecipient represents that no part of the total Subaward amount provided herein shall be paid directly or indirectly to any officer or employee of PTE or Federal Awarding Agency as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Subrecipient in connection with any work contemplated or performed relative to this Subaward.

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| **Subaward Under a Federal Contract**  **Attachment 3A**  **Subcontract No. 20-18-01-0X** |

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| **Subaward Under a Federal Contract**  **Attachment 3B**  **Subcontract No. 20-18-01-0X** |

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| **Subaward Under a Federal Contract**  **Attachment 3B, Page 2**  **Place of Performance & Highest Compensated Officers**  **Subcontract No. 20-18-01-0X** |

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| **Subaward Under a Federal Contract**  **Attachment 4**  **Subcontractor Statement of Work and Reporting Requirements**  **Subcontract No. 20-18-01-0X** |

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| **Subaward Under a Federal Contract**  **Attachment 5**  **Payment Schedule**  **Subcontract No. 20-18-01-0X** |

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| **Subaward Under a Federal Contract**  **Attachment 6**  **Federal Contract Terms and Conditions**  **Subcontract No. 20-18-01-0X** |

Subcontractor is subject to the terms and conditions included below. Where appropriate, the following modifications are made to the specific terms herein:

Wherever the terms "Government" or "Federal Awarding Agency" are used, "Contractor" shall be substituted. Wherever the terms "Contracting Officer" are used, “Contractor Authorized Official” shall be substituted. Wherever the terms "CTO" or "COTR" are used, the "PTE Principal Investigator" shall be substituted. Wherever the word "Contract" is used, the word "Subaward" shall be substituted. Wherever the word "Contractor" is used, the word "Subcontractor" shall be substituted. Such substitutions shall not be made in clauses addressing intellectual property, such as 52.227-14, or where it is clear, by the context of the provision itself or the conditions under which it is being applied, that the reference is intended to refer to the Government, its officers or agents, or the Prime Contractor specifically. References in any provision incorporated by reference herein to the “Disputes” clause shall be construed as references to the “Disputes” provision contained elsewhere in this Subaward. No provision herein shall be taken to imply any direct access on the part of the Subcontractor to the Disputes process as defined in the terms of the Federal Award.

1. Definitions

Where used in this Subaward Agreement with an initial capital, the following defined terms have the ascribed meanings:

a. “Affiliate” means, with respect to any Party, any company or other legal entity, in whatever country organized, now or hereafter controlling, controlled by, or under common control with such Party, for so long as such control exists.

b. “Create” or “Created” means to conceive or first actually reduce to practice an invention, or to otherwise cause an Intellectual Property Right to come into existence.

c. “Data” means computer software, computer software documentation, form, fit and function data, and technical data.

d. “Designated Intellectual Property Rights” means any Intellectual Property Rights Created as a result of the work undertaken pursuant to the Attached Statement of Work, Subaward Agreement Attachment 4.

e. “Designated Product” means any product that embodies, utilizes, or that such product (or the use of such product) is covered by any Designated Intellectual Property Rights.

f. “Government” means the U.S. ARMY Contracting Command on behalf of the Office of the Secretary of Defense, as provided in the TIA.

g. “Intellectual Property Right” means any invention which is or may be patentable or otherwise protectable under Title 35 of the United States Code, copyrightable works (including without limitation, reports, software, and computer codes), Data, and trade secrets.

h. “Net Sales” means, with respect to a Designated Product, the gross amount invoiced by Subawardee (including, without limitation, an Affiliate of Subawardee) to unrelated third parties for the sale, lease, or other transfer of the Designated Product, less the following deductions: i) trade, quantity and cash discounts allowed; ii) discounts, refunds, and rebates which effectively reduce the net selling price; and iii) returns and allowances; all solely to the extent that such deductions are in accordance with both U. S. Generally Accepted Accounting Principles (“U.S. GAAP”) and Subawardee company policy for recognition of top-line revenue calculated for reporting purposes and are supported by documentation readily verified by audit.

i. “Payment” means any consideration in any and all forms received by Subawardee (and/or Subawardee’s Affiliates, successors, and/or assignees) in connection with granting a license (or other rights) to Designated Intellectual Property Rights.

j. “Subject Invention” means any invention conceived or first actually reduced to practice within the performance of work under this Subaward Agreement.

