

DEPARTMENT OF THE NAVY TECHNOLOGY TRANSFER HANDBOOK



**FIRST EDITION / VOLUME ONE
SEPTEMBER 2018**

Department of the Navy Technology Transfer Handbook

First Edition, September 2018

Table of Contents

Preface to the First Edition	Pgs. vi-vii
Acknowledgements	Pg. viii
How to Use This Handbook	Pgs. ix-x
Section I	Technology Transfer
I-1	Technology Transfer (T2) (Who Benefits from T2?; T2 Laws, Directives, Instructions).....
	Section I, Pgs. 2-3
I-2	Choosing the Appropriate Partnership Mechanism (Table 1 – Ways of Doing Business).....
	Section I, Pgs. 4-9
I-3	Distribution Statements (Table 2 – Distribution Statements and Their Corresponding Reasons for Use).....
	Section I, Pgs. 10-12
Section II	Cooperative Research and Development Agreements
II-1	Cooperative Research and Development Agreements (CRADAs) (What is a CRADA?; CRADA Considerations; How CRADAs Benefit the Navy/Marine Corps, CRADAs Benefit Others; CRADA Collaborators; CRADA Provisions; CRADAs Can Support Acquisition Programs).....
	Section II, Pgs. 2-4
II-2	CRADA Process.....
	Section II, Pg. 5
II-2a	Typical CRADA Creation Process (Figure 1 – The CRADA Creation Process).....
	Section II, Pgs. 6-9
II-2b	CRADA Monitoring Process (Outline ; Table 3 – ORTA Checklist).....
	Section II, Pgs. 10-16
II-3	CRADA Application – Planning and Developing the CRADA.....
	Section II, Pg. 17
II-3a	Sample CRADA Application.....
	Section II, Pgs. 18-24
II-4	CRADA Application – Security Questionnaire.....
	Section II, Pg. 25
II-4a	Example of a Security Questionnaire for a CRADA Application.....
	Section II, Pgs. 26-31
II-5	Due Diligence for CRADAs.....
	Section II, Pgs. 32-33
II-6	Pricing the CRADA.....
	Section II, Pgs. 34-36
II-7	Principal Investigator Responsibilities.....
	Section II, Pgs. 37-38
Section III	The Navy Cooperative Research and Development Agreement
III-1	The Navy Cooperative Research and Development Agreement (NCRADA).....
	Section III, Pgs. 2-4
III-2	CRADA Instructions.....
	Section III, Pgs. 5-7
III-3	Approved Alternative Articles.....
	Section III, Pgs. 8-14

Department of the Navy Technology Transfer Handbook

First Edition, September 2018

Table of Contents

Section III	The Navy Cooperative Research and Development Agreement (continued)	
III – 3a	CRADA Article 1, Definitions for Computer-Related Terms.....	Section III, Pg. 9
III – 3b	The Collaborative Work Involves Export Controlled Technology.....	Section III, Pgs. 9-10
III – 3c	The Non-Navy Collaborator is a State or Local Government Entity.....	Section III, Pg. 10
III – 3d	The Non-Navy Collaborator is a Public or Private Foundation that is not a Corporation.....	Section III, Pg. 10
III – 3e	The Non-Navy Collaborator is a U.S. College or University.....	Section III, Pg. 11
III – 3f	The Non-Navy Collaborator is a Single Individual Who is not a Business.....	Section III, Pg. 11
III – 3g	The Non-Navy Collaborator is Foreign Owned, Controlled or Influenced (FOCI).....	Section III, Pgs. 11-12
III – 3h	CRADA Article 4.3, Join Representations and Warranties.....	Section III, Pgs. 12-13
III – 3i	Funding is Being Provided to the Navy Collaborator by Another Federal Entity that is not the Non-Navy Collaborator.....	Section III, Pg. 13
III – 3j	CRADA Article 6.3, Agreement to Confer Prior to Publication or Public Disclosure of Information.....	Section III, Pg. 13
III – 3k	CRADA Article 8.1, Ownership of Tangible Property.....	Section III, Pg. 14
III – 3l	CRADA Article 10, General Provisions (Additional Language Regarding Duplicate Originals).....	Section III, Pg. 14
III – 4	Amendments.....	Section III, Pg. 15
III – 4a	Amendment Format.....	Section III, Pg. 16
III – 4b	Amendment Example.....	Section III, Pgs. 17-19
Section IV	Cooperative Research and Development Agreement Sample Introduction and Examples	
IV	Cooperative Research and Development Agreement (CRADA) Sample Introduction.....	Section IV, Pg. 2
IV – 1	The Standard NCRADA – Explanation.....	Section IV, Pg. 3
	The Standard NCRADA – Example	Section IV, Pgs. 4-26
IV – 2	Supplemental Appendices.....	Section IV, Pg. 27
IV – 2a	Sample for a Third Party Agreement Used When Non-Navy Collaborator Uses a Third Party.....	Section IV, Pgs. 28-29
IV – 2b	Sample for a Third Party Agreement Used When Navy Collaborator Uses a Third Party.....	Section IV, Pgs. 30-31
IV – 2c	Sample for a CRADA Final Report.....	Section IV, Pgs. 32-33
IV – 3	Multiple Party Non-Standard CRADA – Explanation.....	Section IV, Pgs. 34-35
	Multiple Party Non-Standard CRADA – Example	Section IV, Pgs. 36-58
IV – 4	Clinical Trials Non-Standard CRADA – Explanation.....	Section IV, Pg. 59
	Clinical Trials Non-Standard CRADA – Example	Section IV, Pgs. 60-89

Department of the Navy Technology Transfer Handbook

First Edition, September 2018

Table of Contents

Section IV Cooperative Research and Development Agreement Sample Introduction and Examples (continued)

<u>IV – 5</u>	Limited Purpose-CRADAs (LP-CRADAs) – Explanation.....	Section IV, Pgs. 90-91
	Navy Collaborator to Non-Navy Collaborator – <u>Example</u>	Section IV, Pgs. 92-99
	Non-Navy Collaborator to Navy Collaborator – <u>Example</u>	Section IV, Pgs. 100-107
<u>IV – 6</u>	The Small Business Innovation Research (SBIR) Funded Non-Standard CRADA – Explanation.....	Section IV, Pg. 108
	The SBIR Funded Non-Standard CRADA – <u>Example</u>	Section IV, Pgs. 109-131
<u>IV – 7</u>	Technical Assistance Non-Standard CRADA – Explanation.....	Section IV, Pg. 132
	Technical Assistance Non-Standard CRADA – <u>Example</u>	Section IV, Pgs. 133-158
<u>IV – 8</u>	Examples.....	Section IV, Pg. 159
<u>IV – 8a</u>	NCRADA Article 2, Objectives (Two Examples).....	Section IV, Pgs. 160-161
<u>IV – 8b</u>	NCRADA Article 5, Funding (Two Examples).....	Section IV, Pgs. 162-163
<u>IV – 8c</u>	NCRADA Appendix A, Statement of Work (One Example).....	Section IV, Pgs. 164-165

Section V Other Agreements

<u>V</u>	Other Agreements.....	Section V, Pg. 2
<u>V – 1</u>	Dealing with Partnership Intermediaries.....	Section V, Pg. 3
<u>V – 1a</u>	Partnership Intermediary Agreement – Guidance.....	Section V, Pgs. 4-6
<u>V – 1b</u>	Partnership Intermediary Agreement – <u>Example</u>	Section V, Pgs. 7-16
<u>V – 2</u>	Education Partnership Agreements (EPAs).....	Section V, Pg. 17
<u>V – 2a</u>	Education Partnership Agreement – <u>Example One</u>	Section V, Pgs. 18-26
<u>V – 2b</u>	Education Partnership Agreement – <u>Example Two</u>	Section V, Pgs. 27-33
<u>V – 3</u>	Non-Disclosure Agreements (NDAs) – Explanation.....	Section V, Pg. 34
<u>V – 3a</u>	Non-Disclosure Agreement for Industry – <u>Example</u>	Section V, Pgs. 35-37
<u>V – 3b</u>	Bilateral Non-Disclosure Agreement – Explanation and <u>Example</u>	Section V, Pgs. 38-45
<u>V – 3c</u>	Non-Disclosure Agreement for Federal Employees – <u>Example One</u>	Section V, Pg. 46
<u>V – 3d</u>	Non-Disclosure Agreement for Federal Employees – <u>Example Two</u>	Section V, Pg. 47
<u>V – 4</u>	License Grantback Agreements – Explanation and <u>Example</u>	Section V, Pgs. 48-49

Section VI Guidelines and Discussions

<u>VI – 1</u>	Definitions.....	Section VI, Pg. 2
<u>VI – 1a</u>	“Conception” and “Reduction to Practice”.....	Section VI, Pgs. 3-4
<u>VI – 1b</u>	Controlled Unclassified Information (CUI).....	Section VI, Pgs. 5-9
<u>VI – 1c</u>	Government Purpose Rights.....	Section VI, Pg. 10
<u>VI – 2</u>	The Use of Contractors – Explanation.....	Section VI, Pg. 11
<u>VI – 2a</u>	The Use of Support Contractors to Accomplish the Technology Transfer Office (TTO) Mission.....	Section VI, Pgs. 12-13
<u>VI – 2b</u>	The Use of Contractors in CRADAs.....	Section VI, Pgs. 14-15

Department of the Navy Technology Transfer Handbook

First Edition, September 2018

Table of Contents

Section VI Guidelines and Discussions (continued)

<u>VI-3</u>	CRADA Security Considerations: Classified / For Official Use Only (FOUO) / Export Control / Foreign Owned, Controlled or Influenced (FOCI).....	Section VI, Pgs. 16-19
<u>VI-4</u>	Collaborations and Transactions with Foreign Persons, Entities, and Dealing with FOCI.....	Section VI, Pg. 20
<u>VI-4a</u>	Summary of Foreign Disclosure Determination and Export Control Requirements for Licenses and CRADAs.....	Section VI, Pgs. 21-23
<u>VI-4b</u>	Foreign Disclosure, Export Control, and FOCI Entities.....	Section VI, Pgs. 24-32
<u>VI-4c</u>	An Example of One Navy Laboratory’s Due Diligence Program for Dealing with Foreign Persons, Entities and FOCI.....	Section VI, Pgs. 33-38
<u>VI-4d</u>	Tool Kit – Links to Foreign Disclosure and Export Control Laws, Regulations and Other Useful References.....	Section VI, Pgs. 39-41
<u>VI-5</u>	Release Issues for CRADAs – Explanation.....	Section VI, Pg. 42
<u>VI-5a</u>	Public Release Issues for CRADAs.....	Section VI, Pg. 43
<u>VI-5b</u>	Dealing with FOIA Requests.....	Section VI, Pg. 44
<u>VI-5c</u>	Release of a CRADA to Other Federal Agencies or Departments.....	Section VI, Pg. 45
<u>VI-6</u>	Patent Rights and CRADAs with Government Contractors.....	Section VI, Pg. 46
<u>VI-7</u>	U.S. Competitiveness.....	Section VI, Pg. 47
<u>VI-8</u>	Small Business Innovation Research (SBIR) and CRADAs.....	Section VI, Pgs. 48-50

Section VII Department of Defense (DoD) and Department of the Navy (DON) Technology Transfer (T2) Policy and Requirements

<u>VII</u>	Department of Defense (DoD) and Department of the Navy (DON) Technology Transfer (T2) Policy and Requirements.....	Section VII, Pg. 2
<u>VII-1</u>	DoD Directive and Instruction on Domestic T2.....	Section VII, Pg. 3
<u>VII-1a</u>	DoD Directive 5535.5.....	Section VII, Pgs. 4-10
<u>VII-1b</u>	DoD Instruction 5535.8.....	Section VII, Pgs. 11-30
<u>VII-2</u>	Secretary of the Navy Instruction (<u>SECNAVINST</u>) <u>5700.17</u> , Domestic Technology Transfer.....	Section VII, Pgs. 31-44
<u>VII-2a</u>	Laboratory Designation (How a Navy/Marine Corps Technical Activity Becomes a Federal Laboratory).....	Section VII, Pgs. 45-46
<u>VII-2b</u>	Navy/Marine Corps ORTA Representative Designation.....	Section VII, Pgs. 47-49
<u>VII-3</u>	T2 Annual Business Report and Metrics.....	Section VII, Pgs. 50-51

Section VIII Technology Transfer (T2) Legislation, Executive Orders and Presidential Memorandum

<u>VIII-1</u>	Technology Transfer (T2) Legislation, Executive Orders and Presidential Memorandum.....	Section VIII, Pg. 2
-------------------------------	---	---------------------

Department of the Navy Technology Transfer Handbook

First Edition, September 2018

Table of Contents

Section VIII Technology Transfer (T2) Legislation, Executive Orders and Presidential Memorandum (continued)

VIII – 1a	Stevenson-Wydler Technology Innovation Act of 1980.....	Section VIII, Pgs. 3-4
VIII – 1b	Bayh-Dole Act of 1980.....	Section VIII, Pg. 5
VIII – 1c	Federal Technology Transfer Act of 1986.....	Section VIII, Pg. 6
VIII – 1d	Executive Orders 12591 and 12618 (1987) Facilitating Access to Science and Technology.....	Section VIII, Pgs. 7-8
VIII – 1e	National Technology Transfer and Advancement Act of 1995.....	Section VIII, Pg. 9
VIII – 1f	Technology Transfer Commercialization Act of 2000.....	Section VIII, Pg. 10
VIII – 1g	National Defense Authorization Acts Affecting Technology Transfer Legislation.....	Section VIII, Pgs. 11-20
VIII – 1h	Presidential Memorandum – Accelerating Technology Transfer and Commercialization of Federal Research in Support of High-Growth Businesses, 28 Oct 2011.....	Section VIII, Pg. 21
VIII – 1i	American Innovation and Competitiveness Act, 6 Jan 2017.....	Section VIII, Pgs. 22-23
VIII – 2	Other Relevant Public Laws and Guidance.....	Section VIII, Pgs. 24-35
1.	Federal Acquisition.....	Section VIII, Pg. 24
2.	Money and Finance.....	Section VIII, Pgs. 24-25
3.	Small Business.....	Section VIII, Pgs. 25-26
4.	Technology Innovation Definitions.....	Section VIII, Pg. 27
5.	Cooperative Research and Development Agreements.....	Section VIII, Pgs. 27-28
6.	DoD Cooperative Agreements, Grants, and Other Transactions.....	Section VIII, Pgs. 28-29
7.	Work for Private Parties Agreements.....	Section VIII, Pgs. 29-30
8.	Copyrights.....	Section VIII, Pg. 31
9.	Patents.....	Section VIII, Pgs. 31-32
10.	Trademarks.....	Section VIII, Pg. 32
11.	Licensing of Government Owned Inventions.....	Section VIII, Pg. 32
12.	Freedom of Information Act (FOIA).....	Section VIII, Pgs. 32-34
13.	Intergovernmental Personnel Assignment.....	Section VIII, Pg. 34
14.	Tort Claims Procedure.....	Section VIII, Pg. 34
15.	Omnibus Trade and Competitiveness Act of 1988.....	Section VIII, Pg. 35

APPENDIX

Appendix	Acronym List.....	Pgs. 2-5
--------------------------	-------------------	----------

Preface to the First Edition

This Department of the Navy (DON) Technology Transfer Handbook is a reference guide for the Navy Technology Transfer community and is available in digital format. This handbook replaces the 2nd Edition Navy Standard Cooperative Research and Development Agreement (NSCRADA) Handbook, including and updating subject matter from the 2nd Edition NSCRADA Handbook and incorporating other useful technology transfer topics. A companion patent licensing handbook (Volume Two of this handbook) is planned.

This handbook starts with an introduction that includes this Preface, Acknowledgments, and a How To Use This Handbook article. Section I continues with an explanation of technology transfer, providing applicable laws, directives and instructions, a summary of partnership mechanisms, and a discussion of distribution statements.

Sections II and III present Cooperative Research and Development Agreement (CRADA) information which is updated from the 2nd Edition NSCRADA Handbook. CRADA basics are addressed in the beginning of Section II and the CRADA process with planning forms and tips are addressed in Sections II - 2 through II - 7. The CRADA process presented here is a rearrangement and update of Sections II - 4 through II - 9 of the 2nd Edition of the NSCRADA Handbook. Section III provides updated CRADA instructions, modified and new Approved Alternative Articles, and Amendment instructions, format, and examples.

Section IV presents the latest standard Navy CRADA as well as updated samples of other CRADAs including: Multiple Party CRADA, Clinical Trials CRADA, Limited Purpose-CRADAs, Small Business Innovation Research Funded CRADA (new in this handbook), and Technical Assistance CRADA (new in this handbook). As in the 2nd Edition of the NSCRADA Handbook, samples of Third Party Agreements, a CRADA Final Report, and CRADA Objectives, Funding Articles, and Statements of Work are provided.

Other partnering agreements are addressed in Section V. As was in the 2nd Edition of the NSCRADA Handbook, guidance and examples are provided for the partnership intermediary agreement, non-disclosure agreements, and license grantback agreements. A description and examples of education partnership agreements are added. Agreement guidance, explanations, and samples have been reviewed for currency and updated as required.

Section VI defines and discusses various topics, most of which were previously discussed in Section V of the 2nd Edition of the NSCRADA Handbook. This handbook provides up-to-date information on topics previously discussed; e.g., controlled unclassified information, government purpose rights, the use of contractors, security considerations for CRADAs, foreign disclosure, export control, and foreign owned, controlled or influenced entities, release issues for CRADAs, patent rights and CRADAs with government contractors, U.S. competitiveness, and small business innovation research, and CRADAs.

Section VII provides copies of the current directives and instructions that govern Department of Defense and DON domestic technology transfer. In addition, the Navy/Marine Corps laboratory designation process, Office of Research and Technology Applications designation process, and technology transfer reporting requirements and metrics are discussed.

Section VIII expands the list and description of technology transfer legislation and executive orders found in the 2nd Edition of the NSCRADA Handbook. This section includes technology legislation and presidential actions through 2018.

All 2nd Edition NSCRADA Handbook topics transferred to this handbook were reviewed and updated for currency. All comments and feedback to this handbook should be addressed to the DON Technology Transfer Program Office (Navy_Tech_Transfer@navy.mil).

Acknowledgements

The Department of the Navy (DON) Technology Transfer Program Office would like to thank the following for assistance in the production of this handbook:

Special thanks to Kendra Meggett-Carr, DON Technology Transfer Program Office; Dottie Vincent, (retired, DON Technology Transfer Program Office); John Rein, (formerly of the DON Technology Transfer Program Office; and John Karasek, Office of Counsel, Office of Naval Research for leading and supporting the effort to produce this handbook. They also reviewed the handbook and provided much needed feedback.

Special thanks to Dr. Theresa Baus, (retired, Naval Undersea Warfare Center, Division Newport); Amanda Horansky McKinney, Naval Research Laboratory; Jim Kasischke, Naval Undersea Warfare Center, Division Newport; and Michelle Miedzinski, Naval Air Warfare Center Aircraft Division, Patuxent River for providing their expertise and sharing their examples, forms, and material for use in this handbook. Their review and feedback on handbook material are invaluable.

Ed Linsenmeyer (retired, Naval Surface Warfare Center, Panama City Division) for assisting with the structure of this document, suggesting additions and changes, and reviewing and providing feedback on handbook material.

John Forrest, Office of Counsel, Office of Naval Research; Amy Rassing, Office of Counsel, Office of Naval Research; and Dylan Riley, Naval Air Warfare Center Weapons Division, China Lake and Pt. Mugu for reviewing legal/security material of this handbook and providing feedback.

Al Churilla, Office of Counsel, Naval Medical Research Center; and Todd Ponzio, Naval Medical Research Center, for their review and feedback of the Clinical Trials CRADA example.

Joe Teter, Naval Surface Warfare Center, Carderock Division; Jane Barrow, Naval Sea Systems Command; Sharon Thomas, American Technology Solutions International Corporation (ATSI); and Mary Weiss, ATSI for their suggestions/contributions to the content of this handbook.

Amy Kettelle, Naval Air Warfare Center Aircraft Division, Patuxent River; and Nelson Lerma, Naval Air Warfare Center Training Systems Division Orlando for sharing their Command Education Partnership Agreements.

Sunny Simmonds, ATSI; and Regina Coeby, ATSI for organizing and publishing the handbook, keeping track of all feedback, and incorporating suggestions/comments. Lori Corker, ATSI for proofreading the handbook.

Sylvia Jacobs, ATSI for asking the right questions when it mattered and keeping the handbook production schedule as close to the plan as possible.

How to Use This Handbook

This Department of the Navy (DON) Technology Transfer Handbook is a reference guide for the DON technology transfer community. It is intended for use by both new and experienced DON technology transfer personnel. Volume 1 of this handbook is a compendium of information on technology transfer with an emphasis on Cooperative Research and Development Agreements (CRADAs).

This handbook provides information on legal topics related to technology transfer; but, it is not intended to provide legal instruction or direction. For legal direction, refer to Department of Defense (DoD) and DON technology transfer directives/instructions and applicable United States statutes, and, most importantly, consult local laboratory/technical activity legal counsel. For questions and concerns regarding DON policy and processes, contact local legal counsel or the DON Technology Transfer Program Office at the Office of Naval Research (ONR).

This reference guide is not a substitute for information that can be gleaned from formal technology transfer training that is provided by the annual DON ORTA/Legal Workshop, or the annual DoD Technology Transfer Training Workshop, or other professional technology transfer training. Additionally, consulting experienced DON technology transfer legal counsel and office of research and technology applications personnel (ORTA) can provide invaluable information, especially for situations that are not addressed or only partially covered by this handbook.

This handbook is provided in digital format and is intended to be a searchable digital document. Sample agreements are provided within the document as well as separate Word files. All files are available for download from the ONR Technology Transfer website.

To access information of interest, a table of contents (TOC) is provided at the beginning of the document, and the beginning of each handbook section provides an outline of topics. The TOC and section outlines are hyperlinked to the actual content. Within the content of the handbook, there are additional references and hyperlinks to related information within the handbook.

This handbook provides **pre-approved** sample agreements and CRADA articles in Sections III, IV, and V. The standard Navy CRADA (Section IV-1) and Approved Alternative Articles (Section III-3) have been pre-approved for use by the DON community. The following non-standard CRADA samples have also been pre-approved for use: Multiple Party CRADA (Section IV-3), Clinical Trials CRADA (Section IV-4), Small Business Innovation Research Funded CRADA (IV-6), and Technical Assistance CRADA (IV-7). The Limited Purpose-CRADA samples that are provided in Section IV-5 are considered standard and are also pre-approved for use. Additionally, the model Partnership Intermediary Agreement (Section V-1) is pre-approved for use.

Examples of CRADA articles, Third Party Agreements, and the CRADA Final Report are provided in Sections IV-2 and IV-8 as guides in creating corresponding CRADA articles/appendices. The Education Partnership Agreements of Section V-2, Non-Disclosure Agreements of Section V-3, and License Grantback Agreement of Section V-4 are examples and are **NOT** pre-approved by the DON. Local legal counsel should be consulted with regards to these agreements.

This handbook provides sample outlines/worksheets for technology transfer processes (e.g., CRADA creation process), and questionnaires/forms (e.g., security questionnaire and letter to the U.S. Trade Representative). These are provided as examples only. Processes, forms, worksheets, and questionnaires should be tailored by the ORTA to meet specific needs and requirements of its local laboratory/technical activity. These should be coordinated with local experts/authorities for legal, security, public affairs, Command administration and operations, finance, and business affairs.

This handbook provides reference material and short discussions of technology transfer topics. For in-depth detailed information on topics of interest, consult with a DON expert.

Technology Transfer

Section I

- [I-1](#) Technology Transfer (T2) (Who Benefits from T2?; T2 Laws, Directives, Instructions)
- [I-2](#) Choosing the Appropriate Partnership Mechanism ([Table 1](#) – Ways of Doing Business)
- [I-3](#) Distribution Statements ([Table 2](#) – Distribution Statements and Their Corresponding Reasons for Use)

Section I - 1

Technology Transfer (T2)

T2 is the process by which existing knowledge, facilities, or capabilities produced through Federal research and development (R&D) funding are utilized to fulfill public and private needs. Federal T2 legislation has been in place since 1980¹, to facilitate the transfer of federally developed technologies to the private sector, as well as academic institutions and State or local governments. Federal and non-Federal partners have the opportunity to work together on mutually beneficial R&D using various mechanisms such as “cooperative research and development agreements” or CRADAs. T2 legislation also promotes the licensing of patented technologies developed in the Federal laboratories for commercial applications.

Much of the research, development, test, and evaluation at Federal laboratories involve leading-edge technologies in a wide array of technical disciplines with tremendous potential for commercial applications. Moreover, the equipment and facilities available to test this research are often unique and cannot be replicated in the commercial workplace.

Who Benefits from T2?

- Access to Federal Government developed technologies can help private industry, academic institutions, and state and local governments by creating jobs, increasing productivity, and enhancing competitiveness.
- Industry gains a competitive edge by leveraging Government-sponsored R&D activities and facilities.
- Technologies developed at Federal laboratories can enhance the competitiveness of small businesses as well as develop economic opportunities for state and local governments.
- Federal laboratory technologies can also serve academia by expanding areas of cooperative research.
- Businesses that license inventions that are jointly or solely owned by a Federal laboratory save the cost of conducting R&D that has already been performed.
- Through commercialization of its technologies, the Federal Government receives a much greater return on its R&D investment.
- Collaboration can fulfill the Department of Defense’s (DoD’s) need for high quality, timely and integrated products to support the warfighter.

T2 Laws, Directives, Instructions

Title 15 of the United States Code (U.S. Code) Section 3702 (15 U.S. Code § 3702) states that the purpose of T2 legislation is to improve the economic, environmental, and social well-being of the country. Federal legislation regarding T2 is set forth in 15 U.S. Code §§ 3701 through 3716 providing that: T2 is a requirement of all Federal agencies; T2 ensures full use of the nation’s Federal investment in R&D; and T2 is a responsibility of each laboratory science and engineering professional.

¹ Through the Stevenson Wydler Technology Act of 1980

DoD Directive (DoDD) 5535.3 and DoD Instruction (DoDI) 5535.8 affirm that domestic T2 activities are integral elements of the DoD's National Security mission and that T2 must have a high-priority role in all DoD acquisition programs. The Secretary of the Navy Instruction 5700.17 dated 27 March 2009 implements and establishes policy and assigns responsibility for the Department of the Navy domestic T2 program. This instruction is currently under revision and is expected to be published by Fiscal Year 2018.

[Sections VII](#) and [VIII](#) of this handbook provide additional information on T2 legislation, executive orders, directives and instructions.

Section I - 2

Choosing the Appropriate Partnership Mechanism

Within the DoD, there are many non-Federal Acquisition Regulations contractual means of forming an agreement for the purpose of doing work either with, or for, a Non-Navy Collaborator. In many instances, more than one type of agreement will be available, given the statutory restrictions on each type of agreement. For instance, a particular effort may fit either a work for non-Federal entities agreement, also known as a work for private parties agreement, or a CRADA. DoDI 5535.8 states that “CRADAs should be used wherever possible” to expand capabilities for R&D and to T2. Accordingly, in situations where both a CRADA and another type of agreement are equally appropriate, a CRADA should be used.

[Table 1](#), Ways of Doing Business, lists many of the appropriate partnership mechanisms between Non-Navy Collaborators and the Navy. Further details of each mechanism may be determined by consulting the statute of interest. Currently, other than the standard Navy CRADA, there may be different processes and formats for the agreement used depending on the Navy laboratory. Local authorizations and guidelines should be consulted.

When approached by a Non-Navy Collaborator about possible work with the laboratory, the Office of Research and Technology Applications (ORTA), in consultation with the local Navy intellectual property (IP) counsel’s office, should advise the potential collaborator as to what mechanism the laboratory may use to perform the proposed effort. Prior to execution, if the Non-Navy Collaborator is Foreign Owned, Controlled or Influenced, the ORTA must first determine through the local security office and the United States Federal Trade Representative any restrictions that may exist on the technology and the foreign countries involved.

Table 1. Ways of Doing Business					
Type of Agreement (Authority)	Parties	Effect	Advantages	Other Considerations	Authorized Signatories
Partnering Agreements					
CRADA (15 U.S. Code § 3710a)	Federal laboratory and any other entity including other Federal activities.	CRADA allows exchange of personnel, property and intellectual property between government and educational or private entity. Data developed by the government can be protected from release. Provides commercial exposure for technology.	Low cost; CRADA allows shared resources between government and private industry. Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) do not apply. Government may receive funds.	No funding can be provided by the government. Must have cooperative elements. May have problems if CRADA exists for non-dual use technology. Does not overcome necessary funding for contingencies.	Laboratory
Cooperative Agreement (10 U.S. Code § 2358, 31 U.S. Code § 6305, Department of Defense Grant and Agreement Regulations (DoDGARs))	Laboratory and non-Federal entity, other Federal entities may be involved	Principal purpose is to transfer something of value to carry out a public purpose of support authorized by a United States law, and the transaction requires substantial laboratory involvement.	Encourages basic and advanced research in areas of interest. Allows some supervision.	Government involvement and control is substantial. Must help fulfill agency's goals. Funding must be for support and stimulation or be authorized by statute. Primary purpose has no direct Federal Government benefit.	Contracting shop with agreements officer
Other Transactions (10 U.S. Code § 2371)	Laboratory and non-Federal entity; other Federal entities may be involved	Purpose is to provide a flexible method that doesn't fit into a contract, grant or cooperative agreement. Well suited for consortium oversight. Intended for dual use products and technology.	Very flexible. Can be used to avoid the imposition of Government accounting on partners. Government may receive funds.	Cannot be used if standard grants or contracts are available. Must explain special needs. Can only use for R&D. Cannot transfer IP rights.	Contracting shop with agreements officer
Other Transactions for Prototyping (10 U.S. Code § 2371b)	Laboratory and non-Federal entity; other Federal entities may be involved	Purpose is to provide a flexible method that doesn't fit into a contract, grant or cooperative agreement. Well suited for consortium oversight. Intended for military products and technology.	Very flexible. Can be used to avoid the imposition of Government accounting on partners. Government may receive funds.	Cannot be used if standard grants or contracts are available. Non-traditional contractor, cost matching or innovative agreement required. Competitive award for procurements unless justified.	High level. Must be delegated.

Table 1. Ways of Doing Business					
Type of Agreement (Authority)	Parties	Effect	Advantages	Other Considerations	Authorized Signatories
Partnering Agreements					
Center of Industrial and Technical Excellence Agreements (10 U.S. Code § 2474). Activity must obtain approval from the Agency Secretary.	Military depot-level activity and private industry or non-DoD entities	Allows long term joint utilization of under-utilized facilities and equipment at a designated center.	Depot can lease space or equipment. Depot can receive funds but cannot provide funds. Can establish public-private partnerships to perform work related to core competencies. No requirement concerning lack of commercial competition.	No IP terms. Nature of work must be within core competency of center. Liability similar to Work for Private Parties (WFPP).	Delegated by Secretary of Navy (delegation letter should indicate)
Education Partnerships (10 U.S. Code § 2194)	Defense laboratory and educational institution	Allows use of institutional faculty and students in laboratory projects, instruction by laboratory personnel, provision of career and academic advice to students, loan of laboratory equipment to institution, and transfer of surplus equipment.	Can use graduate students from educational institution for laboratory projects. Aids the institutions and DoD in attracting qualified students and future employees. Allows easy path for donation of center equipment.	Partnership must be for the purpose of encouraging and enhancing study in the scientific disciplines. Other party must be a non-profit educational institution.	Laboratory
Memorandum of Understanding (MOU) (10 U.S. Code § 2350a)	Defense laboratory and allied foreign government	Allows a cooperative research and development program between a laboratory and a North Atlantic Treaty Organization or allied foreign country for the purpose of improving conventional defense capabilities.	Allows establishment of cooperative research between nations.	MOU must be rigidly monitored to avoid violation of treaties with other countries. Requires high level approval.	Secretary of Defense (limited ability to delegate)
MOU or Memorandum of Agreement (MOA)	Lab and another government agency	Formalized agreement between two Federal agencies.	Allows agencies to share resources in areas where they have a common interest.	Not enforceable in court. Merely a formalization of mutual interest.	Authorized laboratory representative and authorized party from other entity
MOU or MOA	Laboratory and commercial entity	Formalized agreement providing order to relationship without allocating resources. Can include non-disclosure.	Allows agencies sharing of information in areas with a common interest.	Legal review should ensure no enforceable promises or allocation of resources. Merely a formalization of mutual interest.	Authorized laboratory representative and authorized party from other entity

Table 1. Ways of Doing Business					
Type of Agreement (Authority)	Parties	Effect	Advantages	Other Considerations	Authorized Signatories
Partnering Agreements					
Intergovernmental Personnel Assignment (5 U.S. Code §§ 3371-3376)	Laboratory and Federal, State or local government or a qualified non-profit entity	Allows the laboratory or the governmental unit to transfer employees to work on projects or allow state government employees to be assigned to a laboratory.	Increases agency flexibility in cooperation with educational institutions and qualified non-profit entity.		Human resources office director with Commanding Officer's approval
Non-Partnering Agreements					
Contract (31 U.S. Code § 6303, FAR, DFARS)	Laboratory and non-Federal entity	Principle purpose of the instrument is to acquire goods or services for the laboratory.	Closely fulfills needs in carrying out mission.	FAR and DFARS control formation and performance. Competition in Contracting Act applies.	Contracting officer and other party
Grant (31 U.S. Code § 6304, DoDGARs)	Laboratory and non-Federal entity; other Federal entities may be involved	Principle purpose is to transfer something of value to carry out a public purpose of support authorized by a United States law, and the transaction does not require substantial laboratory involvement.	Allows support of worthy groups by transfer of resources. Encourages basic and advanced research in areas of interest.	Government involvement and control is minimal. Grant must help fulfill a public purpose of support or stimulation authorized by Law, and not to acquire property or services for use by the Government. Primary purpose has no direct Federal Government benefit.	Contracting shop with agreements officer
WFPP/WFNE (Goods & Services) (10 U.S. Code § 2563)	Working capital funded activity and private party	The laboratory can provide its unique services or equipment in the marketplace when excess resources are available.	Allows laboratory to receive payments from a commercial entity to perform work for that entity.	This transaction requires legal review. Commercial competition is prohibited. Requires risk analysis. No IP rights are shared/granted.	Authorized representative of Defense Working Capital funded activity
WFPP/WFNE (10 U.S. Code § 2539b, Samples, Drawings, Information, Equipment, Materials, and Certain Services)	Laboratories, research centers, ranges, or other testing facilities and private party	The laboratory can provide its unique equipment and facilities for use in the marketplace when excess resources are available. Allows commercial entities to use laboratory facilities.	Allows laboratory to receive payments from a commercial entity (e.g., sell samples) to perform work for that entity.	Available for items and services not readily available from the private sector. Wider availability than 10 U.S. Code § 2563. Government entity must be uniquely qualified. Private party must indemnify the Government.	Commanding Officer of Defense Working Capital funded activity
Table 1. Ways of Doing Business					

Type of Agreement (Authority)	Parties	Effect	Advantages	Other Considerations	Authorized Signatories
Non-Partnering Agreements					
Range Test Agreement (10 U.S. Code § 2681)	DoD and commercial entity	Services of a major range and test facility may be provided. Facility must be designated as such by DoD.	Cost reimbursement of direct costs is authorized to the appropriation accounts incurring the costs. Appropriate indirect costs can also be billed. Specific required construction can be a cost.	Testing must be at the designated facility. Contract is terminable upon writing with specified determinations. Must have indemnification. Non-competition is not required when work is being performed for a Government end-user.	Commanding Officer
Economy Act Order (31 U.S. Code § 1535) Military Interdepartmental Procurement Request has same terms	Two governmental units	Laboratory can order goods and services from or provide goods and services to another government agency.	Allows use/sale of resources from another agency if advantageous.	Must be cheaper than privately available. Cannot use to circumvent FAR, DFARS without high level approval.	Authorized agency or laboratory representative
Incoming Bailment or No Cost Contract ² (FAR, DFARS)	Laboratory and non-Federal entity	Temporary transfer property from the non-Federal entity to the Government.	No cost; however, contingencies must be covered by available funding.	Potential unfunded liability if transferred item is lost. Replacement funding must be available. FAR and DFARS control formation and performance.	Contracting officer and other party
Outgoing Bailment Agreement ² (10 U.S. Code § 2539b)	Laboratory and non-Federal entity	Temporary transfer of property from the laboratory to the non-Federal entity.	Can charge fees.	Not all laboratories have authority to do all parts of 10 U.S. Code § 2539b.	Authorized laboratory representative and authorized other party representative
Non-disclosure Agreement (NDA) (Contractually Binding)	Federal Government and non-Federal entity	Permits the parties to exchange information free from risk of public disclosure.	Non-public information is protected. NDA can lead to further collaboration under a separate agreement.	Individuals cannot sign on behalf of the Government.	Authorized Government representative and authorized other party representative.

² Software evaluations can be done through a bailment agreement or a Limited Purpose CRADA. Consultation with local counsel is essential.

Table 1. Ways of Doing Business					
Type of Agreement (Authority)	Parties	Effect	Advantages	Other Considerations	Authorized Signatories
Non-Partnering Agreements					
Patent License Agreement (35 U.S. Code §§ 207-211)	DON and private party	Inventions may be licensed to private parties under certain circumstances. See SECNAVINST 5870.2E and 5700.17A ³	Transfer DON inventions for commercial purposes. Royalty payments for inventors, laboratories/technical activities.	DON laboratory and/or technical activity must be designated per SECNAVINST 5700.17A	The head of designated DON laboratory and/or technical activity
Software License Agreement (10 U.S. Code § 2514 note (2016) (Enhanced Transfer of Technology Developed at Department of Defense Laboratories))	DON and private party	Computer software and computer software documentation may be protected from release under Freedom of Information Act, and licensed for commercial purposes under certain circumstances. See SECNAVINST 5870.2E and 5700.17A ³	Transfer qualifying DoD Software for commercial purposes. Royalty payments for inventors, laboratories/technical activities.	DON laboratory and/or technical activity must be designated per SECNAVINST 5700.17A or by direct delegation from the CNR.	To be delegated to the head of designated DON laboratory and/or technical activity

Original table courtesy of Naval Undersea Warfare Center, Division Newport, modified for this handbook

³ SECNAV 5700.17A is expected to be published by fiscal year 2018.

Section I - 3

Distribution Statements

T2 personnel constantly disseminate technical information and are responsible for providing technical documents to various organizations and the public. Technical documents may be provided as part of negotiating or accomplishing an agreement, marketing technologies, reporting on activities, etc. It is thus incumbent on Navy T2 personnel to be familiar with DoDIs for distribution of technical documents, in particular, Distribution Statements.

The following are excerpts from DoDI 5230.24 (including change 1, 04/28/2016):

Reference (d) is DoDD 5230.25, “Withholding of Unclassified Technical Data from Public Disclosure,” November 6, 1984, as amended

Reference (o) is Subparts 203, 227, and 252 of Title 48, Code of Federal Regulations

In accordance with DoD Manual 5200.01, Volume 2, February 2012 (change 2, March 2013) and DoDI 5230.24, August 2012 (change 2, November 2017), personnel responsible for technical documents must determine their distribution availability and apply appropriate marking before distribution. Classified and unclassified DoD technical documents shall be assigned Distribution Statement A, B, C, D, E, or F. Documents carrying Distribution Statements B, C, D, E, or F must be safeguarded as For Official Use Only.

Distribution statements are used in addition to classification and dissemination control markings. If practical, abstracts should be written for widest possible distribution (Distribution Statement A.)

Export Control Warning

All printed and electronic, including digital, technical documents that are determined to contain export-controlled technical data shall be marked as shown in the “Export Control Warning Label” below. When it is technically infeasible to use the entire statement, an abbreviated marking may be used, and a copy of the full statement added to the “Notice to Accompany Release of Export-Controlled Data” required by Reference (d).

Export Control Warning Label

<p>“WARNING – This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S. Code, Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S. Code, App. 2401 et seq.), as amended. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25.”</p>
--

Marking Requirements

Distribution statements shall be displayed conspicuously on all technical documents regardless of media or format:

- For standard written or printed material, place the distribution statement on the front cover, title page, and Standard Form 298, “Report Documentation Page,” where applicable.
- For digital or other medium, affix the distribution statement to the physical and digital item in a conspicuous position for ready recognition.
- When possible or appropriate, document sections containing controlled unclassified information should be prepared as an attachment, addendum, annex, or enclosure to allow separate dissemination of the basic document at the lowest level of classification and to the widest audience.

Distribution Statements

Distribution Statements B, C, D, and E are expressed in a standard format comprising four parts presented in the following order:

1. Authorized audience
2. Reason for control
3. Date of determination
4. Controlling office

Authorized Distribution Statements and corresponding reasons for use are presented in [Table 2](#). For more information, refer to DoDI 5230.24.

Table 2. Distribution Statements and Their Corresponding Reasons for Use

DISTRIBUTION STATEMENT A. Approved for public release: distribution unlimited.					
DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government agencies (reason) (date of determination). Other requests for this document shall be referred to (controlling DoD office).					
DISTRIBUTION STATEMENT C. Distribution authorized to U.S. Government agencies and their contractors (reason) (date of determination). Other requests for this document shall be referred to (controlling DoD office).					
DISTRIBUTION STATEMENT D. Distribution authorized to DoD and U.S. DoD contractors only (reason) (date of determination). Other requests for this document shall be referred to (controlling DoD office).					
DISTRIBUTION STATEMENT E. Distribution authorized to DoD Components only (reason) (date of determination). Other requests for this document shall be referred to (controlling DoD office).					
DISTRIBUTION STATEMENT F. Further dissemination only as directed by (controlling office) (date of determination) or higher DoD authority.					
REASON	A	B	C	D	E
PUBLIC RELEASE.	X				
ADMINISTRATIVE OR OPERATIONAL USE: To protect technical or operational data or information from automatic dissemination under the International Exchange Program or by other means. This protection covers publications required solely for official use or strictly for administrative or operational purposes. This statement may apply to manuals, pamphlets, technical orders, technical reports, and other publications containing valuable technical or operational data.		X	X	X	X
CONTRACTOR PERFORMANCE EVALUATION: To protect information in management reviews, records of contract performance evaluation, or other advisory documents evaluating programs of contractors.		X			X
CRITICAL TECHNOLOGY: To protect information and technical data that advance current technology or describe new technology in an area of significant or potentially significant military application or that relate to a specific military deficiency of a potential adversary. Information of this type may be classified or unclassified.		X	X	X	X
DIRECT MILITARY SUPPORT: The document contains export-controlled technical data of such military significance that release for purposes other than direct support of DoD-approved activities may jeopardize an important technological or operational military advantage of the U.S., another country, or a joint U.S.-foreign program. Designation of such data is made by competent authority in accordance with Reference (d).					X
EXPORT CONTROLLED: To protect information subject to the provisions of Reference (d).		X	X	X	X
FOREIGN GOVERNMENT INFORMATION: To protect and limit distribution in accordance with the desires of and agreements with the foreign government that furnished the technical information.		X	X	X	X
OPERATIONS SECURITY: To protect information and technical data that may be observed by adversary intelligence systems and determining what indicators hostile intelligence systems may obtain that could be interpreted or pieced together to derive critical information in time to be useful to adversaries.		X			X
PREMATURE DISSEMINATION: To protect patentable information on systems or processes in the development or concept stage from premature dissemination.		X			X
PROPRIETARY INFORMATION: To protect information not owned by the U.S. Government and marked with a statement of a legal property right. This information is received with the understanding that it will not be routinely transmitted outside the U.S. Government.		X			X
TEST AND EVALUATION: To protect results of test and evaluation of commercial products or military hardware when disclosure may cause unfair advantage or disadvantage to the manufacturer of the product.		X			X
SOFTWARE DOCUMENTATION: To protect technical data relating to computer software that is releasable only in accordance with the software license in subpart 227.72 of Reference (o).**It includes documentation such as user or owner manuals, installation instructions, operating instructions, and other information that explains the capabilities of or provides instructions for using or maintaining computer software.		X	X	X	X
SPECIFIC AUTHORITY: To protect information not specifically included in the above reasons, but which requires protection in accordance with valid documented authority (e.g., Executive orders, statutes such as Atomic Energy Federal regulation). When filling in the reason, cite "Specific Authority (identification of valid documented authority)."		X	X	X	X
VULNERABILITY INFORMATION: To protect information and technical data that provides insight into vulnerabilities of U.S. critical infrastructure, including DoD warfighting infrastructure, vital to National Security that are otherwise not publicly available.		X	X	X	X

Cooperative Research and Development Agreements

Section II

- [II-1](#) Cooperative Research and Development Agreements (CRADAs) (What is a CRADA?; CRADA Considerations; How CRADAs Benefit the Navy/Marine Corps; CRADAs Benefit Others; CRADA Collaborators; CRADA Provisions; CRADAs Can Support Acquisition Programs)
- [II-2](#) CRADA Process
 - [II-2a](#) Typical CRADA Creation Process ([Figure 1](#) – The CRADA Creation Process)
 - [II-2b](#) CRADA Monitoring Process ([Outline](#); [Table 3](#) – ORTA Checklist)
- [II-3](#) CRADA Application – Planning and Developing the CRADA
 - [II-3a](#) Sample CRADA Application
- [II-4](#) CRADA Application – Security Questionnaire
 - [II-4a](#) Example of a Security Questionnaire for a CRADA Application
- [II-5](#) Due Diligence for CRADAs
- [II-6](#) Pricing the CRADA
- [II-7](#) Principal Investigator Responsibilities

Section II - 1

Cooperative Research and Development Agreements (CRADAs)

What is a CRADA?

Title 15 U.S. Code § 3710a defines “the term cooperative research and development agreement” to mean “any agreement between one or more Federal laboratories and one or more non-Federal collaborators under which the Government, through its laboratories provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal collaborators) and the non-Federal collaborators provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research and development efforts which are consistent with the missions of the laboratory...”

A CRADA is a legal instrument that allows Federal laboratories⁴ to engage in collaborative efforts with one or more non-Federal partners. A CRADA is a significant technology transfer (T2) mechanism for collaboration, obtaining long-term value, and high returns on research and development (R&D) investments.

A CRADA is a flexible mechanism that removes barriers to collaboration with the private sector without Federal Acquisition Regulation (FAR) selection criteria. The CRADA is not subject to FAR terms and conditions. It must have a joint statement of work (SOW) describing the scope, objectives, planned tasks for R&D, and measurable outcomes/deliverables. The CRADA defines the legal and business framework for the management and execution of the agreement. The CRADA contains provisions for a variety of intellectual property (IP) issues including data rights, property ownership, and the allocation of rights to existing and future inventions and/or IP. It is considered a non-FAR contract or legal agreement, not a grant or cooperative agreement.

CRADA Considerations

A CRADA can be used if the proposed work is within the mission of the laboratory, the work is cooperative research and/or development including the test and evaluation of materials, and each collaborator has a well-defined role in the SOW. Special consideration should be given to U.S. small businesses. In addition, there should be a goal to commercialize a product resulting from the successful completion of the CRADA. Commercialization includes sale of items to the Government.

CRADAs should not be used for the following:

1. The work involves no exchange of IP among the Collaborators
2. The proposed work only involves the sale of products/services or the use of a test facility or range

⁴ Refer to [Section VII - 2a](#) of this handbook for an explanation of how a Navy/Marine Corps technical activity is designated as a Federal laboratory.

3. The Navy is providing only the sale of services to the Non-Navy Collaborator (NNC) based on a task request

How CRADAs Benefit the Navy/Marine Corps

Through CRADAs, the Navy/Marine Corps are able to:

1. Solve technical and industrial problems that support the warfighter
2. Adapt technologies initially developed for commercial use
3. Leverage scarce funds, personnel, and facilities
4. Gain access to outside expertise, facilities, equipment, personnel, and services
5. Sustain a critical technology capability that would otherwise be lost or erode

CRADAs Benefit Others

By entering into CRADAs with Navy/Marine Corps laboratories, other entities can:

1. Gain access to Navy/Marine Corps expertise and unique facilities
2. Perform mutually beneficial R&D
3. Obtain rights to subject invention made under the CRADA

CRADA Collaborators

In addition to Department of Defense (DoD)/Navy/Marine Corps laboratories, other collaborators to CRADAs may be:

1. Other Federal agencies
2. Units of State or local governments
3. Private sector organizations
4. Public or private foundations
5. Non-profit organizations
6. Individual persons

CRADA Provisions

1. The U.S. Government retains irrevocable, royalty-free rights for Government use of IP developed through the CRADA
2. Both partners may contribute personnel, services, and property
3. Federal laboratories cannot contribute funds to the non-Federal partner
4. Non-Federal CRADA partner may obtain an exclusive or non-exclusive license in a predetermined field of use to any inventions made during the performance of the CRADA effort. License should be for reasonable consideration
5. Data generated under the CRADA may be protected from public disclosure for up to five years from date of creation

CRADAs Can Support Acquisition Programs

When used properly, CRADAs can facilitate acquisition. For example, CRADAs can be used to:

1. Test and evaluate vendor products
2. Develop improvements to existing systems
3. Characterize the properties of new materials
4. Insert Navy-developed technologies into commercial products, to be purchased as commercial off-the-shelf products

When using CRADAs to support acquisition, Government personnel must be cautious of conferring unfair competitive advantage to vendors and other non-Government entities.

Section II - 2

CRADA Process

The CRADA Process is presented in two parts in this handbook. [Section II - 2a](#) gives an outline of a typical CRADA Creation Process which includes identification of the mechanism, the collaborators, and the work to be performed to the signing of the CRADA. [Figure 1](#) summarizes the CRADA Creation Process. [Section II - 2b](#) presents an outline of the CRADA Monitoring Process.

The CRADA Creation Process and the CRADA Monitoring Process presented here are typical and may vary among laboratories. The ORTA should tailor its laboratory's process to meet the requirements and regulations of its organization.

Section II - 2a

Typical CRADA Creation Process

This outline describes a typical process for the creation of a CRADA. [Figure 1](#) summarizes this process. A separate outline ([Section II - 2b](#)) addresses CRADA monitoring.

1. Choosing the mechanism (Office of Research and Technology Applications (ORTA) determines if CRADA)
 - A. Approached by laboratory scientist/engineer
 - i. Identify what is the desired work to be done
 - 1) Is CRADA appropriate?
 - 2) Is 10 U.S. Code § 2563 or 10 U.S. Code § 2539b the appropriate statute?
 - ii. Check with your local Navy IP counsel
 - B. Approached by external customer
 - i. Identify what is the desired work to be done
 - 1) Is CRADA appropriate?
 - 2) Is 10 U.S. Code § 2563 or 10 U.S. Code § 2539b the appropriate statute?
 - ii. Is this effort within your mission area?
 - iii. Identify potential laboratory team
 - 1) Are personnel available?
 - 2) Are there potential conflicts of interest such as participation on a source selection or evaluation panel?
 - 3) Identify other resources needed
 - iv. Check with your local Navy IP counsel
 - v. Notify relevant local authorities of intent
2. NNC identification (Refer to [Section II - 5](#), Due Diligence for CRADAs)
 - A. Foreign Owned, Controlled or Influenced (FOCI)
 - i. Notify local Security Office (Refer to [Section II - 4](#), CRADA Application - Security Questionnaire)
 - ii. Notify relevant System Command Export Control Office
 - iii. Notify U.S. Trade Representative
 - iv. Identify any International Traffic in Arms Regulations (ITAR) issues
 - B. Non-FOCI
 - i. Check corporate status
 - 1) Registered in which state?
 - 2) Large or small business
 - 3) Identify any Federal restraints
 - C. Identify NNC authority
 - i. Who is authorized to negotiate?
 - ii. Who is authorized to sign?
3. CRADA application/information worksheet
 - A. Provide application to all collaborators (Refer to [Section II - 3](#) for samples of the CRADA Application form and [Section II - 4](#), CRADA Application - Security Questionnaire)

- B. Each collaborator identify Principal Investigators (PIs)
- C. Identify non-subject data relevant to proposed work
- D. Identify funding mechanism (Refer to [Section II - 6](#), Pricing Your CRADA)
 - i. NNC funds Navy
 - 1) Incremental payment
 - a) Annual
 - b) Milestone
 - 2) Fully funded
 - ii. Third party payment
 - 1) Navy sponsor
 - a) Annual
 - b) Milestone
 - c) Other
 - 2) Other Federal source
 - a) Annual
 - b) Milestone
 - c) Other
 - 3) Other non-Federal source
 - a) Annual
 - b) Milestone
 - c) Other

E. Collaborators prepare SOW

- 4. Review and negotiate SOW
 - A. Provide copy to local Navy IP counsel
 - B. Local review
 - i. PI
 - ii. PI supervisor
 - iii. ORTA
 - iv. Local Navy IP counsel
 - C. Submit reviewed SOW to NNC

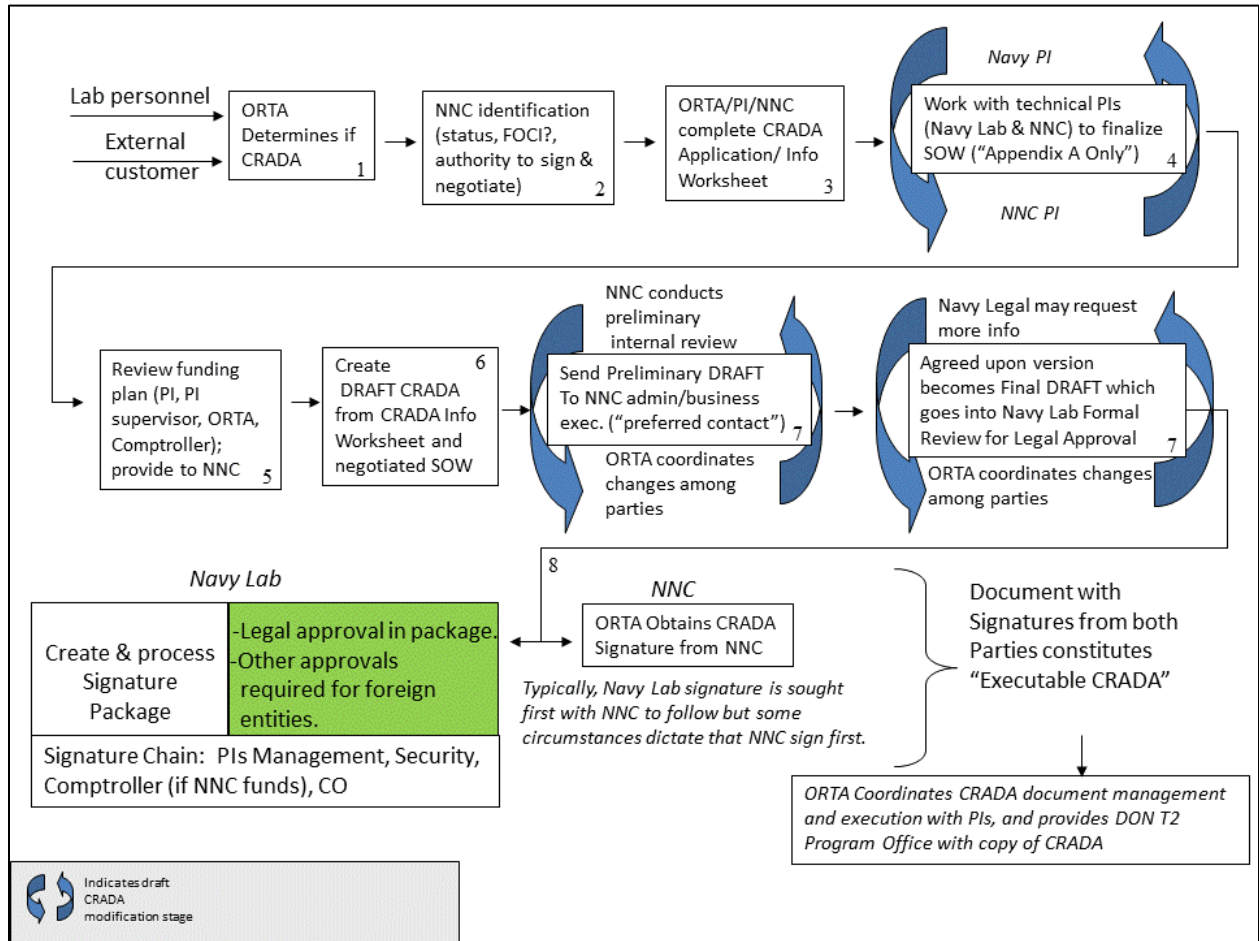
(Iterate Steps a - c as necessary)

- 5. Review funding plan
 - A. Local review
 - i. PI
 - ii. PI supervisor
 - iii. ORTA
 - iv. Laboratory Comptroller
 - B. Submit reviewed funding plan to NNC

6. ORTA prepares CRADA
 - A. Local review before sending to NNC for signature
 - i. Local Navy IP counsel
 - ii. PI
 - iii. ORTA
 - B. Send to NNC for signature
Note: Electronic signatures and email are acceptable depending on local policy for legal documents.
7. Further negotiation
 - A. Authorization
 - i. ORTA
 - ii. Local Navy IP counsel
 - iii. NNC's authorized negotiator
 - B. Conflict resolution
 - i. What can and cannot be changed
 - ii. Do it in writing
 - C. ORTA drafts revised CRADA as necessary
8. Signatures and registration
Note: The outline below assumes the use of hard copies. Electronic signatures/copies and email are acceptable depending on local policy for legal documents.
 - A. ORTA receives two signed copies from NNC
 - B. Local routing by ORTA
 - i. Internal memos/summaries
 - ii. Include local Navy IP counsel review
 - iii. Commanding Officer signs
 - C. Correspondence with NNC
 - i. Cover letter
 - ii. Original signed copy enclosed
 - D. Other copies
 - i. Local Security Office
 - ii. Local Navy IP counsel office
 - iii. PI with oral review
 - iv. DON T2 Program Office*
 - v. Others (U.S. Trade Representative, Systems Command) as required

*It is important to note that, within 10 days after the CRADA is signed, the ORTA must provide the DON T2 Program Office with an electronic copy of the final signed CRADA including a copy of the signed IP counsel review. The DON T2 Program Office reports on CRADAs to the DoD through the Navy Defense Technology Transfer Information System (NDTTIS). Refer to [Section III - 1](#) for instructions and details regarding reports to the DON T2 Program Office and NDTTIS.

Figure 1. The CRADA Creation Process



Original figure, courtesy of Naval Undersea Warfare Center, Division Newport, modified for this handbook.

Section II - 2b

CRADA Monitoring Process

The ORTA must monitor the administrative activities of the signed CRADA. After the CRADA is registered with the DON T2 Program Office and the ORTA has communicated with the local PI to remind him/her of his/her responsibilities, the ORTA needs to develop the process for monitoring the CRADA during its duration. The following outline and checklist provide activities that may be used by the ORTA. What is actually done depends on the specific nature of the CRADA and on the available resources.

CRADA Monitoring Part I - Outline

This outline describes a process for monitoring a signed CRADA. What the ORTA does will depend upon available resources. Milestone and quad charts are not required by the DON T2 Program Office. These are to be used in developing best practices. If any of these ideas work well, the ORTA manager should consider reporting his/her success to others in the DON T2 community meetings.

1. Review signed CRADA
 - A. Prepare milestone chart
 - i. Use SOW
 - ii. Use reporting schedule
 - iii. Use funding profile
 - B. Prepare quad chart
 - C. Meet with PI
 - i. Upon final signature
 - ii. Clarify lines of responsibility
 - 1) Changes in SOW
 - 2) Changes in funding
 - 3) Activity reporting
 - iii. Provide copy of milestone chart
 - iv. Provide copy of quad chart
 - v. Meet quarterly
2. Activity Reporting
 - A. Reports and publications
 - i. Interim reports
 - 1) Know the schedule
 - 2) Local PI reports receipt to ORTA
 - ii. Publications
 - 1) Review prior to publication
 - a) Navy PI
 - b) ORTA
 - c) Cleared for Public Release by Navy
 - 2) Copy of publication
 - a) PI
 - b) ORTA
 - i) Place in CRADA file
 - iii. Classified Information
 - 1) Review local process with local Security Office
 - 2) Review local process with Navy PI
 - a) ORTA on routing
 - b) Maintain a log in CRADA file
 - B. IP
 - i. Marking of Data
 - 1) Establish process for marking data

- a) Navy PI
 - b) ORTA
 - c) Navy IP counsel
 - d) Navy Security Office
 - 2) PI reports to ORTA
 - a) Data delivered to NNC
 - b) Data received by NNC
 - ii. Copyrights applied/issued
 - 1) Reported by NNC
 - 2) Record copyright license to the Government
 - iii. Subject Inventions
 - 1) Obligation to report
 - a) By Navy
 - i) Report by PI
 - ii) Report to ORTA
 - iii) Report to Navy IP counsel
 - b) By NNC
 - i) Report to PI
 - ii) Report to ORTA
 - c) By both Navy and NNC
 - i) Report by PI
 - ii) Report to ORTA
 - iii) Report to Navy IP counsel
 - iv) Report to Non-Navy attorney
 - 2) Determine/record title and ownership
 - a) Report by PI
 - b) Report to ORTA
 - c) Report to Navy IP counsel
 - 3) Determine/record filing of invention disclosures
 - a) Report by PI
 - b) Report to ORTA
 - c) Report to Navy IP counsel
 - d) Report to Non-Navy attorney
 - iv. Nonexclusive license to subject inventions
 - 1) Report from Navy attorney
 - 2) ORTA records in CRADA file
3. Amendments to SOW
 - A. Use authorized Navy (ORTA/PI) and Non-Navy negotiators (CRADA preferred contact/PI)
 - B. Signatures
 - i. From NNC
 - ii. By local Commanding Officer
 - C. Notifications and correspondence
 - i. Signed copy to NNC
 - ii. Signed copy to Navy PI
 - iii. Signed copy to DON T2 Program Office

4. Amendments to funding
 - A. Use authorized Navy (ORTA/PI) and Non-Navy negotiators (CRADA preferred contact/PI)
 - B. Signatures
 - i. From NNC
 - ii. By local Commanding Officer
 - C. Notifications and correspondence
 - i. Signed copy to NNC
 - ii. Signed copy to Navy PI
 - iii. Signed copy to local Navy Comptroller
 - iv. Signed copy to DON T2 Program Office

5. Final reports
 - A. From NNC
 - B. From Navy PI
 - i. Use Navy form

Table 3. CRADA Monitoring Part 2 – ORTA Checklist

The checklist provided here can be used in assisting the ORTA in monitoring a CRADA effort.

<u>TASK</u>	<u>TIME REFERENCE</u>
<i>DON T2 PROGRAM OFFICE ADMINISTRATIVE</i>	
Send CRADA electronically to DON T2 Program Office	Within ten (10) days of signature
The DON T2 Program Office reports agreements through the NDTTIS database	Within thirty (30) days of signature
<i>FUNDING</i>	
Monitor and follow payment schedule, if applicable	
Send notice of default to NNC	Fifteen (15) days after default
Termination of Agreement	
Cancel option for exclusive license	
Terminate any exclusive license	
Return excess funds	After completion, expiration, or termination of CRADA
Issue financial report to Collaborator	Within four (4) months of completion, expiration, or termination of Agreement
<i>REPORTS AMONG COLLABORATORS</i>	
Submission of interim reports to Collaborator	As required by Article 6.1
Submit a final report to Collaborators that contains results obtained and a list of all Subject Inventions	Within four (4) months of completion, expiration, or termination of Agreement
<i>PUBLICATIONS or PUBLIC DISCLOSURE of SUBJECT DATA</i>	
Confer and consult prior to publication or public disclosure of Subject Data	
Review any proposed abstract, publication, presentation, or other document	Not to exceed thirty (30) days, unless mutually agreed, prior to publication or disclosure (note “disclosure” includes peer review prior to publication)
Notification of objection to a proposed disclosure	Within thirty (30) days of the date of notice to disclose
Notification of objection that patent rights may be compromised by a proposed disclosure	Patent Application must be filed by responsible Collaborator before public disclosure or as mutually agreed
Notification of objection that public disclosure may release Proprietary Information, or Information restricted by United States security laws or regulations	Disclosure is to be postponed until Information no longer meets definition for Proprietary Information or is no longer covered by United States security laws or regulations

TASK	TIME REFERENCE
MARKING OF DATA	
Marking Data that are Subject to 35 U.S. Code § 205	Mark at time of delivery
Marking Data that are Classified Information, Controlled Unclassified Information (CUI), or otherwise restricted	Mark at time of delivery
Mark Data provided with less than Unlimited Rights	Mark at time of delivery
Mark For Official Use Only (FOUO) Data and Proprietary Information	Mark at time of delivery
FREEDOM OF INFORMATION ACT REQUESTS	
Notify Collaborator of any Freedom of Information Act requests for Data under the Agreement.	Promptly
REQUEST FOR SUBJECT DATA	
Deliver Subject Data to requesting Collaborator	Not to exceed thirty (30) days
REQUESTS FOR NON-SUBJECT DATA	
Deliver marked Non-Subject Data and defined limited rights	After completion of a separate non-disclosure agreement
SUBJECT INVENTIONS (IP Attorney)	
Provide Collaborator with a copy of each Invention Disclosure	Within sixty (60) days of receiving the Invention Disclosure from the inventor
PATENT APPLICATIONS (IP Attorney)	
Confer and consult on who should file a Patent Application on any Subject Invention	
Confer and consult on who should file a Patent Application on any Invention Jointly Made	
If responsible, file a Patent Application of any Subject Invention	Within sixty (60) days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received
Notify other Collaborator of intent to assume filing because Collaborator failed to file	Ten (10) days written notification
Notify other Collaborator of all filing deadlines for prosecution of a Patent Application of a Subject Invention	
Notify other Collaborator of all filing deadlines for maintenance of a Patent on a Subject Invention	
Notification of intent to respond to a filing deadline	Within sixty (60) days prior to deadline
Provide Collaborator with copies of prosecution papers of a Patent Application of a Subject Invention	Within thirty (30) days of receipt of such communication
Notify inventors of intention not to file a Patent Application	
Identify Preexisting Non-Subject Inventions Pertinent to the Cooperative Work	During CRADA negotiation

<u>TASK</u>	<u>TIME REFERENCE</u>
<i>EXCLUSIVE LICENSE</i>	
Navy Collaborator gives NNC the option to acquiring an exclusive license in a Subject Invention Made by Navy Collaborator employee	NNC must notify Navy Collaborator within six (6) months of filing the Patent Application in order to exercise the option
	NNC must execute an exclusive/non-exclusive commercial license to the Subject Invention within six (6) months of election to exercise the option
<i>NNC BECOMES A FOCI</i>	
Navy may terminate any exclusive license or cancel any option for an exclusive license to a Subject Invention under this Agreement	NNC becomes a FOCI that does not qualify under Executive Order 12591, Section 4(a)
<i>FORCE MAJEURE EVENT</i>	
Notify the other Collaborator of inability to perform under a <i>force majeure</i> event	Prompt notification; work may be suspended
<i>THIRD PARTIES</i>	
Request written permission of other Collaborator to use third parties to perform any part of Cooperative Work	
<i>UNILATERAL TERMINATION</i>	
Either Collaborator may unilaterally terminate the Agreement	Not less than thirty (30) days written notice prior to desired termination date

Section II - 3

CRADA Application - Planning and Developing the CRADA

The sample CRADA application found in this section can be used to assist in planning and developing a CRADA. [Section II - 3a](#) provides a sample application package. An application or CRADA information worksheet should be filled out by the ORTA, the PI, and the authorized representative of the NNC. Once completed, most of the information needed to populate a CRADA example should be available. A sample of an electronically fillable form, the CRADA Information Worksheet, is available as an attachment to the electronic version of this handbook.

The sample CRADA application presented here is provided as an example which the ORTA should tailor for its own laboratory needs.

Section II - 3a

Sample CRADA Application

Reference: Naval Surface Warfare Center, Panama City Division CRADA Worksheet Form

This document is used by the [insert full name of Navy laboratory], Office of Research and Technology Applications (ORTA), in drafting a cooperative research and development agreement (CRADA) with a single Non-Navy Collaborator. If you have any comments or questions, please contact the following: ORTA Manager, [insert full name of ORTA manager] at [insert ORTA's laboratory name and code/branch], telephone [insert ORTA's telephone number] and email [insert ORTA manager's email].

Instructions: Electronic versions are requested when the CRADA application is submitted. Navy Technical Contact and Non-Navy Technical Contact should work together and consolidate their respective information to complete and submit one questionnaire. Fill in each section with the requested information. You are not limited by the space provided below. The most important item for both collaborators to develop before the CRADA document is prepared is a good Statement of Work. Upon completion, the questionnaire should be submitted to the [Navy Laboratory] ORTA Manager.

1. PROPOSED AGREEMENT TITLE:

Provide a short title for the proposed collaborative work:

2. NAVY TECHNICAL PRINCIPAL INVESTIGATOR

Name:

Address:

Office Code:

Phone:

Fax:

Cell:

E-mail:

3. NON-NAVY PREFERRED POINT-OF-CONTACT

Name:

Address:

Phone:

Fax:

E-mail:

4. NON-NAVY TECHNICAL PRINCIPAL INVESTIGATOR

Name:
Address:
Phone:
Fax:
E-mail:

5. NON-NAVY LEGAL POINT OF CONTACT (OPTIONAL)

Name:
Address:
Phone:
Fax:
E-mail:

6. NON-NAVY CORPORATE HEADQUARTERS ADDRESS

Official Organization Name:
Official Organization Acronym (if any):
Address:

7. BACKGROUND INFORMATION ON NON-NAVY COLLABORATOR

Provide a short paragraph describing the nature of the Non-Navy Collaborator – what are the areas of its business, research, or educational interest.

8. PUBLIC RELEASE SUMMARY

Write a brief description, preferably in layman's terms of the intent and nature of the work to be done and how the Collaborators will participate and benefit. Discuss why the Collaborators are partnering and define what unique capabilities, expertise, and facilities that are forming a basis for the Cooperative Research that is to be done.

The Summary is not to be used as a binding requirement of the Agreement. This summary will be used: (1) in internal documents and public releases from the Department of the Navy Technology Transfer Program Office; and (2) in internal documents and public releases from both the Navy and Non-Navy Collaborators. This section will be available for public release, even if the identity of the Non-Navy Collaborator is protected from disclosure.

9. OBJECTIVES OF THE COLLABORATION

Describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of this Agreement. State the desired final outcome by each Collaborator, including any intentions of commercialization, if appropriate. Describe, if appropriate, any benefits to the warfighter. Will this support any existing Department of Defense acquisition program? If so, please state program and sponsor.

FOR NAVY COLLABORATOR:

FOR NON-NAVY COLLABORATOR:

10. REQUIREMENT BY NAVY COLLABORATOR FOR SERVICE OR SUPPORT CONTRACTOR PERSONNEL

Will the Navy Collaborator use service or support contractor personnel in the performance of the work under this Agreement?

If yes, specify contractor(s) name, address, and existing contract agreement number.

11. REQUIREMENT BY NON-NAVY COLLABORATOR FOR SERVICE OR SUPPORT CONTRACTOR PERSONNEL

Will the Non-Navy Collaborator use service or support contractor personnel in the performance of the work under this Agreement?

If yes, specify contractor(s) name, address.

12. REQUIREMENT FOR USE OF NAVY FACILITIES AND OR TEST RANGES

Will the Navy use at [**Navy Laboratory**] any specialized facilities or test ranges for which there is a charge or fee for use?

If yes, specify item and provide the point of contact name and phone number.

Will the Navy use any other Navy specialized facilities or test ranges for which there is a charge or fee for use?

If yes, specify item and provide the point of contact name and phone number.

Will the Navy use any other Department of Defense specialized facilities or test ranges for which there is a charge or fee for use?

If yes, specify item and provide the point of contact name and phone number.

13. SECURITY REQUIREMENTS

FOR THE NAVY:

Is the collaborative work classified?

If yes, specify the required classification guidelines appropriate to this work.

If yes, provide the names of all **[Navy Laboratory]** personnel, service or contractor personnel who will have access to data resulting from this Agreement.

Does the collaborative work include work on unclassified export controlled articles, services, and related technical data that must be controlled in accordance with (IAW) the International Traffic in Arms Regulations (ITAR), 22 §§ C.F.R. 120-130?

Is the data being generated under this agreement Controlled Unclassified Information?

Has a Non-Disclosure Agreement been established with the Non-Navy Collaborator?

FOR THE NON-NAVY COLLABORATOR:

If the collaborative work includes unclassified export controlled technical data that must be controlled in accordance with DoDD 5230.25, the Non-Navy Collaborator must be certified to handle this data. This data is controlled by the ITAR. The Non-Navy Collaborator must provide proof of certification to the **[Navy Laboratory]** ORTA by submitting a copy of the form DD 2345 “Militarily Critical Technology Data Agreement”.

If this collaborative work is classified, please provide the following information for your Security Office:

Name:

Address:

Phone:

E-mail:

14. NAVY MISSION AREA

What is the **[Navy Laboratory]** mission area for the work to be performed by this collaborative effort?

15. REPRESENTATIONS OF NON-NAVY COLLABORATOR

- a. Non-Navy Collaborator is (select one from the following):

(1) A United States commercial business whose Standard Industrial Classification Code is **{specify}** for the commercial product **{identify}** to be developed as a result of this Collaborative Research;

(2) A non-profit or not-for-profit entity under United States law;

(3) A United States public or private educational institution;

(4) A State or Local Government Entity of the United States;

(5) A foreign owned or controlled institution (if so, state nature of organization, identify the country and Non-Navy Collaborator's type of organization, *e.g., corporation, partnership, University, etc.*).

b. State/Country under which Non-Navy Collaborator is organized, exists, or is "incorporated":

c. Non-Navy Collaborator **is** or **is not** a Small Business as defined by the United States Small Business Administration's Guidelines. SPECIFY:

16. FUNDING

a. Will [Navy Laboratory] receive funding from the Non-Navy Collaborator for the work proposed under this Agreement?

b. If yes, list all amounts, schedules, and any specific items for the current Fiscal Year (FY) and three (3) additional FYs if applicable.

c. If no, what is the source of funds for the work being done by the Navy Collaborator?

17. REPORTS AND PUBLICATIONS

Enter the number or frequency of written reports each Collaborator will submit to the other during this Agreement on its work and the results being obtained (*only the Collaborator producing data is required to provide reports; however, both Collaborators may provide reports*). All Collaborators will provide annual reporting and status updates upon request of the Navy Collaborator's ORTA.

a. Navy Collaborator will provide _____ report(s) according to the following schedule:

b. Non-Navy Collaborator will provide _____ report(s) according to the following schedule:

18. OPTION FOR ACQUIRING AN EXCLUSIVE LICENSE - FIELD OF USE

The Navy Collaborator gives the Non-Navy Collaborator the option of acquiring an Exclusive License for a specific Field of Use in the Government's rights to any Subject Invention Made in whole or in part by a Navy employee.

NON-NAVY COLLABORATOR specify the Field of Use:

19. INTELLECTUAL PROPERTY

Does this CRADA involve the licensing of (an) existing Navy patent(s)?

_____ Yes _____ No

If yes, list patent title(s), date(s) of issue, author(s), and patent number(s):

Has a license application been filed? _____ Yes _____ No

If yes, enclose a copy of the licensing agreement.

FOR NAVY COLLABORATOR:

List all Non-Subject Inventions Made prior to the Effective Date of this Agreement that pertain to the proposed Collaborative Work. Provide Invention Title, inventor name(s), patent number or Navy case number if an Invention Disclosure, or Patent Application Serial Number, and date of issue (for patents only).

FOR NON-NAVY COLLABORATOR:

List all Non-Subject Inventions Made prior to the Effective Date of this Agreement that pertain to the proposed Collaborative Work. Provide Invention Title, inventor name(s), patent number or Navy case number if an Invention Disclosure, or Patent Application Serial Number, and date of issue (for patents only).

20. NOTICES

Name and express mail usable mailing address (no Post Office boxes) for Non-Navy Collaborator's receipt of any notices pertaining to or required by this Agreement (*this may be the same person signing the Agreement*):

Name:

Address:

Phone:

Fax:

E-mail:

21. DURATION

The original CRADA duration shall be four years or less. A CRADA may be extended another two years, by amendment, with appropriate intellectual property counsel review and written justification. A CRADA that is extended beyond four years and up to six years is considered a non-standard CRADA. CRADAs cannot have a duration greater than six years. Specify length of effectiveness, or expiration date, of Agreement (*e.g., one year, two years, 31 May 2019, etc.*).

The duration of this CRADA will be _____ (specify months/years).

22. STATEMENT OF WORK

List the division of responsibilities, what each Collaborator is doing or providing, and the schedule. You **MUST** state any actual, or the possibility of, animal or human testing under the Collaborator responsible for those clearances.

Navy Collaborator will:

Non-Navy Collaborator will:

The Collaborators will jointly:

Section II - 4

CRADA Application - Security Questionnaire

[Section II - 4a](#) provides a sample security questionnaire that should accompany the CRADA application. The ORTA should confer with the local security manager to develop a security questionnaire that satisfies the laboratory's security requirements.

For more guidance on security-related topics such as classified data and security issues when dealing with FOCI organizations, refer to [Section VI - 3](#).

Section II - 4a

Example of a Security Questionnaire for a CRADA Application

Reference: Naval Air Warfare Center Weapons Division, China Lake and Point Mugu

CRADA Number: **TBD**
 Date Submitted: _____
 Due Date: _____
 *Revision Number (see attached): _____
 Submission Date: _____
 Due Date: _____

[Laboratory Name] CRADA Security Questionnaire

GENERAL	
What is the Agreement start date?	
What is the anticipated duration?	
Is the customer industry, academia, or other? (if other, then identify)	
What is the customer's complete name/address?	
Commercial and Government Entity Code:	
Joint Certification Program Cert. Number:	
Note: customer must have current System for Award Management registration. Please verify.	
Is the company foreign owned, controlled, or influenced (FOCI) ((Y/N)?	
Does the company have a special security agreement with DoD?	
Will subcontractors be used (Y/N)?	
What is the subcontractor's name/address?	
Is this a classified agreement (Y/N)?	
If yes, provide copy of DD 254.	
Is the Agreement with a command other than [Lab name] (Y/N)?	
If yes, who is it with (list activity name/address)?	
What product, service, or weapon system is involved?	
What type of test(s) is being performed?	
Who is the [Lab name] Technical Point of Contact (POC)?	
What is the POC's competency code and phone number?	
Where within [Lab name] will the work take place?	
What is the complete activity name and address?	
What is the building and/or lab/room number(s)?	

INFORMATION CLASSIFICATION	
Will the CRADA involve access to, and work on, export controlled technical data (Y/N)?	
Who (Government, customer, other) has the overall security cognizance in security matters? (if other, identify)	
Will performance include access to U.S. classified information (Y/N)?	
What is the highest level required? (confidential, secret, top secret, Special Access Program (SAP)/Sensitive Compartmented Information (SCI))	
Where does the classified information reside (activity name, building/room number)?	
Is there a current classification guide (Y/N/NA)?	
Provide guide number, title, and/or other type of guidance.	
Will performance include Navy access to U.S. Sensitive but Unclassified information (Y/N)?	
Where does the sensitive information reside (activity name, building/room number)?	
Does the CRADA Statement of Work explain what performance is classified (Y/N/NA)?	
What is the paragraph number?	
Will the customer have access to classified at the Government activity only (Y/N)?	
Will the customer be receiving classified at the customer's facility (Y/N)?	
Will the customer be generating classified at the customer's facility (Y/N)?	
Is there a requirement to store classified at the customer's facility (Y/N/NA)?	
Does the contractor have a Facility Security Clearance (Y/N)?	
Who (Government, customer, other) owns the data that will be processed? (if other, identify)	
Is access to intelligence information required (Y/N)?	
SCI or non-SCI?	
Does [Lab name] need to provide safeguarding capability for the customer at the Navy facility (Y/N)?	
What resources are needed (i.e., security containers, locks, etc.)?	
Will performance include access to Foreign Government Information (Y/N)?	
What country?	

Will performance include non-Navy access to Controlled Unclassified Information – CUI (<i>Sensitive But Unclassified, For Official Use Only, etc.</i>) (Y/N)?	
How will information be protected?	Information will be marked FOUO and protected in accordance with DoD Manual (DoDM) 5200.01 and DoDM 5400.7-R.
Is there a customer requirement for data encryption (Y/N/NA)?	
Where does the CUI reside (<i>activity name, building/room number</i>)?	
COMPUTER USAGE	
>>>>Information Systems are computers<<<<	
Will Government-owned Non-Navy/Marine Corps Intranet Information Systems (IS) be used in support of the Agreement (Y/N/NA)?	
Have they been accredited or has an Interim Authority to Operate been issued (Y/N/NA)? <i>*see note below</i>	
Have all users signed IS User Agreements or System Authorization Access Request Navy, SAAR-N, form (Y/N/NA)?	
<p><i>*Provided is the definition of what is considered an IS that requires authorization to operate in accordance with DoD Instruction (DoDI) 8500.01, Cybersecurity:</i> A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. Note: Information systems also include specialized systems such as industrial/process controls systems, telephone switching and private branch exchange (PBX) systems, and environmental control systems. Definition of IS comes from Committee on National Security Systems Instruction Number 4009, referenced by DoDI 8500.01.</p>	
Will customer require access to Government-owned IS (Y/N)?	
Will customer-owned unclassified IS be brought onto a Government site in support of the Agreement (Y/N)?	
Provide a letter from the company’s Facility Security Officer that authorizes the IS to be used on site. The letter should include purpose, location, Government POC, equipment specifications, and assurances that the IS being used are at the unclassified level.	
Will customer-owned classified IS be used (Y/N)?	
Have they been accredited by Defense Security Service (Y/N)?	
Will foreign national IS be used in support of the Agreement (Y/N)?	
Will foreign nationals be required to use IS in support of the Agreement (Y/N)?	
Will they be Government-owned, customer-owned, or foreign-owned IS resources? (if foreign, identify)	

FOREIGN NATIONALS/FOREIGN DISCLOSURE	
Are there foreign nationals (FNs) involved (Y/N)?	
Does the FN have Lawful Permanent Residency (green card) (Y/N)?	
Are they a foreign company, foreign government, or U.S. citizen working for a foreign-owned company, or a foreign citizen working for a U.S. company?	
What country(ies) do they represent?	
Will FNs need to be on station (Y/N/NA)?	
How many FNs will need to be on station?	
What is the start date of the FN visit?	
What is the duration of the FN visit?	
Will FNs require access to (<i>lab name</i>) or (<i>lab name</i>) contractor facilities prior to the FN visit start date (Y/N)?	
Where will they require access (<i>activity name/building/room numbers</i>)?	
To which recreational areas will they require access?	
Will they require after hours or weekend access (Y/N)?	
Will the FNs have customers or family visitors (Y/N)?	
Is a FN Visit Request required (Y/N)?	
Has the Visit Request been approved and scheduled (Y/N)?	
Has (<i>Lab Public Affairs Office (PAO) Code</i>) been contacted for release issues/approvals (Y/N/NA)?	
Who is (<i>Lab PAO Code</i>) POC (<i>name/phone number</i>)?	
Provide correspondence.	
Is there a requirement for technical discussions prior to the FN visit start date (Y/N/NA)?	
Will performance require FN access to classified information (Y/N/NA)?	
What type of information?	
Where does the information reside?	
Does the information need to be physically released (Y/N)?	
Who owns the information?	
Who is responsible for the release of the information?	
Has (<i>Lab PAO Code</i>) Foreign Disclosure been contacted for release approval (Y/N)?	
Will performance require FN access to unclassified technical information (Y/N/NA)?	
What type of information?	
Where does the information reside?	
Who owns the information?	
Does the information need to be physically released (Y/N)?	
Who is responsible for the release of the information?	
Has (<i>Lab PAO Code</i>) Foreign Disclosure been contacted for release approval (Y/N)?	

Is a Technical Assistance Agreement required (Y/N/NA)?	
Has the POC reviewed it (Y/N)?	
Include a copy.	
Is an export license required (Y/N/NA)?	
Has the POC reviewed it (Y/N)?	
Provide copy.	
Have escort requirements been determined (Y/N)?	
What are restrictions?	
Who are the escorts?	
Are the escorts civil service, military or certified contractor?	
Has an escort brief been received (Y/N)?	
Will additional guards/escorts be required (Y/N)?	
Is a threat brief requested/required (Y/N/NA)?	

PROGRAM PROTECTION	
Has the Operations Security (OPSEC) checklist been received and reviewed (Y/N/NA)?	
Is there a requirement to conduct photography (Y/N)?	
What kind of camera (digital, still, video) will be used?	
Has an OPSEC brief for the photography pass been obtained (Y/N)?	
Has a photography pass been applied for (Y/N)?	
Is the photographer a U.S. citizen (Y/N)?	
Will FNs have access to local telephone junction boxes serving sensitive programs/projects (Y/N/NA)?	
Will FNs possess/use radio frequency test equipment that would allow interception/analysis/exploitation of other programs/project's emissions (Y/N/NA)?	
Are there PBX vulnerabilities (Y/N/NA)?	
Who will ensure sensors associated with a FN project are only used for their intended purpose?	
Will there be any restrictions concerning the possession of:	
Vision enhancing devices (<i>binoculars</i>) (Y/N)? If yes, describe.	
Audio enhancing devices (<i>bionic ears</i>) (Y/N)? If yes, describe.	
Audio/still/video recorders (<i>i.e. cassette/MP3 recorders, camcorders, cameras, VCRs, audio/video surveillance devices</i>) (Y/N)? If yes, describe.	
Radio frequency receiving/scanning devices (Y/N)? If yes, describe.	

