

Project Title



TECHNOLOGY DEVELOPMENT FUND SCHEME (TDF)

"Building eco-system for enhancing cutting edge technology capability for defence manufacturing"



AGREEMENT
BETWEEN
DEFENCE R&D ORGANISATION
MINISTRY OF DEFENCE
AND
DEVELOPMENT AGENCY

DA _____

FOR THE DEVELOPMENT OF

PROJECT TITLE

“ ”

Under TDF Scheme

DATE:

Preface

Technology Development Fund (TDF) has been established to promote self-reliance in Defence Technology as a part of the 'Make in India' initiative. It is a programme of MoD (Ministry of Defence) executed by DRDO for meeting the requirements of Tri-Services (ARMY, AIR FORCE and NAVY), Defence Production and DRDO.

The scheme encourages participation of public/private industries, especially MSMEs, so as to create an eco-system for enhancing cutting-edge technology capability for defence application/manufacturing. The industry may work in collaboration with the academia or research institutions to carry out innovation, research and development. In cases where academia or research institutions are involved, their work involvement cannot exceed 40% of the total efforts required.

The aims of TDF Scheme is funding the development of defence and dual use technologies that are currently not available with the Indian defence industry, or have not been developed so far, thus, promoting defence manufacturing capability within country.

The TDF program includes the following objectives:

- A) Stimulate development of defence technologies that will form kernel of components, assemblies, which will in turn be used to develop defence equipment/systems/sub-systems/platforms.
- B) Meet the requirements of Tri-Services (ARMY, AIR FORCE and NAVY), Defence Production and DRDO.
- C) Foster and encourage participation of public/private industries, especially MSMEs, for defence manufacturing, supported through TDF funding upto 90% with development period of two years.
- D) Increase the collaborative approach and establishing linkages between industry and academia.

The scheme will cover funding through provision of grants to industry either as advance upon producing a Bank Guarantee of the same amount as collateral or as reimbursement upon successful achievement of milestones as agreed between the Development Agency(ies) and DRDO.

The Expression of Interest (EoI) received through online mode against the projected requirement on Technology Development Fund Scheme web-portal. The selection of the Development Agency will be through a rigorous three level evaluation i.e. Project Monitoring and Mentoring Group, Technical Committee and Empowered Committee.

AGREEMENT
BETWEEN
DEFENCE RESEARCH & DEVELOPMENT ORGANISATION
MINISTRY OF DEFENCE
AND

DA _____

THIS Agreement made and entered into on this **Date.....** between the President of India, through Director, Technology Development Fund, Office at R. No.316, Defence Research and Development Organization, Ministry of Defence

155

Government of India having its office at DRDO Bhawan, Rajaji Marg New Delhi-110011 (hereinafter called DRDO, which expression shall wherever the context so admits, include its successors and permitted assigns) of the **first part**.

AND

DA Rep..... for **DA.....**a company incorporated under the applicable Indian law, having its registered office at **DA Address** (hereinafter called Development Agency (DA), which expression shall, wherever the context so admits, include its successors, receivers, administrators, permitted assigns and associated companies) of the **Second part**.

The Development Agency and Defence Research & Development Organization (DRDO) are hereinafter collectively referred to as "Parties".

Whereas, Technology Development Fund (TDF) scheme has been established to promote self-reliance in Defence Technology as a part of the 'Make in India' initiative. It is a programme of Ministry of Defence (MoD) executed and implemented by DRDO for meeting the requirements of Tri-Services, Defence Production and DRDO. The scheme encourages participation of public/private industries, especially MSMEs, so as to create an eco-system for enhancing cutting-edge technology capability for defence application. The scheme will include funding through provision of grants-in-aid, to industry that will to develop technology and corresponding prototypes and maywork in collaboration with the academia or research institutions to carry out innovation, research and development. In cases where academia or research institutions are involved, their work involvement cannot exceed 40% of the total efforts required.

And whereas DRDO agrees to support the Development Agency for development of technology/ prototype through provision of grant-in-aid under Technology Development Fund Scheme.

And whereas the Development Agency (as Lead Member of Association of Persons/consortium as the case may be), had submitted to DRDO a proposal for Grant of a Technology Development project titled as "**NAME OF PROJECT**" under **Technology Development Fund (TDF)** described in depth in the finalized/revised Detailed Project Report (DPR) submitted by the DA, are annexed as Annexure 'A' to this Agreement and furnished various supporting documents and information relating thereto (hereinafter referred to as "the Project").

And whereas the Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project.

And Whereas the Development Agency/ Parties of Association of Person will open a separate single bank account in a nationalized scheduled bank for payments to be received from the DRDO.

Based on the evaluation and due diligence of DRDO and based on the Proposal, DRDO has agreed to provide a Grant of **Total Amount -----(-)** for supporting the Project.

WHEREAS out of the total sanctioned amount of grant, DRDO has allocated an amount aggregating to **DRDO Share** as per the payment terms agreed and Annexed in Annexure 'B' to the Development Agency, during the course of the project period of **TIME PERIOD**, from the effective date of agreement. The remaining grant i.e. **INR DA SHARE** is to be borne by the Development Agency (DA).