2. Project Intellectual Property Rights

Title to and ownership of any Intellectual Property Rights Created in the course of performance of work under this Subaward Agreement shall be consistent with inventorship and determined in accordance with United States law. Accordingly, any Intellectual Property Right Created solely by Subawardee’s employees or contractors in the course of performing work under this Subaward Agreement, such that Subawardee’s employees or contractors are the only inventors of such Subject Invention, shall be solely owned by Subawardee and any Subject Invention made jointly by the employees or agents of both Subawardee and PTE in the course of performing work under this Subaward Agreement, such that at least one employee or agent of each of Subawardee and PTE is an inventor under United States patent law, shall be held and owned jointly by PTE and Subawardee and each of them shall be and hereby are a co-owner of and hold an undivided equal partial interest in such Subject Invention as a tenant in common, subject to the Government’s Rights and with no accounting of either Party to the other.

3. Government Intellectual Property Rights

Intellectual property is defined to include, but is not limited to, inventions, reports, technical data, software, computer codes and trade secrets.

a. DATA – as used in this section, “data” means computer software, computer software documentation, form, fit and function data and technical data. All data generated by Subawardee while performing under the SOW will be provided to the Government with Government Purpose Rights. Government Purpose Rights will allow the Government the right to practice, obtain, reproduce, publish, or otherwise use in any part of the world for purposes of the Government, and to authorize others to do so solely for Government purposes. Government purpose does not include commercial applications. Similarly, software developed by Subawardee while performing under the SOW will be provided to the Government with Government Purpose Rights.

b. PATENTS - Relative to patents, 37 CFR 401.14 applies with the following caveats: (1) the term “contract” shall read “Subaward Agreement;” (2) the term “contractor” shall read “Subawardee.”

i. March-in Rights: Subawardee agrees that, with respect to any Subject Invention in which Subawardee has retained title, the Government has the right to require Subawardee, an assignee, or exclusive licensee of a Subject Invention, to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Subawardee refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

1. Such action is necessary because Subawardee or assignee has not taken effective steps, consistent with the intent of this Subaward Agreement, to achieve practical application of the Subject Invention;

2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Subawardee, assignee, or their licensees;

3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Subawardee, assignee, or licensees; or

4. Such action is necessary because the agreement required by 37 CFR 401.14(i) has not been obtained or waived or because a licensee who has the exclusive right to use or sell any Subject Invention in the United States is in the breach of such agreement.

ii. Joint Subject Inventions - Title to Subject Inventions made jointly by a Government employee and Subawardee–shall be held jointly by the Government and the Subawardee. The Subawardee shall have the initial option to file patent applications on joint Subject Inventions at its own expense. If the Subawardee declines to file or complete prosecution of such patent applications, the Subawardee waives co-ownership interest and agrees to assign its title to such joint Subject Inventions to the Government.

iii. The Subawardee shall provide PTE with a copy of any disclosure of Subject Inventions made to the Federal Agency under 37 CFR 401.14(c) (pursuant to this Section 2.c.), including a copy of any DD Form 882 submitted as, or in conjunction with, such disclosure, at the same time as the disclosure is made to the Federal Agency. The Subawardee shall promptly inform PTE of the existence of any Intellectual Property Rights and Designated Products and shall ensure that the Final Report, as set forth in Attachment 4 to this Subaward, contains a complete accounting of all Intellectual Property Rights and Designated Products.

c. COPYRIGHT.

i. Works Created Solely by Subawardee: Subawardee retains all ownership to copyrights for original works of authorship created solely by Subawardee’s employees in the course of performance of work under this Subaward Agreement. Subawardee grants a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display worldwide such copyrighted works by or on behalf of the Government for Government purposes.

ii. Jointly Created Works: Ownership to copyrights for original works of authorship created jointly by U.S. Government employees and Subawardee’s employees in the course of performance of work under this Subaward Agreement is vested in the Subawardee. Subawardee grants to the Government a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display worldwide such copyrighted works.

iii. Copyright Statement: Subawardee will include the following statement on any text, drawing, mask work or other work of authorship, that may be copyrighted under Title 17 of the US Code, that is created in the performance of this Subaward Agreement: “The U.S. has a copyright license in this work pursuant to a Technology Investment Agreement.”

d. JOINT WITH ARMI and/or PTE. Title to Subject Inventions and Copyrights made jointly by ARMI and/or PTE and Subawardee shall be held jointly by ARMI and/or PTE and Subawardee, subject to the Government’s rights stated above and with no accounting by either Party to the other.

4. Representations and Warranties

Subawardee represents and warrants to PTE that neither the Subawardee nor its principals are excluded or disqualified from participating in this transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

5. Amendment; Waiver

a. This Subaward Agreement may only be amended by a written amendment signed by authorized representatives of the Parties.

b. Any waiver of any requirement contained in this Subaward Agreement shall only be binding if set forth in a signed written amendment to this Subaward Agreement.

c. Failure of either Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights by either Party.

