

**AFFILIATED TEST BED  
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT  
BETWEEN  
THE RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION  
AND  
TBD ORGANIZATION**

**TITLE:** Memorandum of Cooperation (MOC) to support the development and deployment of infrastructure components using 5.9GHz DSRC and other Vehicle-to-Infrastructure (V-I) wireless communication in Research Test Beds.

**PURPOSE:** The purpose of this and other similar memoranda is to create an affiliation of 5.9GHz DSRC infrastructure device makers, operators of V-I installations, and developers of applications that use V-I communication that will harness their abilities to move the technology toward full deployment by creating an organizational structure around this research, sharing deployment lessons learned, developing a common technical platform, and expanding test bed options for users.

The Research and Innovative Technology expects to enter into a number of these agreements with public, private, and academic organizations to create the affiliation of test beds. All agreements will give the named organization an equal ability to participate in the affiliation. These agreements will help to facilitate the sharing of tools and resources across all facilities to bring about the future deployment of 5.9GHz DSRC and other V-I wireless communication technology.

**PARTIES:** (a) **FEDERAL AGENCY:**  
Research and Innovative Technology Administration  
United States Department of Transportation.

(b) **COLLABORATOR:**  
TBD Organization  
Street Address  
City, State, Country, Postal Code.

**DURATION:** Three (3) years.

**COMMENTS:** Please e-mail comments to Walton Fehr  
ITS JPO Program Manager for System Engineering  
Walton.fehr@dot.gov  
Please submit comments by January 11, 2013

## INTRODUCTION

This MOC is entered into pursuant to the authority contained in 49 U.S.C. 112(e) between TBD Organization (the “Collaborator”), an XYZ entity [1)for-profit, 2)not-for-profit, 3)governmental, or 4)academic], and the Research and Innovative Technology Administration (“the Government” or “RITA”), of the United States Department of Transportation (US DOT) and located at 1200 New Jersey Avenue SE, Washington, DC 20590.

## AUTHORITY

This MOC allows the parties to team together to share technical expertise and resources (including intellectual property) on mutually beneficial research and development in order to improve, promote, or further a certain technological development or to solve a certain technological problem. Such teaming effort allows the parties to share the risks and benefits of collaborative research and development, to promote technology transfer, and to advance commercialization of certain technology.

**WHEREAS**, TBD Organization is a [organization] with expertise in the design, production and support of innovative solutions in the development, installation, and operation of infrastructure equipment using 5.9GHz DSRC and other V-I communication;

**WHEREAS**, the Research and Innovative Technology Administration with a mission to improve the nation’s transportation systems;

**WHEREAS**, the parties, RITA and TBD Organization, seek to collaborate deploying infrastructure devices using 5.9GHz DSRC and other V-I communication;

**NOW THEREFORE**, pursuant to the 49 U.S.C. 112(e), the parties enter into this MOC and agree as follows:

## ARTICLE I – DEFINITIONS

- 1.1 “Affiliation” means a group of organizations united in action or interest.
- 1.2 “Agreement” means this memorandum of cooperation.
- 1.3 “Collaborator” means any party to this Agreement, other than RITA.
- 1.4 “5.9GHz DSRC Infrastructure Equipment” means any device intended to be operated primarily in a fixed location which contains 5.9GHz DSRC radio equipment as one of its means of communicating with other devices.
- 1.5 “Collaborator Equipment” means personal property, tools, apparatus, devices, and technology (including computer software), wherever located, that Collaborator provides for use in connection with the activities to be performed under this Agreement.

- 1.6 "Collaborator Proprietary Data" means data derived through use of any device marked proprietary or confidential by the Collaborator.
- 1.7 "Collaborator Personnel" means any employee, consultant, or other individual (including contract personnel of the Collaborator) acting under the direction or authority of the Collaborator and/or its contractor.
- 1.8 "Computer Software" or "Software" means any combination of associated computer instructions and computer data definitions, including computer programs and computer databases, required to enable computer hardware to perform computational or control functions.
- 1.9 "Contractor" or "Federal Contractor" means any person, group, proprietorship, partnership, company, corporation, other business (whether non-profit or for profit), educational institution, or other entity that possesses a contract with the Government, though, *in terms of this MOC*, primarily means any person, group, proprietorship, partnership, company, corporation, other business (whether non-profit or for profit), educational institution, or other entity that possesses a contract with RITA.
- 1.10 "Contractor personnel" or "Federal Contractor personnel" means any person, officer, agent, consultant, or other individual employed by a Contractor and who acts under the direction or authority of the Contractor pursuant to a specific Federal contract.
- 1.11 "Copyright" means the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of "Subject Data" (including "Computer Software").
- 1.12 "Data" means recorded information, including technical information, schematics, computer software, and documentation, regardless of the form or media on which it may be recorded.
- 1.13 "Day" means, unless otherwise indicated, a calendar day.
- 1.14 "Facility" means various physical spaces located within RITA's premises.
- 1.15 "Government" or "Federal Government" means the Government of the United States of America, though, in terms of this MOC, primarily means RITA.
- 1.16 "Government personnel" means any employee, officer, agent, consultant, or other individual (excluding Federal Contractor personnel) acting under the direction or authority of the Federal Government.
- 1.17 "Government Purpose License Rights" or "GPLR" means, with respect to Subject Data, the right to use, modify, reproduce, prepare and display derivative works, or disclose data, in whole or in part and in any manner, for Government purposes only, and to have or permit other third parties to do so for the Government's purposes only, but do not include the right to have or permit others to use the data for commercial purposes.

