UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2025

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number: 001-41655

NioCorp Developments Ltd.
(Exact Name of Registrant as Specified in its Charter)

British Columbia, Canada	**98-1262185**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
7000 South Yosemite Street, Suite 115 Centennial, CO	**80112**
(Address of Principal Executive Offices)	(Zip code)

Registrant's telephone number, including area code: (720) 334-7066

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares, without par value	NB	The Nasdaq Stock Market LLC
Warrants, each exercisable for 1.11829212 Common Shares	NIOBW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act:

Large Accelerated Filer	☐	Accelerated Filer	☐
Non-Accelerated Filer	☒	Smaller Reporting Company	☒
		Emerging Growth Company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 13, 2025, the registrant had 119,360,725 Common Shares outstanding.

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PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

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NioCorp Developments Ltd.
Condensed Consolidated Balance Sheets
(expressed in thousands of U.S. dollars, except share data) (unaudited)

	As of September 30, 2025	As of June 30, 2025
ASSETS		
Current		
Cash and cash equivalents	$ 162,759	$ 25,554
Prepaid expenses and other	784	1,183
Total current assets	163,543	26,737
Non-current		
Deposits	93	37
Investment in equity securities	3	3
Right-of-use assets	101	118
Land and buildings, net	5,750	839
Mineral properties	25,195	16,085
Total assets	$ 194,685	$ 43,819
LIABILITIES		
Current		
Accounts payable and accrued liabilities	$ 3,878	$ 1,795
Operating lease liability	98	98
Total current liabilities	3,976	1,893
Non-current		
Warrant liabilities, at fair value	18,876	6,852
Earnout liability, at fair value	20,376	5,880
Operating lease liability	14	33
Total liabilities	43,242	14,658
Commitments and contingencies		
Redeemable noncontrolling interest	(68)	838
SHAREHOLDERS' EQUITY		
Common stock, no par value, unlimited shares authorized; 100,737,151 and 58,491,196 shares outstanding, respectively	374,398	208,551
Accumulated deficit	(221,976)	(179,317)
Accumulated other comprehensive loss	(911)	(911)
Total shareholders' equity	151,511	28,323
Total liabilities, redeemable noncontrolling interest, and shareholders' equity	$ 194,685	$ 43,819

The accompanying notes are an integral part of these condensed consolidated financial statements.

NioCorp Developments Ltd.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(expressed in thousands of U.S. dollars, except share and per share data) (unaudited)

	For the three months ended September 30,	
	2025	2024
Operating expenses		
Employee related costs	$ 2,216	$ 330
Professional fees	875	450
Exploration expenditures	7,084	138
Other operating expenses	1,843	477
Total operating expenses	12,018	1,395
Change in fair value of earnout shares liability	14,496	816
Change in fair value of warrant liabilities	17,558	(56)
Change in fair value of convertible notes	-	17
Interest expense	-	44
Foreign exchange (gain) loss	(5)	8
Interest income	(560)	-
Other gains	-	(122)
Loss before income taxes	(43,507)	(2,102)
Income tax benefit	-	-
Net loss and comprehensive loss	(43,507)	(2,102)
Less: Net loss attributable to redeemable noncontrolling interest	(848)	(31)
Net loss and comprehensive loss attributable to the Company	$ (42,659)	$ (2,071)
Loss per common share, basic and diluted	$ (0.53)	$ (0.05)
Weighted average common shares outstanding, basic and diluted	76,059,283	38,361,344

The accompanying notes are an integral part of these condensed consolidated financial statements.

NioCorp Developments Ltd.
Condensed Consolidated Statements of Cash Flows
(expressed in thousands of U.S. dollars) (unaudited)

	For the three months ended September 30, 2025	2024
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss for the period	$ (43,507)	$ (2,102)
Adjustments for:		
Change in valuation of earnout shares liability	14,496	816
Change in valuation of warrant liabilities	17,558	(56)
Other gain	-	(122)
Share based compensation	2,302	-
Accretion of convertible debt	-	44
Change in fair value of convertible note	-	17
Yorkville share issuances	-	(1)
Depreciation	1	1
Non-cash lease activity	(2)	(1)
	(9,152)	(1,404)
Change in working capital items:		
Prepaid expenses	398	(130)
Accounts payable and accrued liabilities	2,085	892
Net cash used in operating activities	(6,669)	(642)
CASH FLOWS FROM INVESTING ACTIVITIES		
Acquisition of land	(4,912)	-
Acquisition of mineral rights	(9,110)	-
Deposits	(56)	-
Net cash used in investing activities	(14,078)	-
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from issuance of capital stock	170,253	692
Debt payments	-	(1,943)
Related party debt draws	-	33
Share issue costs	(12,301)	(2)
Net cash provided by (used in) financing activities	157,952	(1,220)
Change in cash and cash equivalents during period	137,205	(1,862)
Cash and cash equivalents, beginning of period	25,554	2,012
Cash and cash equivalents, end of period	$ 162,759	$ 150
Supplemental cash flow information:		
Conversion of debt for common shares	$ -	$ 501
Value of warrants issued	-	2,262
Unpaid offering costs for the issuance of common shares	721	-
Interest paid	-	-

The accompanying notes are an integral part of these condensed consolidated financial statements.

NioCorp Developments Ltd.
Condensed Consolidated Statements of Shareholders' Equity and Redeemable Noncontrolling Interest
(expressed in thousands of U.S. dollars, except for share data) (unaudited)

	Common Shares Outstanding	Common Stock	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total	Redeemable Noncontrolling Interest
Balance, June 30, 2024	38,062,647	$ 163,823	$ (161,912)	$ (911)	$ 1,000	$ 1,534
Yorkville equity facility draws	399,250	691	-	-	691	-
Debt conversions	258,347	501	-	-	501	-
Issuance of warrants	-	2,262	-	-	2,262	-
Share issuance costs	-	(2)	-	-	(2)	-
Loss for the period	-	-	(2,071)	-	(2,071)	(31)
Balance, September 30, 2024	38,720,244	$ 167,275	$ (163,983)	$ (911)	$ 2,381	$ 1,503
Balance, June 30, 2025	58,491,196	$ 208,551	$ (179,317)	$ (911)	$ 28,323	838
Equity placements	30,854,740	155,037	-	-	155,037	-
Warrant exercises	10,856,182	18,250	-	-	18,250	-
Option exercises	119,452	-	-	-	-	-
Redemptions of vested shares	415,581	58	-	-	58	(58)
Conversion of private warrants	-	2,501	-	-	2,501	-
Share-based compensation	-	2,302	-	-	2,302	-
Share issuance costs	-	(12,301)	-	-	(12,301)	-
Loss for the period	-	-	(42,659)	-	(42,659)	(848)
Balance, September 30, 2025	100,737,151	$ 374,398	$ (221,976)	$ (911)	$ 151,511	$ (68)

The accompanying notes are an integral part of these condensed consolidated financial statements.

1. DESCRIPTION OF BUSINESS

NioCorp Developments Ltd. ("we," "us," "our," "NioCorp" or the "Company") was incorporated on February 27, 1987, under the laws of the Province of British Columbia and currently operates in one reportable operating segment consisting of exploration and development of mineral deposits in North America, specifically, the Company's niobium/scandium/titanium property (the "Elk Creek Project") located in southeastern Nebraska. The Company currently earns no operating revenues and will require additional capital in order to advance the Elk Creek Project to construction and commercial operation, as discussed in Note 3.

2. BASIS OF PRESENTATION

a) Basis of Presentation and Consolidation

The accompanying interim condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles of the United States of America ("U.S. GAAP") and the rules and regulations of the Securities and Exchange Commission (the "SEC"). The interim condensed consolidated financial statements include the consolidated accounts of the Company and its wholly owned subsidiaries with all significant intercompany transactions eliminated. The accounting policies followed in preparing these interim condensed consolidated financial statements are those used by the Company as set out in the audited consolidated financial statements for the year ended June 30, 2025. Certain transactions include reference to Canadian dollars ("C$") where applicable.

In the opinion of management, all adjustments considered necessary (including normal recurring adjustments) for a fair statement of the financial position, results of operations, and cash flows as of September 30, 2025, and for all periods presented, have been included in these interim condensed consolidated financial statements. Certain information and footnote disclosures normally included in the consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to appropriate SEC rules and regulations. These interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements for the year ended June 30, 2025. The interim results are not necessarily indicative of results for the full year ending June 30, 2026, or future operating periods.

b) Recent Accounting Standards

In December 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which enhances the transparency and decision usefulness of income tax disclosures primarily through changes to the rate reconciliation and income taxes paid information. ASU 2023-09 is effective for our annual report for the period ending June 30, 2027, and for interim period reports beginning thereafter. Early adoption is permitted and the amendments should be applied prospectively; however, retrospective application is permitted. We are currently evaluating the impact of this ASU on our consolidated financial statements and related disclosures.

In November 2024, the FASB issued ASU 2024-03, Income Statement - Reporting Comprehensive Income -Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses. ASU 2024-03 requires the disclosure of additional information related to certain costs and expenses, including amounts of inventory purchases, employee compensation, and depreciation and amortization included in each income statement line item. This ASU also requires disclosure of the total amount of selling expenses and our definition of selling expenses. This ASU is effective for our annual report for the period ending June 30, 2028, and for interim period reports beginning thereafter on a prospective or retrospective basis. Early adoption is permitted. We are currently evaluating the impact of adopting this ASU on our consolidated financial statements and disclosures.

From time to time, new accounting pronouncements are issued by the FASB that are adopted by the Company as of the specified effective date. Unless otherwise discussed, management believes that the impact of recently issued standards did not or will not have a material impact on the Company's consolidated financial statements upon adoption.

c) Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. The Company regularly evaluates estimates and assumptions related to the valuation of mineral properties, deferred income tax asset valuations, earnout valuation, warrant liabilities, and share-based compensation. The Company bases its estimates and assumptions on current facts, historical experience, and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the other sources. The actual results experienced by the Company may differ materially and adversely from the Company's estimates. To the extent there are material differences between estimates and the actual results, future results of operations will be affected.

d) Basic and Diluted Earnings per Share

The Company utilizes the weighted average method to determine the impact of changes in a participating security on the calculation of loss per share. The following table sets forth the computation of the Company's basic and diluted net loss per share attributable to common shareholders:

	For the Three Months Ended September 30,	
	2025	2024
Net loss	$ (43,507)	$ (2,102)
Adjust: Net loss attributable to noncontrolling interest	(848)	(31)
Net loss available to participating securities	(42,659)	(2,071)
Net loss attributable to vested shares of ECRC Class B common stock	(2,705)	(186)
Net loss attributed to common shareholders - basic and diluted	$ (39,954)	$ (1,885)
Denominator:		
Weighted average shares outstanding – basic and diluted	76,059,283	38,361,344
Loss per Common Share outstanding – basic and diluted	$ (0.53)	$ (0.05)

The following common shares, no par value, of the Company ("Common Shares") underlying options to purchase Common Shares ("Options"), Common Share purchase warrants ("Warrants"), and outstanding convertible debt were antidilutive due to a net loss in the periods presented and, therefore, were excluded from the dilutive securities computation for the periods indicated below:

	For the Three Months Ended September 30,	
Excluded potentially dilutive securities (1)(2):	2025	2024
Options	3,644,700	2,455,500
Warrants (3)	23,488,196	20,932,985
Convertible debt	-	1,920,000
Total potential dilutive securities	27,132,896	25,308,485

(1) The number of shares is based on the maximum number of shares issuable on exercise or conversion of the related securities as of the period end. Such amounts have not been adjusted for the treasury stock method or weighted average outstanding calculations as required if the securities were dilutive.
(2) Earnout Shares are excluded as the vesting terms were not met as of the end of the reporting period.
(3) Includes 15,666,626 NioCorp Assumed Warrants that are each exercisable into 1.11829212 Common Shares. The remaining Warrants are each exercisable into one Common Share.

3. LIQUIDITY AND GOING CONCERN

The Company incurred a loss of $42,659 for the three months ended September 30, 2025 (three months ended September 30, 2024 - $2,071) and had an accumulated deficit of $221,976 as of September 30, 2025. As a development stage issuer, the Company has not yet commenced its mining operations, has no revenue-generating capacity, and will not generate operating revenues until such time as mining operations are initiated and commercial production begins.

As discussed in Note 12, on October 15, 2025, the Company closed a registered direct offering which resulted in net proceeds of approximately $139,147 after deducting placement agent fees and other offering expenses payable by us. As discussed in Note 7, NioCorp expects to have access to up to $46,917 in net proceeds from the Standby Equity Purchase Agreement, dated January 26, 2023 (the "Yorkville Equity Facility Financing Agreement"), between the Company and YA II PN, Ltd., an investment fund managed by Yorkville Advisors Global, LP ("Yorkville"), through April 1, 2026.

As a result of our recent financing activities, we were able to alleviate prior conditions that gave rise to substantial doubt about our ability to continue as a going concern and we have sufficient cash to fund our planned operations for the next 12 months. However, the Company will need to secure additional capital to finance construction and achieve commercial production to support its long-term business objectives.

The Company plans to continue to seek additional financing through equity issuances and continues to evaluate debt financing options. In addition, the Company may pursue additional sources of financing, and while it has been successful in doing so in the past, there can be no assurance it will be able to do so in the future. Other than the potential issuance of Common Shares under the Yorkville Equity Facility Financing Agreement, the Company did not have any further funding commitments or arrangements for additional financing as of September 30, 2025. The Company's plans to obtain additional financing are subject to market conditions and other factors beyond its control, and therefore the timing and outcome of such activities cannot be predicted with certainty.

4. LAND AND MINERAL PROPERTIES

On August 1, 2025, Elk Creek Resources Corp. ("ECRC"), an indirect, majority-owned subsidiary of the Company, closed on its option to purchase three parcels of land in Johnson County, Nebraska (the "August Property Purchases"). Pursuant to the terms of the applicable option to purchase agreements, the property owners sold, transferred, conveyed, and assigned to ECRC all of their rights, privileges, title, and interest in and to the surface rights with respect to one 80-acre parcel and to the surface rights and associated mineral rights with respect to the other two parcels (consisting of approximately 1.66 acres of the property). The purchase price for the August Property Purchases was calculated based on the appraised value per acre and totaled approximately $2,699, including indirect costs of $35. Of this amount, $2,650 was allocated to land and the remaining $49 was allocated to mineral interests.

On September 30, 2025, ECRC closed on its options to purchase two parcels of land in Johnson County, Nebraska, which include: (i) a 105.77-acre parcel of land and (ii) a 220-acre parcel of land (together, the "September Property Purchases"). Pursuant to the terms of the applicable option to purchase agreements, the property owners sold, transferred, conveyed, and assigned to ECRC all of their respective rights, privileges, title, and interest in and to the surface rights and associated mineral rights with respect to the parcels. The purchase price for the September Property Purchases was calculated based on the appraised value per acre and totaled approximately $11,325, including indirect costs of $29. Of this amount, $2,263 was allocated to land and the remaining $9,062 was allocated to mineral interests.

5. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	As of September 30, 2025	June 30, 2025
Accounts payable, trade	$ 1,986	$ 692
Trade payable accruals	1,844	1,055
Environmental accruals	48	48
Total accounts payable and accrued liabilities	$ 3,878	$ 1,795

6. CLASS B COMMON STOCK OF ECRC

The shares of Class B common stock of ECRC include rights under which the holders may exchange such shares into Common Shares. Certain of such shares were vested as of the Closing (as defined below) and are exchangeable at any time, from time to time, until the tenth anniversary of the Closing Date (as defined below) (the "Vested Shares") and certain of such shares are subject to certain vesting conditions (the "Earnout Shares").

Earnout Shares

The Earnout Shares were valued utilizing a Monte Carlo Simulation pricing model with the following primary inputs:

	September 30, 2025	June 30, 2025
Closing Common Share price	$6.68	$2.33
Term (expiry)	March 17, 2033	March 17, 2033
Implied volatility of our publicly traded Warrants	70.0%	75.0%
Risk-free rate	3.97%	4.04%

The following table sets forth a summary of the changes in the fair value of the Earnout Shares liability for the three-month period ended September 30, 2025:

	Amount
Fair value as of June 30, 2025	$ 5,880
Change in fair value	14,496
Fair value as of September 30, 2025	$ 20,376

Vested Shares

On August 13, 2025, 415,581 Vested Shares were exchanged for an equivalent number of Common Shares. This exchange resulted in a change in the Company's ownership interest in ECRC and was accounted for as an equity transaction in accordance with Accounting Standards Codification ("ASC") 810-10-45-23, with no gain or loss recognized. Accordingly, the carrying amount of the noncontrolling interest was adjusted to reflect the change in the Company's ownership interest with a corresponding offset booked to equity. As of September 30, 2025, 3,518,450 Vested Shares remained outstanding.

Because Board approval for cash payment and the occurrence of a fundamental transaction that would trigger cash payment are considered unlikely, the noncontrolling interest has not been adjusted to its redemption value. As such, noncontrolling interest balance is only being adjusted for the loss attributed to the noncontrolling interest and exchanges of Vested Shares to Common Shares since the noncontrolling interest is not currently considered redeemable.

7. COMMON SHARES

a) Issuance

On July 18, 2025, the Company issued and sold 13,850,000 Common Shares, at an offering price of $3.25 per Common Share, in a registered offering (the "July 2025 Offering") under the Company's registration statement on Form S-3 (Registration No. 333-280176), pursuant to the Placement Agency Agreement between the Company and Maxim Group LLC ("Maxim"), dated July 17, 2025. The Company received net proceeds from the July 2025 Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $41,186.

On September 19, 2025, the Company issued and sold 10,000,000 Common Shares, at an offering price of $5.00 per Common Share, in a registered direct offering (the "September 2025 Registered Direct Offering") under the Company's registration statement on Form S-3 (Registration No. 333-280176), pursuant to the Placement Agency Agreement between the Company and Maxim, dated September 17, 2025. The Company received net proceeds from the September 2025 Registered Direct Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $45,925.