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the parties, hereto, agree as follows:

2 Representation and Warrantees

- i. **Corporate Set up:** Except to the extent already disclosed in writing by the DA, if any, to DRDO, shall be deemed to have assured, confirmed, undertaken as follows:
 - a. The Development Agency is an Indian company/ Partnership firm/ Limited Liability partnership/ Sole proprietorship, registered as per applicable Indian laws with a minimum of 51 percent Indian ownership and shall continue to be owned as such over the total duration of the project,
 - b. The Development Agency having foreign investment, if any, is "owned" and "controlled" by resident Indian citizens and/or Indian companies which are ultimately owned and controlled by resident Indian citizens as per the FDI policy of the GoI.
 - c. The DA shall inform DRDO, if it proposes to undertake or permit any merger, consolidation, reorganization scheme of arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstitution or substantial expansion. The word 'substantial expansion' shall have the same meaning as under the Industries (development and Regulation) Act, 1951.
 - d. The DA shall inform DRDO within 30 (thirty) days, if it has notice of any application for winding up having been made or any statutory notice of winding up under the provisions of the Companies Act, 2013, or any other notice under any other Act or otherwise of any suit or other legal process intended to be filed or initiated against the DA and affecting the title to the properties of the DA or if a receiver is appointed of any of its properties or business or undertaking.
 - e. The DA shall notify DRDO of any material change in its entity status, entity name, Project Coordinator, implementation site, registered office or any such change that would impact on performance of its obligations under the Project and this agreement

ii. Conflict with Memorandum and Articles of Association/ Regulatory Compliances

None of the conditions stipulated by DRDO conflicts with the Memorandum and Articles of Association or Applicable regulatory compliances of the DA. MOA / Applicable regulatory compliances DA should allow them to accept Grants, and Research and Development (Related to this project) should form part of its main or ancillary business in MOA/ Applicable regulatory compliances. If the same are not in compliance, the DA shall amend its Memorandum and/or Articles of Association or applicable regulatory compliances, for safeguarding the rights of DRDO arising out of or under this Agreement, if so required. Company/ partnership firm/ sole proprietorship shall be registered under the Indian Law.

iii. Due payment of public and other demands

Any dues or fault which is being notified by competent authority (Court/Income Tax office/Excise/GST/Custom & other Central Govt Department & etc) and has passed an order leading to some legal action against DA, in that context this Agreement shall stand revoked.

iv. Use of the Grant

The amount of the grant support will be used strictly for the purpose of the project and not for any other purpose. In case it is found/established at any stage that the amount of grant has been mis utilized /misappropriated by the DA, if any, directly or indirectly, the further disbursement of installments will be stopped by DRDO. In such case, the DA, if any, shall be liable to refund the entire Grant/disbursements made by DRDO till date, together with interest shall also be liable to be prosecuted for appropriate civil and/or criminal action which might be taken by DRDO against the DA, its directors and guarantor and/or official/agent of the DA.

v. Infringement of IPR

The DA , if any, declare/s that to the best of his/ their knowledge and belief, use of manufacturing process does not infringe any third party's valid patent rights / Intellectual Property Rights. Validation and verification in context of the project, should be carried out with much sensitivity and precaution by DA to avoid all kind of infringements rights and issues. DA will be solely responsible for any kind of legal implications emanating from such infringement.

The DA, if any, agree/s to indemnify DRDO's legal implication for infringements in this regard. It is agreed and declared that all the cost towards such legal action shall be borne by the DA.

vi. Imposts, Costs and Charges

The DA, if any, shall, during the currency of the grant support bear all such impost, duties and taxes (including interest and other taxes, if any) as may be levied from time to time by the Government or other authority with the sanction of law pertaining to or in respect of the grant.

The DA, if any, shall pay all other costs, charges and expenses in any way incurred by DRDO and such additional stamp duty, other duties, taxes, charges and other penalties, if and when the DA, if any, is required to pay, according to all the laws for the time being in force in the State in which its properties are situated or otherwise.

3. Definition of Expressions/ Terms

(Some common definitions are given under. This list is not exhaustive, may be added as per the requirement)

For the purposes of this Agreement, the following terms shall have the indicated meanings:

Agreement	shall mean this Agreement and its Annexure and including all subsequent amendments agreed to in writing by both Parties.
Effective Date of Agreement	shall mean Effective Date of agreement i.e., the date from where the containing of time schedule commences towards achievement of Agreement obligations of the Parties.
Development Agency (DA)	shall mean Company/Partnership Firm/Sole Proprietorship etc as per the context.
Third Party	shall mean any Party other than the Parties to the agreement .
Project	Proposal submitted by Development Agency to DRDO for seeking financial support in the form of grant for development of technology/ prototype under Technology Development Fund Scheme
Sub-contract	To employ a firm or academia or person(s) outside one's Development Agency to do (work) as part of a larger project
Specifications or Technical specifications	shall mean the technical specifications as defined in, scope of the Agreement as well as any accepted modification of such technical specifications.

