

SUBAGREEMENT NO. 16-858
Firm Fixed Price

between
Arizona Board of Regents
for and on behalf of
Arizona State University
and
Ly Tu Trong Technical College

Issued Under

Prime Sponsor/Sponsor: Intel
Prime Award/Award No: 11-018544
Subrecipient DUNS No: 555317949

This Subagreement, effective on the date of the last signature below, is made and entered into by and between the Arizona Board of Regents for and on behalf of Arizona State University, with a principal place of business at 660 S. Mill Ave., Tempe, AZ 85281 ("ASU"), and Ly Tu Trong Technical College, with a principal place of business at 390 Hoang Van Thu St., Ward 4, Tan Binh Dist. ("Subrecipient").

WHEREAS, ASU is recipient of the referenced award ("Prime Award") for support of a sponsored research project entitled "Higher Engineering Education Alliance Program Female Student Scholarship Program 2015;" and

WHEREAS, Subrecipient has proposed to assist ASU in the accomplishment of this project;

THEREFORE, the parties agree as follows:

I. SPECIAL PROVISIONS

1. SCOPE OF WORK. Subrecipient will use reasonable efforts to perform the work and deliver any reports or other requirements specified in the Statement of Work, **Attachment A**.

2. PERIOD OF PERFORMANCE. This Subagreement will begin on October 1, 2015 and will terminate on December 31, 2015, unless modified or extended by the mutual written consent of both parties or terminated under Section II. General Provisions, 9. Termination.

3. KEY PERSONNEL. Subrecipient's Principal Investigator, Pham Huu Loc, will not be removed or replaced unless Subrecipient first obtains the prior written consent of ASU. ASU's

Principal Investigator, Jeffrey Goss, is authorized to exercise the technical direction of this project within the general scope of work.

4. COMPENSATION.

(a) Compensation will be on a firm fixed price basis in an amount not to exceed 39,000,000 VND (“Compensation Amount”) for work performed in accordance with the Budget and the Payment-Deliverables Schedule, both in **Attachment B**.

(b) Subrecipient will establish a separate account for all funds specified in this Subagreement and will use them to purchase necessary supplies, equipment, defray travel, and will employ the necessary personnel to perform this Subagreement.

5. INVOICING. Subrecipient will submit invoices in accordance with **Attachment B**, Payment-Deliverables Schedule, in order to receive payment.

(a) All invoices will reference **Subagreement No. 16-858**, and must include a unique assigned number to avoid duplication. Invoices will also include the signature of Subrecipient’s officer or other responsible party with language certifying that the requested expenses are allowable and in accordance with the Subagreement. Questions regarding invoices may be directed to: Awards.management@asu.edu. **Invoices are to be submitted electronically to ASU via email:** Awards.management@asu.edu

(b) Payments will be made by ASU to Subrecipient’s Remit To Address:

Financial Contact Name:	Nguyen Ngoc Trang
Address:	Ly Tu Trong Technical College 390 Hoang Van Thu Street
Ward, District:	Ward4, Tan Binh Dist
Email:	nguyenngoctranghcm@gmail.com

(c) Subrecipient will submit a final invoice no later than sixty (60) days after the termination of the Subagreement (“Final Invoice”). In no event will the final billing exceed the Subagreement firm fixed price amount. Final payment will be withheld until ASU has received the most recent audits prescribed by Section II. General Provisions, 21. Audit Requirements, and upon compliance with Section I, Special Provisions, 7. Closeout Requirements.

(d) All payments will be considered provisional. At any time or times prior to final payment, ASU may audit the invoices as it deems proper. Each provisional payment will be subject to reduction for amounts found not to constitute allowable costs, and will also be subject to reduction for overpayments or to increase for underpayments.

(e) In the event that Subrecipient fails to submit either a Final Invoice or a request for a no-cost extension within the period of performance specified in this Subagreement, ASU will consider the last regular invoice to be the Final Invoice. Any unexpended balance will be automatically deobligated and no further payments will be made under this Subagreement.

6. DELIVERABLES.

(a) Subrecipient will submit required technical reports and/or other deliverables as identified in this Subagreement or Attachments to:

Jeffrey Goss, ASU's Principal Investigator
Dept. of Global Outreach & Extended Ed
Arizona State University
PO Box 872805
Tempe, Arizona 85287-2805
Email: Jeffrey.Goss@asu.edu

(b) Subrecipient will submit required technical reports and/or deliverables on the dates(s) specified in **Attachment B**, Payment-Deliverables Schedule.

(c) A photocopy of all reports will also be sent electronically to the ASU contact identified in "Notices."