On September 29, 2025, the Company issued and sold (a) 7,004,740 Common Shares at a public offering price of $6.15 per Common Share and (b) 2,755,260 pre-funded Warrants to purchase an aggregate of 2,755,260 Common Shares (the "September Pre-Funded Warrants") at a public offering price of $6.1499 per September Pre-Funded Warrant in a confidentially marketed public offering (the "September 2025 Public Offering") under the Company's registration statement on Form S-3 (Registration No. 333-280176), pursuant to the Placement Agency Agreement between the Company and Maxim, dated September 26, 2025. On September 30, 2025, the Company issued 2,755,218 Common Shares in connection with the cashless exercise of all of the outstanding September Pre-Funded Warrants. The Company received net proceeds from the September 2025 Public Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $55,320.

b) Stock Options

	Number of Options	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Life
Balance, June 30, 2025	3,020,000	$ 3.09		
Granted	1,955,000	4.35		
Exercised	(200,000)	2.39		
Cancelled/expired	-	-		
Balance, September 30, 2025	4,775,000	$ 3.64	$ 12,027	3.7 Years

On August 18, 2025, the Company granted 1,955,000 Options with an exercise price of $4.35 and an average fair value price of $2.61 per Option, based on a Black-Scholes model with an average risk-free rate of 3.86%, average share price volatility of 76.92%, and a 4.5-year weighted average expected life. 250,000 of these Options were fully vested on the issuance date. 34% of the remaining 1,705,000 Options vested at issuance with the balance vesting equally over a two-year period in equal annual installments until August 18, 2027. For the three months ended September 30, 2025, the Company expensed $2,302 in the condensed consolidated statement of operations associated with the Option grants and related amortization.

c) Warrants

	Number of Warrants	Weighted Average Exercise Price
Balance, June 30, 2025	29,985,922	$ 7.06
Granted	2,755,260	0.0001
Exercised	(10,856,224)	1.40
Expired	(250,000)	4.60
Balance, September 30, 2025	21,634,958	$ 8.91

As of September 30, 2025, the Company had outstanding exercisable Warrants, as follows:

Number	Exercise Price	Expiry Date
413,432	3.54	December 22, 2025
315,000	2.20	June 24, 2026
662,500	1.75	November 5, 2026
1,859,080	1.75	November 13, 2026
15,666,626	11.50	March 17, 2028
1,266,742	2.31	September 17, 2028
514,045	2.07	November 5, 2029
937,533	2.07	November 13, 2029
21,634,958		

2023 Private Warrants

On March 17, 2023 (the "Closing Date"), the Company closed a series of transactions (the "GXII Transaction") pursuant to the Business Combination Agreement, dated as of September 25, 2022, by and among the Company, GXII, and Big Red Merger Sub Ltd. In connection with the closing of the GXII Transaction (the "Closing"), the Company assumed GXII's obligations under the agreement governing the GXII share purchase warrants (the "GXII Warrants"), as amended by an assignment, assumption and amendment agreement (the "NioCorp Assumed Warrant Agreement"), and issued an aggregate of 15,666,626 Warrants (the "NioCorp Assumed Warrants"). The Company issued (a) 9,999,959 public NioCorp Assumed Warrants (the "2023 Public Warrants") in respect of the GXII Warrants that were publicly traded prior to the Closing and (b) 5,666,667 NioCorp Assumed Warrants (the "2023 Private Warrants") to GX Sponsor II LLC (the "Sponsor").

Each 2023 Private Warrant entitles the holder to the right to purchase 1.11829212 Common Shares at an exercise price of $11.50 per 1.11829212 Common Shares (subject to adjustments for stock splits, stock dividends, reorganizations, recapitalizations and the like). No fractional shares will be issued upon exercise of any 2023 Private Warrants, and fractional shares that would otherwise be due to the exercising holder will be rounded down to the nearest whole Common Share. In no event will the Company be required to net cash settle any 2023 Private Warrant.

The 2023 Private Warrants: (i) will be exercisable either for cash or on a cashless basis at the holder's option and (ii) will not be redeemable by the Company, in either case as long as the 2023 Private Warrants are held by the Sponsor, its members or any of their permitted transferees (as prescribed in the NioCorp Assumed Warrant Agreement). In accordance with the NioCorp Assumed Warrant Agreement, any 2023 Private Warrants that are held by someone other than the Sponsor, its members or any of their permitted transferees are treated as 2023 Public Warrants.

The Company classifies the 2023 Private Warrants as Level 2 instruments under the fair value hierarchy as inputs into our pricing model are based on observable data points. The following observable data points were used in calculating the fair value of the 2023 Private Warrants using a Black-Scholes pricing model:

Key Valuation Input	September 30, 2025	June 30, 2025
Closing Common Share price	$6.68	$2.33
Implied volatility of our publicly traded Warrants	65.0%	90.0%
Risk free rate	3.62%	3.70%
Dividend yield	0%	0%
Expected warrant life in years	2.5	2.7

As provided for in the NioCorp Assumed Warrant Agreement, during the three months ended September 30, 2025, a total of 2,281,881 2023 Private Warrants were exchanged for 2023 Public Warrants. Upon exchange, the Company recorded a non-cash loss of $1,217 in change in fair value of warrant liabilities in the condensed consolidated statement of operations, representing the change in fair value of the 2023 Private Warrants through the respective exercise dates.

The change in the 2023 Private Warrants liability is presented below:

	For the Three Months Ended September 30, 2025
Fair value as of June 30, 2025	$ 2,532
Fair value adjustment for warrants exchanged	1,217
Exchange of warrants	(2,501)
Change in fair value	3,039
Fair value as of September 30, 2025	$ 4,287

April 2024 Warrants

As previously disclosed, on April 12, 2024, the Company issued and sold to Yorkville and Lind Global Fund II LP ("Lind II", and together with Yorkville, the "April 2024 Purchasers") $8,000 aggregate principal amount of unsecured notes (the "April 2024 Notes"), pursuant to a securities purchase agreement, dated April 11, 2024, between the Company and each of the April 2024 Purchasers. The Company also issued to the April 2024 Purchasers, in proportion to the aggregate principal amount of April 2024 Notes issued to each April 2024 Purchaser, Warrants (the "April 2024 Warrants") to purchase up to 615,385 Common Shares, which are equal to 25% of the aggregate principal amount of April 2024 Notes issued to the April 2024 Purchasers divided by the exercise price of $3.25, subject to any adjustment to give effect to any stock dividend, stock split or recapitalization. The Company accounted for the April 2024 Warrants in accordance with ASC Topic 815, Derivatives and Hedging, and determined that at issuance, the April 2024 Warrants should be classified as a warrant liability. During the three-month period ended September 30, 2025, all of the outstanding April 2024 Warrants were exercised.

The change in the April 2024 Warrant liability is presented below:

	For the Three Months Ended September 30, 2025
Fair value as of June 30, 2025	$ 489
Fair value adjustment for warrants exercised	1,318
Exercise of warrants	(1,807)
Fair value as of September 30, 2025	$ -

The Company recorded a non-cash loss of $1,318 in change in fair value of warrant liabilities in the condensed consolidated statement of operations during the three-month period ended September 30, 2025, representing the change in fair value of the April 2024 Warrants through the respective exercise dates.

November 2024 Warrants

As previously disclosed, on November 13, 2024, the Company closed a non-brokered private placement of 2,199,602 units of the Company (the "November 2024 Units"). Each November 2024 Unit consisted of one Common Share, one Warrant (a "Series A Private Warrant") to purchase one Common Share, and one-half of one Warrant (each whole such Warrant, a "Series B Private Warrant" and, together with the Series A Private Warrants, the "November 2024 Private Warrants"), with each Series B Private Warrant entitling the holder thereof to purchase one additional Common Share. The Series A Private Warrants have an exercise price of $1.75 per underlying Common Share, are exercisable immediately, and will expire on November 13, 2026. The Series B Private Warrants have an exercise price of $2.07 per underlying Common Share and will expire on November 13, 2029. Based upon the Company's analysis of the criteria contained in ASC 815, the Company determined that the November 2024 Private Warrants met the definition of a derivative liability.

The Company classifies the November 2024 Private Warrants as Level 2 instruments under the fair value hierarchy as inputs into our pricing model are based on observable data points. The following observable data points were used in calculating the fair value of the November 2024 Private Warrants using a Black-Scholes pricing model:

	Series A Private Warrants		Series B Private Warrants	
Key Valuation Input	September 30, 2025	June 30, 2025	September 30, 2025	June 30, 2025
Closing Common Share price	$6.68	$2.33	$6.68	$2.33
Historic equity volatility	97.30%	86.14%	76.06%	74.26%
Risk-free rate	3.62%	3.88%	3.69%	3.77%
Expected warrant life in years	1.12	1.37	4.12	4.38

The change in the fair value of the November 2024 Private Warrants is shown below:

	For the Three Months Ended September 30, 2025
Fair value as of June 30, 2025	$ 3,831
Fair value adjustment for warrants exercised	885
Exercise of warrants	(1,227)
Change in fair value	11,100
Fair value as of September 30, 2025	$ 14,589

The Company recorded a non-cash loss of $885 in change in fair value of warrant liabilities in the condensed consolidated statement of operations during the quarter ended September 30, 2025, representing the change in fair value of the November 2024 Series A Private Warrants and Series B Private Warrants through the respective exercise dates.

Other

As of September 30, 2025, the Company has access to up to $46,917 in net proceeds from the Yorkville Equity Facility Financing Agreement, through April 1, 2026. No Common Shares were issued under the Yorkville Equity Facility Financing Agreement during the three-month period ended September 30, 2025.

8. EXPLORATION EXPENDITURES

	For the Three Months Ended September 30, 2025	2024
Technical studies and engineering	$ 3,167	$ -
Drilling	2,356	-
Field management and other	657	91
Metallurgical development	247	47
Geologists and field staff	657	-
Total	$ 7,084	$ 138

On August 4, 2025, ECRC entered into a Project Sub-Agreement (the "DoD Agreement") with Advanced Technology International, an entity acting on behalf of the Defense Industrial Base Consortium under the authority of the U.S. Department of Defense ("DoD"). Subject to the terms and conditions of the DoD Agreement, ECRC is entitled to receive up to an aggregate of approximately $10.0 million of reimbursement payments from the DoD upon the achievement of certain project milestones. These milestones include, among other matters, the completion of new drilling operations at the Elk Creek Project to support the conversion of a portion of the current indicated mineral resources into measured mineral resources and the subsequent conversion of a portion of the current probable mineral reserves into proven mineral reserves, the production of samples of scandium metal and scandium-aluminum master alloys, and the completion of a new feasibility study for the Elk Creek Project. Reductions to exploration expenditures for reimbursement under the DoD Agreement will be recognized based on management's assessment regarding the achievement of milestones set forth in the DoD Agreement. As of September 30, 2025, no individual milestones had been met.

9. LEASES

The Company incurred lease costs as follows:

Operating Lease Cost:	For the Three Months Ended September 30, 2025	2024
Fixed rent expense	$ 24	$ 23
Variable rent expense	2	3
Short-term lease cost	2	3
Sublease income	(11)	(9)
Lease cost – other operating expense:	$ 17	$ 20

The maturities of lease liabilities are as follows as of September 30, 2025:

	Future Lease Maturities
Total remaining lease payments	$ 124
Less portion of payments representing interest	(12)
Present value of lease payments	112
Less current portion of lease payments	(98)
Non-current lease liability	$ 14

10. FAIR VALUE MEASUREMENTS

The following tables present information about the assets and liabilities that are measured at fair value on a recurring basis as of September 30, 2025, and June 30, 2025, respectively, and indicate the fair value hierarchy of the valuation techniques the Company utilized to determine such fair value. In general, fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical instruments. Fair values determined by Level 2 inputs utilize data points that are observable, such as quoted prices, interest rates, and yield curves. Fair values determined by Level 3 inputs are unobservable data points for the financial instrument and include situations where there is little, if any, market activity for the instrument.

	As of September 30, 2025			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash and cash equivalents	$ 162,759	$ 162,759	$ -	$ -
Investment in equity securities	3	3	-	-
Total	$ 162,762	$ 162,762	$ -	$ -
Liabilities:				
Earnout Shares liability	$ 20,376	$ -	$ -	$ 20,376
Warrant liabilities	18,876	-	18,876	-
Total	$ 39,252	$ -	$ 18,876	$ 20,376

	As of June 30, 2025			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash and cash equivalents	$ 25,554	$ 25,554	$ -	$ -
Investment in equity securities	3	3	-	-
Total	$ 25,557	$ 25,557	$ -	$ -
Liabilities:				
Earnout Shares liability	$ 5,880	$ -	$ -	$ 5,880
Warrant liabilities	6,852	-	6,852	-
Total	$ 12,732	$ -	$ 6,852	$ 5,880

11. SEGMENT INFORMATION

The Company has one reportable segment: the United States. The United States segment conducts exploration, development, and care and maintenance activities at the Elk Creek Project. This segment holds substantially all of the Company's non-current assets and does not presently report any revenues from operations. Through this segment, the Company seeks to position the Elk Creek Project as a development opportunity in the strategic minerals sector. The Company's chief operating decision maker is the Chief Executive Officer ("CODM").

Financial information and annual operating plans and forecasts are prepared and reviewed by the CODM at a consolidated level. The CODM assesses performance for the single operating segment and decides how to better allocate resources based on total operating expenses, net loss, changes in cash and cash equivalents, and cash and cash-equivalent balances that are reported on the Condensed Consolidated Statement of Operations and Condensed Consolidated Statement of Cash Flows. The CODM's objective in making resource allocation decisions is to optimize the Company's ability to develop and operate the Elk Creek Project. In addition, the CODM reviews the segment's assets based on total assets reported on the Condensed Consolidated Balance Sheet, and the accounting policies of our single operating segment are the same as those described in the Summary of Significant Accounting Policies in our Annual Report on Form 10-K for the fiscal year ended June 30, 2025. For additional reportable single operating segment level financial information, see the Condensed Consolidated Financial Statements.

12. SUBSEQUENT EVENTS

The October 2025 Offering

On October 15, 2025, the Company issued and sold (a) 10,152,175 Common shares at an offering price of $9.34 per Common Share and (b) 5,925,000 pre-funded Warrants (the "October Pre-Funded Warrants") to purchase up to an additional 5,925,000 Common Shares at an offering price of $9.3399 per October Pre-Funded Warrant in a registered offering (the "October 2025 Offering") under the Company's registration statement on Form S-3 (Registration No. 333-290837), pursuant to the Placement Agency Agreement between the Company and Maxim, dated October 13, 2025. On October 17, 2025, the Company issued 5,924,942 Common Shares in connection with the cashless exercise of all of the outstanding October Pre-Funded Warrants. The Company received net proceeds from the October 2025 Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $139,147.

Other Common Share Issuances

During the period from October 1, 2025 through November 13, 2025, the Company issued 2,546,457 Common Shares through the exercise of Warrants and Options by their holders and received cash totaling approximately $6,102.

Real Estate Purchase and Transfer Agreement

On November 7, 2025, ECRC completed the acquisition of a 40-acre parcel of land and associated mineral rights (the "November Property") located within the one-square-mile section that comprises the Elk Creek Project area. The acquisition was completed in exchange for (i) the transfer of surface rights to a separate 40-acre tract constituting a portion of the September Properties, which lies outside the Elk Creek Project section, (ii) cash consideration of $500, and (iii) the grant of a 2% net smelter return royalty on the November Property.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our historical interim condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and the Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") for the year ended June 30, 2025 filed on September 11, 2025 (the "Annual Report on Form 10-K"), which have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP"). The Company uses certain non-GAAP financial measures. For a detailed description of each of the non-GAAP measures used herein, please refer to the discussion under "—Use of Non-GAAP Financial Measures and Reconciliations."

This discussion and analysis contains forward-looking statements and forward-looking information that involve risks, uncertainties, and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements and information as a result of many factors, including, but not limited to, those set forth elsewhere in this Quarterly Report on Form 10-Q. See "—Note Regarding Forward-Looking Statements" below.

All currency amounts are stated in U.S. dollars unless noted otherwise.

As used in this Quarterly Report on Form 10-Q, unless the context otherwise indicates, references to "we," "our," the "Company," "NioCorp," and "us" refer to NioCorp Developments Ltd. and its subsidiaries, collectively.

Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q and the exhibits attached hereto contain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and "forward-looking information" within the meaning of applicable Canadian securities legislation (collectively, "forward-looking statements"). Such forward-looking statements concern our anticipated results and developments in the operations of the Company in future periods, planned exploration activities, the adequacy of the Company's financial resources, and other events or conditions that may occur in the future.

Forward-looking statements have been based upon our current business and operating plans, as approved by the Board, and may include statements regarding, among other matters, the financial and business performance of NioCorp; NioCorp's anticipated results and developments in the operations of NioCorp in future periods; NioCorp's planned exploration activities; the adequacy of NioCorp's financial resources; NioCorp's ability to secure sufficient project financing to complete construction and commence operation of the Company's niobium, scandium, and titanium project (the "Elk Creek Project") located in southeastern Nebraska; NioCorp's ability to receive a final commitment of financing from the Export-Import Bank of the United States ("EXIM"); the estimated total upfront capital expenditure for the Elk Creek Project; NioCorp's expectation and ability to produce niobium, scandium, and titanium and the potential to produce rare earth elements at the Elk Creek Project; NioCorp's plans to produce and supply specific products and market demand for those products; NioCorp's ability to access the full amount of the expected net proceeds of the Standby Equity Purchase Agreement, dated January 26, 2023 (the "Yorkville Equity Facility Financing Agreement") between the Company and YA II PN, Ltd., an investment fund managed by Yorkville Advisors Global, LP ("Yorkville"); NioCorp's expectation that it will receive the full $10 million in reimbursement under the DoD Agreement (as defined below); the intended use of our cash balance as of September 30, 2025 as well as the proceeds from the October 2025 Offering (as defined below), the proceeds from the exercise of Common Share purchase warrants ("Warrants") and the reimbursement payments pursuant to the DoD Agreement; the expected results of the 2025 Drilling Program (as defined below) at the Elk Creek Project; the expectation that the results of the 2025 Drilling Program will be used to update the feasibility study for the Elk Creek Project; the Elk Creek Project's ability to produce multiple critical metals; the Elk Creek Project's projected ore production and mining operations over its expected mine life; the completion of technical and economic analyses on the potential addition of magnetic rare earth oxides to NioCorp's planned product suite; statements with respect to the estimation of mineral resources and mineral reserves; the exercise of options to purchase additional land parcels; the execution of contracts with engineering, procurement and construction companies; NioCorp's ongoing evaluation of the impact of inflation, supply chain issues, tariffs, and geopolitical unrest on the Elk Creek Project's economic model; and the creation of full time and contract construction jobs over the construction period of the Elk Creek Project.