8/

Information	means any information, knowledge or data, regardless of its form and characteristics, including but not limited to that of a scientific or technical nature, experimental and test data, designs, improvements, manufacturing or assembling data, engineering or other documentation, specifications, test methods, test results, designs, or other information data or results of a technical character, photographs, software (including source code), reports, manuals, processes, techniques, inventions (whether patented' or, not), product, prototype, technical writings, sound recordings, semiconductor topography, pictorial reproductions, drawings and other graphical representations, film's whether on magnetic tape or any storage device, in computer memory, or in whatever form presented, and whether or not subject to copyright or other legal protection, know-how.
Paying Authority	A competent authority who will sanction and release the financial support in terms of grant
Bond	A written and signed promise to pay money on nonperforming of a specific act/ task as defined in project
Background Information	Means any existing Information generated, possessed or owned by the Parties prior to the Agreement signature or out of the course of the Agreement Performance, but which is necessary or useful to attain the objectives of the Contract.
Foreground Information	means any Information pertaining to subject matter of the Contract, conceived, generated or developed by either Party in the course of the Agreement Performance
Intellectual Property Rights	means legal rights in Information and other intangible property protected by law, including but not limited to, patents, registered and unregistered designs, copyrights and trademarks.
Background Intellectual Property Rights	means legal rights in Background Information and other intangible property protected by law, including but not limited to, patents registered and unregistered designs, copyrights and trademarks.

Foreground Intellectual Property Rights	means legal rights in Foreground Information and other intangible property protected by law, including but not limited to, patents, registered and unregistered designs, copyrights and trademarks.
Project Monitoring and Mentoring Group	PMMG is monitoring and mentoring group which consists of representative from SHQs, HQ-IDS, DRDO, DDP, DGQA, Advisor-Cost, AFA/ IFA and other experts as required.
Technical Committee	Technical Committee is the key operating body for matters pertaining to the TDF scheme.
Empowered Committee	The Empowered Committee is the apex governing and principal decision making body, for matters pertaining to the TDF scheme.

4. Project Summary

- A) Brief description of the project
Details as per Annexure 'A' & Annexure 'D'
- B) Project (Goals/Aim/Objective)
Details as per Annexure 'A', Annexure 'C' & Annexure 'D'

5. **Scope of the Work** The scope of the work to be carried out by Development Agency under this project is defined as given below:
as per technical specifications/ Project Definition Document (PDD) Annexure 'A' and as per Govt. Sanction Letter.

6. **Milestone** The project may be categorized into following subcategories and milestone for each of the sub project may be defined accordingly. –

**Detailed milestone for the project is annexed at Annexures 'B' and 'C'.

S.N	Milestone Duration (Months)/ Cost (INR)	Milestone Activities broad Headings	Cost Distribution Share Milestone wise		Final No. of deliverables/ Prototype at the end of the each milestone under the project.
			DRDO Share	DA Share	
1	I T0 + Months INR		INR	INR	
2	II T0+ Months INR		INR	INR	
	III T0+Months INR		INR	INR	

	IV T0+ Months IN		INR	INR	
	V T0+ months INR		INR	INR	
	VII T0+ Months INR		INR	INR	

7. **Deliverables** Deliverable(s) for the project is annexed at Annexure 'C'.

8. Financial Arrangement

The financial arrangements under this Agreement are as here under

- A) The total estimated cost of the Project is **TOTAL COST ONLY**. The project cost will be jointly funded by DRDO and the Development Agency. Without violating any condition of th TDF Scheme/ GOI Rules. The contribution of DRDP is **DRDO Share** as grant-in-aid. The contribution of Development Agency is **DA Share** on the terms and conditions detailed in this Agreement.
- B) Development Agency is agreed to receive the payment through reimbursement mode or advance mode (against submission of collateral Bank Guarantee). Milestone-based advance may be given to the DA. However, DAs shall be given advance only against bank guarantee of equal outstanding amount.
- C) The first installment of grants-in-aid will be released to Development Agency by **DRDO SHARE MS –I** for as reimbursement mode after the completion of first milestone.
- D) The remainder of the grant amount as agreed by the DA will be taken as either on reimbursement basis or advance basis connected with the Milestone as agreed in the Annexure 'C'. Advance payment will be payable upon producing a bank guarantee of the same amount as collateral at each milestone on successful completion of the previous milestone and submission of Utilisation certificate, Statement of Expenditure, Contingent Bill and other necessary

documents. The Bank guarantee at each milestone will be claimed by DRDO if, the milestone not achieved by the **DA NAME**.

- E) The Development Agency shall not utilize the interest earned on the recurring/ non-recurring grants-in-aid, released to it for any purpose. The interest earned shall be indicated in the Utilization Certificate (in case of advance only) which shall be refunded to the DRDO after sanctioned grants in aid is utilized.
- F) Funds will be released electronically by DRDO/CDA/PCDA in the separate Project Account (current) held with nationalized scheduled bank on pro rata basis opened by Development Agency for this TDF project only. Release of funds will be subject to fulfillment of terms and conditions of the Grant Approval.
- G) The detailed milestone wise and head-wise break-up of financial assistance by DRDO and agreed contribution by the Development Agency are given in Annexure "B".
- H) Utilization of the Grants-in-aid would be for achieving the quantitative and qualitative targets as indicated in Annexure-'C'.
- I) The Grant-in-aid for the project should be utilized for the purpose of that Project only.
- J) Periodic monitoring and review of the projects will be carried out by the Technical Committee through Project Monitoring and Mentoring Group.
- K) Development Agency shall immediately refund to DRDO any funds remaining with it unutilized on foreclosure or termination / completion of the project.
- L) The provision of the grants to Development Agency, by DRDO does not create any liability explicit or implicit on DRDO in respect of the manpower engaged by Development Agency for the project.
- M) The books of accounts for the project shall be open for inspection by the authority approving the grant in aid and audit, both by the Comptroller and Auditor General of India under the provision of CAG (DPC) Act 1971 and Internal Audit party of the Principal Accounts office of the Ministry/ Department whenever the Development Agency is called upon to do so.