(d) Subrecipient will comply with the annual audit as specified in Section II. General Provisions, 21. Audit Requirements.

7. **CLOSEOUT REQUIREMENTS.** The following items are required for Subagreement Closeout ("Closeout Documents") and will be submitted along with a Final Technical Report, if applicable, and a Final Invoice supported by a summary accounting report not later than sixty (60) days after Subagreement termination date:

- (a) Subrecipient's Release
- (b) Subrecipient's Assignment of Refunds, Rebates, Credits and Other Amounts
- (c) Inventory of Property
- (d) Report of Inventions and Subawards

Closeout documents will be provided to Subrecipient on or about the project termination date. Subrecipient will complete and submit Closeout Documents prior to payment of Final Invoice.

8. **NOTICES.** All notices under this Subagreement given by either party to the other will be in writing and will be sent by first class mail or by email to the following:

For ASU:	Office for Research & Sponsored Projects Administration Attention: Heather Clark, Associate Director Arizona State University PO Box 876011 Tempe, Arizona 85287-6011 Email: subawards@asu.edu
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For Subrecipient: Nguyen Ngoc Trang
Ly Tu Trong Technical College
390 Hoang Van Thu Street Ward4,
Tan Binh Dist
nguyenngoctranghcm@gmail.com

9. PRIME AWARD. This Subagreement is subject to the terms and conditions of the Prime Award and other Special Terms and Conditions as specified in **Attachment C**.

II. GENERAL PROVISIONS

1. ENTIRE AGREEMENT. This Subagreement, together with the attachments referenced below, constitutes the entire understanding of the parties and supersedes any other agreement or understanding between the parties relating to the subject matter. The parties agree that if any part of this Subagreement is held to be invalid or void, the remainder will remain in full force and effect and will be binding upon the parties. The following attachments are incorporated into the Subagreement by this reference:

Attachment A - Statement of Work
Attachment B - Budget
Attachment C - Prime Award/Special Terms and Conditions

2. CHANGES/AMENDMENTS/UNILATERAL MODIFICATIONS. Any changes or amendments to this Subagreement, including but not limited to, changes in the scope of work, period of performance, cost and report requirements must have the prior written consent of the other party. ASU may elect to issue the following types unilateral amendments:

- (a) changes in key personnel,
- (b) revisions to the project budget when Subrecipient submits a written request,
- (c) planned incremental funding actions,
- (d) extensions of the project end date,
- (e) carry forward authorization, and
- (f) termination clauses.

Subrecipient may reject such unilateral modifications by providing written notice of exceptions to subwards@asu.edu within thirty (30) days after receipt of said amendment. If Subrecipient objects to a unilateral modification, the parties will negotiate an acceptable one.

3. WAIVER. No waiver, amendment or modification of this Subagreement will be valid or binding unless written and signed by the parties. Waiver by either party of any breach or default of any clause of this Subagreement by the other party will not operate as a waiver of any previous or future default or breach of the same or different clause of this Subagreement.

4. ASSIGNMENT. Neither party will have the right to assign any rights or obligations under this Subagreement without the prior written consent of the other party.

5. GOVERNING LAW. This Subagreement will be governed by and construed in accordance with the laws of the State of Arizona. In addition, ASU's obligations hereunder are subject to the laws of the State of Arizona and the policies of the Arizona Board of Regents.

6. CANCELLATION FOR NONAPPROPRIATIONS. In accordance with A.R.S. § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to the Contracting Party and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

7. CONFLICT OF INTEREST. . If within 3 years after the execution of this Agreement, the Contracting Party hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in Arizona Revised Statutes ("A.R.S.") § 38-511.

8. INDEPENDENT CONTRACTOR. Subrecipient is an Independent Contractor, not a partner or joint venturer, and will not act as an agent for ASU; nor will Subrecipient be deemed to be an employee of ASU for any purpose under this Subagreement. Subrecipient will not have any authority, either express or implied, to enter any agreement, incur any obligations on ASU's behalf, or commit ASU in any manner whatsoever without ASU's prior written consent.

9. TERMINATION.

(a) In the event of default by Subrecipient of the obligations under this Subagreement, ASU will give written notice describing nonperformance. Subrecipient will respond in writing within thirty (30) days of receipt of such notice, describing the action taken or the plan designated to correct the deficiency. If Subrecipient fails to respond or correct the nonperformance, ASU may terminate this Subagreement. Subrecipient will not be liable for nonperformance arising out of causes beyond its control and without its fault or negligence, including, but not limited to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather. Expenditures incurred subsequent to the termination date are unallowable.

(b) Either party may at any time terminate this Subagreement by giving the other party not less than thirty (30) days prior written notice. ASU will remain responsible for payment to Subrecipient for work performed through the date of termination.