COMMUNICATIONS SECURITY (COMSEC) ISSUES	
Is there COMSEC involved (Y/N)?	
Has the Electronic Key Management System/COMSEC Custodian reviewed the CRADA (Y/N)?	
Who owns the crypto?	
Who is the POC for crypto matters for this CRADA?	
List the activity name, location and phone number.	
Where will the crypto be used (<i>activity name and building/room number</i>)?	
What will be the highest level of data encrypted by the crypto? (unclassified, confidential, secret, top secret, sensitive but unclassified)	
What crypto devices will be used?	
Will the COMSEC be transferred to the customer (Y/N)?	

PUBLIC RELEASE	
Is the end product intended for public release (Y/N)?	
Has the Security Policy Review process been initiated through Public Affairs (Y/N/NA)?	

POINTS OF CONTACT	
General CRADA security questions	[local lab POC/phone]
General CRADA questions	[local lab POC/phone]

CRADA Number: **TBD**

Date Submitted: _____

*Revision Number (see attached): _____

Date: _____

Section II - 5

Due Diligence for CRADAs

The following discussion may be helpful in determining the details about the potential NNC. The questions posed are ones that will help build the ORTA's own process for determining who may be a successful collaborator.

1. The potential collaborator, ABC Company, claims to be registered in the United States in the State of XYZ.

- Is ABC registered and in good standing in the state XYZ?
- Is ABC a small/large business?
- Is ABC a subsidiary of a larger company?

2. The first POC within ABC Company claims that he/she represents the company and can close the deal.

- Who is the head of ABC Company?
- Who is the technical POC within the company?
 - Where does he/she fit within the organization?
- Who is the legal POC for ABC Company?
 - Is the legal POC a full-time employee of ABC Company?
 - Does the legal POC have experience with Federal Government CRADAs?
 - Does the legal POC have experience with Navy CRADAs?
- Who has the authority to bind ABC Company to the deal?
 - Is he/she aware of this negotiation?
- Who has the authority to negotiate the deal?

3. The POC with ABC Company claims that they are willing to pay for the proposed work with the Navy laboratory.

- Check the ABC Company financial history.
- Check the ABC Company product line.
 - Is the proposed product part of ABC's current product line?
 - What have been the sales of current product line?

4. The POC claims that ABC Company has technical competence in the area of the proposed work.

- Has the company demonstrated the ability to do R&D in this technical area?
- Have patents been issued to ABC in the technical area of interest?
- Do the PIs have demonstrated experience in this technical area?
- If special facilities are required, does ABC have the necessary resources or can they demonstrate that they have access to the resources needed?

5. Has ABC Company entered into similar Agreements with a Federal laboratory?

- If yes, contact the Federal partner(s) to determine success of relationship.
- What technical areas were involved?
- Was a successful product created?
- Were there difficulties in the administration of the Agreement?

6. Is ABC Company performing the proposed work under any Federal grant, contract, agreement, or other transaction?

- If yes, has the Federal funding sponsor been identified?
 - Determine the contract number.
 - Determine funding to ABC.
 - Determine the contracting officer’s name, organization, address, phone, e-mail.
 - Determine the contracting officer’s representatives name, organization address, phone number.
- If yes, determine clauses in the Federal award regarding performance standards such as time, schedule, and quality that may affect the Navy laboratory’s ability to perform such work for ABC.
- If yes, determine clauses in the Federal award that affect the ownership of generated IP.
- If yes, are there restrictions for working with a Federal laboratory?
 - Are waivers required?
- If yes, are ONLY these funds being used to fund the Federal collaborator?
 - Are these funds to be sent directly from the company or from the Federal sponsor?

How to Answer the Above Questions

Answering the questions above will depend on the resources available to the ORTA. Many of these questions can be answered by using the Internet.

For instance, registration of a company as a corporation in a state can be checked by using the state’s Department of Commerce, or small business administration offices. Using the Internet, the ORTA can also check the company’s advertised profile - links there may help determine organization, product line, personnel, patents and publications. Data on patents can be determined by a search of the U.S. Patent and Trademark Office website. The Defense Technical Information Center (DTIC) can provide information on DoD contracted research that has been performed by ABC Company. Also, DTIC can provide information on ABC Company’s internal R&D efforts. Checking information in NDTTIS can provide data on what other CRADAs the company may have started or completed. The System for Award Management (www.sam.gov) can be used to determine if a company is doing business with the U.S. Government.

The laboratory’s IP counsel may subscribe to a financial service that can provide company financial profiles.

Networking with other Navy ORTA representatives may also be a good resource of information on ABC Company.

Section II - 6

Pricing the CRADA

Article 5 of the standard Navy CRADA addresses funding. There are four basic ways in which the work performed by the Navy Collaborator may be paid for performing the work that supports the CRADA.

1. Each collaborator funds its own effort.
2. The NNC fully pays for all services performed by the Navy Collaborator.
3. The NNC makes partial payment for services performed by the Navy Collaborator.
4. The Navy Collaborator is paid fully or in part by another Federal source.

The Anti-Deficiency Act requires that no work may be performed by a Federal employee for which funds have not been received in order to cover the costs associated with that effort. ORTA representatives are encouraged to remind Navy CRADA PIs of this requirement. The ORTA and Navy PI should mutually agree on the internal process within the laboratory for the management, monitoring and reporting of funds received from Non-Navy sources to support the CRADA effort.

This section of the Navy T2 Handbook addresses allowable charges to the NNC or a Non-Navy Federal source.

What is Permitted and Required?

By Federal law, the NNC may be charged for work that is to be accomplished through the use of a CRADA.

- 15 U.S. Code § 3710a

“...the term cooperative research and development agreement” means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement...”

If funds are collected from the NNC, the Navy is required to maintain accounting records and maintain records of all funds received and expended. This is explicitly stated in the standard Navy CRADA Article 5.4 “Accounting Records”.

“**[Navy Collaborator]** shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by **[Non-Navy Collaborator]** under this Agreement and shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. **[Navy Collaborator]** shall provide **[Non-Navy Collaborator]** a financial report within four (4) months after completion, expiration, or termination of this Agreement.” (underlined for emphasis)

What are Allowable Reimbursable Charges?

The following paragraphs describe items that are allowable as reimbursable charges to support the CRADA. Consult with your local comptroller to establish what algorithm is to be used in charges for the CRADA and format for the financial report. The financial report should be reviewed by the PI and the ORTA before distribution to the NNC.

1. Labor - All labor charges associated with establishing, performing, monitoring, and closing the CRADA may be charged. These charges are to be made according to the laboratory's rates for billing for external customers. This may include Navy/Marine Corps Internet charges that are added to basic labor rates.
 - a. Direct labor hours, including credit hours, compensatory time, and overtime are allowable charges for all scientists, engineers, and technicians. Management support costs are also allowable.
 - b. Administrative support by secretaries, budget office personnel, and contracting support personnel are also allowable charges. In some laboratories, these functions are required to be paid by direct labor charge codes, while others may be paid through general laboratory overhead.
 - c. Labor hours also may be charged by IP counsel and security personnel for basic CRADA review, review of CRADA amendments and time spent in CRADA negotiation. Again, in some laboratories this may be an overhead function not requiring a direct labor hour payment. **If labor hours are to be charged for IP counsel support, the Office of Counsel must be consulted and provide an ethics opinion agreeing to that charge.**
 - i. ORTA management may be an allowable charge. Again, this depends on how the laboratory has established the funding of the ORTA. Possible algorithms for charging for ORTA services include a fixed fee for service, and a threshold or percentage fee based upon the estimated in-house labor costs for externally funded CRADAs.
 - d. A laboratory may also issue a surcharge to the labor rate to cover the Navy's portion of the employee benefit package (i.e., retirement or social security). Depending on your laboratory, there may be a fixed percentage fee to cover these latter expenses when funds are received from non-Federal sources. Check with your comptroller.
2. Travel - travel costs for Federal employees may be paid for by third parties when associated with a CRADA. All travel costs allowed by the Joint Travel Regulations to perform the work under the CRADA are allowable. This includes compensatory travel time.
3. Materials - all costs associated with disposable and non-disposable material in support of work performed under the CRADA are allowable. This includes shipping, inventory control, storage, and disposal.

4. Facilities - the costs associated with operating a laboratory facility is an allowable charge. This cost may include the labor associated with operating personnel, any security charges that may be associated with maintaining the facility, and any depreciation costs for the facility.
5. Permits - any costs associated with special permits that may be required for the Navy Collaborator to perform its work under the CRADA are allowable charges.
6. IP - costs associated with copyrights, patent application and maintenance fees, are allowable charges. The process for determining these costs are determined through negotiation in accordance with the terms of Articles 7.10 and 7.13 of the standard Navy CRADA.

Section II - 7

The following is a sample memorandum the ORTA can send a CRADA's PI to remind the PI of his/her duties/responsibilities.

Principal Investigator Responsibilities

MEMORANDUM

Date:

From: [ORTA or Technology Transfer Office Representative]
(Office Code, Name)

To: Principal Investigator (PI) Code Number (PI Name)

Subject: CRADA Principal Investigator Responsibilities

Congratulations! The cooperative research and development agreement (CRADA) between [Navy Collaborator] (NAVY COLLABORATOR Acronym) and [Non-Navy Collaborator] (NCRADA-CRADA Number), was fully executed on **CRADA start date**. This memorandum is forwarded for information as it serves as a reminder of the specific terms of this Agreement as well as your responsibilities as CRADA PI. Please read this entire memo carefully and keep it in your files for future reference.

[Use the following paragraph if funds are received from the Non-Navy Collaborator to perform this Agreement.]

If [Non-Navy Collaborator] has agreed to provide funding for work to be done by [Navy Collaborator Acronym] under the CRADA, you are responsible for monitoring the expenditure of funds received from [Non-Navy Collaborator]. Because [Navy Collaborator Acronym] is a Navy Working Capital Fund organization, [Navy Collaborator Acronym] cannot provide any goods or services until funds have been received, nor can you continue [Non-Navy Collaborator] funded work after current received funds have been expended. You are to notify the [Navy Collaborator Acronym] ORTA when you are nearing the completion of the expenditure of funds received. The [Navy Collaborator Acronym] ORTA will send official notification to the [Non-Navy Collaborator] regarding any need for continued funding.

The CRADA PI is responsible for the following, either explicitly or as the representative of [Navy Collaborator Acronym] for the purposes of the CRADA:

- Conduct the scientific and technical aspects of the project within [Navy Collaborator Acronym] facilities or supervise aspects performed on behalf of [Navy Collaborator Acronym] by third parties. (Article 3.1 and Appendix A Statement of Work)
- Supervise [Navy Collaborator Acronym] representatives who perform cooperative work at [Non-Navy Collaborator]'s facilities. (Article 3.1)

- Provide interim report(s) of results to the undersigned (**state periodicity**) and, within four months of the termination or expiration of the Agreement, a final report. (Articles 6.1 and 6.2)
- Confer and consult with the **[Non-Navy Collaborator]** prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government Classified Information, or Controlled Unclassified Information is released and that patent rights are not compromised. (Article 6.3)
- Ensure proper handling and marking of all Data generated or shared. (Article 7.7)
- Ensure the Protection of Data including Classified Information, Controlled Unclassified Information, or otherwise restricted Information. (Article 7.5)
- Confer with **[Non-Navy Collaborator]** on the Delivery and Rights of Subject Data (Article 7.2) and Non-Subject Data (Article 7.3).
- Report to the **[Navy Collaborator Acronym]** ORTA and the Office of Counsel for Intellectual Property (**Organization Code**) any Copyrights by the **[Non-Navy Collaborator]** resulting from the Agreement. (Article 7.13)
- Report to the **[Navy Collaborator Acronym]** ORTA and the Office of Counsel for Intellectual Property (**Organization Code**) any Subject Invention within 60 days from the date the Subject Invention was made. (Article 7.8.1)
- Return any property, equipment, or other resources purchased or provided by **[Non-Navy Collaborator]** upon expiration or termination of the Agreement. (Article 8.1 - 8.3).

Questions regarding these responsibilities may be forwarded to the undersigned at *phone number*.

**[Technology Transfer Office or ORTA
Representative Name]**

Copy to:
 ORTA
 PI First Line Supervisor
 Intellectual Property Counsel
 Security Office

The Navy Cooperative Research and Development Agreement

Section III

- [III – 1](#) The Navy Cooperative Research and Development Agreement (NCRADA)
- [III – 2](#) CRADA Instructions
- [III – 3](#) Approved Alternative Articles
 - [III – 3a](#) CRADA Article 1, Definitions for Computer-Related Terms
 - [III – 3b](#) The Collaborative Work Involves Unclassified Export Controlled Technology
 - [III – 3c](#) The Non-Navy Collaborator is a State or Local Government Entity
 - [III – 3d](#) The Non-Navy Collaborator is a Public or Private Foundation that is not a Corporation
 - [III – 3e](#) The Non-Navy Collaborator is a U.S. College or University
 - [III – 3f](#) The Non-Navy Collaborator is a Single Individual Who is not a Business
 - [III – 3g](#) A Non-Navy Collaborator is Foreign Owned, Controlled or Influenced (FOCI)
 - [III – 3h](#) CRADA Article 4.3, Joint Representations and Warranties
 - [III – 3i](#) Funding is Being Provided to the Navy Collaborator by Another Federal Entity that is not the Non-Navy Collaborator
 - [III – 3j](#) CRADA Article 6.3, Agreement to Confer Prior to Publication or Public Disclosure of Information
 - [III – 3k](#) CRADA Article 8.1, Ownership of Tangible Property
 - [III – 3l](#) CRADA Article 10, General Provisions (Additional Language Regarding Duplicate Originals)
- [III – 4](#) Amendments
 - [III – 4a](#) Amendment Format
 - [III – 4b](#) Amendment Example

Section III - 1

The Navy Cooperative Research and Development Agreement (NCRADA)

General authority, enumerated authority, and contract considerations for cooperative research and development agreements (CRADAs) are described in Title 15 U.S. Code § 3710a. In executing this law, each Federal agency has established its own policy and guidance for CRADA format and content.

CRADA authority is delegated to Heads of Navy laboratories through the Secretary of the Navy Instruction (SECNAVINST) 5700.17 dated 27 March 2009. This instruction is currently under revision and is expected to be published by fiscal year (FY) 2018.

Responsibility for CRADAs

Each Federal agency may authorize the director of any of its Federal laboratories to enter into a CRADA (15 U.S. Code § 3710a). The Secretary of the Navy (SECNAV), Head of the Department of the Navy (DON), has delegated authority for technology transfer (T2) to the Chief of Naval Research (CNR), (10 U.S. Code § 5022). In turn, the CNR has allowed, under SECNAVINST 5700.17, the Heads of DON laboratories and Technical Activities to conduct T2 on behalf of the DON. The Head of a DON laboratory and/or Technical Activity is the Commanding Officer of, or person holding the equivalent military position at such activity. The Head of a DON laboratory/technical activity has the authority to enter into CRADAs, partnership intermediary agreements, patent licensing agreements and software licensing agreements for the DON provided that:

- (a) The following qualifications are met:
 1. Procedures are established for entering into CRADAs.
 2. Personnel with training or experience in T2 are designated to be responsible for implementing the procedures.
 3. A single point of contact for interface with the DON T2 Program Office is sent to the DON T2 Program Manager.
 4. Personnel responsible for implementing the procedures receive at least eight hours of training in T2 every year.

- (b) A legal review and a legal recommendation is obtained from an assigned Navy Office of General Counsel Intellectual Property attorney prior to entering into the agreement to ensure that the CRADA conforms to all statutes, regulations, Executive Orders, and other binding instructions and policies issued within the Department of Defense (DoD) and the DON.

- (c) A security review is obtained prior to entering into a CRADA to ensure that the agreement conforms to all statutes, regulations, Executive Orders, and all security regulations and instructions issued within the DoD and the DON.

- (d) Reports and executed copies of CRADAs are submitted as directed by the DON T2 Program Office.

(e) The U.S. Trade Representative is notified prior to entering into a CRADA with any entity that is directly or indirectly controlled or influenced by a foreign company or government, as required by Executive Order 12591, Section 4(a).

The Standard NCRADA

There are certain limitations under 15 U.S. Code § 3710a that the Navy has adopted as policy for the creation of CRADAs. The standard NCRADA and approved alternative Articles reflect this policy. A CRADA that deviates from the conditions of the standard is called a non-standard CRADA and must conform to Navy policy. All CRADAs are required to have local intellectual property counsel and security department review before signature. The local laboratory is fully responsible for CRADA contents.

General Instructions regarding the standard NCRADA are provided in [Section III - 2](#). The sample for the standard NCRADA is presented in [Section IV - 1](#).

Non-Standard NCRADAs

SECNAVINST 5700.17 also authorizes all DON laboratories and technical activities to enter into CRADAs that deviate from the standard agreement. In such cases, a written explanation of the reasons for the deviation shall be prepared and local intellectual property counsel review obtained prior to entering into the non-standard CRADA. Any Navy laboratory can agree to revised clauses to the NCRADA with the Non-Navy Collaborator without prior approval by the DON T2 Program Office, subject to local intellectual property counsel review. The Navy laboratory assumes responsibility for changes to the standard NCRADA and for any result caused by any deviation from the standard NCRADA language. Copies of the explanation and review are to be attached to the copies provided to the DON T2 Program Office.

Note: If a non-standard CRADA is negotiated and approved by local authority, the CRADA Title page and the Top of page 1 of the CRADA must be marked “NON-STANDARD”.

NCRADA Duration and Amendments

The original NCRADA duration shall be four years or less. A CRADA may be extended another two years, by amendment, with appropriate intellectual property counsel review and written justification. A CRADA that is extended beyond four years and up to six years is considered a non-standard CRADA. CRADAs cannot have a duration greater than six years.

Reporting Requirements

DON T2 Program Office Registration

Within TEN (10) days after the CRADA has been signed, the Office of Research and Technology Applications (ORTA) MUST provide the DON T2 Program Office the following items:

1. One electronic copy of the final signed CRADA which may be in pdf form (e-mail to the DON T2 Program Manager at the Office of Naval Research; Navy_Tech_Transfer@navy.mil).
2. All related documentation with samples may be in pdf form.

Correspondence should be addressed to:

Office of Naval Research
Department of the Navy Technology Transfer Program Office
875 North Randolph Street
Arlington, VA 22203-1995

Navy Defense Technology Transfer Information System (NDTTIS) Reporting

Reporting of CRADAs to the DoD is accomplished through the NDTTIS database by the DON T2 Program Office. This database is available at <https://secure.onr.navy.mil/crada/crada.asp> and is common access card enabled. To gain access to this database, requests must be submitted at <https://secure.onr.navy.mil/crada/neworta.asp>. The DON T2 Program Office at the Office of Naval Research approves requests.

The CRADA database can provide different reports on laboratory agreements and it includes laboratory documentation such as designation memoranda. ORTAs can designate more than one person from each lab to access the database. Each lab can only access its own information.

Section III - 2

CRADA Instructions

Instructions for Use of the 6th Edition, 24 February 2016, Standard NCRADA Sample

The standard NCRADA sample presented in [Section IV – 1](#) is designed as an agreement between one Navy laboratory and one U.S. commercial entity. A CRADA that deviates from the conditions of the standard, as outlined below, is a non-standard CRADA and must conform to Navy policy.

A CRADA will be Considered “standard” if the Following Conditions are Met:

1. The CRADA sample provided in this handbook is used WITHOUT MODIFICATION to the Articles listed below or uses approved alternative language for a Collaborator who is a State or local government, a public or private foundation, a nonprofit organization (including a college or university), or a single individual.
 - Article 1 (Definitions)
 - Article 7 (Intellectual Property)
 - Article 8 (Tangible Property)
 - Article 9 (Liability)
 - Article 10 (General Provisions)
 - Article 11 (Modifications and Notices)
 - Article 12 (Surviving Provisions)
2. The CRADA is with a single Non-Navy Collaborator. A CRADA with three or more collaborators is considered a non-standard CRADA.
3. The Non-Navy Collaborator is a U.S. entity: i.e., company, State or local government, public or private foundation, or nonprofit organization (including a college or a university), or a single individual. A CRADA involving a consortium, venture capitalist, an entity that is directly or indirectly controlled by a FOICI (Executive Order 12591, Section 4(a)), or an entity using SBIR funds for the CRADA effort is considered a non-standard CRADA.
4. The original CRADA duration is four years or less. A CRADA may be extended, up to another two years, by amendment with appropriate office of counsel review and written justification. A CRADA that is extended beyond four years and up to six years is considered a non-standard CRADA.
5. The CRADA *does not* provide more than \$3,000,000 to the Navy Collaborator.
6. The CRADA collaborative effort is unclassified.
7. The CRADA *does not* use Export Controlled technology.
8. The CRADA *is not* used for an agreement with an intermediary or technology “broker” for T2 or patent licenses.
9. The CRADA *does not* involve clinical trials.

In addition, a Limited Purpose-CRADA (LP-CRADA) that is prepared in accordance with the LP-CRADA sample provided in this handbook is considered standard. [Section IV - 5](#) provides the sample for a LP-CRADA.

Instructions in Brackets

Bolded text in brackets, e.g., [xyz], indicates text that is to be replaced when preparing a draft CRADA. Bracketed text in bold italics, e.g., [xyz], are instructional notes to be deleted entirely when drafting a CRADA. In the final document, all bracketed text in the CRADA sample is to be replaced or deleted as required.

The phrases [Navy Collaborator] and [Non-Navy Collaborator] are to be replaced with the full name of each Collaborator, together with its accepted acronym or abbreviation in parentheses, in the following locations:

1. Title page.
2. Top of page 1, in the heading “STANDARD NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT BETWEEN...”.
3. Paragraphs 1 and 2 of the PREAMBLE (page 1).
4. Title page of Appendix A (Statement of Work).

Use the acronym or abbreviation for all other references to [Navy Collaborator] and [Non-Navy Collaborator], including in the Table of Contents.

The variables in the Agreement Number on the title page represent the following:

NCRADA	=	Navy-issued CRADA
Navy Org.	=	Accepted acronym of issuing Navy activity
last two digits of FY	=	Last two digits of <u>Fiscal</u> Year issued
sequence number	=	Three digit serial numbering starting at 001. Do <i>not</i> restart at 001 in each new year. This should be a sequential numbering of <i>all</i> CRADAs entered into by a given Navy activity.

Appendices

Appendices to the NCRADA are required to provide additional information concerning the performance of tasks and the administration of the Agreement. The following listing describes various Appendices that make up your CRADA package. Other approved CRADA samples may require additional appendices (i.e., SBIR Collaborator, Clinical Trials CRADA). Please see [Section IV - 2](#) of this document for additional appendices.

Appendix A - Statement of Work (SOW)

The SOW is the required Appendix A of the CRADA. The SOW is divided into separate sections that list tasks to be performed solely by each Collaborator as well as those to be performed jointly, and is intended to clearly state the exact responsibilities of each Collaborator. The SOW should give sufficient detail to allow the Collaborators, and if necessary an outside party, to understand and know who will do what, when, and where. The SOW is not releasable to the public (Article 10.10). An example of a SOW may be found in [Section IV - 8c](#).

Appendix B - Third Party Agreement (Non-Navy Collaborator)

This Appendix may be used when the Non-Navy Collaborator is using a third party to perform work described in Appendix A, SOW. This appendix should be used in conjunction with Article 10.6 Subcontracting of the NCRADA.

Appendix C - Third Party Agreement (Navy Collaborator)

This Appendix may be used when the Navy Collaborator is using a third party to perform work described in Appendix A, SOW. This appendix should be used in conjunction with Article 10.6 Subcontracting of the NCRADA. Refer to [Section IV - 2b](#) of this handbook for a sample third party agreement and [Section VI - 2b](#) for a discussion on the use of contractors in CRADAs.

If the third party is performing work under another agreement, consult with your local legal counsel.

Section III - 3

Approved Alternative Articles

The following subsections provide approved alternative language that may be used in the standard NCRADA except where indicated. CRADAs that are non-standard are specified at the beginning of each subsection.

Subsection Number:

- [III - 3a](#) **CRADA Article 1**, Definitions for computer-related terms
- [III - 3b](#) The Collaborative Work Involves **Export Controlled Technology**
- [III - 3c](#) The Non-Navy Collaborator is a **State or Local Government Entity**
- [III - 3d](#) The Non-Navy Collaborator is a **Public or Private Foundation** that is not a Corporation
- [III - 3e](#) The Non-Navy Collaborator is a **U.S. College or University**
- [III - 3f](#) The Non-Navy Collaborator is a **Single Individual** Who is not a Business
- [III - 3g](#) The Non-Navy Collaborator is **Foreign Owned, Controlled or Influenced (FOCI)**
- [III - 3h](#) **CRADA Article 4.3**, Joint Representations and Warranties
- [III - 3i](#) **Funding is Being Provided** to the Navy Collaborator **by Another Federal Entity** that is not the Non-Navy Collaborator
- [III - 3j](#) **CRADA Article 6.3**, Agreement to Confer Prior to Publication or Public Disclosure of Information
- [III - 3k](#) **CRADA Article 8.1**, Ownership of Tangible Property
- [III - 3l](#) **CRADA Article 10**, General Provisions (Additional Language Regarding Duplicate Originals)

III - 3a CRADA Article 1, Definitions for Computer-Related Terms

- “Computer database” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- “Computer software” means computer programs, 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 data bases or computer software documentation.

III – 3b The Collaborative Work Involves Export Controlled Technology

CRADAs involving export controlled technology are to be considered Non-Standard. Consult with the laboratory’s/technical activity’s Office of Counsel when dealing with export controlled technology.

Article 3.2 is to be altered if the Collaborative Work involves export controlled technology. Also, per the instruction paragraph associated with this Article, an appropriate DD 2345, called a “Militarily Critical Technology Data Agreement” may be required to be attached to the CRADA as an appendix. Refer to [Section VI - 4](#) for more information on Export Control; [Section VI - 4a](#) provides an Export Control Article that can be tailored for use by the DON laboratory/technical activity.

Article 3.2 Security Regulations and Directives

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed.

[This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators’ facilities. If the Cooperative Work covers classified topics, a security clearance must be put in place for the Non-Navy Collaborator’s facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Navy Collaborator’s Security Office. If Export Control is needed, attach DD Form 2345, called a “Militarily Critical Technology Data Agreement” to this Agreement. If the Cooperative Work covers classified topics and the Non-Navy Collaborator is FOCI, then a Special Security Agreement (SSA) may be required. Refer to the Navy T2 Handbook.]

[If a DD Form 254 and/or 2345 are required, insert a copy as an attachment to the CRADA.]

[If needed, sample statements to be added include the following:]

Part of the work on this Agreement will involve access to and work on **export controlled technical data** that must be controlled in accordance with the International Traffic in Arms Regulations (ITAR). Prior to obtaining access or working on **export controlled technical**

data under this Agreement, **[Non-Navy Collaborator]** must have a current militarily critical technical data certification and a copy of its Militarily Critical Technical Data Agreement, DD Form 2345, must be submitted to **[Navy Collaborator]**.

[Non-Navy Collaborator]'s work on this Agreement requires access to information that requires a security clearance. **[Non-Navy Collaborator]** must have an approved DoD Contract Security Classification Specification, DD Form 254, approved and in place before any classified work is initiated under this Agreement.

III - 3c The Non-Navy Collaborator is a State or Local Government Entity

Article 4.2

The NCRADA sample Article 4.2 reads as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth]**.

[Non-Navy Collaborator], **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

For a **State or local government entity**, substitute the following:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a **[State or local]** government entity duly organized, validly existing, and in good standing under the laws of the **[State or Commonwealth]**.

III - 3d The Non-Navy Collaborator is a Public or Private Foundation that is not a Corporation

Article 4.2

The NCRADA sample Article 4.2 reads as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth]**.

[Non-Navy Collaborator], **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

For a **U.S. public or private foundation that is not a corporation**, substitute the following:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is an organization duly organized, validly existing, and in good standing under the laws of the **[State or Commonwealth]**.

III - 3e The Non-Navy Collaborator is a U.S. College or University

Article 4.2

The NCRADA sample Article 4.2 reads as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth]**.

[Non-Navy Collaborator], **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

For a **U.S. college or university**, substitute the following:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a **[college or university]** duly organized, validly existing, and in good standing under the laws of the **[State or Commonwealth]**.

III - 3f The Non-Navy Collaborator is a Single Individual Who is not a Business

Replace all labels **[Non-Navy Collaborator]** with the full name of the Non-Navy Collaborator or shortened form of name if desired.

Article 4.2 [Non-Navy Collaborator]’s Representations and Warranties

The NCRADA sample Article 4.2 reads as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth]**.

[Non-Navy Collaborator], **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

Substitute the following for a single individual:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a citizen of the United States and a resident of **[State or Commonwealth]**.

III - 3g The Non-Navy Collaborator is Foreign Owned, Controlled or Influenced (FOCI)

If the Non-Navy Collaborator is directly or indirectly owned or controlled by a FOCI, the CRADA is considered non-standard. The U.S. Trade Representative (USTR) must be consulted. Refer to [Section VI – 4b](#), 5 for information on coordination with the USTR.

There are many categories of FOCI entities, such as universities, companies, and U.S. subsidiaries of foreign companies. Article 4.2 must be revised appropriately for the case of organizations that are organized in a foreign country. For further information on FOCI see Section-VI of this handbook.

Article 4.2

The NCRADA sample Article 4.2 reads as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth]**.

Substitute the following for a FOCI that was organized in a foreign country:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a **[corporation, college, university, or organization]** duly organized, validly existing, and in good standing under the laws of **[indicate Country]**.”

III - 3h CRADA Article 4.3, Joint Representations and Warranties

The bold italics below can be added to Article 4.3 if needed.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

There is no express or implied warranty as to any research, Invention, or product, whether tangible or intangible. In particular, the Collaborators make no express or implied warranty as to the merchantability or fitness for a particular purpose of any research, Invention, or product, whether tangible or intangible. Likewise, the Collaborators make no express or implied warranty as to any Cooperative Work, Subject Invention, Subject Data, or other product resulting from the Cooperative Work.

Nothing in this Agreement shall be construed as a license to export Information or to permit any disclosure in violation of law, regulation, or Department of Defense or Navy policies. To the extent that any Information or materials may be exported (including deemed exports made in the U.S.), the exporting Collaborator is responsible for complying with all applicable export licensing requirements under U.S. Federal laws and regulations. [Non-Navy Collaborator] shall provide written notification to [Navy Collaborator] immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work (Appendix A) may require the introduction or generation of CUI, *or result in the generation of CUI because it is Proprietary Information or protected from disclosure under U.S. law or regulation.* All CUI that is introduced or generated in the performance of work under this Agreement shall be properly marked and safeguarded as provided herein and in all applicable U.S. Federal laws and regulations.

The work proposed in Appendix A is not classified and is not anticipated to require the introduction or result in the introduction or generation of Information that is classified or that meets the classification standards contained in Executive Order 13526 (“Classified National Security Information”). If, at any time during the performance of the Cooperative Work, either Collaborator should introduce or generate any Information that is classified or meets the classification standards contained in Executive Order 13526, the Information shall be properly marked, safeguarded, and [Navy Collaborator] Security shall be immediately notified.

III - 3i Funding is Being Provided to the Navy Collaborator by Another Federal Entity that is not the Non-Navy Collaborator

Article 5

If the Navy Collaborator or both Collaborators will be funded by another Government agency (e.g. Defense Advanced Research Projects Agency (DARPA)), use the following alternative for Article 5:

5.1 Payment Schedule

Each Collaborator will fund its own efforts.

[Navy Collaborator]’s participation in this Agreement is contingent upon its receipt of funds from [Government sponsoring agency] *via Military Interdepartmental Procurement Request (MIPR) number XXXXX (italicized text is optional or may be modified for the specific CRADA)* in accordance with Article 5.2.

III - 3j CRADA Article 6.3, Agreement to Confer Prior to Publication or Public Disclosure of Information

“The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government Classified Information, or CUI is released and that patent rights are not compromised. Prior to any such publication or public disclosure of Subject Data, the disclosing Collaborator shall notify the receiving Collaborator’s point of contact identified in Article 11.3; all other notices and communications shall be sent according to Article 11.3. All publications containing Subject Data shall be approved by the [Navy Collaborator] Office of Intellectual Property and [Navy Collaborator] Security prior to public disclosure.”

III - 3k CRADA Article 8.1, Ownership of Tangible Property

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to all Tangible Property to which it had title before the Effective Date of this Agreement, aside from any exceptions stated in Appendix A. All Tangible Property developed under this Agreement with all components purchased by one Collaborator shall be the property of that Collaborator. In the case of Tangible Property containing components provided by both Collaborators, the Collaborators may, by mutual agreement, decide which Collaborator shall own the Tangible Property, or separate the Tangible Property into its components. These separated components shall remain the property of the Collaborator that purchased them, aside from any exceptions stated in Appendix A.

III - 3l CRADA Article 10, General Provisions (Additional Language Regarding Duplicate Originals)

“This Agreement and any future modifications to this Agreement may be signed and executed in duplicate originals, or in separate, counterparts, all of which taken together shall constitute but one and the same instrument which is effective as if the parties signed a single original. A facsimile of an original signature (including an electronically submitted pdf file of a scanned document with an original signature) is effective as if the original was sent to the other party.”

Section III - 4

Amendments

Amendments to the CRADA are allowed under the Article 11.1. Amendments must be signed prior to the latest expiration date of the CRADA. A CRADA cannot be amended once it has expired.

Typical acceptable reasons for amendments are:

1. Administrative changes (e.g., change in points of contact, principal investigator, address, contact information, collaborator name)
2. Collaborator status changed (e.g., merger, company purchased by another)
3. Duration (extend period of performance, up to two years)
4. Addition of collaborator
5. Addition/deletion of funding
6. Modification of specific tasks that are within the scope of original SOW
7. Addition/deletion of security requirements

For modifications to CRADAs involving FOCI, the USTR is to be consulted again if there are changes in the country affiliation of the Non-Navy Collaborator or changes in the subject technology of the CRADA. Consult with the Navy T2 Program Manager. Refer to [Section VI – 4b](#).

****Local counsel should be consulted regarding any amendment.****

The amendment format is provided in [Section III - 4a](#) and an example amendment is provided in [Section III - 4b](#).

Section III - 4a

Amendment Format

The DON T2 Program Office approved format for Amendments follows:

[INSERT AMENDMENT NUMBER, i.e., FIRST, SECOND, etc.]
AMENDMENT OF
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN
[INSERT COMMAND NAME OF NAVY COLLABORATOR]
AND
[INSERT FULL NAME OF NON-NAVY COLLABORATOR]

The **[Navy Collaborator]** (**Abbreviation of Command Name**) and **FULL NAME OF [Non-Navy Collaborator]** (**Abbreviation of Non-Navy Collaborator**), agree to amend the Cooperative Research and Development Agreement (CRADA) entitled “[**INSERT SUBJECT OF CRADA FROM COVER PAGE**]”, NCRADA Number [**USE NUMBER FROM CRADA COVER PAGE**] by [**DESCRIBE HOW YOU ARE CHANGING THE CRADA**].

1. **[Navy Collaborator]** and **[Non-Navy Collaborator]** agree to amend Article _____ to read as follows:

[INSERT THE ENTIRE TEXT OF THE AMENDED ARTICLE]
[LIST EACH AMENDED ARTICLE SEPARATELY]

2. All other terms and conditions of the Agreement remain in effect.

For the **[Non-Navy Collaborator]**:

I, the undersigned, am duly authorized to bind **[Non-Navy Collaborator]** to the Amendment(s) of this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of 2____.

By:
Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of 2____.

By:
Title:

Navy Organization:

Section III - 4b

Amendment Example

FIRST AMENDMENT OF
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT BETWEEN
[NAVY COLLABORATOR]
AND
[NON-NAVY COLLABORATOR]

[NAVY COLLABORATOR] and [NON-NAVY COLLABORATOR] agree to amend the Cooperative Research and Development Agreement (CRADA) NCRADA-[Navy Org]-[last two digits of FY]-[sequence number] entitled "[add Agreement Title of CRADA]" by adding \$XX,000 in funding to [NAVY COLLABORATOR], changing the [NON-NAVY COLLABORATOR] PI, and extending the agreement by one (1) year in support of additional tasks in the Statement of Work.

1. [NON-NAVY COLLABORATOR]'s Preferred Contact and Principal Investigator, [insert name], shall be replaced by [insert name], [insert telephone number], [insert email].

2. **Article 5, FUNDING**, shall now be completely replaced by the following:

“5.1 Payment Schedule

[NON-NAVY COLLABORATOR] agrees to pay [NAVY COLLABORATOR] the following costs in accordance with the payment schedule below:

[NON-NAVY COLLABORATOR] shall provide one (1) payment of XXX dollars (**insert dollar amount**) to [NAVY COLLABORATOR] within fifteen (15) days of the execution of the FIRST AMENDMENT.

The total amount that [NON-NAVY COLLABORATOR] pays shall be XXX dollars (**insert dollar amount**). The funded amount will be used to support [NAVY COLLABORATOR] research as described in the Statement of Work (Appendix A).

If mutually agreed, [NON-NAVY COLLABORATOR] may provide additional funding to [NAVY COLLABORATOR] under one or more amendments to this CRADA.

Checks will be payable to:

[NAVY COLLABORATOR]

Each check and its cover correspondences shall refer to Navy CRADA number "NCRADA-[NAVY COLLABORATOR]-XX-XXX."

Checks will be mailed to:

[NAVY COLLABORATOR'S address]

5.2 Insufficient and Excess Funds

[NAVY COLLABORATOR] may discontinue performance under this Agreement if the funds provided by [NON-NAVY COLLABORATOR] for performance by [NAVY COLLABORATOR] are insufficient or are not provided as specified in Article 5.1. In the event [NON-NAVY COLLABORATOR] fails to tender the Government the required payment within fifteen (15) days after its respective due date, [NON-NAVY COLLABORATOR] shall be in default under this Agreement for failure to make payments. If [NON-NAVY COLLABORATOR] is in default for this reason, [NAVY COLLABORATOR] shall notify [NON-NAVY

COLLABORATOR]. If **[NON-NAVY COLLABORATOR]** does not cure the default within fifteen (15) days of mailing date of notice, **[NAVY COLLABORATOR]** may proceed to terminate the Agreement in accordance with Article 11.2.2, may cancel any option for an Exclusive License to a Subject Invention, and may terminate any Exclusive License granted pursuant to this Agreement.

Funds that **[NON-NAVY COLLABORATOR]** paid under Article 5.1 and that **[NAVY COLLABORATOR]** has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to **[NON-NAVY COLLABORATOR]** after **[NAVY COLLABORATOR's]** submission of a final fiscal report to **[NON-NAVY COLLABORATOR]**.

5.3 No New Commitments

[NAVY COLLABORATOR] shall make no new commitments concerning this Agreement after receipt of a written termination notice from **[NON-NAVY COLLABORATOR]** in accordance with Article 11.2 and shall, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by **[NAVY COLLABORATOR]**, **[NON-NAVY COLLABORATOR]** agrees that such costs shall be chargeable against any funding that it provided to **[NAVY COLLABORATOR]**.

5.4 Accounting Records

[NAVY COLLABORATOR] shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by **[NON-NAVY COLLABORATOR]** under this Agreement; and **[NAVY COLLABORATOR]** shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. **[NAVY COLLABORATOR]** shall provide **[NON-NAVY COLLABORATOR]** a financial report within four (4) months after completion, expiration, or termination of this Agreement."

3. Article 7.3.8.1, Cancellation of the Commercial License Option and Termination of Commercial Licenses, shall have the following inserted as item (a) and be renumbered accordingly:

"**[NON-NAVY COLLABORATOR]** is in default for failure to make payment as agreed in Article 5; or"

4. **Article 13, DURATION**, shall now read (changes in *bold italics*):

"This Agreement expires *two (2) years* after its Effective Date, unless otherwise terminated or extended in writing according to the provisions of Article 11."

5. This Amendment may be signed and executed in duplicate originals, or in separate, counterparts, all of which taken together shall constitute but one and the same instrument which is effective as if the parties signed a single original. A facsimile of an original signature (including an electronically submitted PDF file of a scanned document with an original signature) is effective as if the original was sent to the other party.

6. All other terms and conditions of the Agreement remain in effect.
For the **[Non-Navy Collaborator]**:

I, the undersigned, am duly authorized to bind **[Non-Navy Collaborator]** to the Amendment(s) of this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of 2____.

By:
Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of 2____.

By:

Title:

Navy Organization:

Cooperative Research and Development Agreement Sample Introduction and Examples

Section IV

- [IV](#) Cooperative Research and Development Agreement (CRADA) Sample Introduction
- [IV – 1](#) The Standard [NCRADA](#)
- [IV – 2](#) Supplemental Appendices
 - [IV – 2a](#) Sample for a Third Party Agreement Used When Non-Navy Collaborator Uses a Third Party
 - [IV – 2b](#) Sample for a Third Party Agreement Used When Navy Collaborator Uses a Third Party
 - [IV – 2c](#) Sample for a CRADA Final Report
- [IV – 3](#) [Multiple Party Non-Standard CRADA](#)
- [IV – 4](#) [Clinical Trails Non-Standard CRADA](#)
- [IV – 5](#) Limited Purpose-CRADAs (LP-CRADAs) ([Navy Collaborator to Non-Navy Collaborator](#); [Non-Navy Collaborator to Navy Collaborator](#))
- [IV – 6](#) [The Small Business Innovation Research \(SBIR\) Funded Non-Standard CRADA](#)
- [IV – 7](#) [Technical Assistance Non-Standard CRADA](#)
- [IV – 8](#) Examples
 - [IV – 8a](#) NCRADA Article 2, Objectives (Two Examples)
 - [IV – 8b](#) NCRADA Article 5, Funding (Two Examples)
 - [IV – 8c](#) NCRADA Appendix A, Statement of Work (One Example)

Section IV

Cooperative Research and Development Agreement (CRADA) Sample Introduction

[Sections IV - 1](#) through [IV - 7](#) contain the approved model for the standard Navy CRADA (NCRADA), supplemental appendices, and approved samples for non-standard CRADAs. Supplemental appendices provided here are samples for Third Party Agreements and a CRADA Report. The use of the standard NCRADA is subject to the terms and conditions described in [Section III](#) of this handbook.

Changes made to these CRADAs using any of the approved alternative language clauses are to be made in accordance with the Instructions, [Section III - 2](#), of this handbook.

The Supplemental Appendix to the standard CRADA, Final Report, is not currently a requirement to be included in the CRADA. If this appendix is included in the standard CRADA or to any of the approved non-standard CRADAs, Article 6.2 should be modified to reflect that the final report will use that format.

Each of the samples for non-standard CRADAs included in this section is preceded by an explanation of the scope of that particular CRADA. [Section IV - 8](#) provides examples of [CRADA Objectives](#) (Article 2), [Funding](#) (Article 5), and [Statement of Work](#) (Appendix A).

Section IV - 1

The Standard NCRADA - Explanation

This section provides the model for the standard NCRADA. Refer to [Section III - 2](#) for instructions for use of this model CRADA.

STANDARD
NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[full name of NAVY COLLABORATOR then acronym]

AND

[full name of NON-NAVY COLLABORATOR then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: NCRADA - **[Navy Org.] - [last two digits of FY] - [sequence number]**

AGREEMENT ADMINISTRATORS:

[NAVY COLLABORATOR acronym]

Technology Transfer ORTA: **[insert name, organization code, telephone number, e-mail address]**

Intellectual Property Counsel: **[insert name, organization code, telephone number, e-mail address]**

Principal Investigator: **[insert name, organization code, telephone number, e-mail address]**

[NON-NAVY COLLABORATOR acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel *[Optional]*: **[insert name, telephone number, e-mail address]**

Principal Investigator: **[insert name, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE 1

Article 1. DEFINITIONS 1

1.1 “Agreement” 1

1.2 “Classified Information (CI)” 1

1.3 “Collaborator” 1

1.4 “Controlled Unclassified Information (CUI)” 2

1.5 “Cooperative Work” 2

1.6 “Data” 2

1.7 “Effective Date” 2

1.8 “Exclusive Commercial License” 2

1.9 “For Official Use Only (FOUO)” 2

1.10 “Government” 2

1.11 “Government Purpose Rights” 2

1.12 “Information” 2

1.13 “Intellectual Property” 2

1.14 “Internal Use License” 2

1.15 “Invention” 2

1.16 “Invention Disclosure” 2

1.17 “Jointly Made Subject Invention” 2

1.18 “Limited Rights” 2

1.19 “Made” 2

1.20 “Nonexclusive Commercial License” 2

1.21 “Non-Subject Data” 3

1.22 “Non-Subject Invention” 3

1.23 “Patent Application” 3

1.24 “Principal Investigator (PI)” 3

1.25 “Proprietary Information” 3

1.26 “Subject Data” 3

1.27 “Subject Invention” 3

1.28 “Tangible Property” 3

1.29 “Technical Data” 3

1.30 “Technical Document” 3

1.31 “Technical Information” 3

1.32 “Unlimited Rights” 3

Article 2. OBJECTIVES 3

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE 3

3.1 Facilities and Supervision 3

3.2 Security Regulations and Directives 4

Article 4. REPRESENTATIONS AND WARRANTIES 4

4.1 [Navy Collaborator]’s Representations and Warranties 4

4.2 [Non-Navy Collaborator]’s Representations and Warranties 4

4.3 Joint Representations and Warranties 5

Article 5. FUNDING 5

5.1	Payment Schedule	6
5.2	Insufficient and Excess Funds	6
5.3	No New Commitments	6
5.4	Accounting Records	6
Article 6.	REPORTS AND PUBLICATIONS	7
6.1	Interim Reports	7
6.2	Final Reports	7
6.3	Agreement to Confer Prior to Publication or Public Disclosure of Information	7
6.4	Public Presentation of Subject Data	7
Article 7.	INTELLECTUAL PROPERTY	7
7.1	Rights Under Other Agreements	7
7.2	Rights in Subject Data	8
7.2.1	Rights of Both Collaborators	8
7.2.2	Rights of [Navy Collaborator]	8
7.2.3	Rights of [Non-Navy Collaborator]	8
7.3	Rights in Non-Subject Data	8
7.3.1	Rights of Both Collaborators	8
7.3.2	Rights of [Navy Collaborator]	8
7.3.3	Rights of [Non-Navy Collaborator]	8
7.4	No Implied License	8
7.5	Protection of Data	9
7.6	Release of Data Under the Freedom of Information Act	9
7.7	Marking of Data	9
7.7.1	Markings Required for Both Collaborators	9
7.7.1.1	Data Provided with Less than Unlimited Rights	9
7.7.1.2	Data that are CI, CUI, or Otherwise Restricted	9
7.7.1.3	For Official Use Only (FOUO) Marking	9
7.7.2	Markings Required for [Navy Collaborator]	10
7.7.2.1	Data that are Subject to 35 U.S. Code § 205	10
7.7.2.2	Data Protected Under Article 7.5	10
7.7.3	Markings Required for [Non-Navy Collaborator]	10
7.7.3.1	Data that are Proprietary Information	10
7.8	Subject Inventions	10
7.8.1	Reporting of Subject Inventions	10
7.8.2	Determination of Subject Inventions	10
7.8.3	Title to and Ownership of Subject Inventions	11
7.9	Non-Subject Inventions	11
7.9.1	Ownership of Non-Subject Inventions	11
7.9.2	Preexisting Non-Subject Inventions Pertinent to the Cooperative Work	11
7.10	Filing of Patent Applications	11
7.10.1	Patent Filing	11
7.10.2	Copies and Inspection	12
7.10.3	Rights of Inventors if the Collaborators Decline to File a Patent Application	12
7.11	Licenses to Subject Inventions	12
7.11.1	Internal Use License to [Non-Navy Collaborator]	12
7.11.2	Government License	12
7.11.3	Option for Commercial License to Subject Inventions	12

7.11.4	Termination of Licenses Granted and Cancellation of License Option to Subject Inventions	13
7.12	License to Non-Subject Inventions	13
7.13	Copyrights	13
Article 8.	TANGIBLE PROPERTY	13
8.1	Ownership of Tangible Property	13
8.2	Tangible Property Operational and Disposition Costs	14
8.3	Disposal of Tangible Property	14
Article 9.	LIABILITY	14
9.1	Extent of Government Liability	14
9.2	Extent of [Non-Navy Collaborator] Liability	14
9.3	Force Majeure	14
Article 10.	GENERAL PROVISIONS	14
10.1	Entire Agreement	14
10.2	Severability	15
10.3	Interpretation of Headings	15
10.4	Governing Laws	15
10.5	Independent Parties/Entities	15
10.6	Subcontracting	15
10.7	Assignment	15
10.8	Disputes	15
10.9	Use of Name or Endorsements	15
10.10	Public Release Announcements of This Agreement	16
10.11	Environment, Safety, and Health	16
10.12	U.S. Competitiveness	16
10.13	Waivers	16
Article 11.	MODIFICATIONS AND NOTICES	16
11.1	Amendments	16
11.2	Unilateral Termination	16
11.3	Notices	16
Article 12.	SURVIVING PROVISIONS	17
Article 13.	DURATION	17
Article 14.	SIGNATURES	17
	APPENDIX A - STATEMENT OF WORK	Error! Bookmark not defined.

STANDARD

NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[Navy Collaborator full name then acronym]

AND

[Non-Navy Collaborator full name then acronym]

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of the Navy Collaborator, [Navy Collaborator name and address], and the Non-Navy Collaborator described below agree to and enter into this Cooperative Research and Development Agreement (CRADA).

[Insert full name of Non-Navy Collaborator followed by acronym and address], is a corporation [substitute appropriate alternate language for a different entity, e.g., a university] duly organized, validly existing and in good standing under the laws of the [State or Commonwealth] of [indicate name].

[Note to ORTA: If the Non-Navy Collaborator is a FOCl, please add the following sentence in the above paragraph. Also, state the name of the parent company and the country in which it is incorporated.]

Further, [Non-Navy Collaborator] is directly or indirectly controlled by a foreign company or government [Executive Order 12591], Section 4 (a), specifically, [insert name of parent company and the country in which it is incorporated].

[Navy Collaborator] has extensive expertise, capabilities, and information in [state technology area], and in accordance with the U.S. Federal Technology Transfer Act, desires to make this expertise and technology available for use in the public and private sectors.

[Non-Navy Collaborator] has the interest, resources, capabilities, and technical expertise to transition the results of Naval research and development for public use.

Article 1. DEFINITIONS

[Note to ORTA: Specialized definitions required for this Agreement may be added alphabetically within the DEFINITIONS. If specialized definitions are added, they must be included in the Table of Contents.]

As used in this Agreement, the following terms shall have the meanings defined below, which are equally applicable to both the singular and plural forms of nouns or any tense of verbs.

1.1 “Agreement” means this Cooperative Research and Development Agreement (CRADA) with its Appendices.

1.2 “Classified Information (CI)” means all Information classified in accordance with the national security laws of the United States.

1.3 “Collaborator” means the Navy participant or the Non-Navy participant represented and bound by the signatories of this Agreement.

1.4 “Controlled Unclassified Information (CUI)” means official Information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

1.5 “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by [Navy Collaborator] or [Non-Navy Collaborator] working individually or together, pursuant to the Objectives (Article 2) and the Statement of Work (Appendix A).

1.6 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

1.7 “Effective Date” means the date of the last signature of the Collaborators executing this Agreement.

1.8 “Exclusive Commercial License” means the grant by the owner of Intellectual Property of the exclusive right to make, use, or sell an Invention for commercial purposes.

1.9 “For Official Use Only (FOUO)” means a protective marking to be applied to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the Freedom of Information Act. This includes information that qualifies for protection under the provisions of the Privacy Act of 1974, as amended.

1.10 “Government” means the Government of the United States of America.

1.11 “Government Purpose Rights” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes. Government Purpose Rights includes competitive procurement, but does not include the right to have or permit others to use Data for commercial purposes.

1.12 “Information” means all Data, trade secrets, and commercial and financial information.

1.13 “Intellectual Property” means the property of ideas, examples of which include, but are not limited to, patents, trademarks, copyrights, and trade secrets.

1.14 “Internal Use License” means the grant by the owner of Intellectual Property of the right to make, have made, use, and import, but not commercially sell, an Invention or a product or service made using an Invention.

1.15 “Invention” means any creation or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act.

1.16 “Invention Disclosure” means the document identifying and describing to organizational management the Making of an Invention.

1.17 “Jointly Made Subject Invention” means any Invention Made jointly by the Collaborators.

1.18 “Limited Rights” means that each Collaborator of this Agreement may use, reproduce, and disclose to their employees properly marked Non-Subject Data provided by the other Collaborator(s) for use in support only of this Cooperative Work.

1.19 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention.

1.20 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell an Invention.

- 1.21 “Non-Subject Data” means any Data that are not Subject Data.
- 1.22 “Non-Subject Invention” means any Invention that is not a Subject Invention.
- 1.23 “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.
- 1.24 “Principal Investigator (PI)” means that person having the responsibility for the performance of the Cooperative Work on behalf of a Collaborator.
- 1.25 “Proprietary Information” means Information that:
- (i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information (a) is not known or available from other sources without obligations concerning its confidentiality, (b) has not been made available by the owners to others without obligation concerning its confidentiality, (c) is not already available to the Government without obligation concerning its confidentiality, and (d) has not been developed independently by persons who have had no access to the information; or
 - (ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.25(i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.
- 1.26 “Subject Data” means that Data first recorded in the performance of the Cooperative Work.
- 1.27 “Subject Invention” means any Invention Made in the performance of the Cooperative Work.
- 1.28 “Tangible Property” means personal or real property having or possessing physical form.
- 1.29 “Technical Data” means recorded Information relating to experimental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair or overhaul material, including, but not limited to graphic or pictorial delineations in media.
- 1.30 “Technical Document” means recorded Information that conveys scientific and Technical Information or Technical Data.
- 1.31 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.
- 1.32 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Article 2. OBJECTIVES

[Describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of this Agreement. State the desired outcome by each Collaborator, including any intentions for commercialization, if appropriate. This Article and the Statement of Work, Appendix A, are the defining articles for the Cooperative Work to be done by the Collaborators.]

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE

- 3.1 Facilities and Supervision

The Collaborators shall provide personnel, facilities, and equipment necessary for, and shall perform, the Cooperative Work.

The Cooperative Work done by each Collaborator will be performed under the program guidance of its PI, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within that Collaborator's facilities or done on behalf of that Collaborator by third parties in support of this Agreement. Personnel who perform Cooperative Work at the other Collaborator's facilities will be supervised by their own PI.

[Note to ORTA: Refer to the Navy T2 Handbook when third parties are used by the Collaborators as part of this Agreement.]

3.2 Security Regulations and Directives

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed.

[Note to ORTA: This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators' facilities. If the Cooperative Work covers classified topics, a security clearance must be put in place for the Non-Navy Collaborator's facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Navy Collaborator's Security Office. If Export Control is needed, attach DD Form 2345, called a "Militarily Critical Technology Data Agreement" to this Agreement. If the Cooperative Work covers classified topics and the Non-Navy Collaborator is FOCI, then a FOCI Mitigation Instrument may be required. Refer to the Navy T2 Handbook.]

Article 4. REPRESENTATIONS AND WARRANTIES

4.1 [Navy Collaborator]'s Representations and Warranties

[Navy Collaborator] hereby warrants and represents to [Non-Navy Collaborator] that the performance of the activities specified by this Agreement is consistent with the [specify the appropriate mission area] and technology transfer missions of [Navy Collaborator]. [Navy Collaborator] is a Federal laboratory of the U.S. Department of the Navy, as defined by 15 U.S. Code § 3710a (d)(2)(A) and Department of Defense Instruction 5535.8, dated May 14, 1999.

[Note to ORTA: The following Article 4.2 is for a single commercial entity. Choose the appropriate alternatives to Article 4.2 from those listed in the Navy T2 Handbook according to the nature of the Non-Navy Collaborator(s): A university, nonprofit entity, State or local government, an entity directly or indirectly foreign owned, controlled, or influenced (FOCI), an entity comprised of multiple Collaborators.]

4.2 [Non-Navy Collaborator]'s Representations and Warranties

[Non-Navy Collaborator] hereby warrants and represents to [Navy Collaborator] as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of [State or Commonwealth].

[Non-Navy Collaborator] [is/is not] a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

[Note to ORTA: The following paragraph is to be used only if the Non-Navy Collaborator is not a FOCI as of the signature date of this Agreement.]

If [Non-Navy Collaborator] or its successor or assignee is a U.S. company, and becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a foreign company or government (FOCI), the [Non-Navy Collaborator] or its successor or assignee shall promptly notify [Navy Collaborator] to that effect.

[Note to ORTA: If on the signature date of this Agreement the Non-Navy Collaborator is a FOCI, insert the following paragraph. In addition, an Amendment to this CRADA is required – see the Navy T2 Handbook. Otherwise, omit the following paragraph.]

If [Non-Navy Collaborator] or its successor or assignee becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a different foreign company or government (FOCI) then it or its successor or assignee shall promptly notify [Navy Collaborator] to that effect.

The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any agreement binding on [Non-Navy Collaborator]. Furthermore, the execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any valid order of any court, or any regulatory agency or other body having authority to which [Non-Navy Collaborator] is subject.

[Non-Navy Collaborator] is not currently subject to debarment or suspension by any agency of the Government. Should [Non-Navy Collaborator] be debarred or suspended during the term of this Agreement or thereafter, [Non-Navy Collaborator] will notify [Navy Collaborator] within thirty (30) days of receipt of a final notice. [Navy Collaborator] may then elect to terminate this Agreement and any licenses and options granted under this Agreement.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

There is no express or implied warranty as to any research, Invention, or product, whether tangible or intangible. In particular, the Collaborators make no express or implied warranty as to the merchantability or fitness for a particular purpose of any research, Invention, or product, whether tangible or intangible. Likewise, the Collaborators make no express or implied warranty as to any Cooperative Work, Subject Invention, Subject Data, or other product resulting from the Cooperative Work.

[Note to ORTA: See the Navy T2 Handbook for approved alternative language to the following paragraph.]

The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to export Information. The exporting Collaborator is responsible for obtaining any export licenses and/or foreign disclosure reviews that may be required by U.S. Federal law. [Non-Navy Collaborator] shall provide written notification to [Navy Collaborator] immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work, Appendix A, may require the introduction or generation of CUI. All CUI that is introduced or generated in the performance of work under this Agreement shall be properly marked and safeguarded as provided herein and in all applicable U.S. Federal laws and regulations.

Article 5. FUNDING

[Note to ORTA: IF NO PAYMENTS ARE TO BE MADE by Non-Navy Collaborator to Navy Collaborator, or Navy Collaborator is using in-house funding or Government funds already received, use the following phrase and remove Articles 5.1 through 5.4 below and from the Table of Contents.]

Each Collaborator will fund its own efforts.

[Note to ORTA: Consult the Navy T2 Handbook for the situations in which payments are made only after the completion of a critical milestone in the Cooperative Work or in the case where Navy Collaborator's participation is contingent upon receipt of funds from another Government organization.]

[Note to ORTA: IF PAYMENTS ARE TO BE MADE directly from Non-Navy Collaborator to Navy Collaborator, use the following Articles.]

5.1 Payment Schedule

[Non-Navy Collaborator] agrees to pay **[Navy Collaborator]** the following fees/costs in accordance with the payment schedule below:

[Note to ORTA: Insert amount to be paid, identify the task for which payment is made, the schedule of the tasks, and date of payment or, if preferred, the date and amount of each scheduled payment.]

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number]."

Checks will be mailed to:

[Note to ORTA: Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

5.2 Insufficient and Excess Funds

[Navy Collaborator] will not start or continue performance under this Agreement if the funds provided by **[Non-Navy Collaborator]** for performance by **[Navy Collaborator]** are insufficient or are not provided as specified in Article 5.1.

In the event **[Non-Navy Collaborator]** fails to tender the Government the required payment within fifteen (15) days after its respective due date, **[Non-Navy Collaborator]** shall be in default under this Agreement for failure to make payments. If **[Non-Navy Collaborator]** is in default for this reason, **[Navy Collaborator]** shall notify **[Non-Navy Collaborator]**. If **[Non-Navy Collaborator]** does not cure the default within fifteen (15) days of date of notice, **[Navy Collaborator]** may proceed to terminate the Agreement in accordance with Article 11.2, and may cancel any option for an Exclusive Commercial License to a Subject Invention, and may terminate any Exclusive Commercial License granted pursuant to this Agreement.

Excess Funds that **[Non-Navy Collaborator]** provided under Article 5.1 that **[Navy Collaborator]** has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to **[Non-Navy Collaborator]** after **[Navy Collaborator]**'s submission of a final financial report to **[Non-Navy Collaborator]**.

5.3 No New Commitments

[Navy Collaborator] shall make no new commitments concerning this Agreement after receipt of a written termination notice from **[Non-Navy Collaborator]** in accordance with Article 11.2 and shall, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by **[Navy Collaborator]**, **[Non-Navy Collaborator]** agrees that such costs shall be chargeable against any funding that it provided to **[Navy Collaborator]**.

5.4 Accounting Records

[**Navy Collaborator**] shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by [**Non-Navy Collaborator**] under this Agreement and shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. [**Navy Collaborator**] shall provide [**Non-Navy Collaborator**] a financial report within four (4) months after completion, expiration, or termination of this Agreement.

Article 6. REPORTS AND PUBLICATIONS

6.1 Interim Reports

The Collaborators shall submit [**insert number or frequency for each interim written report**] interim written reports to each other on the progress of the Cooperative Work.

6.2 Final Reports

The PIs shall submit to the [**Navy Collaborator**] Technology Transfer Office and [**Non-Navy Collaborator**] preferred contact a final report within four (4) months of the completion, termination, or expiration of this Agreement that includes the results obtained and a list of all Subject Inventions Made.

6.3 Agreement to Confer Prior to Publication or Public Disclosure of Information

For the purposes of this Article, the term “disclosure” shall include, but not be limited to, submission of any manuscript for peer review prior to publication.

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government CI, or CUI, is released and that patent rights are not compromised. Prior to any such publication or public disclosure of Subject Data, each Collaborator shall be offered a period not to exceed thirty (30) days, to review any proposed abstract, publication, presentation, or other document for public disclosure.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the other Collaborator within thirty (30) days of the date of notice of intent to disclose publicly. If no objection is received by the Collaborator intending to make public disclosure, concurrence is assumed.

If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator before the public disclosure or by another date mutually agreed to by the Collaborators.

If a Collaborator objects to the release of Information on the grounds that the Information is Proprietary Information, or Information whose dissemination is restricted by U.S. security laws or regulations, the disclosure shall be postponed until the Information no longer meets the definitions of Proprietary Information, or is no longer covered by U.S. security laws or regulations.

6.4 Public Presentation of Subject Data

Any public presentation that includes Subject Data that are CI or CUI must have prior review and approval by [**Navy Collaborator**] pursuant to the pertinent security laws, regulations, and directives.

Article 7. INTELLECTUAL PROPERTY

7.1 Rights Under Other Agreements

Nothing in this Agreement is intended to change the rights in Intellectual Property acquired by the Collaborators in any other contract or Agreement between the [**Non-Navy Collaborator**] and the Government.

7.2 Rights in Subject Data

7.2.1 Rights of Both Collaborators

Each Collaborator shall have title to all Subject Data generated by that Collaborator. Each Collaborator agrees to provide all Subject Data to the other Collaborator and hereby grants Unlimited Rights in Subject Data that does not contain Proprietary Information.

7.2.2 Rights of [Navy Collaborator]

For Subject Data that contains [Non-Navy Collaborator]'s Proprietary Information, the Government has rights to: 1) Use, modify, reproduce, release, perform, display, or disclose Technical Data within the Government without restriction; and 2) Release or disclose Subject 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 Subject Data for any U.S. Government purpose including competitive procurement.

7.2.3 Rights of [Non-Navy Collaborator]

For Subject Data that contains [Navy Collaborator]'s Proprietary Information, [Non-Navy Collaborator] has rights to use, modify, reproduce, release, perform, display, or disclose Technical Data within [Non-Navy Collaborator]'s organization, in whole or in part, and in any manner, for any internal purpose excluding commercial purposes. If [Non-Navy Collaborator] is subsequently awarded a Government contract that entails deliverables that incorporate the [Navy Collaborator]'s Proprietary Information, such deliverables must be delivered with at least Government Purpose Rights, as defined in the DFARS § 252.227-7013.

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title, or interest, if such Subject Data are provided by [Navy Collaborator] under this Agreement. This Limited Right does not grant the [Non-Navy Collaborator] any License to any Invention in which the Government owns or may own a right, title, or interest. In accordance with Article 7.5 below, such Subject Data are to be held in confidence.

7.3 Rights in Non-Subject Data

7.3.1 Rights of Both Collaborators

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information or protected under 35 U.S. Code § 205 provided under this Agreement.

7.3.2 Rights of [Navy Collaborator]

[Navy Collaborator] has a Limited Right to use, reproduce, and disclose only to Government employees for use in support of the Cooperative Work any Non-Subject Data that are properly marked as Proprietary Information and are provided by [Non-Navy Collaborator] under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless written consent to other use or disclosure is obtained from [Non-Navy Collaborator].

7.3.3 Rights of [Non-Navy Collaborator]

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Non-Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title or interest, if such Non-Subject Data are provided by [Navy Collaborator] under this Agreement. Such Non-Subject Data shall be properly marked by [Navy Collaborator].

7.4 No Implied License

Unless otherwise specifically provided, the Collaborators agree that the exchange of Data of any kind does not confer a license to any Non-Subject Invention claimed in any patent or Patent Application or to the subject matter of any copyright, trademark/service mark, or other form of Intellectual Property protection.

7.5 Protection of Data

Except for the rights granted in Article 7.1 and Article 7.2, Data shall be protected in accordance with the proper markings of its owner and as provided by, at a minimum, the requirements of 15 U.S. Code § 3710a. Proprietary Information will be protected only if it is properly marked as such. Information provided in intangible form that is Proprietary Information must be designated Proprietary Information at the time it is provided, followed within fifteen (15) days by a writing summarizing the exact information to be protected. The Collaborator receiving Information in an intangible form that is designated as Proprietary Information shall be responsible for protecting the Information as Proprietary Information during the fifteen (15) day notification. After the fifteen (15) day period, if no written summary has been received, the receiving Collaborator need not continue to protect the Information received in intangible form.

Data that is provided by **[Non-Navy Collaborator]** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S. Code § 552(b)(4), shall not be disclosed by **[Navy Collaborator]**. **[Non-Navy Collaborator]** shall agree to not disclose, for five (5) years, Data that is produced by **[Navy Collaborator]** and that would have been considered a trade secret, business commercial, or financial information that is privileged or confidential if it had been produce by **[Non-Navy Collaborator]**.

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.

7.6 Release of Data Under the Freedom of Information Act

[Navy Collaborator] will comply with the Freedom of Information Act and Executive Order 12600.

7.7 Marking of Data

7.7.1 Markings Required for Both Collaborators

7.7.1.1 Data Provided with Less than Unlimited Rights

Each Collaborator shall mark all Data that it provides with less than Unlimited Rights with a marking that clearly identifies the Limited Rights.

7.7.1.2 Data that are CI, CUI, or Otherwise Restricted

Each Collaborator shall mark all Data that are CI, CUI or otherwise restricted by U.S. security or export control laws or regulations that it provides under this Agreement.

7.7.1.3 For Official Use Only (FOUO) Marking

FOUO is the marking used for documents/products containing material that qualifies as exempt from release under FOIA. This includes Technical Information and Technical Data.

Use of the FOUO marking is the responsibility of the originator of the Information. Use of the FOUO marking does not automatically qualify for FOIA exemption.

Technical Documents which contain Technical Information and/or Technical Data are considered FOUO documents and must be appropriately marked.

[Note to ORTA: For further information associated with FOUO markings see the Navy T2 Handbook.]

7.7.2 Markings Required for **[Navy Collaborator]**

7.7.2.1 Data that are Subject to 35 U.S. Code § 205

[Navy Collaborator] shall mark Data it provides under this Agreement that disclose one or more Inventions in which the Government owns or may own a right, title or interest, and that are subject to confidentiality under 35 U.S. Code § 205. Such Data shall be marked:

“**[Navy Collaborator]** DATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 U.S. Code § 205.”

7.7.2.2 Data Protected Under Article 7.5

[Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that **[Navy Collaborator]** provides to **[Non-Navy Collaborator]**, where the Collaborators have agreed, under second paragraph of Article 7.5 of this Agreement, to protect such Data for up to five (5) years. The marking shall state:

“**[Navy Collaborator]** DATA SHALL BE PROTECTED BY THE **[Non-Navy Collaborator]** FOR A PERIOD OF **[state a number up to five years]** FROM **[state the date of generation]**.”

7.7.3 Markings Required for **[Non-Navy Collaborator]**

7.7.3.1 Data that are Proprietary Information

[Non-Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that **[Non-Navy Collaborator]** provides to **[Navy Collaborator]** under this Agreement that **[Non-Navy Collaborator]** asserts is Proprietary Information.

For Non-Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-Navy Collaborator]** – **[Navy Collaborator]** MAY USE ONLY FOR PURPOSE OF CRADA NUMBER NCRADA – **[Navy Collaborator]** – [last two digits of FY] – [lab CRADA sequence number]”

For Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-Navy Collaborator]** – GOVERNMENT HAS CERTAIN RIGHTS UNDER CRADA NUMBER NCRADA – **[Navy Collaborator]** – [last two digits of FY] – [lab CRADA sequence number].”

7.8 Subject Inventions

7.8.1 Reporting of Subject Inventions

Within sixty (60) days of Making an Invention resulting from the Cooperative Work, and prior to disclosure of the Invention to any third parties, unless a shorter time period is required by circumstances, the inventor(s) shall submit an Invention Disclosure to their employer. In the case of an Invention Made jointly by inventors from both Collaborators, the inventors of each Collaborator shall submit an Invention Disclosure to their respective employer. Each Collaborator shall provide the other Collaborator with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

7.8.2 Determination of Subject Inventions

The Collaborators shall review each Invention Disclosure resulting from the Collaborative Work and shall confer and consult to determine whether an Invention Disclosure represents a Subject Invention.

7.8.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to solely own the Subject Inventions Made solely by its employees. For any Jointly Made Subject Invention, each Collaborator shall have ownership of the Subject Invention in the form of an undivided interest, without a right of accounting.

Each Collaborator shall cooperate with the other Collaborator to obtain inventor signatures on Patent Applications, assignments or other documents required to secure Intellectual Property protection.

7.9 Non-Subject Inventions

7.9.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

[Note to ORTA: Article 7.9.2 is optional. It should be used only if Navy Collaborator and/or Non-Navy Collaborator have preexisting Non-Subject Inventions that are pertinent to this Cooperative Work.]

7.9.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s), patent number, or Navy case number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Non-Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s) patent number, or attorneys docket number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

7.10 Filing of Patent Applications

By mutual agreement, the Collaborators shall identify which Collaborator shall file a Patent Application on any Subject Invention. The Collaborator responsible for filing of a Patent Application on any Subject Invention shall file such Patent Application at least sixty (60) days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received, whichever comes first. In the case of a Jointly Made Subject Invention, if no Patent Application is filed within the specified time period by the responsible Collaborator, the other Collaborator may assume control of filing the Patent Application and take title to the Jointly Made Subject Invention on ten (10) days written notification. The Collaborator that relinquished the responsibility to file shall retain a nonexclusive, irrevocable, paid-up license to practice the Jointly Made Subject Invention or have the Jointly Made Subject Invention practiced throughout the world by or on its behalf.

7.10.1 Patent Filing

The Collaborator responsible for filing any Patent Application for a Subject Invention shall notify the other Collaborator of all filing deadlines for prosecution of any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.10, sixty (60) days prior to any filing deadline, the Collaborators shall confer to determine if the filing Collaborator intends to respond to the filing deadline. The non-filing Collaborator has the right to take action if the filing Collaborator declines.

7.10.2 Copies and Inspection

Each Collaborator filing a Patent Application on a Subject Invention shall provide the other Collaborator with a copy of any communication relating to prosecution of said Patent Application within thirty (30) days of receipt of such request. The filing Collaborator shall give the other Collaborator a limited power to inspect, with authorization to access the Patent Application, make copies, and, in the event that the filing Collaborator declines continued prosecution of the Patent Application, do all that is necessary to secure patent protection for the Jointly Made Subject Invention.

7.10.3 Rights of Inventors if the Collaborators Decline to File a Patent Application

In the event both Collaborators decline to file a Patent Application on a Subject Invention, the Government will renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

In the event both Collaborators decline to file a Patent Application on a Subject Invention, **[Non-Navy Collaborator]** may, at its sole discretion, renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

7.11 Licenses to Subject Inventions

7.11.1 Internal Use License to **[Non-Navy Collaborator]**

Government grants to the **[Non-Navy Collaborator]** a nonexclusive, irrevocable, paid-up Internal Use License to a Subject Invention Made solely by employees of **[Navy Collaborator]**. No Internal Use License granted under this Agreement shall permit licensee to grant sublicenses. No Internal Use License granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of **[Non-Navy Collaborator's]** business to which such license pertains.

7.11.2 Government License

Pursuant to 15 U.S. Code § 3710a(b)(2), for Subject Inventions Made solely by an employee of **[Non-Navy Collaborator]**, **[Non-Navy Collaborator]** grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.11.3 Option for Commercial License to Subject Inventions

[Navy Collaborator] gives **[Non-Navy Collaborator]** the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of **[Field of Use]** in the Government's rights in any Subject Invention Made in whole or in part by a **[Navy Collaborator]** employee. The license shall be for reasonable consideration. In order to exercise this option, **[Non-Navy Collaborator]** must notify **[Navy Collaborator]** in writing within six (6) months of the filing of a Patent Application. **[Non-Navy Collaborator]** must execute an Exclusive Commercial or Nonexclusive Commercial License to the Subject Invention within six (6) months of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 C.F.R. Part 404.

7.11.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions

[Navy Collaborator] may cancel the Exclusive or Nonexclusive Commercial License option and terminate any Exclusive or Nonexclusive Commercial Licenses and Internal Use Licenses provided for above made in whole or in part by Government employees in the event that:

- (a) **[Non-Navy Collaborator]** is in default for failure to make payment as agreed in Article 5; or
- (b) The Agreement is terminated unilaterally by **[Non-Navy Collaborator]** under Article 11.2; or
- (c) **[Non-Navy Collaborator]** fails to perform according to the Statement of Work (Appendix A); or
- (d) **[Non-Navy Collaborator]** becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a); or
- (e) **[Non-Navy Collaborator]** which was a FOCI organization when the Agreement was signed has now become a different FOCI organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.12 License to Non-Subject Inventions

Each Collaborator shall allow the other Collaborator to practice any of its Non-Subject Inventions for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to either Collaborator in Non-Subject Inventions by performing the Cooperative Work. For commercial applications of Non-Subject Inventions, the **[Non-Navy Collaborator]** must obtain a License from the **[Navy Collaborator]**, in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

[Note to ORTA: Article 7.13 is optional.]

7.13 Copyrights

[Non-Navy Collaborator] may copyright works of authorship prepared pursuant to this Agreement if eligible for copyright protection under Title 17, U.S. Code § 106 **[Non-Navy Collaborator]** grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software, prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.2 and Article 7.3. **[Non-Navy Collaborator]** shall affix the applicable copyright notice of Title 17, U.S. Code §§ 401-403, and an acknowledgment of the scientific and technical contributions of **[Navy Collaborator]**. **[Non-Navy Collaborator]** grants to the U.S. Government a paid-up, non-exclusive, irrevocable, worldwide license to reproduce or have reproduced, prepare or have prepared in derivative form, and distribute or have distributed copies of publications and solely or jointly created Subject Data for Government purposes.

Article 8. TANGIBLE PROPERTY

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to its Tangible Property. All Tangible Property owned and provided by one Collaborator shall remain the property of that Collaborator. Tangible Property having any component purchased or supplied by the Government shall be the property of the Government, unless such tangible Government components reasonably can be separated from non-Government components without damage to any of the individual components comprising the Tangible Property. These separated components shall remain the property of the Collaborator that purchased them. After termination of this Agreement the collaborators may, by mutual consent, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that originally owned the property.

8.2 Tangible Property Operational and Disposition Costs

Each Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all Tangible Property to which it has title.

8.3 Disposal of Tangible Property

Unless otherwise agreed, each Collaborator shall take possession of its respective Tangible Property within sixty (60) days of termination of this Agreement. Each Collaborator shall cooperate with the other Collaborator in the recovery or disposition of the other Collaborator's property. Disposal of Tangible Property shall be in accordance with applicable U.S. Federal, State, and local property disposal laws, environmental laws, and regulations.

Article 9. LIABILITY

9.1 Extent of Government Liability

The Government shall be liable for the negligent or wrongful acts of its officers and employees solely to the extent provided for in the Federal Tort Claims Act (28 U.S. Code § 2671 et. seq.) and in other applicable laws and regulations of the U.S. that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the U.S.

9.2 Extent of [Non-Navy Collaborator] Liability

[Non-Navy Collaborator] is solely responsible for its actions and the actions of those acting for [Non-Navy Collaborator] in the performance of this Agreement and for any damages that may arise from any suit, action, or claim, and for any costs from or incidental to any suit, action, or claim, including but not limited to settlement and defense costs. Further, [Non-Navy Collaborator] agrees that in any suit, action or claim brought by anyone not a Collaborator to this Agreement based on actions of [Non-Navy Collaborator], [Non-Navy Collaborator] shall not pursue any actions to enter the Government as a Collaborator in such suit, action or claim unless the Government has some liability under the Federal Tort Claims Act. This provision shall survive termination of this Agreement.

9.3 *Force Majeure*

No Collaborator shall be liable for the consequences of any *force majeure* that (1) is beyond its reasonable control; (2) is not caused by the fault or negligence of such Collaborator; (3) causes such Collaborator to be unable to perform its obligations under this Agreement; and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure*, the Collaborator unable to perform shall promptly notify the other Collaborator. The Collaborators shall suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and shall use their best efforts to resume performance as quickly as possible.

Article 10. GENERAL PROVISIONS

10.1 Entire Agreement

This Agreement constitutes the entire agreement between the Collaborators concerning the Cooperative Work and supersedes any prior understanding or written or oral agreement relative to the Cooperative Work.

10.2 Severability

The illegality or invalidity of any Article of this Agreement shall not impair, affect, or invalidate any other Article of this Agreement.

10.3 Interpretation of Headings

Headings of the Articles of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

10.4 Governing Laws

U.S. Federal laws shall govern this Agreement for all purposes.

10.5 Independent Parties/Entities

The relationship of the Collaborators to this Agreement is that of independent parties and not as agents of each other, partners, or participants in a joint venture.

10.6 Subcontracting

Neither Collaborator may allow third parties to perform any part of the Cooperative Work under this Agreement without express written consent of the other Collaborator. If consent is obtained, the Collaborator requesting such consent shall remain fully responsible for the portion of the Cooperative Work to be accomplished under a third-party agreement, and the third-party is not a Collaborator of this Agreement. Any third-party agreement to perform a portion of the Cooperative Work shall contain terms consistent with this Agreement.

[Note to ORTA: Refer to the Navy T2 Handbook for a discussion on issues related to the use of contractors during the execution of a CRADA.]

10.7 Assignment

This Agreement shall not be assigned or otherwise transferred by either Collaborator without the prior written consent of the other Collaborator, except to the successor of that part of **[Non-Navy Collaborator]**'s business to which this Agreement pertains.

10.8 Disputes

[Navy Collaborator] and **[Non-Navy Collaborator]** agree to use reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories or their successors for resolution. If a dispute continues, the remaining issues may be submitted to the Chief of Naval Research (CNR), or the CNR designee, for resolution. This Agreement does not prevent any Collaborator from pursuing disputes in a U.S. Federal court of competent jurisdiction. No Collaborator will pursue litigation in a U.S. Federal court until after the CNR, or the CNR designee, decides the dispute, or until sixty (60) days after the dispute was first submitted to the CNR, or the CNR designee, whichever comes first.

10.9 Use of Name or Endorsements

[Non-Navy Collaborator] shall not use the name of **[Navy Collaborator]** or any other Government entity on any product or service that is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of **[Navy Collaborator]**. By entering into this Agreement, **[Navy Collaborator]** does not directly or indirectly endorse any product or service provided, or to be provided, by **[Non-Navy Collaborator]**, its successors, assignees, or licensees. **[Non-Navy Collaborator]** shall not in any way imply that the Department of the Navy endorses any such product or service.

10.10 Public Release Announcements of This Agreement

Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public.

10.11 Environment, Safety, and Health

Each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this Agreement. At the conclusion of this Agreement, each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste still in its possession. Each Collaborator shall obtain at its own expense all necessary permits and licenses as required by U.S. Federal, State, and local law and shall conduct such handling, control, and disposition in a lawful and environmentally responsible manner. Each Collaborator is responsible for all required environmental, safety, and health compliance, notice, and monitoring related to its facility in accordance with U.S. Federal, State, and local law and regulations. Collaborators shall abide by the environmental, safety, and health directives of the host facility in which the Cooperative Work is being performed, and any U.S. Federal, State, or local laws and regulations pertaining to environment, safety, and health that are applicable to the host facility.

10.12 U.S. Competitiveness

[Non-Navy Collaborator] agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

10.13 Waivers

None of the provisions of this Agreement shall be considered waived by either Collaborator unless such waiver is given in writing to the other Collaborator, signed by the executing official of this Agreement or the official's successor having the authority to bind the Collaborator making the waiver. The failure of either Collaborator to insist upon strict performance of any of the terms and conditions herein, or failure or delay to exercise any rights provided herein or by law shall not be deemed a waiver of any right of either Collaborator under this Agreement.

Article 11. MODIFICATIONS AND NOTICES

11.1 Amendments

Any modifications to this Agreement shall be jointly agreed upon and shall not be effective until a written amendment is signed by both executing officials of this Agreement or their successors.

11.2 Unilateral Termination

[Non-Navy Collaborator] and **[Navy Collaborator]** each have the right to unilaterally terminate this Agreement upon thirty (30) days written notice to the other Collaborator.

11.3 Notices

All notices pertaining to or required by Articles of this Agreement, except those pertaining solely to the prosecution of any patent, trademark, or service mark, shall be in writing and shall be signed by an authorized representative of the Technology Transfer Office for **[Navy Collaborator]** or the preferred contact for **[Non-Navy Collaborator]**. All such notices shall be delivered in a manner that ensures confirmation of receipt.

If to **[Navy Collaborator]**:

[Use the official Navy Collaborator mailing address for the Technology Transfer Office.]

If to **[Non-Navy Collaborator]**:

[Specify the mailing address for the preferred contact.]

A Collaborator shall notify the other Collaborator of a change of address in the manner set forth above.

Notices pertaining solely to the prosecution of any patent, trademark, or service mark related to this Agreement shall be in writing and shall be signed by and sent to the Collaborator's legal counsel for Intellectual Property. Legal counsel for Intellectual Property for each Collaborator shall send a copy of any such notice to the Technology Transfer Office for **[Navy Collaborator]**. If either Collaborator fails to identify such counsel upon request, then such notices shall be sent to the points of contact specified above.

Article 12. SURVIVING PROVISIONS

The Articles covering Definitions, Representations and Warranties, Funding, Reports and Publications, Intellectual Property, Tangible Property, Liability, General Provisions, Modifications and Notices, and Surviving Provisions shall survive the completion, termination, or expiration of this Agreement.

Article 13. DURATION

This Agreement expires **[specify a time no greater than four (4) years]** after its Effective Date, unless otherwise extended in writing according to the provisions of Article 11.

[If necessary, write "Signatures for the Agreement follow on next page".]

Article 14. SIGNATURES

For **[Non-Navy Collaborator]**:

I, the undersigned, am duly authorized to bind **[Non-Navy Collaborator]** to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20__.

By: _____

Title:

Navy Organization:

APPENDIX A - STATEMENT OF WORK

BETWEEN

[Navy Collaborator]

AND

[Non-Navy Collaborator]

The Collaborators agree to perform the following tasks:

[Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[Non-Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[Navy Collaborator] and **[Non-Navy Collaborator]** will be responsible for the following joint tasks:

- 1.
- 2.
- 3.

Section IV - 2

Supplemental Appendices

The following Appendices may be used in the CRADA package.

[Section IV - 2a](#) provides a sample for a Third Party Agreement that may be used when the Non-Navy Collaborator is using a third party to perform part of the work described in the Statement of Work (SOW) of the CRADA. Likewise, the sample of [Section IV - 2b](#) may be used when the Navy Collaborator is using a third party to perform part of the work described in the SOW of the CRADA. For a discussion on the use of third parties/subcontractors, refer to [Section VI - 2](#), The Use of Contractors.

[Section IV - 2a](#) provides a sample for use with a standard CRADA only. If a CRADA is with a foreign owned, controlled or influenced (FOCI) collaborator, the use of a third party will only be allowed after all other preliminary procedures have been followed according to non-standard CRADA instructions. The use of third parties in a FOCI CRADA will also have to be reviewed by local legal counsel and the Third Party Agreement language drafted accordingly.

[Section IV - 2c](#) provides a sample for a CRADA Final Report which can be included as another CRADA appendix. This appendix is not currently a requirement to be included in the CRADA. If it is included in the standard CRADA or any of the approved non-standard CRADAs, Article 6.2 should be modified to reflect that the final report will use that format.

Section IV - 2a

Appendix __

Third Party Agreement

[Non-Navy Collaborator] Use of Third Party [insert Third Party name]

As provided in paragraph 10.6 of [NCRADA-Navy Org-last two digits of FY-serial number] [hereinafter the CRADA], [Non-Navy Collaborator] desires to have [Third Party], a U.S. business entity, located at [supply address of Third Party], perform the following services on [Non-Navy Collaborator's] behalf as part of the Cooperative Work listed in Appendix A of the CRADA:

[List Services].