- N) The eligible cost includes manpower cost, equipment, consumables, academia cost (maximum 40% of the total project cost), sub-contract, domestic travel, overhead and contingency. The details are at annexure 'B'.
- O) In any case, overhead costs shall not exceed 10% of the total approved cost for technology/ prototype development.
- P) DRDO pays the actual eligible costs based on the audited project accounts, by Practicing Chartered Accountant who shall not be internal Auditor of the Development Agency.
- Q) The costs related to this project must be incurred and paid by the Development Agency, as the case may be, between the project start and end dates.
- R) The grants-in-aid should not be a source of profit. If after examination of the Audited Accounts, DRDO comes to the conclusion that the grants-in-aid have been a source of profit, then Development Agency shall forthwith refund the amount of grants-in-aid to Government of India with interest at 10 percent per annum.
- S) Any revenue generation activities cannot be included as part of project costs. Strictly and Only Research & Development related activities can be included as part of project costs.
- T) A cost shall not be presumed to be allowable merely because the DA actually incurred the costs, unless meets the test of relevancy, financial prudence, reasonability and relationship.
- U) The Development Agency shall not charge any unallowable costs; and shall segregate the same from any proposal, billing, indirect cost pool or claim submitted to the DRDO. The following costs are specifically considered unallowable for the purpose of these guidelines:
- a. Bad Debts;
 - b. Interest on loans
 - c. Land
 - d. Permanent Building
 - e. Contributions or donations
 - f. Fines, legal expenses and penalties
 - g. Advocacy and business development
 - h. Losses on other contracts
 - i. Entertainment
 - j. Alcoholic beverages
 - k. Business organization costs such as costs of incorporation, re-organization and merger
 - l. Workshop/ Seminar

9. Intellectual Property Rights (IPR) Management:

- i. "IPR" means any invention, Patent, registered design, copyrights, data, design rights, topography right, trade mark, service mark, application to register any of the aforementioned rights by Development Agency relating to the Products and project.
- ii. The ownership of Background Information and Background Intellectual Property Rights, created by DRDO and Development Agency prior to the Contract, shall rest with the respective owning Party. However, DRDO and Development Agency shall be deemed to have royalty free, nonexclusive and all paid-up license to use and reproduce each other's such Background Information and Background Intellectual Property Rights for the purposes of the Project.
- iii. The ownership of All Foreground Information as well as Foreground Intellectual Property Rights, generated during the Project, whether or not legally protected, shall rest either jointly with DRDO and Development Agency alongwith its academic/research institute/industry partner in equal parts or only with DRDO in certain exceptional cases.
- iv. It is the responsibility of DA and DRDO to protect and maintain any IPR rights that may result from the project.
- v. DRDO and Development Agency shall consult each other before publishing any Foreground Information generated during the project activities to ensure that no proprietary Information is released and the Foreground Intellectual Property Rights are not jeopardized. DRDO and Development Agency shall confer and consult each other regarding preparing, filing, prosecuting, maintaining Intellectual Property Rights applications including patent applications covering Foreground Information and related expenditure. Filing of IPR applications including patented applications shall be processed through DRDO and/or DA.
- vi. DRDO and Development Agency shall not disclose any Foreground Information, whether or not legally protected, generated during the Project, to any third party without seeking prior written permission from each other.

- vii. Parties agree that DA may take the lead for commercial development and production on non-exclusive license basis. The **Development Agency** shall be offered non-exclusive license as a preferred partner in case DRDO wishes to go for commercialization/sale through nonexclusive licensing. However, Parties agree that non-exclusive licenses may also be granted to other third parties, taking into account various government requirements such as need for large scale production, urgent requirement for production etc. However, in case of such multiple non-exclusive licenses, terms and conditions of non-exclusive license offered to DA shall be no less favourable than the terms and conditions of non-exclusive licenses offered to other third parties.
- viii. In case of Joint IPR being commercially exploited by third party (with mutual consent), the **Development Agency** will be responsible for collection of their share of royalty/licensing fee and DRDO won't be liable for collection of royalty/licensing fee on their behalf.
- ix. DRDO will hold the "**Right to First Use**" according to which Govt. of India requirements of products/process/design covered under the joint IPR required for national interest will be executed on priority basis.
- x. It shall be the sole responsibility of **Development Agency** to ensure maintaining the quality of products/processes covered under the jointly owned IPR and in case any complaint/claim in the quality of the products/processes manufactured by **Development Agency** is received, DRDO shall in no way be held responsible in any manner, whatsoever, for such rejection/ claims etc.
- xi. DRDO Shall not be responsible for any product liability losses, cost, damages, injury or any other consequence arising out of use, manufacture or sale of products/processes covered under the jointly owned IPR.
- xii. The **Development Agency** agrees to the fullest extent permitted by law, to indemnify and hold harmless DRDO from any liabilities, damages and cost (Including reasonable attorneys fees and cost of defence) to the extent caused by the negligent acts, errors or omissions of the **Development Agency** or anyone for whom "Industry" is legally responsible.