10. DISPUTE RESOLUTION/ARBITRATION. If a dispute arises under this Agreement, the parties will exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809. As required by A.R.S. § 12-1518, the parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

11. INSURANCE. Subrecipient will maintain worker's compensation and general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per person per instance that covers all acts by Subrecipient under this Subagreement. A program of self-insurance at levels comparable to the foregoing will satisfy the requirements of this paragraph. Upon request, Subrecipient will provide evidence of such insurance.

12. INDEMNIFICATION BY SUBRECIPIENT/ INDEMNIFICATION LIMITATION. Subrecipient will indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its and their officials, agents, and employees (collectively, "Indemnatee") for, from, and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by (i) the negligence, acts or omissions of Subrecipient or any of its owners, officers, directors, members, managers, agents, employees, or subcontractors, (ii) a breach of this Subagreement, or (iii) failure to comply with any applicable law. Subrecipient will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Subagreement, Subrecipient waives all rights of subrogation against Indemnatee for losses arising from the services performed or deliverables provided by Subrecipient under this Subagreement.

ASU is a public institution and, as such, any indemnification, liability limitation or hold harmless provision will be limited as required by Arizona law, including without limitation [Article 9, Sections 5](#) and [7](#) of the Arizona Constitution and A.R.S. §§ 35-154 and 41-621. Therefore, notwithstanding any other provision of this Agreement, ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

13. NONDISCRIMINATION. The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

14 SERVICE MARKS AND TRADEMARKS. Neither party will use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of the other party without the express written approval of the other party. The use of any Marks must comply with Owner's requirements including using the ® indication of a registered trademark where applicable.

15. INTELLECTUAL PROPERTY OWNERSHIP.

(a) Ideas, know-how, data and all other intellectual property generated under this project shall be the sole and exclusive property of the inventing party. Inventorship shall be determined in accordance with U.S. Patent laws.

(b) Intellectual property jointly made by the parties will be deemed jointly-owned, and each party will possess the right to independently exploit the intellectual property, unless otherwise agreed in writing. For exclusive rights to the jointly-owned intellectual property, the party requesting exclusivity will need to obtain those rights by licensing or assignment from the other party.

16. RECORDS. To the extent required by A.R.S. § 35-214, the Contracting Party will retain all records relating to this Agreement. The Contracting Party will make those records available

at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five years after the completion of this Agreement. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU on reasonable notice to the Contracting Party.

17. CONFIDENTIALITY. ASU is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Accordingly, notwithstanding any other provision of this Agreement, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

18. AUTHORIZED PRESENCE REQUIREMENTS. As required by A.R.S. § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A) (verification of employee eligibility through the e-verify program). If applicable, Subrecipient warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A). A breach of the foregoing warranty will be deemed a material breach of this Subagreement that is subject to penalties up to and including termination of the Subagreement. ASU retains the legal right to inspect the papers of any contractor or subcontractor employee who works hereunder to ensure that the contractor or subcontractor is complying with the warranty stated above.

19. INSTITUTIONAL REVIEW BOARD (IRB) APPROVAL / INSTITUTIONAL ANIMAL CARE AND USE COMMITTEE (IACUC) APPROVAL. If applicable, no phase of research involving human subject participation (including recruitment, enrollment and survey/questionnaire intervention) may be initiated until the project has been reviewed and approved by the Institutional Review Board (“IRB”), as required by federal regulations and ASU Policy, nor may it be initiated until the Principal Investigator(s) and all personnel involved in human subject participation have obtained training certification in Human Subjects. No phase of research involving the use of animals may be initiated until the project has been reviewed and approved by the Institutional Animal Care and Use Committee (“IACUC”), as required by federal regulations and ASU policy, nor may it be initiated until the Principal Investigator(s) and all personnel involved in the care and use of research animals have obtained training certification in the care and use of research animals.

20. ASSURANCES. By signing this Subagreement, Subrecipient certifies that:

- (a) Non-Delinquency: It is not delinquent on the repayment of any Federal debt.
- (b) Debarment and Suspension: Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (c) Drug-Free Workplace: It is in compliance with the Drug-Free Workplace Act of 1988.
- (d) Lobbying: It is in compliance with 31 USC 1352 prohibiting recipients of Federal grants, cooperative agreements, contracts, or loans from using appropriated funds for lobbying in connection with the grant, cooperative agreement, contract, or loan.
- (e) Clean Air and Water Certification: Any facility to be used in the performance of this Subagreement is not on the Environmental Protection Agency (“EPA”) List of Violating Facilities.
- (f) Dun and Bradstreet Data Universal Numbering System (“DUNS No.”): It is registered with DUNS, and will maintain current its registration throughout the life of this Subagreement.
- (g) System for Award Management (“SAM”): It is registered with SAM and will maintain current its registration throughout the life of this Subagreement.