- 1.18 “Invention” means any creation, method, device, process, discovery or development (including computer software), which is or may be patentable under Title 35 of the United States Code. (See definition for “subject invention” at below paragraph 1.24)
- 1.19 “Made” when used in connection with an invention, means the conception or the first actual reduction to practice of a particular Invention.
- 1.20 “Patent Application” means the United States or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination of any particular invention.
- 1.21 “Proprietary Information” means any information which embodies trade secrets developed at private expense, or any business, commercial or financial information that is privileged or confidential, provided that such information:
- (a) Is identified as “proprietary information” by labels or markings designating the information as proprietary;
  - (b) Has not been developed independently by any person who had no access to the “proprietary information;”
  - (c) Is not known or available from other sources without obligations concerning its confidentiality;
  - (d) Is not already available to the Government without obligations concerning its confidentiality;
  - (e) Has not been made available by the owner(s) of the information to others without obligations concerning its confidentiality; and
  - (f) Is not required to be disclosed by law or by a court of competent jurisdiction.
- 1.22 “Sensitive Data” or “Sensitive Information” means privileged, Collaborator Proprietary Data, or Proprietary Information which, if compromised (e.g., through unauthorized disclosure, alteration, corruption, loss, or misuse) with respect to confidentiality, integrity, and/or availability could have a material adverse effect on the owner’s interests, the conduct of agency’s programs or collaborator’s business, or the privacy to which individuals are entitled.
- 1.23 “Subject Data” means any data or information first produced whether solely by either party to this Agreement, or jointly by the parties of this Agreement, in the performance of work under this Agreement.
- 1.24 “Subject Invention” means any invention made in the performance of work under this Agreement whether accomplished jointly by Government Personnel and Collaborator Personnel or solely by Collaborator Personnel provided “subject invention” derives from or is based on collaborative activities.
- 1.25 “Test Bed” means any installation where 5.9GHz DSRC infrastructure devices or other V-I communication equipment may be installed and operated.
- 1.26 “Third-party Collaborator” means any party or entity with whom the Government or the Collaborator has entered into a contract or agreement (including another MOC or an

interagency or intraagency agreement) involving work performed in connection with or related to activities under this Agreement.

- 1.27 “Unlimited Rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

## **ARTICLE II – PURPOSE, SCOPE, AND DURATION**

- 2.1 **Purpose.** The purpose of this Agreement is to give the named organization an equal ability to participate in an affiliation 5.9GHz DSRC infrastructure device and other V-I communication installation operator Test Beds.
- 2.2 **Scope.** Under this Agreement, the parties shall collaborate in research and share resources (e.g. expertise, knowledge, data, equipment, facilities) as needed to support the specific tasks given to the affiliation of Test Beds. (See Article III herein. See also the Specific Task Statement of Work at Attachment B).
- 2.3 **Term of Agreement.** This Agreement shall become effective on the 31st day after the date of the RITA Administrator’s signature. Further, this Agreement shall continue in effect for a duration of three (3) years from the effective date, or until terminated in accordance with Article VI herein, whichever date is earlier.

## **ARTICLE III -- CONTRIBUTIONS OF THE PARTIES**

- 3.1 **Contributions of the Government.** Under a MOC, the contributions of the Government are limited to providing personnel, knowledge, expertise, intellectual property, services, equipment, facilities, and/or other resources. Consistent with these limitations, during the term of this Agreement, RITA shall:
- 3.1.1 Provide organizational support. The Government will organize Regular Web Meetings and provide staff support to create agendas for and records of the meetings.
- 3.1.2 Create statements of details for specific tasks that the Affiliation will undertake. The contributions of the parties related to the specific task will be included in the statement.
- 3.1.3 Create and/or publish and distribute reports, reviews and other data pertinent to the research performed under this Agreement, provided that any such publication may not, without a Collaborator’s prior written consent, disclose any Collaborator’s Proprietary Data.
- 3.1.4 Provide or establish a public/private key method where Sensitive Data (see paragraph 1.25) will be encrypted via a public key by the Government.

- 3.1.5 Provide to Collaborator the sole private key to access and decrypt the Sensitive Data as it is generated and stored up to three calendar months. Sensitive Data older than three (3) calendar months from the time of collection will be deleted without notice from the Government-owned network.
- 3.1.6 Make Subject Data available to the Collaborator upon request.
- 3.1.7 Be responsible for the cost of its personnel's attendance at, and participation in, meetings, teleconferences, and other activities relating to work under this Agreement.
- 3.1.8 Permit Collaborator to access its equipment at the ITS Joint Program Offices' Test Bed facilities in Southeast Michigan and Oak Ridge, Tennessee as may be necessary.
- 3.1.9 Perform any other task as consistent with or identified in the Statement of Work, appended as Attachment B hereto, or as may be identified in subsequent work plans.
- 3.2 **Contributions of the Collaborator.** During the term of this Agreement, the Collaborator shall:
  - 3.2.1 Assign personnel to attend the Regular Web Meeting.
  - 3.2.2 Participate in at least one Specific Task by performing any other task as consistent with or identified in the sample Specific Task Statement of Work, appended as Attachment B hereto, or as may be identified in subsequent work plans.
  - 3.2.3 Suggest to RITA topics to be considered for Specific Task Statements of Work.
  - 3.2.4 Assist RITA in the creation, publication and distribution of reports, reviews and other data pertinent to the research and analysis performed under this Agreement.
  - 3.2.5 Be responsible for the cost of its personnel's attendance at, and participation in, meetings, teleconferences, and other activities relating to work under this Agreement, as applicable.
  - 3.2.6 Establish and implement a Collaborator Subject Invention reporting policy, as may be applicable.
  - 3.2.7 Report all Subject Inventions to RITA within sixty (60) days after the disclosure or identification of the Subject Invention, or within thirty (30) calendar days after expiration or termination of this Agreement, whichever is earlier.