- xiii. **Development Agency** shall mark the Product/process/design, being manufactured under jointly owned IPR as **“Developed Jointly with DRDO” with combined logo of DRDO and DA.**
- xiv. Development Agency, during the course of production and/ or commercialization of the “Product/Process/design” covered under the joint IPR, may want to effect improvements thereby causing a different “Product/process/design” to be formulated. All such differentials and “variants” will be deemed as based on the Joint IPR and all clauses in this Agreement will be fully applicable to such “variants”. All rights including IP rights on such new (improved) variants/ Product/ process/ design shall either rest with DRDO or jointly owned as per mutual agreement.
- xv. DA shall be deemed to have forfeited any and all rights arising out of joint ownership of any and all IPR generated under this Agreement, in case of occurrence of any event mentioned below from xv(a) to xv(e). Only DRDO shall be deemed to have all ownership and use rights of IPR generated during this Agreement, to the total exclusion of DA, in case of occurrence of any such event mentioned below, without any liability of whatsoever nature, to DA:
- a. If the DA is blacklisted by any Indian Government Agency and/or Government Organization.
 - b. If the DA fails to abide by the terms & conditions of this agreement.
 - c. If it is found that DA is involved in any unlawful acts.
 - d. If the DA becomes insolvent.
 - e. In the event of change of management, ownership and/or merger of DA into any foreign industry or sale/usage of the DA to any foreign person by any mode like purchase of shares, taking over of the DA by any other means, without prior knowledge and consent of DRDO.
- xvi. Notwithstanding any provisions mentioned above or any future licensing agreements, DRDO shall be deemed to have all rights including a nonexclusive, perpetual, irrevocable and royalty-free world-wide license for the unlimited commercial development, series production, continuing engineering support, product improvement, or have developed, any Background information and Background Intellectual Property Rights as well

as Foreground Information and Foreground Intellectual Property Rights, whether or not legally protected, for the purposes of government applications.

- xvii. Whenever DRDO informs Development Agency that the interest of national security requires Development Agency to refrain from commercially supplying product/process based upon any Foreground Information and Foreground Intellectual Property Rights, whether or not legally protected, to any particular third parties, or stipulate conditions in such commercial sale, Development Agency shall abide by DRDO requirements.
- xviii. DRDO shall not be responsible and shall not accept any liability for infringement, innocent or otherwise, by Development Agency of the intellectual Property Rights of third parties.
- xix. The term of the above provisions shall survive the termination of the Contract.
- xx. If any issue arises then it should be resolved based on the prevailing IPR policies of Government of India.

10. Roles and Responsibility of Development Agency

Development agency shall:

- i. Discharge its duties, responsibilities and execute its activities as set out in **Annexure 'C'** and shall conform to the specified objectives, outputs, milestones, and targets therein;
- ii. Share the resources (manpower, equipment, capital, consumables, etc) and provide the services with due diligence & professionalism for the Project activities to the extent as agreed to as per the details given in **Annexure 'C'**
- iii. Subject itself to close supervision and regular monitoring of its activities being implemented under the Project by the **Annexure 'C'**
- iv. The Development Agency may keep all the economy instructions in view while incurring the expenditure. The organization shall not incur any expenditure on those items, the purchase of which items have been banned.
- v. DA shall make arrangements for proper operation and maintenance of equipment/ knowledge procured under the project.

- vi. DA will submit the list of key personnel/ professionals who shall be engaged by the DA specifically for this project for successful implementation of the project. DA shall not change the key professional/ members involved in the project till its completion.
- vii. Professionals/ employees engaged by the DA for this project are governed by the rules made by the DA. There is no relationship between these professionals/ employees and DRDO.
- viii. DA shall also be responsible for adhering to law of the land including rules of central, State and local Governments in its operation.
- ix. DA shall obtain all necessary requisite approvals, clearance certificate, permission and licenses from the government/local authorities for conducting its activities/ operations in connection with the project.
- x. DA shall indemnify and hold DRDO harmless from all costs, damages and expenses arising out of any claim, action or suit brought against DRDO by third parties in respect of any infringement of any patent, registered designs or Intellectual Property Rights resulting from use of any technical information, data or process or design belonging to or used by the DA and/ or furnished to DRDO.
- xi. The DA will adhere and follow the Labour Acts and Rules while executing this Agreement and shall keep DRDO indemnified and harmless from all claims, costs, damages and expenses arising out of any violation of Labour Acts and Rules.
- xii. In case the DA proposes to import any equipment, software etc. for the purpose of performance of the job in India, all duties related to such imports shall be paid directly by the DA to the concerned authorities. DRDO will not bear any liability on this account. It will be the responsibility of the DA to provide the required particulars and documents to the Customs authorities and other Government Authorities and get the materials cleared and transported in time. The DA shall be fully responsible for the delays, penalties, charges and losses, if any, in this regard.
- xiii. Maintain a separate books of account with a non-lien independent bank account (Escrow/Current/ Saving) with nationalized schedule bank for this project
- xiv. Utilize the amounts sanctioned by DRDO for project only for the purpose as specified in the project and shall not entrust the implementation of the project to another agency or divert the grant-in-aid assistance.
- xv. Submit the technical project update report in prescribed format on completion of each milestone and final detailed project report on completion of project
- xvi. Development Agency will intimate DRDO on completion of milestone of PMMG review and submit Project Update report, utilization certificate (in case of advance only) and duly audited statement by a third party chartered accountant