[Non-Navy Collaborator] shall remain fully responsible for the portion of the Cooperative Work to be accomplished by [Third Party], and [Third Party] shall not be a Collaborator of the CRADA. [Third Party] agrees to perform their Cooperative Work in accordance with the terms of the CRADA.

The [Third Party] is aware that the following employee[s] is[are] being assigned to work on tasks assigned to [Non-Navy Collaborator] under the CRADA:

[List Third Party Personnel].

The [Third Party] has read the terms and conditions of the CRADA. [Third Party] and [Non-Navy Collaborator] agree that [Navy Collaborator] shall have the same rights to any inventions made, or any data recorded by these or any other [Third Party] employees in the performance of tasks assigned to [Non-Navy Collaborator] as [Navy Collaborator] would have had, had these tasks been performed by [Non-Navy Collaborator] employees.

SIGNATURES

For [Non-Navy Collaborator]:

I, the undersigned, am duly authorized to bind [Non-Navy Collaborator] to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20____.

By:

Title:

For **[Third Party]**:

I, the undersigned, am duly authorized to bind **[Third Party]** to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20__.

By:

Title:

For the Department of the Navy:

I, the undersigned, on behalf of the Department of the Navy, hereby acknowledge the foregoing agreement between **[Non-Navy Collaborator]** and **[Third Party]**.

Entered into this _____ day of _____ 20__.

By:

Title:

Note: Add the following to CRADA Article 1. Definitions and to the “Table of Contents”:

“Third Party” means a Non-Navy participant who is not a Collaborator but who works on behalf of a Non-Navy Collaborator and is bound to this Agreement as provided in Appendix __.

Section IV - 2b

Note: If the third party is performing work under another agreement, consult with your local legal counsel.

Appendix _

Third Party Agreement

[Navy Collaborator] Use of Third Party [insert Third Party name]

As provided in paragraph 10.6 of [NCRADA-Navy Org-last two digits of FY-serial number] [hereinafter the CRADA], [Navy Collaborator] desires to have [Third Party], a U.S. business entity, located at [supply address of Third Party], perform the following services on [Navy Collaborator's] behalf as part of the Cooperative Work listed in Appendix A of the CRADA:

[List Services].

[Navy Collaborator] shall remain fully responsible for the portion of the Cooperative Work to be accomplished by [Third Party], and [Third Party] shall not be a Collaborator of the CRADA. [Third Party] agrees to perform their Cooperative Work in accordance with the terms of the CRADA.

The [Third Party] is aware that the following employee[s] is[are] being assigned to work on tasks assigned to [Navy Collaborator] under the CRADA:

[List Third Party Personnel].

The [Third Party] has read the terms and conditions of the CRADA. [Third Party] and [Navy Collaborator] agree that [Non-Navy Collaborator] shall have the same rights to any inventions made, or any data recorded by these or any other [Third Party] employees in the performance of tasks assigned to [Navy Collaborator] as [Non-Navy Collaborator] would have had, had these tasks been performed by [Navy Collaborator] employees.

For [Navy Collaborator]:

I, the undersigned, am duly authorized to bind [Navy Collaborator] to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20__.

By:

Title:

For **[Third Party]**:

I, the undersigned, am duly authorized to bind **[Third Party]** to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20____.

By:

Title:

For Non-Navy Collaborator:

I, the undersigned, on behalf of **[Non-Navy Collaborator]**, hereby acknowledge the foregoing agreement between **[Navy Collaborator]** and **[Third Party]**.

Entered into this _____ day of _____ 20____.

By:

Title:

Note: Add the following to CRADA Article 1. Definitions and to the “Table of Contents”:

“Third Party” means a Non-Navy participant who is not a Collaborator but who works on behalf of the Navy Collaborator and is bound to this Agreement as provided in Appendix C.

Section IV - 2c

This appendix is not currently a requirement to be included in CRADAs. If this appendix is included in a standard CRADA or any of the approved non-standard CRADAs, modify Article 6.2 to reflect that the final report will use the format provided in the appendix. This is a sample CRADA Final Report.

Appendix (XX)

Cooperative Research and Development Agreement (CRADA) Final Report

Navy Collaborator:

ORTA:

Name:

Phone:

Fax:

E-Mail:

Non-Navy Collaborator:

CRADA Number:

CRADA Title:

CRADA Objective:

Navy Product Description: (Use Appendix A of ONR Strategic Plan)

Funding Provided by Non-Navy Collaborator to Navy Collaborator:
(Indicate Total Funding to Navy Lab from Non-Navy Collaborator)

CRADA Products

Data that Non-Federal Collaborator Indicated as Proprietary
(Identify Data and Date Submitted; if None, State 'None')

Data Marked [Navy Collaborator] Proprietary [to be protected in accordance with
Articles 7.7.2.2 and 7.5) (Identify Data and Date or Request; if None, State 'None')

Reports Exchanged:
(Number and Dates; if None, State 'None')

Invention Disclosures Made:

(Who Invented, Title, When; if None, State 'None')

Patent Applications:

(Who, Inventors, Title, When, Registration Number; if None, State 'None')

Copyrights Filed:

(Who, Title of Work, Date Filed; if None, State 'None')

Licenses Granted:

(Title, Date Signed; if None, State 'None')

CRADA Outcomes

Describe the Results of the Collaboration.

Were Objectives Met? How?

What was Demonstrated, or Developed?

Will this Result in a Commercial Product by [**Non-Navy Collaborator**]? If So, Describe.

Will this Result in a Product Used by the Department of Defense? If So, Describe.

What was the Value of the Collaboration to [**Non-Navy Collaborator**]?

What was the Value of the Collaboration to the Lab and the Navy?

Signatures (Principal Investigators)

For Non-Navy Collaborator

_____ Date: _____
(Print Name of Non-Navy Principal Investigator)

For Navy Collaborator

_____ Date: _____
(Print Name of Navy Principal Investigator)

Section IV - 3

Multiple Party Non-Standard CRADA - Explanation

A multiple party or multi-party non-standard CRADA is required only when each collaborator's participation is independent and essential. For example, an additional Federal laboratory that commits resources to a CRADA effort should sign the agreement. Alternatives to a multi-party non-standard CRADA are:

(a) Multiple two collaborator CRADAs between the Federal laboratory and each interested collaborator;

(b) CRADA between the Federal laboratory and a consortium composed of multiple collaborators; a provision indicating which collaborator will be the primary point of contact for the consortium should be added to the CRADA.

****The Navy laboratory's legal counsel should be consulted to determine the proper use of a multi-party non-standard CRADA.****

A multi-party CRADA is non-standard; however, many of the articles of the standard CRADA, when repeated with the names of the different Collaborators, will make the creation of such an agreement easier. There will be many options to consider due to the different relationships among the Collaborators. No single example of a multi-party Collaborator will cover all of the many possibilities.

In drafting a multi-party non-standard CRADA, attention must be given to the relationship among all Collaborators when addressing the protection of intellectual property, defining the terms and conditions for licenses and patents, funding liability, and dispute resolution.

There are two basic approaches to addressing the structure of this type of agreement. The first is simple repetition of the articles and individual paragraphs of the standard CRADA for each different Non-Navy Collaborator giving a new heading for each Non-Navy Collaborator. As an example, consider Article 4.2 [**Non-Navy Collaborator**]'s Representations and Warranties, of the Standard CRADA. With two Non-Navy Collaborators, this information could be written as a repeated Article: Article 4.2 for Non-Navy Collaborator A, and a new Article 4.2 with the same information for Non-Navy Collaborator B. If this approach is taken, you must be careful to add new headings and their numerical serialization in the Table of Contents and in the text of the CRADA.

The second approach to addressing this type of agreement is to modify an Article heading and repeat under this new heading the required paragraphs prefacing each section with the phrase "For [**Non-Navy Collaborator A**]" or "For [**Non-Navy Collaborator B**] as appropriate.

The following is a non-standard CRADA sample with multiple parties. This sample is for a single Navy Collaborator, and two U.S. commercial entities. The instructions to the Office of Research and Technology Applications need to be removed from the final signed document. All "**blue text**" indicates changes from the Navy Standard CRADA; these need to be in "black" in the final signed CRADA.

The draft multiple party non-standard CRADA has also attempted to use language that covers all the Non-Navy Collaborators collectively without specific mention of names. Thus, there are many phrases used that read as “the Non-Navy Collaborators”, “a Non-Navy Collaborator”, “each Non-Navy Collaborator”, and “all Non-Navy Collaborators”. The intent of the Articles stands out very clearly when this language is used; almost as an instruction.

New definitions and modified articles have been placed in the multiple party non-standard CRADA. The new definition, “Co-Exclusive License”, has been added and is used in matters dealing with Intellectual Property. There is an expansion of the definition, “exclusive license” to reflect that multiple Collaborators are involved. A new article on Shared Data, now Article 7.6, is included in the draft CRADA. By using this Article, many simplifications are made in the articles dealing with notification of each Collaborator when information is exchanged among the Collaborators.

Legal Review

Legal review is obtained at the laboratory to ensure compliance with the laboratory’s mission, statutes, regulations, instructions and executive directives. If the model multiple party non-standard CRADA is changed, the modification is noted and a written explanation of its necessity is to be provided by local legal counsel and is included with the Agreement when it is forwarded to the Department of the Navy (DON) Technology Transfer (T2) Program Office.

NON-STANDARD

NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[full name of NAVY COLLABORATOR then acronym]

[ORTA: Repeat the following for each Non-Navy Collaborator]

AND

[full name of NON-NAVY COLLABORATOR then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: NCRADA - [Navy Org.] - [last two digits of FY] - [sequence number]

AGREEMENT ADMINISTRATORS:

[NAVY COLLABORATOR acronym]

Technology Transfer ORTA: **[insert name, organization code, telephone number, e-mail address]**

Intellectual Property Counsel: **[insert name, organization code, telephone number, e-mail address]**

Principal Investigator: **[insert name, organization code, telephone number, e-mail address]**

[ORTA: Repeat the following for each Non-Navy Collaborator]

[NON-NAVY COLLABORATOR acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel *[Optional]*: **[insert name, telephone number, e-mail address]**

Principal Investigator: **[insert name, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE 1

ARTICLE 1. DEFINITIONS 1

1.1 “Agreement” 1

1.2 “Classified Information (CI)” 1

1.3 “Co-Exclusive License” 1

1.4 “Collaborator” 2

1.5 “Controlled Unclassified Information (CUI)” 2

1.6 “Cooperative Work” 2

1.7 “Data” 2

1.8 “Effective Date” 2

1.9 “Exclusive Commercial License” 2

1.10 “For Official Use Only (FOUO)” 2

1.11 “Government” 2

1.12 “Government Purpose Rights” 2

1.13 “Information” 2

1.14 “Intellectual Property” 2

1.15 “Internal Use License” 2

1.16 “Invention” 2

1.17 “Invention Disclosure” 2

1.18 “Jointly Made Subject Invention” 2

1.19 “Limited Rights” 2

1.20 “Made” 3

1.21 “Nonexclusive Commercial License” 3

1.22 “Non-Subject Data” 3

1.23 “Non-Subject Invention” 3

1.24 “Patent Application” 3

1.25 “Principal Investigator (PI)” 3

1.26 “Proprietary Information” 3

1.27 “Subject Data” 3

1.28 “Subject Invention” 3

1.29 “Tangible Property” 3

1.30 “Technical Data” 3

1.31 “Technical Document” 3

1.32 “Technical Information” 3

1.33 “Unlimited Rights” 3

Article 2. OBJECTIVES 4

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE 4

3.1 Facilities and Supervision 4

3.2 Security Regulations and Directives 4

Article 4. REPRESENTATIONS AND WARRANTIES 4

4.1 [Navy Collaborator]’s Representations and Warranties 4

4.2 [Non-Navy Collaborator]’s Representations and Warranties 4

4.3 Joint Representations and Warranties 5

<u>Article 5.</u>	<u>FUNDING</u>	<u>6</u>
5.1	<u>Payment Schedule</u>	6
5.2	<u>Insufficient and Excess Funds</u>	6
5.3	<u>No New Commitments</u>	7
5.4	<u>Accounting Records</u>	7
<u>Article 6.</u>	<u>REPORTS AND PUBLICATIONS</u>	<u>7</u>
6.1	<u>Interim Reports</u>	7
6.2	<u>Final Reports</u>	7
6.3	<u>Agreement to Confer Prior to Publication or Public Disclosure of Information</u>	7
6.4	<u>Public Presentation of Subject Data</u>	8
<u>Article 7.</u>	<u>INTELLECTUAL PROPERTY</u>	<u>8</u>
7.1	<u>Rights Under Other Agreements</u>	8
7.2	<u>Rights in Subject Data</u>	8
7.2.1	<u>Rights of Collaborators</u>	8
7.2.2	<u>Rights of [Navy Collaborator]</u>	8
7.2.3	<u>Rights of [Non-Navy Collaborators]</u>	8
7.3	<u>Rights in Non-Subject Data</u>	8
7.3.1	<u>Rights of Collaborators</u>	8
7.3.2	<u>Rights of [Navy Collaborator]</u>	8
7.3.3	<u>Rights of [Non-Navy Collaborator]</u>	9
7.4	<u>No Implied License</u>	9
7.5	<u>Protection of Data</u>	9
7.6	<u>Shared Data</u>	9
7.7	<u>Release of Data Under the Freedom of Information Act</u>	9
7.8	<u>Marking of Data</u>	10
7.8.1	<u>Markings Required for Collaborators</u>	10
7.8.1.1	<u>Data Provided with Less than Unlimited Rights</u>	10
7.8.1.2	<u>Data that are CI, CUI, or Otherwise Restricted</u>	10
7.8.1.3	<u>For Official Use Only (FOUO) Marking</u>	10
7.8.2	<u>Markings Required for [Navy Collaborator]</u>	10
7.8.2.1	<u>Data that are Subject to 35 U.S. Code § 205</u>	10
7.8.2.2	<u>Data Protected Under Article 7.5</u>	10
7.8.3	<u>Markings Required for Non-Navy Collaborators</u>	10
7.8.3.1	<u>Data that are Proprietary Information</u>	10
7.9	<u>Subject Inventions</u>	11
7.9.1	<u>Reporting of Subject Inventions</u>	11
7.9.2	<u>Determination of Subject Inventions</u>	11
7.9.3	<u>Title to and Ownership of Subject Inventions</u>	11
7.10	<u>Non-Subject Inventions</u>	11
7.10.1	<u>Ownership of Non-Subject Inventions</u>	11
7.10.2	<u>Preexisting Non-Subject Inventions Pertinent to the Cooperative Work</u>	11
7.11	<u>Filing of Patent Applications</u>	12
7.11.1	<u>Patent Filing</u>	12
7.11.2	<u>Copies and Inspection</u>	12
7.11.3	<u>Rights of Inventors if the Collaborators Decline to File a Patent Application</u>	12
7.12	<u>Licenses to Subject Inventions</u>	13
7.12.1	<u>Internal Use License to Non-Navy Collaborators</u>	13
7.12.2	<u>Government License</u>	13

7.12.3	Option for Commercial License to Subject Inventions	13
7.12.4	Termination of Licenses Granted and Cancellation of License Option to Subject Inventions	13
7.13	License to Non-Subject Inventions	14
7.14	Copyrights	14
Article 8.	TANGIBLE PROPERTY	14
8.1	Ownership of Tangible Property	14
8.2	Tangible Property Operational and Disposition Costs	14
8.3	Disposal of Tangible Property	14
Article 9.	LIABILITY	14
9.1	Extent of Government Liability	14
9.2	Extent of Non-Navy Collaborators Liability	15
9.3	Force Majeure	15
Article 10.	GENERAL PROVISIONS	15
10.1	Entire Agreement	15
10.2	Severability	15
10.3	Interpretation of Headings	15
10.4	Governing Laws	15
10.5	Independent Parties/Entities	15
10.6	Subcontracting	15
10.7	Assignment	16
10.8	Disputes	16
10.9	Use of Name or Endorsements	16
10.10	Public Release Announcements of This Agreement	16
10.11	Environment, Safety, and Health	16
10.12	U.S. Competitiveness	16
10.13	Waivers	16
Article 11.	MODIFICATIONS AND NOTICES	17
11.1	Amendments	17
11.2	Unilateral Termination	17
11.3	Notices	17
Article 12.	SURVIVING PROVISIONS	17
Article 13.	DURATION	17
Article 14.	SIGNATURES	18
	APPENDIX A - STATEMENT OF WORK	19

NON-STANDARD

NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[Navy Collaborator full name then acronym]

[ORTA: Repeat the following for each Non-Navy Collaborator]

AND

[Non-Navy Collaborator full name then acronym]

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of the Navy Collaborator, [Navy Collaborator name and address], and the Non-Navy Collaborators described below agree to and enter into this Cooperative Research and Development Agreement (CRADA).

[ORTA: Repeat the following paragraph for each Non-Navy Collaborator. Note the addition of information for each FOCI collaborator.]

[Insert full name of Non-Navy Collaborator followed by acronym and address], is a corporation [substitute appropriate alternate language for a different entity, e.g., a university] duly organized, validly existing and in good standing under the laws of the [State or Commonwealth] of [indicate name].

[Note to ORTA: If a Non-Navy Collaborator is a FOCI, please add the following sentence in the above paragraph. Also, state the name of the parent company and the country in which it is incorporated.]

Further, [Non-Navy Collaborator] is directly or indirectly controlled by a foreign company or government [Executive Order 12591], Section 4 (a), specifically, [insert name of parent company and the country in which it is incorporated].

[Navy Collaborator] has extensive expertise, capabilities, and information in [state technology area], and in accordance with the U.S. Federal Technology Transfer Act, desires to make this expertise and technology available for use in the public and private sectors.

The Non-Navy Collaborators have the interest, resources, capabilities, and technical expertise to transition the results of Naval research and development for public use.

Article 1. DEFINITIONS

[Note to ORTA: Specialized definitions required for this Agreement may be added alphabetically within the DEFINITIONS. If specialized definitions are added, they must be included in the Table of Contents.]

As used in this Agreement, the following terms shall have the meanings defined below, which are equally applicable to both the singular and plural forms of nouns or any tense of verbs.

1.1 “Agreement” means this Cooperative Research and Development Agreement (CRADA) with its Appendices.

1.2 “Classified Information (CI)” means all Information classified in accordance with the national security laws of the United States.

1.3 “Co-Exclusive License” means the grant by the owner of Intellectual Property of an equal joint Exclusive

License to two entities.

1.4 “Collaborator” means the Navy participant or the Non-Navy participants represented and bound by the signatories of this Agreement. The term “Collaborator” shall be read to include one or more of the Collaborators as the context requires.

1.5 “Controlled Unclassified Information (CUI)” means official Information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

1.6 “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by [Navy Collaborator] and Non-Navy Collaborators working individually or together, pursuant to the Objectives (Article 2) and the Statement of Work (Appendix A).

1.7 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

1.8 “Effective Date” means the date of the last signature of the Collaborators executing this Agreement.

1.9 “Exclusive Commercial License” means the grant by the owner of Intellectual Property of the exclusive right to make, use, or sell an Invention for commercial purposes. As used in this Agreement, “Exclusive License” includes both an Exclusive License granted to any one of the Non-Navy Collaborators subject to a Non-Exclusive License to the other Non-Navy Collaborator(s) and Co-Exclusive License granted to Non-Navy Collaborators, unless otherwise specified.

1.10 “For Official Use Only (FOUO)” means a protective marking to be applied to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the Freedom of Information Act. This includes information that qualifies for protection under the provisions of the Privacy Act of 1974, as amended.

1.11 “Government” means the Government of the United States of America.

1.12 “Government Purpose Rights” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes. Government Purpose Rights includes competitive procurement, but does not include the right to have or permit others to use Data for commercial purposes.

1.13 “Information” means all Data, trade secrets, and commercial and financial information.

1.14 “Intellectual Property” means the property of ideas, examples of which include, but are not limited to, patents, trademarks, copyrights, and trade secrets.

1.15 “Internal Use License” means the grant by the owner of Intellectual Property of the right to make, have made, use, and import, but not commercially sell, an Invention or a product or service made using an Invention.

1.16 “Invention” means any creation or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act.

1.17 “Invention Disclosure” means the document identifying and describing to organizational management the Making of an Invention.

1.18 “Jointly Made Subject Invention” means any Invention Made jointly by the Collaborators.

1.19 “Limited Rights” means that each Collaborator of this Agreement may use, reproduce, and disclose to their

employees properly marked Non-Subject Data provided by the other Collaborator(s) for use in support only of this Cooperative Work.

1.20 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention.

1.21 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell an Invention.

1.22 “Non-Subject Data” means any Data that are not Subject Data.

1.23 “Non-Subject Invention” means any Invention that is not a Subject Invention.

1.24 “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.

1.25 “Principal Investigator (PI)” means that person having the responsibility for the performance of the Cooperative Work on behalf of a Collaborator.

1.26 “Proprietary Information” means Information that:

(i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information (a) is not known or available from other sources without obligations concerning its confidentiality, (b) has not been made available by the owners to others without obligation concerning its confidentiality, (c) is not already available to the Government without obligation concerning its confidentiality, and (d) has not been developed independently by persons who have had no access to the information; or

(ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.25(i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.

1.27 “Subject Data” means that Data first recorded in the performance of the Cooperative Work.

1.28 “Subject Invention” means any Invention Made in the performance of the Cooperative Work.

1.29 “Tangible Property” means personal or real property having or possessing physical form.

1.30 “Technical Data” means recorded Information relating to experimental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair or overhaul material, including, but not limited to graphic or pictorial delineations in media.

1.31 “Technical Document” means recorded Information that conveys scientific and Technical Information or Technical Data.

1.32 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.

1.33 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Article 2. OBJECTIVES

[Describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of this Agreement. State the desired outcome by each Collaborator, including any intentions for commercialization, if appropriate. This Article and the Statement of Work, Appendix A, are the defining articles for the Cooperative Work to be done by the Collaborators.]

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE

3.1 Facilities and Supervision

The Collaborators shall provide personnel, facilities, and equipment necessary for, and shall perform, the Cooperative Work.

The Cooperative Work done by each Collaborator will be performed under the program guidance of its PI, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within that Collaborator's facilities or done on behalf of that Collaborator by third parties in support of this Agreement. Personnel who perform Cooperative Work at other Collaborators' facilities will be supervised by their own PI.

[Note to ORTA: Refer to the Navy T2 Handbook when third parties are used by the Collaborators as part of this Agreement.]

3.2 Security Regulations and Directives

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed.

[Note to ORTA: This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators' facilities. If the Cooperative Work covers classified topics, a security clearance must be put in place for the Non-Navy Collaborators' facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Navy Collaborator's Security Office. If Export Control is needed, attach DD Form 2345, called a "Militarily Critical Technology Data Agreement" to this Agreement. If the Cooperative Work covers classified topics and a Non-Navy Collaborator is FOCI, then a FOCI Mitigation Instrument may be required. Refer to the Navy T2 Handbook.]

Article 4. REPRESENTATIONS AND WARRANTIES

4.1 [Navy Collaborator]'s Representations and Warranties

[Navy Collaborator] hereby warrants and represents to all Non-Navy Collaborators under this agreement that the performance of the activities specified by this Agreement is consistent with the [specify the appropriate mission area] and technology transfer missions of [Navy Collaborator]. [Navy Collaborator] is a Federal laboratory of the U.S. Department of the Navy, as defined by 15 U.S. Code § 3710a (d)(2)(A) and Department of Defense Instruction 5535.8, dated May 14, 1999.

[Note to ORTA: The following Article 4.2 is for a single commercial entity. Choose the appropriate alternatives to Article 4.2 from those listed in the Navy T2 Handbook according to the nature of the Non-Navy Collaborator(s): A university, nonprofit entity, State or local government, an entity directly or indirectly foreign owned, controlled, or influenced (FOCI), an entity comprised of multiple Collaborators. For multiple independent collaborators, repeat article 4.2 in its entirety for each Non-Navy Collaborator and renumber as appropriate.]

4.2 [Non-Navy Collaborator]'s Representations and Warranties

[Non-Navy Collaborator] hereby warrants and represents to [Navy Collaborator] and the other Non-Navy Collaborators as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation [substitute appropriate alternate language for a different entity, e.g., a university] duly organized, validly existing, and in good standing under the laws of [State or Commonwealth [or, for foreign organization, indicate Country]].

[Non-Navy Collaborator] [is/is not] a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

[Note to ORTA: The following paragraph is to be used only if the Non-Navy Collaborator is not a FOCI as of the signature date of this Agreement.]

If [Non-Navy Collaborator] or its successor or assignee is a U.S. company, and becomes, during the term of this Agreement of thereafter, directly or indirectly owned, controlled, or influenced by a foreign company or government (FOCI), the [Non-Navy Collaborator] or its successor or assignee shall promptly notify [Navy Collaborator] and the other Non-Navy Collaborators to that effect.

[Note to ORTA: If on the signature date of this Agreement the Non-Navy Collaborator is a FOCI, insert the following paragraph. In addition, an Amendment to this CRADA is required – see the Navy T2 Handbook. Otherwise, omit the following paragraph.]

If [Non-Navy Collaborator] or its successor or assignee becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a different foreign company or government (FOCI) then it or its successor or assignee shall promptly notify [Navy Collaborator] and the other Non-Navy Collaborators to that effect.

The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any agreement binding on [Non-Navy Collaborator]. Furthermore, the execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any valid order of any court, or any regulatory agency or other body having authority to which [Non-Navy Collaborator] is subject.

[Non-Navy Collaborator] is not currently subject to debarment or suspension by any agency of the Government. Should [Non-Navy Collaborator] be debarred or suspended during the term of this Agreement or thereafter, [Non-Navy Collaborator] will notify [Navy Collaborator] and the other Non-Navy Collaborators within thirty (30) days of receipt of a final notice. [Navy Collaborator] and the other Non-Navy Collaborators may then elect to terminate this Agreement and any licenses and options granted under this Agreement.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

There is no express or implied warranty as to any research, Invention, or product, whether tangible or intangible. In particular, the Collaborators make no express or implied warranty as to the merchantability or fitness for a particular purpose of any research, Invention, or product, whether tangible or intangible. Likewise, the Collaborators make no express or implied warranty as to any Cooperative Work, Subject Invention, Subject Data, or other product resulting from the Cooperative Work.

[Note to ORTA: See the Navy T2 Handbook for approved alternative language to the following paragraph.]

The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to export Information. Each exporting Collaborator is responsible for obtaining any export licenses and/or foreign disclosure reviews that may be required by U.S. Federal law. Each Non-Navy Collaborator shall provide written notification to [Navy Collaborator] immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work, Appendix A, may require the introduction or generation of CUI. All CUI that is introduced or generated in the performance of work under this Agreement shall be properly marked and safeguarded as provided herein and in all applicable U.S. Federal laws and regulations.

Article 5. FUNDING

[Note to ORTA: IF NO PAYMENTS ARE TO BE MADE by Non-Navy Collaborators to Navy Collaborator, or Navy Collaborator is using in-house funding or Government funds already received, use the following phrase and remove Articles 5.1 through 5.4 below and from the Table of Contents.]

Each Collaborator will fund its own efforts.

[Note to ORTA: Consult the Navy T2 Handbook for the situations in which payments are made only after the completion of a critical milestone in the Cooperative Work or in the case where Navy Collaborator's participation is contingent upon receipt of funds from another Government organization.]

[Note to ORTA: IF PAYMENTS ARE TO BE MADE directly from one or more Non-Navy Collaborator to Navy Collaborator, use the following Articles.]

5.1 Payment Schedule

[ORTA: Repeat the following paragraph for each Non-Navy Collaborator who is providing funding to the Navy Collaborator.]

[Non-Navy Collaborator] agrees to pay **[Navy Collaborator]** the following fees/costs in accordance with the payment schedule below:

[Note to ORTA: Insert amount to be paid, identify the task for which payment is made, the schedule of the tasks, and date of payment or, if preferred, the date and amount of each scheduled payment.]

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number]."

Checks will be mailed to:

[Note to ORTA: Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

5.2 Insufficient and Excess Funds

[Navy Collaborator] will not start or continue performance under this Agreement if the funds provided by a **Non-Navy Collaborator** for performance by **[Navy Collaborator]** are insufficient or are not provided as specified in Article 5.1.

In the event a **Non-Navy Collaborator** fails to tender the Government the required payment within fifteen (15) days after its respective due date, the **Non-Navy Collaborator** shall be in default under this Agreement for failure to make payments. If the **Non-Navy Collaborator** is in default for this reason, **[Navy Collaborator]** shall notify the **Non-Navy Collaborator**. If the **Non-Navy Collaborator** does not cure the default within fifteen (15) days of date of notice, **[Navy Collaborator]** may proceed to terminate the Agreement in accordance with Article 11.2, and may cancel any option for an Exclusive Commercial License to a Subject Invention, and may terminate any Exclusive Commercial License granted pursuant to this Agreement.

Funds that Non-Navy Collaborators provided under Article 5.1 and that [Navy Collaborator] has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to the funding Non-Navy Collaborators after [Navy Collaborator]'s submission of a final financial report to the funding Non-Navy Collaborators.

5.3 No New Commitments

[Navy Collaborator] shall make no new commitments concerning this Agreement after receipt of a written termination notice from a Non-Navy Collaborator in accordance with Article 11.2 and shall, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by [Navy Collaborator], the Non-Navy Collaborator agrees that such costs shall be chargeable against any funding that it provided to [Navy Collaborator].

5.4 Accounting Records

[Navy Collaborator] shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by each Non-Navy Collaborator under this Agreement and shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. [Navy Collaborator] shall provide each funding Non-Navy Collaborator a financial report within four (4) months after completion, expiration, or termination of this Agreement.

Article 6. REPORTS AND PUBLICATIONS

6.1 Interim Reports

The Collaborators shall submit **[insert number or frequency for each interim written report]** interim written reports to each other on the progress of the Cooperative Work.

6.2 Final Reports

The PIs shall submit to the [Navy Collaborator] Technology Transfer Office and Non-Navy Collaborators' preferred contacts a final report within four (4) months of the completion, termination, or expiration of this Agreement that includes the results obtained and a list of all Subject Inventions Made.

6.3 Agreement to Confer Prior to Publication or Public Disclosure of Information

For the purposes of this Article, the term "disclosure" shall include, but not be limited to, submission of any manuscript for peer review prior to publication.

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government CI, or CUI, is released and that patent rights are not compromised. Prior to any such publication or public disclosure of Subject Data, each Collaborator shall be offered a period not to exceed thirty (30) days, to review any proposed abstract, publication, presentation, or other document for public disclosure.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the disclosing Collaborator within thirty (30) days of the date of notice of intent to disclose publicly. If no objection is received by the Collaborator intending to make public disclosure, concurrence is assumed.

If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator before the public disclosure or by another date mutually agreed to by the Collaborators.

If a Collaborator objects to the release of Information on the grounds that the Information is Proprietary Information, or Information whose dissemination is restricted by U.S. security laws or regulations, the disclosure shall be postponed until the Information no longer meets the definitions of Proprietary Information, or is no longer covered by U.S. security laws or regulations.

6.4 Public Presentation of Subject Data

Any public presentation that includes Subject Data that are CI or CUI must have prior review and approval by **[Navy Collaborator]** pursuant to the pertinent security laws, regulations, and directives.

Article 7. INTELLECTUAL PROPERTY

7.1 Rights Under Other Agreements

Nothing in this Agreement is intended to change the rights in Intellectual Property acquired by the Collaborators in any other contract or Agreement between **each Non-Navy Collaborator** and the Government.

7.2 Rights in Subject Data

7.2.1 Rights of Collaborators

Each Collaborator shall have title to all Subject Data generated by that Collaborator. Each Collaborator agrees to provide all Subject Data to the other Collaborators and hereby grants Unlimited Rights in Subject Data that does not contain Proprietary Information.

7.2.2 Rights of **[Navy Collaborator]**

For Subject Data that contains **Non-Navy Collaborators'** Proprietary Information, the Government has rights to: 1) Use, modify, reproduce, release, perform, display, or disclose Technical Data within the Government without restriction; and 2) Release or disclose Subject 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 Subject Data for any U.S. Government purpose including competitive procurement.

7.2.3 Rights of **[Non-Navy Collaborators]**

For Subject Data that contains **[Navy Collaborator]**'s Proprietary Information, **each Non-Navy Collaborator** has rights to use, modify, reproduce, release, perform, display, or disclose Technical Data within the **Non-Navy Collaborator's** organization, in whole or in part, and in any manner, for any internal purpose excluding commercial purposes. If a **Non-Navy Collaborator** is subsequently awarded a Government contract that entails deliverables that incorporate the **[Navy Collaborator]**'s Proprietary Information, such deliverables must be delivered with at least Government Purpose Rights, as defined in the DFARS § 252.227-7013.

Each Non-Navy Collaborator shall have a Limited Right to use, reproduce, or disclose Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title, or interest, if such Subject Data are provided by **[Navy Collaborator]** under this Agreement. This Limited Right does not grant the **Non-Navy Collaborators** any License to any Invention in which the Government owns or may own a right, title, or interest. In accordance with Article 7.5 below, such Subject Data are to be held in confidence.

7.3 Rights in Non-Subject Data

7.3.1 Rights of Collaborators

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information or protected under 35 U.S. Code § 205 provided under this Agreement.

7.3.2 Rights of **[Navy Collaborator]**

[Navy Collaborator] has a Limited Right to use, reproduce, and disclose only to Government employees for use in support of the Cooperative Work any Non-Subject Data that are properly marked as Proprietary Information and are provided by **Non-Navy Collaborators** under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless written consent to other use or disclosure is obtained from **the Collaborator providing the information**.

7.3.3 Rights of **[Non-Navy Collaborator]**

Each **Non-Navy Collaborator** has a Limited Right to use, reproduce, and disclose to its employees for use in support of the Cooperative Work any Non-Subject Data that are marked as Proprietary Information and are provided by **Collaborators** under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless consent to other use or disclosure is obtained from **the Collaborator providing the information**.

The Non-Navy Collaborators shall have a Limited Right to use, reproduce, or disclose Non-Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title or interest, if such Non-Subject Data are provided by **[Navy Collaborator]** under this Agreement. Such Non-Subject Data shall be properly marked by **[Navy Collaborator]**.

7.4 No Implied License

Unless otherwise specifically provided, the Collaborators agree that the exchange of Data of any kind does not confer a license to any Non-Subject Invention claimed in any patent or Patent Application or to the subject matter of any copyright, trademark/service mark, or other form of Intellectual Property protection.

7.5 Protection of Data

Except for the rights granted in Article 7.1 and Article 7.2, Data shall be protected in accordance with the proper markings of its owner and as provided by, at a minimum, the requirements of 15 U.S. Code § 3710a. Proprietary Information will be protected only if it is properly marked as such. Information provided in intangible form that is Proprietary Information must be designated Proprietary Information at the time it is provided, followed within fifteen (15) days by a writing summarizing the exact information to be protected. The Collaborator receiving Information in an intangible form that is designated as Proprietary Information shall be responsible for protecting the Information as Proprietary Information during the fifteen (15) day notification. After the fifteen (15) day period, if no written summary has been received, the receiving Collaborator need not continue to protect the Information received in intangible form.

Data that is provided by **a Non-Navy Collaborator** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S. Code § 552(b)(4), shall not be disclosed by **any Collaborator**. **[Non-Navy Collaborator]** shall agree to not disclose, for five (5) years, Data that is produced by **[Navy Collaborator]** and that would have been considered a trade secret, business commercial, or financial information that is privileged or confidential if it had been produced by the **[Non-Navy Collaborator]**.

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.

7.6 Shared Data

For performance of the Cooperative Work of this Agreement, Data supplied by any Collaborator to another Collaborator may be disclosed to all Collaborators of the Agreement without notification to the supplying Collaborator. All Collaborators may discuss among each other any shared Data.

7.7 Release of Data Under the Freedom of Information Act

[Navy Collaborator] will comply with the Freedom of Information Act and Executive Order 12600.

7.8 Marking of Data

7.8.1 Markings Required for Collaborators

7.8.1.1 Data Provided with Less than Unlimited Rights

Each Collaborator shall mark all Data that it provides with less than Unlimited Rights with a marking that clearly identifies the Limited Rights.

7.8.1.2 Data that are CI, CUI, or Otherwise Restricted

Each Collaborator shall mark all Data that are CI, CUI or otherwise restricted by U.S. security or export control laws or regulations that it provides under this Agreement.

7.8.1.3 For Official Use Only (FOUO) Marking

FOUO is the marking used for documents/products containing material that qualifies as exempt from release under FOIA. This includes Technical Information and Technical Data.

Use of the FOUO marking is the responsibility of the originator of the Information. Use of the FOUO marking does not automatically qualify for FOIA exemption.

Technical Documents which contain Technical Information and/or Technical Data are considered FOUO documents and must be appropriately marked.

[Note to ORTA: For further information associated with FOUO markings see the Navy T2 Handbook.]

7.8.2 Markings Required for [Navy Collaborator]

7.8.2.1 Data that are Subject to 35 U.S. Code § 205

[Navy Collaborator] shall mark Data it provides under this Agreement that disclose one or more Inventions in which the Government owns or may own a right, title or interest, and that are subject to confidentiality under 35 U.S. Code § 205. Such Data shall be marked:

“[Navy Collaborator] DATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 U.S. Code § 205.”

7.8.2.2 Data Protected Under Article 7.5

[Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that [Navy Collaborator] provides to any Non-Navy Collaborator, where the Collaborators have agreed, under second paragraph of Article 7.5 of this Agreement, to protect such Data for up to five (5) years. The marking shall state:

“[Navy Collaborator] DATA SHALL BE PROTECTED BY THE [Non-Navy Collaborator] FOR A PERIOD OF [state a number up to five years] FROM [state the date of generation].”

7.8.3 Markings Required for Non-Navy Collaborators

7.8.3.1 Data that are Proprietary Information

A Non-Navy Collaborator providing Proprietary Information shall place a proprietary marking on each medium used for recording Data that the Non-Navy Collaborator provides to any Collaborator under this Agreement that the Non-Navy Collaborator asserts is Proprietary Information.

For Non-Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF [Non-Navy Collaborator] – [Collaborator] MAY USE ONLY FOR PURPOSE OF CRADA NUMBER NCRADA – [Navy Collaborator] – [last two digits of FY] – [lab CRADA sequence number]”

For Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF [Non-Navy Collaborator] – GOVERNMENT AND [OTHER NON-NAVY COLLABORATORS] HAVE CERTAIN RIGHTS UNDER CRADA NUMBER NCRADA – [Navy Collaborator] – [last two digits of FY] – [lab CRADA sequence number].”

All Collaborators together shall confer to determine if such marking is appropriate, with reference to the Definition of Proprietary Information in Article 1.

7.9 Subject Inventions

7.9.1 Reporting of Subject Inventions

Within sixty (60) days of Making an Invention resulting from the Cooperative Work, and prior to disclosure of the Invention to any third parties, unless a shorter time period is required by circumstances, the inventor(s) shall submit an Invention Disclosure to their employer. In the case of an Invention Made by employees of more than one Collaborator, the inventors of each Collaborator shall submit an Invention Disclosure to their respective employer. Each Collaborator shall provide the other Collaborators with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

7.9.2 Determination of Subject Inventions

The Collaborators shall review each Invention Disclosure resulting from the Collaborative Work and shall confer and consult to determine whether an Invention Disclosure represents a Subject Invention.

7.9.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to solely own the Subject Inventions Made solely by its employees. For any Jointly Made Subject Invention, each inventing Collaborator shall have ownership of the Subject Invention in the form of an undivided interest, without a right of accounting.

Each inventing Collaborator shall cooperate with the other Collaborator to obtain inventor signatures on Patent Applications, assignments or other documents required to secure Intellectual Property protection.

7.10 Non-Subject Inventions

7.10.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

[Note to ORTA: Article 7.9.2 is optional. It should be used only if Navy Collaborator and/or Non-Navy Collaborators have preexisting Non-Subject Inventions that are pertinent to this Cooperative Work.]

7.10.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of [Navy Collaborator] include but are not limited to the following:

[List Invention title, inventor name(s), patent number, or Navy case number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

[ORTA: Repeat the following for each Non-Navy Collaborator]

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of [Non-Navy Collaborator] include but are not limited to the following:

[List Invention title, inventor name(s) patent number, or attorneys docket number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

7.11 Filing of Patent Applications

By mutual agreement, the Collaborators shall identify which Collaborator shall file a Patent Application on any Subject Invention. The Collaborator responsible for filing of a Patent Application on any Subject Invention shall file such Patent Application at least sixty (60) days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received, whichever comes first. In the case of a Jointly Made Subject Invention, if no Patent Application is filed within the specified time period by the responsible Collaborator, any other Collaborator may assume control of filing the Patent Application and take title to the Jointly Made Subject Invention on ten (10) days written notification. Any Collaborator that relinquished the responsibility to file shall retain a nonexclusive, irrevocable, paid-up license to practice the Jointly Made Subject Invention or have the Jointly Made Subject Invention practiced throughout the world by or on its behalf.

7.11.1 Patent Filing

The Collaborator responsible for filing any Patent Application for a Subject Invention shall notify the other Collaborators of all filing deadlines for prosecution of any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.11, sixty (60) days prior to any filing deadline, the Collaborators shall confer to determine if the filing Collaborator intends to respond to the filing deadline. The non-filing Collaborators have the right to take action if the filing Collaborator declines.

7.11.2 Copies and Inspection

Each Collaborator filing a Patent Application on a Subject Invention shall provide the other Collaborators with a copy of any communication relating to prosecution of said Patent Application within thirty (30) days of receipt of such request. The filing Collaborator shall give the other Collaborators a limited power to inspect, with authorization to access the Patent Application, make copies, and, in the event that the filing Collaborator declines continued prosecution of the Patent Application, do all that is necessary to secure patent protection for the Jointly Made Subject Invention.

7.11.3 Rights of Inventors if the Collaborators Decline to File a Patent Application

In the event all Collaborators decline to file a Patent Application on a Subject Invention, the Government will renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

In the event all Collaborators decline to file a Patent Application on a Subject Invention, a Non-Navy Collaborator may, at its sole discretion, renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

7.12 Licenses to Subject Inventions

7.12.1 Internal Use License to **Non-Navy Collaborators**

Government grants to the **Non-Navy Collaborators** a nonexclusive, irrevocable, paid-up Internal Use License to a Subject Invention Made solely by employees of **[Navy Collaborator]**. No Internal Use License granted under this Agreement shall permit licensee to grant sublicenses. No Internal Use License granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of **that Non-Navy Collaborator's** business to which such license pertains.

7.12.2 Government License

Pursuant to 15 U.S. Code § 3710a(b)(2), for Subject Inventions Made solely by an employee of a **Non-Navy Collaborator**, the **Non-Navy Collaborator** grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.12.3 Option for Commercial License to Subject Inventions

[Navy Collaborator] gives **each Non-Navy Collaborator** the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of **[Field of Use]** in the Government's rights in any Subject Invention Made in whole or in part by a **[Navy Collaborator]** employee **subject to the nonexclusive license granted under Article 7.11.1 to each Non-Navy Collaborator separately. For the Non-Navy Collaborators who exercise this option the licenses shall be Co-exclusive.** These licenses shall be for reasonable consideration. In order for a **Non-Navy Collaborator** to exercise this option, **the Non-Navy Collaborator** must notify **[Navy Collaborator]** in writing within six (6) months of the filing of a Patent Application. **Should a Non-Navy Collaborator decide to exercise this option, the Non-Navy Collaborator shall notify all other Non-Navy Collaborators of its decision to do so, simultaneously with the notification to the [Navy Collaborator].** The **Non-Navy Collaborator** must execute an Exclusive Commercial or Nonexclusive Commercial License to the Subject Invention within six (6) months of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 C.F.R. Part 404.

7.12.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions

[ORTA: Repeat the following for each Non-Navy Collaborator]

[Navy Collaborator] may cancel the Exclusive or Nonexclusive Commercial License option and terminate any Exclusive or Nonexclusive Commercial Licenses and Internal Use Licenses provided for above made in whole or in part by Government employees in the event that:

- (a) **[Non-Navy Collaborator]** is in default for failure to make payment as agreed in Article 5; or
- (b) The Agreement is terminated unilaterally by **[Non-Navy Collaborator]** under Article 11.2; or
- (c) **[Non-Navy Collaborator]** fails to perform according to the Statement of Work (Appendix A); or
- (d) **[Non-Navy Collaborator]** becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a); or
- (e) **[Non-Navy Collaborator]** which was a FOCI organization when the Agreement was signed has now become a different FOCI organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of

7.13 License to Non-Subject Inventions

Each Collaborator shall allow the other Collaborators to practice any of its Non-Subject Inventions for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to any Collaborator in Non-Subject Inventions by performing the Cooperative Work. For commercial application(s) of Non-Subject inventions, a license must be obtained from the owner.

[Note to ORTA: Article 7.13 is optional.]

7.14 Copyrights

Each Non-Navy Collaborator may copyright its own works of authorship prepared pursuant to this Agreement if eligible for copyright protection under Title 17, U.S. Code § 106. Each Non-Navy Collaborator grants to the Government, and all other Non-Navy Collaborators of this Agreement, a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software, prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.2 and Article 7.3. A Non-Navy Collaborator shall affix the applicable copyright notice of Title 17, U.S. Code §§ 401-403, and an acknowledgment of the scientific and technical contributions of [Navy Collaborator]. Each Non-Navy Collaborator grants to the U.S. Government a paid-up, non-exclusive, irrevocable, worldwide license to reproduce or have reproduced, prepare or have prepared in derivative form, and distribute or have distributed copies of publications and solely or jointly created Subject Data for Government purposes.

Article 8. TANGIBLE PROPERTY

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to its Tangible Property. All Tangible Property owned and provided by one Collaborator shall remain the property of that Collaborator. Tangible Property having any component purchased or supplied by the Government shall be the property of the Government, unless such tangible Government components reasonably can be separated from non-Government components without damage to any of the individual components comprising the Tangible Property. These separated components shall remain the property of the Collaborator that purchased them. After termination of this Agreement the parties may, by mutual consent, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that originally owned the property.

8.2 Tangible Property Operational and Disposition Costs

Each Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all Tangible Property to which it has title.

8.3 Disposal of Tangible Property

Unless otherwise agreed, each Collaborator shall take possession of its respective Tangible Property within sixty (60) days of termination of this Agreement. Each Collaborator shall cooperate with the other Collaborator in the recovery or disposition of the other Collaborator's property. Disposal of Tangible Property shall be in accordance with applicable U.S. Federal, State, and local property disposal laws, environmental laws, and regulations.

Article 9. LIABILITY

9.1 Extent of Government Liability

The Government shall be liable for the negligent or wrongful acts of its officers and employees solely to the extent provided for in the Federal Tort Claims Act (28 U.S. Code § 2671 et. seq.) and in other applicable laws and regulations of the U.S. that specifically waive sovereign immunity. Nothing in this Agreement shall be

construed as a waiver of the sovereign immunity of the U.S.

9.2 Extent of **Non-Navy Collaborators** Liability

[ORTA: Repeat the following for each Non-Navy Collaborator]

[Non-Navy Collaborator] is solely responsible for its actions and the actions of those acting for **[Non-Navy Collaborator]** in the performance of this Agreement and for any damages that may arise from any suit, action, or claim, and for any costs from or incidental to any suit, action, or claim, including but not limited to settlement and defense costs. Further, **[Non-Navy Collaborator]** agrees that in any suit, action or claim brought by anyone not a Collaborator to this Agreement based on actions of **[Non-Navy Collaborator]**, **[Non-Navy Collaborator]** shall not pursue any actions to enter the Government as a Collaborator in such suit, action or claim unless the Government has some liability under the Federal Tort Claims Act. This provision shall survive termination of this Agreement.

9.3 Force Majeure

No Collaborator shall be liable for the consequences of any *force majeure* that (1) is beyond its reasonable control; (2) is not caused by the fault or negligence of such Collaborator; (3) causes such Collaborator to be unable to perform its obligations under this Agreement; and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure*, the Collaborator unable to perform shall promptly notify the other Collaborators. The Collaborators shall suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and shall use their best efforts to resume performance as quickly as possible.

Article 10. GENERAL PROVISIONS

10.1 Entire Agreement

This Agreement constitutes the entire agreement between the Collaborators concerning the Cooperative Work and supersedes any prior understanding or written or oral agreement relative to the Cooperative Work.

10.2 Severability

The illegality or invalidity of any Article of this Agreement shall not impair, affect, or invalidate any other Article of this Agreement.

10.3 Interpretation of Headings

Headings of the Articles of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

10.4 Governing Laws

U.S. Federal laws shall govern this Agreement for all purposes.

10.5 Independent Parties/Entities

The relationship of the Collaborators to this Agreement is that of independent parties and not as agents of each other, partners, or participants in a joint venture.

10.6 Subcontracting

[Note to ORTA: Refer to the Navy T2 Handbook for a discussion on issues related to the use of contractors during the execution of a CRADA.]

No Collaborator may allow third parties to perform any part of the Cooperative Work under this Agreement without express written consent of the other Collaborators. If consent is obtained, the Collaborator requesting such consent shall remain fully responsible for the portion of the Cooperative Work to be accomplished under a third-party agreement, and the third-party is not a Collaborator of this Agreement. Any third-party agreement to perform a portion of the Cooperative Work shall contain terms consistent with this Agreement.

10.7 Assignment

This Agreement shall not be assigned or otherwise transferred by any Collaborator without the prior written consent of the other Collaborators, except to the successor of that part of a Non-Navy Collaborator's business to which this Agreement pertains.

10.8 Disputes

[Navy Collaborator] and the Non-Navy Collaborators agree to use reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories of this agreement or their successors for resolution. If a dispute continues, the remaining issues may be submitted to the Chief of Naval Research (CNR), or the CNR designee, for resolution. This Agreement does not prevent any Collaborator from pursuing disputes in a U.S. Federal court of competent jurisdiction. No Collaborator will pursue litigation in a U.S. Federal court until after the CNR, or the CNR designee, decides the dispute, or until sixty (60) days after the dispute was first submitted to the CNR, or the CNR designee, whichever comes first.

10.9 Use of Name or Endorsements

A Non-Navy Collaborator shall not use the name of [Navy Collaborator] or any other Government entity on any product or service that is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of [Navy Collaborator]. By entering into this Agreement, [Navy Collaborator] does not directly or indirectly endorse any product or service provided, or to be provided, by Non-Navy Collaborators, or their successors, assignees, or licensees. A Non-Navy Collaborator shall not in any way imply that the Department of the Navy endorses any such product or service.

10.10 Public Release Announcements of This Agreement

Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public.

10.11 Environment, Safety, and Health

Each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this Agreement. At the conclusion of this Agreement, each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste still in its possession. Each Collaborator shall obtain at its own expense all necessary permits and licenses as required by U.S. Federal, State, and local law and shall conduct such handling, control, and disposition in a lawful and environmentally responsible manner. Each Collaborator is responsible for all required environmental, safety, and health compliance, notice, and monitoring related to its facility in accordance with U.S. Federal, State, and local law and regulations. Collaborators shall abide by the environmental, safety, and health directives of the host facility in which the Cooperative Work is being performed, and any U.S. Federal, State, or local laws and regulations pertaining to environment, safety, and health that are applicable to the host facility.

10.12 U.S. Competitiveness

The Non-Navy Collaborators agree that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

10.13 Waivers

None of the provisions of this Agreement shall be considered waived by any Collaborator unless such waiver is given in writing to the other Collaborators, signed by the executing official of this Agreement or the official's successor having the authority to bind the Collaborator making the waiver. The failure of any Collaborator to insist upon strict performance of any of the terms and conditions herein, or failure or delay to exercise any rights provided herein or by law shall not be deemed a waiver of any right of any Collaborator under this Agreement.

Article 11. MODIFICATIONS AND NOTICES

11.1 Amendments

Any modifications to this Agreement shall be jointly agreed upon and shall not be effective until a written amendment is signed by the executing officials of this Agreement or their successors.

11.2 Unilateral Termination

Each Collaborator has the right to unilaterally terminate this Agreement upon thirty (30) days written notice to the other Collaborators.

11.3 Notices

All notices pertaining to or required by Articles of this Agreement, except those pertaining solely to the prosecution of any patent, trademark, or service mark, shall be in writing and shall be signed by an authorized representative of the Technology Transfer Office for [Navy Collaborator] or the preferred contact for the Non-Navy Collaborators. All such notices shall be delivered in a manner that ensures confirmation of receipt.

If to [Navy Collaborator]:

[Use the official Navy Collaborator mailing address for the Technology Transfer Office.]

[ORTA: Repeat the following for each Non-Navy Collaborator]

If to [Non-Navy Collaborator]:

[Specify the mailing address for the preferred contact.]

A Collaborator shall notify the other Collaborators of a change of address in the manner set forth above.

Notices pertaining solely to the prosecution of any patent, trademark, or service mark related to this Agreement shall be in writing and shall be signed by and sent to the Collaborator's legal counsel for Intellectual Property. Legal counsel for Intellectual Property for each Collaborator shall send a copy of any such notice to the Technology Transfer Office for [Navy Collaborator]. If any Collaborator fails to identify such counsel upon request, then such notices shall be sent to the points of contact specified above.

Article 12. SURVIVING PROVISIONS

The Articles covering Definitions, Representations and Warranties, Funding, Reports and Publications, Intellectual Property, Tangible Property, Liability, General Provisions, Modifications and Notices, and Surviving Provisions shall survive the completion, termination, or expiration of this Agreement.

Article 13. DURATION

This Agreement expires [specify a time no greater than four (4) years] after its Effective Date, unless otherwise extended in writing according to the provisions of Article 11.

[If necessary, write "Signatures for the Agreement follow on next page".]

Article 14. SIGNATURES

[ORTA: Repeat the following for each Non-Navy Collaborator]

For [Non-Navy Collaborator]:

I, the undersigned, am duly authorized to bind [Non-Navy Collaborator] to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

Navy Organization:

APPENDIX A - STATEMENT OF WORK

BETWEEN

[Navy Collaborator]

[ORTA: Repeat the following for each Non-Navy Collaborator]

AND

[Non-Navy Collaborator]

The Collaborators agree to perform the following tasks:

[Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[ORTA: List tasks for each Non-Navy Collaborator.]

[Non-Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[Navy Collaborator] and [Non-Navy Collaborator] will be responsible for the following joint tasks:

- 1.
- 2.
- 3.

Section IV - 4

Clinical Trials Non-Standard CRADA - Explanation

The sample Clinical Trials Non-Standard CRADA presented here is based on the standard NCRADA. In particular there are added definitions to Article 1:

Adverse Drug Experience
Clinical Brochure
FDA
Institutional Review Board
Protected Health Information
Protocol
Serious Adverse Drug Experiences
Source Document
Study Patient
Test Article
Unanticipated Adverse Device Effect
Unexpected Adverse Drug Experiences

Other additional Articles include the following:

Article 3.1.1 Records
 3.1.1.1 Complete and Accurate Records
 3.1.1.2 Retention of Records
 3.1.1.3 Communication of Study Results to Study Patients
Article 3.1.2 Audits
 3.1.2.1 **[Non-Navy Collaborator]** Auditing and Source Document Verification
 3.1.2.2 Inspections and Audits
Article 3.1.3 Protected Health Information

Article 3.3 Protection of Human Subjects

Article 6.5 Adverse Drug Experiences

Article 7.8 FDA Documents

Other additional appendices that may be needed depending on the Agreement:

Appendix C Non-Navy Collaborator Use of Third Party/Navy Collaborator Use of Third Party
Appendix D Budget Data
Appendix E Clinical Trials Protocol
Appendix F Form 7443
Appendix G Privacy and Security of Protected Health Information
In addition, additional language is added to the Preamble.

NON-STANDARD

NAVY CLINICAL TRIALS COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[full name of NAVY COLLABORATOR then acronym]

AND

[full name of NON-NAVY COLLABORATOR then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: NCRADA - [Navy Org.] - [last two digits of FY] - [sequence number]

AGREEMENT ADMINISTRATORS:

[NAVY COLLABORATOR acronym]

Technology Transfer ORTA: **[insert name, organization code, telephone number, e-mail address]**

Intellectual Property Counsel: **[insert name, organization code, telephone number, e-mail address]**

Principal Investigator: **[insert name, organization code, telephone number, e-mail address]**

[NON-NAVY COLLABORATOR acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel *[Optional]*: **[insert name, telephone number, e-mail address]**

Principal Investigator: **[insert name, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE 1

Article 1. DEFINITIONS 1

1.1 “Adverse Drug Experience” 1

1.2 “Agreement” 1

1.3 “Clinical Brochure” 2

1.4 “Collaborator” 2

1.5 “Cooperative Work” 2

1.6 “Data” 2

1.7 “Effective Date” 2

1.8 “Exclusive Commercial License” 2

1.9 “FDA” 2

1.10 “For Official Use Only (FOUO)” 2

1.11 “Government” 2

1.12 “Government Purpose Rights” 2

1.13 “Information” 2

1.14 “Institutional Review Board (IRB)” 2

1.15 “Intellectual Property” 2

1.16 “Internal Use License” 2

1.17 “Invention” 2

1.18 “Invention Disclosure” 2

1.19 “Jointly Made Subject Invention” 2

1.20 “Limited Rights” 3

1.21 “Made” 3

1.22 “Nonexclusive Commercial License” 3

1.23 “Non-Subject Data” 3

1.24 “Non-Subject Invention” 3

1.25 “Patent Application” 3

1.26 “Principal Investigator (PI)” 3

1.27 “Proprietary Information” 3

1.28 “Protected Health Information” 3

1.29 “Protocol” 3

1.30 “Serious Adverse Drug Experiences” 3

1.31 “Source Document” 3

1.32 “Study Patient” 3

1.33 “Subject Data” 3

1.34 “Subject Invention” 3

1.35 “Tangible Property” 4

1.36 “Technical Data” 4

1.37 “Technical Document” 4

1.38 “Technical Information” 4

1.39 “Test Article” 4

1.40 “Third Party” 4

1.41 “Unanticipated Adverse Device Effect” 4

1.42 “Unexpected Adverse Drug Experiences” 4

1.43 “Unlimited Rights” 4

<u>Article 2.</u>	<u>OBJECTIVES</u>	4
<u>Article 3.</u>	<u>RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE</u>	4
3.1	<u>Facilities and Supervision</u>	4
3.1.1	<u>Records</u>	4
3.1.1.1	<u>Complete and Accurate Records</u>	4
3.1.1.2	<u>Retention of Records</u>	5
3.1.1.3	<u>Communication of Study Results to Study Patients</u>	5
3.1.2	<u>Audits</u>	5
3.1.2.1	<u>[Non-Navy Collaborator] Auditing and Source Document Verification</u>	5
3.1.2.2	<u>Inspections and Audits</u>	5
3.1.3	<u>Protected Health Information</u>	5
3.2	<u>Security Regulations and Directives</u>	6
3.3	<u>Protection of Human Subjects</u>	6
<u>Article 4.</u>	<u>REPRESENTATIONS AND WARRANTIES</u>	6
4.1	<u>[Navy Collaborator]'s Representations and Warranties</u>	6
4.2	<u>[Non-Navy Collaborator]'s Representations and Warranties</u>	6
4.3	<u>Joint Representations and Warranties</u>	7
<u>Article 5.</u>	<u>FUNDING</u>	8
5.1	<u>Payment Schedule</u>	8
5.2	<u>Insufficient and Excess Funds</u>	9
5.3	<u>No New Commitments</u>	9
5.4	<u>Accounting Records</u>	9
<u>Article 6.</u>	<u>REPORTS AND PUBLICATIONS</u>	9
6.1	<u>Interim Reports</u>	9
6.2	<u>Final Reports</u>	9
6.3	<u>Agreement to Confer Prior to Publication or Public Disclosure of Information</u>	10
6.4	<u>Public Presentation of Subject Data</u>	10
6.5	<u>Adverse Drug Experiences</u>	10
<u>Article 7.</u>	<u>INTELLECTUAL PROPERTY</u>	10
7.1	<u>Rights Under Other Agreements</u>	10
7.2	<u>Rights in Subject Data</u>	10
7.2.1	<u>Rights of Both Collaborators</u>	10
7.2.2	<u>Rights of [Navy Collaborator]</u>	11
7.2.3	<u>Rights of [Non-Navy Collaborator]</u>	11
7.3	<u>Rights in Non-Subject Data</u>	11
7.3.1	<u>Rights of Both Collaborators</u>	11
7.3.2	<u>Rights of [Navy Collaborator]</u>	11
7.3.3	<u>Rights of [Non-Navy Collaborator]</u>	11
7.4	<u>No Implied License</u>	11
7.5	<u>Protection of Data</u>	11
7.6	<u>Release of Data Under the Freedom of Information Act</u>	12
7.7	<u>Marking of Data</u>	12
7.7.1	<u>Markings Required for Both Collaborators</u>	12
7.7.1.1	<u>Data Provided with Less than Unlimited Rights</u>	12
7.7.1.2	<u>For Official Use Only (FOUO) Marking</u>	12
7.7.2	<u>Markings Required for [Navy Collaborator]</u>	12

7.7.2.1	Data that are Subject to 35 U.S. Code § 205	12
7.7.2.2	Data Protected Under Article 7.5	12
7.7.3	Markings Required for [Non-Navy Collaborator]	13
7.7.3.1	Data that are Proprietary Information	13
7.8	FDA Documents	13
7.9	Subject Inventions	13
7.9.1	Reporting of Subject Inventions	13
7.9.2	Determination of Subject Inventions	13
7.9.3	Title to and Ownership of Subject Inventions	13
7.10	Non-Subject Inventions	14
7.10.1	Ownership of Non-Subject Inventions	14
7.10.2	Preexisting Non-Subject Inventions Pertinent to the Cooperative Work	14
7.11	Filing of Patent Applications	14
7.11.1	Patent Filing	14
7.11.2	Copies and Inspection	14
7.11.3	Rights of Inventors if the Collaborators Decline to File a Patent Application	15
7.12	Licenses to Subject Inventions	15
7.12.1	Internal Use License to [Non-Navy Collaborator]	15
7.12.2	Government License	15
7.12.3	Option for Commercial License to Subject Inventions	15
7.12.4	Termination of Licenses Granted and Cancellation of License Option to Subject Inventions	15
7.13	License to Non-Subject Inventions	16
7.14	Copyrights	16
Article 8.	TANGIBLE PROPERTY	16
8.1	Ownership of Tangible Property	16
8.2	Tangible Property Operational and Disposition Costs	16
8.3	Disposal of Tangible Property	16
Article 9.	LIABILITY	17
9.1	Extent of Government Liability	17
9.2	Extent of [Non-Navy Collaborator] Liability	17
9.3	Force Majeure	17
Article 10.	GENERAL PROVISIONS	17
10.1	Entire Agreement	17
10.2	Severability	17
10.3	Interpretation of Headings	17
10.4	Governing Laws	17
10.5	Independent Parties/Entities	17
10.6	Subcontracting	18
10.7	Assignment	18
10.8	Disputes	18
10.9	Use of Name or Endorsements	18
10.10	Public Release Announcements of This Agreement	18
10.11	Environment, Safety, and Health	18
10.12	U.S. Competitiveness	19
10.13	Waivers	19
Article 11.	MODIFICATIONS AND NOTICES	19
11.1	Amendments	19

[11.2 Unilateral Termination](#).....19
[11.3 Notices](#)19
[Article 12. SURVIVING PROVISIONS](#).....**19**
[Article 13. DURATION](#).....**20**
[Article 14. SIGNATURES](#).....**20**
[APPENDIX A - STATEMENT OF WORK](#).....**A-1**
[APPENDIX C](#)**C-1**
[APPENDIX G](#) **G-1**

NON-STANDARD

NAVY CLINICAL TRIALS COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[Navy Collaborator full name then acronym]

AND

[Non-Navy Collaborator full name then acronym]

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of the Navy Collaborator, [Navy Collaborator name and address], and the Non-Navy Collaborator described below agree to and enter into this Cooperative Research and Development Agreement (CRADA).

[Insert full name of Non-Navy Collaborator followed by acronym and address], is a corporation [substitute appropriate alternate language for a different entity, e.g., a university] duly organized, validly existing and in good standing under the laws of the [State or Commonwealth] of [indicate name].

[Note to ORTA: If the Non-Navy Collaborator is a FOCl, please add the following sentence in the above paragraph. Also, state the name of the parent company and the country in which it is incorporated.]

Further, [Non-Navy Collaborator] is directly or indirectly controlled by a foreign company or government [Executive Order 12591], Section 4 (a), specifically, [insert name of parent company and the country in which it is incorporated].

[Navy Collaborator] has extensive expertise, capabilities, and information in the conduct of clinical research within investigational pharmaceutical products and requirements, processes, and related procedures, and in accordance with the U.S. Federal Technology Transfer Act, desires to make this expertise and technology available for use in the public and private sectors.

[Non-Navy Collaborator] conducts business in the research and development, manufacture, and marketing of therapeutic pharmaceutical products and has the interest, resources, capabilities, and technical expertise to transition the results of Naval research and development for public use.

The purpose of this Agreement is to provide for the conduct of certain research in the United States as set forth in [Non-Navy Collaborator]'s Protocol [cite Protocol number], attached hereto as Appendix E, and all future amendments thereto, all of which are incorporated herein by reference and made part of this Agreement, and entitled [“title of clinical Protocol.”]

Article 1. DEFINITIONS

[Note to ORTA: Specialized definitions required for this Agreement may be added alphabetically within the DEFINITIONS. If specialized definitions are added, they must be included in the Table of Contents.]

As used in this Agreement, the following terms shall have the meanings defined below, which are equally applicable to both the singular and plural forms of nouns or any tense of verbs.

1.1 “Adverse Drug Experience” means an adverse event as defined under 21 C.F.R. Section 310.305, Records and Reports Concerning Adverse Drug Experience, and other applicable Federal Regulations.

1.2 “Agreement” means this Cooperative Research and Development Agreement (CRADA) with its Appendices, amendments, and exhibits, if any.

1.3 “Clinical Brochure” means a document containing all the relevant information about a drug, including animal screening, preclinical toxicology, and detailed pharmaceutical data. Also included, if available, is a summary of current knowledge about pharmacology, mechanism of action, and a full description of the clinical toxicities.

1.4 “Collaborator” means the Navy participant or the Non-Navy participant represented and bound by the signatories of this Agreement.

1.5 “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by **[Navy Collaborator]** or **[Non-Navy Collaborator]** working individually or together, pursuant to the Objectives (Article 2) and the Statement of Work (Appendix A) and the Protocol (Appendix E).

1.6 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

1.7 “Effective Date” means the date of the last signature of the Collaborators executing this Agreement.

1.8 “Exclusive Commercial License” means the grant by the owner of Intellectual Property of the exclusive right to make, use, or sell an Invention for commercial purposes.

1.9 “FDA” means the Food and Drug Administration, U.S. Department of Health and Human Services.

1.10 “For Official Use Only (FOUO)” means a protective marking to be applied to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the Freedom of Information Act. This includes information that qualifies for protection under the provisions of the Privacy Act of 1974, as amended.

1.11 “Government” means the Government of the United States of America.

1.12 “Government Purpose Rights” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes. Government Purpose Rights includes competitive procurement, but does not include the right to have or permit others to use Data for commercial purposes.

1.13 “Information” means all Data, trade secrets, and commercial and financial information.

1.14 “Institutional Review Board (IRB)” means an independent body consisting of medical, scientific, and nonscientific members, whose responsibility is to ensure the protection of the rights, safety, and well-being of human subjects involved in a clinical trial, by, among other things, reviewing, approving, and providing continuous review of Protocols and amendments, and of the methods and material to be used in obtaining and documenting informed consent of the Study Patients.

1.15 “Intellectual Property” means the property of ideas, examples of which include, but are not limited to, patents, trademarks, copyrights, and trade secrets.

1.16 “Internal Use License” means the grant by the owner of Intellectual Property of the right to make, have made, use, and import, but not commercially sell, an Invention or a product or service made using an Invention.

1.17 “Invention” means any creation or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act.

1.18 “Invention Disclosure” means the document identifying and describing to organizational management the Making of an Invention.

1.19 “Jointly Made Subject Invention” means any Invention Made jointly by the Collaborators.

1.20 “Limited Rights” means that each Collaborator of this Agreement may use, reproduce, and disclose to their employees properly marked Non-Subject Data provided by the other Collaborator(s) for use in support only of this Cooperative Work.

1.21 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention.

1.22 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell an Invention.

1.23 “Non-Subject Data” means any Data that are not Subject Data.

1.24 “Non-Subject Invention” means any Invention that is not a Subject Invention.

1.25 “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.

1.26 “Principal Investigator (PI)” means that person having the responsibility for the performance of the Cooperative Work on behalf of a Collaborator.

1.27 “Proprietary Information” means Information that:

(i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information (a) is not known or available from other sources without obligations concerning its confidentiality, (b) has not been made available by the owners to others without obligation concerning its confidentiality, (c) is not already available to the Government without obligation concerning its confidentiality, and (d) has not been developed independently by persons who have had no access to the information; or

(ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.25(i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.

1.28 “Protected Health Information” means information regarding diagnosis, history or treatment that allows unique identification of an individual (“Protected Health Information”), as that term is defined by 45 C.F.R. Section 164.501.

1.29 “Protocol” means [Non-Navy Collaborator]’s Protocol [**cite Protocol number and give title of the Protocol**] incorporated into this Agreement by reference and attached in Appendix E.

1.30 “Serious Adverse Drug Experiences” is defined by 21 C.F.R. § 310.305 as any Adverse Drug Experience occurring at any dose that results in any of the following outcomes: death, life-threatening Adverse Drug Experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect.

1.31 “Source Document” means original documents, data and records as defined in the Guideline for Good Clinical Practice, Section 1.52, published in the Federal Register, May 9, 1997 (62 Fed. Reg. 25, 692).

1.32 “Study Patient” means an individual who participates in the Cooperative Work, either as a recipient of the Test Article(s) or as a control.

1.33 “Subject Data” means that Data first recorded in the performance of the Cooperative Work.

1.34 “Subject Invention” means any Invention Made in the performance of the Cooperative Work.

1.35 “Tangible Property” means personal or real property having or possessing physical form.

1.36 “Technical Data” means recorded Information relating to experimental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair or overhaul material, including, but not limited to graphic or pictorial delineations in media.

1.37 “Technical Document” means recorded Information that conveys scientific and Technical Information or Technical Data.

1.38 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of military supplies and equipment.

1.39 “Test Article” means a drug biological product or device that is subject to regulation under the Federal Food, Drug and Cosmetic Act, 21 U.S. Code §201, et seq., as amended, as defined in 21 C.F.R. § 56.152(1).

1.40 “Third Party” means a Non-Navy participant who is not a Collaborator but who works on behalf of a Collaborator and is bound to this Agreement as provided in Appendix C.

1.41 “Unanticipated Adverse Device Effect” is defined by 21 C.F.R. § 812.3(s) as any serious adverse effect on health or safety or any life-threatening problem or death caused by, or associated with, a device, if that effect, problem, or death was not previously identified in nature, severity, or degree of incidence in the investigational plan or any other unanticipated serious problem associated with a device that relates to the rights, safety, or welfare of subjects.

1.42 “Unexpected Adverse Drug Experiences” is defined by either 21 C.F.R. § 310.305(b) or C.F.R. § 314.80(a) as any Adverse Drug Experience, the specificity or severity of which is not consistent with the current investigator brochure or product labeling, as available.

1.43 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Article 2. OBJECTIVES

[Describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of this Agreement. State the desired outcome by each Collaborator, including any intentions for commercialization, if appropriate. This Article, the Statement of Work, Appendix A, and the Clinical Trials Protocol, Appendix E are the defining articles for the Cooperative Work to be done by the Collaborators.]

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE

3.1 Facilities and Supervision

The Collaborators shall provide personnel, facilities, and equipment necessary for, and shall perform, the Cooperative Work.

The Cooperative Work done by each Collaborator will be performed under the program guidance of its PI, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within that Collaborator’s facilities or done on behalf of that Collaborator by third parties in support of this Agreement. Personnel who perform Cooperative Work at the other Collaborator’s facilities will be supervised by their own PI.

[Note to ORTA: Refer to the Navy T2 Handbook when third parties are used by the Collaborators as part of this Agreement.]

3.1.1 Records

3.1.1.1 Complete and Accurate Records

[Navy Collaborator] PI shall maintain complete and accurate records of the status and progress of the Cooperative Work and shall provide such information to **[Non-Navy Collaborator]** upon request. **[Navy Collaborator]** PI shall promptly complete, and allow **[Non-Navy Collaborator]** access to, **[Non-Navy Collaborator]**-supplied case report forms for all Study Patients. Upon **[Non-Navy Collaborator]**'s request, **[Navy Collaborator]** PI shall correct any case report form errors and/or omissions by promptly submitting **[Non-Navy Collaborator]**-supplied forms for resolving document discrepancies. At all times **[Non-Navy Collaborator]** shall remain the sole owner of the case report forms and document discrepancy resolution forms.

3.1.1.2 Retention of Records

[Navy Collaborator] shall retain and preserve one (1) copy only of all Subject Data for the longer of: (i) two (2) years after the last marketing authorization for the Test Article has been approved or **[Non-Navy Collaborator]** has discontinued its research with respect to such drug; or (ii) such longer period as required by applicable global regulatory requirements. At the end of such period, **[Navy Collaborator]** PI shall notify **[Non-Navy Collaborator]** of their intent to destroy all such material. **[Non-Navy Collaborator]** shall have thirty (30) days to respond to **[Navy Collaborator]**'s notice, and **[Non-Navy Collaborator]** shall have a further opportunity to retain such materials at **[Non-Navy Collaborator]**'s expense.

3.1.1.3 Communication of Study Results to Study Patients

[Navy Collaborator]'s PI is encouraged to disclose a summary of the results of the Cooperative Work to Study Patients in accordance with the publications provisions of this Agreement.

3.1.2 Audits

3.1.2.1 **[Non-Navy Collaborator]** Auditing and Source Document Verification

[Navy Collaborator]'s PI shall cooperate fully and make all necessary documents (including but not limited to Subject Data/Source Documents) and personnel available to **[Non-Navy Collaborator]** to permit **[Non-Navy Collaborator]** to examine, analyze, verify, monitor and audit the Cooperative Work as necessary. **[Navy Collaborator]**'s PI has been informed of the purpose of Source Document verification and fully understands this will be part of the **[Non-Navy Collaborator]**'s monitoring process. **[Navy Collaborator]**'s PI understands which Subject Data and items must be included in the Source Document and for which Subject Data and/or items the case report form will stand as the Source Document. **[Non-Navy Collaborator]** shall have the right to monitor and audit the trial, including access to records and personnel involved in the conduct of the Cooperative Work. **[Navy Collaborator]**'s PI and the personnel assisting the **[Navy Collaborator]**'s PI shall also participate as necessary in follow-up monitoring visits and audits to ensure compliance with all applicable laws and regulations.

3.1.2.2 Inspections and Audits

[Navy Collaborator] and/or its PI shall make all necessary Subject Data and Source Documents available to a regulatory authority or other governmental authorities, or the IRB/IEC for inspection or auditing. In the event **[Navy Collaborator]** and/or its PI receives notice that it or the IRB/IEC shall be the subject of an inspection, investigation or audit by a regulatory authority, or other governmental authorities, **[Navy Collaborator]** and/or its PI receiving such notice shall immediately notify **[Non-Navy Collaborator]**. In the event neither **[Navy Collaborator]** nor its PI does not receive prior notice of said inspection, investigation or audit, **[Navy Collaborator]** or its PI shall notify **[Non-Navy Collaborator]** as soon as possible after receiving notice of said inspection, investigation or audit. **[Navy Collaborator]** and/or its PI shall provide **[Non-Navy Collaborator]** with copies of any documents received from or provided to a regulatory authority or other governmental authorities.

3.1.3 Protected Health Information

[Navy Collaborator] shall comply with all laws and regulations, including without limitation the regulations of the Health Insurance Portability and Accountability Act (HIPAA), governing the privacy and security of health information. To the extent required by applicable law, **[Navy Collaborator]** will also require its PI to comply with applicable law.

[Navy Collaborator] shall treat all Protected Health Information as protected from disclosure to the extent required by applicable law. [Navy Collaborator] and [Non-Navy Collaborator] will implement and maintain such privacy and security safeguards as are necessary to ensure that Protected Health Information is adequately protected from unauthorized access.

[Navy Collaborator]'s PI shall ensure that all consents and authorizations required by applicable law are obtained from Study Patient, such that [Non-Navy Collaborator] and each of [Non-Navy Collaborator]'s third party contractors are permitted to access the Protected Health Information of any Study Patient for the purpose of fulfilling any obligation under this Agreement or for the purpose of complying with any requirement under applicable law or any other legal or regulatory requirement to which [Non-Navy Collaborator] is subject.

In the event that this Agreement or any practices which could be or are employed in exercising rights under the Agreement are inconsistent with or do not satisfy the requirements of applicable law relating to the privacy of Protected Health Information, the Collaborators shall take any action necessary to bring performance under this Agreement into compliance with such applicable law, including amending or modifying this Agreement.

3.2 Security Regulations and Directives

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed.

[Note to ORTA: This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators' facilities. If the Cooperative Work covers classified topics, a security clearance must be put in place for the Non-Navy Collaborator's facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Navy Collaborator's Security Office. If Export Control is needed, attach DD Form 2345, called a "Militarily Critical Technology Data Agreement" to this Agreement. If the Cooperative Work covers classified topics and the Non-Navy Collaborator is FOCI, then a FOCI Mitigation Instrument may be required. Refer to the Navy T2 Handbook.]

3.3 Protection of Human Subjects

By signing this agreement, the Parties agree that they will comply with the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Defense at 45 C.F.R. Part 46 (2018). The Parties also agree that no research involving human subjects covered under 32 C.F.R. § 219 can commence until IRB approval has been obtained.

Article 4. REPRESENTATIONS AND WARRANTIES

4.1 [Navy Collaborator]'s Representations and Warranties

[Navy Collaborator] hereby warrants and represents to [Non-Navy Collaborator] that the performance of the activities specified by this Agreement is consistent with the [specify the appropriate mission area] and technology transfer missions of [Navy Collaborator]. [Navy Collaborator] is a Federal laboratory of the U.S. Department of the Navy, as defined by 15 U.S. Code § 3710a (d)(2)(A) and Department of Defense Instruction 5535.8, dated May 14, 1999.

[Note to ORTA: The following Article 4.2 is for a single commercial entity. Choose the appropriate alternatives to Article 4.2 from those listed in the Navy T2 Handbook according to the nature of the Non-Navy Collaborator(s): A university, nonprofit entity, State or local government, an entity directly or indirectly foreign owned, controlled, or influenced (FOCI), an entity comprised of multiple Collaborators.]

4.2 [Non-Navy Collaborator]'s Representations and Warranties

[Non-Navy Collaborator] hereby warrants and represents to [Navy Collaborator] as follows:

[**Non-Navy Collaborator**], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of [**State or Commonwealth**].

[**Non-Navy Collaborator**] [**is/is not**] a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

[Note to ORTA: The following paragraph is to be used only if the Non-Navy Collaborator is not a FOCI as of the signature date of this Agreement.]

If [**Non-Navy Collaborator**] or its successor or assignee is a U.S. company, and becomes, during the term of this Agreement of thereafter, directly or indirectly owned, controlled, or influenced by a foreign company or government (FOCI), the [**Non-Navy Collaborator**] or its successor or assignee shall promptly notify [**Navy Collaborator**] to that effect.

[Note to ORTA: If on the signature date of this Agreement the Non-Navy Collaborator is a FOCI, insert the following paragraph. In addition, an Amendment to this CRADA is required – see the Navy T2 Handbook. Otherwise, omit the following paragraph.]

If [**Non-Navy Collaborator**] or its successor or assignee becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a different foreign company or government (FOCI) then it or its successor or assignee shall promptly notify [**Navy Collaborator**] to that effect.

The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any agreement binding on [**Non-Navy Collaborator**]. Furthermore, the execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any valid order of any court, or any regulatory agency or other body having authority to which [**Non-Navy Collaborator**] is subject.

[**Non-Navy Collaborator**] is not currently subject to debarment or suspension by any agency of the Government. Should [**Non-Navy Collaborator**] be debarred or suspended during the term of this Agreement or thereafter, [**Non-Navy Collaborator**] will notify [**Navy Collaborator**] within thirty (30) days of receipt of a final notice. [**Navy Collaborator**] may then elect to terminate this Agreement and any licenses and options granted under this Agreement.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

There is no express or implied warranty as to any research, Invention, or product, whether tangible or intangible. In particular, the Collaborators make no express or implied warranty as to the merchantability or fitness for a particular purpose of any research, Invention, or product, whether tangible or intangible. Likewise, the Collaborators make no express or implied warranty as to any Cooperative Work, Subject Invention, Subject Data, or other product resulting from the Cooperative Work.

[Note to ORTA: See the Navy T2 Handbook for approved alternative language to the following paragraph.]

The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to export Information. The exporting Collaborator is responsible for obtaining any export licenses and/or foreign disclosure reviews that may be required by U.S. Federal law. [**Non-Navy Collaborator**] shall provide written notification to [**Navy Collaborator**] immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work, Appendix A, may require the introduction or generation of Protected Health Information. All Protected Health Information that is introduced or generated in the performance of work under this Agreement shall be properly marked and safeguarded as provided herein and in all applicable U.S. Federal laws and regulations.

Article 5. FUNDING

[Note to ORTA: IF NO PAYMENTS ARE TO BE MADE by Non-Navy Collaborator to Navy Collaborator, or Navy Collaborator is using in-house funding or Government funds already received, use the following phrase and remove Articles 5.1 through 5.4 below and from the Table of Contents.]

Each Collaborator will fund its own efforts.

[Note to ORTA: Consult the Navy T2 Handbook for the situations in which payments are made only after the completion of a critical milestone in the Cooperative Work or in the case where Navy Collaborator's participation is contingent upon receipt of funds from another Government organization.]

[Note to ORTA: IF PAYMENTS ARE TO BE MADE directly from Non-Navy Collaborator to Navy Collaborator, use the following Articles.]

5.1 Payment Schedule

[Non-Navy Collaborator] agrees to pay **[Navy Collaborator]** the following fees/costs in accordance with the payment schedule provided in the budget document attached, herein, as Appendix D and incorporated herein by reference.

[Note to ORTA: Insert amount to be paid, identify the task for which payment is made, the schedule of the tasks, and date of payment or, if preferred, the date and amount of each scheduled payment.]

Electronic payment is preferred.

Bank Name: Credit Gateway
RTN: 051036706
A/C: [insert account number]

DFAS Cleveland can receive funds via ACH using the following:

Bank Name: FRB New York/US Treasury
City: New York, NY
Country: USA
RTN: 021030004
Swift: FRNYUS33FX1
Account Name: DFAS-Cleveland
Account Number: [insert account number]

DFAS Cleveland can also receive funds via wire using the following:

When funds are being transferred electronically, please refer to the CRADA number and provide advance notice so we can be on the lookout for the payment. Please provide notice to [insert financial point of contact name, email, and telephone number].

If checks must be used, checks will be payable to U.S. Treasury. Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number]."

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number “NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number].”

Checks will be mailed to:

[Note to ORTA: Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

5.2 Insufficient and Excess Funds

[Navy Collaborator] will not start or continue performance under this Agreement if the funds provided by [Non-Navy Collaborator] for performance by [Navy Collaborator] are insufficient or are not provided as specified in Article 5.1.

In the event [Non-Navy Collaborator] fails to tender the Government the required payment within fifteen (15) days after its respective due date, [Non-Navy Collaborator] shall be in default under this Agreement for failure to make payments. If [Non-Navy Collaborator] is in default for this reason, [Navy Collaborator] shall notify [Non-Navy Collaborator]. If [Non-Navy Collaborator] does not cure the default within fifteen (15) days of date of notice, [Navy Collaborator] may proceed to terminate the Agreement in accordance with Article 11.2, and may cancel any option for an Exclusive Commercial License to a Subject Invention, and may terminate any Exclusive Commercial License granted pursuant to this Agreement.

Excess Funds that [Non-Navy Collaborator] provided under Article 5.1 that [Navy Collaborator] has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to [Non-Navy Collaborator] after [Navy Collaborator]'s submission of a final financial report to [Non-Navy Collaborator].

5.3 No New Commitments

[Navy Collaborator] shall make no new commitments concerning this Agreement after receipt of a written termination notice from [Non-Navy Collaborator] in accordance with Article 11.2 and shall, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by [Navy Collaborator], [Non-Navy Collaborator] agrees that such costs shall be chargeable against any funding that it provided to [Navy Collaborator].

5.4 Accounting Records

[Navy Collaborator] shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by [Non-Navy Collaborator] under this Agreement and shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. [Navy Collaborator] shall provide [Non-Navy Collaborator] a financial report within four (4) months after completion, expiration, or termination of this Agreement.

Article 6. REPORTS AND PUBLICATIONS

6.1 Interim Reports

The Collaborators shall submit **[insert number or frequency for each interim written report]** interim written reports to each other on the progress of the Cooperative Work.

6.2 Final Reports

The PIs shall submit to the [Navy Collaborator] Technology Transfer Office and [Non-Navy Collaborator] preferred contact a final report within four (4) months of the completion, termination, or expiration of this Agreement that includes the results obtained and a list of all Subject Inventions Made.