3.3 **Additional Contributions of the Collaborator.** In addition to the requirements identified in above-paragraph 3.2, the Collaborator may contribute equipment, material, supplies, facilities, “in-kind” services and funds in connection with the work under this Agreement.

3.4 **Joint Contributions of the Government and the Collaborator.** During the term of this Agreement, the parties shall:

3.4.1 Jointly prepare, for the benefit of each other, quarterly written reports that shall describe the progress of the work under this Agreement, problems encountered, and results obtained. The progress of the work shall be subject to joint review by the parties. The parties shall jointly prepare such report in a format that is accessible to and useable by both parties. Requirements for additional reports may be identified in the Statement of Work and/or the Work Plan(s).

3.4.2 Jointly prepare, for the benefit of each other, a Final Report for each Specific Task the Collaborator participates in that shall:

- (a) describe the work and results accomplished over the life of this Agreement;
- (b) include a listing of all copyrights, patents and inventions, if any, resulting from all work under this Agreement; and
- (c) specify disposition of all Subject Data, Subject Inventions, and other intellectual property resulting from work under this Agreement.

The parties shall complete such Final Report no later than the expiration or termination of this Agreement, with a written draft of such Final Report due no later than thirty (30) days before the expiration or termination of this Agreement. In the case of a termination (see Article VI) that provides less than thirty (30) days before the effective date of termination, the parties shall prepare a written draft of the Final Report as soon as a practicable.

3.4.3 Each party to this Agreement will retain at least one copy of such Final Report required under paragraph 3.4.2.

## **ARTICLE IV -- MANAGEMENT, SECURITY, AND SAFETY**

### **4.1 APPOINTMENT OF MANAGERS**

4.1.1 **Appointment Officials.** The Director of the ITS Joint Program Office and the Collaborator have each appointed or otherwise designated a Program Manager and a MOC Manager (see Attachment A hereto.) Those persons who may appoint, designate, update or otherwise change its Program Manager or MOC Manager are:

for RITA:

- the Director of the ITS Joint Program Office

- ...

for the Collaborator:

- Senior Director,
- Director,

4.1.2 **Change in Manager(s).** At any time, any party may unilaterally update or otherwise change its appointment or designation of its Program Manager and/or its MOC Manager to this Agreement. Such party seeking to update or otherwise change its appointment or designation of its Program Manager and/or MOC Manager shall give *written* notice of the change to the other party to this Agreement. Such change may be incorporated by revision to Attachment A hereto, and does not require an amendment (see Article IX) to the MOC. However, *within 30 days* of a change of a Program Manager or a MOC Manager, the current RITA MOC Manager or RITA Program Manager shall copy such change to ITS/JPO Program Director.

4.1.3 **Unavailability of Manager.** If any MOC Manager or Program Manager resigns, retires or otherwise leaves the employment of RITA or the Collaborator, or is absent more than 30 consecutive days from the daily employment or oversight of RITA or of the Collaborator, then the Appointment Official for that MOC Manager or Program Manager (see paragraph 4.1.1) shall designate a successor MOC Manager or successor Program Manager. Further, if any MOC Manager or Program Manager is re-assigned to or assumes other duties, responsibilities, or employment position which is inconsistent with or otherwise excludes remaining as the MOC Manager or Program Manager, the Appointment Official for that MOC Manager or Program Manager (see paragraph 4.1.1) shall designate a successor MOC Manager or successor Program Manager.

## 4.2 MOC MANAGEMENT.

4.2.1 **Administration of Agreement.** Together, the MOC Managers, with oversight by the Program Managers, shall jointly manage and administer this Agreement. MOC Managers are responsible for ensuring that the parties actively and diligently pursue the purpose of and work under this MOC. The MOC Managers shall cooperate with each other and shall meet or conference periodically to review the ongoing collaborative activities.

4.2.2 In the temporary absence (30 consecutive days or less) of a MOC Manager, the corresponding Program Manager assumes responsibility for managing and administering this Agreement with the remaining MOC Manager.

4.2.3 From time to time within the period of this Agreement, and with input and agreement from both parties, the parties to this MOC, may add *in scope* work plan(s) to pursue additional work supporting the purpose of this MOC and its Statement of Work (Attachment B). In-scope work shall not require any



additional approval or concurrence by RITA Administrator. (See paragraph 9.15.2.)

4.2.4 RITA MOC Manager shall endeavor to resolve any disagreements arising under this Agreement. Any dispute RITA MOC Manager cannot resolve shall be determined and resolved in accordance with Article VII herein.

#### 4.3 **SECURITY AND ACCESS TO RITA.**

##### 4.3.1 **Access to RITA Campus and Facilities**

4.3.1.1 The RITA MOC Manager shall assist Collaborator, as necessary, in obtaining access for Collaborator personnel to RITA facilities.

4.3.1.2 Collaborator will advise all Collaborator personnel who require access to RITA facilities that in order to gain access they may be required to provide their social security numbers, fingerprints, as well as any other information deemed pertinent by RITA Security prior to gaining access to RITA. Access may be “escorted access” or “unescorted access” as granted by the pertinent Security official.

4.3.1.3 While on a RITA campus, Collaborator’s personnel are subject to and shall comply with all security regulations, directives, orders, and instructions promulgated by or otherwise applicable to RITA, and RITA populace. A violation of any security regulation, directive, order, or instruction may be grounds for immediate eviction of those Collaborator personnel from the campus of RITA.

4.4 **Safety and Accident Prevention.** At all times, Collaborator personnel and RITA personnel, and others working under this Agreement are subject to and shall comply with all applicable safety regulations, directives, orders, and instructions promulgated by or otherwise applicable to RITA populace. Collaborator personnel and RITA personnel shall take all reasonable steps and precautions to prevent any accident and to preserve the life and well-being of Collaborator personnel, RITA personnel and the public. A violation of any applicable safety regulation, directive, order, or instruction may be grounds for immediate removal of the violator from a RITA campus.