6. Key Personnel:

Subawardee's Principal Investigator (identified on Page 1) and other key personnel as identified in the Statement of Work (Attachment 4) (“Key Personnel”) are considered essential to the work to be performed under this Subaward. Substitution or substantial reduction in commitment of Subawardee's Principal Investigator or other Key Personnel requires the prior written approval of ARMI and PTE. In the event that Subawardee notified PTE that it desires to replace Subawardee’s Principal Investigator or other Key Personnel, Subawardee shall notify PTE in writing within 20 business days of the date of such replacement and shall propose substitute principal investigator and/or other key personnel, identifying the proposed substitute(s) in the notice. PTE shall notify Subawardee within 20 business days after receipt of such notice of its decision either to continue the Subaward Agreement with the substitute principal investigator and/or other key personnel or to terminate the Subaward.

7. Termination

a. If the TIA, or a pertinent part thereof, is terminated, ARMI or PTE may terminate this Subaward Agreement by written notice to Subawardee without liability to Subawardee.

b. Either Party may terminate this Subaward Agreement at any time, without cause, upon thirty days’ prior written notice to the other Party (“Termination Notice”). Upon any such termination without cause: Subawardee’s services after receipt of the Termination Notice shall be limited to wind down services as specifically approved by ARMI; Subawardee shall invoice PTE for all costs and un-cancelable commitments incurred prior to Termination Notice.

c. If either Party defaults on an obligation under this Subaward Agreement and fails to cure such default within 30 days of written notice from the other Party, the non-defaulting Party may then terminate this Subaward Agreement by written notice to the defaulting Party, reserving all rights and remedies for such default.

d. Sections 1, 2, 4, 5, 7, 8, and 10. c, e, and f of this Subaward Agreement shall survive termination.

8. Insurance

Subawardee shall obtain and maintain insurance as required by all applicable laws and regulations and provide certificates thereof to PTE upon ARMI or PTE’s request.

9. Additional Flow-Through Provisions.

a. The TIA, and thus this Subaward Agreement, is governed by the guidance in 2 Code of Federal Regulations (CFR) Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as modified and supplemented by the Department of Defense's (DoD) interim implementation found at 2 CFR Part 1103, "Interim Grants and Cooperative Agreements Implementation of Guidance in 2 CFR Part 200", all of which are incorporated herein by reference.

b. Provisions of Chapter I, Subchapter C of Title 32, CFR, "DoD Grant and Agreement Regulations," other than Parts 32 and 33, continue to be in effect and are incorporated herein by reference, with applicability as stated in those provisions.

c. ORDER OF PRECEDENCE. Any inconsistencies in the requirements of this Subaward Agreement shall be resolved in the following order:

i. Federal statutes

ii. Federal regulations

iii. 32 CFR 37 and 2 CFR Part 200, as modified and supplemented by DoD's interim Implementation found in 2 CFR Part 1103

iv. DoD R&D General Terms and Conditions dated JULY 2016

v. ACC-APG-RTP Division Assistance, Research General Terms and Conditions dated AUGUST 2016, hereinafter referred to as “Agency Specific Requirements”

vi. Subaward Agreement-specific terms and conditions

d. To the extent applicable to this Subaward Agreement and Subawardee’s status as a non-profit, Subawardee shall comply with:

i. Financial Management Systems standards at 32 CFR §34.11;

ii. Audit standards at 32 CFR §34.16;

iii. Property standards at 32 CFR §34.21 through §34.23;

iv. Purchasing System standards at 32 CFR §34.31;

v. Access-to-records in accordance with 32 CFR 34.42(e);

vi. Cost principles in 48 CFR Parts 31 and 231.

vii. 32 CFR 37 and 2 CFR Part 200, as modified and supplemented by DoD's interim Implementation found in 2 CFR

Part 1103

viii. DoD R&D General Terms and Conditions dated JULY 2016

ix. “Agency Specific Requirements”

e. Subawardee shall keep all records related to this Subaward Agreement (“Records”) for a period of three years after the Period of Performance, except Subawardee must keep Records longer than three years after the Period of Performance if the Records relate to an audit, claim, or dispute that begins, but does not reach its conclusion, within the 3-year period. In that case, Subawardee must keep the Records until the matter is resolved and final action taken. Records for any real property or equipment acquired with funds under this Subaward Agreement must be kept for three years after final disposition. Subawardee shall provide PTE and PTE’s auditors with access upon reasonable notice for any purpose consistent with this Subaward Agreement and/or the TIA.