6.3 Agreement to Confer Prior to Publication or Public Disclosure of Information

For the purposes of this Article, the term “disclosure” shall include, but not be limited to, submission of any manuscript for peer review prior to publication.

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, or Protected Health Information, is released and that patent rights are not compromised. Prior to any such publication or public disclosure of Subject Data, each Collaborator shall be offered a period not to exceed thirty (30) days, to review any proposed abstract, publication, presentation, or other document for public disclosure.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the other Collaborator within thirty (30) days of the date of notice of intent to disclose publicly. If no objection is received by the Collaborator intending to make public disclosure, concurrence is assumed.

If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator before the public disclosure or by another date mutually agreed to by the Collaborators.

If a Collaborator objects to the release of Information on the grounds that the Information is Proprietary Information, or Information whose dissemination is restricted by U.S. security laws or regulations, the disclosure shall be postponed until the Information no longer meets the definitions of Proprietary Information, or is no longer covered by U.S. security laws or regulations.

6.4 Public Presentation of Subject Data

Any public presentation that includes Subject Data that are Protected Health Information must have prior review and approval by **[Navy Collaborator]** pursuant to the pertinent security laws, regulations, and directives.

6.5 Adverse Drug Experiences

All Adverse Drug Experiences that are either Serious or Unexpected shall be reported to the **[Non-Navy Collaborator]** within twenty four (24) hours of the occurrence. Details about all such Adverse Drug Experiences shall be communicated to the **[Non-Navy Collaborator]** in writing via Form 7443. A sample **[Non-Navy Collaborator]** Form 7443 is attached to this Agreement as Appendix F. This form is to be faxed to the **[Non-Navy Collaborator]** at **[telephone number]**. For **[Non-Navy Collaborator]** reporting purposes, **[Non-Navy Collaborator]** considers any report of pregnancy, cancer or overdose as Serious and shall be notified of the event on Form 7443 by fax at the number listed above. Any report of a death or life-threatening event shall be communicated to the **[Non-Navy Collaborator]** by telephone even before a Form 7443 is prepared. **[Non-Navy Collaborator]**'s **[name of preferred contact]** is the primary contact for Serious Adverse Drug Experiences discussions.

Article 7. INTELLECTUAL PROPERTY

7.1 Rights Under Other Agreements

Nothing in this Agreement is intended to change the rights in Intellectual Property acquired by the Collaborators in any other contract or Agreement between the **[Non-Navy Collaborator]** and the Government.

7.2 Rights in Subject Data

7.2.1 Rights of Both Collaborators

Each Collaborator shall have title to all Subject Data generated by that Collaborator. Each Collaborator agrees to provide all Subject Data to the other Collaborator and hereby grants Unlimited Rights in Subject Data that does not contain Proprietary Information.

7.2.2 Rights of [Navy Collaborator]

For Subject Data that contains [Non-Navy Collaborator]'s Proprietary Information, the Government has rights to: 1) Use, modify, reproduce, release, perform, display, or disclose Technical Data within the Government without restriction; and 2) Release or disclose Subject 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 Subject Data for any U.S. Government purpose including competitive procurement.

7.2.3 Rights of [Non-Navy Collaborator]

For Subject Data that contains [Navy Collaborator]'s Proprietary Information, [Non-Navy Collaborator] has rights to use, modify, reproduce, release, perform, display, or disclose Technical Data within [Non-Navy Collaborator]'s organization, in whole or in part, and in any manner, for any internal purpose excluding commercial purposes. If [Non-Navy Collaborator] is subsequently awarded a Government contract that entails deliverables that incorporate the [Navy Collaborator]'s Proprietary Information, such deliverables must be delivered with at least Government Purpose Rights, as defined in the DFARS § 252.227-7013.

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title, or interest, if such Subject Data are provided by [Navy Collaborator] under this Agreement. This Limited Right does not grant the [Non-Navy Collaborator] any License to any Invention in which the Government owns or may own a right, title, or interest. In accordance with Article 7.5 below, such Subject Data are to be held in confidence.

7.3 Rights in Non-Subject Data

7.3.1 Rights of Both Collaborators

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information or protected under 35 U.S. Code § 205 provided under this Agreement.

7.3.2 Rights of [Navy Collaborator]

[Navy Collaborator] has a Limited Right to use, reproduce, and disclose only to Government employees for use in support of the Cooperative Work any Non-Subject Data that are properly marked as Proprietary Information and are provided by [Non-Navy Collaborator] under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless written consent to other use or disclosure is obtained from [Non-Navy Collaborator].

7.3.3 Rights of [Non-Navy Collaborator]

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Non-Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title or interest, if such Non-Subject Data are provided by [Navy Collaborator] under this Agreement. Such Non-Subject Data shall be properly marked by [Navy Collaborator].

7.4 No Implied License

Unless otherwise specifically provided, the Collaborators agree that the exchange of Data of any kind does not confer a license to any Non-Subject Invention claimed in any patent or Patent Application or to the subject matter of any copyright, trademark/service mark, or other form of Intellectual Property protection.

7.5 Protection of Data

Except for the rights granted in Article 7.1 and Article 7.2, Data shall be protected in accordance with the proper markings of its owner and as provided by, at a minimum, the requirements of 15 U.S. Code § 3710a.

Proprietary Information will be protected only if it is properly marked as such. Information provided in intangible form that is Proprietary Information must be designated Proprietary Information at the time it is provided, followed within fifteen (15) days by a writing summarizing the exact information to be protected. The Collaborator receiving Information in an intangible form that is designated as Proprietary Information shall be responsible for protecting the Information as Proprietary Information during the fifteen (15) day notification. After the fifteen (15) day period, if no written summary has been received, the receiving Collaborator need not continue to protect the Information received in intangible form.

Data that is provided by **[Non-Navy Collaborator]** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S. Code § 552(b)(4), shall not be disclosed by **[Navy Collaborator]**. **[Non-Navy Collaborator]** shall agree not to disclose, for five (5) years, Data that is produced by the **[Navy Collaborator]** and that would have been considered a trade secret, business commercial, or financial information that is privileged or confidential if it had been produced by the **[Non-Navy Collaborator]**.

Protected Health Information shall be protected in accordance with the security laws of the U.S.

7.6 Release of Data Under the Freedom of Information Act

[Navy Collaborator] will comply with the Freedom of Information Act and Executive Order 12600.

7.7 Marking of Data

7.7.1 Markings Required for Both Collaborators

7.7.1.1 Data Provided with Less than Unlimited Rights

Each Collaborator shall mark all Data that it provides with less than Unlimited Rights with a marking that clearly identifies the Limited Rights.

7.7.1.2 For Official Use Only (FOUO) Marking

FOUO is the marking used for documents/products containing material that qualifies as exempt from release under FOIA. This includes Technical Information and Technical Data.

Use of the FOUO marking is the responsibility of the originator of the Information. Use of the FOUO marking does not automatically qualify for FOIA exemption.

Technical Documents which contain Technical Information and/or Technical Data are considered FOUO documents and must be appropriately marked.

[Note to ORTA: For further information associated with FOUO markings see the Navy T2 Handbook.]

7.7.2 Markings Required for **[Navy Collaborator]**

7.7.2.1 Data that are Subject to 35 U.S. Code § 205

[Navy Collaborator] shall mark Data it provides under this Agreement that disclose one or more Inventions in which the Government owns or may own a right, title or interest, and that are subject to confidentiality under 35 U.S. Code § 205. Such Data shall be marked:

“**[Navy Collaborator]** DATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 U.S. Code § 205.”

7.7.2.2 Data Protected Under Article 7.5

[Navy Collaborator] shall place a proprietary marking on each medium used for

recording Data that **[Navy Collaborator]** provides to **[Non-Navy Collaborator]**, where the Collaborators have agreed, under second paragraph of Article 7.5 of this Agreement, to protect such Data for up to five (5) years. The marking shall state:

“**[Navy Collaborator]** DATA SHALL BE PROTECTED BY THE **[Non-Navy Collaborator]** FOR A PERIOD OF **[state a number up to five years]** FROM **[state the date of generation]**.”

7.7.3 Markings Required for **[Non-Navy Collaborator]**

7.7.3.1 Data that are Proprietary Information

[Non-Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that **[Non-Navy Collaborator]** provides to **[Navy Collaborator]** under this Agreement that **[Non-Navy Collaborator]** asserts is Proprietary Information.

For Non-Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-Navy Collaborator]** – **[Navy Collaborator]** MAY USE ONLY FOR PURPOSE OF CRADA NUMBER NCRADA – **[Navy Collaborator]** – [last two digits of FY] – [lab CRADA sequence number]”

For Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-Navy Collaborator]** – GOVERNMENT HAS CERTAIN RIGHTS UNDER CRADA NUMBER NCRADA – **[Navy Collaborator]** – [last two digits of FY] – [lab CRADA sequence number].”

7.8 FDA Documents

If this Agreement involves a product regulated by the FDA, then **[Non-Navy Collaborator]** or **[Navy Collaborator]**, as appropriate, may file any required documentation with the FDA. In addition, the Collaborators authorize and consent to allow each other or its contractor or agent access to, or to cross-reference, any documents filed with the FDA related to the product.

7.9 Subject Inventions

7.9.1 Reporting of Subject Inventions

Within sixty (60) days of Making a Subject Invention, and prior to disclosure of the Invention to any third parties, unless a shorter time period is required by circumstances, the inventor(s) shall submit an Invention Disclosure to their employer. In the case of a Jointly Made Subject Invention, the inventors of each Collaborator shall submit an Invention Disclosure to their respective employer. Each Collaborator shall provide the other Collaborator with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

7.9.2 Determination of Subject Inventions

The Collaborators shall review each Invention Disclosure resulting from the Collaborative Work and shall confer and consult to determine whether an Invention Disclosure represents a Subject Invention.

7.9.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to solely own the Subject Inventions Made solely by its employees. For any Jointly Made Subject Invention, each Collaborator shall have ownership of the Subject Invention in the form of an undivided interest, without a right of accounting.

Each Collaborator shall cooperate with the other Collaborator to obtain inventor signatures on Patent Applications, assignments or other documents required to secure Intellectual Property protection.

7.10 Non-Subject Inventions

7.10.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

[Note to ORTA: Article 7.10.2 is optional. It should be used only if Navy Collaborator and/or Non-Navy Collaborator have preexisting Non-Subject Inventions that are pertinent to this Cooperative Work.]

7.10.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s), patent number, or Navy case number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Non-Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s) patent number, or attorneys docket number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

7.11 Filing of Patent Applications

By mutual agreement, the Collaborators shall identify which Collaborator shall file a Patent Application on any Subject Invention. The Collaborator responsible for filing of a Patent Application on any Subject Invention shall file such Patent Application at least sixty (60) days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received, whichever comes first. In the case of a Jointly Made Subject Invention, if no Patent Application is filed within the specified time period by the responsible Collaborator, the other Collaborator may assume control of filing the Patent Application and take title to the Jointly Made Subject Invention on ten (10) days written notification. The Collaborator that relinquished the responsibility to file shall retain a nonexclusive, irrevocable, paid-up license to practice the Jointly Made Subject Invention or have the Jointly Made Subject Invention practiced throughout the world by or on its behalf.

7.11.1 Patent Filing

The Collaborator responsible for filing any Patent Application for a Subject Invention shall notify the other Collaborator of all filing deadlines for prosecution of any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.11, sixty (60) days prior to any filing deadline, the Collaborators shall confer to determine if the filing Collaborator intends to respond to the filing deadline. The non-filing Collaborator has the right to take action if the filing Collaborator declines.

7.11.2 Copies and Inspection

Each Collaborator filing a Patent Application on a Subject Invention shall provide the other Collaborator with a copy of any communication relating to prosecution of said Patent Application within thirty (30) days of receipt of such request. The filing Collaborator shall give the other Collaborator a limited power to inspect, with authorization to access the Patent Application, make copies, and, in the event that the filing Collaborator declines continued prosecution of the Patent Application, do all that is necessary to secure patent protection for the Jointly Made Subject Invention.

7.11.3 Rights of Inventors if the Collaborators Decline to File a Patent Application

In the event both Collaborators decline to file a Patent Application on a Subject Invention, the Government will renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

In the event both Collaborators decline to file a Patent Application on a Subject Invention, **[Non-Navy Collaborator]** may, at its sole discretion, renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

7.12 Licenses to Subject Inventions

7.12.1 Internal Use License to **[Non-Navy Collaborator]**

Government grants to the **[Non-Navy Collaborator]** a nonexclusive, irrevocable, paid-up Internal Use License to a Subject Invention Made solely by employees of **[Navy Collaborator]**. No Internal Use License granted under this Agreement shall permit licensee to grant sublicenses. No Internal Use License granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of **[Non-Navy Collaborator]**'s business to which such license pertains.

7.12.2 Government License

Pursuant to 15 U.S. Code § 3710a(b)(2), for Subject Inventions Made solely by an employee of **[Non-Navy Collaborator]**, **[Non-Navy Collaborator]** grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.12.3 Option for Commercial License to Subject Inventions

[Navy Collaborator] gives **[Non-Navy Collaborator]** the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of **[Field of Use]** in the Government's rights in any Subject Invention Made in whole or in part by a **[Navy Collaborator]** employee. The license shall be for reasonable consideration. In order to exercise this option, **[Non-Navy Collaborator]** must notify **[Navy Collaborator]** in writing within six (6) months of the filing of a Patent Application. **[Non-Navy Collaborator]** must execute an Exclusive Commercial or Nonexclusive Commercial License to the Subject Invention within six (6) months of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 C.F.R. Part 404.

7.12.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions

[Navy Collaborator] may cancel the Exclusive or Nonexclusive Commercial License option and terminate any Exclusive or Nonexclusive Commercial Licenses and Internal Use Licenses provided for above made in whole or in part by Government employees in the event that:

- (a) **[Non-Navy Collaborator]** is in default for failure to make payment as agreed in Article 5; or
- (b) The Agreement is terminated unilaterally by **[Non-Navy Collaborator]** under Article 11.2; or
- (c) **[Non-Navy Collaborator]** fails to perform according to the Statement

of Work (Appendix A); or

- (d) **[Non-Navy Collaborator]** becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a); or
- (e) **[Non-Navy Collaborator]** which was a FOCI organization when the Agreement was signed has now become a different FOCI organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.13 License to Non-Subject Inventions

Each Collaborator shall allow the other Collaborator to practice any of its Non-Subject Inventions for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to either Collaborator in Non-Subject Inventions by performing the Cooperative Work. For commercial applications of Non-Subject Inventions, the **[Non-Navy Collaborator]** must obtain a License from the **[Navy Collaborator]**, in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

[Note to ORTA: Article 7.14 is optional.]

7.14 Copyrights

[Non-Navy Collaborator] may copyright works of authorship prepared pursuant to this Agreement if eligible for copyright protection under Title 17, U.S. Code § 106 **[Non-Navy Collaborator]** grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software, prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.2 and Article 7.3. **[Non-Navy Collaborator]** shall affix the applicable copyright notice of Title 17, U.S. Code §§ 401-403, and an acknowledgment of the scientific and technical contributions of **[Navy Collaborator]**. **[Non-Navy Collaborator]** grants to the U.S. Government a paid-up, non-exclusive, irrevocable, worldwide license to reproduce or have reproduced, prepare or have prepared in derivative form, and distribute or have distributed copies of publications and solely or jointly created Subject Data for Government purposes.

Article 8. TANGIBLE PROPERTY

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to its Tangible Property. All Tangible Property owned and provided by one Collaborator shall remain the property of that Collaborator. Tangible Property having any component purchased or supplied by the Government shall be the property of the Government, unless such tangible Government components reasonably can be separated from non-Government components without damage to any of the individual components comprising the Tangible Property. These separated components shall remain the property of the Collaborator that purchased them. After termination of this Agreement the parties may, by mutual consent, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that originally owned the property.

8.2 Tangible Property Operational and Disposition Costs

Each Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all Tangible Property to which it has title.

8.3 Disposal of Tangible Property

Unless otherwise agreed, each Collaborator shall take possession of its respective Tangible Property within sixty (60) days of termination of this Agreement. Each Collaborator shall cooperate with the other Collaborator

in the recovery or disposition of the other Collaborator's property. Disposal of Tangible Property shall be in accordance with applicable U.S. Federal, State, and local property disposal laws, environmental laws, and regulations.

Article 9. LIABILITY

9.1 Extent of Government Liability

The Government shall be liable for the negligent or wrongful acts of its officers and employees solely to the extent provided for in the Federal Tort Claims Act (28 U.S. Code § 2671 et. seq.) and in other applicable laws and regulations of the U.S. that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the U.S.

9.2 Extent of [Non-Navy Collaborator] Liability

[Non-Navy Collaborator] is solely responsible for its actions and the actions of those acting for [Non-Navy Collaborator] in the performance of this Agreement and for any damages that may arise from any suit, action, or claim, and for any costs from or incidental to any suit, action, or claim, including but not limited to settlement and defense costs. Further, [Non-Navy Collaborator] agrees that in any suit, action or claim brought by anyone not a Collaborator to this Agreement based on actions of [Non-Navy Collaborator], [Non-Navy Collaborator] shall not pursue any actions to enter the Government as a Collaborator in such suit, action or claim unless the Government has some liability under the Federal Tort Claims Act. This provision shall survive termination of this Agreement.

9.3 *Force Majeure*

No Collaborator shall be liable for the consequences of any *force majeure* that (1) is beyond its reasonable control; (2) is not caused by the fault or negligence of such Collaborator; (3) causes such Collaborator to be unable to perform its obligations under this Agreement; and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure*, the Collaborator unable to perform shall promptly notify the other Collaborator. The Collaborators shall suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and shall use their best efforts to resume performance as quickly as possible.

Article 10. GENERAL PROVISIONS

10.1 Entire Agreement

This Agreement constitutes the entire agreement between the Collaborators concerning the Cooperative Work and supersedes any prior understanding or written or oral agreement relative to the Cooperative Work.

10.2 Severability

The illegality or invalidity of any Article of this Agreement shall not impair, affect, or invalidate any other Article of this Agreement.

10.3 Interpretation of Headings

Headings of the Articles of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

10.4 Governing Laws

U.S. Federal laws shall govern this Agreement for all purposes.

10.5 Independent Parties/Entities

The relationship of the Collaborators to this Agreement is that of independent parties and not as agents of each other, partners, or participants in a joint venture.

10.6 Subcontracting

In accordance with Appendix C, neither Collaborator may allow third parties to perform any part of the Cooperative Work under this Agreement without express written consent of the other Collaborator. If consent is obtained, the Collaborator requesting such consent shall remain fully responsible for the portion of the Cooperative Work to be accomplished under a third-party agreement, and the third-party is not a Collaborator of this Agreement. Any third-party agreement to perform a portion of the Cooperative Work shall contain terms consistent with this Agreement.

[Note to ORTA: Refer to the Navy T2 Handbook for a discussion on issues related to the use of contractors during the execution of a CRADA.]

10.7 Assignment

This Agreement shall not be assigned or otherwise transferred by either Collaborator without the prior written consent of the other Collaborator, except to the successor of that part of **[Non-Navy Collaborator]**'s business to which this Agreement pertains.

10.8 Disputes

[Navy Collaborator] and **[Non-Navy Collaborator]** agree to use reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories or their successors for resolution. If a dispute continues, the remaining issues may be submitted to the Chief of Naval Research (CNR), or the CNR designee, for resolution. This Agreement does not prevent any Collaborator from pursuing disputes in a U.S. Federal court of competent jurisdiction. No Collaborator will pursue litigation in a U.S. Federal court until after the CNR, or the CNR designee, decides the dispute, or until sixty (60) days after the dispute was first submitted to the CNR, or the CNR designee, whichever comes first.

10.9 Use of Name or Endorsements

[Non-Navy Collaborator] shall not use the name of **[Navy Collaborator]** or any other Government entity on any product or service that is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of **[Navy Collaborator]**. By entering into this Agreement, **[Navy Collaborator]** does not directly or indirectly endorse any product or service provided, or to be provided, by **[Non-Navy Collaborator]**, its successors, assignees, or licensees. **[Non-Navy Collaborator]** shall not in any way imply that the Department of the Navy endorses any such product or service.

10.10 Public Release Announcements of This Agreement

Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public.

10.11 Environment, Safety, and Health

Each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this Agreement. At the conclusion of this Agreement, each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste still in its possession. Each Collaborator shall obtain at its own expense all necessary permits and licenses as required by U.S. Federal, State, and local law and shall conduct such handling, control, and disposition in a lawful and environmentally responsible manner. Each Collaborator is responsible for all required environmental, safety, and health compliance, notice, and monitoring related to its facility in accordance with U.S. Federal, State, and local law and regulations. Collaborators shall abide by the environmental, safety, and health directives of the host facility in which the Cooperative Work is being performed, and any U.S. Federal, State, or local laws and regulations pertaining

to environment, safety, and health that are applicable to the host facility.

10.12 U.S. Competitiveness

[Non-Navy Collaborator] agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

10.13 Waivers

None of the provisions of this Agreement shall be considered waived by either Collaborator unless such waiver is given in writing to the other Collaborator, signed by the executing official of this Agreement or the official's successor having the authority to bind the Collaborator making the waiver. The failure of either Collaborator to insist upon strict performance of any of the terms and conditions herein, or failure or delay to exercise any rights provided herein or by law shall not be deemed a waiver of any right of either Collaborator under this Agreement.

Article 11. MODIFICATIONS AND NOTICES

11.1 Amendments

Any modifications to this Agreement shall be jointly agreed upon and shall not be effective until a written amendment is signed by both executing officials of this Agreement or their successors.

11.2 Unilateral Termination

[Non-Navy Collaborator] and **[Navy Collaborator]** each have the right to unilaterally terminate this Agreement upon thirty (30) days written notice to the other Collaborator.

11.3 Notices

All notices pertaining to or required by Articles of this Agreement, except those pertaining solely to the prosecution of any patent, trademark, or service mark, shall be in writing and shall be signed by an authorized representative of the Technology Transfer Office for **[Navy Collaborator]** or the preferred contact for **[Non-Navy Collaborator]**. All such notices shall be delivered in a manner that ensures confirmation of receipt.

If to **[Navy Collaborator]**:

[Use the official Navy Collaborator mailing address for the Technology Transfer Office.]

If to **[Non-Navy Collaborator]**:

[Specify the mailing address for the preferred contact.]

A Collaborator shall notify the other Collaborator of a change of address in the manner set forth above.

Notices pertaining solely to the prosecution of any patent, trademark, or service mark related to this Agreement shall be in writing and shall be signed by and sent to the Collaborator's legal counsel for Intellectual Property. Legal counsel for Intellectual Property for each Collaborator shall send a copy of any such notice to the Technology Transfer Office for **[Navy Collaborator]**. If either Collaborator fails to identify such counsel upon request, then such notices shall be sent to the points of contact specified above.

Article 12. SURVIVING PROVISIONS

The Articles covering Definitions, Representations and Warranties, Funding, Reports and Publications, Intellectual Property, Tangible Property, Liability, General Provisions, Modifications and Notices, and Surviving Provisions shall survive the completion, termination, or expiration of this Agreement.

Article 13. DURATION

This Agreement expires [specify a time no greater than four (4) years] after its Effective Date, unless otherwise extended in writing according to the provisions of Article 11.

[If necessary, write "Signatures for the Agreement follow on next page".]

Article 14. SIGNATURES

For [Non-Navy Collaborator]:

I, the undersigned, am duly authorized to bind [Non-Navy Collaborator] to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

Navy Organization:

APPENDIX A - STATEMENT OF WORK

BETWEEN

[Navy Collaborator]

AND

[Non-Navy Collaborator]

The Collaborators agree to perform the following tasks:

[Navy Collaborator] will be responsible for the following tasks (list as applicable):

1. Obtain all necessary IRB approvals
- 2.
- 3.

[Non-Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[Navy Collaborator] and **[Non-Navy Collaborator]** will be responsible for the following joint tasks:

- 1.
- 2.
- 3.

[Note: Add the following appendices, each on its own page.]

APPENDIX C

[Non-Navy Collaborator Use of Third Party/Navy Collaborator Use of Third Party]

APPENDIX D

[Budget Data, as required]

APPENDIX E

Clinical Trials Protocol

APPENDIX F

[Form 7443]

APPENDIX G

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

(a) *Definitions.* As used in this clause:

Individual has the same meaning as the term “individual” in 45 C.F.R. §§ 164.501 and 164.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E.

Protected Health Information has the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by The Business Associate/Collaborator from or on behalf of the Government.

Required by Law has the same meaning as the term “required by law” in 45 C.F.R. §§ 164.501 and 164.103.

Secretary means the Secretary of the Department of Health and Human Services or his/her designee.

Security Rule means the Health Insurance Reform: Security Standards at 45 C.F.R. Parts 160, 162 and 164, subpart C.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.501 and 164.304.

(b) The Business Associate/Collaborator agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(c) The Business Associate/Collaborator agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(d) The Business Associate/Collaborator agrees to use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits in the execution of this Agreement.

(e) The Business Associate/Collaborator agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate/Collaborator of a use or disclosure of Protected Health Information by the Business Associate/Collaborator in violation of the requirements of this Agreement.

(f) The Business Associate/Collaborator agrees to report to the Government any security incident involving protected health information of which it becomes aware.

(g) The Business Associate/Collaborator agrees to report to the Government any use or disclosure of the Protected Health Information not provided for by this Agreement.

(h) The Business Associate/Collaborator agrees to ensure that any agent, to whom it provides Protected Health Information received from, or created or received by the Business Associate/Collaborator on behalf of the Government agrees to the same restrictions and conditions that apply through this agreement to the Business Associate/Collaborator with respect to such information.

(i) The Business Associate/Collaborator agrees to ensure that any agent, to whom it provides electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.

(j) The Business Associate/Collaborator agrees to provide access, at the request of the Government, and in the time and manner designated by the Government to Protected Health Information in a Designated Record Set, to

the Government or, as directed by the Government, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.

(k) The Business Associate/Collaborator agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Government directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Government or an Individual, and in the time and manner designated by the Government.

(l) The Business Associate/Collaborator agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate/Collaborator on behalf of, the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Privacy Rule.

(m) The Business Associate/Collaborator agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(n) The Business Associate/Collaborator agrees to provide to the Government or an Individual, in time and manner designated by the Government, information collected in accordance with this Clause of the Agreement, to permit the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

GENERAL USE AND DISCLOSURE PROVISIONS

Except as otherwise limited in this Agreement, the Business Associate/Collaborator may use or disclose Protected Health Information on behalf of, or to provide services to, the Government if such use or disclosure of Protected Health Information would not violate the Privacy Rule, the Security Rule or the Department of Defense Health Information Privacy Regulation if done by the Government.

SPECIFIC USE AND DISCLOSURE PROVISIONS

(a) Except as otherwise limited in this Agreement, the Business Associate/Collaborator may use Protected Health Information for the proper management and administration of the Business Associate/Collaborator or to carry out the legal responsibilities of the Business Associate/Collaborator.

(b) Except as otherwise limited in this Agreement, the Business Associate/Collaborator may disclose Protected Health Information for the proper management and administration of the Business Associate/Collaborator, provided that disclosures are required by law, or the Business Associate/Collaborator obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate/Collaborator of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, the Business Associate/Collaborator may use Protected Health Information to provide Data Aggregation services to the Government as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(d) Business Associate/Collaborator may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

OBLIGATIONS OF THE GOVERNMENT

Provisions for the Government to Inform the Business Associate/Collaborator of Privacy Practices and Restrictions

(a) Upon request the Government shall provide the Business Associate/Collaborator with the notice of privacy practices that the Government produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

(b) The Government shall provide the Business Associate/Collaborator with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect the Business Associate/Collaborator's permitted or required uses and disclosures.

(c) The Government shall notify the Business Associate/Collaborator of any restriction to the use or disclosure of Protected Health Information that the Government has agreed to in accordance with 45 C.F.R. § 164.522.

PERMISSIBLE REQUESTS BY THE GOVERNMENT

The Government shall not request the Business Associate/Collaborator to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Government, except for providing Data Aggregation services to the Government and for management and administrative activities of the Business Associate/Collaborator as otherwise permitted by this clause.

TERMINATION

(a) Termination. A breach by the Business Associate/Collaborator of this clause, may subject the Business Associate/Collaborator to termination under any applicable default or termination provision of this Agreement.

(b) Effect of Termination.

(1) If this agreement has records management requirements, the records subject to the Clause should be handled in accordance with the records management requirements. If this agreement does not have records management requirements, the records should be handled in accordance with paragraphs (2) and (3) below.

(2) If this agreement does not have records management requirements, except as provided in paragraph (3) of this section, upon termination of this Agreement, for any reason, the Business Associate/Collaborator shall return or destroy all Protected Health Information received from the Government, or created or received by the Business Associate/Collaborator on behalf of the Government. This provision shall apply to Protected Health Information that is in the possession of agents of the Business Associate/Collaborator. The Business Associate/Collaborator shall retain no copies of the Protected Health Information.

(3) If this agreement does not have records management provisions and the Business Associate/Collaborator determines that returning or destroying the Protected Health Information is infeasible, the Business Associate/Collaborator shall provide to the Government notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Government and the Business Associate/Collaborator that return or destruction of Protected Health Information is infeasible, the Business Associate/Collaborator shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Business Associate/Collaborator maintains such Protected Health Information.

MISCELLANEOUS

(a) Regulatory References. A reference in this Clause to a section in the Privacy Rule or Security Rule means the section as in effect or as amended, and for which compliance is required.

(b) Survival. The respective rights and obligations of Business Associate under the "Effect of Termination" provision of this Clause shall survive the termination of this Agreement.

(c) Interpretation. Any ambiguity in this Clause shall be resolved in favor of a meaning that permits the Government to comply with the Privacy Rule or Security Rule.

Section IV - 5

Limited Purpose-CRADAs (LP-CRADAs)

Guidance for Use/DON LP-CRADA for Data, Equipment or Material Transfer

Statutory Authority and Purpose

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended) a DON Collaborator and a Non-Navy Collaborator may enter into a CRADA. These LP-CRADAs are restricted to the exchange of existing equipment or material that the Collaborators need for their own research, test, evaluation, development or engineering activities. There is no joint work performed under the LP-CRADAs; however, there is a mutual interest in the results. Data and intellectual property of the Collaborators is protected.

An LP-CRADA is not a substitute for a work-for-others agreement. A work-for-others agreement is used where a Navy laboratory is willing to provide an existing product, material or service without competing with the private sector. The working capital fund laboratory is not interested in the research outcome.

LP-CRADAs are to be used when a Navy laboratory and Non-Navy Collaborator both have an interest in the research outcome. A report to all collaborators on the results of the research is required. The key is that the Provider has equipment or material that the parties want evaluated or used by the Recipient. Acceptable collaborative purposes include determining suitability of the equipment or material for Recipient's purpose or to determine if there is mutual interest or need for a more formal CRADA, a patent license agreement or procurement.

Consult with the Navy laboratory's attorney to select the proper business instrument.

Appropriate Non-Navy Collaborators

The U.S. Federal Technology Transfer Act of 1986, as amended, provides for making the expertise, capabilities, and technologies of U.S. Federal laboratories accessible to other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons; in order to improve the economic, environmental, and social well-being of the U.S. by stimulating utilization of U.S. federally funded technology developments and/or capabilities in the U.S.

Navy Model Agreements

The LP-CRADA is an approved CRADA. Two model agreements are included with this Guidance. The first model agreement, [Model #1](#), describes the transfer of equipment or material from a Navy Provider out to a Non-Navy Recipient. The second model agreement, [Model #2](#), describes the transfer of equipment or material from a Non-Navy Provider to a Navy Recipient.

If training is needed to operate the equipment or perform a specific test, the Provider must conduct the training, including on-site training, if necessary.

Funding Options

A DON laboratory, as defined by the U.S. Federal Technology Transfer Act of 1986, as amended, may not issue funds to the Non-Navy Collaborator under a LP-CRADA, but the Navy laboratory may receive funds from the Non-Navy Collaborator.

Payment of shipping will depend on each specific circumstance and should be closely coordinated with both the laboratory comptroller and general attorney.

Non-Disclosure Agreement

If a non-disclosure agreement (NDA) is used for the performance of an LP-CRADA, the Navy laboratory's intellectual property or general attorney should be involved in the preparation or review of the NDA. Examples of NDAs can be found in [Section V - 3](#) of this handbook.

Liability

When the U.S. Government is the Recipient, liability for the loss or destruction of equipment or material that was to be returned to the Provider is still limited by the Federal Tort Claims Act (FTCA). The Government may agree in advance on a maximum settlement value to any liability action allowed under the FTCA. When the Recipient is the Non-Navy Collaborator, the Recipient agrees to assume all risks, direct or consequential, from their use, storage and/or disposal of the equipment or material.

Legal Review

Legal review is obtained at the Navy laboratory to ensure compliance with the Navy laboratory's mission, statutes, regulations, instructions and executive directives. If the model LP-CRADA is changed, the modification is noted and a written explanation of its necessity is to be provided by local legal counsel and is included with the Agreement when it is forwarded to the DON T2 Program Office.

A LIMITED PURPOSE
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(LP-CRADA)
FOR EQUIPMENT, DATA OR MATERIAL TRANSFER
(FROM NAVY PROVIDER TO NON-NAVY RECIPIENT)

FROM

[full name of NAVY PROVIDER then acronym]

TO

[full name of NON-NAVY RECIPIENT then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: LP-CRADA-[Navy Org.]-[last two digits of FY]-[sequence number]

AGREEMENT ADMINISTRATORS:

[NAVY PROVIDER acronym]

Technology Transfer ORTA
Point of Contact:

[insert name, organizational code, telephone number, e-mail address]

Legal Counsel:

[insert name, organization code, telephone number, e-mail address]

[NON-NAVY RECIPIENT acronym]

Preferred Contact:

[insert name, telephone number, e-mail address]

Legal Counsel **[Optional]**:

[insert name, telephone number, e-mail address]

TABLE OF CONTENTS

<u>PREAMBLE</u>	1
<u>Article 1. DEFINITIONS</u>	1
1.1 “Classified Information (CI)”	1
1.2 “Controlled Unclassified Information (CUI)”	1
1.3 “Data”	1
1.4 “Government”	1
1.5 “Information”	1
1.6 “Invention”	1
1.7 “Patent Application”	1
1.8 “Proprietary Information”	1
1.9 “Technical Information”	2
<u>Article 2. [EQUIPMENT/DATA/MATERIAL] TO BE TRANSFERRED</u>	2
<u>Article 3. PURPOSE FOR TRANSFER (PURPOSE)</u>	2
<u>Article 4. PROTECTION OF INFORMATION</u>	2
<u>Article 5. PUBLICATIONS</u>	2
<u>Article 6. WARRANTY</u>	3
<u>Article 7. LIABILITY</u>	3
<u>Article 8. RETURN OF [EQUIPMENT/DATA/MATERIAL]</u>	3
<u>Article 9. PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS</u>	3
<u>Article 10. INVENTION LICENSE</u>	3
<u>Article 11. DELIVERY</u>	3
<u>Article 12. DURATION</u>	3
<u>Article 13. AMENDMENT</u>	4
<u>Article 14. ENTIRE AGREEMENT</u>	4
<u>Article 15. GOVERNING LAW</u>	4
<u>Article 16. FUNDS</u>	4
<u>Article 17. TITLE</u>	4
<u>Article 18. USE OF NAME OR ENDORSEMENTS</u>	4
<u>Article 19. PUBLIC RELEASE OF THIS AGREEMENT</u>	4

Article 20. EFFECTIVE DATE.....4

Article 21. NOTICES.....4

Article 22. SURVIVING PROVISIONS.....5

Article 23. SIGNATURES.....5

A LIMITED PURPOSE
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(LP-CRADA)
FOR EQUIPMENT, DATA OR MATERIAL TRANSFER
(FROM NAVY PROVIDER TO NON-NAVY RECIPIENT)

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of Navy Collaborator (PROVIDER) and Non-Navy Collaborator (RECIPIENT) described below agree and enter into this Limited Purpose Cooperative Research and Development Agreement (LP-CRADA) to transfer [**choose one: EQUIPMENT, DATA or MATERIAL**] according to the clauses and conditions and for the term and duration set in this Agreement.

The PROVIDER is [**state full name and address of Navy Collaborator**], a Federal laboratory of the United States Department of Navy wholly owned by the U.S. Government whose substantial purpose is the performance of research, development or engineering.

The RECIPIENT is [**name and address of Non-Navy Collaborator**], a corporation [**substitute appropriate alternate language for a different entity, e.g., a University**] duly organized, validly existing and in good standing under the laws of the [**State or Commonwealth**] of [**indicate name**]. The RECIPIENT [**is/is not**] a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. § 121.101 et seq.) of the Administrator of the Small Business Administration. Further, the RECIPIENT [**is/is not**] directly or indirectly controlled by a foreign company or government (Executive Order 12591, Section 4 (a)) as of the effective date of this Agreement.

Article 1. DEFINITIONS

1.1 “Classified Information (CI)” means all Information classified in accordance with the national security laws of the United States (U.S.).

1.2 “Controlled Unclassified Information (CUI)” means official Information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

1.3 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

1.4 “Government” means the Government of the United States of America.

1.5 “Information” means all Data, trade secrets, and commercial and financial information.

1.6 “Invention” means any invention or discovery which is or may be patentable under Title 35 of the United States Code.

1.7 “Patent Application” means U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Invention.

1.8 “Proprietary Information” means information that:

- (i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information: (a) is not known or available from other sources without obligations concerning its confidentiality; (b) has not been made available by the owners to others without obligation concerning its confidentiality; (c) is not already available to the Government without obligation concerning its confidentiality; and (d) has not been developed independently by persons who have had no access to the information; or

(ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.8 (i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.

1.9 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.

Article 2. [EQUIPMENT/DATA/MATERIAL] TO BE TRANSFERRED

PROVIDER owns, controls, or otherwise has all rights in [describe the EQUIPMENT/DATA/MATERIAL being transferred], hereafter [EQUIPMENT/DATA/MATERIAL]. PROVIDER has the right to and will transfer [insert quantity] of [EQUIPMENT/DATA/MATERIAL] within [insert time frame] to RECIPIENT for the conduct of the research, tests, evaluation, development or engineering efforts and purposes stated below.

Article 3. PURPOSE FOR TRANSFER (PURPOSE)

(a) RECIPIENT agrees that it will use the [EQUIPMENT/DATA/MATERIAL] solely for [describe project and state intended use] (PURPOSE) under the direction and control of RECIPIENT's Principal Investigator (PI), [insert name], and will follow the United States Federal statutes, rules and regulations controlling the handling and use of research equipment and/or materials of the type described as the [EQUIPMENT/DATA/MATERIAL], as applicable. RECIPIENT agrees that it will not use the [EQUIPMENT/DATA/MATERIAL] for any commercial or production purposes. This Agreement does not constitute or create a joint venture, partnership or formal business entity of any kind.

(b) This Agreement is not a license in Government Intellectual Property including patents or patent applications except for the limited PURPOSE stated. This Agreement shall not be interpreted to alter any pre-existing rights to the [EQUIPMENT/DATA/MATERIAL]. PROVIDER reserves the right to provide the [EQUIPMENT/DATA/MATERIAL] to others. RECIPIENT agrees not to produce, modify or duplicate the [EQUIPMENT/DATA/MATERIAL] for any purpose unless that intention is stated as part of the research PURPOSE, subparagraph 2(a) supra.

(c) If RECIPIENT desires to use the [EQUIPMENT/DATA/MATERIAL] for purposes other than the PURPOSE, RECIPIENT agrees, before beginning any such use, to negotiate a full CRADA and/or a license for any patent or other intellectual property, specific for that use, in good faith with PROVIDER as provided by Federal law. It is understood by RECIPIENT that PROVIDER shall have no obligation to grant such a license or enter into a CRADA with RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others as provided by law.

Article 4. PROTECTION OF INFORMATION

The Parties shall confer and agree what information created by the Navy PROVIDER shall be designated GOVERNMENT PROPRIETARY INFORMATION. RECIPIENT will treat GOVERNMENT PROPRIETARY INFORMATION in a manner equivalent to the manner the Government treats NON-GOVERNMENT PROPRIETARY INFORMATION. It is RECIPIENT's responsibility to properly identify its PROPRIETARY INFORMATION.

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.

[Insert the following language if a Non-disclosure Agreement is used: The attached Non-disclosure Agreement (Appendix A) is incorporated as part of this Agreement. If there is a conflict between the terms and conditions of Appendix A and this Agreement, this Agreement shall control except for time periods].

Article 5. PUBLICATIONS

RECIPIENT agrees to provide appropriate acknowledgement of the source of the [EQUIPMENT/DATA/MATERIAL] in all publications. PROVIDER and RECIPIENT agree to confer and consult to

Limited Purpose CRADA
Navy Provider to Non-Navy Recipient

provide a reasonable review period [**optional: insert time limit**] prior to the publication or presentation of DATA regarding the [EQUIPMENT/DATA/MATERIAL] to assure that no Proprietary or otherwise protected information is released and that patent rights are protected. Publication and/or presentation will be delayed for a reasonable time to afford needed protection. The RECIPIENT shall provide a report of the research results to the PROVIDER within [**insert number of days**] days from the testing of the [EQUIPMENT/DATA/MATERIAL].

Article 6. WARRANTY

RECIPIENT agrees that PROVIDER makes no representations and extends no warranty of any kind, either expressed or implied regarding the [EQUIPMENT/DATA/MATERIAL]. There are no expressed or implied warranties of merchantability or fitness for a particular purpose, or that the use of [EQUIPMENT/DATA/MATERIAL] will not infringe any patent, copyright, trademark, or other rights.

Article 7. LIABILITY

RECIPIENT agrees to assume all risks, direct or consequential, from their use, storage and/or disposal of the [EQUIPMENT/DATA/MATERIAL]. RECIPIENT agrees to defend, indemnify, and hold harmless PROVIDER from any loss, claim, damage, or liability, of any kind, which may arise from their use, storage or disposal of the [EQUIPMENT/DATA/MATERIAL]. PROVIDER's entire liability is as stated in the Federal Tort Claims Act, Section 2671 *et seq.*

Article 8. RETURN OF [EQUIPMENT/DATA/MATERIAL]

RECIPIENT agrees that any and all [EQUIPMENT/DATA/MATERIAL] and information regarding this [EQUIPMENT/DATA/MATERIAL] received from PROVIDER, including copies of information, shall remain the property of PROVIDER. These items will be promptly returned or destroyed at the termination of this Agreement in accordance with the directions of the PROVIDER. All requests and responses must be in writing. The [EQUIPMENT/DATA/MATERIAL] and information will be returned at no expense to the PROVIDER.

Article 9. PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS

Except as expressly provided in this Agreement, no rights are provided to RECIPIENT under any pre-existing patents, patent applications, protected information or other intellectual property of PROVIDER.

Article 10. INVENTION LICENSE

The RECIPIENT shall retain title to any Invention of its employees made in the performance of the PURPOSE. RECIPIENT shall notify PROVIDER of the receipt of any Invention disclosure regarding use or modification of the [EQUIPMENT/DATA/MATERIAL]. RECIPIENT grants the Government a nonexclusive, irrevocable, paid-up license to practice the Invention, or have the Invention practiced throughout the world by or on behalf of the Government. Upon request, RECIPIENT shall give the Government a written instrument, prepared in a form satisfactory to the Government confirming such rights as appropriate.

Article 11. DELIVERY

It is agreed that the PROVIDER will deliver the [EQUIPMENT/DATA/MATERIAL] upon execution of this Agreement to the RECIPIENT within [**insert number**] days from the effective date of this Agreement.

Article 12. DURATION

This Agreement will terminate on the earliest of the following dates:

- (1) upon completion of RECIPIENT's proposed research studies with the [EQUIPMENT/DATA/MATERIAL], or
- (2) upon thirty (30) days written notice by either Collaborator to the other, or

(3) **[insert time, not to exceed four (4) years]** from the effective date of this Agreement.

Article 13. AMENDMENT

This Agreement can be amended only by a written amendment mutually agreed to and signed by the Agreement signatories or their successors.

Article 14. ENTIRE AGREEMENT

This Agreement is the entire Agreement between the Collaborators concerning the PURPOSE and supersedes any prior understanding or written or oral agreement relative to the PURPOSE.

Article 15. GOVERNING LAW

United States Federal Law shall govern this Agreement for all purposes.

Article 16. FUNDS

It is agreed and understood that the **[EQUIPMENT/DATA/MATERIAL]** is furnished and the Agreement is entered into at no cost to the PROVIDER.

No funds are transferred under this Agreement from the Navy PROVIDER to the Non-Navy RECIPIENT.

[If funds are transferred from Non-Navy Recipient to Navy Provider, specify amount and instructions for delivery of funds].

Checks will be payable to:

The United States Treasury

Checks will be mailed to:

[Specify address, including the name of the authorized recipient, title, and appropriate organizational code].

Article 17. TITLE

Each Collaborator shall retain title to all tangible property to which it had title prior to the effective date of this Agreement.

Article 18. USE OF NAME OR ENDORSEMENTS

RECIPIENT shall not use the name of the PROVIDER or any other Government entity on any product or service that is directly or indirectly related to this Agreement without the prior approval of PROVIDER.

Article 19. PUBLIC RELEASE OF THIS AGREEMENT

This Agreement document is releasable to the public.

Article 20. EFFECTIVE DATE

The effective date of this Agreement is the date of execution by the last to sign for the DURATION set in Article 11.

Article 21. NOTICES

All notices will be sent to the Agreement administrators or their successors at the addresses shown in the PREAMBLE.

Limited Purpose CRADA
Navy Provider to Non-Navy Recipient

Article 22. SURVIVING PROVISIONS

All the Articles of this Agreement shall survive its termination.

Article 23. SIGNATURES

Accepted for RECIPIENT:

I, the undersigned, am duly authorized to bind [NON-NAVY RECIPIENT] to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20__.
(month)

By: _____
Name:

Title:

Accepted for PROVIDER:, the undersigned, am duly authorized to bind [NAVY PROVIDER] to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20__.
(month)

By: _____
Name:

Title:

Naval Organization:

A LIMITED PURPOSE
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(LP-CRADA)
FOR EQUIPMENT, DATA OR MATERIAL TRANSFER
(FROM NON-NAVY PROVIDER TO NAVY RECIPIENT)

FROM

[full name of NON-NAVY PROVIDER then acronym]

TO

[full name of NAVY RECIPIENT then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: LP-CRADA-[Navy Org.]-[last two digits of FY]-[sequence number]

AGREEMENT ADMINISTRATORS:

[NON-NAVY PROVIDER acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel **[Optional]**: **[insert name, telephone number, e-mail address]**

[NAVY RECIPIENT acronym]

Technology Transfer ORTA
Point of Contact: **[insert name, organizational code, telephone number, e-mail address]**

Legal Counsel: **[insert name, organization code, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE1

ARTICLE 1. DEFINITIONS1

1.1 “Classified Information (CI)”.....1

1.2 “Controlled Unclassified Information (CUI)”.....1

1.3 “Data”1

1.4 “Government”.....1

1.5 “Information”.....1

1.6 “Invention”.....1

1.7 “Patent Application”1

1.8 “Proprietary Information”.....1

1.9 “Technical Information”2

Article 2. [EQUIPMENT/DATA/MATERIAL] TO BE TRANSFERRED.....2

Article 3. PURPOSE FOR TRANSFER (PURPOSE)2

Article 4. PROTECTION OF INFORMATION.....2

Article 5. PUBLICATIONS.....2

Article 6. WARRANTY2

Article 7. LIABILITY.....3

Article 8. RETURN OF [EQUIPMENT/DATA/MATERIAL]3

Article 9. PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS3

Article 10. INVENTION LICENSE OPTION.....3

Article 11. DELIVERY3

Article 12. DURATION3

Article 13. AMENDMENT.....4

Article 14. ENTIRE AGREEMENT.....4

Article 15. GOVERNING LAW4

Article 16. FUNDS.....4

Article 17. TITLE.....4

Article 18. USE OF NAME OR ENDORSEMENTS4

Article 19. PUBLIC RELEASE OF THIS AGREEMENT4

Article 20. EFFECTIVE DATE4

Article 21. NOTICES.....4

Article 22. **SURVIVING PROVISIONS**5

Article 23. **SIGNATURES**5

A LIMITED PURPOSE
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(LP-CRADA)
FOR EQUIPMENT, DATA OR MATERIAL TRANSFER
(FROM NON-NAVY PROVIDER TO NAVY RECIPIENT)

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Non-Navy Collaborator (PROVIDER) and Department of Navy Collaborator (RECIPIENT) described below agree and enter into this Limited Purpose Cooperative Research and Development Agreement (LP-CRADA) to transfer [**choose one: EQUIPMENT, DATA OR MATERIAL**] according to the clauses and conditions and for the term and duration set in this Agreement.

The PROVIDER is [**name and address of Non-Navy Collaborator**], a corporation [**substitute appropriate alternate language for a different entity, e.g., a University**] duly organized, validly existing and in good standing under the laws of the [**State or Commonwealth**] of [**indicate name**]. The PROVIDER [**is/is not**] a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. § 121.101 et seq.) of the Administrator of the Small Business Administration. Further, the PROVIDER [**is/is not**] directly or indirectly controlled by a foreign company or government (Executive Order 12591, Section 4 (a)) as of the effective date of this Agreement.

The RECIPIENT is the [**state full name and address of Navy Collaborator**], a Federal laboratory of the United States Department of Navy wholly owned by the U.S. Government whose substantial purpose is the performance of research, development or engineering.

Article 1. DEFINITIONS

1.1 “Classified Information (CI)” means all Information classified in accordance with the national security laws of the United States (U.S.).

1.2 “Controlled Unclassified Information (CUI)” means official Information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

1.3 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

1.4 “Government” means the Government of the United States of America.

1.5 “Information” means all Data, trade secrets, and commercial and financial information.

1.6 “Invention” means any invention or discovery which is or may be patentable under Title 35 of the United States Code.

1.7 “Patent Application” means U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Invention.

1.8 “Proprietary Information” means information that:

- (i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information: (a) is not known or available from other sources without obligations concerning its confidentiality; (b) has not been made available by the owners to others without obligation concerning its confidentiality; (c) is not already available to the Government without obligation concerning its confidentiality; and (d) has not been developed independently by persons who have had no access to the information; or

(ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.8 (i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.

1.9 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.

Article 2. [EQUIPMENT/DATA/MATERIAL] TO BE TRANSFERRED

PROVIDER owns, controls, or otherwise has all rights in [describe the EQUIPMENT/DATA/MATERIAL being transferred] hereafter [EQUIPMENT/DATA/MATERIAL]. PROVIDER has the right to and will transfer [insert quantity] of [EQUIPMENT/DATA/MATERIAL] within [insert time frame] to RECIPIENT for the conduct of the research, tests, evaluation, development or engineering efforts and purposes stated below.

Article 3. PURPOSE FOR TRANSFER (PURPOSE)

RECIPIENT agrees that it will use the [EQUIPMENT/DATA/MATERIAL] solely for [describe project and state intended use] (PURPOSE) under the direction and control of RECIPIENT's Principal Investigator (PI), [insert name], and will follow the United States Federal statutes, rules and regulations controlling the handling and use of research equipment and/or materials of the type described as the [EQUIPMENT/DATA/MATERIAL], as applicable. The PURPOSE is consistent with the mission of the RECIPIENT. In addition, RECIPIENT agrees that it will not use the [EQUIPMENT/DATA/MATERIAL] for any production purposes. This Agreement does not constitute or create a joint venture, partnership or formal business entity of any kind.

Article 4. PROTECTION OF INFORMATION

RECIPIENT agrees that it will not use PROVIDER's properly marked PROPRIETARY INFORMATION without prior written consent except for the PURPOSE. The Parties shall confer and agree what information created by the Navy RECIPIENT shall be designated GOVERNMENT PROPRIETARY INFORMATION. PROVIDER will treat GOVERNMENT PROPRIETARY INFORMATION in a manner equivalent to the manner the Government treats NON-GOVERNMENT PROPRIETARY INFORMATION. It is PROVIDER's responsibility to properly identify its PROPRIETARY INFORMATION.

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.

[Insert the following language if a Nondisclosure Agreement is used: The attached Nondisclosure Agreement (Appendix A) is incorporated as part of this Agreement. If there is a conflict between the terms and conditions of Appendix A and this Agreement, this Agreement shall control except for time periods].

Article 5. PUBLICATIONS

Publication of DATA is of prime interest to the RECIPIENT and this Agreement shall not be interpreted to prevent or unreasonably delay publication of research resulting from the use of the [EQUIPMENT/DATA/MATERIAL] or modifications of the [EQUIPMENT/DATA/MATERIAL]. RECIPIENT agrees to provide appropriate acknowledgement of the source of the [EQUIPMENT/DATA/MATERIAL] in all publications. PROVIDER and RECIPIENT agree to confer and consult to provide a reasonable review period [optional: insert time limit] prior to the publication or presentation of DATA regarding the [EQUIPMENT/DATA/MATERIAL] to assure that no PROPRIETARY INFORMATION or RESTRICTED ACCESS INFORMATION is released and that patent rights are protected. Publication and/or presentation will be delayed for a reasonable time to afford needed protection. If the research is not published, the RECIPIENT shall provide a report of the research results to the PROVIDER.

Article 6. WARRANTY

RECIPIENT agrees that PROVIDER makes no representations and extends no warranty of any kind, either expressed or

Limited Purpose CRADA
Non-Navy Provider to Navy Recipient

implied regarding the [EQUIPMENT/DATA/MATERIAL]. There are no expressed or implied warranties of merchantability or fitness for a particular purpose, or that the use of the [EQUIPMENT/DATA/MATERIAL] will not infringe any patent, copyright, trademark, or other rights.

Article 7. LIABILITY

RECIPIENT shall be liable for damage to the [EQUIPMENT/DATA/MATERIAL] resulting from RECIPIENT's fault or negligence in accordance with Federal Law, excepting ordinary wear and tear occasioned by normal and ordinary usage. In no event shall RECIPIENT be liable for such wear and tear associated with the usage of the [EQUIPMENT/DATA/MATERIAL] or for loss, damage, or destruction prior to delivery of the [EQUIPMENT/DATA/MATERIAL] to the RECIPIENT. **[Optional: In the event of loss or irreparable damage to the [EQUIPMENT/DATA/MATERIAL], RECIPIENT'S maximum liability shall not exceed [insert dollar amount]].** PROVIDER agrees to defend, indemnify, and hold harmless RECIPIENT from any loss, claim, damage, or liability, of any kind, which may arise from PROVIDER's use, storage or disposal of the [EQUIPMENT/DATA/MATERIAL]. RECIPIENT's entire liability is as stated in the Federal Tort Claims Act, Section 2671 *et seq.*

Article 8. RETURN OF [EQUIPMENT/DATA/MATERIAL]

RECIPIENT agrees that any and all [EQUIPMENT/DATA/MATERIAL] and PROPRIETARY INFORMATION regarding this [EQUIPMENT/DATA/MATERIAL] received from PROVIDER, and any copies of information, including PROPRIETARY INFORMATION, shall remain the property of PROVIDER. These items will be promptly returned or destroyed at the termination of this Agreement in accordance with the directions of the PROVIDER. All requests and responses must be in writing. The [EQUIPMENT/DATA/MATERIAL] and information will be returned at no expense to the PROVIDER.

Article 9. PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS

Except as expressly provided in this Agreement, no rights are provided to RECIPIENT under any pre-existing patents, patent applications, trade secrets or other intellectual property of PROVIDER.

Article 10. INVENTION LICENSE OPTION

RECIPIENT shall retain title to any Invention of its employees made in the performance of the PURPOSE. RECIPIENT shall notify PROVIDER of the receipt of any Invention disclosure regarding use or modification of the [EQUIPMENT/DATA/MATERIAL]. PROVIDER has a non-exclusive license to use any improvement made by Navy RECIPIENT. RECIPIENT gives PROVIDER the option, to be exercised within one hundred eighty (180) days after the filing of a Patent Application regarding the Invention, of acquiring an exclusive license in the Government's rights in any Invention. The exclusive license will be subject to a reasonable royalty. Any exclusive license granted by the Government in an invention is subject to the statutorily required reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have that invention practiced throughout the world by or on behalf of the Government.

Article 11. DELIVERY

It is agreed that the PROVIDER will deliver the [EQUIPMENT/DATA/MATERIAL] upon execution of this Agreement to the RECIPIENT within [insert number] days from the effective date of this Agreement.

Article 12. DURATION

This Agreement will terminate on the earliest of the following dates:

- (1) upon completion of RECIPIENT's proposed research studies with the [EQUIPMENT/DATA/MATERIAL], or
- (2) upon thirty (30) days written notice by either Collaborator to the other, or

Limited Purpose CRADA
Non-Navy Provider to Navy Recipient

(3) **[insert time, not to exceed four (4) years]** from the effective date of this Agreement.

Article 13. AMENDMENT

This Agreement can be amended only by a written amendment mutually agreed to and signed by the Agreement signatories or their successors.

Article 14. ENTIRE AGREEMENT

This Agreement is the entire Agreement between the Collaborators concerning the PURPOSE and supersedes any prior understanding or written or oral agreement relative to the PURPOSE.

Article 15. GOVERNING LAW

United States Federal Law shall govern this Agreement for all purposes.

Article 16. FUNDS

It is agreed and understood that the **[EQUIPMENT/DATA/MATERIAL]** is furnished and the Agreement is entered into at no cost to the RECIPIENT.

No funds are transferred under this Agreement from the Navy RECIPIENT to the Non-Navy PROVIDER.

[If funds are transferred from Non-Navy Provider to Navy Recipient, specify amount and instructions for delivery of funds].

Checks will be payable to:

The United States Treasury

Checks will be mailed to:

[Specify address, including the name of the authorized recipient, title, and appropriate organizational code].

Article 17. TITLE

Each Collaborator shall retain title to all tangible property to which it had title prior to the effective date of this Agreement.

Article 18. USE OF NAME OR ENDORSEMENTS

PROVIDER shall not use the name of the RECIPIENT or any other Government entity on any product or service that is directly or indirectly related to this Agreement without the prior approval of RECIPIENT.

Article 19. PUBLIC RELEASE OF THIS AGREEMENT

This Agreement document is releasable to the public.

Article 20. EFFECTIVE DATE

The effective date of this Agreement is the date of execution by the last to sign for the DURATION set in Article 11.

Article 21. NOTICES

All notices will be sent to the Agreement administrators or their successors at the addresses shown in the PREAMBLE.

Article 22. SURVIVING PROVISIONS

All the Articles of this Agreement shall survive its termination.

Article 23. SIGNATURES

Accepted for PROVIDER:

I, the undersigned, am duly authorized to bind the [NON-NAVY PROVIDER] to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20__.
(month)

By: _____
Name:

Title:

Accepted for RECIPIENT:

I, the undersigned, am duly authorized to bind the [NAVY RECIPIENT] to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20__.
(month)

By: _____
Name:

Title:

Naval Organization:

Section IV - 6

The Small Business Innovation Research (SBIR) Funded Non-Standard CRADA - Explanation

Small businesses and Navy scientists and engineers can leverage the SBIR and T2 programs. SBIR funds can be used to support CRADAs between Federal laboratories and small business collaborators. Additional information regarding the SBIR Program is provided in [Section VI - 8](#) of this handbook. A sample of an SBIR Funded Non-Standard CRADA is presented in this section. This sample is based on a Naval Research Laboratory example. Articles and paragraphs containing SBIR specific language are highlighted in the sample. The local SBIR Program Manager must be consulted prior to negotiating an SBIR funded CRADA.

NON-STANDARD
NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[full name of NAVY COLLABORATOR then acronym]

AND

[full name of NON-NAVY COLLABORATOR then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: NCRADA - **[Navy Org.]** - **[last two digits of FY]** - **[sequence number]**

AGREEMENT ADMINISTRATORS:

[NAVY COLLABORATOR acronym]

Technology Transfer ORTA: **[insert name, organization code, telephone number, e-mail address]**

Intellectual Property Counsel: **[insert name, organization code, telephone number, e-mail address]**

Principal Investigator: **[insert name, organization code, telephone number, e-mail address]**

[NON-NAVY COLLABORATOR acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel *[Optional]*: **[insert name, telephone number, e-mail address]**

Principal Investigator: **[insert name, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE 1

Article 1. DEFINITIONS 1

1.1 “Agreement” 1

1.2 “Classified Information (CI)” 1

1.3 “Collaborator” 1

1.4 “Controlled Unclassified Information (CUI)” 1

1.5 “Cooperative Work” 1

1.6 “Data” 1

1.7 “Effective Date” 2

1.8 “Exclusive Commercial License” 2

1.9 “For Official Use Only (FOUO)” 2

1.10 “Government” 2

1.11 “Government Purpose Rights” 2

1.12 “Information” 2

1.13 “Intellectual Property” 2

1.14 “Internal Use License” 2

1.15 “Invention” 2

1.16 “Invention Disclosure” 2

1.17 “Jointly Made Subject Invention” 2

1.18 “Limited Rights” 2

1.19 “Made” 2

1.20 “Nonexclusive Commercial License” 2

1.21 “Non-Subject Data” 2

1.22 “Non-Subject Invention” 2

1.23 “Patent Application” 2

1.24 “Principal Investigator (PI)” 2

1.25 “Proprietary Information” 2

1.26 “SBIR Contract Subject Data” 3

1.27 “Small Business Innovation Research (SBIR) Contract” 3

1.28 “SBIR Contractor” 3

1.29 “Subject Invention” 3

1.30 “Tangible Property” 3

1.31 “Technical Data” 3

1.32 “Technical Document” 3

1.33 “Technical Information” 3

1.34 “Unlimited Rights” 3

Article 2. OBJECTIVES 3

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE 3

3.1 Facilities and Supervision 3

3.2 Security Regulations and Directives 4

Article 4. REPRESENTATIONS AND WARRANTIES 4

4.1 [Navy Collaborator]’s Representations and Warranties 4

4.2 [Non-Navy Collaborator]’s Representations and Warranties 4

4.3 Joint Representations and Warranties 5

<u>Article 5.</u>	<u>FUNDING</u>	<u>5</u>
5.1	<u>Payment Schedule</u>	5
5.2	<u>Insufficient and Excess Funds</u>	6
5.3	<u>No New Commitments</u>	6
5.4	<u>Accounting Records</u>	6
<u>Article 6.</u>	<u>REPORTS AND PUBLICATIONS</u>	<u>6</u>
6.1	<u>Interim Reports</u>	6
6.2	<u>Final Reports</u>	6
6.3	<u>Agreement to Confer Prior to Publication or Public Disclosure of Information</u>	7
6.4	<u>Required Review of SBIR Contract Subject Data</u>	7
<u>Article 7.</u>	<u>INTELLECTUAL PROPERTY</u>	<u>7</u>
7.1	<u>Rights Under Other Agreements</u>	7
7.2	<u>Rights in SBIR Contract Subject Data</u>	7
7.2.1	<u>Rights of Both Collaborators</u>	7
7.2.2	<u>Rights and Obligations of [Navy Collaborator]</u>	7
7.2.3	<u>Rights of [Non-Navy Collaborator]</u>	8
7.3	<u>Rights in Non-Subject Data</u>	8
7.3.1	<u>Rights of Both Collaborators</u>	8
7.3.2	<u>Rights of [Navy Collaborator]</u>	8
7.3.3	<u>Rights of [Non-Navy Collaborator]</u>	8
7.4	<u>No Implied License</u>	8
7.5	<u>Protection of Data</u>	8
7.6	<u>Release of Data Under the Freedom of Information Act</u>	9
7.7	<u>Marking of Data</u>	9
7.7.1	<u>Markings Required for Both Collaborators</u>	9
7.7.1.1	<u>Data Provided with Less than Unlimited Rights</u>	9
7.7.1.2	<u>Data that are CI, CUI, or Otherwise Restricted</u>	9
7.7.1.3	<u>For Official Use Only (FOUO) Marking</u>	9
7.7.2	<u>Markings Required for [Navy Collaborator]</u>	9
7.7.2.1	<u>Data that are Subject to 35 U.S. Code § 205</u>	9
7.7.2.2	<u>Data Protected Under Article 7.5</u>	10
7.7.3	<u>Markings Required for [Non-Navy Collaborator]</u>	10
7.7.3.1	<u>Data that are Proprietary Information</u>	10
7.8	<u>Subject Inventions</u>	10
7.8.1	<u>Reporting of Subject Inventions</u>	10
7.8.2	<u>Determination of Subject Inventions</u>	10
7.8.3	<u>Title to and Ownership of Subject Inventions</u>	10
7.9	<u>Non-Subject Inventions</u>	11
7.9.1	<u>Ownership of Non-Subject Inventions</u>	11
7.9.2	<u>Preexisting Non-Subject Inventions Pertinent to the Cooperative Work</u>	11
7.10	<u>Filing of Patent Applications</u>	11
7.10.1	<u>Patent Filing</u>	11
7.10.2	<u>Copies and Inspection</u>	12
7.10.3	<u>Rights of Inventors if the Collaborators Decline to File a Patent Application</u>	12
7.11	<u>Licenses to Subject Invention</u>	12
7.11.1	<u>Internal Use License to [Non-Navy Collaborator]</u>	12
7.11.2	<u>Government License</u>	12
7.11.3	<u>Option for Commercial License to Subject Inventions</u>	12

7.11.4	Termination of Licenses Granted and Cancellation of License Option to Subject Inventions	13
7.12	License to Non-Subject Inventions	13
7.13	Copyrights	13
Article 8.	TANGIBLE PROPERTY	13
8.1	Ownership of Tangible Property	13
8.2	Tangible Property Operational and Disposition Costs	14
8.3	Disposal of Tangible Property	14
Article 9.	LIABILITY	14
9.1	Extent of Government Liability	14
9.2	Extent of [Non-Navy Collaborator] Liability	14
9.3	Force Majeure	14
Article 10.	GENERAL PROVISIONS	14
10.1	Entire Agreement	14
10.2	Severability	15
10.3	Interpretation of Headings	15
10.4	Governing Laws	15
10.5	Independent Parties/Entities	15
10.6	Subcontracting	15
10.7	Assignment	15
10.8	Disputes	15
10.9	Use of Name or Endorsements	15
10.10	Public Release Announcements of This Agreement	16
10.11	Environment, Safety, and Health	16
10.12	U.S. Competitiveness	16
10.13	Waivers	16
Article 11.	MODIFICATIONS AND NOTICES	16
11.1	Amendments	16
11.2	Unilateral Termination	16
11.3	Notices	16
Article 12.	SURVIVING PROVISIONS	17
Article 13.	DURATION	17
Article 14.	SIGNATURES	18
	APPENDIX A - STATEMENT OF WORK	19

NON-STANDARD

NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[Navy Collaborator full name then acronym]

AND

[Non-Navy Collaborator full name then acronym]

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of the Navy Collaborator, [Navy Collaborator name and address], and [insert full name of Non-Navy Collaborator followed by acronym and address], an SBIR Contractor under [insert funding Agency name] Phase [insert SBIR phase number], contract number [insert contract number], agree to and enter into this Cooperative Research and Development Agreement (CRADA).

[Navy Collaborator] has extensive expertise, capabilities, and information in [state technology area], and in accordance with the U.S. Federal Technology Transfer Act, desires to make this expertise and technology available for use in the public and private sectors.

[Non-Navy Collaborator] has the interest, resources, capabilities, and technical expertise to transition the results of Naval research and development for public use.

Article 1. DEFINITIONS

[Note to ORTA: Specialized definitions required for this Agreement may be added alphabetically within the DEFINITIONS. If specialized definitions are added, they must be included in the Table of Contents.]

As used in this Agreement, the following terms shall have the meanings defined below, which are equally applicable to both the singular and plural forms of nouns or any tense of verbs.

1.1 “Agreement” means this Cooperative Research and Development Agreement (CRADA) with its Appendices.

1.2 “Classified Information (CI)” means all Information classified in accordance with the national security laws of the United States.

1.3 “Collaborator” means the Navy participant or the Non-Navy participant represented and bound by the signatories of this Agreement.

1.4 “Controlled Unclassified Information (CUI)” means official Information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

1.5 “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by [Navy Collaborator] or [Non-Navy Collaborator] working individually or together, pursuant to the Objectives (Article 2) and the Statement of Work (Appendix A).

1.6 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

- 1.7 “Effective Date” means the date of the last signature of the Collaborators executing this Agreement.
- 1.8 “Exclusive Commercial License” means the grant by the owner of Intellectual Property of the exclusive right to make, use, or sell an Invention for commercial purposes.
- 1.9 “For Official Use Only (FOUO)” means a protective marking to be applied to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the Freedom of Information Act. This includes information that qualifies for protection under the provisions of the Privacy Act of 1974, as amended.
- 1.10 “Government” means the Government of the United States of America.
- 1.11 “Government Purpose Rights” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes. Government Purpose Rights includes competitive procurement, but does not include the right to have or permit others to use Data for commercial purposes.
- 1.12 “Information” means all Data, trade secrets, and commercial and financial information.
- 1.13 “Intellectual Property” means the property of ideas, examples of which include, but are not limited to, patents, trademarks, copyrights, and trade secrets.
- 1.14 “Internal Use License” means the grant by the owner of Intellectual Property of the right to make, have made, use, and import, but not commercially sell, an Invention or a product or service made using an Invention.
- 1.15 “Invention” means any creation or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act.
- 1.16 “Invention Disclosure” means the document identifying and describing to organizational management the Making of an Invention.
- 1.17 “Jointly Made Subject Invention” means any Invention Made jointly by the Collaborators.
- 1.18 “Limited Rights” means that each Collaborator of this Agreement may use, reproduce, and disclose to their employees properly marked Non-Subject Data provided by the other Collaborator(s) for use in support only of this Cooperative Work.
- 1.19 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention.
- 1.20 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell an Invention.
- 1.21 “Non-Subject Data” means any Data that are not Subject Data.
- 1.22 “Non-Subject Invention” means any Invention that is not a Subject Invention.
- 1.23 “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.
- 1.24 “Principal Investigator (PI)” means that person having the responsibility for the performance of the Cooperative Work on behalf of a Collaborator.
- 1.25 “Proprietary Information” means Information that:

(i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information (a) is not known or available from other sources without obligations concerning its confidentiality, (b) has not been made available by the owners to others without obligation concerning its confidentiality, (c) is not already available to the Government without obligation concerning its confidentiality, and (d) has not been developed independently by persons who have had no access to the information; or

(ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.25(i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.

1.26 “SBIR Contract Subject Data” means any data developed under a contract that is funded under the U.S. Federal Small Business Innovation Program authorized under 15 USC § 638. All Data first recorded in the performance of the Cooperative Work are SBIR Contract Subject Data.

1.27 “Small Business Innovation Research (SBIR) Contract” means [Non-Navy Collaborator]’s [insert funding Agency name] SBIR Phase [insert Phase number] contract number [insert contract number].

1.28 “SBIR Contractor” means any contractor working under a contract that is funded under the U.S. Federal Small Business Innovation Program authorized under 15 USC § 638.

1.29 “Subject Invention” means any Invention Made in the performance of the Cooperative Work.

1.30 “Tangible Property” means personal or real property having or possessing physical form.

1.31 “Technical Data” means recorded Information relating to experimental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair or overhaul material, including, but not limited to graphic or pictorial delineations in media.

1.32 “Technical Document” means recorded Information that conveys scientific and Technical Information or Technical Data.

1.33 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.

1.34 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Article 2. OBJECTIVES

[Describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of this Agreement. State the desired outcome by each Collaborator, including any intentions for commercialization, if appropriate. This Article and the Statement of Work, Appendix A, are the defining articles for the Cooperative Work to be done by the Collaborators.]

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE

3.1 Facilities and Supervision

The Collaborators shall provide personnel, facilities, and equipment necessary for, and shall perform, the Cooperative Work.

The Cooperative Work done by each Collaborator will be performed under the program guidance of its PI, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within that Collaborator's facilities or done on behalf of that Collaborator by third parties in support of this Agreement. Personnel who perform Cooperative Work at the other Collaborator's facilities will be supervised by their own PI.

[Note to ORTA: Refer to the Navy T2 Handbook when third parties are used by the Collaborators as part of this Agreement.]

3.2 Security Regulations and Directives

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed.

[Note to ORTA: This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators' facilities. If the Cooperative Work covers classified topics, a security clearance must be put in place for the Non-Navy Collaborator's facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Navy Collaborator's Security Office. If Export Control is needed, attach DD Form 2345, called a "Militarily Critical Technology Data Agreement" to this Agreement. If the Cooperative Work covers classified topics and the Non-Navy Collaborator is FOCI, then a FOCI Mitigation Instrument may be required. Refer to the Navy T2 Handbook.]

Article 4. REPRESENTATIONS AND WARRANTIES

4.1 [Navy Collaborator]'s Representations and Warranties

[Navy Collaborator] hereby warrants and represents to [Non-Navy Collaborator] that the performance of the activities specified by this Agreement is consistent with the [specify the appropriate mission area] and technology transfer missions of [Navy Collaborator]. [Navy Collaborator] is a Federal laboratory of the U.S. Department of the Navy, as defined by 15 U.S. Code § 3710a (d)(2)(A) and Department of Defense Instruction 5535.8, dated May 14, 1999.

[Note to ORTA: The following Article 4.2 is for a single commercial entity. Choose the appropriate alternatives to Article 4.2 from those listed in the Navy T2 Handbook according to the nature of the Non-Navy Collaborator(s): A university, nonprofit entity, State or local government, an entity directly or indirectly foreign owned, controlled, or influenced (FOCI), an entity comprised of multiple Collaborators.]

4.2 [Non-Navy Collaborator]'s Representations and Warranties

[Non-Navy Collaborator] hereby warrants and represents to [Navy Collaborator] as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of [State or Commonwealth].

[Non-Navy Collaborator] is a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

[Note to ORTA: The following paragraph is to be used only if the Non-Navy Collaborator is not a FOCI as of the signature date of this Agreement.]

If [Non-Navy Collaborator] or its successor or assignee is a U.S. company, and becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a foreign company or government (FOCI), the [Non-Navy Collaborator] or its successor or assignee shall promptly notify [Navy Collaborator] to that effect.

[Note to ORTA: If on the signature date of this Agreement the Non-Navy Collaborator is a FOCI, insert the following paragraph. In addition, an Amendment to this CRADA is required – see the Navy T2 Handbook. Otherwise, omit the following paragraph.]

If [Non-Navy Collaborator] or its successor or assignee becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a different foreign company or government (FOCI) then it or its successor or assignee shall promptly notify [Navy Collaborator] to that effect.

The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any agreement binding on [Non-Navy Collaborator]. Furthermore, the execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any valid order of any court, or any regulatory agency or other body having authority to which [Non-Navy Collaborator] is subject.

[Non-Navy Collaborator] is not currently subject to debarment or suspension by any agency of the Government. Should [Non-Navy Collaborator] be debarred or suspended during the term of this Agreement or thereafter, [Non-Navy Collaborator] will notify [Navy Collaborator] within thirty (30) days of receipt of a final notice. [Navy Collaborator] may then elect to terminate this Agreement and any licenses and options granted under this Agreement.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

There is no express or implied warranty as to any research, Invention, or product, whether tangible or intangible. In particular, the Collaborators make no express or implied warranty as to the merchantability or fitness for a particular purpose of any research, Invention, or product, whether tangible or intangible. Likewise, the Collaborators make no express or implied warranty as to any Cooperative Work, Subject Invention, **SBIR Contract Subject Data**, or other product resulting from the Cooperative Work.

[Note to ORTA: See the Navy T2 Handbook for approved alternative language to the following paragraph.]

The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to export Information. The exporting Collaborator is responsible for obtaining any export licenses and/or foreign disclosure reviews that may be required by U.S. Federal law. [Non-Navy Collaborator] shall provide written notification to [Navy Collaborator] immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work, Appendix A, may require the introduction or generation of CUI. All CUI that is introduced or generated in the performance of work under this Agreement shall be properly marked and safeguarded as provided herein and in all applicable U.S. Federal laws and regulations.

Article 5. FUNDING

5.1 Payment Schedule

[Non-Navy Collaborator] agrees to pay [Navy Collaborator] the following fees/costs in accordance with the payment schedule below, **contingent upon its receipt of funding under the SBIR Contract:**

[Note to ORTA: Insert amount to be paid, identify the task for which payment is made, the schedule of the tasks, and date of payment or, if preferred, the date and amount of each scheduled payment.]

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number “NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number].”

Checks will be mailed to:

[Note to ORTA: Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

5.2 Insufficient and Excess Funds

[Navy Collaborator] will not start or continue performance under this Agreement if the funds provided by [Non-Navy Collaborator] for performance by [Navy Collaborator] are insufficient or are not provided as specified in Article 5.1.

In the event [Non-Navy Collaborator] fails to tender the Government the required payment within fifteen (15) days after its respective due date, [Non-Navy Collaborator] shall be in default under this Agreement for failure to make payments. If [Non-Navy Collaborator] is in default for this reason, [Navy Collaborator] shall notify [Non-Navy Collaborator]. If [Non-Navy Collaborator] does not cure the default within fifteen (15) days of date of notice, [Navy Collaborator] may proceed to terminate the Agreement in accordance with Article 11.2, and may cancel any option for an Exclusive Commercial License to a Subject Invention, and may terminate any Exclusive Commercial License granted pursuant to this Agreement.

Excess Funds that [Non-Navy Collaborator] provided under Article 5.1 that [Navy Collaborator] has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to [Non-Navy Collaborator] after [Navy Collaborator]'s submission of a final financial report to [Non-Navy Collaborator].

5.3 No New Commitments

[Navy Collaborator] shall make no new commitments concerning this Agreement after receipt of a written termination notice from [Non-Navy Collaborator] in accordance with Article 11.2 and shall, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by [Navy Collaborator], [Non-Navy Collaborator] agrees that such costs shall be chargeable against any funding that it provided to [Navy Collaborator].

5.4 Accounting Records

[Navy Collaborator] shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by [Non-Navy Collaborator] under this Agreement and shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. [Navy Collaborator] shall provide [Non-Navy Collaborator] a financial report within four (4) months after completion, expiration, or termination of this Agreement.

Article 6. REPORTS AND PUBLICATIONS

6.1 Interim Reports

The Collaborators shall submit [insert number or frequency for each interim written report] interim written reports to each other on the progress of the Cooperative Work.

6.2 Final Reports

The PIs shall submit to the [Navy Collaborator] Technology Transfer Office and [Non-Navy Collaborator] preferred contact a final report within four (4) months of the completion, termination, or expiration of this Agreement that includes the results obtained and a list of all Subject Inventions Made.

6.3 Agreement to Confer Prior to Publication or Public Disclosure of Information

For the purposes of this Article, the term “disclosure” shall include, but not be limited to, submission of any manuscript for peer review prior to publication.

The Collaborators agree to confer and consult prior to any publication or public disclosure of **SBIR Contract Subject Data** to ensure that no Proprietary Information, Government CI, or CUI, is released and that patent rights are not compromised. Prior to any such publication or public disclosure of **SBIR Contract Subject Data**, each Collaborator shall be offered a period not to exceed thirty (30) days, to review any proposed abstract, publication, presentation, or other document for public disclosure.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the other Collaborator within thirty (30) days of the date of notice of intent to disclose publicly. If no objection is received by the Collaborator intending to make public disclosure, concurrence is assumed.

If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator before the public disclosure or by another date mutually agreed to by the Collaborators.

If a Collaborator objects to the release of Information on the grounds that the Information is Proprietary Information, or Information whose dissemination is restricted by U.S. security laws or regulations, the disclosure shall be postponed until the Information no longer meets the definitions of Proprietary Information, or is no longer covered by U.S. security laws or regulations.

6.4 Required Review of **SBIR Contract Subject Data**

Any **publication, including** public presentation that includes **SBIR Contract Subject Data** must have prior review and approval by **[Navy Collaborator] Security and [Navy Collaborator] Office of Intellectual Property** pursuant to the pertinent security laws, regulations, and directives **prior to disclosure. All publications containing SBIR Contract Subject Data must also be approved by [Non-Navy Collaborator] prior to public disclosure.**

Article 7. INTELLECTUAL PROPERTY

7.1 Rights Under Other Agreements

Nothing in this Agreement is intended to change the rights in Intellectual Property acquired by the Collaborators in any other contract or Agreement between the **[Non-Navy Collaborator]** and the Government.

7.2 Rights in **SBIR Contract** Subject Data

7.2.1 Rights of Both Collaborators

Each Collaborator shall have title to all **SBIR Contract Subject Data** generated by that Collaborator. Each Collaborator agrees to provide all **SBIR Contract Subject Data** to the other Collaborator.

7.2.2 Rights **and Obligations** of **[Navy Collaborator]**

[Navy Collaborator] and Government rights to **SBIR Contract Subject Data** will be in accordance with the **SBIR Contract**. **[Navy Collaborator]** shall protect **SBIR Contract Subject Data** from disclosure for a period of not less than four (4) years from the delivery of **[Non-Navy Collaborator]**'s last deliverable under its **SBIR Contract**, unless permission is obtained to disclose such **SBIR Contract Subject Data** from **[Non-Navy Collaborator]**, per Article 6.4.

7.2.3 Rights of [Non-Navy Collaborator]

For **SBIR Contract Subject Data** that contains [Navy Collaborator]'s Proprietary Information, [Non-Navy Collaborator] has rights to use, modify, reproduce, release, perform, display, or disclose Technical Data within [Non-Navy Collaborator]'s organization, in whole or in part, and in any manner, for any internal purpose excluding commercial purposes. If [Non-Navy Collaborator] is subsequently awarded a Government contract that entails deliverables that incorporate the [Navy Collaborator]'s Proprietary Information, such deliverables must be delivered with at least Government Purpose Rights, as defined in the DFARS § 252.227-7013. [Non-Navy Collaborator] shall have Unlimited Rights in SBIR Contract Subject Data that are not Proprietary Information.

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose **SBIR Contract Subject Data** that may describe one or more Inventions in which the Government owns or may own a right, title, or interest, if such **SBIR Contract Subject Data** are provided by [Navy Collaborator] under this Agreement. This Limited Right does not grant the [Non-Navy Collaborator] any License to any Invention in which the Government owns or may own a right, title, or interest. In accordance with Article 7.5 below, such **SBIR Contract Subject Data** are to be held in confidence.

7.3 Rights in Non-Subject Data

7.3.1 Rights of Both Collaborators

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information or protected under 35 U.S. Code § 205 provided under this Agreement.

7.3.2 Rights of [Navy Collaborator]

[Navy Collaborator] has a Limited Right to use, reproduce, and disclose only to Government employees for use in support of the Cooperative Work any Non-Subject Data that are properly marked as Proprietary Information and are provided by [Non-Navy Collaborator] under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless written consent to other use or disclosure is obtained from [Non-Navy Collaborator].

7.3.3 Rights of [Non-Navy Collaborator]

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Non-Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title or interest, if such Non-Subject Data are provided by [Navy Collaborator] under this Agreement. Such Non-Subject Data shall be properly marked by [Navy Collaborator].

7.4 No Implied License

Unless otherwise specifically provided, the Collaborators agree that the exchange of Data of any kind does not confer a license to any Non-Subject Invention claimed in any patent or Patent Application or to the subject matter of any copyright, trademark/service mark, or other form of Intellectual Property protection.

7.5 Protection of Data

Except for the rights granted in Article 7.1 and Article 7.2, Data shall be protected in accordance with the proper markings of its owner and as provided by, at a minimum, the requirements of 15 U.S. Code § 3710a. Proprietary Information will be protected only if it is properly marked as such. Information provided in intangible form that is Proprietary Information must be designated Proprietary Information at the time it is provided, followed within fifteen (15) days by a writing summarizing the exact information to be protected. The Collaborator receiving Information in an intangible form that is designated as Proprietary Information shall be responsible for protecting the Information as Proprietary Information during the fifteen (15) day notification. After the fifteen (15) day period, if no written summary has been received, the receiving Collaborator need not continue to protect the Information received in intangible form.

Data that is provided by **[Non-Navy Collaborator]** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S. Code § 552(b)(4), shall not be disclosed by **[Navy Collaborator]**. **[Non-Navy Collaborator]** shall agree to not disclose, for five (5) years, Data that is produced by **[Navy Collaborator]** and that would have been considered a trade secret, business commercial, or financial information that is privileged or confidential if it had been produced by the **[Non-Navy Collaborator]**.

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.

7.6 Release of Data Under the Freedom of Information Act

[Navy Collaborator] will comply with the Freedom of Information Act and Executive Order 12600.

7.7 Marking of Data

7.7.1 Markings Required for Both Collaborators

7.7.1.1 Data Provided with Less than Unlimited Rights

Each Collaborator shall mark all Data that it provides with less than Unlimited Rights with a marking that clearly identifies the Limited Rights.

7.7.1.2 Data that are CI, CUI, or Otherwise Restricted

Each Collaborator shall mark all Data that are CI, CUI or otherwise restricted by U.S. security or export control laws or regulations that it provides under this Agreement.

7.7.1.3 For Official Use Only (FOUO) Marking

FOUO is the marking used for documents/products containing material that qualifies as exempt from release under FOIA. This includes Technical Information and Technical Data.

Use of the FOUO marking is the responsibility of the originator of the Information. Use of the FOUO marking does not automatically qualify for FOIA exemption.

Technical Documents which contain Technical Information and/or Technical Data are considered FOUO documents and must be appropriately marked.

[Note to ORTA: For further information associated with FOUO markings see the Navy T2 Handbook.]

7.7.2 Markings Required for **[Navy Collaborator]**

7.7.2.1 Data that are Subject to 35 U.S. Code § 205

[Navy Collaborator] shall mark Data it provides under this Agreement that disclose one or more Inventions in which the Government owns or may own a right, title or interest, and that are subject to confidentiality under 35 U.S. Code § 205. Such Data shall be marked:

“[Navy Collaborator] DATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 U.S. Code § 205.”

