

# COOPERATIVE AGREEMENT MODIFICATION

Agreement/Appendix Title and Number: W912PQ-13-2-1040  
Project Name/Description and Location: ARNG Distributed Learning Program  
Modification Number: P00001

ISSUED BY: NATIONAL GUARD BUREAU	ISSUED TO: THE STATE OF NEW YORK
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This modification is issued pursuant to the Authorities, 31 U.S.C. Chapter 63; MCA and Appendices Article VII, Sect 703; MCCA Article XII, Sect 1201 of the basic cooperative agreements. Mark purpose and obtain signatures as appropriate IAW NGR 5-1, Chapter 3.

- a. FUNDING
- b. TERMS AND CONDITIONS
- c. TERMINATION
- d. OTHER ADMINISTRATIVE

### DESCRIPTION OF MODIFICATION:

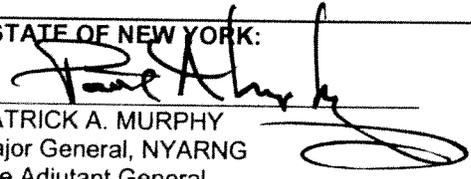
1. This Appendix, W912PQ-12-2-1040, is hereby extended for Fiscal Year 2013. The effective date is 01 October 2012 and the termination date is 30 September 2013 and is subject to the availability of funds.
2. The Appendix number W912PQ-12-2-1040 is changed to read **W912PQ-13-2-1040 for FY 2013.**
3. The Initial Maximum Funding Limitation (MFL-Federal) for this Appendix W912PQ-13-2-1040 for FY 13 is \$0.
4. The initial Estimated Cost (AFP-Federal) for this Appendix W912PQ-13-2-1040 for FY 13 is \$273,379.00.
5. In-Kind assistance is established at \$0.00.
7. As FY2012 budgets are approved by NGB, program managers will add funding to the Appendix by separate modification.

### EXECUTION

Except as provided herein, all terms and conditions of the Cooperative Agreement and/or Appendix remain unchanged in full force and effect.

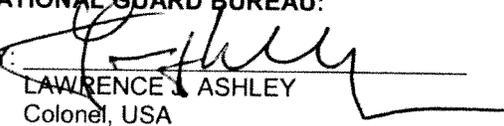
IN WITNESS WHEREOF, the parties by their authorized representatives execute this Cooperative Agreement Modification.

#### THE STATE OF NEW YORK:

BY:   
PATRICK A. MURPHY  
Major General, NYARNG  
The Adjutant General

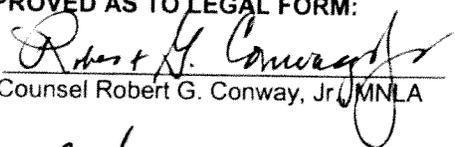
Date: 5 Oct 12

#### NATIONAL GUARD BUREAU:

BY:   
LAWRENCE J. ASHLEY  
Colonel, USA  
USPFO for New York

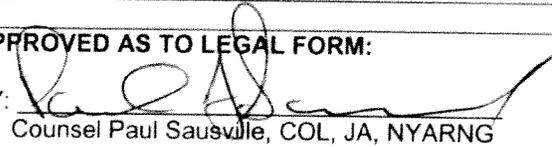
Date: 9 Oct 12

#### APPROVED AS TO LEGAL FORM:

BY:   
Counsel Robert G. Conway, Jr. MNLA

Date: 26 Sep 2012

#### APPROVED AS TO LEGAL FORM:

BY:   
Counsel Paul Sausville, COL, JA, NYARNG

Date: 28 Sep 2012

## **APPENDIX 40**

### **ARMY NATIONAL GUARD DISTRIBUTED LEARNING PROGRAM**

#### **Section 4001. General.**

a. This Appendix to the Master Cooperative Agreement (MCA) prescribes the terms, conditions and administrative procedures related to the National Guard Bureau's (NGB) contribution of federal funds for the ARNG Distributed Learning Program (DLP) for the Army National Guard within the 50 States, Territories of Guam and the U.S. Virgin Islands, Commonwealth of Puerto Rico, and the District of Columbia (hereafter referred to as the States).

b. Statement of Facts.

(1) The authorities and provisions set forth in NGR 5-1 are incorporated into this Appendix by reference.