Forward-looking statements are frequently, but not always, identified by words such as “expects,” “anticipates,” “believes,” “intends,” “estimates,” “potential,” “possible,” and similar expressions, or statements that events, conditions, or results “will,” “may,” “could,” or “should” (or the negative and grammatical variations of any of these terms) occur or be achieved. Any statements that express or involve discussions with respect to predictions, expectations, beliefs, plans, projections, objectives, assumptions, or future events or performance (often, but not always, using words or phrases such as “expects” or “does not expect,” “is expected,” “anticipates” or “does not anticipate,” “plans,” “estimates,” or “intends,” or stating that certain actions, events, or results “may,” “could,” “would,” “might,” or “will” be taken, occur or be achieved) are not statements of historical fact and may be forward-looking statements. Forward-looking statements reflect material expectations and assumptions, including, without limitation, expectations and assumptions relating to: NioCorp’s ability to receive sufficient project financing for the construction of the Elk Creek Project on acceptable terms, or at all; the future price of metals; the stability of the financial and capital markets; and current estimates and assumptions regarding the Yorkville Equity Facility Financing Agreement and its benefits. Such forward-looking statements reflect the Company’s current views with respect to future events and are subject to certain known and unknown risks, uncertainties, and assumptions. Many factors could cause actual results, performance, or achievements to be materially different from any future results, performance, or achievements that may be expressed or implied by such forward-looking statements, including, among others, risks related to the following: NioCorp’s requirement of significant additional capital; NioCorp’s ability to receive sufficient project financing for the construction of the Elk Creek Project on acceptable terms, or at all; NioCorp’s ability to achieve the required milestones and receive the full $10.0 million in reimbursement under the DoD Agreement; NioCorp’s ability to receive a final commitment of financing from EXIM or other debt financing or financial support on acceptable timelines, on acceptable terms, or at all; NioCorp’s ability to access the full amount of the expected net proceeds under the Yorkville Equity Facility Financing Agreement; NioCorp’s ability to continue to meet Nasdaq listing standards; risks relating to the common shares, no par value, of the Company (“Common Shares”), including price volatility, lack of dividend payments and dilution or the perception of the likelihood of any of the foregoing; the extent to which NioCorp’s level of indebtedness and/or the terms contained in agreements governing NioCorp’s indebtedness, if any, the Yorkville Equity Facility Financing Agreement or other agreements may impair NioCorp’s ability to obtain additional financing, on acceptable terms, or at all; covenants contained in agreements with NioCorp’s secured creditors that may affect its assets; NioCorp’s limited operating history; NioCorp’s history of losses; the material weaknesses in NioCorp’s internal control over financial reporting, NioCorp’s efforts to remediate such material weaknesses and the timing of remediation; the possibility that NioCorp may qualify as a “passive foreign investment company (“PFIC”) under the Internal Revenue Code of 1986, as amended (the “Code”); the potential that the 2023 Transactions could result in NioCorp becoming subject to materially adverse U.S. federal income tax consequences as a result of the application of Section 7874 and related sections of the Code; cost increases for NioCorp’s exploration and, if warranted, development projects; a disruption in, or failure of, NioCorp’s information technology systems, including those related to cybersecurity; equipment and supply shortages; variations in the market demand for, and prices of, niobium, scandium, titanium and rare earth products; current and future offtake agreements, joint ventures, and partnerships, including our ability to negotiate extensions to existing agreements or to enter into new agreements, on favorable terms or at all; NioCorp’s ability to attract qualified management; estimates of mineral resources and reserves; mineral exploration and production activities; feasibility study results; the results of metallurgical testing; the results of technological research; changes in demand for and price of commodities (such as fuel and electricity) and currencies; competition in the mining industry; changes or disruptions in the securities markets; legislative, political or economic developments, including changes in federal and/or state laws that may significantly affect the mining industry; trade policies and tensions, including tariffs; inflationary pressures; the impacts of climate change, as well as actions taken or required by governments related to strengthening resilience in the face of potential impacts from climate change; the need to obtain permits and comply with laws and regulations and other regulatory requirements; the timing and reliability of sampling and assay data; the possibility that actual results of work may differ from projections/expectations or may not realize the perceived potential of NioCorp’s projects; risks of accidents, equipment breakdowns, and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in development programs; operating or technical difficulties in connection with exploration, mining, or development activities; management of the water balance at the Elk Creek Project site; land reclamation requirements related to the Elk Creek Project; the speculative nature of mineral exploration and development, including the risks of diminishing quantities of grades of reserves and resources; claims on the title to NioCorp’s properties; potential future litigation; and NioCorp’s lack of insurance covering all of NioCorp’s operations.

Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein. This list is not exhaustive of the factors that may affect any of the Company's forward-looking statements. Forward-looking statements are statements about the future and are inherently uncertain, and actual achievements of the Company or other future events or conditions may differ materially from those reflected in the forward-looking statements due to a variety of risks, uncertainties, and other factors, including without limitation those discussed under the heading "Risk Factors" in our Annual Report on Form 10-K, as well as other factors described elsewhere in this Quarterly Report on Form 10-Q and the Company's other reports filed with the SEC.

The Company's forward-looking statements contained in this Quarterly Report on Form 10-Q are based on the beliefs, expectations, and opinions of management as of the date of this Quarterly Report on Form 10-Q. The Company does not assume any obligation to update forward-looking statements if circumstances or management's beliefs, expectations, or opinions should change, except as required by law. For the reasons set forth above, investors should not attribute undue certainty to, or place undue reliance on, forward-looking statements.

Qualified Person

All technical and scientific information that forms the basis for the Elk Creek Project disclosure included in this Quarterly Report on Form 10-Q has been reviewed and approved by Scott Honan, M.Sc., SME-RM, NioCorp's Chief Operating Officer. Mr. Honan is a "Qualified Person" as such term is defined in National Instrument 43-101 – Standards of Disclosure for Mineral Projects and subpart 1300 of Regulation S-K.

Company Overview

NioCorp is developing the Elk Creek Project, located in southeast Nebraska. The Elk Creek Project is a development-stage property that has disclosed niobium, scandium, and titanium reserves and resources and disclosed rare earth mineral resources. The Company is continuing technical and economic studies around the rare earths contained in the Elk Creek Project's mineral resources in order to determine whether extraction of rare earth elements can be reasonably justified and economically viable after taking into account all relevant factors. Niobium has developing applications in the formulation of solid-state lithium-ion batteries, which may reduce charging times and increase battery safety. Niobium is used to produce various superalloys that are extensively used in high performance aircraft and jet turbines. It also is used in High-Strength, Low-Alloy steel, a stronger steel used in automobiles, bridges, structural systems, buildings, pipelines, and other applications that generally increases strength and/or reduces weight, which can result in environmental benefits, including reduced fuel consumption and material usage and fewer air emissions. Scandium can be combined with aluminum to make high-performance alloys with increased strength and improved corrosion resistance. Scandium also is a critical component of advanced solid oxide fuel cells, an environmentally preferred technology for high-reliability, distributed electricity generation. Titanium is a component of various superalloys and other applications that are used for aerospace applications, weapons systems, protective armor, medical implants, and many others. It also is used in pigments for paper, paint, and plastics. Rare earths are critical to electrification and decarbonization initiatives and can be used to manufacture the strongest permanent magnets commercially available.

Our primary business strategy is to advance our Elk Creek Project to commercial production. We are focused on carrying out our near-term planned work programs associated with securing the project financing package necessary to complete mine development and construction of the Elk Creek Project.

Recent Corporate Events

On July 18, 2025, the Company issued and sold 13,850,000 Common Shares, at an offering price of $3.25 per Common Share, in a registered offering (the "July 2025 Offering") under the Company's registration statement on Form S-3 (Registration No. 333-280176), pursuant to the Placement Agency Agreement between the Company and Maxim Group LLC ("Maxim"), dated July 17, 2025. The Company received net proceeds from the July 2025 Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $41.2 million.

On August 5, 2025, the Company announced that we entered into a Project Sub-Agreement (the "DoD Agreement") with Advanced Technology International ("ATI"), an entity acting on behalf of the Defense Industrial Base Consortium under the authority of the U.S. Department of Defense ("DoD"). Subject to the terms and conditions of the DoD

Agreement, ECRC is entitled to receive up to an aggregate of approximately $10.0 million of reimbursement payments from the DoD upon the achievement of certain project milestones. These milestones include, among other matters, the completion of new drilling operations at the Elk Creek Project to support the conversion of a portion of the current indicated mineral resources into measured mineral resources and the subsequent conversion of a portion of the current probable mineral reserves into proven mineral reserves, the production of samples of scandium metal and scandium-aluminum master alloys, and the completion of a new feasibility study for the Elk Creek Project..

On September 19, 2025, the Company issued and sold 10,000,000 Common Shares, at an offering price of $5.00 per Common Share, in a registered direct offering (the "September 2025 Registered Direct Offering") under the Company's registration statement on Form S-3 (Registration No. 333-280176), pursuant to the Placement Agency Agreement between the Company and Maxim, dated September 17, 2025. The Company received net proceeds from the September 2025 Registered Direct Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $46.0 million.

On September 29, 2025, the Company issued and sold (a) 7,004,740 Common Shares at a public offering price of $6.15 per Common Share and (b) 2,755,260 pre-funded Warrants to purchase an aggregate of 2,755,260 Common Shares (the "September Pre-Funded Warrants") at a public offering price of $6.1499 per September Pre-Funded Warrant in a confidentially marketed public offering (the "September 2025 Public Offering") under the Company's registration statement on Form S-3 (Registration No. 333-280176), pursuant to the Placement Agency Agreement between the Company and Maxim, dated September 26, 2025. On September 30, 2025, the Company issued 2,755,218 Common Shares in connection with the cashless exercise of all of the outstanding September Pre-Funded Warrants. The Company received net proceeds from the September 2025 Public Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $55.3 million.

On October 15, 2025, the Company issued and sold (a) 10,152,175 Common shares at an offering price of $9.34 per Common Share and (b) 5,925,000 pre-funded Warrants (the "October Pre-Funded Warrants") to purchase up to an additional 5,925,000 Common Shares at an offering price of $9.3399 per October Pre-Funded Warrant in a registered offering (the "October 2025 Offering") under the Company's registration statement on Form S-3 (Registration No. 333-290837), pursuant to the Placement Agency Agreement between the Company and Maxim, dated October 13, 2025. On October 17, 2025, the Company issued 5,924,942 Common Shares in connection with the cashless exercise of all of the outstanding October Pre-Funded Warrants. The Company received net proceeds from the October 2025 Offering, after deducting placement agent fees and other offering expenses payable by the Company, of approximately $139.1 million.

The Company intends to use the net proceeds from the July 2025 Offering, September 2025 Registered Direct Offering, September 2025 Public Offering, and October 2025 Offering for working capital and general corporate purposes, including to advance its efforts to launch construction of the Elk Creek Project and move it to commercial operation.

Elk Creek Project Update

On August 1, 2025, Elk Creek Resources Corp. ("ECRC"), an indirect, majority-owned subsidiary of the Company, closed on its option to purchase three parcels of land in Johnson County, Nebraska (the "August Properties"), pursuant to the terms of the Option to Purchase, dated as of December 4, 2009, as amended (the "2009 Option Agreement"), and the Option to Purchase, dated December 4, 2014, as amended (the "2014 Option Agreement" and together with the 2009 Option Agreement, the "August Option Agreements"), each between Roger and Nancy Woltemath and ECRC. Pursuant to the terms of the August Option Agreements, Roger and Nancy Woltemath sold, transferred, conveyed and assigned to ECRC all of their rights, privileges, title and interest in and to the surface rights with respect to one of the parcels (consisting of the property known as Woltemath80S) and to the surface rights and associated mineral rights with respect to a 1.66-acre parcel. The purchase price was approximately $2.7 million, including indirect costs of $35,000.

On September 8, 2025, the Company announced the successful completion of its previously announced drilling program at the Elk Creek Project (the "2025 Drilling Program"). The 2025 Drilling Program was divided into two phases. Phase I of the 2025 Drilling Program comprised 11 HQ diamond drill holes totaling approximately 7,339 meters and Phase II of the 2025 Drilling Program comprised four HQ diamond drill holes totaling approximately 2,235 meters. Two additional geomechanical drill holes totaling approximately 1,950 meters were also completed as part of an accelerated effort to support the underground mine design related to access ramp development. Assays of the drill holes completed during the 2025 Drilling Program are underway at external laboratories.

The 2025 Drilling Program and associated technical work is designed to support the conversion of a portion of the Elk Creek Project's Indicated Mineral Resources into Measured Mineral Resources and the subsequent conversion of a portion of its Probable Mineral Reserves into Proven Mineral Reserves. The 2025 Drilling Program was designed to help meet Mineral Resource and Mineral Reserve classification requirements associated with the ongoing review of the Company's application for up to $800 million in potential debt financing by EXIM, as further discussed under "—Liquidity and Capital Resources."

On September 30, 2025, ECRC closed on its options to purchase two parcels of land in Johnson County, Nebraska, which include: (i) a portion of the property known as Woltemath002, consisting of approximately 105.77 acres of land (the "Woltemath002 Property"), pursuant to the terms of the 2009 Option Agreement and (ii) the property known as Woltemath003J, consisting of approximately 220 acres of land (the "Woltemath003J Property" and, together with the Woltemath002 Property, the " September Properties"), pursuant to the terms of the Amended and Restated Option to Purchase, dated January 4, 2017, as amended, between Victor and Juanita Woltemath (together with Roger and Nancy Woltemath, the "Owners") and ECRC (the "2017 Option Agreement" and, together with the 2009 Option Agreement, the "September Option Agreements"). Pursuant to the terms of the September Option Agreements, the Owners sold, transferred, conveyed and assigned to ECRC all of their respective rights, privileges, title and interest in and to the surface rights and associated mineral rights, which consisted of approximately 325.77 acres of the property. The aggregate purchase price was approximately $11.3 million, including indirect costs of $29,000. This acquisition provides NioCorp with ownership of all land that hosts the Elk Creek Project's Mineral Resource and Mineral Reserve and all acreage necessary to commence construction once project financing is obtained.

On November 7, 2025, ECRC completed the acquisition of a 40-acre parcel of land and associated mineral rights (the "November Property") located within the one-square-mile section that comprises the Elk Creek Project area. The acquisition was completed in exchange for (i) the transfer of surface rights to a separate 40-acre tract constituting a portion of the September Properties, which lies outside the Elk Creek Project section, (ii) cash consideration of $500, and (iii) the grant of a 2% net smelter return royalty on the November Property. As a result of this transaction, the Company now holds full ownership of all surface rights within the one-square-mile section in which it plans to construct both the underground critical minerals mine and integrated surface processing facility associated with the Elk Creek Project.

Other Activities

The Company continues to execute a work plan to further advance the development of the Elk Creek Project. In addition to the expected updates to Mineral Resources and Mineral Reserves, noted above, the Company expects to finalize engineering and costing of its new and more efficient production process which incorporates the potential addition of light and heavy magnetic rare earth oxides, the planned production of titanium in the form of titanium tetrachloride, and the potential to produce both ferroniobium and niobium oxide as commercial products. In addition, the Company is advancing engineering to potentially modify the design of the mine to incorporate a twin ramp for access along with a Railveyor system for material movement instead of utilizing vertical mining shafts. The updated mine design is expected to also incorporate updated costing. This work is expected to be summarized in an updated feasibility study for the Elk Creek Project.

In addition to the work plans noted above, as funds become available through the Company's fundraising efforts, the Company expects to undertake the following activities to further advance the Elk Creek Project and the Company is assessing and prioritizing the timing of these efforts:

- Continued evaluation of the potential to produce rare earth products and sell such products under offtake agreements;
- Negotiation and completion of offtake agreements for the remaining uncommitted production of niobium, scandium, and titanium from the Elk Creek Project, including the potential sale of titanium as titanium tetrachloride, as well as potential rare earth element production;
- Negotiation and completion of engineering, procurement, and construction agreements;
- Hiring of personnel to manage the Company's responsibilities for construction and operations;
- Completion of the final detailed engineering for the underground portion of the Elk Creek Project;
- Initiation and completion of the final detailed engineering for surface project facilities;
- Construction of natural gas and electrical infrastructure to serve the Elk Creek Project site;
- Completion of water supply agreements and related infrastructure to deliver fresh water to the Elk Creek Project site;
- Continuation of mine groundwater investigation and control activities;
- Initiation of long-lead equipment procurement activities;
- Continuation of the Company's efforts to secure additional federal, state, and local operating permits;

- Completion of the characterization and testing of waste materials to support tailings impoundment and paste backfill plant designs; and
- Continued engineering and costing of road improvements near the junction of Nebraska state highways 50 and 62, which are intended to facilitate access to the Elk Creek Project site and manage increased traffic in the project vicinity.

Financial and Operating Results

The Company has no revenues from mining operations. Operating expenses incurred primarily related to costs incurred for the advancement of the Elk Creek Project and the activities necessary to support corporate and shareholder duties and are detailed in the following table.

	For the Three Months Ended September 30,	
	2025	2024
Operating expenses		
Employee-related costs	$ 2,216	$ 330
Professional fees	875	450
Exploration expenditures	7,084	138
Other operating expenses	1,843	477
Total operating expenses	12,018	1,395
Change in fair value of Earnout Shares liability	14,496	816
Change in fair value of warrant liabilities	17,558	(56)
Change in fair values of convertible notes	-	17
Interest expense	-	44
Foreign exchange (gain) loss	(5)	8
Interest income	(560)	-
Other gains	-	(122)
Income tax benefit	-	-
Net loss and comprehensive loss	(43,507)	(2,102)
Less: Loss attributable to noncontrolling interest	(848)	(31)
Net loss attributable to the Company	$ (42,659)	$ (2,071)
Net loss per share attributable to the Company	$ (0.53)	$ (0.05)
Adjusted net loss	$ (8,307)	$ (1,407)
Adjusted net loss per share	$ (0.07)	$ (0.03)

Three-month period ended September 30, 2025 compared to the three-month period ended September 30, 2024

Significant items affecting operating expenses are noted below:

Employee-related expenditures increased for the three-month period in 2025 as compared to 2024 primarily due to the timing of options issued to employees in 2025.

Professional fees increased for the three-month period in 2025 as compared to 2024, primarily due to higher costs incurred in 2025 related to the timing of legal services associated with the preparation of the Company's SEC registration statements filed in October 2025.

Exploration expenditures increased for the three-month period in 2025 as compared to 2024, primarily due to expenditures associated with the 2025 Drilling Program.

Other operating expenses include costs related to investor relations, general office expenditures, shareholder services and proxy expenditures, board-related expenditures, and other miscellaneous costs. These costs increased for the three-month period in 2025 as compared to 2024 primarily due to the timing of fully vested options to purchase

Common Shares ("Options") issued to board members and advisors in 2025 and increases in investor-facing services and stipend payments provided to board members.

Other significant items impacting the change in the Company's net loss and net loss per share are noted below:

Change in fair value of Earnout Shares liability represents the changes in fair value related to the shares of Class B common stock of ECRC, the rights of the holders of which to exchange such shares into Common Shares are subject to certain vesting conditions (such shares of ECRC Class B common stock, the "Earnout Shares"). The 2025 expense represents the impact of an increase in the Company's Common Share price on the financial modeling used to determine the period end fair values, whereas the 2024 gain represents the impact of a lower share price on the financial modeling results.

Change in fair value of warrant liabilities represents the changes in fair value of Warrants that are carried as liabilities in the condensed consolidated balance sheet. Expense for the three-month period ending September 30, 2025, reflects the impact of an increase in the Company's Common Share price on the Black-Scholes modeling results for our outstanding Warrant liabilities, whereas the 2024 gain primarily represents the impact of a lower share price on the modeling at period end.

Interest income represents earnings from the investment of excess cash balances in a commercial money market account. The increase for the three-month period in 2025 as compared to 2024 is due to an increase in our cash balance resulting from our successful financing efforts during calendar year 2025.

Loss attributable to noncontrolling interest represents the portion of net loss in ECRC not owned by the Company. The increase in loss for the three-month period in 2025 as compared to 2024 is related to the increased exploration expenditures, as noted above, incurred by ECRC.

Adjusted net loss and adjusted net loss per share both increased for the three-month period in 2025, as compared to 2024, primarily due to the increase in exploration expenditures, as noted above, incurred by ECRC.

Liquidity and Capital Resources

We have no revenue generating operations from which we can internally generate funds. To date, our ongoing operations have been financed by the sale of our equity securities by way of public and private offerings, convertible securities issuances, the exercise of Options and Warrants, and related party loans. With respect to currently outstanding Options and Warrants, we believe that exercise of these instruments, and cash proceeds from such exercises, will not occur unless and until the market price for our Common Shares equals or exceeds the related exercise price of each instrument.