### **ARTICLE V -- INTELLECTUAL PROPERTY**

#### **5. Marking, Ownership, Access, and Publication.**

5.1 Marking or Labeling of Data. A party providing Proprietary or Sensitive Information under this Agreement shall mark, or label appropriately or otherwise identify any Proprietary Information or Sensitive Information that it furnishes to the other party prior to providing said Proprietary Information or Sensitive Information.

5.2 Disclosure of Information. The parties agree not to knowingly disclose to others who are not a party to this Agreement, or make use outside of this Agreement of any Proprietary or Sensitive Data or Information belonging to the other party of this Agreement, provided that (1) the data or information is appropriately marked, labeled or identified, and (2) the data or information was obtained as a result of activities under this Agreement. Such markings necessarily include, but are not limited to, the data and information being marked as “Proprietary Information”, “Sensitive Data”, or “Sensitive Information.”

5.3 Ownership/Title.

5.3.1 Existing Property. The Government and Collaborator, respectively, shall each retain title to all its pre-existing data, property, facilities, equipment, or other resources made available for work under this Agreement.

5.3.2 Subject Data and Subject Inventions.

5.3.2.1 Each party shall have title to all Subject Data and Subject Inventions developed or generated entirely by that party.

5.3.2.2 All Subject Data and Subject Inventions developed jointly by the Government and Collaborator under this Agreement shall be the property of both the Government and the Collaborator (co-ownership).

5.4 Rights in Data.

5.4.1 The Government shall have Unlimited Rights in all Subject Data generated under this Agreement by the Collaborator that is not Proprietary Information of the Collaborator.

5.4.2 The Government shall have Government Purpose License Rights in data developed by Collaborator and shared under this Agreement.

5.5 Patents.

5.5.1 Disclosure of Patent Rights. Collaborator and RITA shall disclose to one another, in writing, each Subject Invention, within sixty (60) days after the inventor(s) first disclose the Invention to the person(s) responsible for its patent matters. Each party will exercise reasonable diligence to identify any Subject Inventions and inform its personnel of the need to report possible inventions promptly.

5.5.2 Allocation of Patent Rights.

5.5.2.1 In those cases where research at the Facility is accomplished wholly with Federal funding, and the resulting Subject Invention is developed solely by the Government, the parties agree that the Government retains the entire right, title, and interest throughout the world to such Subject

Invention, and may grant to Collaborator a nonexclusive license in that field of use or geographical areas in which Collaborator has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The Government shall retain Unlimited Rights in any Subject Inventions it solely develops.

- 5.5.2.2 In those cases where research at the Facility is accomplished in part with Federal funding, and the resulting Subject Invention is developed jointly by the Government and Collaborator, the parties agree that both parties retain the entire right, title, and interest throughout the world to such Invention, and Collaborator may elect to obtain an exclusive license to joint Subject Invention in accordance with paragraph 5.6 herein. Such election shall be in writing. The Government shall retain a nonexclusive, irrevocable, worldwide, royalty-free right to practice or use and have practiced or used the licensed joint Subject Data or Subject Invention for governmental purposes by or on behalf of the United States and by or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.
- 5.5.2.3 In those cases where research at the Facility is accomplished with no Federal funding, and the Subject Invention is developed solely by Collaborator, the Collaborator, at its election, may retain the entire right, title, and interest throughout the world to such Subject Invention. Should Collaborator retain title to any such Subject Invention, the Government shall have and retain a nonexclusive, irrevocable, worldwide, royalty-free license to practice and have practiced the licensed Subject Invention or Subject Data for governmental purposes by or on behalf of the United States and by or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States. Should the Collaborator elect not to retain the entire right, title and interest to the Subject Invention, Collaborator shall be entitled to an exclusive license in accordance with paragraph 5.6 herein. In either case, such election shall be in writing.
- 5.5.2.4 Filing of Patent Applications. The parties shall mutually agree on which party shall file a patent application on jointly developed Subject Inventions. The party not filing a patent application will fully cooperate with (including executing all necessary documents and obtaining the cooperation of its personnel in executing such documents) the filing party in the preparation and filing of any patent application based upon a jointly developed Subject Invention. Both parties shall exercise their best efforts to timely file a patent application or to enable the other to timely file a patent application in accordance with Title 35 of the United States Code or comparable provision of foreign law.

5.5.2.5 Patent Expenses and Copies. All expenses related to or arising from the filing of any patent application, including any post-filing, post-patent fees, legal fees, and any other incidental or miscellaneous expense shall be borne by the party filing the patent application. Each party shall provide the other party with a copy of each patent application it files on any Subject Invention. If RITA personnel and Collaborator Personnel jointly developed the Subject Invention, each party shall have the right to inspect and make copies of all documents retained in the official patent application or other related files of the other party.

## 5.6 License, and Royalties

5.6.1 Each party to this MOC, by signature at the end of this MOC, certifies that its personnel (Collaborator Personnel and Government Personnel, respectively) are not encumbered by any assignment of title/ownership, royalties, and/or of any other right that would bear upon or affect any title/ownership, royalties and/or any of the rights granted within this MOC.