(2) Congress created Public Law 103-335 (HR 4560) (FY 95) for the Distributed Learning Network (predecessor to and hereafter referred to as the ARNG DLP or DLP) to further military readiness through efficient training and to provide a vehicle by which receivers, other than the National Guard, could benefit from Information Technology through shared use, and help offset costs through reimbursement by non-Guard receivers.

(3) The Chief, National Guard Bureau (CNGB) has been designated by Congress as the Executive Agent for DLP services.

(4) The provisions contained in the annual Department of Defense Appropriation Act funding the ARNG Distributed Learning Program are not permanent legislation.

#### **Section 4002. Additional Definitions.**

a. The Distributed Learning Program is an assistance program with an acquisition component.

b. The expense/investment requirements of this program dictate that the execution of Other Procurement Dollars, will be through federal procurement procedures, while the relationship between the states and NGB are that of an assistance relationship with a Cooperative Agreement chosen as the instrument to implement the program.

c. The Distributed Learning Program Classroom operations are a component of the Distance Learning Network which is a further component of GuardNet XXI.

#### **Section 4003. Office of Primary Responsibility.**

a. The NGB Office of Primary Responsibility Program Manager (NGB-OPR-PM) for this Appendix is the Distributed Learning Branch of the ARNG Training Division (NGB-ART-DL).

b. For the purposes of this Appendix, the Office of the Chief Operating Officer, G-3 (NGB-ARZ-R) is the functional proponent for the Program and exercises the authority of the program executive agent on behalf of the CNGB. NGB-ARZ designated the Office of the Chief Information Officer G-6 (NGB-ARZ-CIO) the technical proponent for the Program and NGB-ART-DL as the NGB-OPR-PM. As such NGB-ART-DL is authorized to give final approval of all DLP budgets and modifications to them and to the language of this Appendix, to authorize distribution of DLP funds to the United States Property and Fiscal Officers (USPFO), to recall DLP funding from the states when necessary, to receive specified accounting reconciliation reports, to approve minor DLP projects above a set limit, and to take any other action on behalf of NGB or CNGB, as specifically reserved under this Appendix for NGB-ART-DL.

**Section 4004. Scope of Agreement.**

a. **Scope of Service.** The state (Grantee) will provide Distributed Learning Program services to include the development, operation, maintenance, administration and management of DLP authorized classrooms and related IT infrastructure in state approved facilities to enhance military training and overall readiness.

b. **Performance Specifications.**

(1) The state (Grantee) shall provide a site(s) that meet(s) the minimum standards for a computer-assisted and video teleconferencing facility, as defined in the Distributed Learning Program Site Preparation and Planning Guide.

(2) The Appendix 40 Program Manager shall develop and maintain a Distributed Learning Implementation Plan (DLIP). At a minimum, the DLIP will establish the goals, strategies, and objectives for the implementation of the DLP at the state level to include integration of DL into state training plans and operations. The DLIP shall be updated on an annual basis or as needed to reflect changes in program implementation. A copy of the current DLIP will be furnished to NGB-ART-DL.

**Section 4005. Authorized Activities/Charges.**

a. **Payment for salaries,** to include approved overtime and allowable benefits in accordance with state personnel policy for the payment of salary and benefits of like state government positions within the same geographic area for validated DLP positions. When there is no like state government position available, salaries and benefits will be equivalent to a comparable grade and series Federal Civil Service position in the geographic area.

(1) Benefit costs include Social Security contributions, workers compensation, medical and unemployment insurance (FICA) premiums and State retirement system.

(2) Costs for merit and incentive awards based on performance providing the awards are part of a program available and consistent with those offered to similar state government positions.

(3) If a state has a pay raise, pay freeze or pay cap, a hiring freeze or employee furloughs for like positions throughout the state, then state DLP employees will have corresponding limitations.

b. **Facilities and other Costs.** Authorized charges will be In Accordance With (IAW) appropriate DLC Site Rate Sheets as provided by NGB-ART-DL referred to in Section 4008 g of this Appendix.

c. The Grantee will provide operation, administration, support, and overall management of authorized DLCs and related IT infrastructure within the state. The state (Grantee) is responsible for providing the services detailed hereafter, some of which may qualify for federal reimbursement.

(1) Personnel IAW State Military Department (SMD) policies and procedures.

(2) Utilities.

(3) Classroom maintenance.

(4) Supplies.

(5) Taxes and licenses.

(6) Reimbursement to NGB for National DLC services (e.g., Video Operations Center).

(7) Maintenance of the published site rate worksheets for the following receiver types: DoD, Non-DoD Federal, Official State, and Other Users.

(8) Training support for military readiness training.