- xvii. Submit a utilization certificate (in case of advance only) and statement of accounts duly audited and certified by a third party chartered accountant for the expenditure incurred on the project
- xviii. Acknowledge the assistance of DRDO for funding this project in all publications, reports, publicity, presentations materials, assets/ facilities created, events etc. success.
- xix. Development Agency shall not transfer IPR/technology/ process know-how or information on technology to any third party without the written consent of DRDO. Technology includes Technology or facility developed, expertise, knowhow etc.
- xx. Permit PMMG/ DRDO authorized personnel access to the premises, during regular business hours, where the project is being/shall be implemented and provide all information and produce or make available the concerned record for inspection and monitoring of the project activity, required by DRDO
- xxi. Assist wherever necessary, the PMMG with requisite technical inputs/ facilities to help accomplish the objectives of the project;
- xxii. Abide by the decision of the PMMG/ Technical Committee/ Empowered Committee on the assessment of the progress in the project and the modification in the objectives, milestones, targets, funding as also the foreclosure of any activity or sub-project;
- xxiii. Ensure and warrant that the same project will not be executed by it with any other party within India during the term of this agreement;
- xxiv. In case DRDO decides to abandon the project for breach of any of the terms and conditions, the entire amount of the grants shall become recoverable forthwith and it shall be open to DRDO to effect the recovery from DA, in any manner it thinks fit
- xxv. DA shall under the project cost, insure and keep insured all the plant, machinery, fixtures and equipment etc. acquired for implementation of the Project, by utilizing the grant in aid for a minimum period of 2 years. In case of loss or damage of such plant, machinery, fixtures and equipment, etc. the insurance monies will be payable to the Government of India.
- xxvi. In case of successful projects, the DA will submit Project Success Report (PSR) at the time of payment of the full and final installment
- xxvii. If project fails at any stage, the DA will submit Project Failure Report (PFR) before settling of accounts

- xxviii. Notwithstanding anything contrary in the agreement, the terms and conditions are subject to change as decided by the Government of India from time to time, M/s Accord Software & Systems Pvt. Ltd., Bengaluru to abide and honor such directions and decisions of Government of India.

11. Roles and Responsibility of DRDO

In TDF, the onus of design and development is on the DA. Role and responsibility of DRDO is to provide mentoring, conduct technical assessment and release funds as per conditions laid down.

12. Project Monitoring and Mentoring Group

A Project Monitoring and Mentoring Group (PMMG) will monitor the project for achieving the defined objectives in the time and costs projected. The terms of reference for the Monitoring Committee are:

- i. To monitor and review the progress of the Project in conformity with the outputs, milestones, targets and objectives as contained in the Agreement.
- ii. Based on the foregoing, to assess and recommend, where necessary for:
 - a. Release of next installment or part release thereof by the DRDO.
 - b. Revision of Project duration
 - c. Foreclosing or dropping or modifying any of the components of the Project, within the overall approved objectives, budget and time-frame,
 - d. Inclusion of additional industrial/institutional partner(s), if the Institute requests involvement of such partner(s), in the overall interest of the Project, and
 - e. Revision of the financial assistance.
- iii. To advise on issues related to securing of IPR and mentor to overcome any technological problem faced in the Project implementation; and
- iv. To advise on any other matter as referred to it by DRDO and/or otherwise reasonably necessary for effective discharge of its duties and/or achievement of aims and objectives of Technology Development Fund Scheme.

13. Project Completion:

- i. A project will be deemed to be completed when all outcomes have been achieved as defined in Annexure 'C'.

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- ii. DA will submit the request for the project closure to DRDO on achievement of outcomes as defined in Annexure 'C'.
- iii. PMMG will physically verify project completion and give their report to the Technical Committee.
- iv. Empowered Committee will finally approve the request of project completion on merits.
- v. DA shall submit a Project Completion Report (technical cum financial and detailed process know how report) along with a soft copy in CD (preferably in MS word format) to DRDO within one month of the completion of the project. DA shall also furnish the feedback, suggestions and project evaluation along with the project completion report to DRDO such completion reports along with detailed process know-how.
- vi. Based on approval by Empowered Committee, DRDO will issue project closure certificate and thereafter DRDO will settle any remaining grants/ financial dues.
- vii. All decision of DRDO will be binding on the DA.

14. Foreclosure and Termination

- i. In cases, during the tenure of Project, it is found that the Project or any Project component does not proceed according to the predetermined milestones as agreed in the DPR, and/or if there are undue time and cost overruns, or failure of the technology/ component of project/prototype(s) on PMMG evaluation or on account of any other reasons or is not likely to lead successful completion, the TDF project may be foreclosed in respect of the DA(s) and proposal for foreclosure will be approved by the Empowered Committee.
- ii. In such cases, the total expenditure made by the DA(s) on the technology/prototype development till foreclosure would be assessed and if excess funds have been paid to the DA(s), the same shall be recovered and if the expenditure is in excess of the amount paid, the balance shall be paid to the DA(s). The decision of Empowered Committee shall be final in this matter.
- iii. The ownership of all tangible assets acquired under the TDF schemes shall vest with DRDO. These may be passed on to the DA at depreciated value as per the extant guidelines of the Government of India.
- iv. If the Development Agency likes to continue the project at its own cost, it would be able to do so without restrictions from DRDO after complying with these provisions.
- v. **Termination by DRDO:** DRDO may terminate this arrangement upon 30 calendar days' notice in writing or after occurrence of any of the events specified in paragraphs below:
 - (a) If the Development Agency does not remedy a failure in the performance of its obligations under the Agreement, within 30 days of being notified of

such a failure, or within such further period as DRDO may have subsequently approved in writing;