7.7.2.2 Data Protected Under Article 7.5

[Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that [Navy Collaborator] provides to [Non-Navy Collaborator], where the Collaborators have agreed, under second paragraph of Article 7.5 of this Agreement, to protect such Data for up to five (5) years. The marking shall state:

“[Navy Collaborator] DATA SHALL BE PROTECTED BY THE [Non-Navy Collaborator] FOR A PERIOD OF [state a number up to five years] FROM [state the date of generation].”

7.7.3 Markings Required for [Non-Navy Collaborator]

7.7.3.1 Data that are Proprietary Information

[Non-Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that [Non-Navy Collaborator] provides to [Navy Collaborator] under this Agreement that [Non-Navy Collaborator] asserts is Proprietary Information.

For Non-Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF [Non-Navy Collaborator] – [Navy Collaborator] MAY USE ONLY FOR PURPOSE OF CRADA NUMBER NCRADA – [Navy Collaborator] – [last two digits of FY] – [lab CRADA sequence number]”

For all SBIR Contract Subject Data the Marking shall state:

“SBIR CONTRACT SUBJECT DATA OF [Non-Navy Collaborator] – GOVERNMENT RIGHTS LIMITED AS PROVIDED IN SBIR CONTRACT NUMBER XXX-YYY-ZZZ.”

7.8 Subject Inventions

7.8.1 Reporting of Subject Inventions

Within sixty (60) days of Making an Invention resulting from the Cooperative Work, and prior to disclosure of the Invention to any third parties, unless a shorter time period is required by circumstances, the inventor(s) shall submit an Invention Disclosure to their employer. In the case of an Invention Made jointly by inventors from both Collaborators, the inventors of each Collaborator shall submit an Invention Disclosure to their respective employer. Each Collaborator shall provide the other Collaborator with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

7.8.2 Determination of Subject Inventions

The Collaborators shall review each Invention Disclosure resulting from the Collaborative Work and shall confer and consult to determine whether an Invention Disclosure represents a Subject Invention.

7.8.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to solely own the Subject Inventions Made solely by its employees. For any Jointly Made Subject Invention, each Collaborator shall have ownership of the Subject Invention in the form of an undivided interest, without a right of accounting.

Each Collaborator shall cooperate with the other Collaborator to obtain inventor signatures on Patent Applications, assignments or other documents required to secure Intellectual Property protection.

The employees of **[Non-Navy Collaborator]** may Make, either solely or jointly with the employees of **[Navy Collaborator]**, Inventions that are Subject Inventions under both this Agreement and the **SBIR Contract**. The **SBIR Contract** imposes requirements for **[Non-Navy Collaborator]** to retain title to Inventions Made, in whole or in part, by its employees under the **SBIR Contract**. Accordingly, **[Non-Navy Collaborator]** shall only be entitled to own Inventions Made by its employees if it has elected to retain title under the **SBIR Contract**. If **[Non-Navy Collaborator]** does not comply with all the requirements for election of title under its **SBIR Contract**, **[Non-Navy Collaborator]** will only retain the license provided for in its **SBIR Contract**.

7.9 Non-Subject Inventions

7.9.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

[Note to ORTA: Article 7.9.2 is optional. It should be used only if Navy Collaborator and/or Non-Navy Collaborator have preexisting Non-Subject Inventions that are pertinent to this Cooperative Work.]

7.9.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s), patent number, or Navy case number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

[Non-Navy Collaborator] shall obtain any necessary license to **[Navy Collaborator]**-owned Non-Subject Inventions needed for its commercial operations in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Non-Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s) patent number, or attorneys docket number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

7.10 Filing of Patent Applications

By mutual agreement, the Collaborators shall identify which Collaborator shall file a Patent Application on any Subject Invention. The Collaborator responsible for filing of a Patent Application on any Subject Invention shall file such Patent Application at least sixty (60) days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received, whichever comes first. In the case of a Jointly Made Subject Invention, if no Patent Application is filed within the specified time period by the responsible Collaborator, the other Collaborator may assume control of filing the Patent Application and take title to the Jointly Made Subject Invention on ten (10) days written notification. The Collaborator that relinquished the responsibility to file shall retain a nonexclusive, irrevocable, paid-up license to practice the Jointly Made Subject Invention or have the Jointly Made Subject Invention practiced throughout the world by or on its behalf.

7.10.1 Patent Filing

The Collaborator responsible for filing any Patent Application for a Subject Invention shall notify the other Collaborator of all filing deadlines for prosecution of any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.10, sixty (60) days prior to any filing deadline, the Collaborators shall confer to determine if the filing Collaborator intends to respond to the filing deadline. The non-filing Collaborator has the right to take action if the filing Collaborator declines.

7.10.2 Copies and Inspection

Each Collaborator filing a Patent Application on a Subject Invention shall provide the other Collaborator with a copy of any communication relating to prosecution of said Patent Application within thirty (30) days of receipt of such request. The filing Collaborator shall give the other Collaborator a limited power to inspect, with authorization to access the Patent Application, make copies, and, in the event that the filing Collaborator declines continued prosecution of the Patent Application, do all that is necessary to secure patent protection for the Jointly Made Subject Invention.

7.10.3 Rights of Inventors if the Collaborators Decline to File a Patent Application

In the event both Collaborators decline to file a Patent Application on a Subject Invention, the Government will renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

In the event both Collaborators decline to file a Patent Application on a Subject Invention, **[Non-Navy Collaborator]** may, at its sole discretion, renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

7.11 Licenses to Subject Inventions

7.11.1 Internal Use License to **[Non-Navy Collaborator]**

Government grants to the **[Non-Navy Collaborator]** a nonexclusive, irrevocable, paid-up Internal Use License to a Subject Invention Made solely by employees of **[Navy Collaborator]**. No Internal Use License granted under this Agreement shall permit licensee to grant sublicenses. No Internal Use License granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of **[Non-Navy Collaborator's]** business to which such license pertains.

7.11.2 Government License

Pursuant to 15 U.S. Code § 3710a(b)(2), for Subject Inventions Made solely by an employee of **[Non-Navy Collaborator]**, **[Non-Navy Collaborator]** grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.11.3 Option for Commercial License to Subject Inventions

[Navy Collaborator] gives **[Non-Navy Collaborator]** the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of **[Field of Use]** in the Government's rights in any Subject Invention Made in whole or in part by a **[Navy Collaborator]** employee. The license shall be for reasonable consideration. In order to exercise this option, **[Non-Navy Collaborator]** must notify **[Navy Collaborator]** in writing within six (6) months of the filing of a Patent Application. **[Non-Navy Collaborator]** must execute an Exclusive Commercial or Nonexclusive Commercial License to the Subject Invention within six (6) months of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 C.F.R. Part 404.

7.11.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions

[Navy Collaborator] may cancel the Exclusive or Nonexclusive Commercial License option and terminate any Exclusive or Nonexclusive Commercial Licenses and Internal Use Licenses provided for above made in whole or in part by Government employees in the event that:

- (a) **[Non-Navy Collaborator]** is in default for failure to make payment as agreed in Article 5; or
- (b) The Agreement is terminated unilaterally by **[Non-Navy Collaborator]** under Article 11.2; or
- (c) **[Non-Navy Collaborator]** fails to perform according to the Statement of Work (Appendix A); or
- (d) **[Non-Navy Collaborator]** becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a); or
- (e) **[Non-Navy Collaborator]** which was a FOCI organization when the Agreement was signed has now become a different FOCI organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.12 License to Non-Subject Inventions

Each Collaborator shall allow the other Collaborator to practice any of its Non-Subject Inventions for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to either Collaborator in Non-Subject Inventions by performing the Cooperative Work. For commercial applications of Non-Subject Inventions, the **[Non-Navy Collaborator]** must obtain a License from the **[Navy Collaborator]**, in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

[Note to ORTA: Article 7.13 is optional.]

7.13 Copyrights

[Non-Navy Collaborator] may copyright works of authorship prepared pursuant to this Agreement if eligible for copyright protection under Title 17, U.S. Code § 106 **[Non-Navy Collaborator]** grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software, prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.2 and Article 7.3. **[Non-Navy Collaborator]** shall affix the applicable copyright notice of Title 17, U.S. Code §§ 401-403, and an acknowledgment of the scientific and technical contributions of **[Navy Collaborator]**. **[Non-Navy Collaborator]** grants to the U.S. Government a paid-up, non-exclusive, irrevocable, worldwide license to reproduce or have reproduced, prepare or have prepared in derivative form, and distribute or have distributed copies of publications and solely or jointly created **SBIR Contract Subject Data** for Government purposes.

Article 8. TANGIBLE PROPERTY

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to its Tangible Property. All Tangible Property owned and provided by one Collaborator shall remain the property of that Collaborator. Tangible Property having any component purchased or supplied by the Government shall be the property of the Government, unless such tangible Government components reasonably can be separated from non-Government components without damage to any of the individual components comprising the Tangible Property. These separated components shall remain the property of the Collaborator that purchased them. After termination of this Agreement the parties may, by mutual consent, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that originally owned the property.

8.2 Tangible Property Operational and Disposition Costs

Each Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all Tangible Property to which it has title.

8.3 Disposal of Tangible Property

Unless otherwise agreed, each Collaborator shall take possession of its respective Tangible Property within sixty (60) days of termination of this Agreement. Each Collaborator shall cooperate with the other Collaborator in the recovery or disposition of the other Collaborator's property. Disposal of Tangible Property shall be in accordance with applicable U.S. Federal, State, and local property disposal laws, environmental laws, and regulations.

Article 9. LIABILITY

9.1 Extent of Government Liability

The Government shall be liable for the negligent or wrongful acts of its officers and employees solely to the extent provided for in the Federal Tort Claims Act (28 U.S. Code § 2671 et. seq.) and in other applicable laws and regulations of the U.S. that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the U.S.

9.2 Extent of [Non-Navy Collaborator] Liability

[Non-Navy Collaborator] is solely responsible for its actions and the actions of those acting for [Non-Navy Collaborator] in the performance of this Agreement and for any damages that may arise from any suit, action, or claim, and for any costs from or incidental to any suit, action, or claim, including but not limited to settlement and defense costs. Further, [Non-Navy Collaborator] agrees that in any suit, action or claim brought by anyone not a Collaborator to this Agreement based on actions of [Non-Navy Collaborator], [Non-Navy Collaborator] shall not pursue any actions to enter the Government as a Collaborator in such suit, action or claim unless the Government has some liability under the Federal Tort Claims Act. This provision shall survive termination of this Agreement.

9.3 *Force Majeure*

No Collaborator shall be liable for the consequences of any *force majeure* that (1) is beyond its reasonable control; (2) is not caused by the fault or negligence of such Collaborator; (3) causes such Collaborator to be unable to perform its obligations under this Agreement; and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure*, the Collaborator unable to perform shall promptly notify the other Collaborator. The Collaborators shall suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and shall use their best efforts to resume performance as quickly as possible.

Article 10. GENERAL PROVISIONS

10.1 Entire Agreement

This Agreement constitutes the entire agreement between the Collaborators concerning the Cooperative Work and supersedes any prior understanding or written or oral agreement relative to the Cooperative Work.

10.2 Severability

The illegality or invalidity of any Article of this Agreement shall not impair, affect, or invalidate any other Article of this Agreement.

10.3 Interpretation of Headings

Headings of the Articles of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

10.4 Governing Laws

U.S. Federal laws shall govern this Agreement for all purposes.

10.5 Independent Parties/Entities

The relationship of the Collaborators to this Agreement is that of independent parties and not as agents of each other, partners, or participants in a joint venture.

10.6 Subcontracting

Neither Collaborator may allow third parties to perform any part of the Cooperative Work under this Agreement without express written consent of the other Collaborator. If consent is obtained, the Collaborator requesting such consent shall remain fully responsible for the portion of the Cooperative Work to be accomplished under a third-party agreement, and the third-party is not a Collaborator of this Agreement. Any third-party agreement to perform a portion of the Cooperative Work shall contain terms consistent with this Agreement.

[Note to ORTA: Refer to the Navy T2 Handbook for a discussion on issues related to the use of contractors during the execution of a CRADA.]

10.7 Assignment

This Agreement shall not be assigned or otherwise transferred by either Collaborator without the prior written consent of the other Collaborator, except to the successor of that part of **[Non-Navy Collaborator]**'s business to which this Agreement pertains.

10.8 Disputes

[Navy Collaborator] and **[Non-Navy Collaborator]** agree to use reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories or their successors for resolution. If a dispute continues, the remaining issues may be submitted to the Chief of Naval Research (CNR), or the CNR designee, for resolution. This Agreement does not prevent any Collaborator from pursuing disputes in a U.S. Federal court of competent jurisdiction. No Collaborator will pursue litigation in a U.S. Federal court until after the CNR, or the CNR designee, decides the dispute, or until sixty (60) days after the dispute was first submitted to the CNR, or the CNR designee, whichever comes first.

10.9 Use of Name or Endorsements

[Non-Navy Collaborator] shall not use the name of **[Navy Collaborator]** or any other Government entity on any product or service that is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of **[Navy Collaborator]**. By entering into this Agreement, **[Navy Collaborator]** does not directly or indirectly endorse any product or service provided, or to be provided, by **[Non-Navy Collaborator]**, its successors, assignees, or licensees. **[Non-Navy Collaborator]** shall not in any way imply that the Department of the Navy endorses any such product or service.

10.10 Public Release Announcements of This Agreement

Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public.

10.11 Environment, Safety, and Health

Each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this Agreement. At the conclusion of this Agreement, each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste still in its possession. Each Collaborator shall obtain at its own expense all necessary permits and licenses as required by U.S. Federal, State, and local law and shall conduct such handling, control, and disposition in a lawful and environmentally responsible manner. Each Collaborator is responsible for all required environmental, safety, and health compliance, notice, and monitoring related to its facility in accordance with U.S. Federal, State, and local law and regulations. Collaborators shall abide by the environmental, safety, and health directives of the host facility in which the Cooperative Work is being performed, and any U.S. Federal, State, or local laws and regulations pertaining to environment, safety, and health that are applicable to the host facility.

10.12 U.S. Competitiveness

[Non-Navy Collaborator] agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

10.13 Waivers

None of the provisions of this Agreement shall be considered waived by either Collaborator unless such waiver is given in writing to the other Collaborator, signed by the executing official of this Agreement or the official's successor having the authority to bind the Collaborator making the waiver. The failure of either Collaborator to insist upon strict performance of any of the terms and conditions herein, or failure or delay to exercise any rights provided herein or by law shall not be deemed a waiver of any right of either Collaborator under this Agreement.

Article 11. MODIFICATIONS AND NOTICES

11.1 Amendments

Any modifications to this Agreement shall be jointly agreed upon and shall not be effective until a written amendment is signed by both executing officials of this Agreement or their successors.

11.2 Unilateral Termination

[Non-Navy Collaborator] and **[Navy Collaborator]** each have the right to unilaterally terminate this Agreement upon thirty (30) days written notice to the other Collaborator.

11.3 Notices

All notices pertaining to or required by Articles of this Agreement, except those pertaining solely to the prosecution of any patent, trademark, or service mark, shall be in writing and shall be signed by an authorized representative of the Technology Transfer Office for **[Navy Collaborator]** or the preferred contact for **[Non-Navy Collaborator]**. All such notices shall be delivered in a manner that ensures confirmation of receipt.

If to **[Navy Collaborator]**:

[Use the official Navy Collaborator mailing address for the Technology Transfer Office.]

If to **[Non-Navy Collaborator]**:

[Specify the mailing address for the preferred contact.]

A Collaborator shall notify the other Collaborator of a change of address in the manner set forth above.

Notices pertaining solely to the prosecution of any patent, trademark, or service mark related to this Agreement shall be in writing and shall be signed by and sent to the Collaborator's legal counsel for Intellectual Property. Legal counsel for Intellectual Property for each Collaborator shall send a copy of any such notice to the Technology Transfer Office for **[Navy Collaborator]**. If either Collaborator fails to identify such counsel upon request, then such notices shall be sent to the points of contact specified above.

Article 12. SURVIVING PROVISIONS

The Articles covering Definitions, Representations and Warranties, Funding, Reports and Publications, Intellectual Property, Tangible Property, Liability, General Provisions, Modifications and Notices, and Surviving Provisions shall survive the completion, termination, or expiration of this Agreement.

Article 13. DURATION

This Agreement expires **[specify a time no greater than four (4) years]** after its Effective Date, unless otherwise extended in writing according to the provisions of Article 11.

[If necessary, write "Signatures for the Agreement follow on next page".]

Article 14. SIGNATURES

For [Non-Navy Collaborator]:

I, the undersigned, am duly authorized to bind [Non-Navy Collaborator] to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

Navy Organization:

APPENDIX A - STATEMENT OF WORK

BETWEEN

[Navy Collaborator]

AND

[Non-Navy Collaborator]

The Collaborators agree to perform the following tasks:

[Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[Non-Navy Collaborator] will be responsible for the following tasks (list as applicable):

- 1.
- 2.
- 3.

[Navy Collaborator] and **[Non-Navy Collaborator]** will be responsible for the following joint tasks:

- 1.
- 2.
- 3.

Section IV - 7

Technical Assistance Non-Standard CRADA - Explanation

The Department of Defense Instruction 5535.8 defines the Technical Assistance Non-Standard CRADA as a CRADA “that allows a Federal laboratory and a non-Federal partner to work jointly to assist local businesses by providing limited (4-day maximum) free technical consulting. Preference is given to non-Federal partners that are State organizations, universities, non-profit entities or business incubators that shall publicize availability of Federal assistance, receive and assess requests for cooperative research, ensure that the laboratory and/or technical activity shall not compete with private organizations, coordinate work of the laboratory and/or technical activity with the requester companies. The laboratory and/or technical activity shall provide the required assistance and reports to the CRADA partner and the requester company...”

The sample non-standard CRADA presented in this section provides a Navy laboratory with a vehicle to assist local businesses by providing technical consulting/assistance in the form of technical information, lessons learned, problem solving, and other advice to these businesses, with the assistance of a non-Federal CRADA collaborator.

For additional information regarding Technical Assistance Non-Standard CRADAs, local intellectual property counsel and/or the DON T2 Program Office should be consulted.

NON-STANDARD
NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[full name of NAVY COLLABORATOR then acronym]

AND

[full name of NON-NAVY COLLABORATOR then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: NCRADA - **[Navy Org.] - [last two digits of FY] - [sequence number]**

AGREEMENT ADMINISTRATORS:

[NAVY COLLABORATOR acronym]

Technology Transfer ORTA: **[insert name, organization code, telephone number, e-mail address]**

Intellectual Property Counsel: **[insert name, organization code, telephone number, e-mail address]**

Principal Investigator: **[insert name, organization code, telephone number, e-mail address]**

[NON-NAVY COLLABORATOR acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel *[Optional]*: **[insert name, telephone number, e-mail address]**

Principal Investigator: **[insert name, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE 1

Article 1. DEFINITIONS 1

1.1 “Agreement” 1

1.2 “Classified Information (CI)” 1

1.3 “Collaborator” 1

1.4 “Controlled Unclassified Information (CUI)” 2

1.5 “Cooperative Work” 2

1.6 “Data” 2

1.7 “Effective Date” 2

1.8 “Exclusive Commercial License” 2

1.9 “For Official Use Only (FOUO)” 2

1.10 “Government” 2

1.11 “Government Purpose Rights” 2

1.12 “Information” 2

1.13 “Intellectual Property” 2

1.14 “Internal Use License” 2

1.15 “Invention” 2

1.16 “Invention Disclosure” 2

1.17 “Jointly Made Subject Invention” 2

1.18 “Limited Rights” 2

1.19 “Made” 2

1.20 “Nonexclusive Commercial License” 2

1.21 “Non-Subject Data” 3

1.22 “Non-Subject Invention” 3

1.23 “Patent Application” 3

1.24 “Principal Investigator (PI)” 3

1.25 “Proprietary Information” 3

1.26 “Requestor” 3

1.27 “Subject Data” 3

1.28 “Subject Invention” 3

1.29 “Tangible Property” 3

1.30 “Technical Data” 3

1.31 “Technical Document” 3

1.32 “Technical Information” 3

1.33 “Unlimited Rights” 3

Article 2. OBJECTIVES 3

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE 3

3.1 Facilities and Supervision 3

3.2 Security Regulations and Directives 4

Article 4. REPRESENTATIONS AND WARRANTIES 4

4.1 [Navy Collaborator]’s Representations and Warranties 4

4.2 [Non-Navy Collaborator]’s Representations and Warranties 4

4.3 Joint Representations and Warranties 5

Article 5. FUNDING 5

5.1	Payment Schedule	6
5.2	Insufficient and Excess Funds	6
5.3	No New Commitments	6
5.4	Accounting Records	6
Article 6.	REPORTS AND PUBLICATIONS	7
6.1	Interim Reports	7
6.2	Final Reports	7
6.3	Agreement to Confer Prior to Publication or Public Disclosure of Information	7
6.4	Public Presentation of Subject Data	7
Article 7.	INTELLECTUAL PROPERTY	7
7.1	Rights Under Other Agreements	7
7.2	Rights in Subject Data	7
7.2.1	Rights of Both Collaborators	7
7.2.2	Rights of [Navy Collaborator]	8
7.2.3	Rights of [Non-Navy Collaborator]	8
7.3	Rights in Non-Subject Data	8
7.3.1	Rights of Both Collaborators	8
7.3.2	Rights of [Navy Collaborator]	8
7.3.3	Rights of [Non-Navy Collaborator]	8
7.4	No Implied License	8
7.5	Protection of Data	8
7.6	Release of Data Under the Freedom of Information Act	9
7.7	Marking of Data	9
7.7.1	Markings Required for Both Collaborators	9
7.7.1.1	Data Provided with Less than Unlimited Rights	9
7.7.1.2	Data that are CI, CUI, or Otherwise Restricted	9
7.7.1.3	For Official Use Only (FOUO) Marking	9
7.7.2	Markings Required for [Navy Collaborator]	9
7.7.2.1	Data that are Subject to 35 U.S. Code § 205	9
7.7.2.2	Data Protected Under Article 7.5	10
7.7.3	Markings Required for [Non-Navy Collaborator]	10
7.7.3.1	Data that are Proprietary Information	10
7.8	Subject Inventions	10
7.8.1	Reporting of Subject Inventions	10
7.8.2	Determination of Subject Inventions	10
7.8.3	Title to and Ownership of Subject Inventions	10
7.9	Non-Subject Inventions	11
7.9.1	Ownership of Non-Subject Inventions	11
7.9.2	Preexisting Non-Subject Inventions Pertinent to the Cooperative Work	11
7.10	Filing of Patent Applications	11
7.10.1	Patent Filing	11
7.10.2	Copies and Inspection	11
7.10.3	Rights of Inventors if the Collaborators Decline to File a Patent Application	12
7.11	Licenses to Subject Invention	12
7.11.1	Internal Use License to [Non-Navy Collaborator]	12
7.11.2	Government License	12
7.11.3	Option for Commercial License to Subject Inventions	12
7.11.4	Termination of Licenses Granted and Cancellation of License Option to Subject Inventions	12

7.12	License to Non-Subject Inventions	13
7.13	Copyrights	13
Article 8.	TANGIBLE PROPERTY	13
8.1	Ownership of Tangible Property	13
8.2	Tangible Property Operational and Disposition Costs	13
8.3	Disposal of Tangible Property	14
Article 9.	LIABILITY	14
9.1	Extent of Government Liability	14
9.2	Extent of [Non-Navy Collaborator] Liability	14
9.3	Force Majeure	14
Article 10.	GENERAL PROVISIONS	14
10.1	Entire Agreement	14
10.2	Severability	14
10.3	Interpretation of Headings	14
10.4	Governing Laws	15
10.5	Independent Parties/Entities	15
10.6	Subcontracting	15
10.7	Assignment	15
10.8	Disputes	15
10.9	Use of Name or Endorsements	15
10.10	Public Release Announcements of This Agreement	15
10.11	Environment, Safety, and Health	15
10.12	U.S. Competitiveness	16
10.13	Waivers	16
Article 11.	MODIFICATIONS AND NOTICES	16
11.1	Amendments	16
11.2	Unilateral Termination	16
11.3	Notices	16
Article 12.	SURVIVING PROVISIONS	17
Article 13.	DURATION	17
Article 14.	SIGNATURES	17
	APPENDIX A - STATEMENT OF WORK	18
	APPENDIX B - REQUEST FOR COOPERATIVE WORK	20

NON-STANDARD

NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[Navy Collaborator full name then acronym]

AND

[Non-Navy Collaborator full name then acronym]

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of the Navy Collaborator, [Navy Collaborator name and address], and the Non-Navy Collaborator described below agree to and enter into this Cooperative Research and Development Agreement (CRADA).

[Insert full name of Non-Navy Collaborator followed by acronym and address], is a corporation [substitute appropriate alternate language for a different entity, e.g., a university] duly organized, validly existing and in good standing under the laws of the [State or Commonwealth] of [indicate name].

[Note to ORTA: If the Non-Navy Collaborator is a FOCl, please add the following sentence in the above paragraph. Also, state the name of the parent company and the country in which it is incorporated.]

Further, [Non-Navy Collaborator] is directly or indirectly controlled by a foreign company or government [Executive Order 12591], Section 4 (a), specifically, [insert name of parent company and the country in which it is incorporated].

[Navy Collaborator] has extensive expertise, capabilities, and information in [state technology area], and in accordance with the U.S. Federal Technology Transfer Act, desires to make this expertise and technology available for use in the public and private sectors.

[Non-Navy Collaborator] has the interest, resources, capabilities, and technical expertise to transition the results of Naval research and development for public use.

Article 1. DEFINITIONS

[Note to ORTA: Specialized definitions required for this Agreement may be added alphabetically within the DEFINITIONS. If specialized definitions are added, they must be included in the Table of Contents.]

As used in this Agreement, the following terms shall have the meanings defined below, which are equally applicable to both the singular and plural forms of nouns or any tense of verbs.

1.1 “Agreement” means this Cooperative Research and Development Agreement (CRADA) with its Appendices.

1.2 “Classified Information (CI)” means all Information classified in accordance with the national security laws of the United States.

1.3 “Collaborator” means the Navy participant or the Non-Navy participant represented and bound by the signatories of this Agreement.

1.4 “Controlled Unclassified Information (CUI)” means official Information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

1.5 “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by [Navy Collaborator] or [Non-Navy Collaborator] working individually or together, pursuant to the Objectives (Article 2) and the Statement of Work (Appendix A).

1.6 “Data” means recorded information of any kind regardless of the form or method of the recording, including computer software.

1.7 “Effective Date” means the date of the last signature of the Collaborators executing this Agreement.

1.8 “Exclusive Commercial License” means the grant by the owner of Intellectual Property of the exclusive right to make, use, or sell an Invention for commercial purposes.

1.9 “For Official Use Only (FOUO)” means a protective marking to be applied to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the Freedom of Information Act. This includes information that qualifies for protection under the provisions of the Privacy Act of 1974, as amended.

1.10 “Government” means the Government of the United States of America.

1.11 “Government Purpose Rights” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes. Government Purpose Rights includes competitive procurement, but does not include the right to have or permit others to use Data for commercial purposes.

1.12 “Information” means all Data, trade secrets, and commercial and financial information.

1.13 “Intellectual Property” means the property of ideas, examples of which include, but are not limited to, patents, trademarks, copyrights, and trade secrets.

1.14 “Internal Use License” means the grant by the owner of Intellectual Property of the right to make, have made, use, and import, but not commercially sell, an Invention or a product or service made using an Invention.

1.15 “Invention” means any creation or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act.

1.16 “Invention Disclosure” means the document identifying and describing to organizational management the Making of an Invention.

1.17 “Jointly Made Subject Invention” means any Invention Made jointly by the Collaborators.

1.18 “Limited Rights” means that each Collaborator of this Agreement may use, reproduce, and disclose to their employees properly marked Non-Subject Data provided by the other Collaborator(s) for use in support only of this Cooperative Work.

1.19 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention.

1.20 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell an Invention.

- 1.21 “Non-Subject Data” means any Data that are not Subject Data.
- 1.22 “Non-Subject Invention” means any Invention that is not a Subject Invention.
- 1.23 “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.
- 1.24 “Principal Investigator (PI)” means that person having the responsibility for the performance of the Cooperative Work on behalf of a Collaborator.
- 1.25 “Proprietary Information” means Information that:
- (i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information (a) is not known or available from other sources without obligations concerning its confidentiality, (b) has not been made available by the owners to others without obligation concerning its confidentiality, (c) is not already available to the Government without obligation concerning its confidentiality, and (d) has not been developed independently by persons who have had no access to the information; or
 - (ii) has been generated by the Navy Collaborator during the performance of this Agreement, and would have qualified as Proprietary Information under 1.25(i) above if it had been generated by the Non-Navy Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.
- 1.26 “Requestor” means the private company seeking technical assistance via a Request for Cooperative Work (Appendix B).
- 1.27 “Subject Data” means that Data first recorded in the performance of the Cooperative Work.
- 1.28 “Subject Invention” means any Invention Made in the performance of the Cooperative Work.
- 1.29 “Tangible Property” means personal or real property having or possessing physical form.
- 1.30 “Technical Data” means recorded Information relating to experimental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair or overhaul material, including, but not limited to graphic or pictorial delineations in media.
- 1.31 “Technical Document” means recorded Information that conveys scientific and Technical Information or Technical Data.
- 1.32 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.
- 1.33 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Article 2. OBJECTIVES

The objective of this Agreement is to assist local businesses by providing technical consulting. This technical assistance shall be provided in the form of technical information, lessons learned, problem solving, or further advice.

Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE

- 3.1 Facilities and Supervision

The Collaborators shall provide personnel, facilities, and equipment necessary for, and shall perform, the Cooperative Work.

The Cooperative Work done by each Collaborator will be performed under the program guidance of its PI, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within that Collaborator's facilities or done on behalf of that Collaborator by third parties in support of this Agreement. Personnel who perform Cooperative Work at the other Collaborator's facilities will be supervised by their own PI.

[Note to ORTA: Refer to the Navy T2 Handbook when third parties are used by the Collaborators as part of this Agreement.]

3.2 Security Regulations and Directives

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed.

[Note to ORTA: This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators' facilities. If the Cooperative Work covers classified topics, a security clearance must be put in place for the Non-Navy Collaborator's facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Navy Collaborator's Security Office. If Export Control is needed, attach DD Form 2345, called a "Militarily Critical Technology Data Agreement" to this Agreement. If the Cooperative Work covers classified topics and the Non-Navy Collaborator is FOCI, then a FOCI Mitigation Instrument may be required. Refer to the Navy T2 Handbook.]

Article 4. REPRESENTATIONS AND WARRANTIES

4.1 [Navy Collaborator]'s Representations and Warranties

[Navy Collaborator] hereby warrants and represents to [Non-Navy Collaborator] that the performance of the activities specified by this Agreement is consistent with the [specify the appropriate mission area] and technology transfer missions of [Navy Collaborator]. [Navy Collaborator] is a Federal laboratory of the U.S. Department of the Navy, as defined by 15 U.S. Code § 3710a (d)(2)(A) and Department of Defense Instruction 5535.8, dated May 14, 1999.

[Note to ORTA: The following Article 4.2 is for a single commercial entity. Choose the appropriate alternatives to Article 4.2 from those listed in the Navy T2 Handbook according to the nature of the Non-Navy Collaborator(s): A university, nonprofit entity, State or local government, an entity directly or indirectly foreign owned, controlled, or influenced (FOCI), an entity comprised of multiple Collaborators.]

4.2 [Non-Navy Collaborator]'s Representations and Warranties

[Non-Navy Collaborator] hereby warrants and represents to [Navy Collaborator] as follows:

[Non-Navy Collaborator], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of [State or Commonwealth].

[Non-Navy Collaborator] [is/is not] a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

[Note to ORTA: The following paragraph is to be used only if the Non-Navy Collaborator is not a FOCI as of the signature date of this Agreement.]

If [Non-Navy Collaborator] or its successor or assignee is a U.S. company, and becomes, during the term of this Agreement of thereafter, directly or indirectly owned, controlled, or influenced by a foreign company or government (FOCI), the [Non-Navy Collaborator] or its successor or assignee shall promptly notify [Navy Collaborator] to that effect.

[Note to ORTA: If on the signature date of this Agreement the Non-Navy Collaborator is a FOCI, insert the following paragraph. In addition, an Amendment to this CRADA is required – see the Navy T2 Handbook. Otherwise, omit the following paragraph.]

If [Non-Navy Collaborator] or its successor or assignee becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a different foreign company or government (FOCI) then it or its successor or assignee shall promptly notify [Navy Collaborator] to that effect.

The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any agreement binding on [Non-Navy Collaborator]. Furthermore, the execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any valid order of any court, or any regulatory agency or other body having authority to which [Non-Navy Collaborator] is subject.

[Non-Navy Collaborator] is not currently subject to debarment or suspension by any agency of the Government. Should [Non-Navy Collaborator] be debarred or suspended during the term of this Agreement or thereafter, [Non-Navy Collaborator] will notify [Navy Collaborator] within thirty (30) days of receipt of a final notice. [Navy Collaborator] may then elect to terminate this Agreement and any licenses and options granted under this Agreement.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

There is no express or implied warranty as to any research, Invention, or product, whether tangible or intangible. In particular, the Collaborators make no express or implied warranty as to the merchantability or fitness for a particular purpose of any research, Invention, or product, whether tangible or intangible. Likewise, the Collaborators make no express or implied warranty as to any Cooperative Work, Subject Invention, Subject Data, or other product resulting from the Cooperative Work.

[Note to ORTA: See the Navy T2 Handbook for approved alternative language to the following paragraph.]

The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to export Information. The exporting Collaborator is responsible for obtaining any export licenses and/or foreign disclosure reviews that may be required by U.S. Federal law. [Non-Navy Collaborator] shall provide written notification to [Navy Collaborator] immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work, Appendix A, may require the introduction or generation of CUI. All CUI that is introduced or generated in the performance of work under this Agreement shall be properly marked and safeguarded as provided herein and in all applicable U.S. Federal laws and regulations.

Article 5. FUNDING

[Note to ORTA: IF NO PAYMENTS ARE TO BE MADE by Non-Navy Collaborator to Navy Collaborator, or Navy Collaborator is using in-house funding or Government funds already received, use the following phrase and remove Articles 5.1 through 5.4 below and from the Table of Contents.]

Each Collaborator will fund its own efforts.

[Note to ORTA: Consult the Navy T2 Handbook for the situations in which payments are made only after the completion of a critical milestone in the Cooperative Work or in the case where Navy Collaborator's participation is contingent upon receipt of funds from another Government organization.]

[Note to ORTA: IF PAYMENTS ARE TO BE MADE directly from Non-Navy Collaborator to Navy Collaborator, use the following Articles.]

5.1 Payment Schedule

[Non-Navy Collaborator] agrees to pay [Navy Collaborator] the following fees/costs in accordance with the payment schedule below:

[Note to ORTA: Insert amount to be paid, identify the task for which payment is made, the schedule of the tasks, and date of payment or, if preferred, the date and amount of each scheduled payment.]

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number “NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number].”

Checks will be mailed to:

[Note to ORTA: Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

5.2 Insufficient and Excess Funds

[Navy Collaborator] will not start or continue performance under this Agreement if the funds provided by [Non-Navy Collaborator] for performance by [Navy Collaborator] are insufficient or are not provided as specified in Article 5.1.

In the event [Non-Navy Collaborator] fails to tender the Government the required payment within fifteen (15) days after its respective due date, [Non-Navy Collaborator] shall be in default under this Agreement for failure to make payments. If [Non-Navy Collaborator] is in default for this reason, [Navy Collaborator] shall notify [Non-Navy Collaborator]. If [Non-Navy Collaborator] does not cure the default within fifteen (15) days of date of notice, [Navy Collaborator] may proceed to terminate the Agreement in accordance with Article 11.2, and may cancel any option for an Exclusive Commercial License to a Subject Invention, and may terminate any Exclusive Commercial License granted pursuant to this Agreement.

Excess Funds that [Non-Navy Collaborator] provided under Article 5.1 that [Navy Collaborator] has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to [Non-Navy Collaborator] after [Navy Collaborator]’s submission of a final financial report to [Non-Navy Collaborator].

5.3 No New Commitments

[Navy Collaborator] shall make no new commitments concerning this Agreement after receipt of a written termination notice from [Non-Navy Collaborator] in accordance with Article 11.2 and shall, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by [Navy Collaborator], [Non-Navy Collaborator] agrees that such costs shall be chargeable against any funding that it provided to [Navy Collaborator].

5.4 Accounting Records

[Navy Collaborator] shall maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by [Non-Navy Collaborator] under this Agreement and shall retain such records for at least twelve (12) months after the completion, expiration, or termination of this Agreement. [Navy Collaborator] shall provide [Non-Navy Collaborator] a financial report within four (4) months after completion, expiration, or termination of this Agreement.

Article 6. REPORTS AND PUBLICATIONS

6.1 Interim Reports

The Collaborators shall submit [insert number or frequency for each interim written report] interim written reports to each other on the progress of the Cooperative Work.

6.2 Final Reports

The PIs shall submit to the [Navy Collaborator] Technology Transfer Office and [Non-Navy Collaborator] preferred contact a final report within four (4) months of the completion, termination, or expiration of this Agreement that includes the results obtained and a list of all Subject Inventions Made.

6.3 Agreement to Confer Prior to Publication or Public Disclosure of Information

For the purposes of this Article, the term “disclosure” shall include, but not be limited to, submission of any manuscript for peer review prior to publication.

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government CI, or CUI, is released and that patent rights are not compromised. Prior to any such publication or public disclosure of Subject Data, each Collaborator shall be offered a period not to exceed thirty (30) days, to review any proposed abstract, publication, presentation, or other document for public disclosure.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the other Collaborator within thirty (30) days of the date of notice of intent to disclose publicly. If no objection is received by the Collaborator intending to make public disclosure, concurrence is assumed.

If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator before the public disclosure or by another date mutually agreed to by the Collaborators.

If a Collaborator objects to the release of Information on the grounds that the Information is Proprietary Information, or Information whose dissemination is restricted by U.S. security laws or regulations, the disclosure shall be postponed until the Information no longer meets the definitions of Proprietary Information, or is no longer covered by U.S. security laws or regulations.

6.4 Public Presentation of Subject Data

Any public presentation that includes Subject Data that are CI or CUI must have prior review and approval by [Navy Collaborator] pursuant to the pertinent security laws, regulations, and directives.

Article 7. INTELLECTUAL PROPERTY

7.1 Rights Under Other Agreements

Nothing in this Agreement is intended to change the rights in Intellectual Property acquired by the Collaborators in any other contract or Agreement between the [Non-Navy Collaborator] and the Government.

7.2 Rights in Subject Data

7.2.1 Rights of Both Collaborators

Each Collaborator shall have title to all Subject Data generated by that Collaborator. Each Collaborator agrees to provide all Subject Data to the other Collaborator and hereby grants Unlimited Rights in Subject Data that does not contain Proprietary Information.

7.2.2 Rights of [Navy Collaborator]

For Subject Data that contains [Non-Navy Collaborator]'s Proprietary Information, the Government has rights to: 1) Use, modify, reproduce, release, perform, display, or disclose Technical Data within the Government without restriction; and 2) Release or disclose Subject 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 Subject Data for any U.S. Government purpose including competitive procurement.

7.2.3 Rights of [Non-Navy Collaborator]

For Subject Data that contains [Navy Collaborator]'s Proprietary Information, [Non-Navy Collaborator] has rights to use, modify, reproduce, release, perform, display, or disclose Technical Data within [Non-Navy Collaborator]'s organization, in whole or in part, and in any manner, for any internal purpose excluding commercial purposes. If [Non-Navy Collaborator] is subsequently awarded a Government contract that entails deliverables that incorporate the [Navy Collaborator]'s Proprietary Information, such deliverables must be delivered with at least Government Purpose Rights, as defined in the DFARS § 252.227-7013.

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title, or interest, if such Subject Data are provided by [Navy Collaborator] under this Agreement. This Limited Right does not grant the [Non-Navy Collaborator] any License to any Invention in which the Government owns or may own a right, title, or interest. In accordance with Article 7.5 below, such Subject Data are to be held in confidence.

7.3 Rights in Non-Subject Data

7.3.1 Rights of Both Collaborators

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information or protected under 35 U.S. Code § 205 provided under this Agreement.

7.3.2 Rights of [Navy Collaborator]

[Navy Collaborator] has a Limited Right to use, reproduce, and disclose only to Government employees for use in support of the Cooperative Work any Non-Subject Data that are properly marked as Proprietary Information and are provided by [Non-Navy Collaborator] under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless written consent to other use or disclosure is obtained from [Non-Navy Collaborator].

7.3.3 Rights of [Non-Navy Collaborator]

[Non-Navy Collaborator] shall have a Limited Right to use, reproduce, or disclose Non-Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title or interest, if such Non-Subject Data are provided by [Navy Collaborator] under this Agreement. Such Non-Subject Data shall be properly marked by [Navy Collaborator].

7.4 No Implied License

Unless otherwise specifically provided, the Collaborators agree that the exchange of Data of any kind does not confer a license to any Non-Subject Invention claimed in any patent or Patent Application or to the subject matter of any copyright, trademark/service mark, or other form of Intellectual Property protection.

7.5 Protection of Data

Except for the rights granted in Article 7.1 and Article 7.2, Data shall be protected in accordance with the proper markings of its owner and as provided by, at a minimum, the requirements of 15 U.S. Code § 3710a. Proprietary Information will be protected only if it is properly marked as such. Information provided in intangible form that is Proprietary Information must be designated Proprietary Information at the time it is provided, followed within fifteen (15) days by a writing summarizing the exact information to be protected. The Collaborator receiving Information in an intangible form that is designated as Proprietary Information shall be responsible for protecting the Information as Proprietary Information during the fifteen (15) day notification. After the fifteen (15) day period, if no written summary has been received, the receiving Collaborator need not continue to protect the Information received in intangible form.

Data that is provided by **[Non-Navy Collaborator]** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S. Code § 552(b)(4), shall not be disclosed by **[Navy Collaborator]**. **[Non-Navy Collaborator]** shall agree to not disclose, for five (5) years, Data that is produced by **[Navy Collaborator]** and that would have been considered a trade secret, business commercial, or financial information that is privileged or confidential if it had been produced by the **[Non-Navy Collaborator]**.

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.

7.6 Release of Data Under the Freedom of Information Act

[Navy Collaborator] will comply with the Freedom of Information Act and Executive Order 12600.

7.7 Marking of Data

7.7.1 Markings Required for Both Collaborators

7.7.1.1 Data Provided with Less than Unlimited Rights

Each Collaborator shall mark all Data that it provides with less than Unlimited Rights with a marking that clearly identifies the Limited Rights.

7.7.1.2 Data that are CI, CUI, or Otherwise Restricted

Each Collaborator shall mark all Data that are CI, CUI or otherwise restricted by U.S. security or export control laws or regulations that it provides under this Agreement.

7.7.1.3 For Official Use Only (FOUO) Marking

FOUO is the marking used for documents/products containing material that qualifies as exempt from release under FOIA. This includes Technical Information and Technical Data.

Use of the FOUO marking is the responsibility of the originator of the Information. Use of the FOUO marking does not automatically qualify for FOIA exemption.

Technical Documents which contain Technical Information and/or Technical Data are considered FOUO documents and must be appropriately marked.

[Note to ORTA: For further information associated with FOUO markings see the Navy T2 Handbook.]

7.7.2 Markings Required for **[Navy Collaborator]**

7.7.2.1 Data that are Subject to 35 U.S. Code § 205

[Navy Collaborator] shall mark Data it provides under this Agreement that disclose one or more Inventions in which the Government owns or may own a right, title or interest, and that are subject to confidentiality under 35 U.S. Code § 205. Such Data shall be marked:

“**[Navy Collaborator]** DATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 U.S. Code § 205.”

7.7.2.2 Data Protected Under Article 7.5

[Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that **[Navy Collaborator]** provides to **[Non-Navy Collaborator]**, where the Collaborators have agreed, under second paragraph of Article 7.5 of this Agreement, to protect such Data for up to five (5) years. The marking shall state:

“**[Navy Collaborator]** DATA SHALL BE PROTECTED BY THE **[Non-Navy Collaborator]** FOR A PERIOD OF **[state a number up to five years]** FROM **[state the date of generation]**.”

7.7.3 Markings Required for **[Non-Navy Collaborator]**

7.7.3.1 Data that are Proprietary Information

[Non-Navy Collaborator] shall place a proprietary marking on each medium used for recording Data that **[Non-Navy Collaborator]** provides to **[Navy Collaborator]** under this Agreement that **[Non-Navy Collaborator]** asserts is Proprietary Information.

For Non-Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-Navy Collaborator]** – **[Navy Collaborator]** MAY USE ONLY FOR PURPOSE OF CRADA NUMBER NCRADA – **[Navy Collaborator]** – [last two digits of FY] – [lab CRADA sequence number]”

For Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-Navy Collaborator]** – GOVERNMENT HAS CERTAIN RIGHTS UNDER CRADA NUMBER NCRADA – **[Navy Collaborator]** – [last two digits of FY] – [lab CRADA sequence number].”

7.8 Subject Inventions

7.8.1 Reporting of Subject Inventions

Within sixty (60) days of Making an Invention resulting from the Cooperative Work, and prior to disclosure of the Invention to any third parties, unless a shorter time period is required by circumstances, the inventor(s) shall submit an Invention Disclosure to their employer. In the case of an Invention Made jointly by inventors from both Collaborators, the inventors of each Collaborator shall submit an Invention Disclosure to their respective employer. Each Collaborator shall provide the other Collaborator with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

7.8.2 Determination of Subject Inventions

The Collaborators shall review each Invention Disclosure resulting from the Collaborative Work and shall confer and consult to determine whether an Invention Disclosure represents a Subject Invention.

7.8.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to solely own the Subject Inventions Made solely by its employees. For any Jointly Made Subject Invention, each Collaborator shall have ownership of the Subject Invention in the form of an undivided interest, without a right of accounting.

Each Collaborator shall cooperate with the other Collaborator to obtain inventor signatures on Patent Applications, assignments or other documents required to secure Intellectual Property protection.

7.9 Non-Subject Inventions

7.9.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

[Note to ORTA: Article 7.9.2 is optional. It should be used only if Navy Collaborator and/or Non-Navy Collaborator have preexisting Non-Subject Inventions that are pertinent to this Cooperative Work.]

7.9.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s), patent number, or Navy case number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Non-Navy Collaborator]** include but are not limited to the following:

[List Invention title, inventor name(s) patent number, or attorneys docket number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]

7.10 Filing of Patent Applications

By mutual agreement, the Collaborators shall identify which Collaborator shall file a Patent Application on any Subject Invention. The Collaborator responsible for filing of a Patent Application on any Subject Invention shall file such Patent Application at least sixty (60) days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received, whichever comes first. In the case of a Jointly Made Subject Invention, if no Patent Application is filed within the specified time period by the responsible Collaborator, the other Collaborator may assume control of filing the Patent Application and take title to the Jointly Made Subject Invention on ten (10) days written notification. The Collaborator that relinquished the responsibility to file shall retain a nonexclusive, irrevocable, paid-up license to practice the Jointly Made Subject Invention or have the Jointly Made Subject Invention practiced throughout the world by or on its behalf.

7.10.1 Patent Filing

The Collaborator responsible for filing any Patent Application for a Subject Invention shall notify the other Collaborator of all filing deadlines for prosecution of any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.10, sixty (60) days prior to any filing deadline, the Collaborators shall confer to determine if the filing Collaborator intends to respond to the filing deadline. The non-filing Collaborator has the right to take action if the filing Collaborator declines.

7.10.2 Copies and Inspection

Each Collaborator filing a Patent Application on a Subject Invention shall provide the other Collaborator with a copy of any communication relating to prosecution of said Patent Application within thirty (30) days of receipt of such request. The filing Collaborator shall give the other Collaborator a limited power to inspect, with authorization to access the Patent Application, make copies, and, in the event that the filing Collaborator declines continued prosecution of the Patent Application, do all that is necessary to secure patent protection for the Jointly Made Subject Invention.

7.10.3 Rights of Inventors if the Collaborators Decline to File a Patent Application

In the event both Collaborators decline to file a Patent Application on a Subject Invention, the Government will renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

In the event both Collaborators decline to file a Patent Application on a Subject Invention, **[Non-Navy Collaborator]** may, at its sole discretion, renounce its entitlement and leave its rights to the inventor(s) who may retain ownership of the Invention, subject to the retention by each Collaborator of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have the Invention practiced throughout the world by or on its behalf.

7.11 Licenses to Subject Inventions

7.11.1 Internal Use License to **[Non-Navy Collaborator]**

Government grants to the **[Non-Navy Collaborator]** a nonexclusive, irrevocable, paid-up Internal Use License to a Subject Invention Made solely by employees of **[Navy Collaborator]**. No Internal Use License granted under this Agreement shall permit licensee to grant sublicenses. No Internal Use License granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of **[Non-Navy Collaborator's]** business to which such license pertains.

7.11.2 Government License

Pursuant to 15 U.S. Code § 3710a(b)(2), for Subject Inventions Made solely by an employee of **[Non-Navy Collaborator]**, **[Non-Navy Collaborator]** grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.11.3 Option for Commercial License to Subject Inventions

[Navy Collaborator] gives **[Non-Navy Collaborator]** the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of **[Field of Use]** in the Government's rights in any Subject Invention Made in whole or in part by a **[Navy Collaborator]** employee. The license shall be for reasonable consideration. In order to exercise this option, **[Non-Navy Collaborator]** must notify **[Navy Collaborator]** in writing within six (6) months of the filing of a Patent Application. **[Non-Navy Collaborator]** must execute an Exclusive Commercial or Nonexclusive Commercial License to the Subject Invention within six (6) months of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 C.F.R. Part 404.

7.11.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions

[Navy Collaborator] may cancel the Exclusive or Nonexclusive Commercial License option and terminate any Exclusive or Nonexclusive Commercial Licenses and Internal Use Licenses provided for above made in whole or in part by Government employees in the event that:

- (a) **[Non-Navy Collaborator]** is in default for failure to make payment as agreed in Article 5; or
- (b) The Agreement is terminated unilaterally by **[Non-Navy Collaborator]** under Article 11.2; or
- (c) **[Non-Navy Collaborator]** fails to perform according to the Statement of Work (Appendix A); or
- (d) **[Non-Navy Collaborator]** becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a); or
- (e) **[Non-Navy Collaborator]** which was a FOCI organization when the Agreement was signed has now become a different FOCI organization that is reasonably determined by **[Navy Collaborator]** not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.12 License to Non-Subject Inventions

Each Collaborator shall allow the other Collaborator to practice any of its Non-Subject Inventions for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to either Collaborator in Non-Subject Inventions by performing the Cooperative Work. For commercial applications of Non-Subject Inventions, the **[Non-Navy Collaborator]** must obtain a License from the **[Navy Collaborator]**, in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

[Note to ORTA: Article 7.13 is optional.]

7.13 Copyrights

[Non-Navy Collaborator] may copyright works of authorship prepared pursuant to this Agreement if eligible for copyright protection under Title 17, U.S. Code § 106 **[Non-Navy Collaborator]** grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software, prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.2 and Article 7.3. **[Non-Navy Collaborator]** shall affix the applicable copyright notice of Title 17, U.S. Code §§ 401-403, and an acknowledgment of the scientific and technical contributions of **[Navy Collaborator]**. **[Non-Navy Collaborator]** grants to the U.S. Government a paid-up, non-exclusive, irrevocable, worldwide license to reproduce or have reproduced, prepare or have prepared in derivative form, and distribute or have distributed copies of publications and solely or jointly created Subject Data for Government purposes.

Article 8. TANGIBLE PROPERTY

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to its Tangible Property. All Tangible Property owned and provided by one Collaborator shall remain the property of that Collaborator. Tangible Property having any component purchased or supplied by the Government shall be the property of the Government, unless such tangible Government components reasonably can be separated from non-Government components without damage to any of the individual components comprising the Tangible Property. These separated components shall remain the property of the Collaborator that purchased them. After termination of this Agreement the parties may, by mutual consent, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that originally owned the property.

8.2 Tangible Property Operational and Disposition Costs

Each Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all Tangible Property to which it has title.

8.3 Disposal of Tangible Property

Unless otherwise agreed, each Collaborator shall take possession of its respective Tangible Property within sixty (60) days of termination of this Agreement. Each Collaborator shall cooperate with the other Collaborator in the recovery or disposition of the other Collaborator's property. Disposal of Tangible Property shall be in accordance with applicable U.S. Federal, State, and local property disposal laws, environmental laws, and regulations.

Article 9. LIABILITY

9.1 Extent of Government Liability

The Government shall be liable for the negligent or wrongful acts of its officers and employees solely to the extent provided for in the Federal Tort Claims Act (28 U.S. Code § 2671 et. seq.) and in other applicable laws and regulations of the U.S. that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the U.S.

9.2 Extent of [Non-Navy Collaborator] Liability

[Non-Navy Collaborator] is solely responsible for its actions and the actions of those acting for [Non-Navy Collaborator] in the performance of this Agreement and for any damages that may arise from any suit, action, or claim, and for any costs from or incidental to any suit, action, or claim, including but not limited to settlement and defense costs. Further, [Non-Navy Collaborator] agrees that in any suit, action or claim brought by anyone not a Collaborator to this Agreement based on actions of [Non-Navy Collaborator], [Non-Navy Collaborator] shall not pursue any actions to enter the Government as a Collaborator in such suit, action or claim unless the Government has some liability under the Federal Tort Claims Act. This provision shall survive termination of this Agreement.

9.3 *Force Majeure*

No Collaborator shall be liable for the consequences of any *force majeure* that (1) is beyond its reasonable control; (2) is not caused by the fault or negligence of such Collaborator; (3) causes such Collaborator to be unable to perform its obligations under this Agreement; and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure*, the Collaborator unable to perform shall promptly notify the other Collaborator. The Collaborators shall suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and shall use their best efforts to resume performance as quickly as possible.

Article 10. GENERAL PROVISIONS

10.1 Entire Agreement

This Agreement constitutes the entire agreement between the Collaborators concerning the Cooperative Work and supersedes any prior understanding or written or oral agreement relative to the Cooperative Work.

10.2 Severability

The illegality or invalidity of any Article of this Agreement shall not impair, affect, or invalidate any other Article of this Agreement.

10.3 Interpretation of Headings

Headings of the Articles of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

10.4 Governing Laws

U.S. Federal laws shall govern this Agreement for all purposes.

10.5 Independent Parties/Entities

The relationship of the Collaborators to this Agreement is that of independent parties and not as agents of each other, partners, or participants in a joint venture.

10.6 Subcontracting

Neither Collaborator may allow third parties to perform any part of the Cooperative Work under this Agreement without express written consent of the other Collaborator. If consent is obtained, the Collaborator requesting such consent shall remain fully responsible for the portion of the Cooperative Work to be accomplished under a third-party agreement, and the third-party is not a Collaborator of this Agreement. Any third-party agreement to perform a portion of the Cooperative Work shall contain terms consistent with this Agreement.

[Note to ORTA: Refer to the Navy T2 Handbook for a discussion on issues related to the use of contractors during the execution of a CRADA.]

10.7 Assignment

This Agreement shall not be assigned or otherwise transferred by either Collaborator without the prior written consent of the other Collaborator, except to the successor of that part of **[Non-Navy Collaborator]**'s business to which this Agreement pertains.

10.8 Disputes

[Navy Collaborator] and **[Non-Navy Collaborator]** agree to use reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories or their successors for resolution. If a dispute continues, the remaining issues may be submitted to the Chief of Naval Research (CNR), or the CNR designee, for resolution. This Agreement does not prevent any Collaborator from pursuing disputes in a U.S. Federal court of competent jurisdiction. No Collaborator will pursue litigation in a U.S. Federal court until after the CNR, or the CNR designee, decides the dispute, or until sixty (60) days after the dispute was first submitted to the CNR, or the CNR designee, whichever comes first.

10.9 Use of Name or Endorsements

[Non-Navy Collaborator] shall not use the name of **[Navy Collaborator]** or any other Government entity on any product or service that is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of **[Navy Collaborator]**. By entering into this Agreement, **[Navy Collaborator]** does not directly or indirectly endorse any product or service provided, or to be provided, by **[Non-Navy Collaborator]**, its successors, assignees, or licensees. **[Non-Navy Collaborator]** shall not in any way imply that the Department of the Navy endorses any such product or service.

10.10 Public Release Announcements of This Agreement

Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public.

10.11 Environment, Safety, and Health

Each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this Agreement. At the conclusion of this Agreement, each Collaborator shall be responsible for the handling, control, and disposition of any and all hazardous substances or waste still in its possession. Each Collaborator shall obtain at its own expense all necessary permits and licenses as required by U.S. Federal, State, and local law and shall conduct such handling, control, and disposition in a lawful and environmentally responsible manner. Each Collaborator is responsible for all required environmental, safety, and health compliance, notice, and monitoring related to its facility in accordance with U.S. Federal, State, and local law and regulations. Collaborators shall abide by the environmental, safety, and health directives of the host facility in which the Cooperative Work is being performed, and any U.S. Federal, State, or local laws and regulations pertaining to environment, safety, and health that are applicable to the host facility.

10.12 U.S. Competitiveness

[Non-Navy Collaborator] agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

10.13 Waivers

None of the provisions of this Agreement shall be considered waived by either Collaborator unless such waiver is given in writing to the other Collaborator, signed by the executing official of this Agreement or the official's successor having the authority to bind the Collaborator making the waiver. The failure of either Collaborator to insist upon strict performance of any of the terms and conditions herein, or failure or delay to exercise any rights provided herein or by law shall not be deemed a waiver of any right of either Collaborator under this Agreement.

Article 11. MODIFICATIONS AND NOTICES

11.1 Amendments

Any modifications to this Agreement shall be jointly agreed upon and shall not be effective until a written amendment is signed by both executing officials of this Agreement or their successors.

11.2 Unilateral Termination

[Non-Navy Collaborator] and **[Navy Collaborator]** each have the right to unilaterally terminate this Agreement upon thirty (30) days written notice to the other Collaborator.

11.3 Notices

All notices pertaining to or required by Articles of this Agreement, except those pertaining solely to the prosecution of any patent, trademark, or service mark, shall be in writing and shall be signed by an authorized representative of the Technology Transfer Office for **[Navy Collaborator]** or the preferred contact for **[Non-Navy Collaborator]**. All such notices shall be delivered in a manner that ensures confirmation of receipt.

If to **[Navy Collaborator]**:

[Use the official Navy Collaborator mailing address for the Technology Transfer Office.]

If to **[Non-Navy Collaborator]**:

[Specify the mailing address for the preferred contact.]

A Collaborator shall notify the other Collaborator of a change of address in the manner set forth above.

Notices pertaining solely to the prosecution of any patent, trademark, or service mark related to this Agreement shall be in writing and shall be signed by and sent to the Collaborator's legal counsel for Intellectual Property. Legal counsel for Intellectual Property for each Collaborator shall send a copy of any such notice to the Technology Transfer Office for **[Navy Collaborator]**. If either Collaborator fails to identify such counsel upon request, then such notices shall be sent to the points of contact specified above.

Article 12. SURVIVING PROVISIONS

The Articles covering Definitions, Representations and Warranties, Funding, Reports and Publications, Intellectual Property, Tangible Property, Liability, General Provisions, Modifications and Notices, and Surviving Provisions shall survive the completion, termination, or expiration of this Agreement.

Article 13. DURATION

This Agreement expires **[specify a time no greater than four (4) years]** after its Effective Date, unless otherwise extended in writing according to the provisions of Article 11.

[If necessary, write "Signatures for the Agreement follow on next page".]

Article 14. SIGNATURES

For **[Non-Navy Collaborator]**:

I, the undersigned, am duly authorized to bind **[Non-Navy Collaborator]** to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code § 3710a and Navy regulations, am duly authorized to bind the U.S. Navy to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 20 ____.

By: _____

Title:

Navy Organization:

APPENDIX A - STATEMENT OF WORK

BETWEEN

[Navy Collaborator]

AND

[Non-Navy Collaborator]

The Collaborators agree to perform the following tasks:

[Navy Collaborator] will be responsible for the following tasks:

1. [Navy Collaborator] shall assess each Request and accompanying information provided by [Non-Navy Collaborator] task #4. [Navy Collaborator] will use its best efforts to identify the necessary expertise based on the information submitted by [Non-Navy Collaborator]. [Navy Collaborator] shall then determine if it will undertake the proposed Cooperative Work.
2. Based upon availability of resources, appropriate experts, and absence of conflicting requirements from DoD mission-related work, [Navy Collaborator] shall make and communicate [Navy Collaborator]'s decision within ten (10) business days of receipt of the Request. For favorable decisions, [Navy Collaborator]'s technology transfer officer shall sign the original Request and provide two photocopies to [Non-Navy Collaborator].
3. [Navy Collaborator] shall assign appropriate [Navy Collaborator] personnel and shall perform the Cooperative Work of up to four (4) man-days for each approved Request. The Cooperative Work is limited to technical information, lessons learned, problem solving, or further advice. At no time will the Cooperative Work encompass research or development.
4. [Navy Collaborator] shall report to [Non-Navy Collaborator] on the results of the Cooperative Work with recommendations.

[Non-Navy Collaborator] will be responsible for the following tasks:

1. [Non-Navy Collaborator] shall ensure that private corporations (especially small businesses) are aware of the availability of Federal assistance and the process by which they may request technical assistance.
2. [Non-Navy Collaborator] shall receive a signed and dated Request for Cooperative Work (Appendix B), with its included problem statement describing the problem to be addressed, from each Requestor.
3. [Non-Navy Collaborator] shall perform an initial assessment of the Request which will include [Non-Navy Collaborator]'s assurance, made to the best of its ability, that the requested federally sponsored assistance does not constitute unfair competition with existing and available commercial enterprise.
4. [Non-Navy Collaborator] shall provide the [Navy Collaborator] technology transfer officer with the original Request for Cooperative Work (Appendix B) signed by both the Requestor and by a [Non-Navy Collaborator] representative. [Non-Navy Collaborator] shall also provide its initial assessment and its opinion of the technical areas involved. This task will be performed within five (5) business days of receipt of the Request.
5. [Non-Navy Collaborator] shall assist [Navy Collaborator] in the planning and coordination of the Cooperative Work including visits/meetings with the Requestor.

6. Upon completion of each Cooperative Work effort, **[Non-Navy Collaborator]** shall follow up with the Requestor to determine satisfaction with provided technical assistance and planned actions. **[Non-Navy Collaborator]** shall assure comprehension of the results and recommendations and shall facilitate explanation necessary for the Requestor to make use of the rendered assistance.

[Navy Collaborator] and **[Non-Navy Collaborator]** will be responsible for the following joint tasks:

1. **[Navy Collaborator]** and **[Non-Navy Collaborator]** shall negotiate a mutually agreeable schedule for each approved Request.
2. **[Navy Collaborator]** and **[Non-Navy Collaborator]** shall initiate each Cooperative Work effort within thirty (30) days after the corresponding Request has been signed by all parties.

APPENDIX B - REQUEST FOR COOPERATIVE WORK

Under NCRADA-[Navy Org.]-[last two digits of FY]-[sequence number]

The Cooperative Work between the [full name of Navy Collaborator then acronym], the [full name of Non-Navy Collaborator then acronym], and the Requestor (the Parties to this Request for Cooperative Work) will be conducted under the following special terms and conditions:

Objective - The objective of this Cooperative Work is to transfer technology from [Navy Collaborator] to the Requestor who, through [Non-Navy Collaborator], has requested technology as described in the attached Problem Statement.

Funding - [Navy Collaborator acronym], [Non-Navy Collaborator acronym], and the Requestor will each bear their own costs as incurred in this request.

Duration - [Navy Collaborator] will provide up to a maximum of four (4) man-days of effort on this request, which is nonrenewable under this agreement.

Liability - The Requestor holds the Government harmless and agrees to indemnify the Government for all liabilities, claims, demands, damages, expenses, and losses of any kind arising out of the performance by the Requestor or other entity acting on behalf of or under the authorization of the Requestor under this Agreement. The Requestor agrees that the Government shall not be liable to the Requestor for any loss of revenue, profits, or other direct or consequential damages.

Use of Name or Endorsements - The Requestor shall not use the name of [Navy Collaborator] or any other Government entity on any product or service which is directly or indirectly related to either this Cooperative Work or any patent license or assignment associated with this Cooperative Work without prior approval of [Navy Collaborator].

Data - Recorded information that is produced during the performance of the requested work (Subject Data) is owned by the Party who produced the information. The other Party has unlimited rights in the Subject Data. Proprietary Information that is included in Subject Data shall be clearly marked. The Parties agree to hold Proprietary Information in confidence, as long as it remains a trade secret.

Patents - These points pertain to Inventions Made during the Cooperative Work.

1. The Party whose employees Make an Invention owns the Invention. If employees of more than one of the Parties Make an Invention, it is jointly owned by those Parties. [Navy Collaborator] will obtain patents on such joint Inventions, subject to approval by [Navy Collaborator].
2. The Party who owns an Invention shall promptly notify the other Party of the Invention and provide a completed written description of the Invention.
3. If the Party who owns an Invention decides to obtain a patent on the Invention, it shall grant to the other Party a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Invention or have the Invention practiced throughout the world by or on behalf of said other Party.
4. If a Party decides not to obtain a patent, that Party shall permit the other Party to file and/or continue to prosecute the patent application.
5. The Party who obtains a patent is responsible for all expenses associated with obtaining and maintaining the patent.
6. The Parties agree to assist and cooperate with the Party who is seeking to obtain a patent.

Title to Property - Each Party shall retain title to and possession of all its pre-existing property, facilities, equipment, or other resources provided under this agreement. Jointly developed property containing Government-owned components shall be the property of the Government.

Governing Laws - The Parties agree that United States Federal Law shall govern this Agreement for all purposes.

Independent Contractors/Entities - The relationship of the Parties to this Agreement is that of independent contractors and not as agents of each other or as joint ventures or partners. Each Party shall maintain sole and exclusive control over its personnel and operations.

Officials Not to Benefit - No member of or delegate to the United States Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

U.S. Competitiveness - The Requestor agrees that any products, processes, or services for use or sale in the United States under any United States patent resulting from a Subject Invention shall be manufactured substantially in the United States.

Reporting - [Navy Collaborator] will provide [Non-Navy Collaborator] with a report on the findings of a specific scientific assessment of the Requestor's Problem Statement. [Non-Navy Collaborator] shall follow up with the Requestor to assure that the transferred technology is appropriate and useful.

Effective Date - This request shall become effective on the date of the last signature of the Parties and the four man-days of Cooperative Work specified in the Duration statement above shall be available from [Navy Collaborator] to the Requestor for a period of six (6) months thereafter.

Problem Statement - The Parties agree that the attached Problem Statement is an integral component of this Request and is accurate as to the Cooperative Work requested.

SIGNATURES:

For Requestor:

By: _____ Date: _____

Name (Print): _____

Title: _____

Company: _____

Address: _____

For [Non-Navy Collaborator]:

By: _____ Date: _____

Name (Print): _____
[name of signatory for **Non-Navy Collaborator**]

Title: _____
[title of **Non-Navy Collaborator's** signatory]

For [Navy Collaborator]:

By: _____ Date: _____

Name (Print): _____
[name of **Navy** signatory]

Title: _____
[title of **Navy** signatory]

Section IV - 8

Examples

This section includes examples for the NCRADA Article 2, Objectives; Article 5, Funding; and Appendix A, the SOW. Article 2.0, Objectives, and Appendix A, the SOW, are the defining articles for the Cooperative Work to be done by the Collaborators.

Section IV - 8a

NCRADA Article 2, Objectives (Two Examples)

In Article 2 of the standard NCRADA, Collaborators are to describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of the Agreement. State the desired outcome by each Collaborator, including any intentions for commercialization, if appropriate. This Article and the SOW are the defining articles for the cooperative work to be done by the collaborators.

Example 1 - Article 2. Objectives

The objective of this CRADA is to produce a low cost, portable, battery-operated, global positioning satellite (GPS), station-keeping buoy prototype. The buoy will be capable of carrying an array of sensors including but not limited to a broad-band hydrophone. The buoy will receive position updates using a GPS receiver. The buoy will station-keep as programmed. The sensor data and the current buoy position will be telemetered to a remote receiver.

The buoy must be capable of deployment from a ship-of-opportunity without the use of a crane. The buoy must operate off batteries for a minimum of eight hours from the time of deployment in up to sea-state 3. The buoy must maintain position within a 50 meter diameter watch-circle. Position updates from the buoy must be received at a minimum rate of 1 per 10 seconds.

At the end of this agreement, both [**Navy Collaborator**] and [**Non-Navy Collaborator**] will have a prototype design for a station-keeping, GPS buoy. [**Navy Collaborator**] will use a field of such buoys to establish a portable tracking range for broad use including ballistic impact signature detection and tracking. The buoys will also have commercial uses in oceanographic studies, and in the oil industry.

Example 2 - Article 2. Objectives

Due to public health concerns, large diesel engines, including diesel engines used for Navy applications such as powering tugboats and generating auxiliary power, commercial transportation applications, and stationary diesel engines used for generating electric power, have recently become the subject of increasingly stringent Environmental Protection Agency (EPA) regulations. For example, there may be a relationship between diesel emissions and asthma. These strict new regulations will apply to Navy tugboats and commercial transportation vehicles including railroad locomotives. Regulations include limitations on the emission of oxides of nitrogen and particulates. In addition to the increased regulation of diesel emissions, volatility in the price of diesel fuel has increased the price of diesel fuel for Navy applications.

The purpose of this CRADA is to perform the initial experiments that will ultimately lead to the development of a control system for large diesel engines, ensuring compliance with EPA, NOx emission standards while optimizing diesel fuel economy. Work will begin with the evaluation of an experimental NOx sensor that will form the heart of a diesel engine control system. The [**Navy Collaborator**] Diesel Engine Test Facility will be used to determine if Ion Mobility Spectrometry

(IMPS) with an appropriate NO_x converter will function adequately as a control system sensor. The U.S. Navy must reduce emissions output from internal combustion engines on the next generation of ships. Therefore, new, affordable, and reliable emission technology will be developed to monitor and eventually control engine performance.

Evaluating this sensor system will leverage ongoing diesel engine emissions research work now underway at **[Navy Collaborator]** and **[Non-Navy Collaborator]**. Hopefully, this sensor will respond to NO_x emissions over a wide range of NO_x concentrations and its performance will not be significantly degraded by co-existing gases in diesel exhaust. The IMPS system will be compared with a conventional NO_x measurement technique in order to evaluate its performance. **[Navy Collaborator]** will have a chance to assess the sensor for Navy applications during these tests. **[Non-Navy Collaborator]** will attempt to secure patents on details of the system such as NO_x No₂ conversion device. **[Non-Navy Collaborator]** intends to make the device available commercially.

Section IV - 8b

NCRADA Article 5, Funding (Two Examples)

This section provides two examples of payment schedules when the Non-Navy Collaborator will pay the Navy Collaborator in incremental amounts. When the incremental amounts are received using the payment schedule in the signed CRADA, it is not necessary to amend the CRADA unless there is a change in the SOW.

Example 1 - Article 5. Funding

5.1 Payment Schedule

[Non-Navy Collaborator] agrees to pay [Navy Collaborator] the following fees/costs in accordance with the payment schedule below:

- (1) \$X,000 within thirty (30) days of the execution of this Agreement.
- (2) An additional increment of \$X,000 no later than four (4) months from the date of execution of this Agreement.
- (3) An additional increment of \$X,000 no later than seven (7) months from the date of execution of this Agreement.
- (4) An additional increment of \$X,000 no later than nine (9) months from the date of execution of this Agreement.
- (5) An additional increment of \$X,000 no later than twelve (12) months from the date of execution of this Agreement.

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number]."

Checks will be mailed to:

[Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

Example 2 - Article 5. Funding

5.1 Payment Schedule

[Non-Navy Collaborator] agrees to pay [Navy Collaborator] the following fees/costs in accordance with the payment schedule below:

(a) [Non-Navy Collaborator] shall provide one (1) payment of \$X,000 dollars to [Navy Collaborator] within fifteen (15) days after the CRADA has been signed by both parties.

(b) [Non-Navy Collaborator] shall provide one (1) payment of \$X,000 dollars to [Navy Collaborator] after [Navy Collaborator] has completed its task 1A, but no more than four (4) months after the CRADA has been signed by both parties.

(c) [Non-Navy Collaborator] shall provide one (1) payment of \$X,000 dollars to [Navy Collaborator] after [Navy Collaborator] has completed its task 1B, but no more than eight (8) months after the CRADA has been signed by both parties.

(d) [Non-Navy Collaborator] shall provide one (1) payment of \$X,000 dollars to [Navy Collaborator] after [Navy Collaborator] has completed its task 1C, but no more than thirteen (13) months after the CRADA has been signed by both parties.

The total amount that [Non-Navy Collaborator] pays to [Navy Collaborator] shall be \$X,000 dollars.

The funded amount will be used to support [Navy Collaborator]'s research as described in the Statement of Work.

Checks will be payable to U.S. Treasury.

Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-[Navy Collaborator]-[last two digits of FY]-[lab CRADA sequence number]."

Checks will be mailed to:

[Specify address, including the name of the authorized recipient, title, and appropriate organizational code.]

Section IV - 8c

NCRADA Appendix A, Statement of Work (One Example)

The SOW is one of the most important parts of the CRADA. It should represent a clear description of the work to be performed by each Collaborator separately and work to be performed jointly by the Collaborators. Because of the nature of research and development activities, this SOW may be at a high level; however, it should be detailed enough for each Collaborator to understand his/her role and responsibilities. An example of a SOW is provided.

STATEMENT OF WORK
BETWEEN
[NAVY COLLABORATOR]
AND
[NON-NAVY COLLABORATOR]

[Navy Collaborator] will be responsible for the following tasks:

1. Provide personnel, facilities, equipment, and support for promoting transfer of existing and future [Navy Collaborator] unmanned underwater vehicle (UUV) applicable technology to foster development of improved capabilities in this area.
2. Provide access for [Non-Navy Collaborator] to [Navy Collaborator]'s UUV technology through data, demonstrations, consultation, and documentation.
3. Provide [Non-Navy Collaborator] access during and after oceanographic surveys for video/film documentation of applicable UUV technologies.
4. Review and assist [Non-Navy Collaborator] in preparing the Research and Development Plan in support of improving [Navy Collaborator]'s existing UUVs.
5. Develop Top Level Requirements (TLR) for an UUV that can adequately perform hydrographic, oceanographic, and /or bathymetric surveys.

[Non-Navy Collaborator] will be responsible for the following tasks:

1. Provide personnel for collecting and documenting (audio and visual) mission survey data of existing and future UUV related technology.
2. Develop TLR for an UUV that is suitable for commercial use in industries such as: telecommunications, oil and gas, and ship/aircraft wreck surveys, etc.
3. Provide personnel who will conduct training and execute other technical support to [Navy Collaborator] for integration of applicable [Non-Navy Collaborator] navigation technology (to include software and hardware) in UUVs for military surveys.

4. Provide a Research and Development Plan in support of improving **[Navy Collaborator]** existing UUV operations. This plan will guide efforts within this agreement for specific technology development. This plan will be reviewed, and if necessary revised, annually by both partners for accuracy, pertinence, and reasonable expectation of achieving its objectives. The first year's (Y2017) research and development (R&D) Plan is Attachment 1 to this Appendix.
5. Request prior approval for all commercial uses of **[Navy Collaborator]** equipment that is in possession of **[Non-Navy Collaborator]**. At a minimum, use must be in support of and consistent with specific tasks delineated in the R&D Plan and in full compliance with any Government regulations and/or restrictions including, but not limited to, foreign national restrictions and militarily critical technology (MCT) list export restrictions that may pertain to the specified equipment.
6. Ensure that any non-signatory party to this agreement that **[Non-Navy Collaborator]** may team with or allow to use **[Navy Collaborator]** equipment is in full compliance of all Government regulations and/or restrictions that may pertain to the specified equipment including, but not limited to, foreign national restrictions and MCT list export restrictions, and shall include adequate insurance and indemnification provisions. Such use shall be in direct support of specific tasks delineated in the R&D Plan.

[Navy Collaborator] and [Non-Navy Collaborator] will be responsible for the following joint tasks:

1. Strive to construct an UUV based on the TLR for military survey.
2. Strive to construct an UUV based on the TLR for commercial ocean search and survey.

Other Agreements

Section V

- [V](#) Other Agreements
- [V-1](#) Dealing with Partnership Intermediaries
 - [V-1a](#) Partnership Intermediary Agreement - Guidance
 - [V-1b](#) Partnership Intermediary Agreement - [Example](#)
- [V-2](#) Education Partnership Agreements (EPAs)
 - [V-2a](#) Education Partnership Agreement - [Example One](#)
 - [V-2b](#) Education Partnership Agreement - [Example Two](#)
- [V-3](#) Non-Disclosure Agreements (NDAs) - Explanation
 - [V-3a](#) Non-Disclosure Agreement for Industry - [Example](#)
 - [V-3b](#) Bilateral Non-Disclosure Agreement - Explanation and [Example](#)
 - [V-3c](#) Non-Disclosure Agreement for Federal Employees - [Example One](#)
 - [V-3d](#) Non-Disclosure Agreement for Federal Employees - [Example Two](#)
- [V-4](#) License Grantback Agreements - Explanation and [Example](#)

Section V Other Agreements

This section discusses other agreements that are useful in supporting partnerships with non-Navy collaborators.

- [V - 1](#) Dealing with Partnership Intermediaries
- [V - 1a](#) Partnership Intermediary Agreement - Guidance
- [V - 1b](#) Partnership Intermediary Agreement - Example
- [V - 2](#) Education Partnership Agreements (EPAs)
- [V - 3](#) Non-Disclosure Agreements
- [V - 4](#) License Grantback Agreements

Section V - 1

Dealing with Partnership Intermediaries

The Technology Transfer Commercialization Act of 2000 (Public Law 106-404) authorized Federal laboratories to enter into contracts with partnership intermediaries to perform services that increase the likelihood of successes in the conduct of cooperative or joint activities with institutions of higher education. The Department of the Navy (DON) Technology Transfer (T2) Program Office has established a process for individual Navy laboratories to enter into partnerships with such organizations.

There are two parts to this Section:

[Section V - 1a](#) Partnership Intermediary Agreement - Guidance

[Section V - 1b](#) Partnership Intermediary Agreement - Example

Section V - 1a

Partnership Intermediary Agreement - Guidance

Statutory Authority and Purpose:

The statutory authority for use of partnership intermediaries are Title 15 U.S. Code § 3715 and Title 10 U.S. Code § 2368 (amended by Section 231, PL 115-232, August 13, 2018). The DON defines a partnership intermediary agreement (PIA) as a *contract or memorandum of understanding* between a Federal laboratory and an entity known as a partnership intermediary. The PIA provides for the partnership intermediary to perform services for the Federal laboratory that increase the likelihood of success in the conduct of cooperative or joint activities with industry or academic institutions.

Appropriate Partnership Intermediary Organizations:

Title 15 U.S. Code § 3715 (c) and Title 10 U.S. Code § 2368 define a “partnership intermediary” in terms of the *organization’s structure and function*.

The *organization’s structure* must be:

- an agency of a State or local government, or
- a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government.

The *organization’s function* must be to assist, counsel, advise, evaluate, or otherwise cooperate with industry or academic institutions that need or can make demonstrably productive use of technology-related assistance from a Federal laboratory.

Appropriate Uses of Partnership Intermediary Agreements:

PIAs provide a support mechanism for organizations that need or can make demonstrably productive use of technology-related assistance from a Federal laboratory. This support may be in the form of assistance, counsel, advice, evaluation, or other cooperation from the partnership intermediary. The key points are (1) that the PIA must provide for the partnership intermediary to provide support to these organizations and (2) the support must relate to technology-related assistance from the Federal laboratory. Although PIAs often provide ancillary benefits to the Government, particularly in assisting Federal laboratories in fulfilling their T2 mission, the immediate purpose of a PIA is to provide support to the organizations that can make use of a Federal laboratory’s technical assistance. PIAs are not a substitute for laboratory support services contracts.

Policy and Delegation:

Title 15 U.S. Code § 3715 provides that the Director of a Federal laboratory, or in the case of a federally funded research and development center that is not a laboratory (as defined in Section 3710a(d)(2) of Title 15), a Federal employee who is the contract officer, may enter into a PIA, subject to the approval of the Secretary of the agency.

Department of Defense (DoD) Instruction 5535.8, DoD T2 Program of 14 May 1999, encourages use of partnership intermediaries and delegation of authority for their use.

The Secretary of the Navy (SECNAV), by SECNAV Instruction 5700.17 dated 27 March 2009 (currently under revision and expected to be published by fiscal year 2018), delegated authority to enter into PIAs to heads of Navy Laboratories and/or Technical Activities.

Navy Model Agreement:

The DON provides a model PIA ([Section V - 1b](#)). This model Agreement has been developed specifically to conform to legislative and policy regulations and serves as the memorandum of understanding referenced in Title 15 U.S. Code § 3715. It is not a procurement contract for services.

Funding Options:

Under a PIA, the Navy laboratory and/or technical activity may, but is not required to, pay the Federal costs of the PIA out of funds available for the support of its T2 function. An appropriate, separate instrument for funding will have to be executed if money is being transferred.

The Navy laboratory may not receive funds under a PIA.

Legal Review:

Legal review is obtained at the Navy laboratory to ensure compliance with the Navy laboratory mission, statutes, regulations, instructions and executive directives. If the model PIA is changed, the modification is noted and a written explanation of its necessity is reviewed by local legal counsel and is included with the Agreement when it is forwarded to the DON T2 Program Office.

Signature Authority for PIAs:

The Head of a Navy laboratory has the authority to enter into a PIA and sign such Agreements for the DON. Requirements for signing PIAs are similar to those for cooperative research and development agreements (CRADAs):

- (a) The Navy laboratory must meet the following qualifications:
 1. Procedures are established for entering into PIAs.
 2. Personnel with training or experience in T2 are designated to be responsible for implementing the procedures.
 3. A single point of contact for interface with the DON T2 Program Office is sent to the DON T2 Program Manager.
 4. Personnel responsible for implementing the procedures receive at least eight hours of training in T2 every year.

- (b) A legal review and a legal recommendation is obtained from an assigned Navy Office of General Counsel Intellectual Property attorney prior to negotiating and entering into the agreement to ensure that the PIA conforms to all statutes, regulations, Executive Orders, and other binding instructions and policies issued within the DoD and the DON.

- (c) A security review is obtained prior to negotiating and prior to entering into a PIA to ensure that the agreement conforms to all statutes, regulations, Executive Orders, and all security regulations and instructions issued within the DoD and the DON.
- (d) Reports and executed copies of PIAs are submitted as directed by the DON T2 Program Office.

If the activity is a federally funded research and development center, the Federal employee who is the contract officer must sign the PIA.

Navy laboratory T2 personnel may solicit advice or consult with the DON T2 Program Office on any PIA issues.

Actions after Signature:

An electronic copy of the signed PIA, along with supporting documents, should be forwarded to the DON T2 Program Office.

The Office of Research and Technology Applications (ORTA) will include information on PIAs in the annual T2 business plan submitted to the DON T2 Program Office and DoD.

Through use of the Navy Defense Technology Transfer Information System database, the DON T2 Program Office will maintain a record of the activities carried out pursuant to each PIA sufficient to support discussion and evaluation of the PIA in terms of their stimulation of productivity, technology, and innovation.

Section V - 1b

Partnership Intermediary Agreement - Example

The following provides an example for an agreement with a partnership intermediary.

PARTNERSHIP INTERMEDIARY AGREEMENT (PIA)

BETWEEN

[NAVY ACTIVITY full name then acronym]

AND

[PARTNERSHIP INTERMEDIARY full name then acronym]

AGREEMENT NUMBER: PIA-[Navy Org.]-[last two digits of FY]-[sequence number]

AGREEMENT ADMINISTRATORS:

[NAVY ACTIVITY acronym]

Technology Transfer Office

Point of Contact: **[insert name, organizational code, telephone number, e-mail address]**

Legal Counsel: **[insert name, organization code, telephone number, e-mail address]**

[PARTNERSHIP INTERMEDIARY acronym]

Preferred Contact: **[insert name, telephone number, e-mail address]**

Legal Counsel: **[insert name, telephone number, e-mail address]**

TABLE OF CONTENTS

PREAMBLE

Article 1. DEFINITIONS

- 1.1 “Agreement”
- 1.2 “Data”
- 1.3 “Federal Laboratory”
- 1.4 “Government”
- 1.5 “Invention”
- 1.6 “License Agreement”
- 1.7 “Proprietary Information”

Article 2. PARTIES

Article 3. BACKGROUND AND PURPOSE

Article 4. DESIGNATED REPRESENTATIVES

Article 5. AGREEMENT ACTIVITIES

Article 6. FUNDING

Article 7. INTELLECTUAL PROPERTY

Article 8. PROPRIETARY OR PROTECTED INFORMATION

Article 9. GENERAL PROVISIONS

- 9.1 Relationship of the Parties
- 9.2 Security
- 9.3 Export Control
- 9.4 Liability
 - 9.4.1 Government Liability
 - 9.4.2 **[Partnership Intermediary]** Liability
 - 9.4.3 *Force Majeure*
- 9.5 Savings Provision
- 9.6 Applicable Law
- 9.7 Termination of the Agreement
 - 9.7.1 Termination by Mutual Consent
 - 9.7.2 Unilateral Termination
 - 9.7.3 Survivability
- 9.8 Duration of the Agreement
- 9.9 Tangible Property
- 9.10 Titles and Headings
- 9.11 Agreement Not An Exclusive Agreement
- 9.12 Entire Agreement
- 9.13 Reports
 - 9.13.1 Annual Report
 - 9.13.2 Final Report
- 9.14 Disputes
- 9.15 Waivers
- 9.16 Amendments
- 9.17 Use of Names or Endorsements
- 9.18 Notices

Article 10. PUBLICATIONS

- 10.1 Publication of Results
- 10.2 Governmental Use
- 10.3 Disclaimer

Article 11. EFFECTIVE DATE

Article 12. SIGNATURES

PARTNERSHIP INTERMEDIARY AGREEMENT (PIA)

BETWEEN

[NAVY ACTIVITY full name then acronym]

AND

[PARTNERSHIP INTERMEDIARY full name then acronym]

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), (hereinafter referred to Title 15 U.S. Code § 3715) **[NAVY ACTIVITY full name then acronym]**, located at **[supply appropriate address]**, and **[Partnership Intermediary full name then acronym]**, whose headquarters are located at **[supply appropriate address]**, (hereinafter referred to individually as a “Party” or collectively as the “Parties”) enter into this Partnership Intermediary Agreement (PIA), which shall be binding upon the Parties according to the clauses and conditions hereof and for the term and duration set forth.