(9) Site availability for all federal requirements.

(10) Configuration Management for federal and state acquired hardware and software IAW ARNG Enterprise Configuration Management Plans.

(11) DLC Systems and Telecommunications/Network Information Assurance and Information Security (IA/IS) IAW NGB-AIN-IA policies and procedures.

(12) Post-facility upgrade costs. Note: the Fielding Office will fund all initial allowable facility upgrade costs including electrical and telecommunications line installation up to a pre-approved amount per site IAW DoD FMR Volume 2A, Chapter 1.010201E2, "Special Guidance Concerning Real Property Facilities".

**Section 4006. Unauthorized Activities/Charges.**

- a. Any changes to system configuration not accomplished in accordance with published NGB guidance are not authorized and shall not be undertaken.
- b. All other activities/charges not otherwise approved in Section 4005 or by NGB-ART-DL prior to execution, are unauthorized.
- c. OPA funds, OMNG (non DLP) or state appropriated funds shall not be used to augment funds provided for the DLP.
- d. The use of In-Kind Assistance (IKA) shall be the exception for contracting for allowable services under the CA and shall not be used to contract for personnel to run the DLCs.
- e. Reimbursement for courses, whether accredited or non-accredited and professional training not specifically required for performance of position duties covered under this agreement.

**Section 4007. Budget Requirements.**

- a. NGB-ART-DL shall provide annual budget guidance, IAW NGB-ARC State Operating Budget Financial Plan directives. The guidance will include format requirements and timelines for budget submission.
- b. NGB-ART-DL shall also provide annual approved budget authority. The approved budget authority will be the Maximum Funding Limitation of federal dollars obligated or immediately available for obligation or the federal government's share of the Appendix. A copy of the modification/s shall be submitted to NGB-ART-DL within 15 days following execution.
- c. Army Management Structure Codes (AMSCOs). The CA PM shall use the following AMSCOs in accounting for charges to this Appendix of the Agreement: 122G.15.00 TADT (DLC Operations and Maintenance) and 122G.26.00 TADT (DLC Long Haul Communications) unless the CA PM has received written approval from NGB-ART-DL to use additional AMSCOs in accounting for charges. No charge will be made to this Appendix or to the listed AMSCO unless it specifically falls under the guidelines of AMSCOs defined in the current DFAS Manual 37-100-XX.
- d. Budget Reports/Changes.
  - (1) The CA PM shall submit any other requested operational, financial, or budget reports that NGB-ART-DL may require on an as needed basis.
  - (2) The CA PM must submit a written request to decrease the federal funds in its budget or otherwise transfer funds between or out of either 122G.15.00 TADT and 122G.26.00 TADT. The state must furnish a copy of the said request to NGB-ART-DL. The request shall include an updated budget reconciliation report as an enclosure. The request shall not take effect, nor can any expenditure of funds take place until it receives the approval of NGB-ART-DL. The request shall not be binding unless it is so approved. The request and approval shall not be binding unless a CA modification to this appendix has been executed.
  - (3) Budget changes, not requiring a written amendment, shall be reflected in the periodic reports and copies of executed modifications it is required to submit to NGB-ART-DL.

**Section 4008. Appendix Administration.**

- a. Program Background.
  - (1) Public Law 103-335 (HR 4650) (FY95), provided funding for the initiation of a distance learning regional training network demonstration project. It directed that the funding provided was only for a distance learning regional training demonstration project for Pennsylvania, West Virginia, Virginia, Maryland and the District of Columbia. The law made the Chief, National Guard Bureau (CNGB) the Executive Agent for executing the project. Public Law 104-208 (HR 3610) (FY 97), and Senate Report 104-286 provided direction to the NGB to W912PQ-13-2-1040

expand the distance learning project to all states. PL 104-208 also directed the CNGB to enter into agreements with the states to conduct a Distance Learning Project and permitted the CNGB to allow use of the equipment by any person or entity on a space-available, reimbursable basis. Amounts collected under this authority are to be credited to funds available for the National Guard Distance Learning Project and are available to defray the costs associated with the use of project equipment without fiscal year limitation. The language, which permits the CNGB to allow use of the distance learning system by any person or entity on a space-available reimbursable basis, has appeared in each Defense Appropriation Act since fiscal year 1997. Since an appropriation act is made for a particular fiscal year, the presumption is that everything contained in the act is effective only for the year covered. Thus, the rule is: A provision contained in an annual appropriation act is not construed to be permanent legislation unless the language used therein or the nature of the provision makes it clear that Congress intended it to be permanent. (Office of the Comptroller General, Principles of Appropriations Law, Second Edition, Volume 1, Chapter 2). This will require a review of the appropriation language on an annual basis unless Congress inserts language that makes it permanent.