5.6.2 Exclusive License. Collaborator reserves the right (“reservation of right period”) to obtain from the Government an exclusive license to use or practice the joint Subject Data or the joint Subject Invention in one or more lines of business at a reasonable royalty rate and upon such other terms to be negotiated in good faith between RITA and Collaborator. This reservation of right period shall expire within sixty (60) calendar days after disclosure or identification of the joint Subject Data or joint Subject Invention, or within thirty (30) calendar days after expiration or termination of this Agreement, whichever is earlier. Collaborator agrees that Collaborator shall not receive such exclusive license unless Collaborator notifies, in writing, the Government of its desire to obtain an exclusive license and negotiates with the Government such license agreement. This written notice (one copy each) must be submitted to RITA MOC Manager and RITA Director within the “reservation of right period.” Within a reasonable period after RITA receives such written notice, the parties shall negotiate terms and conditions of the license agreement (see below paragraph 5.6.5). This license and license agreement shall grant the Government a nonexclusive, irrevocable, worldwide, royalty-free right to practice or use and have practiced or used the licensed joint Subject Data or Subject Invention for governmental purposes by or on behalf of the United States and by or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

5.6.3 In the event that a Collaborator does not seek an exclusive license within sixty (60) calendar days after disclosure or identification of the joint Subject Data or joint Subject Invention, or within thirty (30) calendar days after expiration or termination of this Agreement, whichever is earlier, the Collaborator shall lose its right to obtain an exclusive license.

- 5.6.4 March-In Rights. If Collaborator does not timely seek an exclusive license and subsequently loses its right to an exclusive license for any joint Subject Invention (see above paragraph 5.6.3), RITA shall have the right to request the Collaborator grant a nonexclusive, partially exclusive or exclusive license in any field of use to any responsible applicant(s) based on terms that are reasonable under the circumstances. If Collaborator declines a request to grant such a license, then RITA, on behalf of the United States Government, may grant such a license to the applicant(s) provided the action is necessary because the Collaborator has not taken, or is not expected to take action within a reasonable time to achieve practical application of the joint Subject Invention in such field of use for which the applicant(s) request a grant of license.
- 5.6.5 Collaborator may be granted a nonexclusive royalty-free license throughout the world in Subject Data or Subject Invention to which the Government has title.
- 5.6.6 Confirmatory Nonexclusive License Agreement. For each nonexclusive license granted under this Agreement, each party shall provide to the other party a confirmatory license agreement to be negotiated in good faith between RITA and Collaborator.
- 5.6.7 Royalties for Joint Research. Collaborator (including Third-Party Collaborator) shall be required to pay to RITA fifty percent (50%) of any royalties (that is, royalties less cost and fees paid or “net royalties”) or other income received by Collaborator or its affiliates from the licensing, assignment, sale, lease and/or rental or other disposition of any copyrighted and/or patented work based on the results of work performed at the Facility in which there is a RITA co-author or co-developer, except where such disposition is to the United States Government. Payments shall be payable by Collaborator to RITA not later than sixty (60) days after the calendar year ending December 31 in which the Collaborator receives the royalties or other income.

## 5.7 Copyright.

- 5.7.1 Collaborator may establish a copyright in scientific and technical articles based on or containing data first produced by both parties in the performance of this Agreement, and published in academic, technical journals, professional journals, or similar works. However, before publication, Collaborator shall provide a courtesy copy of the proposed publication in accordance with paragraph 5.8 herein. For all other data first produced by both parties in the performance of this Agreement, but not published in academic, technical journals, professional journals, or similar works, Collaborator shall request from RITA signatory (or his successor) written permission in order to assert copyright in such data. If granted written permission to assert copyright to this data, Collaborator shall affix not only the applicable copyright notice (see 17 U.S.C. 401 et. seq.), but also an acknowledgment of Government collaboration and/or sponsorship of the data. In either case, after the copyright is obtained and the data is published or otherwise available for dissemination, Collaborator shall provide two copies of

such copyrighted data, materials, document and/or publication to the Government (see paragraph 5.7 herein).

- 5.7.2 For data other than computer software, the Collaborator grants to the Government and others acting on its behalf, a nonexclusive, irrevocable, worldwide, royalty-free license in such copyrighted data to reproduce the copyrighted data or materials, in part or in whole, in a paper, electronic or digital format, as well as to prepare derivative works from the copyrighted data or material, distribute copies of such reproduced or derivative works to the public, and perform publicly and display publicly such reproduced or derivative works, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a nonexclusive, irrevocable, worldwide, royalty-free license in such copyrighted computer software to reproduce the copyrighted computer software, as well as to prepare derivative works from the copyrighted computer software, and perform publicly and display publicly (but not to distribute copies to the public) such reproduced or derivative works, by or on behalf of the Government.
- 5.7.3 The Collaborator shall not knowingly incorporate any data, writing or work copyrighted, licensed or patented by any third party non-Collaborator into any joint Subject Invention, unless the Collaborator has acquired for RITA, or RITA otherwise obtains, a nonexclusive, irrevocable, worldwide and royalty free license to reproduce, publish, or otherwise use, and to authorize others to use the work or writing for Government purposes. This provision does not require RITA to obtain such license to permit incorporation of the third party non-Collaborator copyrighted, licensed or patented data, writing or work into a joint Subject Invention.
- 5.7.4 The Collaborator shall be responsible for any losses that result from or arise out of the negligent use of or breach of this Agreement Article V provisions by its employees or agents regarding the publication, translation, reproduction, delivery, use, practice, or disposition of any Subject data, Subject invention, or protected Proprietary or Sensitive Information provided under this Agreement notwithstanding that this provision shall not be deemed a waiver by Collaborator of any immunities to which it may be entitled under applicable Federal, State, local or other laws.

## 5.8 Publication.

- 5.8.1 The parties agree to confer and consult prior to the publication of Subject Data to assure that no Proprietary Information is released.
- 5.8.2 Prior to submitting for outside review any manuscript that contains Subject Data or results of research and/or development under this Agreement, the Government shall be offered a reasonable opportunity to review such proposed publication. If no such outside review is sought, made, or obtained, the Government shall be

offered a reasonable opportunity to review such proposed publication before Subject Data is published.