The Parties agree as follows:

Article 1. DEFINITIONS

- 1.1. The term “Agreement” as used herein shall mean a PIA as authorized by Title 15 U.S. Code § 3715 for performance of partnership intermediary services. This Agreement is neither a procurement contract subject to the Federal Acquisition Regulation, nor a support agreement subject to the DoD Grant and Agreement Regulations.
- 1.2. The term "Data" means recorded information of any kind regardless of the form or method of recording.
- 1.3. The term "Federal Laboratory" means any organization defined in Title 15 U.S. Code § 3703(6), as amended.
- 1.4. The term “Government” refers to the United States Government.
- 1.5. The term "Invention" means any discovery or invention that is or may be patentable or otherwise protected under Title 35, U.S. Code, or any novel variety of plant that is or may be patentable under the Plant Variety Act (Title 15 U.S. Code § 3703(9)).
- 1.6. The term “License Agreement” shall mean an agreement to license a federally-owned invention under Title 35 U.S. Code §§ 207-11 and 37 C.F.R. Part 404.
- 1.7. The term "Proprietary Information" shall mean information that embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged and confidential provided that such information: is not known or available from other sources without obligations concerning its confidentiality; has not been made available by the owners to others without obligation concerning its confidentiality; is not already available to the Government without obligation concerning its confidentiality; or has not been developed independently by persons who have had no access to the information.

Article 2. PARTIES

- 2.1. The **[Navy Activity]** **[provide description]**.
- 2.2. The **[Partnership Intermediary]** **[provide a description that includes a citation to the legal authority establishing the Partnership Intermediary and its mission statement]**.

Article 3. BACKGROUND AND PURPOSE

3.1. Title 15 U.S. Code § 3715 (Use of Partnership Intermediaries) specifically authorizes the Director of a Federal Laboratory to enter into memoranda of understanding and contracts with State and local governmental agencies and nonprofit entities owned, chartered, funded, or operated by or on behalf of a State or local government to perform partnership intermediary services that increase the likelihood of success in the conduct of cooperative or joint activities with small business firms and educational institutions that need or can make demonstrably productive use of technology-related assistance from a Federal Laboratory. These services include the promotion of cooperative or joint activities with small business firms and educational institutions that need or can make demonstrably productive use of technology-related assistance from Federal Laboratories.

3.2. The purpose of this Agreement is to promote cooperative activities between **[Navy Activity]** and small business firms and educational institutions served by **[Partnership Intermediary]**. The services to be provided by **[Partnership Intermediary]** as hereinafter described are intended to **[insert purpose as authorized under the Statute]**.

Article 4. DESIGNATED REPRESENTATIVES

4.1. The **[Navy Activity]** designated representative responsible for coordination of activities under this Agreement is **[insert name and position of representative]**. The **[Navy Activity]**'s representative will coordinate directly with the designated **[Partnership Intermediary]** representative.

4.2. The **[Partnership Intermediary]**'s designated representative responsible for coordination of activities under this Agreement is **[name and position of the representative]**. The **[Partnership Intermediary]** representative will coordinate directly with the designated **[Navy Activity]** representative.

Article 5. AGREEMENT ACTIVITIES

5.1. To accomplish the purposes of this Agreement, the Parties' representatives will engage in discussions and use their best efforts to identify activities under which small business firms and educational institutions can make demonstrably productive use of technology-related assistance from **[Navy Activity]**. The Parties will use their best efforts to accomplish the purpose of this Agreement.

5.2. [Optional] Licensing **[Navy Activity]** Inventions. **[Navy Activity]** will identify to **[Partnership Intermediary]** such of its Inventions that are available for licensing. **[Partnership Intermediary]** will attempt to locate and identify to **[Navy Activity]** small businesses and educational institutions within its area of responsibility that have an interest in licensing **[Navy Activity]** Inventions. **[Navy Activity]** will engage in discussions with such interested businesses and educational institutions as are identified to it with a view toward reaching a patent license agreement. Such discussions and any resulting license agreement will be accomplished in full accordance with all applicable Federal laws and regulations. **[Partnership Intermediary]** may choose to participate in the license discussions and provide such other assistance to interested small businesses or educational institutions as is consistent with its corporate charter.

5.3. [Optional] Submission of Research Proposals to **[Navy Activity]**. **[Navy Activity]** will identify to **[Partnership Intermediary]** areas of **[Navy Activity]** research and development activities where the submission of proposals are desired under the **[Navy Activity]** Broad Agency Announcement (BAA). The **[Navy Activity]** BAA is issued under the provisions of paragraphs 35.016 and 6.102(d)(2) of the Federal Acquisition Regulation (FAR). These provisions provide for the use of BAA's by agencies to fulfill requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. **[Partnership Intermediary]** will attempt to locate small businesses and educational institutions interested in submitting proposals, advise those interested in proposal requirements, and provide such other assistance as is within its charter to perform. All proposals received will be considered by **[Navy Activity]** in accordance with applicable Federal laws and regulations.

5.4. [Optional] **[Navy Activity]** Support For Outside Activities. **[Navy Activity]** will identify to **[Partnership Intermediary]** research and development capabilities of **[Navy Activity]** that may be made available to small businesses and educational institutions that need or can make use of technology-related assistance from **[Navy Activity]**. **[Partnership Intermediary]** will attempt to locate and advise such small businesses and interested

educational institutions of the availability of such capabilities and the related procedures and conditions. In the preparation and submission of proposals, **[Partnership Intermediary]** may choose to participate and provide such other assistance to interested small businesses or educational institutions as is consistent with its corporate charter. **[Navy Activity]** will fully consider all requests submitted for such support. All support will be provided as appropriate in accordance with applicable Federal laws and regulations.

5.5. [Optional] Technology Marketing Programs and Showcases. **[Navy Activity]** and **[Partnership Intermediary]** will cooperate in planning and presenting various programs that showcase **[Navy Activity]** technology and research and development areas of interest.

5.6. [Optional] Small Business and Educational Institution Technology and Capabilities. **[Partnership Intermediary]** will sponsor activities and programs that showcase the technology and capabilities of small businesses and educational institutions within its area of responsibility that may be of interest to **[Navy Activity]** in connection with its research and development mission.

5.7. [Optional] **[Navy Activity]** **[may describe other activities that are authorized within the scope of Title 15 U.S. Code § 3715].**

Article 6. FUNDING

6.1. Other than as expressly provided herein, no funds of either Party are in any way committed or obligated for any purpose whatsoever by virtue of entering into this Agreement. This Agreement does not identify or require the transfer of funds between the Parties. This Agreement shall not be construed to authorize or guarantee funding for any proposals submitted in response to any solicitation, nor shall it be construed as a guarantee of future funding. Nor shall this Agreement be construed as an endorsement of any proposal submitted by any Party or non-Party.

6.2. Each Party shall be responsible for funding its own activities under this Agreement, except as expressly provided herein. Each Party is individually responsible for assuring that its funding commitments are fully in accordance with all fiscal requirements and restrictions applicable to it by law and regulation.

Article 7. INTELLECTUAL PROPERTY

7.1. In the event that employees of the Parties make an Invention or produces technical Data while performing the Agreement activities, each Party shall have title to the Data or Invention made or produced by its employees. Inventions made and Data produced jointly by those employees, shall be jointly owned by the Parties in the form of an equal and undivided interest in the title.

7.2. Rights in intellectual property created under a separate agreement resulting from this Agreement shall be determined in accordance with the terms of the separate agreement.

7.3. No rights in any intellectual property are conveyed or granted by or under this Agreement.

Article 8. PROPRIETARY OR PROTECTED INFORMATION

8.1. During performance of activities under this Agreement, the Parties may require access to Proprietary Information of each other and non-Party small businesses and educational institutions identified by **[Partnership Intermediary]**. Likewise, such non-Party small businesses and educational institutions may require access to information about patentable **[Navy Activity]** Inventions that are exempted from disclosure under Title 35 U.S. Code § 205 (Confidentiality). The Parties agree to use their best efforts to enter into agreements with each other and any non-Party entities as may be necessary to protect such information from unauthorized use or disclosure and to refrain from using such information for any purpose other than that for which it was furnished.

8.2. No exchange of information under this Agreement is intended to convey to the receiving Party any license or other rights in such information unless otherwise expressly provided in writing by the disclosing Party.

Article 9. GENERAL PROVISIONS

9.1. Relationship of the Parties. The relationship of the Parties is that of independent parties and not as agents of each other, partners, or participants in a joint venture.

9.2. Security. Performance of work under agreements with small businesses and educational institutions established as the result of this Agreement may require access to classified information and secure facilities. Performers of such work may be required to qualify in accordance with applicable security regulations.

9.3. Export Control. Work on certain **[Navy Activity]** research projects may involve militarily critical technology or information the export of which is restricted by statute, executive order, or regulation (including, but not limited to, the Arms Export Control Act, the International Traffic in Arms Regulation, the Export Administration Act). The Party desiring to export shall ensure full compliance with all applicable requirements and restrictions before it makes any disclosure that may be deemed an export of such information. Nothing in this article is intended to waive any requirements imposed by any other U.S. Government agency with respect to disclosure of export controlled information or militarily critical technology to foreign nationals.

9.4. Liability.

9.4.1. Government Liability. **[Navy Activity]** is an activity of the U.S. Government. As such, the sovereign immunity of the United States applies to the activities of **[Navy Activity]**. The Government shall be liable for the negligent or wrongful acts of its officers and employees to the extent provided for in the Federal Tort Claims Act (Title 28 U.S. Code § 2671 *et seq.*) and other applicable laws and regulations of the United States that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the United States.

9.4.2. **[Partnership Intermediary]** Liability. **[Partnership Intermediary]** is a state chartered corporation and public instrumentality of the **[indicate State or Commonwealth]**. **[Partnership Intermediary]** and the **[indicate State or Commonwealth]** shall be solely responsible for the actions of **[Partnership Intermediary]** employees and the actions of those acting for it in the performance of this Agreement to the extent provided for under the applicable provisions of the State law. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the **[indicate State or Commonwealth]** in accordance with **[provide citation]**.

9.4.3. *Force Majeure*. Neither Party shall be liable for the consequences of a *force majeure* that (1) is beyond its reasonable control; (2) is not caused by the fault or negligence of such Party; (3) causes such Party to be unable to perform its obligations under this Agreement; and, (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure*, the Party unable to perform shall notify the other Party. The Parties shall suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and shall use their best efforts to resume performance as quickly as possible.

9.5. Savings Provision. The illegality or invalidity of any provisions of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.

9.6. Applicable Law. The Parties agree that the laws of the United States of America shall govern this Agreement for all purposes. In the absence of governing Federal law, the laws of the **[identify State or Commonwealth]** shall apply.

9.7. Termination of the Agreement.

9.7.1. Termination by Mutual Consent. The Parties jointly may elect to terminate this Agreement at any time by mutual consent.

9.7.2. Unilateral Termination. Either Party may elect to terminate this Agreement at any time by giving to the other Party not less than thirty (30) days advance written notice of the intent to terminate and the effective date of termination.

9.7.3. Survivability. Article I. DEFINITION, Article VI. FUNDING, Article VII. INTELLECTUAL

PROPERTY, Article VIII. PROPRIETARY OR PROTECTED INFORMATION, Article IX. GENERAL PROVISIONS, Article X. PUBLICATIONS, shall survive the completion, termination or expiration of this Agreement. **[Other articles may be added to this list if deemed desirable].**

9.8. Duration of the Agreement. This Agreement shall remain in effect for **[insert number]** months from its effective date unless previously terminated or extended as provided by this Agreement. The Parties may by mutual written agreement extend the term of the Agreement.

9.9. Property. Each Party shall retain title to all tangible property that it has acquired by purchase or gift and used in performance of tasks under this Agreement.

9.10. Titles and Headings. Titles and headings of the sections and subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

9.11. Agreement Not An Exclusive Agreement. The rights granted by **[Navy Activity]** to **[Partnership Intermediary]** under this Agreement to perform the services of this Agreement are not exclusive. The Government may grant permission to other entities to perform the same or similar services at any time.

9.12. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

9.13. Reports.

9.13.1. Annual Report. **[Partnership Intermediary]** shall submit to **[Navy Activity]** an annual report summarizing its efforts in furtherance of this Agreement. The report should provide a concise and factual discussion of the results of its efforts to include: a listing of small businesses and educational institution contacts; agreements entered by **[Navy Activity]** with small businesses and academic institutions that it identified; significant accomplishments resulting from those agreements (publications, technological developments, inventions, patents, product development and sales, etc.); any measurable effect upon community business and employment; lessons learned and recommendations for improvement; and such other information deemed pertinent by **[Partnership Intermediary]**.

9.13.2. Final Report. **[Partnership Intermediary]** shall submit a final report summarizing the entire effort during the term of the Agreement in the same topic areas required for the annual report.

9.14. Disputes. The Parties agree to use reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories or their successors for resolution.

9.15. Waivers. No provision of this Agreement shall be considered waived by any Party hereto unless such waiver is given in writing to the other Party. The failure of any Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any right provided herein or by law, shall not be deemed a waiver of any right of any Party hereto.

9.16. Amendments. The Parties shall, upon reasonable notice of the proposed modification by the Party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall be effective upon the date of the last signature of the authorized representatives of each of the Parties.

9.17. Use of Name or Endorsements. Neither Party shall use the name of the other Party on any product or service which is directly or indirectly related to this Agreement without the prior approval of the other Party. By entering into this Agreement, neither Party directly or indirectly endorses any product or service provided, or to be provided, by the other Party, its successors, assignees, or licensees. Neither Party shall imply in any way that this Agreement is an endorsement by the other Party of any product or service.

9.18. Notices. All notices are to be sent to the PIA administrators.

Article 10. PUBLICATIONS

10.1. Publication of Results. **[Partnership Intermediary]** is encouraged to publish results of the Agreement. Each article planned for publication shall be submitted to the **[Navy Activity]** designated representative for review and approval prior to submission for publication.

10.2. Governmental Use. Any publication based on or developed under this Agreement will reflect that the U.S. Government is licensed to reproduce and distribute the article for Governmental purposes notwithstanding any copyright or other restrictive legends.

10.3. Disclaimer. Published articles shall contain the statement that "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 Department of the Navy or the U.S. Government."

Article 11. EFFECTIVE DATE

11.1 This Agreement shall become effective upon the date of the last signature of the authorized representatives of each of the Parties.

Article 12. SIGNATURES

For **[Partnership Intermediary]**:

I, the undersigned, am duly authorized to bind **[Partnership Intermediary full name]** to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20____.
(month)

By: _____

Name:

Title:

Address:

For **[Navy Activity]**:

I, the undersigned, am duly authorized to bind **[Navy Activity full name]** to this Agreement and do so by affixing my signature hereto.

Entered into this _____ day of _____ 20____.
(month)

By: _____

Name:

Title:

Address:

Section V - 2

Education Partnership Agreements (EPAs)

Title 10 of U.S. Code § 2194 (10 USC 2194) provides for the authority for directors of defense laboratories “to enter into one or more education agreements with educational institutions in the United States for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education.” These educational institutions “are local educational agency, colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, business, law, technology transfer or transition and engineering education.”

Under an EPA, “the director of a defense laboratory may provide, and is encouraged to provide, assistance to the educational institution by—”

- a. loaning defense laboratory equipment that supports the agreement;
- b. transferring computer equipment or other scientific equipment as appropriate;
- c. making laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution;
- d. providing in the defense laboratory sabbatical opportunities for faculty and internship opportunities for students;
- e. involving faculty and students of the institution in defense laboratory projects, including research and T2 or transition projects;
- f. cooperating with the institution in developing a program under which students may be given academic credit for work on defense laboratory projects;
- g. providing academic and career advice and assistance to students of the institution.

Priorities, preferences, and other details relating to EPAs are provided in the text of 10 USC 2194. [Section V - 2a](#) and [V - 2b](#) provide EPA examples.

Local legal counsel and, if available, the local education outreach expert should be consulted regarding Command/Activity policies on EPAs.

Section V - 2a

Education Partnership Agreement - Example One

There is no standard Navy EPA. General authority and contract considerations for EPAs are described by 10 USC 2194. The sample provided here has been used by the Naval Air Warfare Center Training Systems Division. Some referenced authorities were updated for this handbook and others may need to be updated. This sample can be tailored for use by other Commands/Activities.

EXAMPLE 1

EDUCATION PARTNERSHIP AGREEMENT

between

INSTITUTION

and

[Navy Collaborator]

No. xxxxxx

Acceptance of Agreement on behalf of **INSTITUTION**

Name
Title

Date

Acceptance of Agreement on behalf of
[Navy Collaborator]

Commander
[Navy Collaborator]

Date

EDUCATION PARTNERSHIP AGREEMENT

TABLE OF CONTENTS

I. **PREAMBLE** 1

II. **BACKGROUND**..... 1

III. **AUTHORITY** 1

IV. **PURPOSE** 1

V. **BENEFITS** 2

VI. **ACTIONS**..... 2

VII. **INTELLECTUAL PROPERTY** 3

VIII. **GENERAL PROVISIONS** 4

IX. **EFFECTIVE DATE** 6

X. **POINTS OF CONTACT**..... 6

EDUCATION PARTNERSHIP AGREEMENT TERMS AND CONDITIONS

I. PREAMBLE

In accordance with and in support of the goals and objectives of Title 10 United States Code (U.S. Code) § 2194, Education Partnerships, the [Navy Collaborator] and INSTITUTION (the Partners) wish to enter into an Education Partnership Agreement (this Agreement). The Partners enter into this Agreement in recognition of the vital role that science, mathematics and engineering education play in the United States' current as well as future viability and wellbeing.

II. BACKGROUND

Congress enacted Public Law 101-510 (5 Nov 1990), 10 U.S. Code § 2194, Education Partnerships, for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education. 10 U.S. Code § 2194 requires the Secretary of Defense to authorize each defense laboratory to enter into one or more Education Partnership Agreements with educational institutions in the United States, including local education agencies, colleges, universities, and nonprofit institutions that are dedicated to improving science, mathematics, and engineering education.

III. AUTHORITY

This Agreement is entered into pursuant to the authority contained in the following:

- a) Title 10 U.S. Code § 2194, Education Partnerships
- b) Title 5 U.S. Code § 4103, "Establishment of Training Programs"
- c) Department of Defense Instruction 5535.8, "DoD Technology Transfer Program" (14 May 1999)
- d) Director of Defense for Research and Engineering memorandum entitled, "Interim Guidance on the use of certain Authorities Granted under: 10 U.S. Code § 2194, Education Partnerships"
- e) Department of Defense Instruction 1400.25, "Civilian Personnel Management" (December 1996)
- f) Naval Air Warfare Center Aircraft Division Instruction 5000.46, Education Partnership Agreements (8 Apr 2011)

IV. PURPOSE

Subject to Paragraph VIII G, "Export Controls" and H, "Eligibility to Participate," the purpose of this Agreement is to:

- A. Aid in the educational experience of INSTITUTION students and faculty** by providing a mechanism by which those students and faculty can benefit from the staff expertise, unique facilities, and equipment related to naval warfare systems and technologies available from [Navy Collaborator] through this Agreement. Access to [Navy Collaborator] (i.e., hardware, personnel, facilities, etc.) will provide a unique opportunity for INSTITUTION students to become aware of and collaborate in the many disciplines associated with all aspects of weapons systems and sub-systems from concept, to integration, through testing, which would not otherwise be available. A goal is to facilitate student interest and expertise in science, mathematics, and engineering, particularly as these fields relate to the real world technical applications required by the United States Navy.
- B. Aid [Navy Collaborator] engineers and other employees in executing their mission** by leveraging the educational knowledge and capabilities of INSTITUTION students and faculty. It will also serve to provide INSTITUTION students and other employees access to state-of-the-art and new, innovative technological methods relating to solving existing technical problems. A secondary goal is to facilitate the training and recruitment of potential future employees. **Truncate as necessary for K-12.**
- C. Encourage and facilitate early interest in the sciences and engineering** by young people at all stages of their academic careers. **Add for K-12.**

D. Facilitate the identification of other mutually beneficial partnership opportunities.

V. BENEFITS

A. Benefits to INSTITUTION.

1. A formal vehicle for information exchange with [Navy Collaborator].
2. Access to state-of-the-art facilities and technology beyond what would normally be available to the INSTITUTION's community.
3. Educational opportunities which may encourage and facilitate early interest in the sciences and engineering. Add for K-12.
4. Research experiences which may provide students and faculty with opportunities to understand and improve upon multiple jointly developed technologies.

B. Benefits to [Navy Collaborator].

1. Promotion and facilitation of the education of future scientists and engineers.
2. Enhanced perspective on projects by exposure to the ideas of the academic community.
3. Increased opportunities for scientific growth, exploration, and experience by participation in the academic process.
4. Potential for collaborative effort with INSTITUTION students and staff in various technology areas as they relate to a variety of scientific disciplines.

C. Mutual benefits to INSTITUTION and [Navy Collaborator]. The opportunity to identify additional mutually beneficial areas of endeavor.

VI. ACTIONS

A. Meetings of the Partners. The Partners shall maintain an ongoing dialogue regarding the status of the Partners' activities under this Agreement. The Partners will meet as needed in order to discuss the progress of projects undertaken through this Agreement, to resolve any issues that arise in the performance of this Agreement, and to seek agreement on future projects to be pursued under this Agreement.

B. Advisory Services. In order to achieve the objectives of promoting the economic and educational growth of INSTITUTION and ensuring the availability of a stable workforce that can meet the needs of [Navy Collaborator], [Navy Collaborator] may designate a liaison to INSTITUTION advisory councils for technical programs. Examples of the types of advisory services that may be provided by these representatives include:

1. Appropriate information or data on future engineering and science technology requirements in those areas related to [Navy Collaborator] mission responsibilities.
2. Participation in course and curriculum development efforts in technical fields.
3. Advisement and review of curriculum issues as appropriate.

C. INSTITUTION/[Navy Collaborator] Coordinators. Coordinators may be established in the following areas to accomplish specific actions that the Partners wish to pursue under this Agreement:

1. Research and engineering (R&E) projects and opportunities ("R&E Coordinator").

2. Business, career, and academic projects and opportunities (“Business/Academic Coordinator”).

D. One or more of the following initiatives may be used to achieve the goals of this partnership.

1. [Navy Collaborator] may transfer to **INSTITUTION** defense laboratory equipment, determined by the Commanding Officer to be surplus, to support [Navy Collaborator]’s mission to teach the general public and students of **INSTITUTION** about research and development, science and technology.
2. [Navy Collaborator] may loan defense laboratory equipment to **INSTITUTION** for educational purposes.
3. [Navy Collaborator] may make its personnel available to teach naval engineering and science courses, to assist in the development of such courses and related educational material, **or to participate in science fairs and other STEM outreach activities/events.**
4. [Navy Collaborator] may offer visits, tours and demonstrations at its facilities for faculty and students of **INSTITUTION.**
5. [Navy Collaborator] may provide academic and career advice to students of **INSTITUTION.**
6. [Navy Collaborator] may involve students and educators of **INSTITUTION** in research projects.
7. The level of effort to be expended by [Navy Collaborator] on any activity under this Agreement shall be within the discretion of [Navy Collaborator] and the scope shall be limited as enumerated in 10 U.S. Code § 2194.
8. **INSTITUTION** may provide annual reports to [Navy Collaborator] on the benefits of [Navy Collaborator]’s contributions to the educational program.

VII. INTELLECTUAL PROPERTY

A. Definitions. Proprietary Information – Any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, mask works, and art work, which are clearly identified and marked as being proprietary. Information transmitted orally or visually shall be considered to be Proprietary Information provided such Proprietary Information is identified by the disclosing Partner prior to disclosure, reduced to written summary form, and marked as being proprietary by the transmitting Partner, and transmitted to the recipient within 30 business days after such oral or visual transmission. During this 30 business day period, such oral or visual information so disclosed shall be provided the same protection as provided Proprietary Information as set forth below. Failure to so identify, reduce to writing, mark, and deliver such verbally or visually disclosed information in the manner prescribed shall relieve the receiving Partner of all obligations of protection with respect to said disclosed information thereafter.

B. Information Handling.

1. Information Security – Each Partner shall provide notice of any special information handling (classified, proprietary, etc.) associated with the project, test articles, technical information, test data, specifications, etc. If no notice is provided, it will be assumed that no restrictions are required.
2. Data Classification – If the project or related information is classified, the product or related information will be handled in accordance with the applicable instructions, e.g., DD Form 441 of the DoD Industrial Security Manual, for safeguarding such articles or information against unauthorized disclosure and as stipulated herein.

3. Control of Proprietary Information – The Partners to this Agreement who receive Proprietary Information belonging to the other Partner shall hold such Proprietary Information in strict confidence; shall limit its further disclosure to only personnel having a need for access to the Proprietary Information; shall not disclose such Proprietary Information; and shall use the Proprietary Information only for performance of this Agreement. The Partners further agree to make a good faith effort to minimize, to the extent practicable, the number of persons having access to Proprietary Information. Proprietary Information shall receive security protection in accordance with the receiving Partner’s standard procedures governing the handling of such information and as agreed to in any attachments hereto.
4. Return and Destruction of Information – Upon completion or termination of this Agreement, each Partner shall return or properly dispose of all classified, Proprietary Information unless otherwise agreed by the Partners.

C. Data Rights.

1. Definition – The term “data” as used in this Agreement includes technical data, detailed manufacturing or process data, form, fit and function data, computer databases, computer programs, computer software, and computer software documentation as defined in the Defense Federal Acquisition Regulation Supplement (DFAR) 252.227-7013. It also includes orally communicated information of a scientific or technical nature and information that, if recorded, would be technical data, detailed manufacturing or process data, form, fit and function data, computer databases, computer programs, computer software, and computer software documentation, provided such information is reduced to writing within 30 business days after communication.
2. Government Data Rights – Notwithstanding any provision to the contrary, nothing in this Agreement shall diminish any rights in data, including any preexisting rights in any data, which the Government has, or is entitled to, under this or any other Government agreement or contract, or is otherwise entitled to as a matter of law.
3. Data Disclosure – Except where prohibited by law or regulation or otherwise provided in this Agreement, **INSTITUTION** shall have the right to use and disclose data delivered by [Navy Collaborator] under this Agreement.
4. Survival of Provision – These provisions shall survive the termination, cancellation or suspension of this Agreement.

D. Patent Rights.

1. Definition – The term “invention” as used in this Agreement is defined in Federal Acquisition Regulation (FAR) 52.227-11.
2. Transfer of Invention Rights – Nothing in this Agreement shall grant to, or confer upon, **INSTITUTION** any rights, expressed or implied, to any invention owned by the Government or to which the Government is entitled to ownership, including but not limited to, any invention conceived or reduced to practice under this Agreement, or under any patent application or patent owned by the Government or to which the Government is entitled to ownership.
3. License Rights – The Partners agree that **INSTITUTION** shall have the right to seek a license, in accordance with Chapter 18 of Title 35 U.S. Code as implemented within the Navy by Secretary of the Navy Instruction 5870.2E, for any invention conceived or first reduced to practice under this Agreement.

VIII. GENERAL PROVISIONS

- A. [Navy Collaborator] Level of Effort.** The level of effort to be expended by [Navy Collaborator] on any

activity under this Agreement shall be within the discretion of [Navy Collaborator].

- B. **INSTITUTION Level of Effort.** The level of effort to be expended by INSTITUTION on any activity under this Agreement shall be within the discretion of INSTITUTION.
- C. **Costs.** Each Partner will be responsible for its own costs.
- D. **Clearance of Material Intended for Public Release.** This section applies to material intended for public release and to any information that may be protected as Proprietary Information as described in part VII of this Agreement, or for which a Partner has specified a higher degree of information handling security, as described in part VII.B. INSTITUTION will work through the [Navy Collaborator] Technical Point of Contact and the [Navy Collaborator] Public Affairs Office for the proper public release of proprietary information and associated data. At no time shall the INSTITUTION claim or imply endorsement by [Navy Collaborator] as a result of this Agreement.
- E. **Warranty.** INSTITUTION warrants that it is an educational institution dedicated to improving science and mathematics education, as required by Title 10 U.S. Code § 2194, and that it has the requisite power and authority to enter into this Agreement and to perform according to its terms.

F.Liabilities.

- 1. [Navy Collaborator]'s responsibility for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of [Navy Collaborator] while acting within the scope of his office or employment will be in conformance with the Federal Tort Claims Act (28 U.S. Code § 2671 *et seq.*). Except as provided by the Federal Tort Claims Act, [Navy Collaborator] shall not be liable to INSTITUTION for any claims whatsoever, including loss of revenue or other indirect or consequential damages.
 - 2. INSTITUTION holds [Navy Collaborator] harmless and agrees to indemnify [Navy Collaborator] for all liabilities, claims, demands, damages, expenses, and losses of any kind caused by the sole or gross negligence, or willful misconduct, of the INSTITUTION or any other entity acting on behalf of or under authorization of INSTITUTION under this Agreement.
 - 3. No Partner shall be liable for the consequences of any unforeseeable *force majeure* event that (1) is beyond its reasonable control, (2) is not caused by the fault or negligence of such Partner, (3) causes such Partner to be unable to perform its obligations under this Agreement, and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure* event, the Partner unable to perform shall promptly notify the other Partner. It shall further pursue its best efforts to resume as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the *force majeure* event.
- G. **Export Controls.** Notwithstanding any other clause in this Agreement, this Agreement does not in any way authorize the export of any defense articles or defense services (including information or technical data) nor does it in any way authorize or approve the use of an exemption to the export licensing requirements of the International Traffic in Arms Regulation (ITAR).
- H. **Eligibility to Participate.** Restrictions on participation in this Agreement apply to members of INSTITUTION staff, faculty, or student body who are not United States citizens or who are United States citizens with dual nationality with an ITAR-prohibited country. If any proposed project under this Agreement has to do with export-controlled technology, members of INSTITUTION wishing to participate will be required to submit further information to the [Navy Collaborator] Point of Contact in order to determine their eligibility to participate.

I. **General.**

1. This Agreement constitutes the entire agreement between the Partners concerning the subject matter and supersedes any prior understanding or related written or oral agreement.
2. The illegality or invalidity of any provisions of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.
3. The Partners agree that the laws of the United States of America as applied by the Federal Courts shall govern this Agreement.
4. **INSTITUTION** and **[Navy Collaborator]** may elect to terminate this Agreement at any time by mutual consent. In such event, the Partners shall specify the disposition of all activities accomplished or in progress arising from or performed under this Agreement, and they shall specify the disposal of all property in a manner consistent with this Agreement and property disposal laws and regulations. Either Partner may unilaterally terminate this entire Agreement at any time by giving the other Partner written notice at least 30 days prior to the desired termination date.
5. This Agreement will remain in effect for 60 months unless terminated by the participating organizations. At the conclusion of this term, it may be extended by mutual written agreement of the Partners. Modifications can be made at any time by mutual agreement of the signatories or their successors.
6. The articles covering Liabilities, General Provisions, and Surviving Provisions shall survive the termination of this Agreement.

IX. EFFECTIVE DATE

This Agreement will become effective on the date when it has been executed by both Parties.

X. POINTS OF CONTACT

A. [Navy Collaborator].

1. **Technical Point of Contact.** Name, address, phone, fax, e-mail
2. **Legal Point of Contact.**
3. **Administrative Point of Contact.**

B. INSTITUTION.

1. **Signatory.** Name, address, phone, fax, e-mail
2. **Administrative Point of Contact.** Name, address, phone, fax, e-mail

Section V - 2b

Education Partnership Agreement - Example Two

There is no standard Navy EPA. General authority and contract considerations for EPAs are described by 10 U.S. Code § 2194. The sample provided here has been used by the Naval Undersea Warfare Center, Division Newport. This sample can be tailored for use by other Commands/Activities.

EDUCATION PARTNERSHIP AGREEMENT

FOR

[Selected Technology]

BETWEEN

[Educational Institution]

AND

[Navy Laboratory]

Education Partnership Agreement

This Education Partnership Agreement is entered into by and between **[Educational Institution]** also known as, located in **[City]**, **[State]**, and the United States of America, as represented by the Department of the Navy, **[Navy Laboratory]** also known as **[Navy Laboratory Acronym]**.

a. Whereas, Congress in enacting Public Law 101-510 (5 November 1990) and Title 10 U.S. Code § 2194, Education Partnerships for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education; and

b. Whereas, Title 10 U.S. Code § 2194, Education Partnerships require the Secretary of Defense to authorize each defense laboratory to enter into one or more Education Partnership Agreements with educational institutions in the United States, including local education agencies, colleges, universities and nonprofit institutions that are dedicated to improving **science, mathematics, business, law, technology transfer or transition and engineering education**; and

c. Whereas, **[Navy Laboratory Acronym]** has a history spanning over 50 years of world-class research and development in undersea technologies; and

d. Whereas, **[Navy Laboratory Acronym]** currently possesses a broad spectrum of skills, facilities, personnel, special equipment, information, computer software and know-how pertaining to **[Selected Technology]**; and

e. Whereas, **[Navy Laboratory Acronym]** and **[Educational Institution]** desire to cooperate in developing a program under which **[Educational Institution]** students in science, mathematics, engineering and computer science may be given academic credit for work on defense laboratory research projects pertaining to **[Selected Technology]**; and

f. Whereas, **[Educational Institution]** desires to involve its faculty and students in utilizing the outstanding scientific, technological and undersea technology resources of **[Navy Laboratory Acronym]**.

Now, Therefore, the Parties hereto agree as follows:

1.0 PURPOSE

The purpose of this Education Partnership Agreement is to aid in the education of **[Educational Institution]** students by providing a mechanism by which selected students can undertake research projects and by which students and faculty of **[Educational Institution]** can benefit from the staff expertise, unique facilities and equipment related to **[Selected Technology]** available from **[Navy Laboratory Acronym]** through this Agreement. **[Navy Laboratory Acronym]**'s contributions to this partnership will help to encourage student interest in the **[Selected Technology]** applications of their individual disciplines; may benefit the laboratory in terms of advance training of future employees; and may benefit the country by exposing students to career opportunities in Government research and development.

2.0 REQUIREMENTS

2.1 Responsibilities of **[Navy Laboratory Acronym]**

2.1.1 **[Navy Laboratory Acronym]** may transfer to **[Educational Institution]** defense laboratory equipment, determined by the director (Commander) to be surplus, to support **[Educational Institution]**'s educational mission.

2.1.2 **[Navy Laboratory Acronym]** may loan defense laboratory equipment to **[Educational Institution]** for educational purposes.

2.1.3 **[Navy Laboratory Acronym]** may provide academic and career advice and assistance to **[Educational Institution]** students.

2.1.4 [Navy Laboratory Acronym] will provide personnel, equipment, and facilities to establish a program to allow selected [Educational Institution] students the opportunity to work at [Navy Laboratory Acronym] on research projects in [Selected Technology].

2.1.5 [Navy Laboratory Acronym] may suggest appropriate projects suitable for student participation. It is understood that projects will normally be of an extent and sophistication commensurate with either senior level undergraduate or advanced degree work. [Navy Laboratory Acronym] will also be responsible for determining if any laboratory research and development project on which a [Educational Institution] student or faculty member works or is involved with contains information which is proprietary or restricted for export or military critical technologies, and [Navy Laboratory Acronym] will notify [Educational Institution] students or faculty members to comply with paragraph 4.2 of this Agreement. [Navy Laboratory Acronym] may require [Educational Institution] faculty members who wish to participate in projects under this agreement to sign agreements restricting disclosure of certain information.

2.1.6 [Navy Laboratory Acronym] may provide opportunities for student internships and sabbaticals for [Educational Institution] faculty.

2.1.7 [Navy Laboratory Acronym] will provide students with appropriate guidance from staff scientists and engineers to ensure that projects meet the standards of [Navy Laboratory Acronym] and [Educational Institution]. Student projects should be structured along the lines of typical laboratory work and therefore be representative of meaningful on-the-job experience.

2.1.8 In accordance with Federal policy, the [Navy Laboratory Acronym] director will place a priority on providing assistance as suggested by [Educational Institution] for promoting science and engineering professions among groups who are traditionally involved in these professions in disproportionately low numbers.

2.1.9 The level of effort to be expended by [Navy Laboratory Acronym] on any activity under this Agreement shall be within the discretion of [Navy Laboratory Acronym].

2.1.10 All transfers and loans of defense laboratory equipment will be made following established [Navy Laboratory Acronym] procedures.

2.2 Responsibilities of [Educational Institution]

2.2.1 [Educational Institution] will specifically designate a faculty member to serve as liaison with [Navy Laboratory Acronym] concerning the structure and conduct of this Partnership Program. Additionally, each student involved in work with [Navy Laboratory Acronym] will have a faculty advisor appointed by [Educational Institution]. The [Educational Institution] faculty advisor will work with the student and the [Navy Laboratory Acronym] staff in a cooperative effort to guide and monitor the student's work at [Navy Laboratory Acronym]. The [Educational Institution] faculty advisor will have the final responsibility for determining the student's course grade after consultation with the [Navy Laboratory Acronym] staff involved in the project.

2.2.2 Students satisfactorily completing participation in the Program may receive academic credit in the appropriate degree program, in accordance with established [Educational Institution] policies.

2.2.2.1 Undergraduate students participating in the Program may obtain academic credit through an appropriate senior level project-oriented course of their specific degree program, in accordance with established [Educational Institution] policies. The course requirements would include a formal written and/or oral report of the project results.

2.2.2.2 Graduate student involvement in the Program will usually be in the form of work which may serve as the basis for a thesis or a project. The student's advisor will serve as the faculty advisor described in paragraph 2.2.1. To obtain graduate academic credit for thesis or project work, established [Educational Institution] policy must be followed.

2.2.2.3 Acknowledgment of **[Navy Laboratory Acronym]** participation in any report or thesis, or subsequent presentations or publications resulting from work performed under this Agreement shall not be made unless prior approval from the Commander is obtained. By entering into the Agreement, **[Navy Laboratory Acronym]** does not directly or indirectly endorse any opinions or facts stated in any report, thesis, presentation, or publication made by any participating students or faculty of **[Educational Institution]**. The Program participants and/or **[Educational Institution]** shall not in any way imply that this Agreement is an endorsement of any such opinions or facts presented in any fashion.

2.2.2.4 **[Navy Laboratory Acronym]**, **[Educational Institution]** and participating students and faculty agree to confer and consult with each other prior to publication or other public disclosure of the results of work under this Agreement to ensure that no proprietary information or military critical technology is released. Furthermore, prior to submitting a report, thesis or manuscript for publication or before any public disclosure, each party will offer the other party an opportunity to review such proposed report, thesis, publication, or disclosure, to submit objections, and to file applications for letters patent (if necessary) in a timely manner, but in any case such review shall not delay release of publication for more than 45 days from submission.

2.3 Funding

Each Party will be responsible for its own funding.

3.0 WARRANTIES

3.1 Of **[Navy Laboratory Acronym]**

[Navy Laboratory Acronym] hereby warrants to **[Educational Institution]** that the performance of the activities specified by this Agreement is consistent with the mission of **[Navy Laboratory Acronym]**, and that the official executing this Agreement has the requisite authority to do so.

3.2 Of **[Educational Institution]**

[Educational Institution] hereby warrants to **[Navy Laboratory Acronym]** that, as of the date hereof, it is an educational institution, under the definition of, and as required by 10 U.S. Code § 2194, dedicated to improving science, mathematics, and engineering education; and that it has the requisite power and authority to enter into this Agreement and to perform according to the terms thereof.

4.0 CONDITIONS AND LIABILITIES

The following conditions and liabilities will apply to this program.

4.1 **[Educational Institution]** students and faculty will abide by **[Navy Laboratory Acronym]** rules for security, safety, and general conduct while at **[Navy Laboratory Acronym]**.

4.2 **[Educational Institution]** students and faculty participating in the Program will not be required to obtain security clearances. Project completion will not require access to classified information. If work on projects requires **[Educational Institution]** student or faculty access to proprietary information in **[Navy Laboratory Acronym]** possession or information for which export is restricted, **[Navy Laboratory Acronym]** may allow work on the project on a case-by-case basis. In such circumstances, **[Navy Laboratory Acronym]** may require **[Educational Institution]** students and faculty to sign a standard nondisclosure agreement.

4.3 **[Navy Laboratory Acronym]** Liabilities

[Navy Laboratory Acronym]'s responsibility for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of **[Navy Laboratory Acronym]** while acting within the scope of his office or employment will be in conformance with the Federal Tort Claims Act (28 U.S. Code § 2671 et seq.). Except as provided by the Federal Tort Claims Act, **[Navy Laboratory Acronym]** shall not be liable to **[Educational Institution]** for any claims whatsoever, including loss of revenue or other indirect or consequential damages.

4.4 Indemnification by **[Educational Institution]**

[Educational Institution] will agree to indemnify and hold harmless the United States, its agents, and employees against any and all liability or claims for personal injury or death, failure of or damage to experiments or equipment,

or for the loss of or damage to any property of students, faculty or other persons, resulting directly from the use by **[Educational Institution]** or its personnel of **[Navy Laboratory Acronym]** facilities. Such liability shall include any injury occurring to or caused by a student or faculty member while involved in the performance of duties under this program. This indemnification shall not apply to any liability or claims resulting directly from the negligent acts or omissions of **[Navy Laboratory Acronym]** and its employees. This provision shall survive termination of this Agreement.

4.5 Force Majeure

No Party shall be liable for the consequences of any unforeseeable force majeure event that (1) is beyond their reasonable control, (2) is not caused by the fault or negligence of such Party, (3) causes such Party to be unable to perform its obligations under this Agreement and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a force majeure event, the Party unable to perform shall promptly notify the other Party. It shall further pursue its best efforts to resume as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

5.0 ADMINISTRATION

The administration of this Partnership Program and the coordination of the specific activities which comprise the program will be the joint responsibility of the designated program managers from each institution.

[Navy Program Manager] will serve as the Partnership Program Manager (PPM) on behalf of **[Navy Laboratory Acronym]**. The **[Navy Laboratory Acronym]** PPM will work with the **[Educational Institution]** PPM to identify specific activities to be undertaken at any given time. The **[Navy Laboratory Acronym]** PPM will assure that program activities meet the legal and administrative requirements of the United States Government and the Department of the Navy. If **[Navy Program Manager]** becomes unavailable for continued service as PPM, **[Navy Laboratory Acronym]** will designate a successor PPM.

[Partnership Program Manager] of **[Educational Institution]**, will serve as PPM on behalf of **[Educational Institution]**. The **[Educational Institution]** PPM will coordinate program activities with the **[Navy Laboratory Acronym]** PPM and ensure that they comply with the legal and administrative requirements of **[Educational Institution]**. If **[Partnership Program Manager]** becomes unavailable for continued service as PPM, **[Educational Institution]** will designate a successor PPM.

6.0 GENERAL PROVISIONS

6.1 Entire Agreement

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

6.2 Severability

The illegality or invalidity of any provisions of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

6.3 Headings

Titles and headings of the sections and subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

6.4 Governing Laws

The Parties agree that the laws of the United States of America as applied by the Federal Courts shall govern this Agreement for all purposes.

6.5 Termination by Mutual Consent and Unilateral Termination

[Navy Laboratory Acronym] and **[Educational Institution]** may elect to terminate this Agreement at any time by mutual consent. Either Party may unilaterally terminate this entire Agreement at any time by giving the other Party written notice not less than thirty (30) days prior to the desired termination date. In the event of mutual or unilateral

termination, the Parties shall specify the disposition of all activities accomplished or in progress, arising from or performed under this Agreement, and they shall specify the disposal of all property in a manner consistent with this Agreement, and property disposal laws and regulations.

7.0 PERIOD OF AGREEMENT

This Agreement will remain in effect for sixty (60) months unless terminated by the participating organizations. At the conclusion of this term it may be extended by mutual written agreement of the Parties. Modifications can be made at any time by mutual agreement of the signatories or their successors.

8.0 SURVIVING PROVISIONS

The articles covering Conditions and Liabilities, General Provisions and Surviving Provisions shall survive the termination of this Agreement

9.0 SIGNATURES

[Educational Institution]

[Navy Laboratory]

<signed>
<title>

<name of Commanding Officer>
<Rank>, U.S. Navy Commanding Officer

Date: _____

Date: _____

Section V - 3

Non-Disclosure Agreements (NDAs) - Explanation

NDAs are used by industry to protect their proprietary data. The Government protects data by having non-Federal Collaborators sign NDAs. Federal employees are forbidden by statute from disclosing proprietary information received from a contractor. Federal employees are discouraged from signing non-Federal NDAs because signing such an agreement puts only the signatory at risk, not the local Navy laboratory or the DON. The following examples are for an NDA signed by industry when receiving Government information or data ([Section V - 3a](#)) and two examples are presented for NDAs which can be given by a Federal employee to a non-Federal party citing the statutes that the Government employee must honor ([Section V - 3c](#) and [Section V - 3d](#)). [Section V - 3b](#) provides a bilateral or mutual NDA.

ORTAs and laboratory employees should use NDAs when companies wish to learn more about laboratory technologies before entering into a formal agreement.

****Local legal counsel should be consulted prior to using an NDA.****

Important references dealing with Government disclosure include the following:

- i) 5 U.S. Code § 552(b)(4) (Freedom of Information Act), *available at* <http://uscode.house.gov>;
- ii) Full text of the Freedom of Information Act with all amendments to the statute made by the “FOIA Improvement Act of 2016” (Department of Justice Office of Information Policy website) at <https://www.justice.gov/oip/freedom-information-act-5-usc-552>;
- iii) 18 U.S. Code § 1905 (Disclosure of Confidential Information Generally) *available at* <http://uscode.house.gov>;
- iv) 18 U.S. Code §§ 1831-1939 (Economic Espionage Act of 1996) Protection of Trade Secrets, *available at* <http://uscode.house.gov>

Section V - 3a

Non-Disclosure Agreement for Industry - Example

[full name of NAVY LABORATORY] Non-Disclosure Agreement

This Agreement is entered into by **[insert name, organization, and address]**, (hereafter the Recipient) for the benefit of the Government of the United States of America (hereafter the Government) in consideration of disclosure by the Government, as represented by the **[full name of Navy Laboratory then acronym]**, Department of the Navy, of data collected by the United States Government.

[Navy Laboratory] is the holder of **[specify what type of information is being offered by the Government, i.e., sonar data, CAD/CAC algorithms, XYZ sensor etc.]** in which the Government owns or may own a right or interest.

Recipient is desirous of obtaining advance information concerning **[specify precise exchange item]** for the purpose of evaluation. Recipient hereby agrees, in consideration of disclosure to recipient of such information by **[Navy Laboratory]**, to protect such information in accordance with the terms and conditions of this Agreement.

Recipient agrees that it will use the information for purposes of evaluation only, and that it will disclose the information only to the Recipient's employees and associates who have a need to know the information for such purposes and who are under an obligation to the Recipient not to further disclose to any other person and use it for any other purpose.

All information that is subject to this Agreement shall be in writing and marked with the following legend:

Restricted Information

This information has been made available in confidence for purpose of evaluation only, and may not be further disclosed, or used for any other purpose, without written authorization from Counsel, **[full name of Navy Laboratory and address]**.

In the event that Recipient receives an oral disclosure of information that is protectable under this Agreement but has not previously been received in written form, Recipient is under no obligation to hold such orally disclosed information in confidence unless reduced to a writing received by Recipient within one month from the date of oral disclosure and marked with the above identified legend. Recipient agrees to hold such oral disclosures in confidence under the terms of this Agreement until expiration of the one-month period.

Recipient's obligation under this agreement shall remain in effect for a period of five (5) years after the date of execution by Recipient, or until release of Recipient from any or all obligations under this Agreement is obtained in writing from Counsel, [Navy Laboratory].

Recipient's obligation under this Agreement shall not extend to: (1) Information that is already in the possession of the Recipient; (2) Information that is available to the public; (3) Information that subsequently becomes available to the public; (4) Information that is subsequently developed within the Recipient's organization independently, without knowledge of information subject to this Agreement; and (5) Information that is obtained by Recipient from some another source without restriction.

Recipient agrees that neither the Government nor any person acting on its behalf will be responsible for any injury, damage, or loss of any kind whatsoever from use of the information provided under this Agreement.

IN WITNESS WHEREOF, Recipient, by its authorized representative, has executed the Agreement.

Recipient

By: _____

Name: _____

Title: _____

Date: _____

This attachment to the Non-Disclosure Agreement may be useful if your laboratory requires data on each person having access to the material/information described in the Non-Disclosure Agreement.

Personnel Information

Name _____

Organization _____

Mailing Address _____

City _____ State _____

Country _____ Postal Code (Zip) _____

Email Address _____

Office Phone _____ FAX _____

Social Security Number * _____

Date of Birth _____ Place of Birth _____

US Citizen Yes No (circle the correct response)

INS Number if Naturalized _____

Highest Level Security Clearance Held _____

* Used only if security clearance is needed.

Note: When the recipient/signatory of this Agreement is another Government Agency, its purpose is to give notice and to give record of the date of transfer. The notice is to handle the information as Government proprietary pending patent filings and any commercial actions being undertaken.

Section V - 3b

Bilateral Non-Disclosure Agreement - Explanation and Example

The bilateral NDA is also known as a mutual NDA. Within the Navy, the Naval Research Laboratory uses this type of NDA. Local General Counsel should be consulted prior to using this NDA.

Mutual Non-Disclosure Agreement

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between [Navy Collaborator], a United States Federal Government Laboratory of the Department of the Navy, located at [Navy Collaborator address], and [Non-Navy Collaborator], whose principal address is located at [Non-Navy Collaborator address] (hereinafter referred to individually as “Party” or collectively as the “Parties”) to facilitate the following described “Stated Purpose” by protecting non-public and proprietary information from misuse and unauthorized disclosure. This Agreement shall become effective upon the date of last signature by the authorized representatives of each of the Parties (“Effective Date”).

SUBJECT MATTER AND STATED PURPOSE:

- a. The general subject of information to be exchanged is _____
- b. The Stated Purpose of this Agreement is to _____

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND SPECIFIC REQUIREMENTS. As used in this Agreement, the following terms shall have the meanings as defined.

- 1.1. Information – includes, but is not limited to, knowledge relating to research, inventions, trade secrets, technology (including designs and specifications of components and systems, the composition of matter, methods and processes, machines and articles of manufacture, applications, and performance data), and business and financial records.
- 1.2. Disclosure of Information – the exchange of Information orally, visually, or on any human or machine readable medium including, but not limited to, oral and visual expressions, demonstrations, audio tapes, video tapes, drawings, computer memory devices, models, prototypes and samples.
- 1.3. Disclosing Party – the Party making a Disclosure of Information to the other Party. Either or both Parties may be a Disclosing Party.
- 1.4. Receiving Party – the Party receiving a Disclosure of Information from the other Party. Either or both Parties may be a Receiving Party.
- 1.5. Protected Information – Information provided by a Disclosing Party to a Receiving Party under this Agreement that has been clearly identified through the use of an appropriate marking that puts the Receiving Party on notice that the Disclosing Party considers the Information to be protected under the terms of this Agreement and such Information should not be disclosed to any non-Parties except as provided under the Agreement. Protected Information shall not include, and the identification of Information as Protected Information shall not affect the rights of the Parties to use or disclose, Information that:

- 1.5.1. was available in the public domain at the time of disclosure and receipt, or subsequently becomes available in the public domain from a source other than by a breach of this Agreement by the Receiving Party, or
- 1.5.2. was already known to the Receiving Party, as can be proved by written documentation, prior to the time the Disclosing Party disclosed the Protected Information to the Receiving Party, or
- 1.5.3. is or becomes available to the Receiving Party without restriction from another source that does not violate any obligation to the Disclosing Party, or
- 1.5.4. is independently developed by or for the Receiving Party by persons having no access to the Disclosing Party's Protected Information, as evidenced by written documentation; or
- 1.5.5. is disclosed by the Disclosing Party to a third party without restriction; or
- 1.5.6. Is disclosed after three (3) years from the date of receipt of the Information.

The fact that individual elements of a Disclosing Party's Protected Information may be in the public domain shall not relieve the Receiving Party of its obligations hereunder unless the specific combination or combinations of elements as disclosed in such Protected Information is available to the public.

- 1.6. Appropriate Markings – any reasonable method by which a Disclosing Party clearly identifies to a Receiving Party that Information is being disclosed under this Agreement, and such Information is considered by the Disclosing Party to be Protected Information. Protected Information that is disclosed in tangible form shall be clearly marked with a human readable legend, stamp or other written notification prominently affixed or attached to the medium in which the Information is conveyed. The marking shall reference and require compliance with this Agreement. Use of the marking "Protected Information" is preferred, but the Parties will also recognize other usual and appropriate markings such as "Sensitive Information," "Proprietary Information," "Non-Disclosure Information," and "Business Sensitive Information." The terms "Confidential," "Secret," and "Top Secret" are established security classifications within the U.S. Government and shall not be used to mark or identify Information as Protected Information.
 - 1.6.1. If Protected Information is disclosed in an intangible form (orally, visually, or otherwise), the Disclosing Party shall, prior to disclosure, provide oral or written notice to the Receiving Party that it considers the Information to be Protected Information, and the Receiving Party shall treat such intangible Information as Protected Information. Within thirty (30) calendar days after notice and disclosure, the Disclosing Party shall provide an appropriately marked written summary of the intangible Information to the Receiving Party. If a properly marked written summary is not provided by the Disclosing Party within thirty

(30) calendar days, the Information previously conveyed in intangible form will not be Protected Information under this Agreement.

1.6.2. If a Receiving Party has any objection to a marking placed on Information or to any summary of intangible Information transferred to it by the Disclosing Party as Protected Information, the Receiving Party shall, within ten (10) working days of receipt of such Information or summary of intangible Information, bring such objection to the attention of the Disclosing Party. If the Parties are unable to mutually resolve the objection, the Receiving Party shall immediately return the challenged Information or summary to the Disclosing Party.

2. AUTHORIZED ACCESS AND DISCLOSURE.

- 2.1. A Receiving Party shall not use or disclose Protected Information other than in accordance with the terms and conditions of this Agreement.
- 2.2. A Receiving Party shall take reasonable and appropriate measures to safeguard Protected Information from misuse, theft, loss, destruction, and unauthorized disclosure. Such measures shall be no less than that degree of care the Receiving Party normally takes to preserve and safeguard its own proprietary Information of a similar nature. Upon discovery of any misuse, theft, loss, destruction, or unauthorized disclosure of Protected Information, a Receiving Party shall promptly notify the Disclosing Party in writing and take action to prevent further disclosure and to recover any Protected Information already disclosed.
- 2.3. If Protected Information is included in any analyses, reports, or other documents or physical embodiments prepared by the Receiving Party, all such documents and embodiments shall be appropriately protected by the Receiving Party in the same manner as the Receiving Party protects the source Protected Information.
- 2.4. A Receiving Party may provide access to Protected Information to its own employees who reasonably require such access in order to accomplish the Stated Purpose of this Agreement and who are legally bound by law or written agreement to safeguard Protected Information to substantially the same extent as the Receiving Party is bound to do so under this Agreement. The status of **[Navy Collaborator]** employees as U.S. Government employees subjects them to the requirements and restrictions of the Trade Secrets Act (18 U.S. Code § 1905) which are deemed to be at least as extensive as the requirements and restrictions of this Agreement with regard to their duty to safeguard Protected Information. Prior to being granted access to Protected Information, employees of a Receiving Party shall be advised concerning the requirements and restrictions of this Agreement, directed to use and safeguard Protected Information properly, and not to disclose Protected Information without proper authorization.
- 2.5. A Receiving Party may provide access to Protected Information to its agents, service contractor employees, collaborators and other non-Parties to this Agreement who reasonably require such access in order to accomplish the Stated Purpose of this

Agreement. Before any such non-Party organizations or individuals are granted access to Protected Information, the Receiving Party shall notify and obtain the concurrence of the Disclosing Party. The Receiving Party shall also require non-Party organizations and individuals (other than U.S. Government officers and employees who are covered by the Trade Secrets Act, 18 U.S. Code § 1905) to execute the Supplemental Agreement at Appendix I prior to providing such non-Parties access to any Protected Information.

- 2.6. A Receiving Party shall not disclose Protected Information or any matter derived from Protected Information to any person (including its own employees), nor shall a Receiving Party export any Protected Information from the United States, if such disclosure or export would violate the Arms Export Control Act, the International Traffic in Arms Regulation (22 C.F.R. Part 121 et seq.), the Export Administration Act, the Department of Commerce Export Regulations (15 C.F.R. Part 730 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R), or any other applicable law or regulation of the United States. A Receiving Party shall first obtain the written consent of the Disclosing Party before exporting or requesting authority to export Protected Information from the United States.
- 2.7. The Parties agree that Protected Information disclosed under this Agreement is proprietary to the Disclosing Party. Nothing contained herein shall be construed to grant or confer any rights other than to use the Protected Information for the Stated Purpose under the terms of this Agreement, nor shall anything herein be construed to grant license or other rights to any inventions, patents, trademarks, copyrights, technical information, trade secrets, or other intellectual property whatsoever.
- 2.8. In the event a Disclosing Party discloses a non-Party's proprietary information, the Disclosing Party represents that it is authorized to disclose such proprietary information to the Receiving Party, and the Receiving Party agrees to treat such proprietary information as the Disclosing Party's Protected Information.
- 2.9. The following individuals are designated as the principal points-of-contact for the transmittal and receipt of Protected Information under this Agreement:

For **[Navy Collaborator]**:

Name

Phone

Email

For **[Non-Navy Collaborator]**:

Name

Phone

Email

3. GENERAL PROVISIONS.

- 3.1. All Protected Information owned by a Disclosing Party shall remain the property of the Disclosing Party. Protected Information in tangible form may be retained in the possession of the Receiving Party after termination or expiration of this Agreement only to the extent expressly authorized by the Disclosing Party. Within thirty (30) days after

termination or expiration of this Agreement, or upon receipt of a written demand from the Disclosing Party for the return of Protected Information, the Receiving Party shall promptly cease all use of the Disclosing Party's Protected Information. The Receiving Party shall make a commercially reasonable good faith effort to return (or destroy, if so requested) all tangible forms of Protected Information received from the Disclosing Party. If destruction is requested, the Receiving Party will provide written notification to the Disclosing Party certifying that the destruction has been accomplished.

- 3.2. If samples, models, prototypes, computer programs, or other such embodiments are disclosed as Protected Information, the Receiving Party will not attempt to reverse engineer or otherwise analyze, modify, or adapt such items unless the written approval of the Disclosing Party is obtained prior to engaging in reverse engineering, analysis, modification, or adaptation.
- 3.3. Each Party shall bear its own costs and expenses incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to deliver Protected Information to the other Party or to enter into a contract, subcontract, or other business relationship with the other Party.
- 3.4. This Agreement shall not be construed as a Teaming Agreement, Joint Venture, or any other such agreement nor shall it be construed as a commitment to procure or provide any specific products or services.
- 3.5. THE PARTIES AGREE THAT ALL PROTECTED INFORMATION AND EMBODIMENTS THEREOF ARE PROVIDED AND ACCEPTED ON AN "AS IS" BASIS. THE DISCLOSING PARTY MAKES NO WARRANTY OR REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.
- 3.6. Either Party, upon thirty (30) days written notice to the other Party, may terminate this Agreement.
 - 3.6.1. Duration. Unless sooner terminated, this Agreement shall expire three (3) years from the Effective Date.
 - 3.6.2. Period of Obligation. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by a Receiving Party with respect to protection, use, disclosure and return or destruction of Protected Information shall survive and remain in effect for three (3) years from the date of the delivery of the Protected Information to the Receiving Part.
- 3.7. This Agreement may not be assigned by either Party without the prior express written authorization of the other Party. All obligations incurred by a Receiving Party under this Agreement with respect to Protected Information shall be binding on its authorized successors and assigns.

- 3.8. This Agreement shall be governed by the Federal laws applicable to **[Navy Collaborator]** as an instrumentality of the United States Government.
- 3.9. In the event a Receiving Party is subjected to any legal process that seeks to require it to produce Protected Information for inspection or review in a judicial or administrative proceeding, the Receiving Party shall promptly provide notice and a copy of the legal process to the Disclosing Party in order that the Disclosing Party may have an opportunity to challenge the legal process or seek a protective order. If, in the absence of a protective order, a Receiving Party is compelled to produce Protected Information to a tribunal or be found liable in contempt and subjected to a penalty, the Receiving Party may disclose such Protected Information to the tribunal provided the Protected Information so disclosed is clearly marked as Protected Information.
- 3.10. This Agreement constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreements, representations and understandings of the Parties with respect to the disclosure of Information covered by this Agreement. It shall not be suspended, modified, or amended except by written agreement of the Parties. The provisions of this Agreement are independent of and separable from each other, and, no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be found invalid or unenforceable.
- 3.11. This Agreement may be executed in duplicate with each Party signing one original and providing a facsimile (fax) or other electronic copy of the signature page to the other Party. The Party receiving the electronic signature shall acknowledge receipt of the electronic signature. Each Party agrees to make its document with original signature available to the other Party upon request. The Parties further agree that the electronic signatures shall be treated as original signatures, and neither Party shall contest the validity of this Agreement based on the use of electronic signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized representatives who also warrant their authority to enter into the Agreement on behalf of their respective Parties:

_____	_____
For: [Navy Collaborator]	For: [Non-Navy Collaborator]
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title
DATED: _____	DATED: _____

APPENDIX I
SUPPLEMENTAL NON-DISCLOSURE AGREEMENT

In consideration of being allowed access to Protected Information under the above basic Non-Disclosure Agreement between [Navy Collaborator] and [Non-Navy Collaborator], the Undersigned agrees that:

The basic Non-Disclosure Agreement has been read and the requirements and restrictions with respect to the use, protection, disclosure, and return or destruction of Protected Information are understood. The terms of the Agreement with respect to the use, protection, disclosure, and return or destruction of Protected Information will be complied with by the Undersigned to the same extent as if the Undersigned were an original Party and signatory to the basic Non-Disclosure Agreement. When the Undersigned signs this Agreement as the representative of an Organization, the Undersigned will ensure that all individuals who are authorized access to Protected Information through the Organization will sign and enter into this Supplemental Non-Disclosure Agreement before being granted access to Protected Information.

IN WITNESS WHEREOF, the Undersigned has hereto subscribed individually and/or as representatives of the named Organization.

SIGNATURE

NAME (Print or Type)

TITLE

DATE

Name & Address of Organization

Section V - 3c

Non-Disclosure Agreement for Federal Employees - Example One

Acknowledgement of Responsibility Regarding Privately Owned Proprietary Information

The undersigned Federal Employee acknowledges his/her responsibilities under Title 18, Section 1905 of the United States Code (reproduced below) with regard to the control and protection of privately owned proprietary information. The undersigned Federal Employee acknowledges that, if convicted of a violation of this statute, he/she may be fined or imprisoned, and removed from office or employment.

Employee Signature

Print Employee Name

Date

18 U.S. Code § 1905. Disclosure of Confidential Information Generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S. Code §§ 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under Chapter 37 of Title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

Section V - 3d

Non-Disclosure Agreement for Federal Employees - Example Two

**Acknowledgement of Duty of Non-Disclosure
To Protect <enter company's name>'s Confidential Information**

- A. Parties. This Acknowledgement is executed by [govt employee name], a full-time civilian employee of the United States Navy's [laboratory name and location].
- B. Purpose. The purpose of this Acknowledgement is to confirm [govt employee name]'s duties to protect Confidential Information received from [company name] for the sole purpose of:
- [describe purpose for which information will be used]. The Confidential Information disclosed to [govt employee name] by [company name] will consist of [describe information].
- C. Acknowledgement. [govt employee name] acknowledges, by signing below, that the Confidential Information provided by [company name] contains information that is presented in confidence and may contain [company name]'s trade secret or commercial or financial information, and further acknowledges the obligation to protect such information from disclosure to the extent authorized or required by:
- i) 5 U.S. Code § 552(b)(4) (Freedom of Information Act), available at <http://uscode.house.gov>;
 - ii) Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), available at <https://www.archives.gov/federal-register/codification>;
 - iii) 18 U.S. Code § 1905 (Trade Secrets Act), available at <http://uscode.house.gov>;
 - iv) 18 U.S. Code § 1831 et seq. (Economic Espionage Act), available at <http://uscode.house.gov>; and
 - v) any other similar statute, order or regulation applicable to United States Government employees.

The foregoing authorities represent [govt employee name]'s entire obligation to protect the Confidential Information received under this Agreement. Nothing herein shall be interpreted as giving rise to a private cause of action against [govt employee name] or any other employee of the United States Government.

Accepted:

By _____

Name:

Title _____

Date _____

Section V - 4

License Grantback Agreements - Explanation and Example

If the Navy is using a Third Party Contractor and a Subject Invention is Made as a result of the work under a CRADA, the Bayh-Dole rights may be waived by the Contractor with a license grantback agreement.

****Local Intellectual Property attorney should be consulted when using this agreement.****

License Grantback Agreement

Patent Application Title: **[Insert Title as on Patent Application]**

Contractor Inventor(s): **[Insert Name(s) as in Patent Application]**

Government Inventor(s): **[Insert Name(s) as in Patent Application]**

Contractor: **[Insert Full Name and Acronym if Any]**

Contract No.: **[Insert Full Navy Contract Number]**

Government Entity: **[Insert Full Name and Acronym, of Government Agency, Department, or Laboratory]**

Agency Docket Nos.: **[Insert Appropriate Assigned Number]**

Inventions: Patent Application No. **[Insert Number]**

License Grant: The Contractor has retained nonexclusive royalty-free license throughout the world in each subject invention in the inventions under FAR 52.227-11. The Contractor hereby relinquishes its nonexclusive royalty-free license throughout the world in each subject invention and grants back to the Government all right, title and interest in and to each subject invention.

Duration: This License shall be in effect until the expiration of the above-referenced U.S. patent applications, including any substitution, division, continuation-in-part, continuation, foreign counterpart and/or reissue and any U.S. or foreign patents that issue therefrom, or until all exclusive or partially exclusive licenses executed by **[Navy Laboratory]** in accordance with applicable provisions at 37 C.F.R. Part 404 are terminated, whichever is earlier.

Governing Law: This License shall be governed by and construed in accordance with applicable United States Federal Law, Regulations, Directives, and Instructions.

Signed this _____ Day of _____, 20xx.

I, the undersigned, verify that I am empowered to bind the company and that the company agrees to be bound to this License Grantback Agreement and do so by affixing my signature hereto.

By:

Name and title

[Insert Full Contractor Name]

Guidelines and Discussions

Section VI

- [VI-1](#) Definitions
 - [VI-1a](#) “Conception” and “Reduction to Practice”
 - [VI-1b](#) Controlled Unclassified Information (CUI)
 - [VI-1c](#) Government Purpose Rights
- [VI-2](#) The Use of Contractors – Explanation
 - [VI-2a](#) The Use of Support Contractors to Accomplish the Technology Transfer Office (TTO) Mission
 - [VI-2b](#) The Use of Contractors in CRADAs
- [VI-3](#) CRADA Security Considerations: Classified / For Official Use Only (FOUO) / Export Control / Foreign Owned, Controlled or Influenced (FOCI)
- [VI-4](#) Collaborations and Transactions with Foreign Persons, Entities, and Dealing with FOCI
 - [VI-4a](#) Summary of Foreign Disclosure Determination and Export Control Requirements for Licenses and CRADAs
 - [VI-4b](#) FOCI Entities
 - [VI-4c](#) An Example of One Navy Laboratory’s Due Diligence Program for Dealing with Foreign Persons, Entities and FOCI
 - [VI-4d](#) Tool Kit - Links to Foreign Disclosure and Export Control Laws, Regulations and Other Useful References
- [VI-5](#) Release Issues for CRADAs - Explanation
 - [VI-5a](#) Public Release Issues for CRADAs
 - [VI-5b](#) Dealing with FOIA Requests
 - [VI-5c](#) Release of a CRADA to Other Federal Agencies or Departments
- [VI-6](#) Patent Rights and CRADAs with Government Contractors
- [VI-7](#) U.S. Competitiveness
- [VI-8](#) Small Business Innovation Research (SBIR) and CRADAs

Section VI - 1

Definitions

The following includes discussions to clarify terms and definitions in the standard Navy cooperative research and development agreement (CRADA). Items that are discussed include the following: Conception and Reduction to Practice; Controlled Unclassified Information (CUI); and Government Purpose Rights.

Section VI - 1a

“Conception” and “Reduction to Practice”

The following information may be particularly useful when considering how the defined term “Made” is defined in a CRADA and how “Made” is used throughout the CRADA. The definition “Made” in the CRADA is as follows: “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention (15 U.S. Code § 3703(8)) and where “Invention” in the CRADA is defined as follows. “Invention” means any invention or discovery that is or may be patentable or otherwise protected under Title 35, U.S. Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act (15 U.S. Code § 3703(7)).

An important concept in patent law that needs to be understood by both the scientific and engineering communities is: when has “invention” occurred. “Invention” can be comprised of two basic aspects, conception and reduction to practice; but, at a minimum, comprises conception. Conception is thought of as the mental part of the invention and actual reduction to practice as the physical part of the invention. The U.S. patent laws are based on a “first inventor-to-file” system for patent applications filed at the U.S. Patent and Trademark Office (USPTO) on or after March 16, 2013. Corroboration by an independent witness of the invention will always be required in inventorship determinations.

Conception is the “idea” part of invention. Case law has defined it as the formation “in the mind of the inventor of a definite and permanent idea of a complete and operative invention, as it is thereafter to be applied in practice.” See, Hybitech, Inc. v. Monoclonal Antibodies, Inc., 231 United States Patent Quarterly at 87-88 (Fed. Cir. 1986). The idea can be formed by more than one inventor. The “idea” of the invention must be complete and permanent to such a degree that one of ordinary skill in the art could physically complete the invention, i.e., could actually reduce the idea to practice by simply reading the disclosure of the idea. Another way to say this is that one of ordinary skill in the art must be able to determine from the disclosure the means for effectively carrying out the idea. If further undue research or undue experimentation is needed, there is no definite and permanent idea of the complete and operative invention. Thus, if more experimentation or research is needed in order to practice the invention then conception is not enough for invention to have occurred. One’s idea should be adequately described in one’s notebook and corroborated by an independent witness who understands the idea.

Reduction to Practice is defined as either “constructive reduction to practice” or “actual reduction to practice.” Constructive reduction to practice occurs when the patent application is filed with the USPTO. On the other hand, actual reduction to practice occurs when there is a physical article, physical syntheses or formation of a compound or composition, or the physical practice of a process or method. Corroboration by an independent witness of the actual reduction to practice should be found in one’s notebook.

Corroboration requires that at least one independent witness understands the disclosure as found in the inventor's notebook and then signs and dates the notebook. It is required that each witness sign and date the notebook at each stage of research, including the conception of the invention, actual reduction to practice, experimental results, and if a chemical invention, the usage.

For more information please contact your laboratory intellectual property (IP) counsel.

Section VI - 1b

Controlled Unclassified Information (CUI)

The following guidance is considered authoritative as of the date of this handbook. Please consult local security personnel for any updates or revisions.

References:

CUI is addressed in the CUI website of the National Archives, <https://www.archives.gov/cui>; based on Executive Order (EO) 13556 (Controlled Unclassified Information) signed by President Obama in 2010 and 32 Code of Federal Regulations (C.F.R.) Part 2002 (Implementing Directive). This website provides the CUI Registry, a CUI Marking Handbook, CUI Notices and other information relating to the Federal establishment and implementation of the CUI program.

The National Archives website also provides a CUI blog as an educational and informative resource, run by the CUI Executive Agent, to support implementation of the CUI Program. For frequently asked questions regarding CUI visit the CUI blog at: <https://isoo.blogs.archives.gov>.

The Department of the Navy (DON) addresses CUI in Secretary of the Navy (SECNAV) M-5510.36 (June 2006). This manual is available from the website for DON Issuances, <https://doni.documentservices.dla.mil/allinstructions.aspx>.

Discussion:

SECNAV M-5510.36, dated June 2006 (DON Information Security Program), states that an individual's need-to-know applies to classified and CUI. CUI is for official Government use and must not be released to the general public which includes foreign nationals. Persons disclosing CUI must ensure the individual receiving the information has the appropriate need-to-know.

CUI must be safeguarded. During normal working hours, CUI must be kept face down on desks. After normal working hours, CUI should be locked in a desk drawer or in a locked office. CUI should not be transmitted via non-secure means. CUI e-mail must be encrypted.

The definition used in the standard Navy cooperative research and development agreement (NCRADA) for CUI follows:

1.4 "Controlled Unclassified Information (CUI)" means official information that requires the application of controls and protective measures in accordance with national laws, policies, and regulations and has not been approved for public release, to include technical information, proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.

SECNAV M-5510.36 provides a more detailed definition as follows:

Controlled Unclassified Information (CUI) is defined and governed by laws, international agreements, Executive Orders, and regulations that address its identification, marking, protection, handling, transmission, transportation, and destruction. Categories of Controlled Unclassified Information include:

- a. For Official Use Only information, as defined under the Freedom of Information Act; protective measures; Law Enforcement Sensitive Information;
- b. Department of State Sensitive but Unclassified (formerly Limited Official Use) information;
- c. Department of Defense and Department of Energy Unclassified Nuclear Information;
- d. Drug Enforcement Administration Sensitive Information;
- e. Unclassified information in technical documents requiring distribution statements; and
- f. National Geospatial Intelligence Agency Limited Distribution Information.

Federal Policy and Implementation

The following are excerpts from the CUI website of the National Archives: <https://www.archives.gov/cui> (August 2018):

Controlled Unclassified Information (CUI) is information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and Government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.

Executive Order 13556 “Controlled Unclassified Information” (the Order), establishes a program for managing CUI across the Executive branch and designates the National Archives and Records Administration as Executive Agent (EA) to implement the Order and oversee agency actions to ensure compliance. The Archivist of the U.S. delegated these responsibilities to the Information Security Oversight Office (ISOO). A copy of the Order is available in the National Archives website.

32 C.F.R. Part 2002 “Controlled Unclassified Information” was issued by ISOO to establish policy for agencies on designating, safeguarding, disseminating, marking, decontrolling, and disposing of CUI, self-inspection and oversight requirements, and other facets of the Program. The rule affects Federal executive branch agencies that handle CUI and all organizations (sources) that handle, possess, use, share, or receive CUI—or which operate, use, or have access to Federal information and information systems on behalf of an agency.

The rule provides safeguarding, dissemination, marking, control and disposition guidance. A copy of the rule can be found in the National Archives website for the Code of Federal Regulations: <https://www.archives.gov/federal-register/cfr>

General Dissemination Principles

- Access to CUI should be encouraged and permitted to the extent that access or dissemination:
 - Abides by the laws, regulations, or Government-wide policies that established the information as CUI;
 - Furthers a lawful Government purpose;
 - Is not restricted by an authorized limited dissemination control established by the CUI EA; and
 - Is not otherwise prohibited by law.
- Agencies may place limits on disseminating CUI beyond for a lawful Government purpose only through the use of the limited dissemination controls listed below, or through methods authorized by a CUI specified authority.
- Each agency's CUI policy governs specific criteria for when, and by whom, it will allow for the application of limited dissemination controls and control markings, and ensure that policy aligns with 32 C.F.R. Part 2002.
- Only the designating agency may apply limited dissemination controls to CUI. An agency may apply limited dissemination control markings when it designates information as CUI and may approve later requests by authorized holders to apply them. Authorized holders may apply limited dissemination control markings only with the approval of the designating agency, and must follow all such markings on CUI.
- Designating agencies may combine limited dissemination controls to accommodate necessary practices.
- Using limited dissemination controls to unnecessarily restrict access to CUI is contrary to the goals of the CUI program.
- Reference 32 C.F.R. 2002.16 for full discussion of limited dissemination guidelines.

Limited Dissemination Control	Description	Marking	Portion Marking
No foreign dissemination	Information may not be disseminated in any form to foreign governments, foreign nationals, foreign or international organizations, or non-U.S. citizens.	NOFORN	NF
Federal Employees Only	Dissemination authorized only to (1) employees of U.S. Government Executive branch departments and agencies (as agency is defined in 5 U.S. Code § 105), or (2) armed forces personnel of the U.S. or Active Guard and Reserve (as defined in 10 U.S. Code § 101).	FED ONLY	FED ONLY
Federal Employees and Contractors Only	Dissemination authorized only to (1) employees of U.S. Government Executive branch departments and agencies (as agency is defined in 5 U.S. Code § 105), (2) Armed Forces personnel of the U.S. or Active Guard and Reserve (as defined in 10 U.S. Code § 101), or (3) individuals or employers who enter into a contract with the U.S. (any department or agency) to perform a specific job, supply labor and materials, or for the sale of products and services, so long as dissemination is in furtherance of that contractual purpose.	FEDCON	FEDCON
No dissemination to Contractors	No dissemination authorized to individuals or employers who enter into a contract with the U.S. (any department or agency) to perform a specific job, supply labor and materials, or for the sale of products and services. Note: This dissemination control is intended for use when dissemination is not permitted to Federal contractors, but permits dissemination to State, local, or tribal employees.	NOCON	NOCON
Dissemination List Controlled	Dissemination authorized only to those individuals, organizations, or entities included on an accompanying dissemination list. Note: Use of this limited dissemination control supersedes other limited dissemination controls, but cannot supersede dissemination stipulated in Federal law, regulation, or Government-wide policy.	DL ONLY	DL ONLY
Authorized for release to certain nationals only	Information has been predetermined by the designating agency to be releasable or has been released only to the foreign country(ies)/international organization(s) indicated, through established foreign disclosure procedures and	REL TO [USA, LIST] - see list	REL TO [USA, LIST] - see list

Limited Dissemination Control	Description	Marking	Portion Marking
	channels. It is NOFORN to all foreign country(ies)/international organization(s) not indicated in the REL TO marking. Note: See list of approved country codes for use with REL TO here. USA must always appear first when using REL TO followed by additional permitted trigraph country codes in alphabetical order.	provided in National Archives website	provided in National Archives website
DISPLAY ONLY	Information is authorized for disclosure to a foreign recipient, but without providing the foreign recipient with a physical copy for retention, regardless of medium to the foreign country(ies)/international organization(s) indicated, through established foreign disclosure procedures and channels.	DISPLAY ONLY	DISPLAY ONLY

CUI Registry - Categories and Subcategories

The CUI registry provides categories, subcategories, category descriptions and markings used to designate unclassified information for safeguarding. For the complete list of categories, descriptions and markings, refer to the National Archives website <https://www.archives.gov/cui/registry/category-list>

Section VI - 1c

Government Purpose Rights

Definition from the standard Navy CRADA:

- 1.11 “Government Purpose Rights” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes. Government Purpose Rights includes competitive procurement but does not include the right to have or permit others to use Data for commercial purposes.

Frequently Asked Questions (potential questions from a non-Federal CRADA collaborator):

1. May the Government use Data generated from our CRADA to make a competitive procurement award to another non-Federal party?

Answer: Yes, if the procurement is for Government purposes only.

2. What is meant by ‘commercial purposes’?

Answer: There is no explicit definition of “commercial purposes.” It does not include selling products and services to the Federal Government. It does include selling to non-governmental entities (i.e., consumers, corporations, etc.). The question becomes whether it includes sales to State and local, or even foreign governments. The general understanding is that it does, and only sales to the U.S. Government fall under the purview of Government Purpose Rights.

Section VI - 2

The Use of Contractors - Explanation

In the standard NCRADA, Article 10.6 Subcontracting, states that “Neither Collaborator may allow third parties to perform any part of the Cooperative Work under this Agreement without express written consent of the other Collaborator.” The two sections which follow provide discussions on the use of Third Parties to provide either CRADA administrative support or technical work in the performance of a CRADA.

If the Navy is using a Third Party Contractor and a Subject Invention is Made as a result of the work under a CRADA, the Bayh-Dole rights may be waived by the Contractor with a license grantback agreement (see [Section V - 4](#) for a sample agreement).

Section VI - 2a

The Use of Support Contractors to Accomplish the Technology Transfer Office (TTO) Mission

1. Special consideration must be given whenever the Government employs the services of a support contractor to accomplish any aspect of the TTO mission. This includes: (1) using support contractors within the TTO as administrative/clerical support as well as in direct support of negotiating and managing patent license agreements (PLAs) and CRADAs; and, (2) using support contractor services to assist in accomplishing the Government's collaborative research and development (R&D) obligations under CRADAs.
2. When support contractors are used within the TTO, there is a particular need for: (1) ensuring that sufficient non-disclosure provisions are included in the support contract to require support contractor employees to properly safeguard information they receive against unauthorized use and disclosure (see the attached model contract clause); (2) ensuring that the TTO non-Government customers (potential collaborators and licensees): (a) are made aware up-front as to the status (contractor or Government employee) of all individuals working in the TTO with whom they come into contact, (b) provide written consent to share their information with non-Government support personnel, and, (c) to request, at their option, a direct non-disclosure agreement (NDA) with the contractor employing the non-Government support personnel before information is disclosed; and, (3) ensuring that appropriate provisions are included in the support contract to avoid potential organizational conflicts of interest that may occur when a support contractor competes for Government requirements (see the attached model contract clause).
3. In order to address these matters, an appropriate contract provision must be included in all contracts supporting a TTO whenever contractor employees could potentially have access to company proprietary information or controlled Government information. A model contract clause is provided below. Any NDAs filed with a TTO as a result of this policy must be provided to the appropriate Contracting Officer for inclusion in the applicable contract file.
4. Special consideration must also be given whenever the use of support contractors is considered to accomplish any of the Government's R&D tasks under the Statement of Work (SOW) of a CRADA. In particular, the Contracting Officer and TTO must ensure that appropriate arrangements have been made between support contractors accomplishing the Government's CRADA R&D obligations and the CRADA collaborator regarding rights in inventions and technical data.
5. The TTO should refer to local counsel for specific guidance pertinent to the TTO's situation in view of the general guidance provided above.

References:

18 U.S. Code § 1905 Disclosure of Confidential Information Generally
Federal Acquisition Administration Part 9.5 (Organizational Conflict of Interest)
35 U.S. Code § 202; 15 U.S. Code § 3710a(b)(1) (Invention Rights)

Model Contract Clause:

USE AND SAFEGUARDING OF PROPRIETARY INFORMATION. The Contractor shall perform tasks in support of the Technology Transfer (T2) Program that include, but are not limited to, negotiation of CRADAs and PLAs.

- A. In the performance of such tasks, the Contractor may be given access to proprietary information submitted to the Government by non-Government businesses and organizations. The Contractor agrees: (1) to ensure that the non-Government party has provided written consent for delivery to and receipt by the Contractor of the non-Government party's proprietary information that may be subject to protection under 18 U.S. Code § 1905, Disclosure of Confidential Information Generally; (2) to protect all proprietary information it receives in performance of the Contract from unauthorized use or disclosure for as long as it is considered proprietary by the business or organization that submitted it to the Government; (3) to advise the businesses and organizations whose proprietary information will be received by the Contractor of (a) the Contractor's status and (b) willingness to enter into an NDA with the business or organization; and, (4) to ensure that all Contractor employees who have access to such proprietary information are made aware of and comply with the requirements and restrictions contained herein. The Contractor shall furnish copies of all NDAs to the Head of the TTO.

- B. The Contractor's independent and objective judgment must be relied upon by the Government in the negotiation and award of CRADAs and PLAs. To avoid the possibility of even the appearance of a conflict-of-interest, the Contractor agrees that it is precluded for five years from the date of award of a CRADA or PLA from independently pursuing the same or closely related technology or acting as a consultant or subcontractor for any other business or organization that is pursuing the same or closely related technology.

Section VI - 2b

The Use of Contractors in CRADAs

Types of contractors who supply goods and services that involve IP rights:

1. Service Contractors:

People doing a specific task on a relevantly short-term basis under contract to the Government, e.g., manufacturing, testing, repairing equipment, etc.

Typically commercial goods or services, and rarely R&D. Their contract with the Government may not have a patent rights clause.

2. Support Contractors:

People working for the Government on a contract basis to perform R&D. Often support contractors will work at Government facilities using Government equipment. Their contract with the Government should have a patent rights clause.

3. Third Party:

Third parties are parties other than the Federal laboratory and the CRADA Collaborator; but, they have entered into an agreement with either of these entities. Because of this agreement, they may have IP rights in subject matter developed under the CRADA. These IP rights must be addressed.