(2) Congress also addressed the implementation of a Community Learning and Information Network (CLIN) community shared usage model, and the Reserve Forces Policy Board formally endorsed the CLIN concept. NGB is responsible for the overall design and implementation of the network backbone, delivery system, software, equipment, installation, integration, and courseware availability. The program has the additional responsibility of establishing and promoting civil and governmental shared usage of the DLCs and related DL delivery and IT infrastructure on a space-available, reimbursable basis. NGB is authorized to contribute federal funds to the State for certain expenses incurred in both rendering service and maintenance of the DLCs and DL delivery network infrastructure.

b. The DLP Cooperative Agreement is currently funded with Operations and Maintenance, Army National Guard (OMNG) funds specifically appropriated for the DLP. As such, Expense/Investment criteria as defined in the DoD Financial Management Regulation, Volume 2A, Chapter One, must be followed for the execution of the DLP O&M funds. DLC equipment and related DL delivery and IT infrastructure acquisition and sustainment are funded with Other Procurement Army (OPA) funds specifically appropriated for the DLP. As long as Congress continues to fund DLC equipment and related DL delivery and IT infrastructure acquisition and sustainment with OPA funds, OMNG (non DLP) or state appropriated funds shall not be used to augment funds provided for the DLP. However, in certain circumstances and with prior approval from NGB-ART-DL, states may procure equipment with state appropriated funds to satisfy and/or expand the shared-use role of an authorized DLC, provided the primary use of the assets will not be in support of state and Federal Guard missions. Federal statutory provisions pertaining to the augmentation of appropriations preclude the state from procuring equipment to satisfy requirements of the National Guard or other federal activities. Federally appropriated DLP funds must be used for DLP authorized purposes and excess funding, if any, must be reported to NGB-ART-DL for reprogramming. Reimbursement for the use of DLP facilities by other Federal Agencies is not program income but reimbursement to the Army National Guard Operation and Maintenance appropriation. Amounts paid directly to the state for shared use of DLP facilities by a State Agency or any other non-federal user for use of DLP facilities and related IT infrastructure are program income. Funding generated from shared-use, less payments to courseware vendors and military pay and allowances, may be retained in the "state" as reimbursement of Federal Appropriations for use against DLP requirements unless other instructions are provided by NGB-ART-DL.

c. DLP Property Installed in Non-National Guard Facilities. The Grantee, with written approval of the United States Property & Fiscal Officer (USPFO) allowing the Grantee to contract out administration of DLP equipment, may opt to install classrooms in other than National Guard facilities (e.g. college/university facilities, high schools etc.) when those facilities contribute materially to access by National Guard personnel or for other cogent mission related reasons. When this situation occurs, the following minimum actions must be accomplished by the Grantee:

(1) Site approval. All distributed learning facilities must have an agreement support code eligible for Federal reimbursement as listed in the Facilities Inventory and Support Plan (FISP). If the Grantee wishes to acquire a facility not currently coded for federal support, then it must receive the approval of both NGB-ART and NGB-ARI. If it receives such approvals, it then must enter the facilities in the FISP. Federal reimbursement of costs under this appendix shall be based on the FISP support level and the DLP Memorandum of Agreement prepared incident to fielding. Contracting, other than equipment installation by NGB, is the responsibility of the Grantee IAW State Military Department (SMD) contracting procedures.

(2) Once the site has been added to the FISP, the Grantee and the USPFO must enter into a written formal agreement with the property owner which specifies the terms and conditions (liability, National Guard access

requirements, authority for NGB to install the classroom, etc.) that property owner incurs with the acceptance of DLP classroom equipment and related IT infrastructure. The property owner, prior to classroom installation, must agree to indemnify the federal government against any liability arising from the installation or use of the classroom by other than National Guard personnel. The agreement, at a minimum, must specifically address:

1. Equipment accountability.
2. Maintenance and security procedures.
3. Site utilization priorities.
4. Operational hours to meet military requirements.
5. Rate structure for site utilization, IAW published DLC site rate worksheets.
6. Collection and disposition of program income, reimbursements, and site use reporting requirements.

d. Equipment Accountability.