f. Any transfer of technology developed by Subawardee under this Subaward Agreement must be consistent with the U.S. export laws, regulations and policies [e.g., the International Traffic in Arms Regulation at chapter I, subchapter M, Title 22 of the CFR (22 CFR Parts 120 through 130), the DoD Industrial Security Regulation in DoD 5220.22-R,6 and the Department of Commerce Export Regulation at chapter VII, subchapter C, Title 15 of the CFR (15 CFR Parts 730 through 774), as applicable]. The Subawardee agree that it will not disclose, export or re-export any materials or technical data received under this Subaward to any countries for which the U.S. Government requires an export license unless it has obtained prior written authorization first from the U.S. Office of Export Control or other authority responsible for such matters. The Subawardee further agrees that in the event that export license is required, the Subawardee shall be responsible for the cost of obtaining such license. Exclusive right to use or sell the technology developed by Subawardee under this Subaward Agreement in the United States must, unless the Government grants a waiver, require that products embodying the technology or produced through the use of the technology will be manufactured substantially in the United States.

g. Only in the following two situations may Subawardee use project funds to purchase real property or equipment (i.e., to charge to the project the full acquisition cost of the property): (i) In the event that the real property or equipment will be dedicated to the project and have a current fair market value that is less than $5,000 by the time the project ends; or (ii) The Government approves the full acquisition cost of the real property or equipment as part of the cost of the project (see §37.535) via acceptance of a proposal or inclusion of such in a budget for a program plan.

h. Should Subawardee’s performance require access to Department of Defense facilities or resources, Subawardee shall coordinate with the Subaward Agreement Officer’s Representative (AOR) or their designated point of contact providing access in order to obtain the most current access guidance.

i. Public Release or Dissemination of Information

i. Publication or Disclosure. Subawardee agrees to furnish advance copies to PTE prior to publication or other disclosure of the results of the efforts under this Subaward Agreement. Subawardee will provide PTE not less than 45 calendar days (prior to publication or other disclosure) to review such proposed disclosure, to submit objections, and to file application letters for patents in a timely manner.

ii. Prior Review of Public Releases. It is herein agreed that Subawardee will submit all proposed public releases to PTE for review and comment prior to release. Public releases include press releases, specific publicity or advertisement, and articles for proposed publication or presentation.

iii. Publication Legend. Articles for publication or presentation relating to any work performed under this Subaward Agreement will contain an acknowledgement of support and a disclaimer. These statements may be placed either at the bottom of the first page or at the end of the paper and should read as follows: “Research was sponsored by the Office of the Secretary of Defense and was accomplished under Agreement Number W911NF-17-3-003. 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 Office of the Secretary of Defense or the U.S. Government. The U.S. Government is authorized to reproduce and distribute reprints for Government purposes notwithstanding any copyright notation herein.”

j. Unless Subawardee is exempt as provided in Section 8(k) below, Subawardee shall report the names and total compensation of each of Subawardee’s five most highly compensated executives for Subawardee’s preceding completed fiscal year, if -

i. In Subawardee's preceding fiscal year, Subawardee received –

1. (a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and

Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

2. (b) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and

Federal financial assistance subject to the Transparency Act (and subawards); and

3. The public does not have access to information about the compensation of the executives through periodic

reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

ii. If applicable, Subawardee must report the executive total compensation described above to ARMI or PTE by the 15th of the month following the month of the Execution Date.

k. Exemptions. If, in the previous tax year, Subawardee had gross income, from all sources, under $300,000, Subawardee is exempt from the requirements of this Section 8(j).

10. General

a. This Subaward Agreement (and all of its attachments) sets forth the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior understandings or written or oral agreements relative to said matter.

b. Neither Party may assign this Subaward Agreement unless the other Party consents to such assignment by written consent signed by an authorized representative of that other Party.

c. New Hampshire law governs this Subaward Agreement.

d. Neither Party shall be in breach of this Subaward Agreement for any failure of performance 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 shall promptly notify the other Party and shall in good faith maintain such partial performance as is reasonably possible and shall resume full performance as soon as is reasonably possible. If the Party affected by the force majeure event does not resume full performance within 30 days following commencement of the force majeure event, the other Party may terminate this Subaward Agreement by written notice to the Party affected by the force majeure event.