The CRADA Collaborator may also be working with a third party. The CRADA Collaborator must be able to warrant that no other agreement that they enter into will detract from their ability to fully deliver the IP rights that they are obligated to deliver to the Government under the CRADA. There are certain IP rights that both the Government and the CRADA Collaborator are required to receive under the Technology Transfer Act.

Understanding the Rules:

Service contractors and support contractors are not treated differently under the Federal Acquisition Regulation (FAR) regarding rights in inventions, assuming their contract contains a patent rights clause. Both of these types of contractors will have the right to elect title to any inventions that they develop. At the same time, CRADA Collaborators have the right to negotiate for an exclusive license to any inventions developed under the CRADA. This potential conflict must be resolved in any CRADA where the Government uses service or support contractors.

Refer to FAR Subpart 27.3 – Patent Rights Under Government Contracts for contract patent rights policy and clauses. Consult with laboratory IP counsel regarding the use of service and support contractors and other third parties in the performance of a CRADA.

Consider the following with regards to the third party agreement/contract:

1. The third party may be required to reach an agreement with the CRADA Collaborator to allocate the IP rights in any invention developed, at least in part, by third party personnel in performance of work under the CRADA.

2. If the third party agreement does not include FAR patent rights clauses, then the third party agreement must be modified to provide for the proper allocation of IP rights in any invention developed, at least in part, by third party personnel in performance of work under the CRADA.

Note that templates for third party agreements are provided in [Section IV, Supplemental Appendices](#), as [Section IV - 2a](#) and [IV - 2b](#) of this handbook.

Model for Handbook:

For CRADAs where the Government intends or anticipates the use of any third party, including service or support contractors in performance of the CRADA SOW, and where the support contract includes the proper FAR patent rights clauses, the CRADA should include the following language after Article 10.6:

“The Government intends to use support contractors for at least part of the tasks assigned to the Government in the SOW. [**Non-Navy Collaborator**] is advised that these support contractors have certain rights to inventions developed at least in part by their employees in support of work under this CRADA. The support contractor will be required to reach an agreement with [**Non-Navy Collaborator**] regarding these IP rights.”

For other CRADAs where the Government intends or anticipates the use of third party personnel in performance of the CRADA SOW, where the third party contract does not contain a proper FAR patent rights clause, the contract must be modified to comply with the terms of the CRADA. Suggested language may be found at FAR 52.227-II, Alternate V.

Section VI - 3

CRADA Security Considerations: Classified / For Official Use Only (FOUO) / Export Control / Foreign Owned, Controlled or Influenced (FOCI)

Office of Naval Research (ONR) Guidance for Safeguarding Classified Information in CRADAs:

The ONR guidance for safeguarding classified information within CRADA work requires the use of the DoD Contract Security Classification Specification (DD 254) and CRADA clauses that are either pre-approved by the ONR IP counsel or approved by cognizant DON laboratory legal counsel. All classified CRADAs should have a DD 254 as an appendix.

Background Information for Safeguarding Classified Information and Use of the DD 254:

References: FAR Subpart 4.402; DFARS Subpart 204.403/PGI-204.403(1); DoD 5220.22-M; Defense Security Service Guide for Preparation of the DD 254.

The Executive Order (EO) 12829, January 6, 1993 (58 Fed. Reg. 3479) as amended by EO 12885, December 14, 1993 (58 Fed. Reg. 65863), entitled “National Industrial Security Program” (NISP), establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. The National Industrial Security Program Operating Manual (NISPOM) incorporates the requirements of this and other relevant EOs. The following DoD publications implement the program:

- (1) National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M)
- (2) Industrial Security Regulation (DoD 5220.22-R)

The NISP applies to all Executive Branch Departments and Agencies and to all cleared contractor facilities located within the United States and its territories. The NISPOM “shall be used by contractors to safeguard classified information released during all phases of the contracting, licensing, and grant process, including bidding, negotiation, award, performance, and termination. It also applies to classified information not released under a contract, license, certificate or grant, and to foreign government information furnished to contractors that requires protection in the interest of national security.”

DFARS Subpart 204.403 offers the DD 254 as an option for solicitations/notices to industry that involve classified information and/or controlled unclassified information, consistent with FAR subpart 4.403. The DFARS also refers to the NISPOM and Industrial Security Regulation. FAR subpart 4.403 specifically states that “Agencies covered by the NISP shall use the Contract Security Classification Specification, DD Form 254.”

The Defense Security Service Guide for Preparation of the DD 254 describes the DD 254 as follows: “A completed DD 254, with its attachments and incorporated references, is the principal authorized means for providing security classification guidance and the requirements to the contractor with the associated contract or agreement that requires access to classified information.”

Practical Considerations and Key Elements:

The following discussions are based in part on the Naval Air Systems Command experience and therefore, policies may differ to some extent within other Navy commands. ORTAs should confer with local legal counsel and security expert regarding classified work and other security concerns.

Upon initiation of a new CRADA effort, the Office of Research and Technology Applications (ORTA) provides a CRADA security questionnaire to the Navy Principal Investigator (PI) in order to collect necessary information regarding classified/unclassified, computer usage (information assurance), involvement of foreign nationals, etc. At the appropriate time, the ORTA submits the completed CRADA security questionnaire, a copy of the draft CRADA document, and a draft DD Form 254 (if a classified CRADA) to the Industrial Security Division of the Navy laboratory intending to execute the CRADA. The Industrial Security team then initiates a CRADA contract security review to determine whether the Non-Navy Collaborator is properly credentialed to participate in a classified CRADA. When the CRADA contract security review has been completed and the CRADA approved, a representative of the Industrial Security team will convey this approval to the ORTA. If the CRADA is not approved, the existence of any deficiencies will be brought to the attention of the ORTA which will then take actions to ensure that these deficiencies are addressed either by the Navy PI, the Non-Navy Collaborator, or both, as necessary. Among the critical items and specific criteria examined by the Industrial Security team are the following:

Facility Clearance (FCL):

In order for a Non-Navy Collaborator to receive or generate classified information, it is necessary that the entity hold a facility clearance for that specific location at which the classified information will be received/generated. The Industrial Security Division of the Navy laboratory intending to execute the CRADA will contact the Defense Security Service (DSS) to ascertain whether a facility clearance exists. *It may not be practical to pursue a classified CRADA with a company that does not have an FCL already in place. The approval process for obtaining an FCL is lengthy and rigorous.*

Commercial and Government Entity (CAGE) Code:

A CAGE Code is an identifier assigned to vendors as part of the Central Contractor Registration process. The Industrial Security Division of the Navy laboratory intending to execute the CRADA will use the CAGE Code during its CRADA contract security review. The CAGE Code can be obtained directly from the Non-Navy Collaborator, or alternately, from online search engines such as the “Commercial and Government Entity (CAGE) Search and Inquiry (CSI)”:

<https://cage.dla.mil/Home/UsageAgree> or <https://www.sam.gov>

DD Form 254 “DoD Contract Security Classification Specification”:

For all classified CRADAs, the ORTA will prepare and submit a preliminary draft of a DD Form 254 to the Industrial Security Division of the Navy laboratory intending to execute the CRADA. This form will stipulate the level of safeguarding required, as well as specific details regarding use of communications security, intelligence, and FOUO information, Operations Security (OPSEC) Requirements, etc. The DD Form 254 will include the appropriate distribution statement for all subsequent reports generated as a result of CRADA activities. The draft DD Form 254 will be approved and signed by an authorized representative of the Industrial Security Division of the Navy laboratory intending to execute the CRADA. At the time of CRADA execution, the signed DD Form 254 will be forwarded, by the ORTA, to the Non-Navy Collaborator as a certified acknowledgment of the Non-Navy Collaborator’s ability to participate in the classified CRADA. The DD Form 254 may be added as an Appendix to the CRADA.

DD 2345 “Militarily Critical Technical Data Agreement”:

As stated in CRADA Article 3.2, if part of the work on the Agreement will involve access to and work on export controlled technical data that must be controlled in accordance with Department of Defense (DoD) Directive 5230.25⁵, the Non-Navy Collaborator must have a current militarily critical technical data certification and a copy of its Militarily Critical Technical Data Agreement, DD Form 2345, must be submitted to the Navy laboratory intending to execute the CRADA, prior to obtaining access to or working on export controlled technical data under the Agreement. A copy of the certified DD Form 2345 is then included as Appendix C of the CRADA. If the Non-Navy Collaborator does not have a current, certified DD Form 2345, one must be applied for by completing the necessary application and submitting it, along with supporting documentation to the U.S./Canada Joint Certification Office, Defense Logistics Information Service (DLIS), in Battle Creek, Michigan. The application form can be downloaded from the DLIS website:

<http://www.dla.mil/HQ/InformationOperations/Offers/Products/LogisticsApplications/JCP.aspx>

or

http://www.dla.mil/Portals/104/Documents/InformationOperations/LogisticsInformationServices/Logistics%20Applications/J6_dd2345_170629.pdf

OPSEC Plan:

In the case of classified CRADAs or unclassified CRADAs involving FOUO information, the Non-Navy Collaborator will be required to submit a preliminary draft of an OPSEC Plan that conforms to guidelines presented in DI-MGMT-80934A, “OPSEC Plan Guidance.” The OPSEC Plan is typically submitted to the Industrial Security Division of the Navy laboratory intending to execute the CRADA for approval and recommendation.

5 DoD Directive 5230.25 SUBJ: Withholding of Unclassified Technical Data From Public Disclosure. This directive applies to all unclassified technical data with military or space application that may not be exported lawfully without an approval, authorization, or license under the Arms Export Control Act as amended (22 U.S. Code § 2751 et seq.).

Guidance Documents that may be provided to the Non-Navy Collaborator:

Signed DD Form 254 Security Classification Specification
Department of Defense Manual 5400.07-R, FOIA Program
Information Assurance Manual SECNAV M-5239.1
Navy IA Program OPNAVINST 5239.1C
OPSEC Plan Contract Data Requirements List
OPSEC Plan Guidance DI-MGMT-80934C

Security Considerations for FOCI Companies:

FOCI Mitigation Instruments

American-based corporations that are FOCI are able to conduct business with the DoD by virtue of a FOCI Mitigation Instrument in accordance with the National Industrial Security Program Operating Manual (NISPOM), that is predicated on the establishment of a “firewall” between the U.S. subsidiary and its foreign ownership that is intended to ensure that sensitive or classified information is not vulnerable to foreign disclosure. Examples of these mitigation instruments are Special Security Agreements, Proxy Agreements, and Voting Trust Agreements. The FOCI Mitigation Instrument certifies that the company will abide by regulations and practices outlined in the NISPOM, particularly with regard to access to classified or sensitive information by unauthorized individuals. Either the ORTA or a security specialist can confirm the existence of a FOCI Mitigation Instrument by contacting the DSS. The DoD DSS website which provides guidance for FOCI Mitigation Instruments is:

http://www.dss.mil/isp/foci/foci_mitigation.html.

In CRADAs involving FOCI companies, it is recommended that the following paragraph, or suitable alternate language, be added to Article 4.2.1:

“[Non-Navy Collaborator] certifies that it maintains data and information in accordance with the National Industrial Security Program Operating Manual (NISPOM), and in accordance with NISPOM, maintains adequate protective measures preventing unauthorized disclosure of classified information to personnel not otherwise cleared to receive such information. Additionally, [Non-Navy Collaborator] certifies that it maintains facility security procedures in accordance with NISPOM and in accordance with its [FOCI Mitigation Instrument], as may be amended.”

Section VI - 4

Collaborations and Transactions with Foreign Persons, Entities, and Dealing with FOCI

Special diligence must be exercised in advance of discussions, exchanges of technical information, collaborations, and negotiation of business transactions (licensing inventions, CRADAs, and sales) with foreign persons, entities, and any entities that are “foreign owned, controlled, or influenced (FOCI).” This Section discusses the issues that most frequently present themselves when dealing with foreign persons, entities, and FOCI, and provides references to relevant authorities for resolving those issues. This Section includes the following:

[VI - 4a](#) Summary of Foreign Disclosure Determination and Export Control Requirements for Licenses and CRADAs

[VI - 4b](#) FOCI Entities

1. Principal U.S. Export Control Systems That Apply to “Technology Transfer” Transactions with Foreign Persons, Entities and FOCI
2. Definition of “Foreign Persons and Entities”
3. FOCI
4. Dealing with FOCI Entities
5. Coordination with the U.S. Trade Representative
6. Dealing with U.S. Citizens Who Represent Foreign Persons and Entities
7. Responsibility for Establishing Appropriate Controls of Technical Information
8. Ensuring Compliance with Export Control Requirements - Examination of the USML and the CCL
9. USML/CCL Technologies and Export Licenses
10. Deemed Export
11. Foreign Disclosure Determination
12. Sales to Foreign Entities (via 10 U.S. Code § 2539b)
13. Other Considerations
14. Universities and Export Control Provisions in Agreements

[VI - 4c](#) An Example of One Navy Laboratory’s Due Diligence Program for Dealing with Foreign Persons, Entities and FOCI

[VI - 4d](#) Tool Kit - Links to Foreign Disclosure and Export Control Laws, Regulations, and Other Useful References

Section VI - 4a

Summary of Foreign Disclosure Determination and Export Control Requirements for Licenses and CRADAs

1. All projects and transactions that involve the disclosure of classified or CUI to foreign governments or international organizations, or to persons who are sponsored by them, whether in the U.S. or abroad, must be coordinated with the Navy organization's points of contact for exports and security. If required, the project/transaction will be coordinated with the Navy International Programs Office (NIPO). The organization's Office of Counsel should be consulted.
2. The most useful and authoritative reference tool for assessing foreign disclosure issues is the Department of the Navy Foreign Disclosure Manual:

<https://doni.documentservices.dla.mil/manuals-secnav.aspx>

This manual provides policy and assigns responsibilities for the foreign disclosure of CUI that is determined to require export controls as well as other unclassified information with a military or space application that is determined to be exempt from public disclosure. It contains an extremely useful list of acronyms, abbreviations, and definitions relevant to foreign disclosure and export control issues.

3. If a project or transaction does not involve classified information or a foreign government (or international organization), a preliminary determination must be made whether CUI would have to be disclosed to foreign persons during the negotiation or performance of a project or transaction. CUI is technical information that is FOUO and includes information that is subject to export controls. The export controls generally do not apply to non-technical or administrative information; financial or budget information; human resources information; or, basic marketing information. Determining whether technical information is export controlled requires a review of the U.S. Munitions List (USML) and the Commerce Control List (CCL) by the program/project manager. Questions about coverage can be referred to the Office of Counsel. A Commodity Jurisdiction Determination can be requested from the U.S. Department of State Directorate of Defense Trade Controls (DDTC) (to determine whether the technology is on the USML or the CCL); and, for items on the CCL, a Commodity Classification can be requested from the U.S. Department of Commerce Bureau of Industry and Security (BIS) (to determine which, if any, Export Control Classification Number (ECCN) applies to the technology).

The USML is listed in 22 C.F.R. Part 121 and available in the DDTC website:

http://www.pmddtc.state.gov/official_itar_and_amendments.htm

The CCL is listed in 15 C.F.R. Part 774 (and explained in Part 738) and available in the BIS website:

<https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>

4. If technical information that is listed on the USML or CCL (i.e., export controlled) will be involved in the negotiation or performance of a project or transaction with a foreign person or entity, a preliminary determination must be made whether an export license is required or an exemption from the export license requirement applies before such information may be disclosed to a foreign person anywhere in the world (Deemed Exports occur when technical information is disclosed to a foreign person in the United States).
5. There are numerous exemptions from the export licensing requirements. The most important exception is that for technical information that is “publicly available” or in the “public domain.” For example: if a Navy laboratory licenses an invention to a foreign entity, and a patent or patent application for the invention has been published, the technical information in the published patent or application is in fact “publicly available” and an export license is not required for the Navy laboratory to enter into the license or disclose published technical information to the foreign licensee.
6. If an export license is required (which, under the applicable guidelines, would be extremely rare at most Navy laboratories), the Office of Counsel would provide assistance and coordinate the filing of any required export license applications.
7. Depending upon the type of agreement used for the collaboration (i.e., a CRADA, cooperative agreement, license agreement, work for private parties agreement (WFPPA), etc.), additional outside coordination may be required. For example, all Navy licenses and CRADAs with foreign entities must be coordinated with the U.S. Trade Representative (USTR), and certain WFPPAs with U.S. entities who plan to market to foreign entities require coordination with NIPO.
8. Navy laboratories should include a clause in their agreements that cover export of technical information generated or delivered under the agreement. A clause such as the following should be used:

Export Control.

- a. Neither Party shall make a disclosure, export, or deemed export of any technical information, articles, or services that result from this Agreement to any foreign location, entity, or person (including its own employees and associates of any type) except in full compliance with all applicable United States Federal laws (including treaties) and departmental regulations that establish and implement export controls. Compliance with all applicable export licensing requirements and restrictions implemented in the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulations (EARs) is required. A “deemed export” is a disclosure of export controlled information in the United States or abroad to a “foreign person” (under the ITAR) or to a “foreign national” (under EAR).

- b. This Agreement does not authorize any disclosure, export, or deemed export of technical information, articles, or services, nor does it authorize or approve the use of any exemption to the export licensing requirements of the ITAR or the EAR.
 - c. The Non-Navy Collaborator warrants that, as of the date of its authorized representative's signature approving this Agreement, it [(does) or (does not)] intend to make a disclosure, export, or deemed export of technical information, articles or services containing or derived from technical information delivered to it by [**insert Navy laboratory**] under this Agreement.
9. The status of Navy IP rights is also established in advance (in coordination with Patent Counsel). An NDA may be required (to protect Navy IP rights), but it is not a substitute for obtaining any export license that may be required.
10. Always obtain a security review to determine if there are any limitations on disclosing the type of information involved in the CRADA to the home country of the potential collaborator; obtain the approval of laboratory management; coordinate with the sponsor of the work; consult with the USTR; and, designate and process CRADAs with FOCI as non-standard.

Section VI - 4b

Foreign Disclosure, Export Control, and FOCI Entities

Due diligence must be exercised in advance of discussions, exchanges of technical information, collaborations, and negotiating agreements with foreign persons and entities (including entities that are FOCI). The following provides additional information regarding foreign disclosure and export control.

1. Principal U.S. Export Control Systems That Apply to “Technology Transfer” Transactions with Foreign Persons, Entities and FOCI Entities

Export controls are established under two systems: one managed by the Department of State (for “military” items); and one managed by the Department of Commerce (for “dual use” items). The Government is covered by and required to comply with both.

a. The export (and temporary import) of defense articles and services (and related technical information) is controlled in accordance with 22 U.S. Code § 2778 of the Arms Export Control Act as implemented by 22 C.F.R. Parts 120-130 (the ITAR). This export control system is managed by the DDTC within the Department of State. The U.S. Government views the sale, export, and re-transfer of defense articles and defense services as an integral part of safeguarding U.S. national security and furthering U.S. foreign policy objectives. The DDTC is charged with controlling the export and temporary import of defense articles and defense services covered by the USML. The DDTC website provides a wealth of information and useful tools for understanding and complying with the ITAR. The DDTC website is at <http://www.pmdtcc.state.gov/>.

b. The export of “dual use” items is controlled under the EAR by the BIS in the Department of Commerce. The mission of the BIS is to advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. BIS is charged with controlling the export of dual use items covered by the CCL. The BIS website is at <http://www.bis.doc.gov/>.

2. Definition of “Foreign Persons and Entities (Non-U.S. Entities)”

The ITAR, EAR, and other authorities have defined what constitutes a foreign person. For purposes of T2, it is most useful to apply the definitions from the ITAR. The following definitions are contained in the ITAR.⁶

⁶ The Export Administration Regulation (EAR) also provides varied definitions for specific provisions of the EAR at: 15 C.F.R. § 772.1 **Person**; 15 C.F.R. §772.1 **U.S. Person**; 15 C.F.R. § 740.9(a)(2)(i)(C) **U.S. Person**; 15 C.F.R. § 740.14 **U.S. Person**; 15 C.F.R. § 746.2(d) **U.S. Person**; and, 15. C.F.R. § 760.1 **U.S. Person**. Useful definitions and guidance are also contained in the Department of the Navy Foreign Disclosure Manual. <http://doni.daps.dla.mil/secnavmanuals.aspx>. See also DFARS 209.104-70 and 252.209-7001.

22 C.F.R. § 120.14 **Person.** *Person* means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§120.16) or U.S. person (§120.15), then it refers to both.

22 C.F.R. § 120.15 **U.S. person.** *U.S. person* means a person (as defined in §120.14 of this part) who is a lawful permanent resident as defined by 8 U.S. Code § 1101(a)(20) or who is a protected individual as defined by 8 U.S. Code § 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the U.S. It also includes any governmental (Federal, State, or local) entity. It does not include any foreign person as defined in § 120.16 of this part.

22 C.F.R. § 120.16 **Foreign person.** *Foreign person* means any natural person who is not a lawful permanent resident as defined by 8 U.S. Code § 1101(a)(20) or who is not a protected individual as defined by 8 U.S. Code § 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

3. FOCI

The following discussion of FOCI is an excerpt from the website of the DoD DSS which summarizes FOCI policy and definition found in the NISPOM.

“Foreign investment can play an important role in maintaining the vitality of the U.S. industrial base. Therefore, it is the policy of the U.S. Government to allow foreign investment consistent with the national security interest of the United States.

A Company is considered to be operating under FOCI whenever a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable, to direct or decide matters affecting the management or operations of that company in a manner which may result in unauthorized access to classified information or may adversely affect the performance of classified contracts.

The following factors relating to a company, the foreign interest, and the government of the foreign interest are reviewed in the aggregate in determining whether a company is under FOCI:

- Record of economic and government espionage against U.S. targets,
- Record of enforcement and/or engagement in unauthorized T2,
- The type and sensitivity of the information that shall be accessed,
- The source, nature and extent of FOCI,
- Record of compliance with pertinent U.S. laws, regulations and contracts
- The nature of any bilateral and multilateral security and information exchange agreements that may pertain
- Ownership or control, in whole or in part, by a foreign government.”

The DSS website provides FOCI information pertinent to the mitigation of U.S. companies (cleared or in-process for a facility security clearance), participating in the National Industrial Security Program (NISP) and operating under FOCI: http://www.dss.mil/isp/foci/foci_info.html.

Additional information on FOCI is available in Section 3 of the NISPOM (DoD 5220.22-M) and Chapter 15 of the DON Foreign Disclosure Manual. The NISPOM is available from the DSS NISP Library at: http://www.dss.mil/isp/fac_clear/download_nispom.html).

4. Dealing with FOCI Entities

When considering dealing with foreign persons and entities (individuals, corporations, governments, and international organizations), advance consideration must be given to export control and foreign disclosure requirements and restrictions. Extra diligence must also be exercised when considering a deal with a U.S. company that is subject to FOCI. Navy Policy allows collaborative research with entities under FOCI, and requires that steps be taken to ensure that working with the FOCI is in the best interests of the U.S. We directly ask potential non-Federal collaborators for information to determine whether they are under FOCI in order to ensure foreign interests are not given an opportunity to undermine U.S. security and export controls to gain unauthorized access to critical technology.

a. U.S. citizenship is a criterion for obtaining a personal security clearance. Thus, while a permanent resident alien is considered to be a U.S. person for purposes of export controls under the ITAR and the EAR, that same individual is not eligible for a personal security clearance. Similarly, although a U.S. corporation is considered to be a U.S. person for export control purposes, that same U.S. corporation may not be eligible to obtain or retain an FCL (an FCL which is analogous to a personal clearance for a company, university, or other entity). An FCL is a requirement for entities to be awarded classified Government Funding Agreements (contracts, cooperative agreements, and grants) in accordance with the DD 254 (“Department of Defense Contract Security Classification Specification”) applicable to the funding agreement.

b. Granting and administering FCLs is a function of the DSS:

http://www.dss.mil/isp/fac_clear/fac_clear.html

The DSS administers and implements the Defense portion of the NISP pursuant to Executive Order 12829. DSS Industrial Security personnel provide oversight and assistance to cleared contractor facilities and assist management and Facility Security Officers in ensuring the protection of U.S. and foreign classified information. The FOCI provisions in the NISPOM should be consulted when there are specific questions about the eligibility of an entity under FOCI for an FCL. The Navy Foreign Disclosure Manual also addresses the considerations that need to be made when dealing with FOCI.

c. To have access to U.S. classified information and participate in the NISP, a facility - a designated operating entity in private industry or at a college/university - must have a bona fide procurement requirement. Once this requirement has been established, a facility can be processed for an FCL. An FCL is an administrative determination that a facility is eligible to access classified information at the same or lower classification category as the clearance being granted. The FCL may be granted at the Top Secret, Secret, or Confidential level. When a determination has been made that a facility meets the eligibility requirements for an FCL, the contractor must execute a DoD Security Agreement, which is a legally binding document that sets forth the responsibilities of both parties and obligates the contractor to abide by the security requirements of the NISPOM.

d. If a U.S. entity is under FOCI, the degree of foreign ownership, control, and influence must be assessed on a case-by-case basis to determine whether a collaborative agreement should be pursued or approved. Of particular importance is the nature of the technology that will be the subject of the agreement (i.e., is it classified, export controlled, or militarily critical technology?).

e. When a company with an FCL enters into negotiations for the proposed merger, acquisition, or takeover by a foreign interest, it is required to submit notification to DSS of the commencement of such negotiations. The notification shall include the type of transaction under negotiation (stock purchase, asset purchase, etc.), the identity of the potential foreign investor, and a plan to mitigate/negate the FOCI consistent with paragraph 2-303, NISPOM, in order to retain the FCL. Mitigation plans for FOCI may include many elements including Special Security Agreements (SSAs) and Security Control Agreements (SCAs). SSAs and SCAs are substantially identical arrangements that impose substantial industrial security and export control measures within an institutionalized set of corporate practices and procedures; require active involvement of senior management and certain board members in security matters (who must be cleared, U.S. citizens); provide for the establishment of a Government Security Committee to oversee classified and export control matters; and preserve the foreign person shareholder's right to be represented on the board of directors with a direct voice in the business management of the company while denying unauthorized access to classified information.

f. When considering whether to enter into a CRADA with an entity that is under FOCI, great deference should be accorded to the fact that the entity has been allowed to retain its FCL under a SSA, SCA, or other mitigation plan approved by the DSS (and thereby allowed to continue work on classified Government contracts). Any decision to proceed with a CRADA with an entity that is under FOCI should be coordinated with the servicing security office, laboratory management, any sponsors of the work, and NIPO (when required or appropriate). The USTR must also be consulted. Also, all CRADAs with FOCI are non-standard and should be designated and processed as such.

5. Coordination with the USTR

All Navy licenses and CRADAs with “foreign persons or industrial organizations (where these entities are directly or indirectly controlled by a foreign company or government)” must be coordinated with the USTR in accordance with Executive Order 12591 (<https://www.archives.gov/federal-register/codification/executive-order/12591.html>).

The consultation requirement is not equivalent to the assessment of an entity under FOCI as discussed above.

a. Section 4 of the Executive Order provides (with emphasis added):

Sec. 4. International Science and Technology. In order to ensure that the U.S. benefits from and fully exploits scientific research and technology developed abroad, (a) the head of each Executive department and agency, when negotiating or entering into CRADAs and licensing arrangements with foreign persons or industrial organizations (where these entities are directly or indirectly controlled by a foreign company or government), shall, ***in consultation with the USTR***, give appropriate consideration:

(1) to whether such foreign companies or governments permit and encourage U.S. agencies, organizations, or persons to enter into CRADAs and licensing arrangements on a comparable basis;

(2) to whether those foreign governments have policies to protect the U.S. IP rights; and

(3) where cooperative research will involve data, technologies, or products subject to national security export controls under the laws of the U.S., to whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under such national security export controls, either through participation in the Coordinating Committee for Multilateral Export Controls or through other international agreements to which the U.S. and such foreign governments are signatories.

b. The thrust of the Executive Order provision is to ensure U.S. competitiveness. Only ***consultation*** with (***not concurrence*** from) the USTR is required. Coordination with the USTR is accomplished by the TTO or ORTA. Contact the DON T2 Program Office for the USTR point of contact information.

c. The following is a sample coordination letter/memorandum that can be submitted to the USTR for CRADA consultation.

[Date of Request]

United States Trade Representative
Attn: [name of USTR]
Office of Intellectual Property Rights
600 17th Street, N. W.
Washington, DC 20508

Dear Ms./Mr. xxxx:

I am providing the following information in accordance with Executive Order 12591, which requires consultation with the United States (US) Trade Representative when entering into a Cooperative Research and Development Agreement (CRADA) with a foreign Collaborator. In this particular case, the [Navy Collaborator] wishes to enter into a CRADA for [Title of CRADA effort] with [Non-Navy Collaborator], a Foreign Owned, Controlled, or Influenced (FOCI) company, located at [Address of Non-Navy Collaborator].

I understand you require the following information:

- A. Requesting Navy Laboratory Name: [Navy Collaborator, address]
- B. Company: [Non-Navy Collaborator, address]
- C. Agreement Type: Navy Non-Standard Cooperative Research and Development Agreement.
- D. The proposed CRADA is entitled [CRADA Title, (Agreement number)]
- E. Purpose of this agreement: The objective of this CRADA [objective of the collaborative effort]
- F. Classification: The collaborative efforts contemplated under this Agreement will be at the UNCLASSIFIED level.
- G. Other Information: [enter additional information if needed, (i.e., Foreign Company has an executed Special Security Agreement, etc.)]

Please e-mail me documentation indicating whether [Navy Collaborator] may proceed with the proposed CRADA.

If you have any questions or concerns regarding this agreement contact [ORTA Contact information].

Sincerely,

[ORTA Signature Information]

Please note - for amendments to CRADAs involving FOCI, USTR is to be consulted again if there are changes in the country affiliation of the Non-Navy Collaborator or if there are changes in the technology. Consult with the Navy T2 Program Manager.

6. Dealing with U.S. Citizens Who Represent Foreign Persons and Entities

For foreign disclosure purposes, a person, regardless of citizenship, who represents a foreign interest in his or her dealings with the U.S. Government, or a person who is officially sponsored by a foreign government or international organization, must be treated as a Foreign National. Thus, a U.S. national will be treated as a foreign person for disclosure purposes when acting as a foreign representative.

7. Responsibility for Establishing Appropriate Controls of Technical Information

Control of technical information is the responsibility of the PI/project manager. Technical information generated under a project or program should be assigned an appropriate “distribution statement.”

All classified and controlled unclassified technical information must bear one of the distribution statements prescribed by DoD 5230.24. A distribution statement is used to denote the extent of availability of technical information for distribution, release, and disclosure without additional approvals or authorizations. At the time technical information is generated, an appropriate “distribution statement” should be established. Establishing the appropriate “distribution statement” is also the responsibility of the PI/project manager. Refer to [Section I - 3](#) for more information on distribution statements.

8. Ensuring Compliance with Export Control Requirements - Examination of the USML and the CCL

To ensure compliance with export control requirements, the first determination that must be made is whether the technology that is proposed for disclosure to a foreign person or entity (anywhere in the world) or may be developed in collaboration with a foreign person or entity is export controlled. This determination requires making an examination of the USML and the CCL.

There are various ways of dealing with the assessment. At the Navy laboratory, the “first pass” is conducted by the PI or a Program Participant knowledgeable of the technology. If there is a question about whether a technology belongs on the USML or the CCL, a Commodity Jurisdiction Determination may be submitted to the U.S. Department of State DDTC. Requests for a Commodity Jurisdiction Determination should be coordinated with the Office of Counsel. The website for the U.S. Department of State DDTC is www.pmdtc.state.gov. If the technology is on the CCL and there is a question about the ECCN that should be assigned to the technology, a Classification Request may be submitted to the BIS. If the issue cannot be resolved at the Navy laboratory, the assistance of NIPO may be requested. If the technology is export controlled, that should be reflected on the Distribution Statement for the technical information generated in the collaboration.

9. USML/CCL Technologies and Export Licenses

An export license is not necessarily required for technologies that are listed in the USML or the CCL. There are numerous exemptions from the licensing requirements under the ITAR and EAR.

The most important is that for technical information that is “publicly available” or in the “public domain.” For example: if a Navy laboratory licenses a Government invention to a foreign entity, and the patent has been published, the technical information in the published patent is “publicly available” and an export license is not required for disclosure of that technical information to the foreign licensee. There are also special provisions for dealing with Canadian entities (see 22 C.F.R. § 126.5 and <https://public.logisticsinformationservice.dla.mil/PublicHome/jcp/default.aspx>). Coordination with the Office of Counsel should be initiated to establish whether an exemption may apply.

If an export license is required (which would be a rare event at most Navy laboratories), the Office of Counsel should be contacted to provide assistance and coordinate with NIPO (as required) the filing of a license application with the State Department under the ITAR or the Commerce Department under the EAR.

10. Deemed Export

An export of controlled technical information occurs whenever such information is disclosed to a foreign person anywhere in the world. Such disclosure is considered to be an export to the country of the foreign person to whom the disclosure is made (even if the disclosure is made within the U.S., for example, during a visit to a Navy laboratory). If the disclosure of export controlled technical information occurs in the U.S., the disclosure is sometimes referred to as a “*deemed export*.” The BIS website (<http://www.bis.doc.gov/licensing/index.htm>) provides an excellent discussion of deemed exports that should be reviewed in its entirety. The concept of “deemed exports” applies equally to disclosures of technical information listed on the USML as well as the CCL.

11. Foreign Disclosure Determination

The requirements and procedures for disclosure of export controlled information (i.e., CUI) to foreign government entities and international organizations are set forth in SECNAV Instruction 5510.34A and the DON Foreign Disclosure Handbook. If technical information proposed for release to a foreign government or international organization is export controlled (in USML/CCL), it is CUI and a Foreign Disclosure Determination (FDD) must be made (in addition to compliance with all applicable export control license requirements). Regarding other foreign persons, the Handbook explains: “Foreign Disclosure.[T]he transfer or disclosure of Classified Military Information (CMI) or CUI to a foreign national who is an authorized employee of the U.S. Government or a U.S. contractor is technically not a foreign disclosure, since the disclosure is not made to the person’s government. For contractors, access by such persons will be handled under the provisions of the Arms Export Control Act or the Export Administration Act and the National Industrial Security Program Operating Manual (NISPOM).”

12. Sales to Foreign Entities (via 10 U.S. Code § 2539b)

Coordination with the USTR is not required. If the proposed transaction involves technology or information that is subject to release restrictions, coordination with Information Security is required to ensure that all security requirements regarding export control and/or foreign disclosure

have been met. If the proposed sale will involve release of controlled information (1) to a foreign person anywhere in the world or (2) to a representative of a foreign government (even if that representative is a U.S. citizen), security will coordinate with NIPO to ensure appropriate release approvals are met.

13. Other Considerations

All requirements related to Publication Approval and Foreign Visitors must be strictly complied with. Preliminary discussions with foreign persons must be carefully structured to ensure that there is no inadvertent unauthorized export of controlled information. Remember, an export can occur anywhere in the world if the recipient of technical information is a foreign person or a representative of a foreign person. The status of Government IP rights under any agreement should be established in advance in coordination with the laboratory's office of counsel. An NDA may also be required to protect Government IP rights (but it is not a substitute for an FDD or an export license).

14. Universities and Export Control Provisions in Agreements

Some universities resist export control provisions in agreements with the Government. Universities rely heavily upon the use of foreign students and faculty to perform fundamental research (much of which is performed under funding agreements with the Government); universities also strongly resist limits upon their ability to publish the results of their research. Both the ITAR (22 C.F.R. § 120.11) and the EAR (15 C.F.R. § 734.8) provide exemptions from the export license requirements for fundamental research under specified conditions (thus obviating the need to obtain an export license for their foreign participants). Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research (and the license exemption will be lost) if: (1) The university or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or (2) the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable. For this reason, certain universities do not routinely accept classified funding agreements from the Government.

Section VI - 4c

An Example of One Navy Laboratory's Due Diligence Program for Dealing with Foreign Persons, Entities and FOCI

The following describes one Navy laboratory's internal "pre-approval" process for initiating CRADA discussions with FOCI entities. The process includes a "pre-approval" of the opportunity by the laboratory's director of research following coordination with various internal organizations including the legal organization and the laboratory's security organization. This internal pre-approval process was established by this laboratory as a matter of due diligence in dealing with foreign entities. The pre-approval process is not mandatory, but other laboratories may wish to pursue this or alternative pre-approval processes suited to their circumstances.

(Step 1)

When the ORTA is approached with a CRADA opportunity involving a FOCI, the following correspondence is sent to the PI that requested the CRADA:

Dear PI:

CRADA proposals involving foreign entities (either directly as the Non-Navy Collaborator or indirectly as a third party to the Non-Navy Collaborator) need to be pre-approved by the laboratory's director of research before the laboratory enters into a negotiating stage. The internal routing is extensive, and it is difficult to predict how long it will take.

CRADA negotiations involving a foreign entity as a collaborator (a Non-Navy Collaborator) or other participant (under agreement with a Non-Navy Collaborator) are exceptions to the laboratory's regular CRADA process, and advance approval of the director of research must be obtained before negotiations may be initiated. Consultation with the U.S. Trade Representative is also required prior to negotiations of a CRADA with an entity that is foreign owned or controlled (in accordance with Executive Order 12591). In addition, if technology that is export controlled will be involved in the CRADA, coordination with the DON T2 Program Office and/or the Navy International Programs may be required. An export license may also be required.

Responsibilities for the CRADA pre-approval process:

- A. The Navy laboratory's PI is responsible for preparing the advance-approval request described here (and identified in Step 1 below).
 - 1) The PI shall contact the ORTA before preparing the request to discuss the proposed CRADA and obtain a sample format. Please see the documents (below) that are a sample format for the PI to use.
 - 2) The PI shall review the export control lists (shown below) to determine whether the technology that will be involved in the proposed CRADA (whether existing or to be

developed) is export-controlled (and it is suggested you use the advanced approval request memo format attached here). The attached draft memo includes the type of information that security and the director of research need in order to make a determination on whether to proceed with CRADA negotiations involving a foreign entity.

3) The advance-approval request shall contain the following elements:

- a) Background and purpose of the proposed collaboration;
- b) Detailed information about any foreign party or participant that will be involved;
- c) A statement summarizing the results of the PI's review of the export control lists indicating whether the CRADA technology is export-controlled;
- d) Publication release numbers of related laboratory research, if available; and,
- e) A summary sheet.

4) Routing. The PI shall route the advance-approval request package as follows:

- a) PI/Section
- b) ORTA (TTO)
- c) PI's Branch Head
- d) PI's Division Head
- e) Associate Director of Research (ADOR)
- f) Office of Counsel
- g) ORTA (TTO)
- h) Laboratory's Security Office
- i) Director of Research
- k) ORTA (TTO)

B. The ORTA is responsible for reviewing the advance-approval request (Step 2) for completeness and discussing any special issues with the PI, as well as consulting with the USTR and the DON T2 Program Office/NIPO (in coordination with office of counsel and the laboratory's security office) as required.

C. PI's branch/division heads and ADORs are responsible for reviewing the request and providing recommendations as to whether the proposed CRADA should be pursued (Steps 3, 4, and 5). Any recommendation against pursuing the CRADA will be immediately sent to the ORTA.

D. Office of counsel is responsible for reviewing the request for legal sufficiency (Step 6). If the PI determines that the CRADA will involve technology that is export controlled, office of counsel will provide comments and recommendations regarding any requirements for a foreign disclosure determination and/or an export license.

E. Laboratory's security office is responsible for reviewing the subject matter of the technology involved in the proposed CRADA for public release authorization (Step 8). Laboratory's security office will also coordinate the processing of required foreign disclosure determination requests with the DON T2 Program Office/NIPO.

- F. Director of research will approve or disapprove the request (Step 9).
- G. ORTA will take one of the following actions if the director of research approves the request (Step 10):
- 1) If the technology is not export-controlled. If director of research approves CRADA negotiations, ORTA will consult with the USTR. ORTA will notify the PI following a positive response from the USTR and CRADA negotiations may begin.
 - 2) If the technology is/may be export-controlled. If director of research approves CRADA negotiations, in addition to consulting with the USTR (above), ORTA, office of counsel, and laboratory's security office will coordinate submission of a request for a FDD to the DON T2 Program Office/NIPO as appropriate. ORTA and office of counsel will also determine whether an export license may also be required. When all of the foregoing has been successfully accomplished, ORTA will notify the PI that CRADA negotiations may begin.

Additional Information: The process for obtaining advance-approval to enter into CRADA negotiations when a foreign party or other foreign entity will be involved is in addition to the usual CRADA formation and approval process. If advance-approval to enter into negotiations is granted, the usual CRADA negotiation, review, and approval process will be followed. This includes: negotiation of a draft CRADA by the ORTA with the CRADA Collaborator; review of the draft CRADA by the PI's division and ADOR; and, legal review of the draft CRADA by office of counsel; and, approval and execution of the CRADA by codes the director of research and the commanding officer.

The following guidance is provided to the PI for doing the export control assessment:

CHECKING THE USML AND CCL/PRE-APPROVAL REQUESTS

A determination must be made whether technology (articles, services, or technical information) that is (1) proposed for export to a foreign location or disclosure to a foreign person or entity (anywhere in the world) or (2) that may be developed in collaboration with a foreign person is export controlled. This determination requires making an examination of the USML and the CCL. Both of the lists are accessible on the Internet, and the Department of State and the Department of Commerce have good websites that explain the requirements and procedures.

- The USML is at 22 C.F.R. Part 121
http://www.pmddtc.state.gov/official_itar_and_amendments.htm
 - The CCL is at 15 C.F.R. Part 774 (and explained in Part 738)
<https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>
1. Start with the USML. (there is no need to consult the CCL if a technology is listed on the USML). There are 21 USML Categories listed in Subpart 121.1. Check your technology against the descriptions for each category. Note the results (including negative results) of your search. If there is a match, note the particular provision. If there is no match, proceed to the CCL (below).

2. If there is no match on the USML, go to the CCL. Check your technology against the 10 categories (Category 0 through Category 9) on the CCL. Note the results (including negative results) of your search.
3. If the technology to be exchanged is on either list, further analysis will have to be done to determine whether an export license (or, in some cases, a temporary import license) will be required. There are a number of exceptions and exclusions that will have to be considered. The Office of Counsel can assist. Include a summary of the results of your search in the preapproval request to the director of research.

(Step 2)

Advance Internal Approval Memo (Sample) to be used by PI to support internal pre-approval to CRADA negotiations with a FOCI:

Date:

Reply to Attention of: Principal Investigator with contact information

Subject: Proposed CRADA between the Laboratory and XXX Corporation (“XXX”)

To: Director of Research

1. The laboratory has been contacted by a FOCI company, XXX, that has expressed interest in pursuing collaborative research, etc. *(Describe here as much detail as you know about the circumstances of the inquiry, whether any intellectual property is jointly owned, etc., what company has expressed interest and what country they are from etc.)*.
2. As the laboratory’s Principal Investigator of this potential CRADA, I understand that it is my responsibility to check the Commerce Control List (CCL), and the U.S. Munitions List (USML) to determine if the technology is controlled. I have consulted online versions of these lists, and to the best of my knowledge, I do (or do not) believe this CRADA technology appears on any of them. In particular, I looked for entries related to *(describe the technology and provide explanation why you believe this CRADA technology does/does not appear on any of the above lists)*.
3. *[Optional: If the technology has been approved for public release, cite applicable Navy laboratory security office release number(s), if known. Providing this information helps the Navy laboratory’s security office make a recommendation as to whether or not the technology should have a Foreign Disclosure Determination (FDD). If the Navy laboratory’s security office recommends an FDD following the director of research approval, then office of counsel will prepare the applicable document and forward it to the DON T2 Program Office. While the publication release numbers are not mandatory, this information should help expedite the review by the Navy laboratory’s security office.]*

4. Please let me know if you need additional information to make a determination concerning the dissemination of technical information to this (*country e.g. United Kingdom*) third party. Attached is a brief summary of the proposed CRADA. I can be reached at (xxx) xxx-xxxx or xxxxx@xxx.

Name, Title

Proposed CRADA between [insert Navy Laboratory] and XXX

CRADA Title:

Summary: *[One or two paragraphs summarizing the proposed research, exchange, etc. Include the Navy laboratory's benefit from working with this entity and why the Navy laboratory wants to or needs to work with this entity; include some description of company's business and R&D expertise that it brings to the CRADA opportunity. Also, identify relevant Navy laboratory inventions relating to the proposed work and identify whether the technology that is the subject of the CRADA is classified or unclassified.]*

Navy Laboratory's Program Manager:

Name, phone, and e-mail

(Step 3)

Sample Information/Letter for USTR:

Dear (U.S. Trade Representative),

I am providing the following information in accordance with Executive Order 12591, which requires consultation with the United States (US) Trade Representative when entering into a Cooperative Research and Development Agreement (CRADA) with a foreign Collaborator. In this particular case, the [Navy Collaborator] wishes to enter into a CRADA for [Title of CRADA effort] with Subsidiary Company XYZ. This company is incorporated in the [insert State or Commonwealth of ABC], but is FOCI by the [insert name of country] company, Parent Company XYZ.

I understand you require the following information:

- A. Requesting Navy Laboratory Name: [Navy Collaborator, address]
- B. Company: Subsidiary Company XYZ which is incorporated in the **[insert State or Commonwealth of ABC]** but is FOCI by Parent Company XYZ. Subsidiary Company XYZ is a US firm but its parent company, Parent Company XYZ, is a **[insert name of country]** firm.
- C. Agreement Type: CRADA
- D. The proposed CRADA is entitled "Processing Techniques to Enhance Power Output of Widgets"
- E. Purpose of this agreement: The objective of this CRADA [objective of the collaborative effort]

F. Classification: The collaborative efforts contemplated under this Agreement will be at the UNCLASSIFIED level.

G. Other Information: [enter additional information if needed, (i.e., Foreign Company has an executed Special Security Agreement, etc.)]

Please e-mail me documentation indicating whether [Navy Collaborator] may proceed with the proposed CRADA.

If you have any questions or concerns regarding this agreement contact [ORTA Contact information].

Section VI - 4d

Tool Kit - Links to Foreign Disclosure and Export Control Laws, Regulations and Other Useful References

Subject	URL	Notes
BIS, Department of Commerce	http://www.bis.doc.gov/	This is the “must” website for the export of “dual use” items on the CCL.
Canadian Exceptions (Joint Certification Program)	https://public.logisticsinformation.service.dla.mil/PublicHome/jcp/	There are special provisions for dealing with Canadian entities (see 22 C.F.R. § 126.5).
Code of Federal Regulations (CFR)	https://www.archives.gov/federal-register/cfr	The CFR contains the ITAR and EAR and other Government Agency Regulations.
Electronic Code of Federal Regulations (ECFR)	https://www.ecfr.gov/cgi-bin/ECFR?page=browse	The ECFR contains the same content as the CFR but has a more user-friendly printing capability.
CCL	https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl	The CCL is at 15 C.F.R. Part 774 (and explained in Part 738). It lists the items that are export controlled under the EAR.
Commodity Jurisdiction	http://www.pmdtc.state.gov/commodity_jurisdiction/index.html	The Commodity Jurisdiction program is administered by the DDTC to assist in determining which export control list (if any) a particular technology is on.
Deemed Exports	http://www.bis.doc.gov/licensing/index.htm	The BIS website provides an excellent discussion of deemed exports that should be reviewed in its entirety.
Department of the Navy Foreign Disclosure Manual	https://doni.documentservices.dla.mil/secnavmanuals.aspx	The most useful, authoritative reference tool for assessing foreign disclosure issues. It also contains an extremely useful list of acronyms, abbreviations, and definitions used in foreign disclosure and export control issues.

Subject	URL	Notes
DSS	http://www.dss.mil/index.html	DSS administers the NISP. Its home page includes links to the NISPOM (a key reference in assessing FOCI and Facility Clearance issues).
Defense Technology Security Administration (DTSA)	http://www.dtsa.mil/SitePages/default.aspx	DTSA administers the development and implementation of DoD technology security policies on international transfers of defense-related goods, services and technologies.
DDTC, U.S. Department of State	http://www.pmdtc.state.gov	This links to the DDTC website and relevant information about the ITAR and USML as well as the Export License process.
EO 12829	https://www.archives.gov/isoo/policy-documents/eo-12829.html	This EO establishes the NISP (the basis for Facility Clearances for Government Contractors and FOCI assessments).
EO 12591	http://www.archives.gov/federal-register/codification/executive-order/12591.html	This EO, among other things, establishes the requirement for consultation with the USTR for licenses and CRADAs with foreign entities.
EARs	https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear	You can search and download the full text of the EARs. The CCL is included.
Federal Register	https://www.archives.gov/federal-register	The Office of the Federal Register provides access to the official text of Federal laws, presidential documents, administrative regulations, and notices and more.
Federation of American Scientists Arms Sales Monitoring Project	https://fas.org/programs/ssp/asm/index.html	Great source for facts and figures, Government documents, issue papers, etc., on arms and export control.

Subject	URL	Notes
Fundamental Research Exceptions	https://fas.org/irp/doddir/dod/research.pdf https://www.aau.edu/issues/exports-controls DoD Instruction 5230.27 - http://www.esd.whs.mil/Directives/issuances/dodi/	The URLs link to several references related to the fundamental research exception to export control requirements under the ITAR and EAR.
ITARs	https://www.pmddtc.state.gov/regulations_laws/itar.html	This edition of the ITAR is up-to-date. The USML is included.
NIPO	http://www.secnav.navy.mil/rda/nipo/Pages/index.aspx	Among other responsibilities, NIPO manages the Navy's foreign disclosure program.
National Aeronautics and Space Administration Export Control Program	https://oiir.hq.nasa.gov/nasaecp/	
NISPOM (DoD 5220.22-M)	http://www.dss.mil/isp/fac_clear/download_nispom.html	The NISPOM is the DSS Manual that implements Facility Clearance Procedures for Government Contractors (a good FOCI reference).
NISPOM FOCI Provisions	http://www.dss.mil/isp/foci/foci_info.html	This provision is a key reference for assessing FOCI.
SECNAV Instruction 5510.34A	https://doni.documentservices.dla.mil/allinstructions.aspx	Disclosure of classified military information and CUI to foreign governments, international organizations, and foreign representatives.
USML	http://www.pmddtc.state.gov/official_itar_and_amendments.htm	
Wassenaar Arrangement	http://www.wassenaar.org/	
Wassenaar Arrangement List of Dual-Use Goods and Technologies & Munition List	http://www.wassenaar.org/wp-content/uploads/2016/12/List-of-Dual-Use-Goods-and-Technologies-and-Munitions-List-Corr.pdf	

Section VI - 5

Release Issues for CRADAs - Explanation

This section provides guidance for release of information of work related to a CRADA. Requests for such information may require a general public release by either of the collaborators announcing the CRADA collaboration, a FOIA request, or a request provided for these cases. General guidance is provided for these cases.

Section VI - 5a

Public Release Issues for CRADAs

Article 10.10 of the standard NCRADA addresses the public release of the Agreement:

“Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public.”

The document contains business sensitive information and that information should be protected. All Navy personnel with responsibility for the CRADA need to be advised of these sensitivities ensuring that any copies of the CRADA are not freely given out to unauthorized personnel. Further, the Non-Navy Collaborator may not wish the relationship to be publicly known.

If either of the Collaborators desires to make a press release announcing the CRADA collaboration, both need to agree on its content. The Navy Collaborator needs to have official release according to the rules and regulations of that laboratory. As a matter of practice, copies of any press releases dealing with the CRADA should be sent to the DON T2 Program Manager, Office of Naval Research.

The operative word in Article 10.10 is “may”. The CRADA may be distributed within the Navy for the purpose of conducting official business. It may be released to the public under a FOIA request (see [FOIA section](#) of the handbook).

In registering the CRADA in the Navy Defense Technology Transfer Information System, the information entered is only available to those within the Navy who have been given authorization for its use.

Section VI - 5b

Dealing with FOIA Requests

It is Navy policy to include in its CRADAs an Article describing how CRADA information may be released under a FOIA request. The following is extracted from the NCRADA, Articles 7.6 and 7.5.

Article 7.6 Release of Data Under the Freedom of Information Act:

“**[Navy Collaborator]** will comply with the Freedom of Information Act and Executive Order 12600.”

Paragraphs 2 and 3 of Article 7.5 Protection of Data

“Data that is provided by **[Non-Navy Collaborator]** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S. Code § 552(b)(4), shall not be disclosed by **[Navy Collaborator]**. The Parties shall agree to not disclose, for up to five (5) years, Data that is produced by the **[Navy Collaborator]** and that would have been considered a trade secret or commercial or financial information that is privileged or confidential if it had been produced by the **[Non-Navy Collaborator]**.”

CI, CUI or otherwise restricted information shall be protected in accordance with the security laws of the U.S.”

The classes of marked data that will not be released under a FOIA request are: Classified Information, CUI, Proprietary Information, and otherwise restricted information. Generally speaking, the CRADA document will rarely have CUI or otherwise restricted information included in the text. The one type of CUI it is most likely to contain is Proprietary Information.

Best Practice:

If a FOIA request is received for the CRADA and/or data generated by the CRADA, immediate notification by phone and in writing is to be made to the Non-Navy Collaborator when the FOIA request is received by the ORTA. Such review should be made within 15 calendar days from notification to the Non-Navy Collaborator (the local Navy point of contact in charge of answering the FOIA request may grant you a longer time period if justified).

During the review process, a distinction should be made among the text of the legal requirements of the CRADA, the SOW, and the Appendices. The Appendices can be protected from release in a manner similar to Government privileged or confidential information for a period not to exceed five years from date of creation. The legal text, except for financial or business sensitive information, should be open for public view. For data that are part of the CRADA, the Collaborators should review all data generated for proper markings in accordance with the CRADA instruction. Only data that meet the FOIA requirements will be released.

For information regarding the laws related to the FOIA, refer to [Section VIII - 2](#) of this handbook. [Section VIII - 2](#) also includes excerpts from DoD Manual 5400.07, DoD FOIA Program.

Section VI - 5c

Release of a CRADA to Other Federal Agencies or Departments

To ensure protection of sensitive business information discussed in a CRADA, it is recommended that each page of the CRADA be marked with the statement, "For Official Use Only" before releasing to any Federal Agency or Department requesting a copy of a Navy laboratory CRADA. The CRADA document should be marked with a distribution statement.

Section VI - 6

Patent Rights and CRADAs with Government Contractors

The Bayh-Dole Act (Public Law 96-517) defines the respective rights of the Government and small business or non-profit contractors in inventions made by employees of the contractor while performing under the work statement of a Government funding agreement such as a contract (“Subject Inventions”). This statute is implemented by regulation in the form of patent rights clause FAR 52.227-11 and implementing guidance found in Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7038. Government policy requires that essentially similar rights be extended to big business contractors under the patent rights clause FAR 52.227-12. These clauses are required to be in certain types of contracts as defined in FAR Part 27 and DFARS Part 227. The patent rights clauses are to be used without modification, and no other clause in the contract may have the effect of imposing modifications on the patent rights clauses. Absent a patent rights clause, the Government obtains no rights in any invention made by the contractor under a contract. The patent rights clause defines a “subject invention” as any invention “conceived” or “first actually reduced to practice” by an employee of the company working on the contract. Under the patent rights clause, the contractor is permitted to retain title (own) any subject invention so long as the contractor: (a) elects to retain title to the invention within a specified time period; (b) files a patent application in the USPTO to protect the invention; (c) provides the Government with a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention throughout the world; and (d) provides the Government with an appropriate document suitable for filing in the USPTO that confirms the Government’s rights in the invention. Under certain circumstances, the Government may cover the contractor’s costs for protecting a subject invention (see FAR 31.205-30).

Federal laboratories are not authorized to fund the participation of a Non-Navy Collaborator under a CRADA (15 U.S. Code § 3710a(b)(3)(A)). However, there is no prohibition to the collaborating party receiving funding from other Government activities. Thus, a laboratory may enter into a CRADA with a contractor of another Government activity to assist the contractor in performing tasks under the contract so long as all the other requirements of a CRADA are met.

The Bayh-Dole Act and the implementing contractual patent rights clause, as well as the big business patent rights clause, are consistent with the invention rights disposition of a CRADA. What differs is the time frames for taking action imposed on the parties by the patent rights clauses and the standard NCRADA model. While different, these time requirements are not totally inconsistent and, thus, meeting the earliest time requirements in either agreement will satisfy the requirements of the other agreement so long as the reporting/electing requirements of each agreement are met. As a result, the contractor/CRADA collaborator is subject to an increased administrative burden. See also [Section V - 4, License Grantback Agreement](#).

For more information, contact your IP counsel.

Section VI - 7

U.S. Competitiveness

“Manufactured Substantially in the U.S.”

The preference for manufacturing in the U.S. has a long history. In 1980, the Patent and Trademark Amendments Act (Bayh-Dole) provided exclusive rights to inventions arising under funding agreements with Federal agencies to small businesses and nonprofit organizations agreeing that products embodying the invention will be manufactured substantially in the U.S. Also, in 1980, the Stevenson-Wydler Technology Innovation Act required that preference be given to industrial technology transfer partners agreeing to substantially manufacture in the U.S. any products resulting from technology transfer. In 1984, the Trademark Clarification Act amended the Bayh-Dole Act to extended substantial manufacture in the U.S. provisions to all partners of Federal Agencies. In 1986, the Federal Technology Transfer Act required that preference be given to CRADA partners located in the United States and agreeing that products embodying inventions made under the CRADA will be manufactured substantially in the United States. In 1989, the National Competitiveness Technology Transfer Act established congressional intent that CRADAs be performed in a manner that fosters the competitiveness of U.S. industry.

This preference for substantial manufacture in the U.S. has been embodied in the Navy Standard CRADA Article 10.12. Note that this Article encompasses all “Intellectual Property” arising from the performance of the Agreement, and is not restricted to “Inventions.”

Article 10.12, U.S. Competitiveness of the Navy Standard CRADA is currently required by Navy policy. The Article as currently written is shown below:

[Non-Navy Collaborator] agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

If the U.S. Competitiveness clause becomes a point in negotiation with your Non-Navy Collaborator, please contact your laboratory legal office for advice. Two examples of alternative language are provided as reference.

1. **[Non-Navy Collaborator]** agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S. Waivers will be considered by **[Navy Collaborator]** on a case by case basis.
2. **[Non-Navy Collaborator]** agrees that any product, process, or service using Subject Inventions arising from the performance of this Agreement shall be manufactured substantially in the U.S., however, Subject Inventions wholly-owned by **[Non-Navy Collaborator]** may be manufactured in **[insert country of origin]**.

Section VI - 8

Small Business Innovation Research (SBIR) and CRADAs

The SBIR Program promotes collaborations between small businesses and Federal laboratories. SBIR companies may use both non-SBIR and SBIR funds to enter into CRADAs. If the SBIR award winning company has an Internal Research and Development Program, those funds may be legally used to fund a CRADA with any Federal laboratory. Additionally, as a result of a change in the Small Business Administration's (SBA's) SBIR policy regarding funds in 2014, SBIR funds were made available for CRADAs. Per Section 9(e)(5) of the 2014 SBA SBIR Program Policy Directive, "an agency may issue an SBIR funding agreement to a small business concern that intends to enter into an agreement with a Federal laboratory to perform portions of the award or has entered into a cooperative research and development agreement (see 15 U.S. Code § 3710a(d)) with a Federal laboratory..." Restrictions are listed in Section 9(e)(5)(i) to (vi) of the SBA policy directive.

Policies regarding a company's pre-existing data generated under an SBIR award, use and transfer of equipment, and conflicts of interest are addressed by Section 8 of the SBA SBIR Program Policy Directive as follows:

"Terms of Agreement Under SBIR Awards

- (a) **Proprietary Information Contained in Proposals.** The standardized SBIR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require small business concerns (SBCs) to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the SBIR Program, from disclosure.
- (b) **Rights in Data Developed Under SBIR Funding Agreement.** The Act provides for "retention by an SBC of the rights to data generated by the concern in the performance of an SBIR award."
 - (1) Each agency must refrain from disclosing SBIR technical data to outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.
 - (2) SBIR agencies must protect from disclosure and non-governmental use all SBIR technical data developed from work performed under an SBIR funding agreement for a period of not less than four years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or federally-funded SBIR Phase III) unless, subject to paragraph (b)(3) of this section, the agency obtains permission to disclose such SBIR technical data from the awardee or SBIR applicant. Agencies are released from obligation to protect SBIR data

upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent SBIR award must remain protected through the protection period of that subsequent SBIR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an SBIR award, whether patented or not. This section does not apply to program evaluation.

- (3) SBIR technical data rights apply to all SBIR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the SBIR Program, as described in Section 4 of this Policy Directive. The scope and extent of the SBIR technical data rights applicable to federally-funded Phase III awards is identical to the SBIR data rights applicable to Phases I and II SBIR awards. The data rights protection period lapses only:
 - (i) upon expiration of the protection period applicable to the SBIR award; or
 - (ii) by agreement between the awardee and the agency.
 - (4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as SBIR data rights clauses into all SBIR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an SBIR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an SBIR Phase III award conditional on data rights. If the SBIR awardee wishes to transfer its SBIR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its SBIR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an SBIR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that SBIR Phase III award. Such a bilateral data rights agreement must be entered into only after the SBIR Phase III award, which includes the appropriate SBIR data rights clause, has been signed. SBA will report to Congress any attempt or action by an agency to condition an SBIR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.
- (c) Title Transfer of Agency-Provided Property. Under the Act, the Government may transfer title to property provided by the SBIR agency to the awardee or acquired by the awardee for the purpose of fulfilling the contract where such transfer would be more cost effective than recovery of the property.
 - (d) Continued Use of Government Equipment. The Act directs that an agency allows an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee or acquired by the awardee for the purpose of fulfilling the contract. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the SBIR Program.

- (e) Grant Authority. The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.
- (f) Conflicts of Interest. SBA cautions SBIR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each SBIR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.
- (g) American-Made Equipment and Products. Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each SBIR agency must provide to each awardee a notice of this requirement.”

An approved example for an SBIR funded CRADA is provided in [Section IV - 6](#) of this handbook. The local SBIR Program Manager must be consulted prior to negotiating an SBIR funded CRADA.

Department of Defense (DoD) and Department of the Navy (DON) Technology Transfer (T2) Policy and Requirements

Section VII

- [VII](#) Department of Defense (DoD) and Department of the Navy (DON) Technology Transfer (T2) Policy and Requirements
- [VII-1](#) DoD Directive and Instruction on Domestic T2
 - [VII-1a](#) DoD Directive 5535.5
 - [VII-1b](#) DoD Instruction 5535.8
- [VII-2](#) Secretary of the Navy Instruction ([SECNAVINST](#)) 5700.17, Domestic Technology Transfer
 - [VII-2a](#) Laboratory Designation (How a Navy/Marine Corps Technical Activity Becomes a Federal Laboratory)
 - [VII-2b](#) Navy/Marine Corps ORTA Representative Designation
- [VII-3](#) T2 Annual Business Report and Metrics

Section VII

Department of Defense (DoD) and Department of the Navy (DON) Technology Transfer (T2) Policy and Requirements

[Sections VII - 1a](#), [1b](#), and [2](#) provide copies of the directives and instructions that govern DoD and Navy domestic T2. DoD and DON T2 policy and requirements are addressed. [Section VII - 2a](#) describes the Navy/Marine Corps laboratory designation process and [Section VII - 2b](#) presents the Navy/Marine Corps office of research and technology applications (ORTA) designation process. T2 reporting requirements and metrics are discussed in [Sections VII - 3](#).

Section VII - 1

DoD Directive and Instruction on Domestic T2

DoD Directive 5535.3 and DoD Instruction 5535.8 implement and establish policy, assign responsibilities, and prescribe procedures for DoD domestic T2 activities prescribed by Federal law, as applied to the DoD.

The following material are copies of DoD Directive 5535.3, dated 21 May 1999, and DoD Instruction 5535.8, dated 14 May 1999. For the latest DoD directive and instruction, refer to the DoD Issuances website, <http://www.esd.whs.mil/DD/DoD-Issuances>.



Section VII - 1a
Department of Defense
DIRECTIVE

NUMBER 5535.3
May 21, 1999

DDR&E

SUBJECT: DoD Domestic Technology Transfer (T2) Program

References: (a) DoD Directive 5535.3, "Licensing of Government-Owned Inventions by the Department of Defense," November 2, 1973 (hereby canceled)
(b) Secretary of Defense Memorandum, "DoD Domestic Technology Transfer/Dual Use Technology Development," June 2, 1995 (hereby canceled)
(c) DoD 3200.12-R-4, "Domestic Technology Transfer Program Regulation," December 1988, (hereby canceled)
(d) Sections 3702, 3703, 3705, 3706, 3710, 3712, 3715 of title 15, United States Code
(e) through (k), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Reissues reference (a) and supersedes references (b) and (c).
- 1.2. Implements, establishes policy, and assigns responsibility for DoD domestic T2 activities under reference (d), as they apply to the Department of Defense, and under 10 U.S.C. (reference (e)), as they apply to the T2 activities of the Department of Defense.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

3. DEFINITIONS

The following terms, used in this Directive, are defined in DoD Instruction 5535.8 (reference (f)):

- 3.1. Cooperative Research and Development Agreement (CRADA).

- 3.2. Laboratory (as broadly defined in 15 U.S.C. 3710a(d)(2)(A), reference (d), for this Directive).
- 3.3. Nonprofit institution (Sections 3703 and 3710(i) of reference (d) and E.O. 12999 (reference (g)) for this Directive).
- 3.4. Technical assistance.
- 3.5. T2.

4. POLICY

It is DoD policy that:

- 4.1. Consistent with national security objectives under 10 U.S.C. 2501 (reference (e)), domestic T2 activities are integral elements of DoD pursuit of the DoD national security mission and concurrently improve the economic, environmental, and social wellbeing of U.S. citizens (Section 3702 of reference (d)). Concurrently, T2 supports a strong industrial base that the Department of Defense may utilize to supply DoD needs. Those activities must have a high-priority role in all DoD acquisition programs and are recognized as a key activity of the DoD laboratories and all other DoD activities (such as test, logistics, and product centers and depots and arsenals) that may make use of or contribute to domestic T2.
- 4.2. Domestic T2 programs, including spin-off, dual-use, and spin-on activities, make the best possible use of national scientific and technical capabilities to enhance the effectiveness of DoD forces and systems.
- 4.3. It is further DoD policy to:
 - 4.3.1. Promote domestic T2 through a variety of activities, such as CRADAs, cooperative agreements, other transactions, education partnerships, State and local government partnerships, exchange of personnel, presentation of technical papers, and other ongoing DoD activities.
 - 4.3.2. Promote domestic T2 through U.S. and foreign patenting, patent licensing, and protecting other intellectual property rights. DoD inventions applicable for licensing shall be publicized to accelerate transfer of technology to the domestic economy. T2 is of the greatest benefit when the patented invention is commercialized (35 U.S.C. 200 and 207, reference (h)).

- 4.3.3. Allow non-Federal entities to use independent research and development funding as a part of their contributions to domestic T2 activities, including CRADAs, cooperative arrangements, and other transactions (Subpart 31.205-18(e) of the FAR, reference (i)).
- 4.3.4. Include domestic T2 as a duty and responsibility in position descriptions for applicable scientific, engineering, management, and executive positions.
- 4.3.5. Allow CRADAs between a DoD Component and DoD contractors, in accordance with DoD conflict of interest rules (DoD Directive 5500.7, reference (j)) and export control laws and regulations.
- 4.3.6. Ensure that domestic transfers of technology are accomplished without actual or apparent personal or organizational conflicts of interest or violations of ethics standards.
- 4.3.7. Allow conduct of T2 activity with foreign persons, industrial organizations, or government R&D activities, in accordance with export control laws, regulations, and policies and laws, regulations and policies governing foreign military sales (FMS). Consideration should be given to whether or not the government of such persons or industrial organization allows similar relationships and whether such activities benefit the U.S. industrial base and are consistent with the U.S. export control and FMS frameworks (E.O. 12591, reference (k)).
- 4.3.8. Encourage domestic T2 by giving preference to U.S. small business firms, consortia involving U.S. small business firms, and firms located in the United States.

5. RESPONSIBILITIES

- 5.1. The Under Secretary of Defense for Acquisition and Technology shall ensure that the Director, Defense Research and Engineering, shall:
 - 5.1.1. Implement 10 U.S.C. 2515 (reference (e)) to monitor all DoD R&D activities; identify DoD R&D activities using technologies and technology advancements that have potential non-DoD commercial application; serve as a clearinghouse for, coordinate, and otherwise help the transfer of technology to the U.S. private sector; assist private firms to resolve policy issues involved with the transfer of technology from the Department of Defense; and consult and coordinate with other Federal Departments on matters involving T2.

- 5.1.2. Serve as oversight authority for execution of all domestic T2 science and technology (S&T) matters and coordination with, as applicable, other DoD officials for matters under their oversight. As part of that oversight, the Director, Defense Research and Engineering, (DDR&E) shall define core domestic T2 S&T mechanisms and provide policy guidance for DoD Component investments in such mechanisms.
 - 5.1.3. Develop policy for DoD Component participation in, and support of, Federal S&T domestic T2 programs.
 - 5.1.4. Develop guidance for implementation of domestic T2 policy, to include coordination with other DoD officials for matters under their cognizance.
 - 5.1.5. Coordinate input from the DoD Components and prepare reports to the Congress, as required by 15 U.S.C. (reference (d)) and reference (e), the Office of Management and Budget, and others, as may be imposed by higher authority.
 - 5.1.6. Ensure that the DoD Components establish T2 awards programs and make applicable T2 awards.
 - 5.1.7. Ensure that the Administrator, Defense Technical Information Center (DTIC), maintains and provides development support for T2 databases useful to the Office of the DDR&E (ODDR&E) and the DoD Components.
- 5.2. The Secretaries of the Military Departments and the Heads of the other DoD Components, including the Directors of the Defense Agencies, under the OSD Principal Staff Assistants, shall:
- 5.2.1. Ensure that domestic T2 is a high priority in their organizations. That includes establishing processes to promote T2 and developing plans for improving T2 for matters under their oversight, to include specific objectives and milestones.
 - 5.2.2. Provide inputs for reports, as required by the ODDR&E, including T2 transaction and program investment data to the DTIC.
 - 5.2.3. Develop personnel policies for R&D executives, managers, laboratory directors, scientists, and engineers that make domestic T2 a critical factor for consideration in promotions, a critical element in performance appraisals, and a duty and responsibility in position descriptions where applicable. Those policies also shall ensure that members of the Office of Research and Technology Applications (ORTA) staff are included in the overall laboratory and/or Agency and/or DoD Field Activity management development programs.

- 5.2.4. Execute a T2 education and training program for scientists and engineers and other personnel who may be involved in domestic T2.
- 5.2.5. Establish an awards program, including cash awards, to recognize domestic T2 accomplishments.
- 5.2.6. Institute policies for protecting inventions and other intellectual property arising from federally supported R&D. That includes policies for patenting inventions, licensing the patented inventions, and maintaining the patents with commercial potential. Costs and expenses to acquire and maintain those patents shall be funded by the DoD Components. That shall not preclude collaborating parties from paying costs and expenses associated with protecting intellectual property rights.
- 5.2.7. Institute policies under which laboratories may be authorized to license, assign, or waive rights to intellectual property and distribute royalties and other payments, in accordance with DoD Instruction 5535.8 (reference (f)).
- 5.2.8. Implement marketing and outreach programs.
- 5.2.9. Provide support of mission-related domestic T2 activities with mission program element funds and ensure that domestic T2 programs have adequate staff and resources, giving particular attention to payment of salaries and travel expenses of scientific, engineering, legal, and ORTA personnel involved in T2. That includes costs and expenses associated with initiation and/or negotiation of CRADAs and other agreements.
- 5.2.10. Ensure implementation of all T2 functions, as required in 15 U.S.C. 3710(c) (reference (d)), by the ORTA or other domestic T2 focal points.
- 5.2.11. Allow use of partnership intermediaries to obtain domestic T2 support. Approval authority may be redelegated to the heads of the DoD laboratories.
- 5.2.12. Ensure that the directors and/or the commanders of laboratories make domestic T2 a high-priority element of their S&T programs by plan, budget, and execution.
- 5.2.13. Ensure that laboratories and other activities prepare applications assessments for selected R&D projects that may have commercial applications.
- 5.2.14. Encourage laboratories to provide technical assistance services, including help by technical volunteers, to State and local governments, school systems, and other organizations, where applicable.

5.3. The Heads of the DoD Components (other than the Secretaries of the Military Departments), including the Directors of the Defense Agencies, under the OSD Principal Staff Assistants, are delegated the authority of the Secretary of Defense to:

5.3.1. Loan, lease, or give research equipment or educationally useful Federal equipment, consistent with export control laws and regulations, which is excess to the needs of the laboratory to an educational institution or nonprofit institution for the conduct of technical and scientific education and research activities (Section 3710(i) of reference (d), and E.O. 12999 and 10 U.S.C. 2194, references (g) and (e)). That authority may be further delegated.

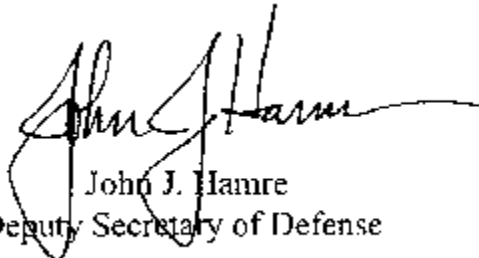
5.3.2. Enter into CRADAs with entities other than foreign governmental entities (Section 3710a of reference (d)). That authority may be further delegated.

6. INFORMATION REQUIREMENTS

The Secretaries of the Military Departments and the Heads of the other DoD Components shall provide inputs for reports, as required by the ODDR&E in subparagraph 5.2.2., above, including T2 transaction and program investment data to the DTIC under Reports Control Symbol DDA&T(A)2020.

7. EFFECTIVE DATE

This Directive is effective immediately.



John J. Hamre
Deputy Secretary of Defense

Enclosures - 1
E1. References, continued

E1. ENCLOSURE 1
REFERENCES

- (e) Sections 2501, 2506, 2514-2516, 2358, 2371, 2194, 2195 of title 10, United States Code
- (f) DoD Instruction 5535.8, "DoD Technology Transfer Program Procedures," May 14, 1999
- (g) Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century," April 17, 1996
- (h) Sections 200 and 207-209 of title 35, United States Code
- (i) Federal Acquisition Regulation, Subpart 31.205-18(e), "Independent Research and Development and Bid and Proposal Costs," current edition
- (j) DoD Directive 5500.7, "Standards of Conduct," August 30, 1993
- (k) Executive Order 12591, "Facilitating Access to Science and Technology," April 10, 1987



Section VII - 1b

Department of Defense INSTRUCTION

NUMBER 5535.8

May 14, 1999

DDR&E

SUBJECT: DoD Technology Transfer (T2) Program

References:

- (a) DoD Directive 5535.3, "Department of Defense Technology Transfer (T2) Program," May 21, 1999
- (b) DoD 5025.1-M, "DoD Directives System Procedures," August 1994, authorized by DoD Directive 5025.1, June 24, 1994
- (c) Sections 2501, 2506, 2514, 2516, 2358, 2371, 2194, 2195 of title 10, United States Code
- (d) Sections 3702, 3703, 3705, 3706, 3710, 3712, 3715 of title 15, United States Code
- (e) through (o), see enclosure 1

1. PURPOSE

This Instruction:

- 1.1. Implements policy, assigns responsibilities, and prescribes procedures under reference (a) for implementation of T2 programs.
- 1.2. Authorizes issuance of DoD 5535.8-H, in accordance with reference (b).

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy under DoD Directive 5535.3 (reference (a)) that, consistent with U.S. security objectives set out at 10 U.S.C. 2501 (reference (c)), T2 activities shall be an integral element of the DoD national security mission, a high-priority role in all DoD acquisition programs, and recognized as a key activity of the DoD laboratories and/or technical activities and all other DoD activities that may make use of or contribute to T2.

5. RESPONSIBILITIES

5.1. The Director, Defense Research and Engineering, under the Under Secretary of Defense for Acquisition and Technology, shall monitor compliance with this Instruction and DoD Directive 5535.3 (reference (a)).

5.2. The Deputy Director, Defense Research and Engineering, Technology Transition, shall:

5.2.1. Fulfill requirements in 10 U.S.C. 2515 (reference (c)), to:

5.2.1.1. Monitor all DoD research and development (R&D) activities.

5.2.1.2. Identify R&D activities using technologies and technology advancements that have potential non-DoD commercial application.

5.2.1.3. Serve as a clearinghouse for, coordinate, and otherwise facilitate T2 to the private sector.

5.2.1.4. Assist private firms to resolve problems involved with the transfer of technology from the Department of Defense.

5.2.1.5. Consult and coordinate with the other Federal Departments on matters involving T2.

5.2.2. Circumscribe core T2 science and technology (S&T) mechanisms for DoD Component investment. That procedure is prescribed in section 6., below.

5.2.3. Ensure effective and consistent application of U.S. and DoD guidance impacting the participation of foreign individuals and organizations in DoD T2 transactions.

5.2.4. Issue DoD 5535.8-H to provide common practices, procedures, and processes necessary to promote a uniform DoD approach to T2 between the Department of Defense and its partners.

5.3. The Secretaries of the Military Departments and the Heads of the Other DoD Components, including the Directors of the Defense Agencies, under the OSD Principal Staff Assistants, shall be responsible for:

5.3.1. Accomplishing T2 in their organizations, as defined in DoD Directive 5535.3, subsection 5.2. (reference (a)).

5.3.2. Ensuring that all DoD laboratories and/or technical activities, as defined in 15 U.S.C. 3710a(d)(2) (reference (d)), and all other organizations capable of supporting or making use of T2, shall make T2 a high priority in accomplishing their programs.

6. PROCEDURES

6.1. The DoD Components may participate in, and shall support, Federal S&T T2 programs. That includes, but is not limited to, the following:

6.1.1. Each DoD Component shall transfer funds to the National Institute of Standards and Technology to support the Federal Laboratory Consortium (FLC), as required in 15 U.S.C. 3710e(7)(A)-3710e(7)(C) (reference (d)).

6.1.2. Federal resources such as the National Technology Transfer Center and the Regional Technology Transfer Centers managed through the National Aeronautics and Space Administration and the National Technical Information Service may be used, when applicable.

6.1.3. Ongoing programs or projects supporting U.S. initiatives such as the Partnership for a New Generation Vehicle are encouraged.

6.1.4. Laboratory personnel are encouraged to participate in conferences, seminars, workshops, and other mission-related technical activities of interest due to the mission of the particular laboratory.

6.1.5. Collaborative efforts between the DoD laboratories and/or technical activities or between DoD laboratories and other Federal Agency activities are encouraged.

6.2. The DoD Components are encouraged to use any combinations of spin-off, dual-use, and spin-on mechanisms that are most effective for accomplishment of T2 objectives.

- 6.2.1. T2 ensures DoD programs make the best possible use of national scientific and technical capabilities to enhance the effectiveness of DoD forces and systems. Commercial availability of DoD-developed technologies can be expected to lower the costs of acquiring military equipment by providing the opportunity to take advantage of economies of scale and buy from a larger commercial industrial base. The following mechanisms are core DoD T2 mechanisms and as such should be part of DoD Components' investment strategies. The list, while extensive, is not meant to be exclusive of other mechanisms.
 - 6.2.1.1. Cooperative Research and Development Agreements - CRADAs should be used whenever possible to expand capabilities for R&D and to transfer technology developed jointly or independently to enhance both defense capabilities and the civilian economy. The cost and expense of development, negotiation, and implementation of CRADAs should be funded from laboratory resources.
 - 6.2.1.2. Other core T2 mechanisms include, alphabetically: contracts, cooperative agreements, education partnerships, exchange of personnel, exchange of technical data, grants, other transactions, partnerships with universities, patenting, patent license agreements and other intellectual property licensing agreements, presentations of technical papers, technical assistance, and technology assessments.
- 6.2.2. That recommendation aligns DoD T2 with other elements in the DoD new acquisition strategy, which gives greater emphasis to dual-use technology development and spin-on from the private sector. Several considerations, which are also relevant for T2, have prompted that new strategy. Affordability is a key consideration in weapon system acquisition and sustainment, where the commercial acquisition of products provides economies of scale and resulting cost savings. The Department of Defense frequently will benefit from making DoD-developed technologies available to the commercial sector so that subsequent DoD acquisitions may benefit from such economies of scale.
- 6.2.3. Dual-use and spin-on also take advantage of the strategic advantages inherent in the U.S. civilian economy and technology base. A DoD-unique acquisition strategy may result in the fielding of obsolescent systems.

- 6.2.4. The increased attention being given to dual-use and spin-on does not mean that there is no longer an important role for in-house research, development, test, and evaluation (RDT&E) in the DoD Components. Some technologies are unique to the DoD missions. Some technological capabilities may be adapted to make them fully suitable for DoD applications. Despite those considerations, there has been a change in emphasis. The DoD Components are encouraged to experiment with new dual-use and spin-on mechanisms in T2.
- 6.3. The Heads of the DoD laboratories and/or technical activities, as defined in enclosure 2, shall prepare, with the business planning processes of their organizations, a T2 business plan that describes how the responsibilities prescribed in the DoD Directive 5535.3, paragraphs 5.2.1. through 5.2.14. (reference (a)), have been addressed for the current year. Those plans shall identify the activities for the year ahead and describe efforts to make improvements in that program.
- 6.4. To accomplish its role, the Director, Defense Research and Engineering (DDR&E), as the central authority and clearinghouse for DoD T2, requires various reports from the DoD Components. Those reports include, but are not limited to, the OMB Circular A-11 (reference (e)) report, the Defense T2 Information System (DTTIS) reports, and the DoD Component business plans. Those reports also help the DDR&E highlight DoD T2 successes as part of the reporting requirements to the Congress. Details on the DTTIS and other reporting requirements are in section 7., below, and in separate DDR&E issuances.
- 6.5. DoD Directive 5535.3 (reference (a)) requires that the Heads of the DoD Components shall develop personnel policies for R&D executives, managers, laboratory directors, scientists, and engineers that make T2 a critical element for position descriptions, job performance appraisals, and promotions. They are also required to ensure that members of the Office of Research and Technology Applications (ORTA) staff are included in the overall laboratory and/or Agency and/or DoD Field Activity management development programs. Procedures to accomplish that include, but are not limited to, the following:
 - 6.5.1. Including statements in personnel position descriptions similar to those found in enclosure 3.
 - 6.5.2. Including identification of critical factors for consideration in promotions for T2 personnel in the T2 business plans of the DoD Components.
 - 6.5.3. Providing incentives for ORTA personnel such as training or future job assignments, as an incentive to attract the best people to those positions.
 - 6.5.4. Making knowledge of T2 a required knowledge, skill, and ability for all laboratory scientific or engineering job announcements.

- 6.6. The implementation and execution of a viable T2 program requires education and training of personnel, including all scientists and engineers, and other personnel who may be involved in T2. All the DoD Components are encouraged to institute applicable organization-wide T2 training programs that provide personnel with the requisite knowledge base and skills. Some sources of training include the FLC, the NTTC, the Technology Transfer Society, the Association of University Technology Managers, colleges and universities, and other professional organizations.
- 6.7. Under the authorities of 15 U.S.C. 3710b and DoD 1400.25-M (references (d) and (f)), the Deputy DDR&E, recognizes S&T T2 achievements through a variety of mechanisms, including monetary rewards to DoD winners of FLC awards.
 - 6.7.1. DoD recipients of FLC awards may receive a cash award. The amount may be provided to one Federal employee or appropriately divided if there is more than one Federal employee for each organization. When notified, the DoD Components shall provide the names of their FLC award recipient(s) to the ODDR&E. If cash awards are available, they shall be provided through personnel pay system disbursements.
 - 6.7.2. Letters of appreciation and other forms of recognition may be issued for specific T2 accomplishments. Such honorary awards may be presented to individuals and teams, which may include Federal employees as well as non-Federal employees, who shall have made exceptional achievements in T2.
- 6.8. Patents are one of the original instruments of T2 and represent one of the clearest means to characterize an innovation and to describe how it may be of benefit to the user. Procedures for protecting intellectual property shall include the following:
 - 6.8.1. Evaluation of inventions arising from R&D efforts.
 - 6.8.2. Filing and prosecuting patent applications for those inventions selected as having sufficient benefit to justify obtaining patent protection.
 - 6.8.3. Determination of which patents shall remain enforceable through payment of required maintenance fees.
 - 6.8.4. Providing for payment of costs and expenses to acquire and maintain patents and other intellectual property from the program elements funds, overhead accounts, royalties or other payments, or other sources, as applicable, of the DoD Components. That does not preclude collaborating parties from paying costs and expenses associated with intellectual property rights.
- 6.9. Distribution of royalties and other payments received by the DoD Components.