As discussed above under "*—Recent Corporate Events*", the Company closed four equity offering transactions between July 18, 2025 and October 15, 2025. The combined net proceeds from these offerings were approximately $194.4 million, after deducting placement agency fees and other offering expenses payable by the Company. In addition, during the three-month period ended September 30, 2025, the Company issued an aggregate of 10,975,634 Common Shares through the exercise of Warrants and Options by their holders, for which the Company received proceeds totaling approximately $15.2 million. The Company expects to use these net proceeds for working capital and general corporate purposes, including to advance efforts to launch construction of the Elk Creek Project and move it to commercial operation.

As of September 30, 2025, the Company had cash of $162.8 million and working capital of $159.6 million, compared to cash of $25.6 million and working capital of $24.8 million on June 30, 2025.

We expect that the Company will operate at a loss for the foreseeable future. The Company's current planned cash outflows are approximately $40.0 million to $50.0 million for the next twelve months. Our planned cash outflows over the next twelve months are expected to consist of expenditures relating to limited, incremental activities to advance certain aspects of the Elk Creek Project by NioCorp's majority owned subsidiary, ECRC, corporate overhead costs, and estimated costs related to securing financing necessary for advancement of the Elk Creek Project. These planned expenditures include expenditures relating to the anticipated completion of an updated resource and reserve estimate

and associated mine plan and an updated capital cost estimate in connection with the EXIM application process, ongoing engineering and metallurgical test work, environmental and permitting activities, community and stakeholder engagement programs, corporate and administrative overhead, and advisory costs related to securing project financing.

The Company will need to secure additional capital to finance construction and achieve commercial production to support its long-term business objectives. Until sufficient funding for construction is secured, the Company expects to limit activities to modest, value-preserving work and project readiness efforts. The Company also intends to evaluate strategies and potential investment opportunities that could reduce overall project costs, capital requirements, or execution risk.

The planned corporate overhead costs over the next twelve months are approximately $11.0 million, including Elk Creek property lease commitments, which are $65,000 through June 30, 2026, and the settlement of outstanding accounts payable as of September 30, 2025.

The estimated financing costs associated with the Elk Creek Project over the next twelve months include, but are not limited to, costs relating to the EXIM application process, the scope of which remains under discussion with EXIM. On June 6, 2023, the Company announced that it had submitted an application to EXIM for up to $800 million in debt financing (the "EXIM Financing") to fund the project costs for the Elk Creek Project, under EXIM's "Make More in America" initiative. The EXIM Financing is subject to, among other matters, the satisfactory completion of due diligence, the negotiation and settlement of final terms, and the negotiation of definitive documentation. The Company was informed that its application received approval by the first of three reviews by the EXIM Transaction Review Committee (the "TRC") on October 2, 2023. In April 2024, EXIM provided the Company with a preliminary, non-binding indicative term sheet as part of a Preliminary Project Letter (the "PPL"), which also conveyed EXIM's initial due diligence findings on the Company's application for the EXIM Financing. The PPL identified additional project activities to be undertaken by the Company as part of EXIM's due diligence process. These included, among other things, an updated mine plan and updated Elk Creek Project capital costs on a final or close-to-final basis reflecting updated process flows. The 2025 Drilling Program, which started in April 2025, was designed to help meet mineral resource and mineral reserve classification requirements necessary to complete certain of the additional project activities identified by the PPL. In addition, as previously disclosed, the Company took an additional step in the process by executing a professional services agreement with SLR Consulting to conduct an independent environmental and social review as part of EXIM's ongoing project due diligence.

The Company continues to meet with EXIM, provide responses to requests for additional information from EXIM and to the consultants that are conducting due diligence on the Company's application on behalf of EXIM and take steps to complete the additional project activities identified by the PPL. There can be no assurance as to what further project activities or matters EXIM may request in connection with the application process. We are currently unable to estimate how long the application process may take, and there can be no assurances that we will be able to successfully negotiate a final commitment of debt financing from EXIM.

We expect our cash balance as of September 30, 2025, as well as the net proceeds from the October 2025 Offering, the proceeds from Warrant and Option exercises that occurred since September 30, 2025, and the reimbursement payments pursuant to the DoD Agreement, to be sufficient to fund our planned expenditures for the next twelve months. However, additional work is required in order to advance the Elk Creek Project to construction, requiring additional financing. The technical report summary for the Elk Creek Project prepared in accordance with subpart 1300 of Regulation S-K ("S-K 1300") and filed as Exhibit 96.1 to the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2025, includes an estimated total upfront capital expenditure for the Elk Creek Project of approximately $1,141.0 million. The actual amount of capital expenditure required to successfully achieve commercial production at the Elk Creek Project is subject to, among other factors, the timing and actual cost of further exploration, preparing feasibility studies, permitting, engineering and the construction of infrastructure, mining and processing facilities. In addition, to the extent that EXIM requests further project activities to be undertaken in connection with the diligence process, the Company would require additional funding to complete such activities. As noted above, the Company's ability to continue operations, fund our current work plan, and construct and operate the Elk Creek Project is dependent on management's ability to secure additional financing. When available, the Yorkville Equity Facility Financing Agreement provides an opportunity for opportunistic share sales to help fund our current work plan. However, the Yorkville Equity Facility Financing Agreement will expire by its terms on April 1, 2026.

Except for the potential funding from advances under the Yorkville Equity Facility Financing Agreement, as discussed above, and the potential exercise of Options and Warrants, we currently have no further funding commitments or arrangements for additional financing at this time. Management currently anticipates that it will fund the upfront capital expenditure amount for the Elk Creek Project through a combination of debt and equity financing, with approximately two-thirds of such amount being funded from the net proceeds of debt financing, including the amount of debt that would be represented by the EXIM Financing, if any. Management is actively pursuing additional sources of debt and equity financing to meet its long-term funding requirements, and while it has been successful in doing so in the past, there is no assurance that we will be able to obtain any such additional financing on acceptable terms, if at all. Pursuant to the Exchange Agreement, dated as of March 17, 2023 (as amended, supplemented or otherwise modified, the "Exchange Agreement"), by and among NioCorp, ECRC and GX Sponsor II LLC, NioCorp is restricted from issuing equity or equity-linked securities (other than Common Shares) or any preferred equity or non-voting equity if such issuance would adversely impact the rights of the holders of the shares of Class B common stock of ECRC, without the consent of the holders of a majority of the shares of Class B common stock of ECRC. The various placement agency agreements entered into with Maxim in connection with the equity offerings described above under "— *Recent Corporate Events*," including the October 2025 Placement Agency Agreement, also contain certain covenants that, among other things, limit NioCorp's ability to enter into any variable rate transaction on or before November 28, 2025, including issuances of equity or debt securities that are convertible into Common Shares at variable rates and any equity line of credit, at-the-market offering agreement, or other continuous offering of Common Shares, other than with Maxim, subject to certain exceptions. Notwithstanding the restrictions set forth in the Exchange Agreement, as well as the various placement agency agreements, there is significant uncertainty that we would be able to secure any additional financing in the current equity or debt markets. The quantity of funds to be raised and the terms of any proposed equity or debt financing that may be undertaken will be negotiated by management as opportunities to raise funds arise. Management may pursue funding sources of both debt and equity financing, including but not limited to the issuance of equity securities in the form of Common Shares, Warrants, subscription receipts, or any combination thereof in units of the Company pursuant to private placements to accredited investors or pursuant to public offerings in the form of underwritten/brokered offerings, registered direct offerings, or other forms of equity financing and public or private issuances of debt securities, including secured and unsecured convertible debt instruments, or secured debt project financing. Management does not currently know the terms pursuant to which such financings may be completed in the future, but any such financings will be negotiated at arm's-length. Future financings involving the issuance of equity securities or derivatives thereof will likely be completed at a discount to the then-current market price of the Company's securities and will likely be dilutive to current shareholders. In addition, we could raise funds through the sale of interests in our mineral properties, although current market conditions and other recent worldwide events have substantially reduced the number of potential buyers/acquirers of any such interests. However, we cannot provide any assurances that we will be able to be successful in raising such funds.

As defined under S-K 1300, we are a development stage issuer and we have incurred losses since our inception. The Company will require additional capital to meet its long-term operating requirements. Uncertainty in capital markets, supply chain disruptions, increased interest rates and inflation, and the potential for geographic recessions have contributed to general global economic uncertainty. During the three-month period ended September 30, 2025, these events continued to create uncertainty with respect to overall project funding and timelines. The Company will need to secure additional capital to finance construction and achieve commercial production to support its long-term business objectives.

We have no exposure to any asset-backed commercial paper. Other than cash held by our subsidiaries for their immediate operating needs in Colorado and Nebraska, all of our cash reserves are on deposit with major U.S. and Canadian chartered banks. We do not believe that the credit, liquidity, or market risks with respect thereto have increased as a result of the current market conditions. However, in order to achieve greater security for the preservation of our capital, we have, of necessity, been required to accept lower rates of interest, which has also lowered our potential interest income.

Operating Activities

During the three months ended September 30, 2025, the Company's operating activities consumed $6.7 million of cash (2024: $0.6 million). The cash used in operating activities for the three months ended September 30, 2025, reflects the Company's funding of losses of $43.5 million, primarily resulting from increased fair value related to the Earnout

Shares and Warrant liabilities, share-based compensation, and other non-cash transactions. Overall, operational outflows during the three months ended September 30, 2025, increased from the corresponding period of 2024 due to costs and expenditures incurred in connection with the 2025 Drilling Program. Going forward, the Company's working capital requirements are expected to increase substantially in connection with the development of the Elk Creek Project.

Investing Activities

During the three months ended September 30, 2025, the Company's investing activities consumed $14.1 million of cash (2024: $0). The cash used in investing activities for the three months ended September 30, 2025, reflects the acquisition of additional land and mineral rights for the Elk Creek Project.

Financing Activities

Financing inflows were $158.0 million during the three months ended September 30, 2025 (2024 outflows: $1.2 million), with 2025 inflows reflecting the gross receipts of $155.0 million from the equity offerings, and $15.3 million from Warrant exercises, offset by $12.3 million of share issuance costs.

Cash Flow Considerations

The Company has historically relied upon debt and equity financings to finance its activities. Subject to the restrictions set forth in the Exchange Agreement and the various placement agency agreements with Maxim, the Company may pursue additional debt and/or equity financing in the medium term; however, there can be no assurance the Company will be able to obtain any required financing in the future on acceptable terms, or at all.

The Company has limited financial resources compared to its proposed expenditures, no source of operating income, and no assurance that additional funding will be available to it for current or future projects, although the Company has been successful in the past in financing its activities through the sale of equity securities.

The ability of the Company to arrange additional financing in the future will depend, in part, on the prevailing capital markets conditions, and its success in developing the Elk Creek Project. Any quoted market for the Common Shares may be subject to market trends generally, notwithstanding any potential success of the Company in creating revenue, cash flows, or earnings, and any depression of the trading price of the Common Shares could impact its ability to obtain equity financing on acceptable terms.

Historically, the Company has used net proceeds from issuances of Common Shares to provide sufficient funds to meet its near-term exploration and development plans and other contractual obligations when due. However, development and construction of the Elk Creek Project will require substantial additional capital resources. This includes funding for Elk Creek Project construction and other costs. See "*—Liquidity and Capital Resources*" above for the Company's discussion of arrangements related to possible future financings.

Critical Accounting Estimates

There have been no material changes in our critical accounting estimates discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations" under the heading "Critical Accounting Estimates and Recent Accounting Pronouncements" as of June 30, 2025, in the Annual Report on Form 10-K.

Use of Non-GAAP Financial Measures and Reconciliations

The Company has included certain non-GAAP financial measures in this Quarterly Report on Form 10-Q such as adjusted net loss and adjusted net loss per share. Adjusted net loss for presentation purposes is our net loss attributable to the Company plus non-cash items plus (gain)/loss on non-recurring items plus tax adjustments. Adjusted net loss per share is the impact of these adjustments on the per share net losses incurred. These non-GAAP measures are intended to provide additional information and should not be considered in isolation or as a substitute for measures of performance prepared in accordance U.S. GAAP. Because these non-GAAP performance measures do not have any standardized meaning prescribed by U.S. GAAP, they may not be comparable to similar measures presented by other companies. The Company's management believes that presenting adjusted net loss and adjusted net loss per share provides

investors with additional insight into underlying operating performance by excluding the non-cash losses noted above. Our presentation of certain non-GAAP financial measures should not be construed to imply that our future results will be unaffected by the types of items excluded from the calculations of non-GAAP measures. These non-GAAP measures are not presented in accordance with U.S. GAAP and the use of these terms vary from others in our industry.

Reconciliations of net loss attributable to the Company to adjusted net loss and net loss per share attributable to the Company to adjusted net loss per share are presented below:

	For the Three Months Ended September 30,	
	2025	2024
Net loss attributable to the Company	$ (42,659)	$ (2,071)
Adjustments:		
Change in fair value of earnout liability	14,496	816
Change in fair value of warrant liability	17,558	(56)
Share based compensation	2,302	-
Other gains	(4)	(96)
Adjusted net loss	$ (8,307)	$ (1,407)
Net loss per share attributable to the Company	$ (0.53)	$ (0.05)
Adjustments:		
Change in fair value of earnout liability	0.19	0.02
Change in fair value of warrant liability	0.24	-
Share based compensation	0.03	-
Other gains	-	-
Adjusted net loss per share	$ (0.07)	$ (0.03)

Certain U.S. Federal Income Tax Considerations

If NioCorp (or a subsidiary) is a PFIC for any taxable year (or portion thereof) that is included in the holding period of a U.S. holder of Common Shares or other NioCorp securities (as determined under applicable U.S. federal income tax law), then certain significant adverse tax consequences could apply to such U.S. holder, including requirements to treat any gain realized upon a disposition of Common Shares (or other securities) as ordinary income, to include certain "excess distributions" on Common Shares in income, and to pay an interest charge on a portion of any such gain or distribution. NioCorp believes that it was classified as a PFIC during the taxable years ended June 30, 2025 and 2024, and, based on the current composition of its income and assets, as well as current business plans and financial expectations, that it may be classified as a PFIC for its current taxable year or in future taxable years. No opinion of legal counsel or ruling from the Internal Revenue Service (the "IRS") concerning the PFIC status of NioCorp or any subsidiary has been obtained or is currently planned to be requested. The determination of whether any corporation was, or will be, a PFIC for a taxable year depends, in part, on the application of complex U.S. federal income tax rules, which are subject to differing interpretations. In addition, whether any corporation will be a PFIC for any taxable year depends on the assets and income of such corporation over the course of each such taxable year and, as a result, cannot be predicted with certainty as of the date of this Quarterly Report on Form 10-Q. In addition, even if NioCorp concluded that it or any subsidiary was not classified as a PFIC, the IRS could challenge such determination and a court could sustain the challenge. Accordingly, there can be no assurance that NioCorp or any subsidiary will not be classified as a PFIC for any taxable year. Each holder of Common Shares or other NioCorp securities should consult its own tax advisors regarding the PFIC status of NioCorp and each subsidiary thereof and the resulting tax consequences to the holder, as well as any potential to mitigate such tax consequences through a "QEF" or "mark-to-market" election. See the "Risk Factors" section of the Annual Report on Form 10-K.

Other

The Company has one class of shares, being Common Shares. A summary of outstanding Common Shares, Options, and Warrants as of November 13, 2025, is set out below, on a fully diluted basis.

	Common Shares Outstanding (Fully Diluted)
Common Shares	119,360,725
Vested shares of ECRC Class B common stock (1)	3,518,450
Options (2)	4,777,500
Warrants (3)	19,338,512

(1) Each exchangeable into one Common Share at any time, and from time to time, until March 17, 2033.
(2) Each exercisable into one Common Share.
(3) Includes 15,666,526 NioCorp Assumed Warrants that are each exercisable into 1.11829212 Common Shares and 3,671,986 Warrants that are each exercisable into one Common Share.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest rate risk

The Company's exposure to changes in market interest rates relates primarily to the Company's earned interest income on cash deposits and short-term investments. The Company maintains a balance between the liquidity of cash assets and the interest rate return thereon. The carrying amount of financial assets, net of any provisions for losses, represents the Company's maximum exposure to credit risk.

Foreign currency exchange risk

The Company incurs expenditures in both U.S. dollars and Canadian dollars. Canadian dollar expenditures are primarily related to certain Common Share-related costs and corporate professional services. As a result, currency exchange fluctuations may impact the costs of our operating activities. To reduce this risk, we maintain sufficient cash balances in Canadian dollars to fund expected near-term expenditures.

Commodity price risk

The Company is exposed to commodity price risk related to the elements associated with the Elk Creek Project. A significant decrease in the global demand for these elements may have a material adverse effect on our business. The Elk Creek Project is not in production, and the Company does not currently hold any commodity derivative positions.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

The management of NioCorp Developments Ltd. has evaluated, under the supervision of and with the participation of the Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of September 30, 2025. Based on that evaluation, the CEO and the CFO have concluded that, as of September 30, 2025, our disclosure controls and procedures were not effective due to the material weaknesses in internal control over financial reporting described below.

Notwithstanding the material weaknesses in our internal control over financial reporting, our CEO and CFO have concluded that the interim condensed consolidated financial statements included in this Quarterly Report on Form 10-Q fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with U.S. GAAP.

Material Weaknesses in Internal Control over Financial Reporting Existing as of September 30, 2025

The management of NioCorp Developments Ltd. is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act for the Company. Management assessed the effectiveness of our internal control over financial reporting as of September 30, 2025. In making this assessment, our management used the criteria set forth in the Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO Framework"). Based on that evaluation, the CEO and the CFO have concluded that, as of September 30, 2025, our internal control over financial reporting was not effective due to the material weaknesses in internal control over financial reporting described below.

Material Weaknesses

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis.

Management concluded that the material weaknesses disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2025, continued to exist as of September 30, 2025. Specifically, management identified deficiencies in the principles associated with the control environment, risk assessment, control activities, and monitoring components of internal control, based on the criteria established by the COSO Framework, that constitute material weaknesses, either individually or in the aggregate.

- Control Environment: The Company does not have sufficient personnel with the appropriate levels of knowledge, experience, and training in accounting and internal control over financial reporting commensurate with the complexity of the Company's financing transactions and associated reporting requirements. This material weakness contributed to additional material weaknesses further described below.

- Risk Assessment: The Company does not have a formal process to identify, update, and assess financial reporting risks due to changes in the Company's business practices, including entering into increasingly complex transactions that could significantly impact the design and operation of the Company's control activities.

- Control Activities: Management did not maintain effective controls over:
  - monitoring and assessing the work of third-party specialists, including the evaluation of the appropriateness of accounting conclusions,
  - the evaluation of certain inputs and assumptions used to estimate the fair value of instruments and features associated with complex debt and equity transactions, and
  - the design and implementation of effective process-level control activities related to vendor banking information.

- Monitoring Activities: Management did not appropriately:
  - select, develop, and perform ongoing evaluation to ascertain whether the components of internal controls are present and functioning, and
  - evaluate and communicate internal control deficiencies in a timely manner to those parties responsible for taking corrective action.