- 5.8.3 Collaborator shall coordinate with and obtain concurrence from the RITA Program Manager before publication for all proposed publications, presentations or use of Subject Data for public release to ensure that no Sensitive Information or Sensitive Data are included in the proposed publications, presentations, or use. In any case, Collaborator shall not publish or otherwise disclose Sensitive Information or Sensitive Data.
- 5.8.4 Notwithstanding rights granted to Collaborator elsewhere in this Agreement, RITA may submit for publication the results of research and/or development work performed under this Agreement. Depending on the extent of contributions made, Collaborator Personnel may be cited as co-authors. In the event RITA wishes to submit research and/or development results for publication, before publication, the Government will notify Collaborator's MOC Manager. In no event, however, shall the name of Collaborator or any of its trademarks and/or trade names be used in any publications without Collaborator's prior written consent.
- 5.8.5 Each party shall prominently mark each written work resulting from performance of work under this Agreement with the words (verbatim):

This work was created in the performance of a Cooperative Research and Development Agreement between TBD Organization(s) and the Research and Innovative Technology Administration of the United States Department of Transportation.

5.9 Use of the Affiliated Test Bed mark.

- 5.9.1 Parties to this agreement can identify themselves as a member of the Affiliated Test Beds.
- 5.9.2 Parties to this agreement have the right to use the Affiliated Test Bed mark on documents, promotional materials, and web sites.

**ARTICLE VI -- TERMINATION**

- 6.1 **Bilateral Termination:** The parties may terminate this Agreement at any time by written mutual consent evidenced as an amendment to this Agreement.
- 6.2 **Unilateral Termination:** Either party may unilaterally terminate this Agreement by giving ninety (90) days' notice, in writing, to the other party to this Agreement.
- 6.3 ***Only the signatories to this Agreement*** (or other authorized person by succession) can terminate this Agreement before expiration of the term of the Agreement. ***No Program***

***Manager or MOC Manager has the authority to terminate this Agreement at any time.*** However, the Program Manager and/or MOC Manager may recommend to a signatory that termination is in the best interest of the party.

6.4 The termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination. In the event of termination by either party, each party shall be responsible for its own costs incurred through the date of termination, and for its own costs related to the termination that is incurred after the date of termination.

6.5 Maintenance and Disposition of Property.

6.5.1 During the term of this Agreement, Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, shipping, and/or disposal of all equipment or property to which it retains title. Disposal of property will be in accordance with applicable disposal laws and regulations.

6.5.2 The Government may request that Collaborator equipment remain as part of the product or system in which it has been installed. The parties may confer regarding the value of said Collaborator Equipment, and address the value and any compensation thereof under separate agreement or contract. If Collaborator agrees to leave the Collaborator Equipment in place, Collaborator shall relinquish all claim of title to said Collaborator Equipment, and shall have no further responsibility to maintain or replace it.

## ARTICLE VII -- DISPUTES

7.1 **Dispute Resolution.** Any dispute arising under this Agreement that is not disposed of by agreement between the MOC Managers, after all reasonable efforts have been exhausted to reach an amicable settlement, shall be submitted for resolution to RITA signatory (or his/her designee) and the Collaborator's signatory (or his/her designee). The RITA Director's decision shall be the final disposition of any dispute pertinent to the use of the Facility. The joint decision of the RITA signatory (or designee) and the Collaborator's signatory (or designee) shall be the final disposition of any dispute, excluding any dispute pertinent to intellectual property or the use of the Facility. An appropriate administrative or judicial forum possessing competent jurisdiction shall determine final disposition of any dispute pertinent to intellectual property. Nothing in this Agreement is intended to prevent either party from pursuing any other legal remedies it may have available in any court or other forum of competent jurisdiction.

7.2 **Continuation of Work.** Pending the resolution of any dispute pursuant to this Article VII, the parties agree that each shall continue to perform diligently all obligations under this Agreement.

## ARTICLE VIII – WARRANTY, INSURANCE, AND LIABILITY

8.1 **Warranty.**



8.1.1 The Collaborator warrants that it is the owner of the Collaborator equipment that will be or may be provided in connection with the activities under this Agreement.

8.1.2 Except as specifically stated herein, neither party to this Agreement makes any expressed or implied warranty as to the condition of any equipment provided in connection with the activities of this Agreement or as to any matter whatsoever, including fitness for a particular purpose of any matter, service, equipment, or product, tangible or intangible.

## 8.2 **Insurance.**

8.2.1 RITA acknowledges it is self-insured.

8.2.2 The Collaborator acknowledges and agrees to maintain a program of insurance and/or self-insurance, which is adequate to address any liability(ies) that may arise out of Collaborator's performance of work and activities under this Agreement.

8.3 **Indemnification.** To the extent authorized by United States Federal law, each party will be responsible and liable for the negligent or willful acts or omissions of its employees, officers, agents, directors, invitees, contractors, consultants, or others acting on its behalf or with its authority.

8.4 Except to the extent that damage arises from or is related to the negligent or willful misconduct of the Government and its officers, employees, consultants, or agents and Government liability for such damage is cognizable under the Federal Tort Claims Act (FTCA), 28 U.S.C. §2671 et. seq., the Government shall not be responsible for damage to any Collaborator equipment or property used in connection with the activities under this Agreement. Further, except as provided under FTCA or other Federal law where sovereign immunity has been waived, the Government shall not be responsible for the negligent or willful misconduct of its officers, employees, consultants, and agents for any damage, loss, personal injury or death of Collaborator personnel arising in connection with activities under this Agreement or because of that person's presence on a government facility based on this Agreement. Where the Government may be liable for certain damage, loss, personal injury or death, under the FTCA the Government will be liable in the same manner and to the same extent as a private individual under like circumstances, but will not be liable for interest prior to judgment or for punitive damages. (see 28 U.S.C. §2674). The parties should be aware that both Federal and state law may impose limitations on liability.