e. Lower Tier Agreements

a. Subawardee shall have the right to enter into subawards and subcontracts to perform a portion of the work set forth in the Statement of Work (Attachment 4)(hereinafter “Lower Tier Agreements”), provided that:

i. The Subawardee shall ensure that any entity performing any work under the Statement of Work (Attachment 4) of this Subaward Agreement on behalf of Subawardee complies with the terms of this Subaward Agreement and ARMI’s Subrecipient and Contractor Policy (attached to this Subaward Agreement as Attachment 7 and incorporated herein by reference).

ii. No less than ten (10) business days prior to entering into any such Lower Tier Agreement, Subawardee provides to PTE, for PTE’s review and approval, the following:

1. The identity of each party to such Lower Tier Agreement;

2. A Budget for the work to be performed under such Lower Tier Agreement; and

3. An assessment of whether each such Lower Tier Agreement should be a subaward or subcontract, including the rational for such assessment pursuant to ARMI’s Subrecipient and Contractor Policy, except as specifically noted in the Statement of Work (Attachment 4);

4. PTE shall use commercially reasonable efforts in good faith to timely respond to Subawardee’s Lower Tier Agreement submission so as to permit the execution of the Lower Tier Agreement as promptly as practicable.

iii. For any Lower Tier Agreements that have been determined to be issued as Subawards, Subawardee shall include the provisions of this Attachment 1, suitably modified to identify the appropriate parties, in such a Lower Tier Agreement, and shall reasonably cooperate with PTE and the Government to enforce the provisions of such subawards.

f. Neither Party shall employ or use the name of the other Party in any promotional materials or advertising without the prior written permission of such other Party.

g. Dispute Resolution. The Parties shall follow the dispute resolution provisions set forth in the Subawardee’s Membership Agreement.

h. The Parties are independent contractors. Nothing in this Subaward Agreement shall be deemed to create a relationship of employment or agency, or to constitute PTE and Subawardee as partners or joint venturers.

i. Anti-kickback. Subawardee represents that no part of the funding provided in this Subaward Agreement shall be paid directly or indirectly to any officer or employee of ARMI or PTE or Government as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Subawardee in connection with any work contemplated or performed relative to this Subaward Agreement.

j. Each Party hereto acknowledges and agrees:

i. that no representation or promise not expressly contained in this Subaward Agreement has been made by the other Party hereto or by any of its agents, employees, representatives or attorneys concerning the subject matter of this Subaward Agreement;

ii. that this Subaward Agreement is not being entered into on the basis of or in reliance on any promise or representation, express or implied, covering the subject matter hereof other than those which are set forth expressly in this Subaward Agreement; and

iii. that each Party has had the opportunity to be represented by counsel of its own choice in this matter, including during the negotiations which preceded the execution of this Subaward Agreement.

k. Each Party warrants and represents that it has the full right and power to enter into, and perform its obligations under, this Subaward Agreement, and that, to the best of their knowledge, there are no existing agreements, assignments, obligations, or encumbrances in existence to which such Party is bound that are inconsistent with the provisions of this Subaward Agreement.

l. No Party shall be liable for any failure to perform as required by this Subaward Agreement to the extent such failure to perform is caused by any reason beyond the Party's control, or by reason of any of the following: labor disturbances or disputes, accidents, failure of any required governmental approval, civil disorders, acts of aggression, acts of God, failure of utilities, mechanical breakdowns, material shortages, disease, or similar occurrences.

m. If any part of this Subaward Agreement is held (by final judicial decree) void, invalid or unenforceable, such ruling shall not affect the validity or enforceability of the remainder of this Subaward Agreement.

n. Any notices given under this Subaward Agreement shall be in writing and shall be (i) sent by first class mail, postage prepaid, (ii) hand delivered, (iii) transmitted by legible telecopy, with a copy concurrently sent by first class mail, postage prepaid, (iv) delivered by prepaid overnight courier, or (v) via email, in each case addressed to a Party at the address set forth above. Each Party may change its notice address by written notice to the other. Notices hereunder shall be deemed effectively delivered: (i) five (5) business days following dispatch, if sent by first class mail, (ii) when actually received, if delivered by hand, or (iii) two (2) business days following dispatch, if delivered by telecopy or overnight courier.

o. Counterparts. This Subaward Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The Parties agree that a Party’s signature on this Subaward Agreement that is exchanged by portable document format (PDF) or facsimile shall have the effect of original signature of the Party for all purposes.

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| **Subaward Under a Federal Contract**  **Attachment 7**  **ARMI’s Subrecipient and Contractor Policy**  **Subcontract No. 20-18-01-0X** |