As previously disclosed, these material weaknesses resulted in errors that required the restatement of Company's consolidated financial statements as of and for the fiscal years ended June 30, 2022 and 2021, as well as the restatement of the Company's condensed consolidated financial statements as of and for the interim periods ended September 30, 2021, December 31, 2021, March 31, 2022, September 30, 2022, and December 31, 2022. Additionally, these material weaknesses could result in a misstatement of the account balances or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or timely detected.

Remediation Plan for the Material Weaknesses

To address our material weaknesses existing as of September 30, 2025, we have implemented a detailed plan to address each individual material weakness identified, including the following:

- We have and will continue to engage outside accounting and internal control consultants with subject matter expertise to supplement our level of knowledge, experience, and training in accounting and internal control over financial reporting.
- We have developed a formal risk assessment process requiring periodic review and updates of current risks and internal controls, as well as a focus on potential future events that could result in additional risks and/or internal control lapses. This process is expected to enable us to effectively identify, develop, evolve, and implement controls and procedures to address risks, and results of this risk assessment process will be reviewed with the Audit Committee on a periodic basis.
- We have hired additional personnel to assist with the monitoring and review of internal control functions.
- We have developed an initial training plan to provide incremental training to accounting and finance personnel responsible for overall technical accounting and valuation-related transactions.
- Management is developing a monitoring program to periodically evaluate and assess whether those responsible for controls are conducting their activities in accordance with their design, such that there is contemporaneous evidence that the components of internal control are present and functioning and will communicate internal control deficiencies in a timely manner to those parties responsible for taking corrective action.

The process of designing and maintaining effective internal control over financial reporting is a continuous effort that requires management to anticipate and react to changes in our business, economic, and regulatory environments and to expend significant resources. As we continue to evaluate our internal control over financial reporting, we may take additional actions to remediate the material weaknesses or modify the remediation actions described above.

While we continue to devote significant time and attention to these remediation efforts, the material weaknesses will not be considered remediated until management completes the design and implementation of the actions described above and the controls operate for a sufficient period of time, and management has concluded, through testing, that these controls are effective.

Changes in Internal Control over Financial Reporting

Other than as discussed above, there has been no change in our internal control over financial reporting during the quarter ended September 30, 2025, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We know of no material, active, or pending legal proceedings against the Company, nor are we involved as a plaintiff in any material proceeding or pending litigation. There are no proceedings in which any of our directors, officers, or affiliates, or any registered or beneficial shareholder, is an adverse party or has a material interest adverse to our interest.

ITEM 1A. RISK FACTORS

There have been no changes to the risk factors set forth under the heading “Risk Factors” in the Annual Report on Form 10-K.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent Sales of Unregistered Securities

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Pursuant to Section 1503(a) of the Dodd-Frank Act, issuers that are operators, or that have a subsidiary that is an operator, of a coal or other mine in the United States are required to disclose specified information about mine health and safety in their periodic reports. These reporting requirements are based on the safety and health requirements applicable to mines under the Federal Mine Safety and Health Act of 1977 (the "Mine Act") which is administered by the U.S. Department of Labor's Mine Safety and Health Administration ("MSHA"). During the three-month period ended September 30, 2025, the Company and its subsidiaries and their properties or operations were not subject to regulation by MSHA under the Mine Act and thus no disclosure is required under Section 1503(a) of the Dodd-Frank Act.

ITEM 5. OTHER INFORMATION

Rule 10b5-1 Trading Arrangements

During the quarter ended September 30, 2025, no director or officer (as defined in Rule 16a-1(f) promulgated under the Exchange Act) of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement" (as each term is defined in Item 408 of Regulation S-K).

ITEM 6. EXHIBITS

Exhibit No.	Title
3.1(1)	Notice of Articles dated April 5, 2016
3.2(1)	Articles, as amended, effective as of January 27, 2015
3.3(2)	Amendment to Articles, effective March 17, 2023
4.1(3)	Placement Agency Agreement, dated as of September 26, 2025, by and between NioCorp Developments Ltd. and Maxim Group LLC
4.2(3)	Form of September Pre-Funded Warrant (included in Exhibit 4.1)
4.3(4)	Placement Agency Agreement, dated as of October 13, 2025, by and between NioCorp Developments Ltd. and Maxim Group LLC
4.4(4)	Form of October Pre-Funded Warrant (included in Exhibit 4.3)
10.1#	Amendment to Contract, dated August 18, 2025, between the Company and 76 Resources, LLC
10.2	Defense Industrial Base Consortium Base Agreement, dated as of July 22, 2025, between Elk Creek Resources Corp. and Advanced Technology International and Elk Creek Resources Corp.
10.3	Project Sub Agreement, dated as of August 4, 2025, by and between Elk Creek Resources Corp. and Advanced Technology International
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS(5)	Inline XBRL Instance Document
101.SCH(5)	Inline XBRL Taxonomy Extension- Schema
101.CAL(5)	Inline XBRL Taxonomy Extension – Calculations
101.DEF(5)	Inline XBRL Taxonomy Extension – Definitions
101.LAB(5)	Inline XBRL Taxonomy Extension – Labels
101.PRE(5)	Inline XBRL Taxonomy Extension – Presentations
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

Management compensation plan, arrangement, or agreement.

(1) Previously filed as an exhibit to the Company's Draft Registration Statement on Form S-1 (Registration No. 377-01354) submitted to the SEC on July 26, 2016, and incorporated herein by reference.

(2) Previously filed as an exhibit to the Company's Current Report on Form 8-K (File No. 001-41655) filed with the SEC on March 17, 2023, and incorporated herein by reference.

(3) Previously filed as an exhibit to the Company's Current Report on Form 8-K (File No. 001-41655) filed with the SEC on September 29, 2025, and incorporated herein by reference.

(4) Previously filed as an exhibit to the Company's Current Report on Form 8-K (File No. 001-41655) filed with the SEC on October 15, 2025, and incorporated herein by reference.

(5) Submitted Electronically Herewith. Attached as Exhibit 101 to this report are the following formatted in inline XBRL (Extensible Business Reporting Language): (i) the Interim Condensed Consolidated Balance Sheets as of September 30, 2025 and June 30, 2025, (ii) the Interim Condensed Consolidated Statements of Operations and Comprehensive Loss for the Three Months ended September 30, 2025 and 2024, (iii) the Interim Condensed Consolidated Statements of Cash Flows for the Three Months ended September 30, 2025 and 2024, (iv) the Interim Condensed Consolidated Statements of Shareholders' Equity and Redeemable Noncontrolling Interest for the Three Months ended September 30, 2025 and 2024 and (v) the Notes to the Interim Condensed Consolidated Financial Statements.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NIOCORP DEVELOPMENTS LTD.
(Registrant)

By: /s/ Mark A. Smith
Mark A. Smith
President, Chief Executive Officer and
Executive Chairman
(Principal Executive Officer)

Date: November 13, 2025

By: /s/ Neal Shah
Neal Shah
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: November 13, 2025

Exhibit 10.1

AMENDMENT TO CONTRACT

AGREEMENT, made and entered into this 18th day of August 2025, by and between **NIOCORP DEVELOPMENTS LTD.,** of 7000 South Yosemite Street, Suite 115, Centennial, CO 80112 (hereinafter referred to as "NioCorp") and **76 RESOURCES, LLC., having** an office in Highlands Ranch, Co, USA (hereinafter referred to as "Consultant").

W I T N E S S E T H

WHEREAS, NioCorp and Consultant have previously entered into that certain "Consulting Agreement" dated May 13, 2014, and amended on April 1, 2023 (hereinafter referred to as the "Contract"); and

WHEREAS, NioCorp and Consultant wish to amend the terms and conditions of the Contract as hereinafter provided;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, each to the other in hand paid, NioCorp and Consultant agree as follows:

1. Section 4.1 "Base Fee" is hereby deleted and replaced in its entirety with the following:

Base Fee

4.1 Subject to the terms and conditions set out in this Agreement, the Company shall pay to the Consultant, throughout the Term, a base fee (the **"Base Fee")** of $360,000.00 per annum ($30,000.00 per month), to be paid monthly or in such other instalments and at such other times as the Consultant and the Company may agree. Anything herein contained to the contrary notwithstanding, the Board of Directors of the Company shall have the authority, in its sole reasonable discretion, to revise the amount of the Base Fee paid to Consultant pursuant to this Section 4.1 from time to time, by majority vote.

Except as specifically set forth hereinabove, the Contract remains in full force and effect.

In witness whereof the parties have set their mutual hands and seals the day and date first above written.

NioCorp Developments Ltd.:	76 Resources, LLC.:
By: /s/ Neal Shah	By: /s/ Mark A. Smith
Chief Financial Officer & Corporate Secretary	Managing Director
Title	Title

Exhibit 10.2

SPECIFIC TERMS IN THIS EXHIBIT HAVE BEEN REDACTED BECAUSE SUCH TERMS ARE BOTH NOT MATERIAL AND ARE THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. THESE REDACTED TERMS HAVE BEEN MARKED IN THIS EXHIBIT WITH THREE ASTERISKS AS [***].

Defense Industrial Base Consortium (DIBC) Base Agreement

BETWEEN

Advanced Technology International (ATI)
315 Sigma Drive
Summerville, SC 29486

AND

Elk Creek Resources Corp.
7000 S. Yosemite Street, Suite 115
Centennial, Colorado 80112

Unique Entity ID: [***]

Authorities: Other Transaction Agreement Number: [***] *pursuant to 10 United States Code § 4021 OR 4022 and under the United States Federal law.*

Base Agreement No. 2025-391
January 2024

This Agreement is entered into between the Advanced Technology International (ATI), hereinafter referred to as the "Consortium Management Organization" or the "CMO," and Elk Creek Resources Corp., hereinafter referred to as "Consortium Member". This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorized representative of each of the parties. The validity, construction, scope and performance of this Agreement shall be governed by the laws of the state of South Carolina, excluding its choice of laws rules.

Elk Creek Resources Corp.	Advanced Technology International
/s/ Jim Sims	
(Signature)	[***]
Jim Sims, Chief Communications Officer	[***]
(Name & Title)	
July 22, 2025	July 22, 2025
(Date)	(Date)

Base Agreement No. 2025-391
January 2024

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Parties

The parties to this agreement are the Consortium Member identified on the cover page and the Defense Industrial Base Consortium (DIBC) Consortium Management Organization (CMO), Advanced Technology International (ATI).

B. Definitions

1. "Adequate Security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

2. "Agreement" or Base Agreement means the Base Agreement between the DIBC CMO and the Consortium Member.

3. "Agreement Officer" means an individual with authority to enter into, administer, or terminate the DIBC OTA and instruct the CMO to enter into, administer, or terminate any individual PSAs executed under this Agreement.

4. "Agreement Officer's Representative" means an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government. At the Government's discretion, multiple AORs may be designated in writing at either the OTA level or Project Agreement level.

5. "Agreement Specialist" is the Government person designated to assist the AO. The Agreement Specialist (AS) is not authorized to bind the Government.

6. "Area of Interest" is the Government's problem statement or statement of need that forms the basis for the Request for White Paper (RWP)/Request for Prototype Proposal (RPP) or Request for Research Proposal (RRP).

7. "Classified Information" means information (i.e., Top Secret, Secret and Confidential) as defined by Executive Order (EO) 13526, Classified National Security Information, and as codified at 32 Code of Federal Regulation (C.F.R.) § 2001, et. seq.

8. "Commercial Computer Software" means software developed or regularly used for non-governmental purposes which -

    a. Has been sold, leased, or licensed to the public;

    b. Has been offered for sale, lease, or license to the public;

    c. Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this agreement; or

    d. Satisfies a criterion expressed in paragraphs a, b, or c of this definition and would require only minor modification to meet the requirements of this agreement.

9. "Compromise" means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

10. "Computer Database" as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include Computer Software.

11. “Computer Software” as used in this Agreement means Computer Programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer Software does not include Computer Databases or Computer Software Documentation.

12. “Computer Software Documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the software.

13. “Consortium” means the Defense Industrial Base Consortium (DIBC).

14. “Consortium Management Organization” means ATI.

15. “Consortium Member” means the Nontraditional and Traditional Defense Contractors, including small and large businesses, for profit and not for profit entities, and academic research institutions that are members in good standing of the Consortium. For purposes of this agreement, the term “Consortium Member” will be used throughout when referring to the DIBC member receiving the Project Sub-Agreement (PSA) award associated with this agreement.

16. “Consortium Membership Agreement” means the agreement governing the rights and obligations between the CMO and its Consortium Member(s), to include the flow down of the terms and conditions contained herein.

17. “Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

18. “Controlled Technical Information” means Technical Information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled Technical Information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in Department of Defense (DoD) Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

19. “Controlled Unclassified Information” is government created or owned information that requires safeguarding or dissemination controls consistent with applicable laws, regulations and government wide policies. CUI is not classified information. It is not corporate intellectual property unless created for or included in requirements related to a government contract/agreement.

20. “Covered Contractor Information System” means an unclassified information system that is owned, or operated by or for, a Consortium Member and that processes, stores, or transmits Covered Defense Information.

21. “Covered Defense Information” means unclassified Controlled Technical Information or other information, as described in the CUI Registry at http://www.archives.gov/cui/registry/category-list that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is—

    a. Marked or otherwise identified in the agreement, contract, task order, or delivery order and provided to the Consortium Member by or on behalf of DoD in support of the performance of the agreement; or

    b. Collected, developed, received, transmitted, used, or stored by or on behalf of the Consortium Member in support of the performance of the agreement.

22. “Covered Government Support Contractor” means a contractor (other than a litigation support contractor) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor

    a. Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort.

23. “Cyber Incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an Information System and/or the information residing therein.

24. “Data” means recorded information, regardless of form or the Media on which it may be recorded. The term includes Technical Data and Computer Software. The term does not include information incidental to Agreement administration, such as financial, administrative, cost or pricing, or management information.

25. “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “Developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of U.S.C. Title 35—Patents.

26. “Development” means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new technology, product or service (or of an improvement in an existing technology, product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

27. “Disclosing Party” means Consortium Member, or their subcontractors or suppliers, or the Government who discloses Protected Information for purposes of this Agreement.

28. “Effective Date” means the date when this Agreement is signed and executed by the CMO.

29. “Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the U.S., its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

30. “Forensic Analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the Data.

31. “Form, Fit and Function Data” means Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For Computer Software it means Data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

32. “Government” means the United States of America, represented by Washington Headquarters Services, Acquisition Directorate.

33. “Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

34. “Government Purpose Rights” means the rights to use modify, reproduce, release, perform, display, or disclose Data, within the Government without restriction; and to release or disclose Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for a government purpose. Government Purpose Rights do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so.

35. “Information System” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

36. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 U.S.C. § 101.

37. “Item” includes components or processes.

38. “Know-How” means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, Technical Data, specifications, devices, apparatus and machines.

39. “Limited Rights” means the right to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting Limited Rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the data by persons outside the Government if—

    a. The reproduction, release, disclosure, or use is—

        i. Necessary for emergency repair and overhaul; or

        ii. A release or disclosure to—

            1. A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or

            2. A foreign government, of Data other than detailed manufacturing or process data, when use of such Data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;

    b. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and

    c. The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

40. “Limited Rights Data” means Data, other than Computer Software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

41. “Made” when used in relation to any invention, as defined in 35 U.S.C. § 201, means the conception or first actual reduction to practice of such invention.

42. “Malicious Software” means Computer Software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an Information System. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

43. “Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which Covered Defense Information is recorded, stored, or printed within a Covered Contractor Information System.

44. “Milestone” means a scheduled event signifying the successful completion of a major deliverable or a set of related deliverables as identified in the Milestone Payment Schedule in the Statement of Work (SOW).

45. “Nonprofit Research Institution” as defined in 40 C.F.R. § 262.200, is an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. § 501(c)(3). Additionally, it means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which, inures to the benefit of any private shareholder or individual; and includes federally funded research and development centers, as identified by the National Scientific Foundation.

46. “Nontraditional Defense Contractor” as defined in 10 U.S.C. § 3014, is an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

47. “Operations, Maintenance, Installation and Training Data” means data necessary for operation, maintenance, installation, and training purposes (other than detailed manufacturing or process data).

48. “Operationally Critical Support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

49. “Payable Milestone” means that once a milestone has been met, the Government can approve payment for the PSA Holder (PSAH) (defined in 52) of a predetermined dollar amount in relation to performance of a particular deliverable under the Project Sub-Agreement (PSA) (defined in 51).

50. “Practical Application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms as defined in 35 U.S.C. § 201.

51. “Project Sub-Agreement” means an effort proposed by a Consortium Member and selected by the Government for award of PSA, which is issued by the CMO to the Consortium Member for the execution of a research or prototype project. The PSA award shall mirror the Project Award awarded to the CMO and in the event the CMO receives any revised terms and conditions, data rights, end user license agreements (EULA), etc. from the Consortium Manager, the CMO shall enter into negotiations with the Governments again for the Project Agreement.

52. “Project Sub-Agreement Holder” means the Consortium Member executing a research or prototype project pursuant to a PSA issued by the CMO.

53. “Property” means any tangible personal property other than property actually consumed during the execution of work under a PSA.

54. “Proprietary” means information such as Trade Secrets and commercial or financial information obtained from a Disclosing Party on a privileged or confidential basis. Information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. It includes any information and materials considered a Trade Secret by the Disclosing Party on its own behalf or on behalf of a third party (e.g., their subcontractors or suppliers). Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information or a Trade Secret if such Disclosing Party, within 30 days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret.

55. “Prototype Project” means an effort proposed by a Consortium Member and selected by the Government for a PSA that is directly relevant to enhancing mission effectiveness of military personnel and supporting platforms, systems, components or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components or materials in use by the armed forces as defined in 10 U.S.C. § 4022.

56. “Protected Information” means information that is protected from disclosure by law or policy or that is furnished on a privileged basis and marked as such. Protected Information includes, but is not limited to, personally identifiable information, Trade Secrets, CUI, and proprietary information.

57. “Rapidly Report” means within 72 hours of discovery of any Cyber Incident.

58. “Receiving Party” means contractor, or their subcontractors or suppliers, or the Government who receives Protected Information disclosed by a Disclosing Party.

59. “Research Project” means an effort that is proposed by a Consortium Member and selected by the Government for a PSA that is focused on validating research results and advancements, rather than for the delivery or acquisition of the resultant technologies.

60. “Restricted Computer Software” means Computer Software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted Computer Software, including minor modifications of any such Computer Software.

61. “Request for Prototype Proposal” means the request by the Government to the CMO requesting proposal(s) to be prepared for execution of a Prototype PSA.

62. “Request for Research Proposal” means the request by the Government to the CMO requesting proposal(s) to be prepared for execution of a Research PSA.

63. “Request for White Paper” means the request by the Government to the CMO requesting White Papers to be prepared for execution of either a Prototype or a Research Project.

64. “Selection Notification” means the CMO’s official notification issued to the Consortium Member documenting the selection of White Paper(s) and/or Proposal for either a Research or Prototype Project Sub-Agreement.

65. “Small Business Contractor” or small business concern, as defined in 15 U.S.C. § 632, is an enterprise that is deemed to be one that is independently owned and operated, and is not dominant in its field of operation based on the appropriate standards, utilizing the number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

66. “Statement of Need” means the Government’s problem statement or Area of Interest (AOI). See the definition for AOI above.