## **ARTICLE IX – GENERAL TERMS AND PROVISIONS**

9.1 **Notices.** All notices pertaining to or required by this Agreement shall be in writing and shall be directed to the MOC Managers identified in Attachment A hereto.

- 9.2 **Assignment.** Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party. Any attempted or actual assignment shall be void.
- 9.3 **Officials Not to Benefit.** No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, nor to any benefit that may arise therefrom unless the share, part or benefit is for the general benefit of a corporation or company.
- 9.4 **Drug-Free Workplace.** The parties to this Agreement shall maintain a drug-free workplace consistent with the requirements of the Drug-Free Workplace Act of 1988, 41 U.S.C. §701 et. seq. (P.L.100-690).
- 9.5 **Use of Name or Endorsements.** By entering into this Agreement, the Government does not directly or indirectly endorse any product or service provided, or to be provided, by Collaborator, its employees officers, successors, assignees, or licensees. The Collaborator shall not in any way imply that this Agreement is an endorsement by the United States Government, the Department of Transportation, the Research and Innovative Technology Administration, and/or RITA of any Collaborator product or service. Neither party to this Agreement shall use the name of the other party of this Agreement in any form of publicity without the prior written permission of the other party whose name is to be used. Those persons who may grant such permission are:
- for RITA:                      the Director of the ITS Joint Program Office, RITA
- for the Collaborator:                      Senior Director,
- 9.6 **Participation in Presentations or Displays in Public or Academic Forums.** With the prior written agreement between the parties to this MOC, either party of this MOC may present or display the results of this MOC to the public. Such agreement shall not be unreasonably withheld but is intended to protect against release of Sensitive Data or Information or Proprietary Information the release of which could cause harm to the Government's and/or the Collaborator's interests. RITA and/or the Collaborator will identify, in writing, any limitation(s) to such presentation or display in a "prior written agreement" consenting to such presentation or display, and shall incorporate such writing by amendment to this MOC. Any such presentations shall be subject to Use of Name or Endorsements
- 9.7 **Relationship of the Parties.** The parties to this Agreement and their employees are independent of each other, and are not agents of each other, joint-venturers, partners or joint parties to a formal business organization of any kind. Each party retains sole and exclusive control over its own personnel and operations, and the personnel of either party is not subject to the supervision of the other party.
- 9.8 **Section 508 Electronic Information Technology.** Any development, procurement, maintenance, or use of information technology under this Agreement shall comply with

Section 508 of the Rehabilitation Act (29 U.S.C. §794d) as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998. Under Section 508 (29 U.S.C. §794d), agencies must give disabled employees and members of the public access to information that is comparable to the access available to others.

- 9.9 **Americans with Disabilities.** Any equipment used in or created as a product from the performance of the work under this MOC, to the extent practical and by reasonable accommodation, shall conform to the requirements of the American Disabilities Act (as amended, 42 U.S.C. §12101 et. seq.) Collaborator recognizes and complies with the American Disabilities Act, as amended, 42 U.S.C. §12101 et. seq.
- 9.10 **Protection of Human Subjects.** Any research under this Agreement shall be carried out in accordance with the Federal Policy for the Protection of Human Subjects and implementing Department of Transportation regulations, “Protection of Human Subjects”, 49 C.F.R. § 11.101 et. seq. Before undertaking any research activity involving human subjects at the RITA Facility, a Collaborator or Third-party Collaborator shall submit written assurance, satisfactory to RITA that said Collaborator or Third-party Collaborator shall comply with said requirements of policy and regulations pertinent to the protection of human subjects.
- 9.11 **Buy America.** The parties to this MOC agree that any equipment or supply purchases to support work under this MOC will conform to or be in accordance with the United States preference requirements described in 49 U.S.C. §5323(j). Further, the parties agree that any end product of this MOC will also conform to or be in accordance with the United States preference requirements as described in 49 U.S.C. §5323(j).
- 9.12 **Non-Discrimination Compliance.** All activities pursuant to this Agreement shall be in compliance with the provisions of Executive Order No. 11246, 3 C.F.R. 339 (1964-1965), the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000d et. seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. §794); the Age of Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §6101 et. seq.); and with all other federal laws and regulations prohibiting discrimination on the grounds of race, color, creed, national origin, handicap, religion or gender in providing for facilities and service to the public.
- 9.13 **Force Majeure.** No party to this Agreement shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform shall promptly notify the other parties and shall in good faith maintain such part performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.
- 9.14 **Waiver of Rights.** Failure to insist upon strict performance of any of the terms and conditions of this Agreement, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party to this Agreement. Any waiver of rights by either party shall be in writing and provided to the other party to this Agreement.

9.15 **Amendment/Modification.**

9.15.1 Either party may seek to modify this Agreement. Such modification shall not be effective until it is incorporated herein by a formally executed written amendment or modification to this Agreement.

9.15.2 A modification or amendment *within the scope* of the Agreement shall become effective the date the ITS JPO Director signs the amendment. An in-scope modification shall not require any coordination beyond the RITA Office of Chief Counsel (RTC-1) and the RITA Director (or his successor) for the modification to become effective.