- (b) If the Development Agency becomes insolvent or bankrupt;
- (c) Development Agency committed any breach of any terms of this agreement; or
- (d) If, as the result of Force Majeure Event, the Development Agency is unable to perform a material portion of its obligations for a period of not less than 30 days.

vi. In the event of termination of the agreement by DRDO,

- (a) No further disbursement shall be made by DRDO.
- (b) Development agency shall be liable to return immediately the amount of grants availed from DRDO with interest at the rate of 10 (ten) percent per annum within 30 (thirty) days of termination of the Agreement.

or

Development Agency shall be liable to return the equipment/ machinery purchased under the Grant amount at book value. Remaining amount of grant after deducting the book value of equipment shall be returned to DRDO with interest at the rate of 10 (ten) percent per annum within 30 (thirty) days of termination of the Agreement.

- vii. In case of failure to repay, without prejudice to any other rights under this agreement, the amount can be recovered by initiating any procedure available in Law.
- viii. In the event of termination, reports, documents generated during the process shall be shared with DRDO.
- ix. **Termination by DA:** DA can request for termination by providing their reasons. Matter will be reviewed by DRDO in deciding on foreclosure/short closure, payments and possession of assets.

15. Asset Management

- i. The ownership of all tangible assets and the developed prototypes under the TDF schemes shall vest with DRDO. These may be passed on to the DA at depreciated value as per the extant guidelines of the Government of India.
- ii. The assets acquired / created wholly or substantially by the Development Agency out of Government grants except those declared as obsolete and unserviceable or condemned in accordance with the procedure laid down in the G.F.R. shall not be disposed-off encumbered or utilized for the another purpose/project, without obtaining the prior approval of DRDO. In case of winding up or dissolution of the organization all the assets acquired to that effect out of the grants-in-aid by the DRDO should be returned forthwith to the Government of India.

- iii. In the event of any liquidation or bankruptcy proceedings or any threatened distress action against the Development Agency or any of its assets, plants, machineries, fixtures and equipment procured for the purpose of the Project out of or with the support of Grant in aid shall be outside such proceedings and the GOI may assume the control and management of the Development Agency in respect of the concerned project(s) and appoint any of its officer or authorized representative to run the Project(s).
- iv. The Physical assets developed as a result of the project (machines / equipment etc.) shall be located at the Development Agency after completion of the project. Development Agency may use such assets for continued development and may also put to productive use with the written approval of DRDO. Development Agency shall be responsible for maintenance of equipment for its lifetime or its occupation of the Development Agency site, whichever is earlier.
- v. In case of foreclosed projects, the tangible assets thus created may be disposed of as per the extant Government guidelines. Expenditure incurred on intangible assets as defined in the relevant Indian Accounting Standards may be considered for writing off with the approval of Empowered Committee.

16. Dispute Resolution

- i. In the event of any dispute or difference between the parties hereto, such disputes or differences shall be resolved amicably by mutual consultation. If such resolution is not possible, then unresolved dispute or differences shall be referred to arbitration of one of the arbitrator to be appointed by Secretary, Department of Defence Research and Development, Government of India. The provisions of Arbitration & Conciliation (Amendment) Act, 2015 shall be applicable to the Arbitration. The venue of such arbitration shall be at Delhi or any place, as may be decided by arbitrator. The language of arbitration proceedings shall be English. The arbitrator shall make a reasoned award (the 'Award'). However, if any party aggrieved by such award may make a further reference for setting aside the award as per the provisions of Arbitration & Conciliation (Amendment) Act, 2015. The cost of the arbitration shall be shared equally by both parties to the Agreement. However, expenses occurred by each party in connection with preparation, presentation should be borne by the parties itself.
- ii. Pending the submission of and/or decision on a dispute, differences of claim or until the arbitral award is published; the parties shall continue to perform all of their obligations under this Agreement without prejudice through a final adjustment in accordance with such award.

17. Force Majeure

- i. Neither party shall be held responsible for non-fulfillment of their respective obligations under this Agreement due to the exigency of one or more of the force Majeure events such as but not limited to acts of god, war, flood, earthquakes, strikes not confined to the premises of the party, Lockouts beyond the control of the party claiming force majeure, epidemics, riots, civil commotions etc. provided on the occurrence and cessation of any such event the party affected thereby shall give a notice in writing to the other party within one month of such occurrence or cessation.
- ii. If the force Majeure conditions continue beyond six months, the parties shall jointly decide about the future course of action.
- iii. The validity of the claim of *force majeure* shall be determined by DRDO after due enquiry and the decision of DRDO in this regard shall be final.