67. “Subject Invention” means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this Agreement.

68. “Successfully Completed” means that there has been a written determination by the appropriate approving official that efforts conducted under the Agreement: (1) met the key technical goals of a project; (2) satisfied success metrics incorporated into the Agreement; or (3) accomplished a particularly favorable or unexpected result that justifies the transition to production.

69. “Technical Data” means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including Computer Software Documentation). The term does not include Computer Software or data incidental to contract administration, such as financial and/or management information.

70. “Technical Information” means Technical Data or Computer Software, as those terms are defined in ‘Data.’ Examples of Technical Information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and Computer Software executable code and source code.

71. “Technology” means discoveries, innovations, know-how and inventions, whether patentable or not, including Computer Software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

72. “Trade Secret” means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

    a. The owner thereof has taken reasonable measures to keep such information secret; and

    b. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public.

73. “Traditional Defense Contractor” as defined in 32 C.F.R. § 3.4, is any business unit that does not meet the definition of a NDC.

74. “Unlimited Rights” means rights to use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

C. Scope

1. This is an OT base agreement, pursuant to 10 U.S.C. § 4021 OR 4022. The principal purpose of this Agreement is to conduct research OR prototype project(s) in accordance with the Government's problem statement.

2. The PSAH shall be responsible for performance of the work set forth in the PSA SOW, as agreed upon by the parties.

    a. The PSAH shall provide all documentation required in accordance with the deliverables table set forth in the PSA's SOW.

    b. The Consortium Member is responsible for performance under this Agreement.

    c. The AOR will be responsible for accepting deliverables submitted for any PSA awarded under this Agreement.

3. The Terms and Conditions contained herein shall flow down to any resulting lower tier agreement entered into solely in connection with this Agreement; understanding references to the parties or particular Agreements may have to be modified.

D. Potential for Follow-On Production

1. 10 U.S.C. § 4022 authorizes the DoD to structure Agreements with potential for a sole source follow-on award to the PSAH. Two criteria must be met to use this authority: 1) competitive procedures were used to select the PSAH and 2) a successfully completed prototype project has been provided for in the transaction.

2. In accordance with 10 U.S.C. § 4022, the parties will consider the resulting PSAs or portions thereof successfully completed upon acceptance of specific: Milestones, objectives, outcomes, or accomplishments as outlined in the SOW. In accordance with Office of the Secretary of Defense policy, successful completion may occur prior to the completion of the entire prototype project. Additionally, completion can occur prior to the conclusion of a prototype project to allow the Government to transition any aspect of the prototype project determined to provide utility into production while other aspects of the prototype project have yet to be completed.

ARTICLE II: TERM OF AGREEMENT AND TERMINATION

A. Term of this Agreement

The term of this Agreement commences upon the date of full execution of this award and continues through December 30, 2028 at which time, the term may have the option to extend for an additional 5 year period ending December 30, 2033. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

B. Termination Provisions

1. At the direction of the Government, the CMO may terminate any PSA, in whole or in part, if the AO determines that doing so is in the Government's best interests. The AO shall affect termination by delivering to the CMO a notice of termination specifying the extent of the termination and the effective date. Through written notice to the CMO, the Consortium Member may request termination, which the Government may grant at its discretion.

2. Should a PSA be terminated prior to completion of each Milestone and/or contract line item number (CLIN) the Government will receive the specific PSA data rights in the completed or partially completed Milestones consistent with the Deliverables table in the PSA's SOW, the Data Assertions, and Article IX: Data Rights. In the event of a termination, the Parties will act in good faith to negotiate a settlement that accounts for work already performed and other appropriate costs and deliverables. Disputes regarding settlement will be resolved under Article V: Disputes, of this Agreement.

3. After receipt of a Notice of Termination for the PSA, and except as directed by the AO, the CMO shall immediately proceed with the following actions :

    a. Direct the PSAH to stop work of the PSA as specified in the notice.

    b. Instruct the PSAH to not place any further orders for materials, services, or facilities, except as necessary to complete the continued existing portion of the PSA.

    c. Instruct the PSAH to terminate all orders, to the extent they relate to the terminated work.

    d. With approval or ratification by the AO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.

    e. As directed by the AO, the CMO shall obtain from the PSAH under the terminated portion of the PSA a transfer of title to the following where applicable and coordinate delivery to the Government:

        i. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

        ii. The completed or partially completed plans, drawings, information, and other technical data, computer software, and property and associated license rights and interests in subject inventions that, if the order had been completed, would have been required to be furnished to the Government.

    f. Ensure that any GFP, as covered by Article XIV, that has been provided under the PSA and is not directly addressed by these Termination Provisions, is returned to the Government.

    g. Direct the PSAH to complete performance of any work that is not terminated within the PSA.

    h. Take any action that may be necessary with AO's approval, or that the AO may direct, for the protection and preservation of the property that is in the possession of the PSAH, in relation to the project, and in which the Government has or may acquire an interest.

    i. Complete negotiations with the Government for the termination whether in whole or in part, and finalize the termination of the PSA with the PSAH

In the event of a termination of a PSA, the Government shall retain or assume all patent rights as described in Article VIII, Patent Rights, and all rights in data as described in Article IX, Data Rights. Failure of the Parties to agree to termination settlement costs or an equitable adjustment shall be resolved pursuant to Article V Disputes.

C. Extending the Term

At the Government's direction, the term of a PSA may be extended if opportunities within the scope set forth in Article I: Scope of the Agreement, reasonably warrant. Any extension shall be formalized through modification of the Agreement by the CMO and the PSAH in accordance with procedures outlined in Article III, section B, Modifications.

D. Stop-Work Order

1. The Government, in its sole discretion, may require the CMO to stop all or part of the performance of work under a PSA, in whole or in part, if the AO determines that a work stoppage is in the Government's best interest. The AO will issue a Stop-Work Order to the CMO, specifying the extent of the stop-work and the effective date.

2. The stop-work order shall be specifically identified in accordance with this article. Upon receipt of the order, the CMO shall immediately comply with its terms, notifying the PSAH, and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage, whether for the PSA.

3. After receipt of a stop-work order, and except as directed by the AO, the CMO shall immediately proceed with the following actions if the stop-work is for a resulting PA:

    a. Direct the PSAH to stop work of the PSA as specified in the notice

    b. Instruct the PSAH not to place any further orders for materials, services, or facilities, except as necessary to complete the continued existing portion of the PSA

    c. Instruct the PSAH to stop issuance of all order, to the extent they relate to the stop-work order

4. Upon conclusion of the Stop-Work Order, the AO shall either:

    a. Cancel the stop-work order; or

    b. Terminate the work covered by the order as provided in Article II, section B, Termination Provisions.

5. If a stop-work order issued under this Article is canceled, the CMO shall or notify the PSAH to resume work under the PSA immediately. The AO may make an adjustment to any schedules defined within the PSA, and the PSA shall be modified, in writing, accordingly, if-

    a. The stop-work order results in an increase in the time required for, or in the PSAH's cost associated with the performance of any part of this PSA; and

    b. The PSAH may assert its right to the adjustment within 30 days after the end of the period of work stoppage; if the AO decides the facts justify the action, the AO may receive and act upon the claim submitted at any time before final payment under the PSA.

6. If a stop-work order is not canceled and the work covered by the order is terminated, the Parties will act in good faith to negotiate a settlement that accounts for work already performed and other appropriate costs and deliverables. Disputes regarding settlement will be resolved in accordance with procedures outlined in Article V: Disputes.

E. Project Agreement

1. For administration of a resulting PA, the CMO shall provide detailed information governing all aspects of all PSAs's lifecycle- pre-award, negotiation, PA setup, PA administration, and PA closeout.

2. The CMO's administration and financial management of this all PSAs will include (i) establishment of Consortium Member Agreements, (ii) membership oversight, (iii) reconciliation of PSA payments by the Government, and (iv) reporting of the Agreement financial activities to the Government.

F. Project Sub-Agreements

Upon receipt of Government Direction, the CMO shall establish a PSA with the selected Consortium Member(s) for execution of the PSA, inclusive of all flow downs and applicable terms and conditions to successfully carry out the objectives of the PSA.

G. Closeout Procedures

Upon completion of a PSA or termination of a PSA:

1. No later than 90 calendar days after the end date of a PSA, the PSAH shall liquidate all obligations incurred by submitting all financial, performance, and other reports, as required by the terms and conditions of the PSA.

2. The CMO shall make prompt payments to PSAH's for allowable costs under the associated PSA being closed out.

3. To the maximum extent practicable, quick closeout procedures shall be followed.

4. In the event that the PSAH fails to submit the closeout documents within the timeframes required, the Government may direct the CMO to unilaterally closeout the PSA.

    a. Such a failure shall equate to the PSAH's express agreement that the amounts paid pursuant to the PSA's, up to the date of the notice of the unilateral closeout, shall constitute the full, complete and final extent of any further financial obligation to the CMO or PSAH.

    b. The PSAH shall release and discharge the Government, its officers, agents and employees, of and from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to the PSA, expressly authorizes the Government to rely on the foregoing representations and release in connection with the PSA.

    c. The CMO shall refund the balance of obligated funds that were not paid to the PSAH, after receiving approval from the AO.

ARTICLE III: AGREEMENT ADMINISTRATION

A. Administration

Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

1. DIBC CMO Points of

    [***]

2. Consortium Member POC:

NioCorp Developments Ltd.
Jim Sims
Chief Communications Officer
[***]
[***]

The Consortium Member may change the representative named above by written notification to the CMO. The CMO will affect the change following the procedures in Article III, section B, Modifications, of the main text of the Agreement.

B. Modifications

1. Recommendations for a modification to a PSA, including justifications to support any changes to the SOW, may originate via a written request sent to the CMO or to the AOR or from the AOR to the AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the program. Unless otherwise noted in the Agreement, a modification will be made by mutual agreement of the Parties. Neither the Government, nor the CMO is obligated to pay for additional or revised future milestones until the SOW is formally revised and made part of the PSA. The AO shall be responsible for review and approval of modification to the PSA.

2. A PSA may contain both Pre-Priced and/or To Be Negotiated Option Agreement Line Item Numbers (ALINs). Pre-Priced Option ALINs, if exercised, may be executed unilaterally at the negotiated prices as defined in the PSA. ALINs for which the price is To Be Negotiated or listed as Rough Order of Magnitude (ROM), will be negotiated, exercised at a mutually agreeable price, and included by supplemental modification to the PSA, as directed by the AO.

3. Minor or administrative modifications to the Agreement or PSA (e.g., changes to personnel identified in the Agreement, incremental funding, etc.) do not require Consortium Member or PSAH signature. Administrative modifications may be unilaterally executed by the CMO.

4. The CMO, as directed by the AO, is responsible for executing all modifications to this Agreement and all resulting PSAs.

ARTICLE IV: OBLIGATION AND PAYMENT

A. Obligation

In no case shall the Government's or CMO's financial obligations exceed the amount obligated on a PSA. The CMO may obligate funds to a PSA incrementally, if directed by the Government. If a modification becomes necessary in performance of a PSA, pursuant to Article III, section B, Modifications, the CMO and the PSA's Administrator shall execute the requested revisions.

B. Payments

1. Project Payments: The detailed instructions for project payments for fixed price projects will be included in the PSA Milestone Payment Schedule. Expenditure-based projects will be reimbursed based on actual costs incurred.

2. Accounting System Requirements: Prior to the submission of invoices, the PSAH shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles (GAAP) and the requirements of a PSA. The PSAH shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds under any resulting PSA. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

3. For expenditure-based or resource-sharing projects, the capability of the Consortium Member's accounting system will be considered prior to award. Although the Government will not impose requirements that will cause a Consortium Member to revise or alter its existing accounting system, the Government will not direct the CMO to enter into a PSA that provides for payment based on amounts generated from the Consortium Member's financial or cost records, if the Consortium Member does not have an accounting system capable of identifying the amounts/costs to individual PSA's.

C. Invoicing:

The Consortium Member shall segregate and track each individual PSA separately and shall document the accomplishments of each Milestone under each PSA.

Each PSA will be awarded as either a fixed price milestone payment method or an expenditure based milestone payment method as described below.

Fixed Price Milestone Payment Method: Payments shall be made in accordance with the Milestone Payment Schedule of each PSA, provided the designated AOR has verified compliance with the SOW and accomplishment of the stated effort. The Milestone Payment Schedule may be revised as appropriate and deemed necessary by issuance of a bilateral modification to the PSA. Quarterly reviews by the AOR and the CMO will assess the need for revisions to the Milestone Payment Schedule. An acceptable invoice for adjustable fixed price milestone payments is one that (on the invoice or on the Milestone Report):

1) Is addressed to the CMO and contains the CMO's address;
   Advanced Technology International
   315 Sigma Dr.
   Summerville, SC 29486
2) contains the date of invoice and sub-agreement number (20XX-XXX PSA XX);
3) identifies the milestone number and deliverable description for any milestone(s) that are complete; and
4) lists the milestone amount negotiated and contained in each PSA.

Expenditure Based Plus Fixed Fee or Expenditure Based Milestone Payment Method: (with not to exceed ceiling): Payment is contingent upon satisfactory progress toward completion of milestones as delineated in each PSA. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable PSA, provided the designated AOR has verified compliance with the SOW and accomplishment of the stated effort. Per (3) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each PSA):

1) Is addressed to the CMO and contains the CMO's address;
   Advanced Technology International
   315 Sigma Dr.
   Summerville, SC 29486
2) contains the date of invoice and sub-agreement number (20XX-XXX PSA XX);
3) identifies any associated technical milestones and the progress toward completion of each milestone;
4) includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, fixed fee, if applicable, and extended totals;
5) indicates the current period and cumulative manhours and costs incurred through the period indicated on the invoice; and
6) contains the following certification statement and signature:
   "I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received."
   Authorized Signature _____

Expenditure Based, Cost Sharing Milestone Payment Method (with not to exceed ceiling): Payment is contingent upon satisfactory progress toward completion of milestones as delineated in PSA and acceptable cost share. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable SOW, provided the designated AOR has verified compliance with the SOW and accomplishment of the stated effort. Per (3) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each PSA):

1) is addressed to the CMO and contains the CMO's address;
Advanced Technology International
315 Sigma Dr.
Summerville, SC 29486

2) contains the date of invoice and sub-agreement number (20XX-XXX PSA XX);

3) identifies any associated technical milestones and the progress toward completion of each milestone;

4) includes a report of the cost share expended towards the accomplishment of the SOW tasks and/or milestones. This cost share report may be attached to the invoice if Consortium Member practices make inclusion of such information on the invoice itself impractical. If the cost share report is separate from the invoice, it must be signed by an authorized representative. This cost share report must contain a breakout of the cost share by cost element similar to the level of detail required on the invoice and any in-kind contributions. The preferred method of reporting cost share is to provide an invoice for actual cost incurred with a value for the cost shared amount and the value to be reimbursed by the Government through the CMO;

5) includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals;

6) indicates the current period and cumulative manhours and costs incurred through the period indicated on the invoice; and

7) contains the following certification statement and signature:
"I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received."
Authorized Signature _____

Submission of Invoices
Invoices may be submitted at least once a month. The Consortium Member shall submit invoices and any necessary supporting documentation via email to [***].

The Consortium Member's final invoice (completion invoice) will be clearly indicated as such and shall indicate the cumulative amounts incurred and billed to completion, and a written certification of the total hours expended.
Actual project costs incurred and cost share performance, if applicable, of each PSA shall be reported and reviewed each month.

Payment Terms
Payment terms are NET 30 days after CMO's receipt of an acceptable invoice. An acceptable invoice is one that meets the conditions described in this article.

D. Financial Records and Reports:

The Consortium Member shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for PSA funding provided under this Agreement, should resource sharing procedures be implemented for funding a particular project. The Consortium Member shall ensure that, for each PSA, the PSAH's relevant financial records are available and subject to examination or audit on behalf of the Government for a period not to exceed three years after final payment of the PA. The Government shall have direct access to sufficient records and information of the PSAH to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon written notice 90 calendar days prior and shall be subject to the security requirements of the audited party. Any audit required during the term of this Agreement may be conducted by the Government using Government auditors or, at the request of the CMO, on behalf of a PSAH, by the PSAH's external CPA accounting firm at the expense of the PSAH.

ARTICLE V: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues pertaining to this Agreement and any resulting PSA, with the objective of resolving any misunderstanding, disagreement, claims, or disputes by mutual agreement between the Parties of this Agreement.

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute with the Government by the Consortium Member concerning questions of fact or law arising from or in connection with a PSA, and whether or not involving an alleged breach of this PSA, may be raised only under this Article.

2. Whenever disputes disagreements, or misunderstandings arise, the Parties and the Government shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. Every reasonable attempt will be made to resolve all issues at the AO's level. Alternative Dispute Resolution (ADR) procedures to include, but not limited to settlement negotiations, mediation and fact-finding, will be used to the maximum extent practicable. Whenever the PSAH through the CMO submits in writing a claim or issue to the Government, the AO shall consider the claim or issue and within 30 calendar days of receipt of the claim or issue in dispute, either:

    a. Prepare and transmit a written decision to the CMO, which shall include the basis for the decision and accordingly document the Agreement file or;

    b. Notify the CMO of a specific date when the AO will render a decision if more time is needed for response. The notice will inform the CMO of the reason for delaying the decision.

3. In the event that a mutually agreeable solution cannot be reached at the AO level, the PSAH through the CMO may request a higher level review in writing from the AO's Deputy Director, with notice to the AO. The notice shall provide the relevant facts, identify unresolved issues, specify the clarification or remedy sought, and document the rationale as to why the clarification/remedy is appropriate.

    The AO's Deputy Director will conduct a review of the matter(s) in dispute and render a decision in writing within 30 calendar days after receipt of the Parties submission. Such a decision will not be subject to further administrative review. Failing agreement through this process, the Parties may pursue any rights and remedies afforded to them by law, consistent with the terms of this Agreement.

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement or any PSA shall be limited to direct damages only up to the aggregate amount of Government funding disbursed for the PSA, as of the time the dispute arises. In no event shall the Party be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE VI: PROTECTED INFORMATION

A. Exchange of Information

The Government may, from time to time, disclose Protected Information to the Consortium Member and its subcontractor(s) or supplier(s), in connection with a PSA, and the Consortium Member and its subcontractor(s) or supplier(s), may, from time to time, disclose Protected Information to the Government in connection with a resulting PSA, or performance thereunder.

B. Protection and Authorized Disclosure.

The Receiving Party agrees, to the extent permitted by law, that Protected Information shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Protected Information shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article VIII: Patent Rights, and Article IX: Data Rights, provided that the duty to protect such Protected Information shall not extend to materials or information that:

1. Are received or become available without restriction to the Receiving Party under a proper separate agreement,

2. Are not identified with a suitable notice or legend,

3. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,

4. Are or later become part of the public domain through no fault of the Receiving Party,

5. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,

6. Are developed independently by the Receiving Party without use of Protected Information as evidenced by written records,

7. Are required by law or regulation to be disclosed, provided; however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

C. Return of Protected Information

Upon the request of the Consortium Member the Government shall promptly return all copies and other tangible manifestations of the disclosed Protected Information. Upon request by the Government, the Consortium Member shall promptly return all copies and other tangible manifestations of the Protected Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

ARTICLE VII: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

Subject to the provisions of Article VI: Protected Information and Article VII: Publication and Academic Rights, the Consortium Member and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government the Consortium Member under this Agreement. The Consortium Member and the Government shall include an appropriate acknowledgement of the sponsorship of the Research or Prototype Projects by the Government and the Consortium Member in such publication or disclosure. The Parties shall have only the right to use, disclose, and exploit any such data and Protected Information in accordance with the rights held by them pursuant to a PSA. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph, alone, to disclose any Protected Information of the Government or a PSAH. Nothing contained herein shall contradict or contravene any use of unlimited data rights obtained under Article IX: Data Rights.