- (1) The Grantee will provide the DLP equipment to the owner of the facility IAW State procedures.
- (2) The Grantee retains ultimate accountability/responsibility for loss, damage or destruction of DLP equipment.

e. The Grantee agrees to follow NGB guidance with respect to DLP system configuration. Recommended changes or modifications, for any reason, must be approved in advance by NGB-ART-DL. Procedures for processing change requests have been determined and are published separately in the Army National Guard Enterprise Configuration Management Plan.

f. The Grantee agrees to adhere to all Information Assurance (IA) and Information Security (IS) procedures promulgated by NGB-AIN-IA with respect to DLC equipment and/or its operation.

g. Applicable Rates and Charges. Applicable rates and charges for facility use and operation will be determined by the Grantee IAW DLC site rate worksheets. All other charges are unauthorized. The Grantee shall ensure that all fee charges, network costs, etc. associated with shared use of DLP equipment are collected and that reimbursements due to NGB are accomplished in a timely manner consistent with NGB guidance.

h. Cost Sharing. The Federal Fielding Office bears the cost of initial installation, equipment, and initial training for sites identified in the fielding plan. The Grantee will be responsible for the cost of DLP services provided in accordance with Section 4009 of this Appendix.

i. DLP Program Income.

(1) Program income is the net income (i.e. that amount of income remaining after all liabilities incident to the generation of gross program income have been satisfied) received by the Grantee from fees for allowable services performed and from the use or rental of real or personal property, the operation and maintenance of which is supported under this Appendix. (Ref Title 32 CFR Part 33.25(c)).

(2) Program income shall be added to the DLP budget as a Grantee contribution regardless of the percentage of federal contribution reflected in this Appendix and must be reported in the Defense Assistance Awards Data System (DAADS) report. DLP enabling legislation provides specific authority for program income to have no fiscal year identity.

(3) The Grantee shall report all DLP program income to NGB. Net income shall be used to defray costs associated with the DLC operations to include equipment maintenance and services.

(4) The Grantee agrees to maintain quantitative records reflecting the receipt, maintenance, and disbursement of program income and further agrees to maintain DLP program income in a separate state bank account. In the event that state law prohibits establishment of a separate state bank account, the Grantee must submit a request for exception to NGB that outlines a proposed alternative procedure and certifies that such procedure permits program income to be utilized without regard to the fiscal year in which the income was earned.

(5) With the exception of payments received for military personnel, the Grantee is authorized to retain all fees collected for shared use of ARNG DLP facilities, equipment and related IT infrastructure. Funds collected must be used solely to defray costs for operation and maintenance of the DLCs without regard to the fiscal year in which the income was earned, in accordance with laws and/or cooperative agreement terms. These funds may not be used for any other purpose.

j. Supervision and Inspection. The overall DLP oversight and management at the state level resides with the G-3. The G-3, in coordination with the Deputy Chief of Staff for Information Management (DCSIM) and/or the state Program Manager, state DL Training Administrator is/are responsible for making inspections of the DLP sites, as necessary, to determine the extent of compliance with, and efficiency of, operation under this regulation.

k. Obtaining Telecommunication Resources. Telecommunication resources necessary for the operation of the DLP should be coordinated with the J6/G6/Director of Information Management (DOIM). Telecommunication funds provided in AMSCO 122G2600 TADT are intended for such use. These funds will not be reprogrammed without written approval of NGB-ART-DL.

l. Classroom operations and maintenance funds are provided in AMSCO 122G1500 TADT and are intended for such use. These funds will not be reprogrammed without written approval from NGB-ART-DL.

m. Budget Reconciliation.

(1) Quarterly Status Report.

1. The DLP CA PM shall reconcile 122G1500 TADT and 122G2600 TADT budget amounts with NGB-ART-DL quarterly, 15 days following the closeout of previous quarters, by submission of a message in the format detailed in section (c) below. The status report shall explain how the state intends to spend the remaining authorized funds.

2. The template for this Quarterly Status Report is available in the Reporting Templates folder in the Classroom Operations Cooperative Agreements and Appendix 40 Section of the NGB-ART-DL GKO Website: [https://gkoportal.ngb.army.mil/sites/G3\\_ART/DL/ClassroomOps/default.aspx](https://gkoportal.ngb.army.mil/sites/G3_ART/DL/ClassroomOps/default.aspx)

3. Annual Appendix Closeout will be IAW NGR 5-1, Chapter 10, Final Accounting and Settlement. The DLP CA PM shall reconcile and closeout 122G1500 TADT and 122G2600 TADT budget amounts with NGB-ART-DL for the previous fiscal year as of 31 December with a due date of 31 January following the close out of the previous fiscal year.