18. Technology Sharing Agreement

- i. **Technical Know-How** Development Agency (DA) shall transfer the complete details of the technical know-how and testing method for quality assurance to DTDF/DRDO, with requisite data on the functioning of the product/technology.
- ii. **Permitted Regions** By this Agreement, DRDO grants a non-exclusive right to utilise the "Technology" by Development Agency (DA) for the manufacture & sale in India. For export and sale of the developed technology outside India, Development Agency (DA) shall seek prior written approval of DRDO.
- iii. **Grant of Rights** By this Agreement, DRDO grants a non-exclusive right to utilise the "Title of the Project." by Development Agency (DA) for the manufacturing and sale in India. DRDO shall have the March-in Rights to use the IP for its own use in the interest of Government of India without any restrictions, irrespective of the nature of rights/permission granted in this agreement.
- iv. **Sale** Development Agency (DA) shall inform DRDO of the sale of the product/technology on a yearly basis (financial year). A copy of this information will also be sent to DTDF, DRDO. For enquiries received from abroad for the product/technology, Development Agency (DA) shall seek prior written approval from DTDF, DRDO.
- v. **Fee/Royalty** Development Agency (DA) shall also pay Goods & Service tax (as applicable) and Royalty on Reverse Charge Basis as per Extant guidelines of Government of India.

19. Packing and Marking:

- i. The **DA Name** shall provide packing and preservation of the equipment and spares/goods contracted so as to ensure their safety against damage in the conditions of land, sea and air transportation, trans-shipment, storage and weather hazards during transportation, subject to proper cargo handling. The **Development Agency** shall ensure that the stores are packed in containers, which are made sufficiently strong. The packing cases should have prominently displayed instructions for lifting by crane/fork lift truck. Tags with proper marking shall be fastened to the special equipment, which cannot be packed
- ii. The packing of the equipment and spares/goods shall conform to the requirements of specifications and standards in force or as specified by the DRDO
- iii. A label in English shall be pasted on the carton indicating the pertinent details of the item contained in the carton.
- iv. The **Development Agency** _____ shall mark each package with indelible paint in English language as follows:-
 - Contract No. -----
 - Port/Intermediate Consignee -----
 - Port/Airport of destination -----
 - Ultimate Consignee ----- (Name of the Lab/Estt.)
 - Package No. a/b -----
 - Gross/Net Weight: ----- kg
 - Overall dimensions/volume: ----- cm/cu m

Where: a = Serial No. of Package;
b = Total number of Packages in the particular Consignment.

- v. If necessary, each package shall be marked with warning inscriptions: < Top >, "Do not turn over", category of cargo, order of packing and stacking etc., will be prominently marked on each carton/ package.
- vi. Should any special equipment be returned to the **Development Agency** by the DRDO, the latter shall provide normal packing, which protects the equipment and spares/goods from damage or deterioration during transportation by land, air or sea. In such case the DRDO shall finalize the marking with the **Development Agency**

20. Denial Clause:

"Variations in the rates of statutory levies within the original delivery schedule will be allowed if taxes are explicitly mentioned in the Agreement and delivery has not been made till the revision of the statutory levies. DRDO reserves the right not to reimburse the enhancement of cost due to increase in statutory levies

beyond the original delivery period of the Agreement even if such extension is granted without imposition of any penalty”

21. Effective Date of Agreement

- i. The Agreement shall come into effect/force (Effective Date T0) on the latest date of fulfillment of the following conditions (either one or more as agreed):
Signature of the Parties in case of reimbursement mode of the project i.e. date
Or
The date on which Payment of advance to DA
Or
45 days from signing of Agreement in case of release of advance payment against BG
Or
Any other conditions
- ii. This Agreement shall remain valid till 12 months after the administrative closure of the Project by Empowered Committee.
- iii. The project shall commence from the effective date of the Agreement.

22. Governing Laws

This Agreement shall be governed and interpreted in accordance with the laws of India.

23. Notices and Jurisdiction

- i. All notices and other communications required to be served on any of the parties under the terms of this Agreement shall be considered to be duly served, if the same shall have been delivered by hand or posted by registered mail to the party at its last known address of business. Similarly, any notice to be given to DRDO shall be considered as duly served, if the same shall have been delivered to, left with or posted by registered mail to the DRDO at its registered address in New Delhi.
- ii. The Courts at New Delhi shall have exclusive jurisdiction in all matters concerning this Agreement including any matter arising out of the arbitration proceedings or any award made therein.

24. Amendments to the Agreement

No amendment or modification of this Agreement shall be valid unless the same is made in writing by both the parties to the agreement or their authorized representatives and specifically stating the same to be an amendment of this Agreement. The modifications / changes shall be effective from the date on which they are made / executed unless otherwise agreed to.

25. Confidentiality

Signatories will maintain strict confidentiality and prevent disclosure thereof of all the information and data exchanged/generated pertaining from the project under this at all times except with mutual consent.

Parties:

IN WITNESS WHEREOF the parties hereto through its duly authorized representatives have signed this Agreement on the day, month and year mentioned hereinbefore.

PARTIES TO THE AGREEMENT

For & on behalf of Defence Research and Development Organization (First Part)	For & on behalf of DA NAME (Second Part)
Signature:	Signature:
Name:	Name:
Designation:	Designation:
SEAL	SEAL
Date:	Date:

WITNESS:

Signature:	Signature:
Name:	Name:
Address:	Address:

- Annexure 'A': Finalized/ Revised Detailed Project Report
- Annexure 'B': Payment Terms Linked With Milestone Wise
- Annexure 'C': Milestone and Details of Deliverables
- Annexure 'D': PDD (Project Definition Document)

131