9.15.3 A modification or amendment *outside the scope* of, and seeking to expand or otherwise change the scope of, the original Agreement, shall become effective on the 31<sup>st</sup> day after the date of the RITA Director's signature on the proposed modification or upon the date of concurrence by the US DOT RITA Administrator, whichever date is earlier. *An out-of-scope modification shall be subject to coordination with the US DOT RITA Administrator.*

9.15.4 The term of this Agreement can be modified. However the term of this Agreement may not be modified to extend this Agreement beyond a total of five (5) years from its effective date. If additional work is contemplated that would take work beyond five years from its effective date, then this Agreement can be renewed by the signatories (or successors) to this Agreement for a period mutually acceptable to both the Government and the Collaborator, subject to approval by the RITA Administrator (see Article I, paragraph 2.3; see also Article IX, paragraph 9.15.3).

9.16 **Authorization for Amendment.** Only the signatories (or successors) to this Agreement can amend, extend or otherwise modify this Agreement. The MOC Managers shall have no authority to amend, extend, or otherwise modify this Agreement. In keeping with RITA's authority to enter into MOCs, this authority for amendment is not subject to delegation.

9.17 **Surviving Provisions.** The following provisions shall survive the termination, expiration or closure of this Agreement: Article I Definitions, Article V Intellectual Property, Article VI Termination, Article VII Disputes, Article VIII Warranty, Insurance, and Liability, and Article IX General Terms and Provisions. Additionally, the requirements for a Final Report (see paragraph 3.4) shall survive the termination, expiration or closure of this Agreement.

9.18 **Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect.

9.19 **Governing Law.** The Federal laws of the United States shall govern the construction, validity, performance, and effect of this Agreement for all purposes.

9.20 **Entire Agreement.** This MOC constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding, written agreement, or oral agreement relative to said matter.

9.21 **Execution of the Agreement.** This Agreement will be considered fully executed when the RITA Administrator signs the Agreement.

9.22 To expedite processing, this Agreement may be executed in two counterparts, which together shall constitute one and the same instrument. Further, the parties may execute this Agreement by telefacsimile signatures or original signed documents converted to pdf and transmitted electronically via email directly to the RITA Office of Chief Counsel (RTC-1), subject to the following:

- (a) within 48 hours of transmitting the telefacsimile or email counterpart, Collaborator will dispatch or otherwise mail directly to the RITA Office of Chief Counsel (RTC-1), two duplicate original Agreements signed in original hand; and
- (b) within 21 (twenty-one) days from the date of the Collaborator's signature, the parties shall execute this Agreement in 2 (two) complete originals - that is, two duplicate Agreements signed in original hand by each party with the signatures of the Collaborator's authorized employee(s) or agent(s) and the ITS JPO Director appearing together on each of the same original MOC. The date on these duplicate originals shall bear the same date the party signed the counterparts. Thereafter, the previously executed counterpart Agreement shall cease to act as any original replaced by the conformed duplicate original Agreements. Collaborator will receive from the RITA Office of Chief Counsel (RTC-1) one completely executed original MOC in a reasonable period after the MOC becomes effective. The effective date of this Agreement shall remain as established by paragraph 2.3 herein.

2 Attachments:

Attachment A Identification of MOC/Program Managers and their contact information

Attachment B Sample Specific Work Detail

This Agreement consists of XX pages, including Attachments A and B.

**IN WITNESS WHEREOF**, each individual signing this document represents that he has the authority to execute this Agreement on behalf of his respective agency, or business, and each such individual have set forth his signature and executed this Agreement in duplicate:

**FOR THE COLLABORATOR:**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME  
Title  
Phone Number

[Please use corporate seal. **If no corporate seal, please obtain notarization**]

On this day, NAME appeared before me, presented sufficient identification or is personally known to me, and set forth his hand this \_\_\_\_\_ day of XXX, XXX.

.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**FOR THE GOVERNMENT:**

United States Department of Transportation  
Research and Innovative Technology Administration (RITA)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME  
Director, ITS JPO  
phone number

I approve / do not approve (please circle one) the work proposed under this Cooperative Research and Development Agreement. (If no action taken, please see paragraph 2.3 herein.)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
GREGORY D. WINFREE  
Deputy Administrator, RITA  
(202) 366-4412

The Managers for this Agreement are:

**TBD Organization (COLLABORATOR)**

***Program Manager***

Name:

Address:

Tel:

Fax:

Email:

***MOC Manager***

Name:

Address:

Tel:

Fax:

Email:

**FOR RITA (GOVERNMENT)**

***Program Manager***

Name:

Address: United States Department of Transportation  
Research and Innovative Technology Administration

Tel:

Fax:

E-mail:

***MOC Manager***

Name:

Address:

Tel:

Fax:

E-mail:

**AFFILIATED TEST BED**  
**SPECIFIC TASK WORK DETAILS #1**

**1. BACKGROUND.**

One of the most defining documents of interest to 5.9GHz DSRC device makers and operators is the Requirements Specification that defines roadside equipment (RSE's). The current version of that specification was developed to support the US Department of Transportation's Safety Pilot Model Deployment in Ann Arbor, MI. That specification is due for an update to include lessons learned in that installation.

**2. OBJECTIVE:** The objective of this task assignment is to advance the development and practical use of 5.9GHz DSRC roadside equipment.

**3. SCOPE OF THE WORK**

3.1 The parties to the MOC will collaborate in research and development leading to the next revision of the RSE Requirements Specification.

3.2 RITA will provide a technical editor and other means to collect comments and assemble interim documents.

3.3 The Collaborator will participate in specific web meetings and provide written comments to interim documents.

3.4 The parties to the MOC will prepare and share periodic reports (e.g. progress reports, project reports) as provided for in the MOC and subsequent work plans, if any. The parties shall also prepare and share a final version of the RSE Requirements Specification update at the completion of all work under the MOC.

3.5 The parties intend that all work in this SOW, and subsequent work plans, if any, will be completed within the effective period of the MOC. Work shall consist of at least one research and development project, but may include other project(s) throughout the effective period of the MOC.