B. Classified Projects

If a release of Protected Information is for a classified project, the provisions of the DoD Form (DD Form) 441 (DoD Security Agreement), Standard Form (SF) 328 (Certificate Pertaining to Foreign Interests), and the DD Form 254 (Contract Security Classification Specification), apply. The Government will be responsible for the completion of the DD Form 254. The PSAH shall complete the DD Form 441 and SF 328 and provide them to the Government, through the CMO, for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Counterintelligence and Security Agency office and the requiring activity's local Security office for the DD Form 254.

C. Review or Approval of Technical Information for Public Release

1. At least 30 calendar days prior to the scheduled release date, the PSAH shall submit to the AOR a copy of the information to be released along with a Clearance Request for Public Release of DoD Information, DD Form 1910, who will route the information to the AO and other appropriate parties for review and approval.

    a. The AOR is designated as the approval authority for the AO for such releases.

2. The PSAH is responsible for assuring that an acknowledgment of government support will appear in any publication of any material based on or developed under this Agreement, using the following acknowledgement terms:

    "Effort sponsored by the U.S. Government under Other Transaction Agreement number, HQ0034249C00B between Advanced Technology International and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

3. Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under a resulting PSA contains the following disclaimer:

    "The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government."

D. Filing of Patent Applications

During the course of any such 30 calendar day period, the PSAH through the CMO, shall provide notice to the AO as to whether it desires that a patent application be filed on any invention disclosed in such materials. In the event that the PSAH, desires that such a patent be filed, the PSAH through the CMO, proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

1. Filing of a patent application covering such invention, or

2. Written agreement, from the AO and the PSAH that no patentable invention is disclosed in such materials.

3. Further, during the course of any such 30 calendar day period, the PSAH through the CMO shall notify the AO and the Government if it believes any of its Protected Information has been included in the proposed publication or disclosure and shall identify the specific Protected Information that need to be removed from such proposed publication. The Government and the PSAH agree to remove from the proposed publication or disclosure all such Protected Information so identified by the PSAH through the CMO.

ARTICLE VIII: PATENT RIGHTS

A. Allocation of Principal Rights

1. Unless the PSAH notifies the Government, in accordance with subparagraph 2 below, that the PSAH does not intend to retain title, the PSAH shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.

2. With respect to any Subject Invention in which the PSAH retains title, the Government shall receive a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced (make, have made, use, have used, or import) the Subject Invention throughout the world on behalf of the U.S. for Government purposes and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the U.S. in accordance with 35 U.S.C. § 209(d)(J) and 37 C.F.R. § 404.7(a)(2)(i). The PSAH shall record a confirmatory instrument of the Government's license to the Subject Invention with the U.S. Patent and Trademark Office.

B. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The PSAH through the CMO shall disclose each Subject Invention to the Government within three months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement and circumstances under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted and/or accepted for publication at the time of disclosure.

2. If the PSAH determines that it does not intend to retain title to any such invention, the PSAH through the CMO shall notify the Government, in writing, within eight months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for such notice may be shortened by the Government to a date that is no more than 60 calendar days prior to the end of the statutory period.

3. The PSAH shall file its initial patent application on a Subject Invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the U.S. after a publication, or sale, or public use. The PSAH may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either 10 months of the corresponding initial patent application or six months after the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.

4. The PSAH shall notify the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than 30 calendar days before the expiration of the response period required by the relevant patent office.

5. Requests for extension of the time for disclosure election, and filing under Article VII: Publication and Academic Rights, may be granted at the Government's discretion after considering the circumstances of the PSAH and the overall effect of the extension.

6. The PSAH, through the CMO shall submit to the Government annual listings of Subject Inventions. At the completion of the each PSA, the PSAH shall submit a comprehensive listing of all Subject Inventions identified during the course of this Agreement and the current status of each.

C. Conditions When the Government May Obtain Title

Upon the Government's written request, the PSAH shall convey title to any Subject Invention to the Government under any of the following conditions:

1. If the PSAH fails to disclose or elects not to retain title to the Subject Invention within the times specified in section B of this Article; however, the Government may only request title within 60 calendar days after learning of the failure of the PSAH to disclose or elect within the specified times;

2. In those countries in which the PSAH fails to file patent applications within the times specified in section B of this Article; however, if the PSAH has filed a patent application in a country after the times specified in section B of this Article, but prior to its receipt of the written request by the Government, the PSAH shall continue to retain title in that country; or

3. In any country in which the PSAH decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

D. Minimum Rights to the PSAH and Protection of the PSAH's Right to File

1. The PSAH shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the PSAH fails to disclose the Subject Invention within the times specified in section B of this Article. The PSAH license extends to its domestic subsidiaries and affiliates, if any, and includes the right to grant licenses of the same scope to the extent that the PSAH was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.

2. The PSAH's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. 404. This license shall not be revoked in that field of use or the geographical areas in which the PSAH has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PSAH, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Government shall furnish the PSAH, through the CMO, with a written notice of its intention to revoke or modify the license, and the PSAH shall be allowed 30 calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

E. Action to Protect the Government's Interest

1. The PSAH agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the PSAH elects to retain title, and (ii) convey title to the Government when requested under section C of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. The PSAH agrees to require by written agreement with its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the PSAH each Subject Invention made under this Agreement or any resulting PSA in order that the PSAH can comply with the disclosure provisions of section B of this Article. The PSAH shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The PSAH shall include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement:

> "*This invention was made with Government support under Other Transaction Agreement No HQ0034249C00B and/or Project Agreement No XXXXXX., awarded by the Government. The Government has certain rights in the invention."*

F. Reporting on Utilization of Subject Inventions

1. The PSAH agrees to submit, during the term of this Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the PSAH or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the PSAH, and such other data and information as the Government may reasonably specify. The PSAH also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with section G of this Article. The Government agrees it shall not disclose such information to persons outside the Government without permission of the PSAH, unless required by law.

G. March-in Rights

The PSAH agrees that with respect to any Subject Invention in which it has retained title or a PSAH has retained the title, the Government has the right to require the PSAH, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the PSAH, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government determines that the PSAH shall follow the procedures set forth in 37 C.F.R. § 401.6.

1. Such action is necessary because the PSAH or assignee has not taken effective steps, consistent with the intent of this Agreement or a resulting PSA, to achieve practical application of the Subject Invention;

2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PSAH, assignee, or their licensees;

3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PSAH, assignee, or licensees; or

ARTICLE IX: DATA RIGHTS

A. Allocation of Principal Rights

1. In consideration for Government funding, the Consortium Member grants the Government rights in Data in accordance with the table in any resulting PSA. No Data Rights are associated with this Agreement and will be asserted and negotiated at the PSA level.

    a. With respect to Data developed or generated under a PSA, the Government shall receive royalty free, world-wide, nonexclusive, irrevocable, Government Purpose Rights. The PSAH agrees, with respect to data developed or generated under a PSA, the Government may, within five years after completion or termination of the PSA, require delivery of data and receive Government Purpose Rights.

    b. With respect to Form, Fit and Function Data and Operation, Maintenance, Installation or Training Data relevant to Data developed, generated, or delivered under a PSA, the Government will receive royalty free, world-wide, nonexclusive, irrevocable Unlimited Rights.

    c. With respect to Data developed or generated in whole or in part at private expense (in a resulting PSA), the Government will receive the rights indicated in a resulting PSA.

2. Data that will be delivered, furnished, or otherwise provided to the Government under a PSA, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre- existing rights, unless (a) the Parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

3. Marking of Data: Any Data delivered under this Agreement shall be marked with the following legend:

    "*Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HQ0034249C00B and/or Project Agreement No XXXXXX, between Advanced Technology International and the Government.*"

4. In the event that the PSAH learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the PSAH, t will have the opportunity to cure such omission going forward by providing written notice to the AO, through the CMO, within six months of the erroneous release.

B. Prior Technology

In the event it is necessary for the PSAH to furnish the Government with Data which existed prior to, or was produced outside of the PSA or this Agreement, and such Data embodies Protected Information or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors employees. The PSAH shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement or a specific PSA to the Government. Upon completion of activities under this Agreement or a resulting PSA, such Data will be disposed of as requested by the PSAH.

C. Oral and Visual Information

If information which the PSAH considers to embody Protected Information or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within 30 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the Government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or Protected Information, PSAH shall provide addition detail at the Government's request, subject to restrictions on use and disclosure.

D. Disclaimer of Liability

1. Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

    a. Data not identified with a suitable notice or legend as set forth in this Article; nor

    b. Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third Party without restriction, or is included in Data which the PSAH has furnished, or is required to furnish to the Government without restriction on disclosure and use.

2. Notwithstanding paragraph D.1.a. of this Article, if the PSAH cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under paragraph D.1.b. of this Article.

E. Copyright

The PSAH hereby grants to the Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly any copyrighted materials developed (excluding Data) under this Agreement to which it owns the copyright, and to authorize others to do so.

F. Survival Rights

Provisions of this Article shall survive termination of this Agreement and any resulting PSA.

G. March-In Rights

1. In the event the Government chooses to exercise rights, as defined in Article VIII: Patent Rights, section I, March-In Rights, the PSAH agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within 60 calendar days from the date of Notice. In the event the Government chooses to exercise its March-in Rights, the Government shall retain Unlimited Rights, as defined in Article I, section BC, Definitions, to this delivered Data.

2. To facilitate any potential deliveries, the PSAH agrees to retain and maintain in good condition until five years after completion or termination of this Agreement and any resulting PSA, all Data necessary to achieve practical application of any Subject Invention as defined in Article I, section B, Definitions.

ARTICLE X: SOFTWARE LICENSE

A. Software License

All Computer Software delivered to the Government under this Agreement, other than Computer Software developed or generated under this Agreement, shall be subject to the restrictions and limitations set forth in the PSA's End User License Agreement (EULA). If applicable, provided they are consistent with federal law. To the extent the terms and conditions in the PSA's EULA are inconsistent with federal law, they shall be deemed deleted and unenforceable including, but not limited to the following:

1. Any future changes to a resulting PSA or the EULA must be signed by a duly warranted AO, in writing. The same requirement applies to modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the Agreement signed by a warranted AO.

2. Clauses in the EULA referencing termination or cancellation are hereby deemed to be deleted. Termination and cancellations will be governed by Article II: Term of Agreement and Termination of the resulting PSA.

3. Any disputes relating to the EULA shall be resolved in accordance with Article V: Disputes, of this Agreement. Any provisions of the EULA that would subject the U.S. to any law, jurisdiction, or venue other than that of the U.S. is hereby deemed to be deleted. The validity, interpretation and enforcement of this Agreement and resulting PSA and the attached EULA will be governed by and construed in accordance with federal law as opposed to any state or local law.

4. All EULA clauses referencing Licensee Indemnities are hereby deemed to be deleted. All EULA clauses that (1) violate the Department of Justice's right to represent the Government in any case (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

5. All EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. § 1341), which prohibits the Government from paying any fees or penalties beyond the Agreement amount (including attorney's and expert witness fees), unless specifically authorized by existing statutes, are hereby deemed to be deleted. This includes, but is not limited to, provisions indicating paid services, fees, charges, and/or billing practices will renew automatically until the licensee elects to cancel.

6. The PSAH's warranty clause shall not impair the Government's right to recover for fraud or crimes arising out of or related to this PA under any federal fraud statute, including, but not limited, to the False Claims Act, 31 U.S.C. § 3729-3733.

7. The EULA does not represent the entire agreement, but will be incorporated as an Attachment and made a material part of the resulting PSA. In the event of a conflict between the terms of this Agreement, the PSA and the EULA the terms of the PSA shall take precedence.

B. Marking of Data

Any Computer Software delivered under a resulting PSA that is subject to the PSAH's EULA, shall be marked with the appropriate data rights markings and the 'PSAH's name and address and include the following legend:

> "*Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HQ0034249C00B and/or Project Agreement No XXXXXX, between the Government and Advanced Technology International.*"

ARTICLE XI: FOREIGN ACCESS TO TECHNOLOGY

A. Export Compliance

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § 2751-2794, including the ITAR, 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401- 2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement or any resulting PSA. Accordingly, the PSAH shall not export, directly, or indirectly, any products and/or technology, Protected Information, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

ARTICLE XII: OPERATIONAL SECURITY

Access and General Protection/Security Policy and Procedures. When on Government installations all PSAH employees, including subcontractor employees, shall comply with all installation and facility access and local security policies and procedures (provided by Government representative), and security/emergency management exercises. The PSAH shall also provide all information required for background checks to meet installation access requirements. All PSAH employees, including subcontractor employees, shall comply with all personal identity verification and accountability requirements as directed by the Government and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in PSAH security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. The PSAH shall be subject to and comply with vehicle searches, wearing of ID badges, etc. The PSAH shall comply with all requirements contained in Article XII: Operational Security.

A. Access and General Protection/Security Policy and Procedures

The PSAH shall provide personnel with the appropriate personnel security clearance levels (PCL) for the work to be performed under this Agreement and any resulting PSA. Access to Classified Information may be required in the performance of this Agreement and any resulting PSA and shall be in accordance with 32 C.F.R. 117, NISPOM and applicable DoD personnel security regulations. The PSAH shall maintain sufficiently cleared personnel to perform the tasks required by the SOW for any PSA and this Agreement. All PSAH personnel shall possess the requisite PCL, accesses, and need-to-know commensurate with the requirements of their positions. Overarching security requirements, and PSAH access to Classified Information, shall be as specified in the DD Form 254 for all any resulting PSA. All PSAH personnel with access to unclassified information systems, including e-mail, shall have at a minimum a favorable Tier 1 Investigation (T1) determination.

B. Security Education, Training and Awareness Briefs

All PSAH employees, including subcontractor employees, shall receive new employee training and annual security refreshers. These training programs will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity and violations to their local security officers. This training shall be completed annually. The PSAH shall submit certificates of completion for each employee and subcontractor employee to the AOR within 14 calendar days after completion of training by all employees and subcontractor personnel.

C. Access to DoD Facility or Installation

All PSAH employees, including subcontractor employees, shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database; applicable installation, facility and area commander installation and facility access and local security policies and procedures (DoD Manual (DoDM) 5200.08-R 09APR07) (provided by the AOR).

D. Controlled Unclassified Information

All PSAH personnel shall be capable of accessing, handling, receiving and storing UNCLASSIFIED documents, equipment, hardware and test items using applicable standards of CUI. All CUI information generated and/or provided under this award shall be marked and safeguarded as specified in DoDM 5200.48, Volume 2, DoD Information Security Program: Marking of Information available at: https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/520048p.PDF. The PSAH shall not store or transmit CUI on personal information technology (IT) systems or via personal e-mail. UNCLASSIFIED e-mail containing any DoD CUI shall be encrypted or sent via Safe Access File Exchange (SAFE) website available at https://safe.apps.mil/.

E. Operations Security

1. The PSAH shall develop, implement, and maintain an Operations Security (OPSEC) program to protect CUI and classified activities, information, equipment, and material used or developed by the PSAH and any subcontractor during performance of this Agreement and any resulting PSA. The PSAH shall be responsible for the subcontractor implementation of the OPSEC requirements. The OPSEC program shall be in accordance with National Security Decision Directive 298, and at a minimum shall include:

    a. Assignment of responsibility for OPSEC direction and implementation.

    b. Issuance of procedures and planning guidance for the use of OPSEC techniques to identify vulnerabilities and apply applicable countermeasures.

    c. Establishment of OPSEC education and awareness training.

    d. Provisions for management, annual review, and evaluation of OPSEC programs.

    e. Flow down of OPSEC requirements to subcontractors when applicable.

2. The SOW for any resulting PSA may require the PSAH to prepare an OPSEC Plan for Government review.

3. The PSAH shall implement and maintain security procedures and controls to prevent unauthorized disclosure of CUI and Classified Information and to control distribution of CUI and Classified Information in accordance with the NISPOM and DoDM 5200.48, DoD Information Security Program. The DoD Contract Security Classification Specification, DD Form 254, defines program specific security requirements. All PSAH facilities shall provide an appropriate means of storage for CUI and classified documents, classified equipment and materials and other equipment and materials.

F. Public Release of Information

In accordance with DoDM 5205.02, an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by the PSAH shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Article XVII: Statutory Authority.

ARTICLE XIII: JURISDICTION

1. In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from this Agreement, and the remainder of this Agreement shall remain in full force and effect.

2. The headings appearing at the beginning of the sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

ARTICLE XIV: GOVERNMENT FURNISHED PROPERTY

1. The Government will provide the PSAH with the GFP listed in the SOW for all resulting PSAs and/or referenced in a GFP List that may be incorporated as an attachment to resulting PSAs to facilitate the performance of the PSA.

2. The PSAH shall assume the risk of and be responsible for any loss or destruction of, or damage to the GFP while it is in the PSAH possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. The GFP shall be returned at the end of the respective PSA's period of performance in a condition that is as good as when it was received with the exception of said reasonable wear and tear, or in accordance with the provisions of the PSA regarding its use. The PSAH shall obtain explicit written authorization for any transfer or disposition of the GFP.

ARTICLE XV: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

A. Adequate Security

The PSAH shall provide Adequate Security on all Covered Contractor Information Systems. To provide Adequate Security, the PSAH shall implement, at a minimum, the following information security protections:

1. For Covered Contractor Information Systems that are part of an IT service or system operated on behalf of the Government, the following security requirements apply:

    a. Cloud computing services shall be subject to the security requirements specified:

        i. The PSAH shall implement and maintain administrative, technical, and physical safeguards and controls with the security level and services required in accordance with the DoD Cloud Computing Security Requirements Guide (CC SRG) found at https://public.cyber.mil/dccs unless notified by the AOR that this requirement has been waived by the DoD Chief Information Officer (CIO).

        ii. The PSAH shall maintain within the U.S. or outlying areas all Government data that is not physically located on Government premises, unless the PSAH receives written notification from the AOR to use another location.

    b. Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in a resulting PSA.

2. For Covered Contractor Information Systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph A.1. of this Article, the following security requirements apply:

    a. Except as provided in paragraph 2.b. of this Article, the Covered Contractor Information System shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171r2, "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" in effect at the time the solicitation is issued or as authorized by the AO.

    b. The NIST Considerations:

        i. The PSAH shall implement NIST SP 800-171r2, as soon as practical.

        ii. The PSAH shall submit requests to vary from NIST SP 800-171 in writing to the AO, through the CMO, for consideration by the DoD CIO. The PSAH need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non-applicable or to have an alternative, but equally effective, security measures that may be implemented in its place.

        iii. If the DoD CIO has previously adjudicated the PSAH's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the AO or AOR when requesting its recognition under a resulting PSA.

        iv. If the PSAH intends to use an external cloud service provider to store, process, or transmit any Covered Defense Information in performance of this Agreement or resulting PSA, the PSAH shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/documents/) and that the cloud service provider complies with requirements in sections C through G of this Article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for Forensic Analysis, and cyber incident damage assessment.

