



## TECHNOLOGY DEVELOPMENT FUND SCHEME (TDF)

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



# Memorandum of Understanding

BETWEEN

DEFENCE R&D ORGANISATION

MINISTRY OF DEFENCE

AND

XXXXXXXXXDEVELOPMENT AGENCY

FOR THE DEVELOPMENT OF

PROJECT TITLE

XXXXXXXXXXXXXXXXXXXXX

Under TDF Scheme

DATE:XX/XX/XXXX

## **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.

THIS Memorandum of Understanding (MoU) made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, Two thousand \_\_\_\_\_ between the President of India, through (Name) Sh./Smt./Ms./Mrs. \_\_\_\_\_ (Designation ) \_\_\_\_\_, (Full Address) \_\_\_\_\_ Defence Research and Development Organization, Ministry of Defence 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

(Name) Sh./Smt./Ms./Mrs. \_\_\_\_\_ (authorized signatory) for \_\_\_\_\_ a company incorporated under the applicable Indian law, having its registered office at

\_\_\_\_\_ (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 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.

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 following named parties have decided to irrevocably constitute an Association of Persons (AoP)/ consortium (the "Consortium") for the purpose of executing and implementing the complete "TDF" project upto the completion of the technology/prototype development that DRDO places on the AOP.

And whereas, M/s ----- shall be the Lead member of the Consortium for and on behalf of the Consortium till completion of the project under the MoU.

And whereas The Parties of AOP hereby undertake that Lead Member shall enter into a MoU with DRDO for performing all its obligations as the Development Agency in terms of the contract.

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 “\_\_\_\_\_” under \_\_\_\_\_described in depth in the finalized/revised Detailed Project Report (DPR) submitted by the DA, are annexed as Annexure ‘A’ to this MoU 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 INR \_\_\_\_\_ ( \_\_\_\_\_Only) for supporting the Project.

WHEREAS out of the total sanctioned amount of grant, DRDO has allocated an amount aggregating to INR\_\_\_\_\_( \_\_\_\_\_ Only) as per the payment terms agreed and Annexed in Annexure ‘B’ to the Development Agency, during the course of the project period of \_\_\_\_ months, from the effective date of MoU.

**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, 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 MoU

## **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 MoU, if so required. Company 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) and has passed an order leading to some legal action against DA, in that context this MoU 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 misutilized /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 regards. 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 imposts, 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 MoU, the following terms shall have the indicated meanings:

MoU	shall mean this MoU and its Annexure and including all subsequent amendments agreed to in writing by both Parties.
Effective Date of MoU	shall mean Effective Date of MoU i.e., the date from where the containing of time schedule commences towards achievement of MoU obligations of the Parties.
Development Agency (DA)	shall mean Company/ Association of Person (AoP)/ Consortium/ R&D/Academic Institutions as per the context.

Parties / Party	shall mean the Development Agency/ Association of Person (AoP)/ Consortium and/or DRDO as per the context.
Third Party	shall mean any Party other than the Parties to the MoU .
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 MoU as well as any accepted modification of such technical specifications.
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 MoU signature or out of the course of the MoU 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 MoU 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
- B) Project ( Goals/Aim/Objective)

**5. Scope of the Work defined by DA** The scope of the work to be carried out by Development Agency under this project is defined as given below:

- i. Detailed specification for the project
- ii. Simulation and demonstration
- iii. Schematic design
- iv. Thermal and SI analysis
- v. Design Analysis



- vi. Design document and flowcharts
- vii. Development of various components as listed:
  - a) A
  - b) B
  - c) C
  - d) D .....
- viii. Fabrication
- ix. Assembly
- x. Testing ,evaluation and certification
- xi. Demonstration
- xii. Delivery

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

- A) Sub Project-1
    - i. Milestone I
    - ii. Milestone-II
    - iii. Milestone-III + .....
  - B) Sub Project-2
    - i. Milestone I
    - ii. Milestone-II
    - iii. Milestone-III +.....
  - C) Sub Project-3 + .....
- i. Milestone I
  - ii. Milestone- II
  - iii. Milestone-III + .....

**7. Deliverables** Deliverable(s) for the project is annexed at Annexure ‘D’.

**8. Financial Arrangement**

The financial arrangements under this MoU are as here under

- A) The total estimated cost of the Project is Rs. \_\_\_\_\_lakhs(Rupees \_\_\_\_\_) only. The project cost will be jointly funded by DRDO and the Development Agency in the ratio XX:XX without violating any condition of the TDF Scheme/ GOI Rules. The contribution of DRDO is Rs\_\_\_\_\_ lakhs (Rupees \_\_\_\_\_) as grant-in-aid. The contribution of Development Agency is Rs\_\_\_\_\_ lakhs (Rupees \_\_\_\_\_) on the terms and conditions detailed in this MoU.
- B) Development Agency is agreed to receive the payment either reimbursement mode or advance mode (choose one).
- C) The first installment of grants-in-aid will be released to Development Agency by DRDO for Rs ..... Lakhs at the time of sanction / after signing of the MoU and bond in a prescribed format.
- D) The remainder of the grant amount will be available 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. Fund installments will be released on completion of approved milestones as agreed in the Annexure 'C'.
- 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 (Escrow/ current/ saving) held with nationalized scheduled bank on pro rata basis opened by Development Agency. Release of fund 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 ..... 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 in the ratio of XX:XX or only with DRDO in certain exceptional cases.
- iv. Each party shall bear the cost of filing IPR in proportion to their ownership ratio of XX:XX.
- v. It is the responsibility of DA and DRDO to protect and maintain any IPR rights that may result from the project.