4. The template for this report FY Closeout is available in the Reporting Template folder in Classroom Operations Cooperative Agreements and Appendix 40 Section of the NGB-ART-DL GKO Website: [https://gkoportal.ngb.army.mil/sites/G3\\_ART/DL/ClassroomOps/default.aspx](https://gkoportal.ngb.army.mil/sites/G3_ART/DL/ClassroomOps/default.aspx)

n. Required Metrics Reporting.

(1) The CA PM is required to report all usage activities for their fixed and mobile Army National Guard (ARNG) Distributed Learning Classrooms (DLCs) to include support for MOSQ Training, Collective Training, Individual Readiness Training, Professional Military Education, Full-Time Equivalent Training, Command and Control, MWR, and Shared/Reimbursable Usage.

(2) Metrics to be captured and derived from these events include event type, total event hours, man hours, the number and types of receivers, and are used to support Army G-3 reporting annual requirements for the Army G-3 in addition to justification of DLP funding levels during the POM process.

(3) The CA PM will report all usage metrics using the DLC usage reporting tool which may be found at <https://www.gcls.ngb.army.mil>. Usage is to be reported on an event-by-event basis and verified by the CA PM by the 15<sup>th</sup> of each month following the reporting period. Any usage reported and not verified within the timeframe described above will not be included in that month's report, but will be included in the overall cumulative summary of usage in subsequent periods.

(4) IAW message HQDA, DAMO-TRI, 021706Z May 06, subject: Utilization Rate Standards for Army Distributed Learning (DL) Digital Training Facility (DTF) and Army National Guard DL Classrooms, metrics collected are used by NGB-ART-DL to demonstrate progress toward maintaining a minimum 50% utilization rate for DLCs with an 85% objective utilization rate. The utilization rate for ARNG DLCs is based upon classroom availability of 179 days per year, or an average of eight hours per day, 96 hours per month, 1432 hours annually, which would result in 100% utilization. Note, the current target utilization rate and hours required to achieve this, are subject to change by NGB-ART-DL depending upon overall program performance and changes in HQDA utilization rate standards. A state that fails to achieve a minimum utilization rate of 50% for their DLCs for two consecutive quarters will be required to submit a memorandum to NGB-ART-DL with an explanation for not achieving at least the minimum rate and steps the state will take to increase utilization for the types of activities described above. Progress toward meeting the DAMO-TR mandated average utilization rate targets will be evaluated by NGB-ART-

DL throughout the year to measure and ensure compliance. A state failing to maintain at least minimum 50% utilization rate for their DLCs may risk:

1. Corresponding reductions in funding levels.
2. Relocation of the DLCs.
3. Pullback of the Federal DLC assets to NGB for redistribution.

o. Demonstrations. Consistent with laws, regulations, and the guidance provided herein, USPFs, as Grants Officers, may approve one-time DLP shared use demonstrations at no charge.

(1) A demonstration is defined as a presentation to prove to a receiver(s) or potential receiver the capabilities and/or limitations of the DLP (classroom, VTC, etc). Demonstrations are encouraged as a means of educating receivers or potential receivers about current DLP capabilities.

(2) Limitations.

1. Demonstrations are considered a one-time event where the complete process/activity requirements of a receiver are satisfactorily accomplished.

2. Additional or multiple demonstrations conducted after the successful completion of an initial demonstration and/or test of the same process/activity for the same receiver, will require reimbursement at the appropriate receiver profile rates.

p. Shared Use.

(1) Enabling legislation for the DLP encourages the use of the DLP sites by non-Guard receivers whenever the National Guard is not using the site(s). This is a unique circumstance where non-Guard receivers on a space-available, reimbursable basis can use federally procured equipment, provided for the training of National Guard personnel. All non-Guard use is reimbursable.

(2) Shared use is any use of federal DLP resources other than official National Guard use. A shared receiver is any receiver who is not performing official National Guard business. Shared use receivers are classified into one of four profiles.

1. DoD Components. Receivers from other DoD agencies, including all non-Guard military organizations. These receivers are only required to reimburse for incremental direct costs incurred in providing shared use to these agencies. Reimbursements from these receivers are to reimburse National Guard appropriations and are not program income.