In the event that the status of any of the above items changes, Subrecipient will notify ASU of the change within thirty (30) days.

21. AUDIT REQUIREMENTS. Subrecipient certifies that it complies with 2 CFR Part 200, which replaces OMB Circular A-133, and that it will notify ASU of completion of required audits and of any adverse findings which impact this Subagreement. ASU reserves the right to inspect, upon ASU’s reasonable advance notice and during normal business hours, Subrecipient’s physical facilities, all aspects of the Statement of Work undertaken under this Subagreement, and all books, records, and documents of any kind pertaining to the Subagreement. Subrecipient agrees to provide copies of any records, receipts, accounts or other documentation to ASU in a timely fashion as reasonably requested by ASU. Subrecipient will keep all usual and proper records and books of accounts in accordance with Generally Accepted Accounting Principles (GAAP) relating to performance of the Statement of Work.

22. ORDER OF PRECEDENCE. In the event of any inconsistency between the conditions of this Subagreement, the inconsistency will be resolved by giving precedence in the following order: (i) I. Special Provisions, (ii) II. General Provisions, (iii) Attachment C, including any other special terms and conditions, and (iv) Attachment A, Statement of Work. If any inconsistency exists, Subrecipient will be responsible for notifying subawards@asu.edu.

23. WEAPONS, EXPLOSIVE DEVICES AND FIREWORKS; TOBACCO. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. §

12-781, or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by the Contracting Party to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of the Contracting Party (“Notification Parties”) of this policy is a condition and requirement of this Agreement. The Contracting Party further agrees to enforce this contractual requirement against all Notification Parties. ASU’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>. ASU is tobacco-free. For details visit www.asu.edu/tobaccofree.

24. RESPONSIBILITY. Each party will be responsible for the negligence, acts and omissions of its employees and contractors when acting under such party’s direction and supervision. Notwithstanding the terms of this Agreement or any other document or agreement: (i) other than for employees and contractors acting under ASU’s direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless the person is an authorized signatory of ASU, as set forth in PUR-202, which is at <http://www.asu.edu/counsel/manual/signatureauthority.html>.

25. STUDENT EDUCATIONAL RECORDS. Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”). Contracting Party will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement contains a scope of work or any provision that requires or permits Contracting Party to access or release any student records, then, for purposes of this Agreement only, ASU hereby designates Contracting Party as a “school official” for ASU under FERPA, as that term is used in FERPA and its implementing regulations. As such, Contracting Party will comply with FERPA and will not make any disclosures of ASU students’ educational records to third parties without prior notice to, and consent from, ASU or as otherwise permitted by law. In addition, any access or disclosures of student educational records made by Contracting Party or its employees and agents must comply with ASU’s definition of legitimate educational purpose, which definition can be found at: SSM 107-01: Release of Student Information (<http://www.asu.edu/aad/manuals/ssm/ssm107-01.html>). If Contracting Party violates the terms of this section, Contracting Party will immediately provide notice of the violation to ASU.

26.
Reserved.

27. AMERICANS WITH DISABILITIES ACT AND REHABILITATION ACT. Contracting Party will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act, and all applicable federal regulations. All electronic and information technology and products and services to be used by ASU faculty/staff, students, program participants, or other ASU constituencies must be compliant with the Americans with Disabilities Act as amended and the Section 508 of the Rehabilitation Act of 1973. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.

28. FOREIGN CORRUPT PRACTICES ACT/LOCAL ANTI-CORRUPTION LAW COMPLIANCE. Contracting Party warrants that it is familiar with the U.S. laws prohibiting corruption and bribery under the U.S. Foreign Corrupt Practices Act. In connection with Contracting Party's work under this Agreement, Contracting Party will not offer or provide money or anything of value to any governmental official or employee or any candidate for political office in order to influence their actions or decisions, to obtain or retain business arrangements, or to secure favorable treatment in violation of the Foreign Corrupt Practices Act or any other local anti-corruption law, either directly or indirectly. Any breach of the U.S. Foreign Corrupt Practices Act or other local anti-corruption law, will be a material breach of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Subagreement to be executed by its duly authorized representatives on the respective dates entered below.

**Arizona Board of Regents,
for and on behalf of
Arizona State
University**

By _____

Associate Director
Research Administration

Date _____


By 
Name PHAM HUU LOC
Title RECTOR

Date 10/30/2015