Apply other information systems security measures when the PSAH reasonably determines that information systems security measures, in addition to those identified in paragraphs A.1 and A.2 of this Article, may be required to provide Adequate Security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

B. Cyber Incident Reporting Requirement

1. When the PSAH discovers a Cyber Incident that affects a Covered Contractor Information System or the Covered Defense Information residing therein, or that affects the PSAH's ability to perform the requirements of the PSA that are designated as Operationally Critical Support and identified in the Agreement, the PSAH shall—

    a. Conduct a review for evidence of Compromise of Covered Defense Information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing Covered Contractor Information System(s) that were part of the Cyber Incident, as well as other Information Systems on the PSAH's network(s), that may have been accessed as a result of the incident in order to identify compromised Covered Defense Information, or that affect the PSAH's ability to provide Operationally Critical Support; and

    b. Rapidly report Cyber Incidents to DoD at https://dibnet.dod.mil.

2. Cyber Incident report. The Cyber Incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at https://dibnet.dod.mil.

3. Medium assurance certificate requirement. In order to report Cyber Incidents in accordance with this Article, the PSAH or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report Cyber Incidents. For information on obtaining a DoD-approved medium assurance certificate, see https://public.cyber.mil/eca/assurance-levels.

C. Malicious Software.

When the PSAH or subcontractors discover and isolate Malicious Software in connection with a reported Cyber Incident, submit the Malicious Software to DoD Cyber Crime Center (DC3) at this website: https://www.dc3.mil/ or in accordance with additional instructions provided by DC3 or the AO or the AOR. Do not send the Malicious Software to the AO or AOR.

D. Media preservation and protection.

When a PSAH discovers a Cyber Incident has occurred, the PSAH shall preserve and protect images of all known affected Information Systems identified in paragraph B.1.a. of this Article and all relevant monitoring/packet capture data for at least 90 calendar days from the submission of the cyber incident report to allow DoD to request the Media or decline interest.

E. Access to additional information or equipment necessary for Forensic Analysis.

Upon request by DoD, the PSAH shall provide DoD with access to additional information or equipment that is necessary to conduct a Forensic Analysis.

F. Cyber Incident damage assessment activities.

If DoD elects to conduct a damage assessment, the AO will request that the PSAH provide all of the damage assessment information gathered in accordance with section D of this Article.

G. DoD safeguarding and use of PSAH attributional/proprietary information.

The Government shall protect against the unauthorized use or release of information obtained from the PSAH (or derived from information obtained from the PSAH) under this Article that includes PSAH attributional/proprietary information, including such information submitted in accordance with paragraph B. To the maximum extent practicable, the PSAH shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the PSAH attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

H. Use and release of PSAH attributional/proprietary information not created by or for DoD.

Information that is obtained from the PSAH (or derived from information obtained from the PSAH) under this Article that is not created by or for the Government is authorized to be released outside of Government-

1. To entities with missions that may be affected by such information;

2. To entities that may be called upon to assist in the diagnosis, detection, or mitigation of Cyber Incidents;

3. To Government entities that conduct counterintelligence or law enforcement investigations;

4. For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base participants in the program at 32 C.F.R. 236).

I. Use and release of PSAH attributional/proprietary information created by or for DoD.

Information that is obtained from the PSAH (or derived from information obtained from the PSAH) under this Article that is created by or for the Government (including the information submitted pursuant to section C of this Article) is authorized to be used and released outside of the Government for purposes and activities authorized by section A of this Article, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

J. Other safeguarding or reporting requirements.

The safeguarding and cyber incident reporting required by this Article in no way abrogates the PSAH's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable Articles of this Agreement or resulting PSAs, or as a result of other applicable U.S. Government statutory or regulatory requirements.

ARTICLE XVI: TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

This Article is to ensure compliance with Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for FY 2019 (Pub. L. 115-232). Based on the information provided below, the Government may be unable to enter into an Agreement, exercise an option under an Agreement, or bilaterally modify the Agreement to extend the term of an Agreement with the PSAH.

(a) *Definitions.* As used in this article–

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.*, connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means–

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means–

(1) Defense articles or defense services included on the U.S. Munitions List set forth in the ITAR under subchapter M of chapter I of title 22, C.F.R.;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, C.F.R., and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by Part 810 of Title 10, C.F.R. (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by Part 110 of Title 10, C.F.R. (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by Part 331 of Title 7, C.F.R., Part 121 of Title 9 of such Code, or Part 73 of Title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition*.

(1) Section 889(a)(1)(A) of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019 from:

(i) Procuring or obtaining, or extending or renewing an Agreement to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The COMPANY is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this article applies or the covered telecommunication equipment or services are covered by a waiver.

(ii) Entering into an agreement, or extending or renewing an agreement, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this article applies or the covered telecommunication equipment or services are covered by a waiver. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal agreement.

(c) *Exceptions*. This article does not prohibit companies from providing–

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the PSAH identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during agreement performance, or the PSAH is notified of such by a subcontractor at any tier or by any other source, the PSAH shall report the information in paragraph (d)(2) of this Article to the AO, unless elsewhere in this Agreement or resulting PSA are established procedures for reporting the information; in the case of the DoD, the PSAH shall report to the website at https://dibnet.dod.mil.

(2) The PSAH shall report the following information pursuant to paragraph (d)(1) of this article:

(i) Within one business day from the date of such identification or notification: the agreement number; the order number(s), if applicable; supplier name; supplier UEI (if known); supplier CAGE code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this article: any further available information about mitigation actions undertaken or recommended. In addition, the PSAH shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

ARTICLE XVII: STATUTORY AUTHORITY

This Agreement is not a Federal procurement contract, grant or cooperative agreement. Nothing in this Agreement, resulting PSA or respective attachments will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation not specifically mentioned in this Agreement. This Agreement is subject to the following:

1. The compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d, et seq.) relating to nondiscrimination in federally assisted programs. The COMPANY shall sign an Assurance of Compliance with the nondiscriminatory provisions of the Act at https://ocrportal.hhs.gov/ocr/aoc/instruction.jsf and provide a copy to the AO, through the CMO, within 15 days of award

2. The Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. Chapter 78), EO 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, the international Traffic in Arms Regulations (22 C.F.R. 120, et seq.), the NISPOM (32 C.F.R. 117), the Department of Commerce's Export Administration Regulations (15 C.F.R. 730, et seq.), and the Federal Property and Administrative Services Act (40 U.S.C. Chapter 5), to the extent applicable to the activities to be conducted under this PA.

3. The Procurement Integrity Act (41 U.S.C. § 2101-2107). The COMPANY shall sign an Assurance of Compliance with the nondiscriminatory provisions of the Act and provide a copy to the AO, through the CMO, within 15 days of award.

ARTICLE XIX: INDEMNITY

1. The Consortium Member shall defend, indemnify and hold the Government harmless (including payment of all reasonable costs, attorneys' fees, settlements and damages) from any actions brought against the Government on account of any alleged patent or copyright infringement arising out of performance under this Agreement or resulting PSA.

2. In the event such a claim is brought against the Government, the Consortium Member shall be informed as soon as practicable by the Government of the suit or action alleging such infringement and shall be given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense.

ARTICLE XX: ASSIGNMENT AND TRANSFER

Neither Party may assign, reassign, nor transfer such Party's rights and obligations under this Agreement or resulting PSA without the prior written consent of the other Party, provided that (1) the Government may delegate or transfer its administrative authority over this Agreement to a different AO within the DoD, and (2) nothing herein shall be construed to preclude the Agreement from assigning proceeds under resulting PSA(s) in accordance with the Assignment of Claims Act.

ARTICLE XXI: FORCE MAJEURE

1. Neither Party 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. If such a force majeure event occurs, the Party unable to perform shall promptly notify the other Party and shall in good faith maintain such partial performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

2. No failure or omission by the Consortium Member in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same shall arise from any cause or causes beyond the control of the Parties, including but not limited to, the following: acts of God; acts or omissions of any Government; any rules, regulations or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion and provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable after the occurrence of one or more of the above mentioned cause.

ARTICLE XXII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and the language set forth in the Attachments, the inconsistency shall be resolved by giving precedence in the following order: (1) this Agreement (2) all Attachments to this Agreement, and Project Sub Agreement documentation (including but not limited to the PSA and the PSAH proposal selected for funding by the Government). However, specifically negotiated PSA terms issued will govern over the general terms of this Agreement as they pertain to an individual PSA.

ARTICLE XXIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the CMO and the PSAH. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

ARTICLE XXIV: SIGNIFICANT PARTICIPATION

Use of 10 U.S.C. § 4022 prototype authority for prototype projects is contingent on the significant participation of at least one NDC, NRI and/or SB. The proposed NDC(s), NRI(s), and/or SB(s) will be identified at the PSA level for prototype project agreements.

Attachment 1
Assurance of Compliance

In accordance with Article XVII: Statutory Authority, the undersigned certifies, to the best of his or her knowledge and belief that this institution, organization, and its principals are in compliance with:

1. Title VI of the Civil Rights Act of 1964, as amended (codified at 42 U.S.C. § 2000d et seq.), and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin (including limited English proficiency) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department.

2. The Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. Chapter 78), EO 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, the international Traffic in Arms Regulations (22 C.F.R. 120, et seq.), the NISPOM (32 C.F.R. 117), the Department of Commerce's Export Administration Regulations (15 C.F.R. 730, et seq.), and the Federal Property and Administrative Services Act (40 U.S.C. Chapter 5), to the extent applicable to the activities to be conducted under this PA.

3. The Procurement Integrity Act (41 U.S.C. § 2101-2107).

Jim Sims, Chief Communications Officer	NioCorp Developments Ltd.
(Typed Name and Title of Official Responsible)	(Name of Organization/Institution)
/s/ Jim Sims	July 22, 2025
(Signature of Official Responsible)	(Date)

Base Agreement No. 2025-391
January 2024

Exhibit 10.3

SPECIFIC TERMS IN THIS EXHIBIT HAVE BEEN REDACTED BECAUSE SUCH TERMS ARE BOTH NOT MATERIAL AND ARE THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. THESE REDACTED TERMS HAVE BEEN MARKED IN THIS EXHIBIT WITH THREE ASTERISKS AS [***].

PROJECT SUB-AGREEMENT NO.: 01

DIBC BASE AGREEMENT NO.: 2025-391

PROJECT TITLE: DIBC-OA-24-01-060; Developing a Partnered Alloy Scandium Supply Chain Domestically

UEI: [***]

PARTIES: Advanced Technology International ("DIBC CM0") and Elk Creek Resources Corp ("Project Sub-Agreement Holder" or "PSAH")

This Project Sub-Agreement is awarded under the authority of DIBC Other Transaction Agreement No. HQ0034249C00B, Project Agreement No. HQ0034259CB07 and herein incorporates all the terms and conditions of DIBC Base Agreement No. 2025-391.

1. PAYMENT METHOD AND PAYMENT TERMS

The Payment Method for this Project Sub-Agreement is Expenditure Based with Cost Share with a not to exceed ceiling. Payment terms are NET 15 days after DIBC CMO's receipt of an acceptable invoice. An acceptable invoice is one that meets the conditions described in the DIBC Base Agreement.

2. PRE-AGREEMENT COSTS

Expenditure of Pre-Agreement Costs to a maximum of $6,884,945 (Milestones 1, 2 and 3) is limited to those costs which would be allowable and allocable and which would have been incurred after the effective date of the Project Sub-Agreement. Further, the Pre-Agreement Costs may only be expended to incorporate the effort identified above

3. TERM OF THE PROJECT SUB-AGREEMENT

The period of performance for this Project Sub-Agreement is from April 07, 2025 through January 31, 2027.

4. OBLIGATION

The DIBC CM0's liability to make payments to the Project Sub-Agreement Holder is limited to only those funds obligated under this Project Sub-Agreement or by modification to the Project Sub-Agreement. DIBC CM0 may incrementally fund this Project Sub-Agreement.

5. TOTAL ESTIMATED COST AND COST SHARE

The total estimated cost and cost share for the services to be provided by the Project Sub-Agreement Holder is as follows:

Estimated Government Funded Cost	**$9,973,362**
Estimated PSAH Cost Share	**$4,607,127**
Total Project Cost	**$14,580,489**

6. LIMITATION OF COSTS

The total amount of funding currently available for payment and allotted to this Project Sub-Agreement is **$9,973,362.** If at any time the Project Sub-Agreement Holder has reason to believe that the Total Estimated Cost which will accrue in the performance of this Project Sub-Agreement in the next succeeding ninety (90) days, when added to all other payments previously accrued, will exceed eighty-five percent (85%) of the then current total authorized funding, the Project Sub-Agreement Holder shall notify the DIBC CM0 to that effect, advising the estimate of additional funds required for the period specified. The Project Sub-Agreement Holder is not obligated to continue performance under this Project Sub-Agreement (including actions under the Termination clause of the DIBC Base Agreement) or otherwise incur costs in excess of the amount allotted to the Project Sub-Agreement by the DIBC CMO.

7. MILESTONE PAYMENT SCHEDULE

The Project Sub-Agreement Holder shall segregate and track all Project Sub-Agreement costs separately and shall document the accomplishments of each Project Payable Milestone under each Project Sub-Agreement. Acceptance of Milestones shall be contingent upon approval from the Government Project Agreement-Agreements Officer Representative (PA-AOR) detailed in Clause No. 10, Technical and Administrative Representatives. Milestone payments will be paid in the amount indicated in the attached Milestone Payment Schedule (Attachment A) and are adjustable based on actual expenditures.

8. COST SHARE

For the purposes of this Sub-Agreement, the Project Agreement Holder cost share equals approximately $4,607,127. The Project Sub-Agreement Holder must meet or exceed the cost share ratio in accordance with the agreed upon Milestone Payment Schedule. If the Project Sub-Agreement Holder is unable to meet its required cost share contribution as delineated in Clause No. 5 above and the Milestone Payment Schedule (Attachment A), the Project Sub Agreement Holder must notify the DIBC CMO.

9. APPROACH TO MEETING THE OTHER TRANSACTION AUTHORITY

In accordance with provision contained in 10 U.S.C. 4022 governing the use Other Transaction Agreements each DIBC Member Organization must meet at least one of the following conditions: have at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the performance of an awarded Project Sub-Agreement; all significant participants in the Project Sub-Agreement other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. 638)) or nontraditional defense contractors; or provide a cost share of no less than one third of the value of the Project Sub-Agreement awarded to the Member Organization. The Project Sub-Agreement Holder's approach to meeting the Other Transaction Authority requirement is identified below. Throughout the period of performance of any Project Sub-Agreement, the CMO and the Government will actively monitor the award to ensure compliance with this provision in accordance with implementation guidance from The United States Government, Washington Headquarters Services (WHS) and/or Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD). The Project Sub-Agreement Holder will be given the opportunity to become compliant with the guidance should they be found non-compliant. Failure to comply may result in termination..

The signed certifications submitted as part of the proposal are hereby incorporated into this Project Sub-Agreement. The Project Sub-Agreement Holder was proposed as a nontraditional defense contractor and determined to be providing a significant contribution.

10. PROJECT EXECUTION PLAN

The Project Execution Plan, Attachment A, provides a detailed description of the work to be accomplished and reports and deliverables required by this Project Sub-Agreement. All changes to Attachment A must be incorporated via written modification to this Project Sub-Agreement.

11. TECHNICAL AND ADMINISTRATIVE REPRESENTATIVES
The following technical and contractual representatives of the Parties are hereby designated for this Project Sub-Agreement. Either party may change their designated representatives by written notification to the other.

DIBC CMO Contractual Representative:
[***]
[***]
[***]
[***]
[***]
[***]

Government Project Agreement-Agreements Officer Representatives:
[***]
[***]
[***]
[***]

Project Sub-Agreement Holder's Representatives:

Technical Representative:
Scott Honan
7000 S. Yosemite Street, Suite 115
Centennial, Colorado 80112
shonan@niocorp.com
Phone: (702) 604-0042

Contractual Representative:
Jim Sims
7000 S. Yosemite Street, Suite 115
Centennial, Colorado 80112
jim.sims@niocorp.com
Phone: (303) 503-6203

12. MARKING OF DELIVERABLES
Any Data delivered under this Project Sub-Agreement, by the Project Sub-Agreement Holder, shall be marked with a suitable notice or legend.

13. SECURITY ADMINISTRATION
[***]

14. ATTACHMENTS
Attachments listed herein are hereby incorporated by reference into this Project Sub-Agreement.

A. Project Execution Plan, "Developing a Partnered Alloy Scandium Supply Chain Domestically"

15. GOVERNMENT FURNISHED PROPERTY
At this time, Government Furnished Property is not provided for use under this Project Sub-Agreement.

16. ARMS, AMMUNITION, & EXPLOSIVES (AA&E)
At this time the need for Arms, Ammunition, & Explosives (AA&E) has not been identified for this effort. As such the Project Sub-Agreement Holder is prohibited from performing work dealing with AA&E on this Project Sub-Agreement.

17. FOLLOW-ON PRODUCTION PROVISION
10. U.S.C. 4022(f) authorizes the DoD to structure Agreements with potential for a sole source follow-on award to the Project Sub-Agreement Holder. Two criteria must be met to use this authority: 1) competitive procedures were used to select the Project Sub-Agreement Holder and 2) a successfully completed prototype project has been provided for in the transaction.

18. ENTIRE AGREEMENT
This Project Sub-Agreement and the DIBC Base Agreement under which it is issued constitute the entire understanding and agreement between the parties with respect to the subject matter hereof.

Except as provided herein, all Terms and Conditions of the DIBC Base Agreement and its modifications remain unchanged and in full force and effect.

The Project Sub-Agreement Holder is required to sign this document and return to Advanced Technology International to finalize this action.

Elk Creek Resources Corp		**Advanced Technology International**	
By:	/s/ Jim Sims	By:	[***]
Name:	Jim Sims	Name:	[***]
Title:	Chief Communications Officer	Title:	[***]
Date:	August 4, 2025	Date:	August 4, 2025

Attachment A
Project Execution Plan

[This attachment has been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant undertakes to provide such information to the Commission upon request.]

EXHIBIT 31.1

CERTIFICATION

I, Mark A. Smith, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NioCorp Developments Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2025

By: /s/ Mark A. Smith
Mark A. Smith
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION

I, Neal Shah, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of NioCorp Developments Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2025

By: /s/ Neal Shah
Neal Shah
Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of NioCorp Developments Ltd. (the "Company"), for the period ended September 30, 2025, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark Smith, Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2025

By: /s/ Mark A. Smith
Mark A. Smith
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of NioCorp Developments Ltd. (the "Company"), for the period ended September 30, 2025, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Neal Shah, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2025

By: /s/ Neal Shah
Neal Shah
Chief Financial Officer
(Principal Financial and Accounting Officer)