- vi. 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.
- vii. 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.
- viii. Notwithstanding any provisions mentioned above or any future licensing MoUs, 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.
- ix. 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.
- x. 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.
- xi. The term of the above provision shall survive the termination of the Contract.
- xii. If any issue arises then it should be resolved based on the IPR policies.

## **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 MoU 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 MoU;
- xxiv. In case DRDO decides to abandon the project or 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 MoU, the terms and conditions are subject to change as decided by the Government of India from time to time, \_\_\_\_\_ agrees to abide and honor such directions and decisions of Government of India.

## **11. Roles and Responsibility of DRDO**

- i. DRDO will timely approve & provide grants for the project, as outlined in Annexure 'B' as required;
- ii. DRDO would timely release the grants to Development Agency in the designated Project Account for execution of the project depending upon the financial, technical and physical progress of the project and recommendations of the Project Monitoring and Mentoring Group/ Technical Committee/ Empowered Committee;
- iii. DRDO shall nominate one nodal officer for this project
- iv. DRDO shall facilitate, coordinate, monitor and review the activities of the projects through Project Monitoring and Mentoring Group (PMMG) for smooth functioning of the project etc
- v. Facilitate and ensure the holding of Project Monitoring and Mentoring Group meetings, as far as possible, at least once in six months or as and when required to monitor the project;
- vi. DRDO will issue the milestone achievement certificate and project completion certificate for the purpose of release of installment
- vii. DRDO shall take necessary steps to implement the decisions of the PMMG including extension / curtailing / modification of outputs, milestones, re-appropriation of grants, and targets;
- viii. In case of request of cost overrun/ time overrun in the project as received from Development Agency, Empowered Committee may consider approval of cost overrun/ time overrun based on the merit of the case

## **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 MoU.
- 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 'D'.
- ii. DA will submit the request for the project closure to DRDO on achievement of outcomes as defined in Annexure 'D'.
- 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 total amount paid to the DA(s) shall be written off with the approval of the competent authority.
- 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 MoU, 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 MoU; 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 MoU by DRDO
  - a. No further disbursement shall be made by DRDO.
  - b. Development Agency shall be liable to return immediately the amount of grants already availed from DRDO with interest at the rate of 10 (ten) percent per annum within 30 (thirty) days of termination of the MoU

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 MoU

- vii. In case of failure to repay, without prejudice to any other rights under this MoU, 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 Development Agency:** Development Agency may terminate this MoU upon 30 calendar days' notice in writing after occurrence of any of the events specified in paragraphs below:
  - (a) If, DRDO is unable to conduct the Project Monitoring and Mentoring Group meeting within reasonable time on receiving of request from Development Agency.
  - (b) If DRDO fails to pay any monies due to the Development Agency pursuant to this arrangement within reasonable time after receiving written notice from the Development Agency that such payment is overdue subject to satisfactory progress of the project measured as per Project Schedule by DRDO and submission of documentation related to satisfactory utilization of the fund already released.

The termination of this MoU shall not prejudice or affect in anyway, the rights and benefits accrued or liabilities and duties imposed on the Parties of this MoU.

## 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**

- a) 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 Legal Affairs (“Law Secretary”), 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 MoU. However, expenses occurred by each party in connection with preparation, presentation should be borne by the parties itself.

- b) 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 MoU 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 MoU 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. Governing Laws**

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

## **19. Notices and Jurisdiction**

- i. All notices and other communications required to be served on any of the parties under the terms of this MoU 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 MoU including any matter arising out of the arbitration proceedings or any award made therein.

## **20. Amendments to the MoU**

No amendment or modification of this MoU shall be valid unless the same is made in writing by both the parties to the MoU or their authorized representatives and specifically stating the same to be an amendment of this MoU. The modifications /

changes shall be effective from the date on which they are made / executed unless otherwise agreed to.

## 21. Severability

In case any one or more of the provisions or parts of a provision contained in this MoU shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this MoU; and this MoU shall, to the fullest extent lawful, be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein.

## 22. Confidentiality

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

### Parties:

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

### PARTIES TO THE MOU

<b>For &amp; on behalf of Defence Research and Development Organization (First Part)</b>	<b>For &amp; on behalf of Name of the Development Agency(Second Part)</b>
Signature:	Signature:
Name:	Name:
Designation:	Designation:
SEAL	SEAL
Date :	DATE:

### WITNESS:

Signature:	Signature:
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Name:	Name:
DRDO	Address:

Annexure 'A' : Finalized/ Revised Detailed Project Report

Annexure 'B' : Payment terms linked with milestone wise

Annexure 'C' : Milestone

Annexure 'D' : Deliverables