2. Non-DoD Federal Receivers. Federal receivers from other than the DoD. These receivers are only required to reimburse for incremental direct costs incurred plus any costs for technicians and military personnel in providing shared use to these agencies. Reimbursements from these receivers are to reimburse National Guard appropriations and are not program income.

3. Non-Federal Receivers. Non-Federal receivers, including private organizations. These receivers are required to reimburse for actual costs incurred by the National Guard to provide the shared use service or the prevailing commercial rate, whichever is higher. A portion of the reimbursements received from these receivers will be used to reimburse National Guard appropriations and the Grantee for facility costs. The remainder (program income) will be retained at Grantee level in a separate, no fiscal year state government account and utilized to support federally authorized DLP requirements at the Grantee level.

4. State and local governments (Applicable only when special or technical services are provided by a DoD entity to state and local governments in accordance with DoD Financial Management Regulation, Volume 11A, Chapter 11). Under the specific circumstances delineated in preceding cited reference these receivers are required to reimburse the federal government for all actual costs incurred by the National Guard to provide the shared use service. A portion of reimbursements received from these receivers will be utilized to reimburse National Guard appropriations and the Grantee for facility utilization and site operation contractual costs. The remainder will be program income retained at Grantee level in a separate no fiscal year state government account and utilized to support federally authorized DLP requirements at the state level.

(3) All shared receivers may utilize DLP site services including computer and web-based courseware, video teleconferencing (VTC) resources, facilities, productivity tools, and peripheral equipment when they are not required for official National Guard business. Fees charged for the use of these services will be determined based upon the customer's shared use profile.

(4) Reimbursement is a two-step process: the collection of funds and the disbursement of payments to eligible claimants (e.g., state, NGB, service providers). The state is responsible for maintaining accurate records to ensure that all costs associated with shared use are identified and collected for subsequent reimbursement and/or

accumulation as program income. Use of DLP resources potentially involves participation from all members of the private sector and local communities.

(5) For ease of accounting, it is recommended that the state maintain a separate bank account for deposit of all receipts associated with shared use and that all expenditures are documented consistent with state accounting procedures.

(6) Site Rate Worksheets designed to facilitate calculation of auditable rates have been developed and are mandatory for use in establishing rates for each classroom and each potential receiver (DoD components, non-DoD federal, non federal, state and local governments). Current worksheets are available online in the Site Rate Worksheets folder in the Classroom Operations Cooperative Agreements and Appendix 40 Section of the NGB-ART-DL GKO Website: [https://gkoportal.ngb.army.mil/site/G3\\_ART/DL/ClassroomOps/default.aspx](https://gkoportal.ngb.army.mil/site/G3_ART/DL/ClassroomOps/default.aspx)

(7) Reimbursement rates for use of DLP Classrooms will be published annually by NGB-ART-DL and are included in the computation of site rates in the site rate worksheets.

q. Changes to the terms and condition of this Appendix shall be IAW NGR 5-1, Chapter 3.

**Section 4009. Funding Limitation.**

a. Approved Budget/Annual Funding Program (AFP): The total dollar amount that NGB anticipates, subject to the availability of funds, being available for reimbursement to the Grantee for its costs in fulfilling its responsibilities under this Appendix. This amount may be increased or decreased by NGB during the fiscal year.

b. Total Dollars Obligated: The total amount of funds obligated for NGB's share under this Appendix. Only funds obligated through an executed CA modification to this appendix are available for reimbursement to the State. Funds shall be obligated to this Appendix as received by the CA PM.

c. Accomplished as In-Kind Assistance: The total dollars expended through federal acquisition. This dollar amount may reflect anticipated In-Kind Assistance and be updated as IKA is approved, but as a minimum shall reflect the total dollars accomplished through In-Kind Assistance in support of this Appendix for each fiscal year as it occurs.

d. Program Income: Amounts paid directly to the Grantee for shared use of DLP facilities by a state Agency, or any other non-federal receiver for use of DLP facilities are program income. The gross income received minus cost of generating the income (e.g., network costs, courseware fees, etc.) is net program income. The net program income is added to the cooperative agreement and reported as a Grantee contribution to the cooperative agreement. Net program income is cumulative IAW with Congressional language, with no fiscal year identity. This cumulative nature must be reflected in any modification/s to the Appendix. The addition of program income to the funds committed in a cooperative agreement shall not require an increase in the federal funding contribution. This dollar amount may reflect anticipated Program Income and be updated as Program Income is reported, but as a minimum shall reflect the total dollars received as Program Income for each fiscal year as it occurs.

e. The following funding limitations are provided for each fiscal year as it occurs.

1. Fiscal Year 2010:	Approved Budget/(AFP) \$352,800.00	Total Dollars Obligated \$352,800.00
	Accomplished as In-Kind Assistance \$69,000.00	
	Program Income \$ 9,367.84	
2. Fiscal Year 2011:	Approved Budget/(AFP) \$301,700.00	Total Dollars Obligated \$301,700.00
	Accomplished as In-Kind Assistance \$0.00	
	Program Income \$1,827.54	
3. Fiscal Year 2012:	Approved Budget/(AFP) \$ 115,000.00	Total Dollars Obligated \$ 115,000.00
	Accomplished as In-Kind Assistance \$15,533.88	

August 2009

Program Income \$ 1,829.35

4. Fiscal Year 2013:      Approved Budget/(AFP)      Total Dollars Obligated  
   \$273,379.00      \$ \_\_\_\_\_  
Accomplished as In-Kind Assistance \$0.00  
Program Income      \$ \_\_\_\_\_

5. Fiscal Year \_\_\_\_\_:      Approved Budget/(AFP)      Total Dollars Obligated  
   \$ \_\_\_\_\_      \$ \_\_\_\_\_  
Accomplished as In-Kind Assistance \$ \_\_\_\_\_  
Program Income      \$ \_\_\_\_\_

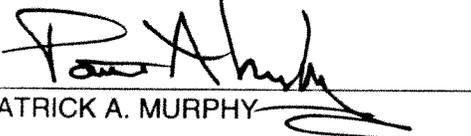
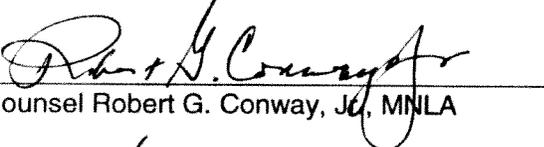
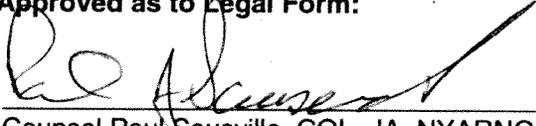
**Section 4010. Agreement Particulars.**

The information below shall be recorded by the Grants Officer's Representative (GOR) for the compliance with the reporting requirements of the DoD Assistance Award Action Report System (DAADS) and the Federal Funding Accountability and Transparency Act of 2006.

- a. Grantee/Recipient Category: Government
- b. Grantee/Recipient Type: State Government
- c. Grantee/Recipient DUNS: 044776024
- d. Primary Place of Performance (if different from 'Issued To' on CA Modification Form): New York, 12110-3514
  
- (To include Zip + 4)
- e. Grantee/Recipient County (Primary Place of Performance): 36
- f. Grantee/Recipient Congressional District (Primary Place of Performance): Albany
- g. Major Agency: DOD
- h. Agency Code: 2100
- i. Funding Agency: Army
- j. Program Source Agency: 21
- k. Transaction Type: Cooperative Agreement
- l. CFDA: 12.401
- m. CFDA Program Title: Operation and Maintenance, Army National Guard
- n. Program Source Account-Funding: 2065
- o. Treasury Appropriation Code: 2065
- p. Award/Obligation/Action Date: 1 Oct 2012
- q. Starting Date: 1 Oct 2012
- r. Ending Date: 30 Sep 2013
- s. Record Type: Individual Action
- t. Fiscal Year/Quarter: 2013/1<sup>st</sup> Qtr

**EXECUTION**

**IN WITNESS WHEREOF: The parties, by their signatures, execute this Appendix and agree to its terms and conditions.**

<p><b>STATE OF NEW YORK:</b></p> <p>BY:  PATRICK A. MURPHY</p> <p>Major General, NYARNG The Adjutant General</p> <p><u>5 Oct 2012</u> (Date)</p>	<p><b>NATIONAL GUARD BUREAU:</b></p> <p>BY:  LAWRENCE J. ASHLEY</p> <p>Colonel, USA USP&amp;FO for New York</p> <p><u>9 OCT 12</u> (Date)</p>
<p><b>Approved as Legal Form:</b></p> <p> Counsel Robert G. Conway, Jr., MNLA</p> <p><u>26 Sep 2012</u> (Date)</p>	<p><b>Approved as to Legal Form:</b></p> <p> Counsel Paul Sausville, COL, JA, NYARNG</p> <p><u>21 Sep 2012</u> (Date)</p>