- 6.9.1. Royalties or other payments received on account of any invention licensed by a DoD Component shall be payable to the inventor or each co-inventor, as prescribed in the remainder of this paragraph. The DoD Component shall pay to the inventor or each co-inventor each year, at least \$2,000 plus equal shares of at least 20 percent of the remainder of the royalties or other payments. In the absence of extrinsic evidence that co-inventors made unequal contributions to the invention, subject to review and approval by the concerned legal counsel for the DoD Component, it shall be presumed that the co-inventors made equal contributions to the invention and are entitled to equal shares of the 20 percent remainder of the royalties or other payments. If the royalties or other payments received in any given year are less than or equal to \$2,000, or for co-inventors, less than or equal to \$2,000 times the number of inventors, the entire amount is paid to the inventor, or for co-inventors, the entire amount is divided equally among the co-inventors. The inventor or co-inventors shall receive their prescribed share of any royalties or other payments, as received by the Government on an annualized basis.
- 6.9.2. Royalties or other payments from inventions to any one person shall not exceed \$150,000 for each year without Presidential approval, as in 5 U.S.C. 4504 (reference (g)).
- 6.9.3. A DoD Component or subordinate laboratory, when authority is delegated, may provide applicable incentives from royalties or other payments, to laboratory employees who are not inventors or co-inventors of such inventions, but who substantially increase the technical value of such inventions. When the incentive is in the form of a monetary payment, such payments may be at any level subject to the authority of the DoD Component or activity that approved the payment, but such payments shall not exceed the limits established in paragraphs 6.9.1. and 6.9.2., above. Payments may be on a one-time or annual basis, and they shall cease when the employee is no longer employed by that DoD Component.
- 6.9.4. Inventors shall be entitled to royalties or other payments income, as discussed in subsection 6.1. through paragraph 6.9.3., above, and paragraph 6.9.4. through subparagraph 6.9.5.3., below, regardless of the date of the invention.
- 6.9.5. Assignment and use of royalties or other payments income shall be applied, in accordance with the following schedule:
 - 6.9.5.1. Royalties or other payments shall be used by the end of the second fiscal year (FY) succeeding the FY in which the royalties and other payments were received.

- 6.9.5.2. After assignment of royalties and other payments to inventors under paragraph 6.9.1., above, any remainder may be used for the following:
 - 6.9.5.2.1. Payment of expenses incidental to administration and licensing of inventions and other intellectual property.
 - 6.9.5.2.2. Other activities of the DoD Component that increase the licensing potential for transfer of DoD technology.
 - 6.9.5.2.3. Scientific R&D consistent with the R&D mission and objectives of activities of the DoD Component.
 - 6.9.5.2.4. Reward of scientific, engineering, and technical employees of activities of the DoD Component.
 - 6.9.5.2.5. Promotion of scientific exchange among other activities in the DoD Component.
 - 6.9.5.2.6. Education and training of employees consistent with the R&D mission and objectives of the Department of Defense.
 - 6.9.5.3. Each DoD Component shall prescribe its own regulations as to whether inventors or co-inventors, whose whereabouts are unknown for 1 year, or more, are entitled to further royalty payments.
- 6.10. U.S. and DoD initiatives to stimulate economic competitiveness, reform the acquisition process, and integrate the civilian and defense industrial bases, all stress the need for improved interaction between the laboratories and/or technical activities and the industrial and academic sectors. Laboratories and/or technical activities shall have formal programs to stimulate "spin-off" and "spin-on" to eliminate the perception that the laboratories and/or technical activities compete with the private sector, and to develop new partnerships with broad segments of industry and academia. The implementation and execution of a viable T2 program also shall require applicable forms of marketing and outreach. The intent of marketing and outreach activities is to communicate, inform, or collaborate with stakeholders, in the T2 community.

- 6.10.1. The cost and expenses associated with establishing and operating a T2 Office or an ORTA shall come from the program element funds, overhead accounts, royalties or other payments, or other sources, as applicable, of the DoD Components. Subsection 3710(b) of 15 U.S.C. (reference (d)), requires that the DoD Components shall make available sufficient funding to support the T2 functions. An office (ORTA), that provides coordination, administration, and management of DoD T2, shall function at all DoD laboratories and/or technical activities with 200 or more scientific, engineering, or related technical positions regardless of individual laboratory and/or technical activity funding issues.
- 6.10.2. The Heads of DoD laboratories and/or technical activities shall develop procedures to provide support to mission-related T2 activities and shall ensure that T2 programs are adequately staffed and resourced. For example, program element funds may be used to pay the costs and expenses of initiation and negotiation of CRADAs and other agreements. Those procedures shall give particular attention to payment of salaries and travel expenses of scientific, engineering, and legal personnel and ORTA personnel involved in T2.
- 6.10.3. Marketing and outreach activities are part of the functions of the ORTA. The DoD Components are encouraged to utilize multiple means to conduct marketing and outreach programs, such as the following:
 - 6.10.3.1. Advanced information technologies (including websites, search and/or retrieval tools, webcasting, and collaboration applications).
 - 6.10.3.2. Personal and professional contacts.
 - 6.10.3.3. Advertising.
 - 6.10.3.4. Joint technical publications.
 - 6.10.3.5. Requests for collaborations in the Commerce Business Daily.
 - 6.10.3.6. Use of Advanced Planning Briefing for Industry.
 - 6.10.3.7. Press releases for relevant industrial publications.
 - 6.10.3.8. Use of the North American Industrial Classification System for targeted mailings to industry.
 - 6.10.3.9. Education partnerships.
 - 6.10.3.10. Symposia and conferences.

- 6.10.3.11. Alliances with local, regional, and U.S. T2 networks and organizations (i.e., State and local business development organizations).
- 6.10.4. Some DoD laboratories and/or technical activities have unique technical and other capabilities that may be of benefit to non-Federal organizations. It is applicable for laboratories and/or technical activities to advertise and demonstrate such capabilities to promote fee-for-service use. The Heads of the DoD Components and laboratory managers shall develop and implement policies to ensure that such advertising and use of laboratory facilities is consistent with U.S. and DoD policy for such matters. Particular attention shall be given to the objective of avoiding situations in which a DoD laboratory is competing with or providing services available from other domestic sources. Special emphasis shall be given to development and implementation of policies to ensure that fee-for-service use of DoD facilities does not degrade performance of primary mission activities in the laboratories and/or technical activities.
- 6.11. Intermediaries affiliated with State or local governments may ease communication and understanding between defense laboratories and/or technical activities and non-Federal entities. Intermediaries normally conduct a number of functions for the laboratory that a laboratory cannot perform due to lack of skills or expertise. The goal of the intermediaries is to assist the laboratory in forming and maintaining productive technology partnerships. The DoD Components are encouraged to delegate authority, to the maximum extent possible, for entering into partnerships with intermediaries.
 - 6.11.1. The intermediaries shall provide a number of services, including consulting services, strategic planning, military and commercial technology assessments, integration with Federal core research and/or focus and/or outreach areas, and technology marketing. They also may provide coordinated media and legislative interface and assistance with DoD conversion activities. One of their attributes is their ability to interface with small business and regional economies interested in commercializing Federal technology.

- 6.11.2. Intermediaries normally shall provide services to the affiliated defense lab and/or center typically under a contract, CRADA, educational partnership agreement, or memorandum of understanding and/or memorandum of agreement. Intermediaries may be professional societies; industry and trade associations; economic development associations; DoD conversion and/or technology development Agencies; academic institutions; State, regional, or local governments; and for-profit consultants and/or firms under competed procurement contracts. A specific type of intermediary, a “Federal Partnership Intermediary,” is described in 15 U.S.C. 3715(c) (reference (d)). The DoD Components are encouraged to delegate authority for such decisions to the maximum extent possible.
- 6.12. Technology assessment is an important part of the T2 process. Technology assessments shall be conducted to determine the potential commercial value of a laboratory and/or the intellectual property of a technical activity. Technology assessment shall be a continuous process in DoD laboratories and/or technical activities to enable development of a portfolio of marketable technologies that may be used to respond to inquiries and unanticipated application opportunities defined by potential clients. Assessment includes identifying candidate products and/or processes and evaluating potential to validate feasibility, suitability, and marketability.
- 6.13. Besides intermediaries, use of consultants and contractors to support T2 activities by conducting assessments of marketing opportunities, applications, and technologies is among the mechanisms that the DoD Components may use to promote T2. That may involve contracts with for-profit or nonprofit organizations. It also may involve purchasing commercial products and services dealing with markets, applications, and technologies. Consideration shall be given to potential conflict-of-interest issues in making decisions on the use of consultants and contractors to perform assessments supporting T2.
- 6.14. Laboratories and/or technical activities may provide technical assistance services, including help by technical volunteers, to State and local governments, school systems, and nonprofit organizations. Those services may include problem analysis, assistance in the development and interpretation of technical information, hands-on technical help from laboratory volunteers, and limited projects in a laboratory where that does not compete with available services in the private sector. In making decisions on such technical assistance services, mission activities necessarily shall have first priority. It is applicable to consider U.S. and DoD policies that promote educational and technical activities. It is also applicable to give consideration to potential payoffs to the laboratory; e.g., the benefits for recruitment of technical staff that may be associated with providing technical assistance services to educational institutions.

- 6.15. The Heads of the DoD laboratories and/or technical activities (see enclosure 2, definition E2.1.3.) may loan, lease, or give research equipment that is excess to the needs of the laboratory to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer to the recipient when the excess research equipment is transferred as a gift. Research equipment provided to a recipient under 15 U.S.C. 3710(i) (reference (d)) is not subject to existing Federal property disposal regulations implementing separate authorities. Federal laboratories and/or technical activities that transfer their excess research equipment directly to the recipient shall report the transfer to the General Services Administration (GSA). That is clarification of 15 U.S.C. 3710(i) (reference (d)) and E.O. 12999 (reference (h)) to allow laboratories and/or technical activities, Agencies, or Departments to give, loan, or lease excess research equipment to public and private schools and nonprofit institutions without the administrative burden of existing Federal property disposal laws. That is an alternative and free-standing method of distribution of excess research equipment. Under this E.O. (reference (h)), Federal laboratories and/or technical activities may donate their excess research equipment directly to the recipient or report excess research equipment to the GSA for transfer under existing Federal property disposal laws.
- 6.16. One objective of DoD T2 is to improve the domestic U.S. economy and standard of living. That does not mean that T2 may be accomplished only by working with U.S.-owned and U.S.-based companies. There may be situations in which working with a foreign organization, individual, or government R&D facility is the best way to accomplish the T2 goal. The foreign individual, organization, or government R&D facility may have the best technology for a given application, or a foreign company may provide for manufacture mostly in the United States.
- 6.16.1. It is DoD policy to allow foreign persons and organizations to be involved in DoD T2 transactions when it is in the judgment of the laboratory or other DoD Component personnel responsible for making such decisions, the best option for achieving their objectives, only if such foreign participation is consistent with U.S. and DoD policy. That is done without any intention of inhibiting such foreign participation; the goal, rather, is to ensure that actions are consistent with U.S. and DoD policy.
- 6.16.2. The Heads of the DoD Components shall consider the criteria in paragraph 6.16.3., below, when developing guidance for their laboratories and/or technical activities on U.S. and DoD policies impacting the participation of foreign individuals and organizations in T2 transactions. Such guidance shall be developed in forms that help decision-making in DoD laboratories and/or technical activities, which are not anticipated to have expertise in trade policy. That guidance shall encompass all of the types of T2 transactions and mechanisms addressed in this Instruction.

- 6.16.3. It is expected that criteria shall include special consideration such as the following:
 - 6.16.3.1. Whether such foreign companies or governments shall permit and encourage U.S. Agencies, organizations, or persons to enter into cooperative R&D agreements and licensing arrangements on a comparable basis.
 - 6.16.3.2. Whether those foreign governments shall have policies to protect U.S. intellectual property rights.
 - 6.16.3.3. Where cooperative research shall involve data, technologies, or products subject to U.S. security export controls under the laws of the United States, whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under such U.S. security export controls or by international agreements to which the United States and such foreign governments are signatories.

6.17. Guidance and factors to consider when using a CRADA:

- 6.17.1. CRADAs are agreements that allow one or more Federal laboratories and/or technical activities and one or more non-Federal parties to conduct specified R&D efforts that are related to and consistent with the mission of the DoD laboratory. CRADAs are instruments that may be used in all aspects of a product and/or system life cycle where RDT&E activities occur.
- 6.17.2. CRADAs are not subject to terms for procurement contracts and other instruments that are defined by 31 U.S.C. 6303-6305 (reference (i)), but they are contracts in the sense that are legally enforceable documents. CRADAs shall not be viewed as an alternative to normal procurement procedures.
- 6.17.3. Special consideration shall be given to small businesses or consortia involving small businesses.
- 6.17.4. Preference shall be given to businesses located in the United States or those that agree that products embodying inventions made under the CRADA or produced through the use of such inventions shall be manufactured substantially in the United States (consistent with subsection 6.16., above).
- 6.17.5. CRADAs shall contain provisions for a variety of intellectual property issues including data rights, property ownership, and the allocation of rights to future inventions and/or intellectual property.

- 6.17.6. DoD laboratories and/or technical activities may protect from public access certain commercially valuable information resulting from work under a CRADA for a period of up to 5 years. Doing so provides the collaborating entity sufficient time to capitalize on the inventions and/or intellectual property created under the CRADA.
- 6.17.7. DoD laboratories and/or technical activities may commit resources such as personnel, services, facilities, equipment, intellectual property or other resources with or without reimbursement, but shall not provide funds to the non-Federal partner as part of the agreement. Non-Federal parties may commit funds to the Federal partner to the agreement.
- 6.17.8. DoD laboratories and/or technical activities receiving funds under a CRADA shall maintain separate and distinct accounts, records, and other evidence supporting expenditures under the CRADA.
- 6.17.9. When licensing intellectual property under a CRADA, the DoD laboratory and/or activity shall retain a nonexclusive, nontransferable, irrevocable, and paid-up license for use by the Government.
- 6.17.10. The private non-Federal partner shall be given the option to choose an exclusive license for a pre-negotiated field of use for any invention made in whole or part by a laboratory employee.
- 6.17.11. CRADAs shall be accomplished without actual or apparent personal or organizational conflicts of interest or violations of ethics standards.

7. INFORMATION REQUIREMENTS

- 7.1. The Defense Technical Information Center (DTIC) shall, under the direction of the DDR&E, develop, maintain, and operate databases to collect, store, and disseminate information about DoD T2 program activities. Elements or segments of those databases shall be accessible to applicable levels of DoD and external users (non-DoD activities) in a manner consistent with the constraints of the data, as specified in DoD Directive 5535.3, the Secretary of Defense Memorandum, and 15 U.S.C. (references (a), (j), and (d)). The DTIC shall develop, maintain, and operate those computer databases in support of DoD T2 policies and concepts with the coordinated and approved requirements of the DoD Components to include the following:
 - 7.1.1. Preparation; coordination with the DoD Components; and issuance of uniform procedures, codes, data elements, and formats for submitting records to, and obtaining records from, the computer databases. The data elements and codes shall comply with DoD 8320.1-M-1 (reference (k)) or be developed, in accordance with DoD Directive 8320.1 (reference (l)).

- 7.1.2. Providing and operating a system for database input, output, access, and retrieval.
 - 7.1.3. Providing to each of the DoD Components and activity focal points, a quarterly report that summarizes quantity and quality of input from the activities of that DoD Component. A complete summary of those reports shall be provided to the ODDR&E (Technology Transfer Directorate).
 - 7.1.4. Incorporation of applicable security requirements, in accordance with DoD 5200.28-M (reference (m)).
- 7.2. Other scientific and technical information needs may be addressed in DoD Directive 3200.12 and DoD Instruction 5230.27 (references (n) and (o)), and other policy issuances.

8. EFFECTIVE DATE

This Instruction is effective immediately.


Director, Defense Research and Engineering

Enclosures - 3

E1. References, continued

E2. Definitions

E3. Starting Point for Position Descriptions, Work Plans, and Performance Standards

E1. ENCLOSURE 1
REFERENCES

- (e) Office of Management and Budget, Circular No. A-11, "Preparation and Submission of Budget Estimates," June 23, 1997
- (f) DoD 1400.25-M, "DoD Civilian Personnel Manual System," December 1996, authorized by DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
- (g) Sections 2105 and 4504 of title 5, United States Code
- (h) Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century," April 17, 1996
- (i) Sections 6303-6305 of title 31, United States Code
- (j) Secretary of Defense Memorandum, "DoD Domestic Technology Transfer/Dual Use Technology Development," June 2, 1995
- (k) DoD 8320.1-M-1, "Data Element Standardization Procedures," January 1993, authorized by DoD Directive 8320.1, September 26, 1991
- (l) DoD Directive 8320.1, "DoD Data Administration," September 26, 1991
- (m) DoD 5200.28-M, "ADP Security Manual," January 1973, authorized by DoD Directive 5200.28, March 21, 1988
- (n) DoD Directive 3200.12, "DoD Scientific and Technical Information Program," February 15, 1983
- (o) DoD Instruction 5230.27, "Presentation of DoD-Related Scientific and Technical Papers at Meetings," October 6, 1987

E2. ENCLOSURE 2 DEFINITIONS

E2.1.1. Cooperative Research and Development Agreement (CRADA). An agreement between one or more Federal laboratories and/or technical activities and one or more non-Federal parties. Under a CRADA, the Government laboratories and/or technical activities shall provide personnel, services, facilities, equipment or other resources with or without reimbursement (but not funds to the non-Federal parties). CRADAs are instruments that may be used in all aspects of a product and/or system life cycle where RDT&E activities occur. The non-Federal parties shall provide funds, personnel, services, facilities, equipment or other resources toward the conduct of specified R&D efforts that are consistent with the missions of the laboratory. The CRADA partners shall share in the intellectual property developed under the effort. The terms of a CRADA may not conform to a procurement contract or cooperative agreement as those terms are used in Sections 6303-6305 of 31 U.S.C. (reference (i)). Besides that definition, two types of CRADAs are, as follows:

E2.1.1.1. Technical Assistance CRADA. That allows a Federal laboratory and a non-Federal partner to work jointly to assist local businesses by providing limited (4-day maximum) free technical consulting. Preference is given to non-Federal partners that are State organizations, universities, non-profit entities, or business incubators that shall publicize availability of Federal assistance, receive and assess requests for cooperative research, ensure that the laboratory and/or technical activity shall not compete with private organizations, and coordinate work of the laboratory and/or technical activity with the requester companies. The laboratory and/or technical activity shall provide the required assistance and reports to the CRADA partner and the requester company. The requester company only shall provide a problem statement and sign a short 2-page "mini-CRADA" agreement, "sub-agreement," or "CRADA amendment."

E2.1.1.2. Military-Use CRADA. A CRADA between a DoD laboratory and/or technical activity and an industrial partner to utilize existing unique capabilities and facilities at the DoD laboratory in a product or process intended primarily for DoD or other military use. Each participant recognizes that it cannot support the research alone nor duplicate existing research or facilities. The technology is incorporated in new DoD systems or products as well as in other commercial opportunities. Specific concerns to be addressed in each military-use CRADA include the following:

E2.1.1.2.1. A CRADA may be the proper vehicle (work is not a contract).

E2.1.1.2.2. Government rights are maintained (not establishing a sole source).

E2.1.1.2.3. Equal opportunity shall be provided to other qualified companies.

E2.1.1.2.4. The laboratory shall not compete with private sector.

E2.1.1.2.5. Preferably, the funds for the laboratory shall not go through industry.

E2.1.2. Federal Employee. That is defined in U.S.C. 2105 (reference (g)).

E2.1.3. Laboratory and/or Technical Activity. For the Instruction, that term is, as broadly defined, in 15 U.S.C. 3710a(d)(2)(A) (reference (d)), and shall include the following:

E2.1.3.1. "A facility or group of facilities owned, leased, or otherwise used by a Federal Agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government."

E2.1.3.2. Use of this broad definition, in subdefinition E2.1.3.1., above, is deliberate. That definition is not confined to those DoD Components that are formally titled "laboratories." The intent of that definition is to encompass the wide range of organizations and arrangements that function as laboratories and/or technical activities in DoD research, development, and engineering programs. It shall include laboratories and/or technical activities and reference more diverse arrangements that shall provide a virtual laboratory capability. For example, a DoD Component may have a virtual lab involving a management function accomplished in a Defense Agency activity, plus a dispersed set of research activities to be accomplished by a variety of organizations outside of the sponsoring and/or managing activity. Those capabilities are included in test, logistics, and product centers; depots; arsenals; program offices; and all DoD offices providing for RDT&E. That is consistent with 15 U.S.C. 3710a(d)(2)(A) (reference (d)), which uses such encompassing terms as "facility." That broad definition is in accordance with new DoD practices.

E2.1.3.3. While the definition cited in Subsection 3710a(d)(2)(A) of reference (d) occurs in a Section of the U.S.C. dealing with CRADAs, the use of that broad definition in the Instruction (and DoD Directive 5535.3, reference (a)) shall not be limited to matters involving CRADAs. The broad definition applies to all citations of laboratories and/or technical activities in the Instruction and reference (a).

E2.1.4. Nonprofit Institution. That is an organization owned and operated exclusively for scientific or educational purposes, the net earnings of which shall not benefit any private shareholder or individual.

E2.1.5. Technical Assistance. Allows a Federal laboratory and a non-Federal partner to work jointly to assist local businesses by providing limited (up to 4-day maximum) free technical consulting. Preference shall be given to non-Federal partners that are State organizations, universities, or non-profit entities, including the FLC, which shall publicize availability of Federal assistance, ensure that the laboratory and/or technical activity shall not compete with private organizations, and coordinate the work of the laboratory and/or technical activity with the requester companies. The laboratory and/or technical activity shall provide the required assistance in the form of technical information, lessons, learned, problem solving, or further advice. At no time are technical assistance activities or technical assistance CRADAs to be used to accomplish R&D.

E2.1.6. Technology Transfer (T2). The intentional communication (sharing) of knowledge, expertise, facilities, equipment, and other resources for application to military and nonmilitary systems. Domestic T2 activities shall include the following:

E2.1.6.1. Spin-off activities that shall demonstrate DoD technology; e.g., commercial viability of technologies already developed or presently being developed for U.S. security purposes. The primary purpose of those activities, which encompass T2, shall be to promote and make available existing DoD-owned or -developed technologies and technical infrastructure to a broad spectrum of non-DoD applications.

E2.1.6.2. Dual-use science and technology and other activities that develop technologies that have both DoD and non-DoD applications.

E2.6.3 Spin-on promotion activities that shall demonstrate the U.S. security utility of technologies developed outside of the Department of Defense. That goal shall be to incorporate the innovative technology into military systems to meet mission needs at a lower acquisition cost by taking advantage of the economies of scale by purchasing from a larger industrial base.

E3. ENCLOSURE 3
STARTING POINTS FOR DEVELOPMENT OF POSITION DESCRIPTIONS,
WORK PLANS, AND PERFORMANCE STANDARDS

E3.1. POSITION DESCRIPTION

E3.1.1 Duties and Responsibilities. Transfers, where applicable, federally owned or originated technology and technical capabilities to State and local governments and to the private sector. Develops technologies having both DoD and non-DoD applications. Promotes the use of technologies developed outside the Department of Defense.

E3.2. WORK PLAN

E3.2.1. Performance Element (Critical) T2. Assesses the availability and applicability of technologies and technical capabilities of their projects and programs. Transfers those technologies and technical capabilities to State and local government and the private sector in compliance with public laws and applicable DoD Directives, Instructions, and Regulations, and Component directives, instructions, and regulations. Obtains assistance from the local ORTA. Works with the T2 partner after formal agreements are in effect (CRADAs, cooperative agreements, other transactions, and patent license agreements, etc.).

E3.2.2. Dual-Use Technology. That technology shall identify industrial technology requirements and shall take those requirements into consideration when developing in-house technology.

E3.2.3. Spin-on Technology. When seeking solutions to DoD requirements, shall consider technologies developed outside Department of Defense on an equal basis with those developed inside the Department of Defense.

E3.3. PERFORMANCE STANDARD

E3.3.1. T2. Performance is satisfactory when the incumbent shall demonstrate an active knowledge of the program requirements, take positive action to assess technologies and technical capabilities, and start actions to formally transfer those technologies and technical capabilities to State and local government and the private sector. The incumbent shall maintain an active working relationship with the local ORTA in developing, negotiating, and getting approval for T2 instruments (CRADAs, cooperative agreements and other transactions, patent license agreements, etc.). It actively shall work with the T2 partners to satisfy effectively the Component obligations in the T2 instruments.

E3.3.2. Dual-Use Technology and Spin-on. Performance is satisfactory when the incumbent shall consider industrial requirements when developing in-house technologies and non-DoD technologies when seeking solutions to DoD requirements.

Section VII - 2

Secretary of the Navy Instruction (SECNAVINST) 5700.17, Domestic Technology Transfer

SECNAVINST 5700.17 implements, establishes policy, and assigns responsibility for the DON domestic T2 program, in accordance with public law and the aforementioned DoD directive and instruction. The SECNAVINST 5700.17 is provided in this section. For the latest Navy instruction refer to the DON Issuances website <https://DoNi.documentservices.dla.mil/default.aspx>.



Department of the Navy
INSTRUCTION

SECNAVINST 5700.17
ONR 03TSB
27 March 2009

SECNAV INSTRUCTION 5700.17

From: Secretary of the Navy

Subj: DOMESTIC TECHNOLOGY TRANSFER

- Ref:
- (a) DoD Instruction 5535.8 of 14 May 99
 - (b) Sections 3702, 3703, 3705, 3706, 3710, 3712, 3715 of Title 15, United States Code
 - (c) Sections 2501, 2506, 2514, 2515, 2358, 2371, 2194, 2195, 5022 of Title 10, United States Code
 - (d) Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century," of 17 Apr 96
 - (e) Sections 200 et seq. of Title 35, United States Code
 - (f) DoD Directive 5535.3 of 21 May 99
 - (g) Executive Order 12591, "Facilitating Access to Science and Technology," of 10 Apr 87
 - (h) SECNAVINST 5430.7P
 - (i) SECNAVINST 5870.2D
 - (j) Federal Acquisition Regulation, Subpart 31.205-18(e), "Independent Research and Development and Bid and Proposal Costs," 62 FR 64932, 9 Dec 97; FAC 97-03
 - (k) SECNAV M-5210.1

- Encl:
- (1) Definitions
 - (2) Laboratory or Technical Activity Designation Procedure
 - (3) Office of Research and Technology Applications Representative Designation Procedure

1. Purpose. To implement, establish policy, and assign responsibility for the Department of the Navy (DON) Domestic Technology Transfer (T2) Program, per references (a) through (g).

2. Scope. This instruction is applicable to all commands and activities within the Department of the Navy responsible for the sponsorship, management, administration, and execution of domestic T2 (activities).

3. Definitions. Terms, used in this instruction, are defined in enclosure (1).
4. Policy. It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development; therefore, the Federal Government shall strive, where appropriate, to transfer federally owned or originated technology to state and local governments and to the private sector. Furthermore, domestic T2 is an integral element of the DON national security mission and, as such, requires each DON laboratory and technical activity, each DON science, engineering and T2 professional, as well as each DON employee providing T2 support, to be responsible for T2 consistent with mission responsibilities. Therefore, it is DON policy to promote domestic T2 throughout the Department of the Navy to ensure improvements to the economic, environmental and social well-being of the United States and its citizens, and to carry out DON T2 per references (a) through (j).
5. Responsibilities. The Chief of Naval Research (CNR) is responsible for all domestic T2 policy and guidance matters within the Department of the Navy.

- a. The CNR shall:

- (1) Manage the DON Domestic T2 Program and serve as oversight authority for execution of all DON domestic T2 Science and Technology (S&T) matters.
- (2) Be delegated the authority to manage the Laboratory/ Technical Activity and Office of Research and Technology Applications (ORTA) representative designation procedures. This authority may be re-delegated to the DON program manager for domestic T2.
- (3) Cultivate collaboration between DON S&T communities and industry to promote efforts resulting in the transfer of DON technology to the commercial sector.
- (4) Execute an awards program, including cash awards, to recognize domestic T2 accomplishments.
- (5) Institute policies under which laboratories and technical activities may be authorized to enter into Cooperative Research and Development Agreements (CRADAs), Partnership Intermediary Agreements (PIAs), licenses of Navy patents or inventions (referred to herein as Patent License Agreements (PLAs)), assign or waive rights to patents and inventions, and distribute royalties and other payments, per references (a), (h) and (i).
- (6) Determine, as required in section 3710(e)(7) (A) through (C) of title 15, United States Code (U.S.C.) (reference (b)), the amount of Navy funding support to the Federal Laboratory Consortium (FLC); collect the determined amount of funds from the Navy research, development, test and evaluation allocation holders; and transfer the funds to the National Institute of Standards and Technology for use by the FLC.
- (7) Designate a DON program manager for domestic T2.

b. The DON Program Manager for Domestic T2 (DON T2 PM) shall:

- (1) Coordinate, direct, and manage Navy Domestic T2 per established policies, this instruction, and the directions of higher authority.
- (2) Provide inputs for reports, as required.
- (3) Represent the Department of the Navy in the FLC at interagency meetings with other Federal departments and internally with DON activities.
- (4) Encourage participation in and promote the results of DON Domestic T2.

c. Heads of DON Activities shall:

(1) Review the definition of laboratory and/or technical activity (reference (a), paragraph E2.1.3.) and determine whether their activity may be considered a laboratory or technical activity for the purposes of this instruction. This determination shall be made by following the procedure outlined in enclosure (2) of this instruction.

(2) Implement and follow, in accordance with reference (a) and this instruction, the procedures mandated for Department of Defense (DoD) laboratories and/or technical activities, if it is determined that their DON activity is considered a laboratory or technical activity.

d. All Heads of Designated DON Laboratories and/or Technical Activities are delegated the authority to:

(1) Enter into CRADAs, PIAs, and PLAs in accordance with this instruction, provided that the following requirements are met and maintained:

(a) The head of a DON laboratory and/or technical activity is the commanding officer of, or holds an equivalent position at, such activity. (Hereinafter, the commanding officer and/or the commanding officer equivalent will be referred to as the “commanding officer”.)

(b) A laboratory or technical activity designation memorandum has been issued by Office of Naval Research (ONR) (see enclosure (2)).

(c) The laboratory or technical activity has met and maintained all requirements of this instruction, has designated a sufficiently trained ORTA representative by following the procedure outlined in enclosure (3), and has received an approval of their designated ORTA representative from ONR.

(d) A support staff, with adequate training or experience in T2, is provided, as necessary, to assist the designated ORTA representative.

(e) Procedures for operating their T2 program are established prior to entering into a CRADA, PIA, or PLA. These procedures should include provisions for all appropriate pre-

disclosure reviews of information and data prior to the release of such data or information including, but not limited to, a legal review, which should include a review for issues that might affect the patentability of a DON invention or might otherwise affect DON intellectual property; a security review; and, when necessary, a public affairs-related review.

(f) A legal review and a legal recommendation is obtained from an assigned (or identified) Navy Office of General Counsel Intellectual Property (OGC IP) attorney prior to negotiating and prior to entering into a CRADA, PIA, or PLA to ensure that the CRADA, PIA, or PLA conforms to all statutes, regulations, Executive Orders, this instruction, and other binding instructions and policies issued within the Department of Defense and the Department of the Navy.

(g) A security review is obtained prior to negotiating and prior to entering into a CRADA, PIA, or PLA to ensure that the CRADA, PIA, or PLA conforms to all statutes, regulations, Executive Orders, this instruction, and all security regulations and instructions issued within the Department of Defense and the Department of the Navy. The security review shall include, but is not limited to, a review of the responsibilities of managing and controlling the dissemination of the information or data that could, or will, result from the work under the CRADA, PIA or PLA.

(h) Prior to entering into negotiations for a CRADA or PLA with foreign persons or industrial organizations that are directly or indirectly controlled by a foreign company or government, the following requirements must be met:

1. When required, a foreign disclosure determination is completed and approved by the laboratory or technical activity;

2. A consultation memorandum is submitted to, and a confirmation that the consultation memorandum was received is obtained from, the United States trade representative;

3. When required, the Navy International Program Office, and other officials or offices, are contacted and involved as needed; and

4. An export control assessment will be completed and all applicable foreign disclosure and export license requirements and restrictions complied with.

(i) Unless otherwise instructed by the DON T2 PM, a copy, preferably electronic, of each fully executed CRADA, PIA, and PLA, and documentation showing the results of the legal review and recommendation per subparagraph 5d(f), and the security review per subparagraph 5d(g); and, for CRADAs and PLAs that are entered into with foreign persons or industrial organizations that are directly or indirectly controlled by a foreign company or government, documentation demonstrating that the requirements of subparagraphs 5d(h)1 through 5d(h)4 have been complied with, are forwarded to the DON T2 PM as part of the CRADA, PIA or PLA package.

(j) A copy, preferably electronic, of all other required reports and documents are submitted to ONR as directed by this instruction or the DON T2 PM.

(2) Loan, lease, or give research equipment or educationally useful Federal equipment, consistent with export control laws and regulations, which is excess to the needs of the laboratory and/or technical activity, to an educational institution or nonprofit institution for the conduct of technical and scientific education and research activities. (See section 3710(i) of title 15, U.S.C., of reference (b); section 2194 of title 10, U.S.C., of reference (c); and Executive Order 12999 of reference (d).) This authority may be further delegated.

e. All Heads of Designated DON Laboratories or Technical Activities shall:

(1) Comply with subparagraphs 5d(1)(a) through (j) and 5e(2) of this instruction, and are on notice that noncompliance with this instruction could result in revocation of their laboratory or technical activity designation.

(2) Submit, when requested by the DON T2 PM, documentation showing that it continues to meet the laboratory or technical activity requirements of this instruction. Such documentation shall be provided to the DON T2 PM within 60 days of the date of such request.

(3) Assume the responsibility for all aspects of its CRADAs, PIAs, and PLAs.

f. The Designated and Approved ORTA Representative shall:

(1) Coordinate, direct, and manage Navy Domestic T2 for their laboratory or technical activity per established policies, this instruction, and the directions of higher authority.

(2) Provide annual business plans, training presentation/outlines and reports, statistical data and other information as requested by the DON T2 PM, or otherwise required by statute, regulation, directive, executive order, instruction or DON policy.

(3) Offer at least 2 hours of T2, marketing, or other related, training to personnel of their laboratory or technical activity annually.

(4) Receive at least 8 hours of training in T2 every calendar year; complete the online DON ORTA training course every calendar year; and submit a summary of the annual training (listing the number of training hours received and the source(s) of the training) to the DON T2 PM by the end of each calendar year. This summary can be submitted to the DON T2 PM along with the copy of the annual business plan required by reference (a).

(5) Encourage participation in, and promote the results of, DON domestic T2.

(6) Comply with subparagraphs 5f(1) through 5f(5) of this instruction, and is on notice that noncompliance with this instruction could result in revocation of the approval of their ORTA designation.

6. Patent License Payments

a. Preferably, all payments due under a patent license shall be made in U.S. dollars and will be submitted via express mail, Wire Transfer (WT) or Electronic Fund Transfer (EFT).

(1) If the payment is being made using a WT or EFT, the financial or other institution that provides the WT/EFT service will require information to process the transaction which should be included in the license.

(a) The following information must be used to process the transaction: bank name, city, country, routing transit number, account name, and account number.

(b) The following reference information should also be included with the transaction:

WT/EFT Beneficiary Block:	Office of Naval Research
Sender Reference:	Sender's Name and License Number
Originator's Name:	Licensee's Name

(2) On the day of the transfer, the Licensee should notify ONR and the DON laboratory or technical activity responsible for the license that the Licensee is providing a payment via a WT or an EFT by sending an email to: EFTRoyaltyPayment@navy.mil.

b. Payments made by check or some other form of non-cash paper tender should be made payable to: U.S. Treasury and mailed to:

Deputy Counsel (Intellectual Property) Office of Naval Research
ONR 00CC/(Room W515, W524A, or 518)
875 North Randolph Street Arlington, VA 22203-1995

c. Regardless of the method of tender, the tender must be annotated or identified with the license number (or other identifier) and the licensee's name.

7. Action

a. Responsible DON commands, activities, and personnel shall take the necessary steps to implement DON Domestic T2 as outlined in this instruction.

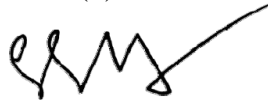
b. The commanding officer of each DON laboratory and/or technical activity, within 60 days of receipt of this instruction and in accordance with the requirements and guidance contained in this instruction, shall request ONR to issue a laboratory and/or technical activity designation memorandum in accordance with enclosure (2). ONR shall provide a response within 60 days of receipt of such request.

c. The commanding officer of each DON laboratory and/or technical activity, within 60 days of receipt of their laboratory and/or technical activity designation memorandum from ONR, shall either receive notice of the approval of its currently designated ORTA representative from ONR or be required to designate and request approval from ONR of an ORTA representative in

accordance with enclosure (3). ONR shall provide a response within 60 days of receipt of such request.

d. The commanding officer of a designated DON laboratory and/or technical activity must notify the DON T2 PM within 60 days of a change of the activity's ORTA representative, and should designate a new ORTA representative in accordance with this instruction.

8. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed in accordance with reference (k).



Sean J. Stackley
Assistant Secretary of the Navy
(Research, Development and
Acquisition)

Distribution:

Electronic only, via Department of the Navy Issuances website <http://DoNi.daps.dla/mil/>

Enclosure 1
Definitions

1. The following terms are defined in reference (a):
 - a. CRADA.
 - b. Technical Assistance CRADA.
 - c. Military-Use CRADA.
 - d. Laboratory and/or Technical Activity (including the Marine Corps).
 - e. T2.

2. The following terms and definitions are applicable to the Department of the Navy:
 - a. “Navy Cooperative Research and Development Agreement Handbook” (Handbook)¹: The Handbook is a desktop reference for each Navy ORTA and for use by others who are engaged in Navy T2 processes.

 - b. Navy Standard CRADA (NSCRADA): The NSCRADA is based on applicable law and policy and a NSCRADA template is provided in the Handbook. The Handbook also provides approved alternate language for use in a NSCRADA. A CRADA that includes the use of approved alternate language is still considered a NSCRADA. (See the Handbook.)

 - c. Navy Standard Limited-Purpose CRADA (NSLPC): The NSLPC is a CRADA restricted to the exchange of existing equipment and/or material that the collaborators use for their research, test, evaluation, development or engineering activities. There is no joint work performed under the NSLPC, but there is a mutual interest in the results. Data and intellectual property are protected. A NSLPC template is provided in the Handbook. (See the Handbook).

¹ The Handbook is available from the Navy Domestic T2 program manager by submitting a request to: Office of Naval Research, Attn: DON T2 PM, 875 North Randolph Street, Arlington, VA 22203-1995; by email to: Navy_Tech_Transfer@navy.mil; or from the ONR Web site: http://www.onr.navy.mil/sci_tech/3t/transition/tech_tran/orta/docs/crada_handbook.doc.

d. Non-Standard CRADA: Any CRADA that deviates from the NSCRADA or the NSLPC is considered non-standard. Some examples of non-standard CRADAs include technical assistance and clinical trials CRADAs, and CRADAs with multiple parties or with foreign persons or industrial organizations that are directly or indirectly controlled by a foreign company or government. While both the standard and non-standard CRADAs require local legal review, each deviation to the NSCRADA or NSLPC will require the preparation of a written explanation of the reasons and justification for the deviation and a written legal review and recommendation from the local, assigned, or identified Navy OGC IP attorney, prior to entering into the CRADA. This explanation, and the legal review and recommendation must be forwarded to the DON T2 PM at the ONR as part of the CRADA package.

e. PIA:

(1) Statutory Authority: Section 3715 of title 15, United States Code.

(2) Definition: See “Statutory Authority.”

(3) Navy Standard PIA (NSPIA): The NSPIA is based on applicable law and policy, and a NSPIA template is provided in the Handbook.

(4) Non-Standard PIA: Any PIA that deviates from the NSPIA is considered non-standard. While both the standard and non-standard PIAs require local legal review, any deviation to the NSPIA will require: the preparation of a written explanation of the reasons and justification for the deviation; and a written legal review and recommendation from the local, assigned, or identified OGC IP attorney, prior to entering into the PIA. This explanation, and the legal review and recommendation must be forwarded to the DON T2 PM at ONR as part of the PIA package.

f. Navy Standard Patent License Agreement (NSPLA): There is a NSPLA template for both exclusive/partially exclusive and non-exclusive PLAs. Each NSPLA is based on applicable law and policy. Any PLA that deviates from the NSPLA is considered non-standard, and, while both the standard and non-standard PLAs require local legal review, any deviation to the NSPLA will require the preparation of a written explanation of the reasons and justification for the deviation and a written legal review and recommendation from the local, assigned, or identified OGC IP attorney, prior to entering into the PLA. Unless otherwise instructed by the DON T2 PM, this explanation, and the legal review and recommendation, must be forwarded to the DON T2 PM at ONR as part of the PLA package.

Enclosure 2

Laboratory or Technical Activity Designation Procedure

In conjunction with this instruction, and prior to entering into a CRADA, a PIA, or a PLA (or Invention License Agreement), the following procedure is required to be used in order to become designated as a DON laboratory or technical activity.

1. The commanding officer, or equivalent, of a DON activity shall sign and submit a memorandum, on official letterhead, requesting designation as a laboratory or technical activity to the DON T2 PM. This request for designation memorandum must contain responses to the following questions:

a. Do personnel at the activity have a working knowledge of sections 3710, 3710a and 3715 of title 15, U.S.C.; DoD Instruction 5535.8; DoD Directive 5535.3; and SECNAVINST 5700.17 (or, when appropriate, any superseding statute, order, directive or instruction)?

b. Does the activity meet the definition of a laboratory and/or technical activity (see reference (a), paragraph E2.1.3.)?

c. What is the name and physical location of the activity?

d. What is the mission of the activity?

e. Does the activity have sufficient T2, security, and Navy OGC legal staff to advise the commanding officer and support the activity's T2 mission?

(1) Is a Navy OGC IP attorney assigned to your activity? If not, who will be responsible for providing legal reviews and recommendations relating to CRADAs, PIAs, PLAs, and other legal assistance to your activity regarding T2? A copy of the writing or agreement showing that an OGC Office of Counsel will supply T2 legal services to the activity, and identifying the Navy OGC IP attorney(s) that will be assigned to support such services must be provided.

[NOTE: An OGC IP attorney is required to be assigned, or otherwise be available, to provide T2 legal support prior to obtaining laboratory or technical activity designation.]

(2) Are security personnel assigned to your activity? If not, who will be responsible for providing security reviews relating to CRADAs, PIAs, or PLAs?

2. The request for designation memorandum will be reviewed by the DON T2 PM and forwarded to the Intellectual Property Counsel of the Navy for legal review. A determination whether the activity meets the criteria for designation as a laboratory or technical activity will be made by ONR, and a laboratory or technical activity designation memorandum will be sent by ONR to the requesting activity approving or rejecting the designation request.

3. If the activity receives a laboratory or technical activity designation memorandum approving its request for designation as a laboratory or technical activity, and if the activity's current ORTA has not been designated and approved by ONR, then the commanding officer of such activity shall submit a memorandum to ONR designating an ORTA representative (see enclosure (3), ORTA Representative Designation Procedure).

4. The request for laboratory or technical activity designation memorandum should be on official letterhead, signed by the commanding officer (or commanding officer equivalent) of the laboratory or technical activity, and forwarded to the DON T2 PM at:

Office of Naval Research
Attn: DON T2 PM
875 North Randolph Street
Arlington, VA 22203-1995
or
Emailed to: Navy_Tech_Transfer@navy.mil

Enclosure 3
Office of Research and Technology Applications (ORTA)
Representative Designation Procedure

1. In conjunction with this instruction, and prior to entering into a CRADA, a PIA, or a PLA (or Invention License Agreement), the following procedure is required to be used in order to request approval of the designation of an ORTA representative for a DON activity designated as a laboratory or technical activity.

2. The commanding officer, or commanding officer equivalent, of a DON activity designated as a laboratory or technical activity shall sign and submit a memorandum, on official letterhead, designating an ORTA representative for the activity to the DON T2 PM. This ORTA representative designation memorandum must contain responses to the following questions:

- a. What is the name and location of the activity?
- b. What is the name of the person being designated as the ORTA representative?
- c. Are procedures in place (if not, when will procedures be established) for entering into CRADAs, PIAs, and PLAs?
- d. Does the ORTA representative, who will be responsible for implementing the procedures, have training or experience in T2?
- e. Has the ORTA representative completed the online DON ORTA training course?
- f. Has the ORTA representative reviewed the CRADA? Handbook?²

[NOTE: The ORTA representative is required to complete the online DON ORTA training course and review the CRADA Handbook.]

- g. Has the ORTA representative completed at least 8 hours of T2 training prior to designation?

² The Handbook is available from the Navy Domestic T2 program manager by submitting a request to: Office of Naval Research, Attn: DON T2 PM, 875 North Randolph Street, Arlington, VA 22203-1995; by email to: Navy_Tech_Transfer@navy.mil; or from the ONR website: <https://www.onr.navy.mil/Science-Technology/Directorates/Transition/Technology-Transfer-T2/Partnership-Options/CRADA-handbook>) prior to ONR approving the designation of an ORTA representative.]

[NOTE: Each ORTA representative is required to complete 8 hours of T2 training or complete the online DON ORTA training course and review the CRADA Handbook prior to obtaining approval of their designation. Thereafter, each ORTA representative is required to complete 8 hours of T2 training every calendar year. This training may include, but is not limited to, the annual Technology Transfer Integrated Planning Team Workshop; the annual FLC National Conference; any Navy ORTA/legal workshop; or any other T2 related training activity.]

h. Does the activity have sufficient T2, security, and Navy OGC legal staff to advise and support the ORTA representative?

(1) Is a Navy OGC IP attorney assigned to your activity? If not, who will be responsible for providing legal reviews and recommendations relating to CRADAs, PIAs, PLAs, and other legal assistance to your activity regarding T2? A copy of the writing or agreement showing that an OGC Office of Counsel will supply T2 legal services to the activity, and identifying the Navy OGC IP attorney(s) that will be assigned to support such services must be provided.

[NOTE: An OGC IP attorney is required to be assigned, or otherwise be available, to provide T2 legal support prior to obtaining laboratory or technical activity designation.]

(2) Are security personnel assigned to your activity? If not, who will be responsible for providing security reviews relating to CRADAs, PIAs, and PLAs?

3. ONR will send a response to the activity approving or rejecting the designation of the ORTA representative.

4. The commanding officer, or equivalent, of a DON activity that has been designated as a DON laboratory or technical activity must notify the DON T2 PM within 60 days of a change of the activity's designated ORTA representative and should designate a new ORTA representative in accordance with this instruction.

5. The ORTA representative designation memorandum should be on official letterhead, signed by the commanding officer (or commanding officer equivalent) of the laboratory or technical activity, and forwarded to the DON T2 PM at:

Office of Naval Research
Attn: DON T2 PM
875 North Randolph Street
Arlington, VA 22203-1995
or
Emailed to: Navy_Tech_Transfer@navy.mil

Section VII - 2a

Laboratory Designation

How a Navy/Marine Corps Technical Activity Becomes a Federal Laboratory

Laboratory Designation

In accordance with 15 U.S. Code § 3710a (d)(2)(A), for purposes of domestic T2, the DoD and the Navy define a laboratory/technical activity as “A facility or group of facilities owned, leased, or otherwise used by a Federal Agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government.” References are DoD Instruction 5535.8 E2.1.3 and SECNAVINST 5700.17 Enclosure 1. Also, refer to DoD Instruction 5535.8 E2.1.3.2 for further definition of a laboratory/technical activity.

The procedure for designating a Navy/Marine Corps activity as a Federal laboratory, giving the head of the laboratory the authority to enter into cooperative research and development agreements (CRADAs), partnership intermediary agreements (PIAs) and patent license agreements (PLAs), is provided here. (Reference: SECNAVINST 5700.17 Enclosure 2.)

Laboratory or Technical Activity Designation Procedure

In conjunction with this instruction, and prior to entering into a CRADA, a PIA, or a PLA (or invention license agreement), the following procedure is required to be used in order to become designated as a DON laboratory or technical activity.

1. The commanding officer, or equivalent, of a DON activity shall sign and submit a memorandum, on official letterhead, requesting designation as a laboratory or technical activity to the DON T2 Program Manager. This request for designation memorandum must contain responses to the following questions:
 - a. Do personnel at the activity have a working knowledge of sections 3710, 3710a, and 3715 of Title 15, U.S. Code; DoD Instruction 5535.8; DoD Directive 5535.3; and SECNAVINST 5700.17 (or, when appropriate, any superseding statute, order, directive or instruction)?
 - b. Does the activity meet the definition of a laboratory and/or technical activity (see reference (a), paragraph E2.1.3.)?
 - c. What is the name and physical location of the activity?
 - d. What is the mission of the activity?
 - e. Does the activity have sufficient T2, security, and Navy Office of the General Counsel (OGC) legal staff to advise the commanding officer and support the activity’s T2 mission?

(1) Is a Navy OGC intellectual property (IP) attorney assigned to your activity? If not, who will be responsible for providing legal reviews and recommendations relating to CRADAs, PIAs, PLAs, and other legal assistance to your activity regarding T2? A copy of the writing or agreement showing that an OGC Office of Counsel will supply T2 legal services to the activity, and identifying the Navy OGC IP attorney(s) that will be assigned to support such services must be provided.

[Note: An OGC IP attorney is required to be assigned, or otherwise be available, to provide T2 legal support prior to obtaining laboratory or technical activity designation.]

(2) Are security personnel assigned to your activity? If not, who will be responsible for providing security reviews relating to CRADAs, PIAs, or PLAs?

2. The request for designation memorandum will be reviewed by the DON T2 Program Manager and forwarded to the IP Counsel of the Navy at the Office of Naval Research (ONR) for legal review. A determination whether the activity meets the criteria for designation as a laboratory or technical activity will be made by ONR, and a laboratory or technical activity designation memorandum will be sent by ONR to the requesting activity approving or rejecting the designation request.

3. If the activity receives a laboratory or technical activity designation memorandum approving its request for designation as a laboratory or technical activity, and if the activity's current ORTA has not been designated and approved by ONR, then the commanding officer of such activity shall submit a memorandum to ONR designating an ORTA representative (see enclosure (3), ORTA Representative Designation Procedure).

4. The request for laboratory or technical activity designation memorandum should be on official letterhead, signed by the commanding officer (or commanding officer equivalent) of the laboratory or technical activity, and forwarded to the DON T2 Program Manager..."

5. An approval letter is signed by the Chief of Naval Research and is forwarded by the DON T2 Program Manager to the laboratory/technical activity Commanding Officer (or equivalent) with a copy to the laboratory/technical activity ORTA.

Section VII - 2b

Navy/Marine Corps ORTA Representative Designation

The ORTA for each Federal laboratory was established through 15 U.S. Code § 3710 (b). In accordance with 3710 (b), the functions of the ORTA are:

1. “to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;
2. to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;
3. to cooperate with and assist the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, and other organizations which link the research and development resources of the laboratory and the Federal Government as a whole to potential users in State and local government and private industry;
4. to provide technical assistance to State and local government officials; and
5. to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.”

SECNAVINST 5700.17 defines the functions of the ORTA representative for each Navy/Marine Corps laboratory/technical activity as follows:

1. “Coordinate, direct, and manage Navy Domestic T2 for their laboratory or technical activity per established policies, this instruction, and the directions of higher authority.
2. Provide annual business plans, training presentation/outlines and reports, statistical data and other information as requested by the DON T2 Program Manager, or otherwise required by statute, regulation, directive, executive order, instruction or DON policy.
3. Offer at least two hours of T2, marketing, or other related, training to personnel of their laboratory or technical activity annually.
4. Receive at least eight hours of training in T2 every calendar year; complete the online DON ORTA training course every calendar year; and submit a summary of the annual training (listing the number of training hours received and the source(s) of the training) to the DON T2 Program Manager by the end of each calendar year. This summary can be submitted to the DON T2 Program Manager along with the copy of the annual business plan required by reference (a).
5. Encourage participation in, and promote the results of, DON domestic T2.”

Note: Reference (a) in cited paragraph 4 above is DoD Instruction 5535.8.

SECNAVINST 5700.17, Enclosure 3, provides the procedure for designation of a Navy/Marine Corps laboratory/technical activity ORTA representative. The procedure is cited here:

1. In conjunction with SECNAVINST 5700.17, “and prior to entering into a CRADA, a PIA, or a PLA (or invention license agreement), the following procedure is required to be used in order to request approval of the designation of an ORTA representative for a DON activity designated as a laboratory or technical activity.

2. The commanding officer, or commanding officer equivalent, of a DON activity designated as a laboratory or technical activity shall sign and submit a memorandum, on official letterhead, designating an ORTA representative for the activity to the DON T2 Program Manager. This ORTA representative designation memorandum must contain responses to the following questions:

- a. What is the name and location of the activity?
- b. What is the name of the person being designated as the ORTA representative?
- c. Are procedures in place (if not, when will procedures be established) for entering into CRADAs, PIAs, and PLAs?
- d. Does the ORTA representative, who will be responsible for implementing the procedures, have training or experience in T2?
- e. Has the ORTA representative completed the online DON ORTA training course?
- f. Has the ORTA representative reviewed the Navy T2 Handbook?

[NOTE: The ORTA representative is required to complete the online DON ORTA training course and review the Navy T2 Handbook.]

g. Has the ORTA representative completed at least eight hours of T2 training prior to designation?

[NOTE: Each ORTA representative is required to complete eight hours of T2 training or complete the online DON ORTA training course and review the Navy T2 Handbook prior to obtaining approval of their designation. Thereafter, each ORTA representative is required to complete eight hours of T2 training every calendar year. This training may include, but is not limited to, the annual DoD Technology Transfer Training Workshop; the annual Federal Laboratory Consortium National Conference; any Navy ORTA/Legal Workshop; or any other T2 related training activity.]

h. Does the activity have sufficient T2, security, and Navy OGC legal staff to advise and support the ORTA representative?

(1) Is a Navy OGC IP attorney assigned to your activity? If not, who will be responsible for providing legal reviews and recommendations relating to CRADAs, PIAs, PLAs, and other legal assistance to your activity regarding T2? A copy of the writing or agreement showing that an OGC Office of Counsel will supply T2 legal services to the activity, and identifying the Navy OGC IP attorney(s) that will be assigned to support such services must be provided.

[Note: An OGC IP attorney is required to be assigned, or otherwise be available, to provide T2 legal support prior to obtaining laboratory or technical activity designation.]

(2) Are security personnel assigned to your activity? If not, who will be responsible for providing security reviews relating to CRADAs, PIAs, and PLAs?

3. ONR will send a response to the activity approving or rejecting the designation of the ORTA representative.

4. The commanding officer, or equivalent, of a DON activity that has been designated as a DON laboratory or technical activity must notify the DON T2 Program Manager within 60 days of a change of the activity's designated ORTA representative and should designate a new ORTA representative in accordance with this instruction.

5. The ORTA representative designation memorandum should be on official letterhead, signed by the commanding officer (or commanding officer equivalent) of the laboratory or technical activity, and forwarded to the DON T2 Program Manager..."

Section VII - 3

T2 Annual Business Report and Metrics

In accordance with Title 15 of the U.S. Code § 3710(g) (2), DoD Directive 5535.3 and DoD Instruction 5535.8, DoD laboratories are required to report on T2 efforts. The Office of the Secretary of Defense, through each service T2 Program Office, requests laboratories to provide an Annual Business Plan and metrics of T2 related information and accomplishments. This data is mainly rolled into the Department of Commerce/National Institute of Standards and Technology biennial report to the President and Congress but is also used to respond to data calls from the White House and other Federal agencies such as the Government Accounting Office.

The Department of Commerce's annual Federal Laboratory Technology Transfer Summary Reports to the President and Congress can be found in: <https://www.nist.gov/tpo/federal-laboratory-interagency-technology-transfer-summary-reports>. This report is prepared in accordance with the requirement of Title 15 U.S. Code, § 3710(g) (2), for an annual report summarizing the use of T2 authorities by Federal agencies. It highlights the achievements of Federal T2 and includes data on the use of specific transfer authorities. This report is used to keep the President and Congress informed of the ongoing efforts of Federal laboratories to expand T2 efforts in partnership with U.S. industry, academic institutions, non-profit foundations, and State, local, and tribal governments.

Topics that are to be considered for inclusion in the DoD Annual Business Plan are:

- How the ORTA fits into the laboratory's overall organization and mission
- Success stories, lessons learned, quad charts
- Human resources
 - Number of people
 - Education/Training/Professional Development Plan
- Financials
 - Income
 - Royalty distribution including number of inventors receiving royalty payments
 - Expenses (travel, training, fees, etc., but NOT salaries)

Annual DoD data calls in the past have been collected directly from the Navy designated laboratories. Currently the T2 metrics come from the Navy Defense Technology Transfer Information System and from the Supervisory IP Counsel of Navy.

The list of data items listed below have been asked for in previous DoD requests:

- Active and new CRADAs (including Limited Purpose-CRADAs) and CRADA revenues (provided by the DON T2 Program Office based on information submitted by the ORTA throughout the year)
- Invention information related to CRADAs
- Number of invention disclosures, patent applications and patents issued (ONR Legal collects information from laboratory legal offices)

- Number of active licensable inventions
- Number of new and active invention licenses, and license revenues (ONR Legal collects information from laboratory legal offices)
- Number of licenses to new businesses, small businesses, academic institutions, and other businesses
- Amount of royalty income dispensed to inventors
- Amount of royalty income retained by organization/laboratory
- Revenue from Non-Navy Collaborators executed under authority of DoD Instruction 5535.11
- Number of published peer reviewed journal articles
- Number of T2 related trademarks
- Number of active licenses for trademarks and copyrights assigned to the organization and income from these (ONR Legal collects this information)
- Number of scientists and engineers on personnel exchanges with organizations outside of the Federal Government

Technology Transfer (T2) Legislation, Executive Orders and Presidential Memorandum

Section VIII

- [VIII](#) Technology Transfer (T2) Legislation, Executive Orders and Presidential Memorandum
 - [VIII – 1](#) Statutory Requirements
 - [VIII – 1a](#) Stevenson-Wydler Technology Innovation Act of 1980
 - [VIII – 1b](#) Bayh-Dole Act of 1980
 - [VIII – 1c](#) Federal Technology Transfer Act of 1986
 - [VIII – 1d](#) Executive Orders 12591 and 12618 (1987) Facilitating Access to Science and Technology
 - [VIII – 1e](#) National Technology Transfer and Advancement Act of 1995
 - [VIII – 1f](#) Technology Transfer Commercialization Act of 2000
 - [VIII – 1g](#) National Defense Authorization Acts Affecting Technology Transfer Legislation
 - [VIII – 1h](#) Presidential Memorandum – Accelerating Technology Transfer and Commercialization of Federal Research in Support of High-Growth Businesses, 28 Oct 2011
 - [VIII – 1i](#) American Innovation and Competitiveness Act, 6 Jan 2017
 - [VIII – 2](#) Other Relevant Public Laws and Guidance
 - [1.](#) Federal Acquisition
 - [2.](#) Money and Finance
 - [3.](#) Small Business
 - [4.](#) Technology Innovation Definitions
 - [5.](#) Cooperative Research and Development Agreements
 - [6.](#) DoD Cooperative Agreements, Grants, and Other Transactions
 - [7.](#) Work for Private Parties Agreements
 - [8.](#) Copyrights
 - [9.](#) Patents
 - [10.](#) Trademarks
 - [11.](#) Licensing of Government Owned Inventions
 - [12.](#) Freedom of Information Act (FOIA)
 - [13.](#) Intergovernmental Personnel Assignment
 - [14.](#) Tort Claims Procedure
 - [15.](#) Omnibus Trade and Competitiveness Act of 1988

Section VIII

Technology Transfer (T2) Legislation, Executive Orders and Presidential Memorandum

This section provides summaries/highlights, and, in some cases, excerpts of legislation, executive orders, and a Presidential memorandum pertaining to T2. For more detail, refer to the Federal Laboratory Consortium's publication, *Federal Technology Transfer Legislation and Policy* (The Green Book) or refer to the text of laws, executive orders, and Presidential memorandum that are referenced here.*

The following provides a table of contents for the sub-sections of this summary:

Section VIII - 1	Statutory Requirements
Section VIII - 1a	Stevenson-Wydler Technology Innovation Act of 1980 (PL 96-480)
Section VIII - 1b	Bayh-Dole Act of 1980 (PL 96-517)
Section VIII - 1c	Federal Technology Transfer Act of 1986 (PL 99-502)
Section VIII - 1d	Executive Orders 12591 and 12618 (1987), Facilitating Access to Science and Technology
Section VIII - 1e	National Technology Transfer and Advancement Act of 1995 (PL 104-113)
Section VIII - 1f	Technology Transfer Commercialization Act of 2000 (PL 106-404)
Section VIII - 1g	National Defense Authorization Acts
Section VIII - 1h	Presidential Memorandum - Accelerating Technology Transfer and Commercialization of Federal Research in Support of High Growth Businesses, 28 Oct 2011
Section VIII - 1i	American Innovation and Competitiveness Act, 6 Jan 2017 (PL 114-329)
Section VIII - 2	Other Relevant Public Laws and Guidance

*The full text of each public law (PL) can be found in one of the following references:

1. U.S. House of Representatives, Office of the Law Revision Counsel United States Code website, uscode.house.gov. U.S. code texts cited in this section are from U.S. Code files current through PL 115-43 (06/30/2017).
2. Website for the Library of Congress, <https://www.congress.gov/>. PL texts that are cited in this section are from summaries of laws that are provided in this website.

The reference for executive orders is the National Archives website for "Codification of Presidential Proclamations and Executive Orders" at <https://www.archives.gov/federal-register/codification>.

The reference for the Presidential Memorandum of October 2011 is the Barack Obama Presidential Library (ObamaWhiteHouse.gov) at <https://obamawhitehouse.archives.gov/>.

Section VIII - 1 - Statutory Requirements

Section VIII - 1a

Stevenson-Wydler Technology Innovation Act of 1980 (PL 96-480)

The Stevenson-Wydler Technology Innovation Act of 1980 was the first law to define and promote T2 from Federal laboratories to non-Federal parties.

Details of the Stevenson-Wydler Act and its amendments are found in **15 U.S. Code §§ 3701-3716**. Highlights of the original include the following:

- Focused on dissemination of information
- Required Federal laboratories to take an active role in technical cooperation
- Established Offices of Research and Technology Applications at major Federal laboratories
- Established the Center for the Utilization of Federal Technology in the National Technology Information Service

The purpose of Chapter 63 of Title 15 (§§ 3701 - 3724), Technology Innovation is “to improve the economic, environmental, and social well-being of the U.S. by:

1. Establishing organizations in the executive branch to study and stimulate technology;
2. Promoting technology development through the establishment of cooperative research centers;
3. Stimulating improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector;
4. Providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and
5. Encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.”

Amendments to Stevenson-Wydler Technology Innovation Act of 1980

1. Federal Technology Transfer Act of 1986 (refer to description in [Section VIII - 1c](#))
2. National Institute of Standards and Technology Authorization Act for Fiscal Year (FY) 1989 (PL 100-519)

Amends the Stevenson-Wydler Technology Innovation Act of 1980 to: 1.) make specific provision for intellectual property (IP) within the context of cooperative research and development agreements (CRADAs); 2.) authorize cash awards to scientific, engineering, and technical personnel for computer software; and 3.) revise provisions regarding the distribution to inventors of royalties received by Federal agencies. Makes this final amendment retroactive to October 20, 1986.

3. American Preeminence Act of 1991 (PL 102-245)

Amends the Stevenson-Wydler Technology Innovation Act of 1980 to extend, through FY 1996, the requirement that each Federal agency transfer an amount to National Institute of Standards and Technology (NIST) for the Federal Laboratory Consortium for Technology Transfer. Repeals provisions mandating demonstration projects in T2. Adds references to IP to provisions defining “cooperative research and development agreement.” Authorizes the head of any Federal agency to give excess research equipment to an educational or nonprofit organization to conduct education and research activities. Amends the definition of “Federal agency” to include any agency of the legislative branch. Authorizes the use of appropriated funds to carry out the Act.

4. National Technology Transfer and Advancement Act of 1995 (PL 104-113) (refer to description in [Section VIII - 1e](#))

5. Technology Transfer Commercialization Act of 2000 (PL 106-404) (refer to description in [Section VIII - 1f](#))

6. National Defense Authorization Act (NDAA) for FY 1991 (PL 101-510)*

7. NDAA for FY 1993 (PL 102-484)*

8. NDAA for FY 1994 (PL 103-160)*

9. NDAA for FY 2001 (PL 106-398)*

*Refer to summaries of relevant NDAAAs in [Section VIII - 1g](#).

Section VIII - 1b

Bayh-Dole Act of 1980 (PL 96-517, 35 U.S. Code §§ 200 - 212)

The Bayh-Dole Act was co-sponsored by Senators Birch Bayh and Robert Dole. It is also known as the “University and Small Business Patent Procedures Act of 1980.” It governs rights in inventions made with Federal assistance. The Bayh-Dole Act of 1980 and the Patent and Trademark Clarification Act of 1984 placed new limitations on patents and licenses for federally funded research and development (R&D).

- Permitted universities, not-for-profit organizations, and small businesses to obtain title to inventions developed with Government support
- Provided early on IP rights protection of invention descriptions from public dissemination and Freedom of Information Act (FOIA)
- Allowed Government owned and Government operated (GOGO) laboratories to grant exclusive licenses to patents

Bayh-Dole regulation changes went into effect on May 14, 2018 through updates to 37 C.F.R. Parts 401 and 404. The new rule, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Co-operatives Agreements,” applies to funding agreements with all Federal agencies executed after May 14, 2018, although existing agreements may be amended at a funding agency’s discretion. The rule changes should streamline the CRADA and licensing process.

“The final rule reduces regulatory burdens by clarifying electronic reporting, updating certain sections to conform with changes in the patent laws, and streamlining the licensing application process for some Federal laboratory collaborators, makes technical corrections, clarifies the role of provisional patent application filing, explains a unique situation that may be appropriate for a Determination of Exceptional Circumstances, clarifies the role of funding agencies in the Bayh Dole process, and addresses subject inventions as to which a Federal laboratory employee is a co-inventor.” (Reference: Federal Register/Vol. 83, No. 72, April 13, 2018)

Section VIII - 1c

Federal Technology Transfer Act of 1986 (PL 99-502)

This was the second major T2 legislation. Highlights of the law are as follows:

- Made T2 a responsibility of all Federal laboratory scientists and engineers
- Mandated that T2 responsibility be considered in employee performance evaluations
- Established the principle of royalty sharing for Federal inventors (15% minimum) and set-up a reward system for other innovators
- Legislated a charter for the Federal Laboratory Consortium for Technology Transfer and provided a funding mechanism for that organization to carry out its work
- Provided for the exchange of personnel, services, and equipment among the laboratories and non-Federal partners
- Granted Federal laboratories the ability to enter into CRADAs and negotiate licenses for Government-owned inventions
- Permitted current and former Government employees to participate in commercial development, to the extent there is no conflict of interest
- Allowed laboratories to make advance agreements with large and small companies on title and license to inventions resulting from CRADAs with Government laboratories

Section VIII - 1d

Executive Orders 12591 and 12618 (1987)

Facilitating Access to Science and Technology

Purpose

To ensure that Federal agencies and laboratories assist universities and the private sector in broadening the U.S. technology base by moving new knowledge from the research laboratory into the development of new products and processes.

Content and Outline

Section 1. Transfer of Federally Funded Technology

- Delegated CRADA authority to GOGO laboratories
- GOGO laboratories authorized to license, assign, or waive rights to IP developed by the laboratory under a CRADA
- Promoted the commercialization of science and technology

Section 2. Establishment of the Technology Share Program

- Restricted to the Departments of Agriculture, Commerce, Energy, Health and Human Services, and the National Aeronautics and Space Administration

Section 3. Technology Exchange - Scientists and Engineers

- Authorized a personnel exchange program between Federal laboratories and the private sector

Section 4. International Science and Technology

- Permits agencies to enter into CRADAs and licensing agreements with foreign owned, controlled, or influenced entities in consultation with the U.S. Trade Representative, with appropriate consideration to:
 - Reciprocity
 - Policies by foreign governments to protect U.S. IP
 - Processes by foreign governments that prevent the transfer of strategic technologies, products and data to destinations prohibited under U.S. laws

Section 5. Technology Transfer from the Department of Defense

- Required the Secretary of Defense to identify a list of funded technologies with potential use to U.S. industry and academia

Section 6. Basic Science and Technology Centers

- Allowed agency to examine the potential for establishing university centers, funded by the Federal Government, the private sector, and the states, on technology areas that contribute to the nation's long-term economic competitiveness

Section 7. Reporting Requirements

- Required the Director of the Office of Science and Technology Policy to convene an interagency task force to identify and disseminate creative approaches to T2 from Federal laboratories

Section VIII - 1e

National Technology Transfer and Advancement Act of 1995 (PL 104-113)

This is the third major T2 legislation. It amended the Stevenson-Wydler Act and made T2 more attractive to both Federal laboratories and scientists and to private industry.

- Assures to U.S. companies that they will be granted sufficient IP rights to justify prompt commercialization of inventions arising from a CRADA with a Federal laboratory
- Gives collaborating party in a CRADA the right to choose an exclusive or nonexclusive license for a pre-negotiated field of use for an invention resulting from a joint research under a CRADA
- CRADA partner may also retain title to an invention made solely by its employees in exchange for granting the Government a worldwide license to use the invention
- Revised financial rewards for Federal scientists who develop marketable technology under a CRADA to \$150,000 per person
- Provided for permanent funding of the Federal Laboratory Consortium from the agencies

Section VIII - 1f

Technology Transfer Commercialization Act of 2000 (PL 106-404)

This act provides additional amendment to the Stevenson-Wydler Technology Transfer Act and is often referred to as the Morella Bill. The Morella Bill also made changes to 35 U.S. Code § 209 (Licensing Federally Owned Inventions) and the Bayh-Dole Act.

- Permits Government laboratories under a CRADA to grant licenses of federally owned inventions for which a patent application was filed before the signing of the agreement, and directly within the scope of work under such agreement
- Requires a license applicant to make a commitment to achieve practical application of the invention within a reasonable time
- Prohibits an agency from granting an exclusive license on a federally owned invention unless it has provided a 15-day public notice and considered all comments received (exempts from such requirements the licensing of any inventions made under a CRADA)
- Provides that an agency may grant a license on a federally owned invention only if the licensee has supplied a basic business plan for development or marketing the invention; such business plans are not subject to FOIA
- Provides that a Federal agency, employing a co-inventor with a non-profit organization or small business, may consolidate rights in the invention to ease commercialization of the invention
- Requires each Federal agency with a federally funded laboratory that has one or more CRADAs to report to the Committee on National Security of the National Science and Technology Council and Congress, with respect to major proposed CRADAs that involve critical national security technology or that may have a significant impact on domestic or international competitiveness
- Authorized Federal laboratories to enter into contracts with partnership intermediaries to perform services that increase the likelihood of successes in the conduct of cooperative or joint activities with institutions of higher education
- Requires that each Federal agency which operates or directs one or more Federal laboratories or which conducts activities under 35 U.S. Code §§ 207 and 209, shall report annually to the Office of Management and Budget, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories

Section VIII - 1g

National Defense Authorization Acts Affecting Technology Transfer Legislation

National Defense Authorization Act for FY 1991 (PL 101-510)

Title VIII: Acquisition Policy, Acquisition Management, and Related Matters - Part C: Defense Industrial and Technology Base

Directs the Secretary, acting through the Under Secretary of Defense for Acquisition, to: 1.) provide centralized Department of Defense (DoD) policy guidance and direction to the military departments and defense agencies on all matters relating to manufacturing technology; and 2.) direct the development and implementation of DoD plans and policies promoting the development and application of advanced technologies to manufacturing processes, tools, and equipment. Requires the Secretary to develop and implement a National Defense Manufacturing Technology Plan to provide such guidance and policy for defense manufacturing, as well as assure its implementation by defense agencies and other related Federal agencies. Requires the Secretary to enhance basic research in scientific disciplines relating to manufacturing technology by promoting research and creating T2 in such field.

Amends the Stevenson-Wydler Technology Innovation Act of 1980 to authorize the director of a Federal laboratory or the contracting officer of a federally funded R&D center to enter into contracts for a partnership intermediary to perform services which increase the likelihood of success in conducting cooperative or joint activities of such laboratories or R&D centers with small business firms. Directs the Secretary of Commerce to develop model programs for national defense laboratories.

Title II: Research, Development, Test and Evaluation - Part E: Other Matters

Authorizes each defense laboratory director to enter into one or more education partnership agreements with public school systems, colleges, and universities to encourage and enhance study in scientific disciplines at all levels of education. Outlines partnership agreement provisions. Requires the directors to establish, in association with such programs, cooperative work-education programs for undergraduate and graduate students. Outlines work-education program provisions.

National Defense Authorization Act for FY 1993 (PL 102-484)

Title II: Research, Development, Test, and Evaluation

Subtitle B: Program Requirements, Restrictions, and Limitations

Directs the Secretary, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out such projects, to permit the director of any federally funded R&D center to enter into cooperative R&D agreements with instrumentalities of the U.S., any unit of State or local government, and any other entity under the general authority for such agreements granted by the Stevenson-Wydler Technology Innovation Act of 1980. Provides for the transfer of technology to a non-Federal party in a manner consistent with such provisions.

Subtitle C: Other Matters

Amends the Stevenson-Wydler Technology Innovation Act of 1980 to require any non-Federal entity that operates a laboratory pursuant to a contract with a Federal agency to submit to the head of such Federal agency any cooperative R&D agreement that the entity proposes to enter into with a small business firm and the joint work statement required with respect to that agreement. Outlines procedures for the approval or disapproval of the proposed agreement and joint work statement by the Federal agency in a manner consistent with such provisions.

Directs the Secretary to establish a program to facilitate and encourage the transfer of technology to small businesses and to issue guidelines relating to the program by May 1, 1993.

Title XLII: Defense Technology and Industrial Base, Reinvestment, and Conversion

Subtitle C: Programs for Development, Application, and Support of Dual-Use Technologies

Recodifies Federal provisions concerning the establishment of defense dual-use (civilian and military) critical technology partnerships. Provides FY 1993 projects to be included in such partnerships. Provides FY 1993 funding for such partnerships. Directs the Secretary to conduct a program which establishes cooperative arrangements (partnerships) between DoD and one or more eligible firms and nonprofit research corporations. Provides other entities that may be included in such partnerships. Authorizes the Secretary to make grants to enter into such partnerships, limiting partnership duration to five years. Requires a specified financial contribution to such partnerships by the non-DoD participants. Outlines selection criteria, including the extent to which such commercial-military integration partnerships enhance national security objectives. Provides FY 1993 partnership funding.

Redesignates the current critical technology application centers (centers which promote regional cooperative efforts to facilitate dual-use defense needs that meet national security objectives) as regional technology alliances. Recodifies such provisions and provides FY 1993 funding.

Directs the Secretary to establish and implement the Federal Defense Laboratory Diversification Program to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry in order to enhance and improve the products of such activities. Promote the transfer of defense or dual-use technologies from defense laboratories to private industry for conversion to commercial uses.

Directs the Secretary to establish within his Office an Office of Technology Transition to ensure that technology developed for national security purposes is integrated into the private sector.

Establishes a Military-Civilian Integration and Technology Transfer Board to ensure the effective and efficient integration between defense and civilian industries of military and commercial technologies. Terminates the Board at the end of FY 1997.

Subtitle D: Defense Manufacturing Technology, Dual-Use Assistance Extension, and Defense Supplier Base Enhancement and Support Programs

Directs the Secretary to establish a program to further the national security objectives and the objectives of the defense reinvestment, diversification, and conversion program by providing support for programs that assist businesses economically dependent on DoD expenditures to acquire dual-use capabilities to enable such companies to convert from defense to commercial production and practices. Authorizes the Secretary to assist such economically-dependent small businesses to obtain access to a national network of scientists and engineers, and to information resources that can help minimize technical risk and facilitate the development and commercialization of new products. Requires specified financial commitment from non-DoD participants in such program. Outlines selection procedures for businesses participating in the program. Terminates such program after FY 1998, with funding limitations after FY 1995. Provides FY 1993 funding.

Amends the Small Business Innovation Development Act of 1982 to increase the amount set aside each year by DoD for use solely by small business for R&D activities under the Small Business Innovation Research (SBIR) Program.

**National Defense Authorization Act for 1994
(PL 103-160)**

Section 1315. Directs the Secretary to ensure that the amount of funds provided to a dual-use technologies partnership does not exceed 50 percent of the total cost of partnership activities. (Currently, the amount allowed is the total amount provided by non-governmental participants in the partnership.) Authorizes the Secretary to prescribe regulations to provide for the consideration of in-kind contributions by such non-governmental entities. Allows small business participants to use funds received under the SBIR Program or the Small Business Technology Transfer Program for partnership activities. Authorizes the Secretary to prescribe regulations for the consideration of in-kind contributions by non-governmental participants in regional technology alliances and manufacturing extension programs, again allowing small businesses to utilize the funds received under the above programs for partnership participation activities. Directs the Secretary to ensure that, under all such alliances and programs, the principal economic benefits of such partnerships and other arrangements accrue to the economy of the U.S.

Section 3160. Amends the Stevenson-Wydler Technology Innovation Act of 1980 to include in its coverage the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

**National Defense Authorization Act for 1997
(PL 104-201)**

Section 203. Earmarks funds for the dual-use (military and civilian) technology program. Directs the Secretary to designate a senior official in the Office of the Secretary of Defense whose sole responsibility shall be developing policy relating to, and ensuring effective implementation of, dual-use programs and the integration of commercial technologies into current and future military systems for the period beginning October 1, 1996, and ending September 30, 2002. Provides funding for such program from funds appropriated for such fiscal years for DoD science and technology programs. Provides obligation limits and transfer authority. Limits to 50 percent the Federal share of any dual-use program during FY 1997 through 2000.

Section 262. Directs the Comptroller General to report to Congress on research processes and competitive procedures relating to the SBIR Program.

Section 266. Directs the Secretary to carry out a pilot program to demonstrate online transfers of information on defense technologies to business in the private sector through an interactive data network involving small business development centers of higher educational institutions.

Section 267. Authorizes (current law requires) a cooperative agreement containing a clause for the recovery of DoD funds to be used for a DoD research project when the use of a standard contract, grant, or cooperative agreement is not appropriate.

Section 3136. Prohibits FY 1997 Department of Energy (DOE) funds from being used for certain R&D or T2 purposes unless such activities support the DOE national security mission.

**National Defense Authorization Act for FY 2001
(PL 106-398)**

Section 3196. Amends the Stevenson-Wydler Technology Innovation Act of 1980 to authorize the Federal waiver of a license from an administration laboratory to a party to have such party practice an invention discovered in a DOE laboratory by or on behalf of the Government when the designated official finds that the retention of such license would substantially inhibit the commercialization of an invention that would otherwise serve an important Federal mission. Terminates such waiver authority five years after the enactment of this Act.

**National Defense Authorization Act for FY 2002
(PL 107-107)**

Section 262. Directs the Secretary of the Navy to carry out a demonstration project to increase access to Navy facilities by small businesses and universities engaged in science and technology research beneficial to the naval fleet.

Section 1115. Amends the National Technology Transfer and Advancement Act of 1995 to allow appropriated funds to be used by Federal employees to participate in technical standards development activities.

**National Defense Authorization Act for FY 2003
(PL 107-314)**

Title XIV: Homeland Security - Section 1401. Directs the Secretary to designate a senior DoD official to coordinate all DoD efforts to identify, evaluate, deploy, and transfer to Federal, State, and local first responder technology items and equipment in support of homeland security.

**National Defense Authorization Act for FY 2008
(PL 110-181)**

Section 232. Authorizes DoD laboratory and research centers to make available to any person or entity facilities, services, and equipment of any Government laboratory or research center in order to promote accelerated development of critical technologies and T2 initiatives that support DoD, as long as the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

Section 882. Authorizes the Secretary concerned to license trademarks, service marks, certification marks, and collective marks owned or controlled by that Secretary relating to military designations and likenesses of military weapons systems to any qualifying company, upon their request. Defines “qualifying companies” as any small business that is a toy or hobby manufacturer.

Section 1076. Expresses the sense of Congress that DoD’s SBIR Program: 1.) has been effective in supporting the performance of DoD missions; 2.) has transitioned a number of technologies and systems into operational use by warfighters; and 3.) should be reauthorized.

**National Defense Authorization Act for FY 2010
(PL 111-84)**

Section 847. Amends the Small Business Act (SBA) to authorize the Secretary and the Secretary of each military department to carry out the DoD’s SBIR and Small Business Technology Transfer (STTR) programs through FY 2010.

Section 848. Amends the above Act to extend through FY 2010 the SBIR commercialization pilot program.

**National Defense Authorization Act for FY 2011
(PL 111-383)**

This act established the Rapid Innovation Program which was later re-designated as the Rapid Innovation Fund within the DoD.

Section 1073: Directs the Secretary to: 1.) establish a program to accelerate the fielding of innovative technologies developed using DoD research funding, and the expedient DoD use of such technologies in defense acquisition programs; and 2.) report annually on program operation. Provides funding. Terminates program authority (and the report requirement) at the end of FY 2015.

**National Defense Authorization Act for FY 2012
(PL 112-81)**

Includes the SBIR/STTR Reauthorization Act of 2011. Excerpts follow.

Section 5101. Amends the SBA to reauthorize through FY 2017 the SBIR and STTR programs of the SBA.

Section 5102. Increases by 0.1% per year through FY 2016, and by 0.2% per year and thereafter, the percentage of participating Federal agencies' extramural research budget to be set aside for SBIR Program activities. Increases the set-aside allocation under the STTR from 0.3% to 0.45% by increasing such percentage by 0.050% every two years from FY 2012-FY 2016.

Section 5103. Increases, for both the SBIR and STTR programs, the individual small business award levels from: 1.) \$100,000 to \$150,000, for participation at the Phase I level; and 2.) \$750,000 to \$1 million, for participation at the Phase II level. Changes from every five years to annually the required SBA inflation adjustment of such awards.

Section 5104. Allows a small business that receives an: 1.) SBIR award from one agency to receive an award for a subsequent phase from another agency, as long as the head of each agency determines that the topics of the relevant awards are the same; and 2.) award under either the SBIR or STTR program to receive an award for a subsequent phase under either program.

Section 5106. Authorizes the National Institutes of Health (NIH), DoD, and the Department of Education, during FY 2012-FY 2017, to provide SBIR Phase II awards under a project to a small business without regard to whether such business was provided a Phase I award under such project, upon certain determinations.

Section 5107. Authorizes the NIH Director, the Secretary of Energy, and the Director of the National Science Foundation, 30 days after notifying the SBA Administrator (Administrator, for purposes of this title) and specified committees, to award through competitive, merit-based procedures up to 25% of their respective SBIR funds to small businesses majority-owned by multiple venture capital companies, hedge funds, or private equity firms. Permits other Federal agencies to award up to 15% of their SBIR funds to such small businesses.

Section 5108. Requires Federal agencies and Federal prime contractors, to the greatest extent practicable, to issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

Section 5109. Authorizes the head of each participating Federal agency to issue SBIR and STTR awards to small businesses that have entered, or intend to enter, into a collaborative R&D agreement with a Federal laboratory or Federally Funded Research and Development Center (FFRDC). Prohibits a Federal agency from: 1.) conditioning an award upon entering into such an agreement; 2.) approving an agreement if the small business performs a lesser portion of the R&D activities than required by the Act and by SBIR and STTR Policy Directives; or 3.) approving an agreement that violates any SBA provision or such Directives. Requires the Administrator to modify such Directives to ensure that small businesses may use the resources of Federal laboratories or FFRDCs without entering into such agreements.

Section 5111. Allows a small business that receives a Phase II SBIR or STTR award to receive an additional Phase II SBIR or STTR award for that project.

Section 5121. Outreach and Commercialization Initiatives

Allows each Federal agency conducting an STTR program (under current law, only an SBIR Program) to contract for the provision of technical assistance to small businesses participating in that program. Extends from three to five years the authorized period of such assistance. Increases from \$4,000 to \$5,000 the amount authorized to be provided to SBIR or STTR participants under the first and second phases of such projects.

Section 5122. Redesignates the Commercialization Pilot Program as the Commercialization Readiness Program, and includes STTR technology projects under such Program. Makes such Program permanent. Authorizes the Secretary of Defense to: 1.) establish goals for the transition of Phase III technologies in subcontracting plans; and 2.) require prime contractors to report on the number and the amount of contracts entered into for Phase III SBIR or STTR projects. Directs the Secretary to: 1.) establish goals for increasing the number of Phase II SBIR and STTR contracts awarded that lead to technology transition into programs of record or fielded systems; 2.) use incentives or create new incentives to encourage agency program managers and prime contractors to meet such goals; and 3.) include in a required annual report to Congress information on projects funded through the program and efforts to transition their technologies into programs of record or fielded systems.

Section 5123. Allows the head of each Federal agency to allocate up to 10% of SBIR and STTR program funds to establish a pilot program: 1.) for awards for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR Phase II technologies; or 2.) to support the progress of research, R&D, and commercialization conducted under such programs to Phase III. Terminates the pilot program at the end of FY 2017.

Section 5127. Authorizes the NIH Director to use specified funds for a Proof of Concept Partnership pilot program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. Outlines partnership requirements. Limits awards to: 1.) \$100,000 per individual proposal, and 2.) \$1 million per institution per year for up to three years. Requires such Director to report to the small business committees on the pilot program. Terminates the program at the end of FY 2017.

National Defense Authorization Act for FY 2013 (PL 112-239)

Section 251. Includes educational institutions in Puerto Rico, the Northern Mariana Islands, and U.S. territories and possessions within authorized defense laboratories education partnerships.

Section 252. Authorizes the Secretary to use the DoD research and engineering network to support regional advanced technology clusters established by the Secretary of Commerce to encourage the development of innovative advanced technologies to address national security and homeland defense challenges. Requires the Under Secretary to report to Congress on DoD participation in such activities.

Section 1040. Establishes the Interagency Council on the Strategic Capability of the National Laboratories to, among other things, identify and consider the adequacy of the science, technology, and engineering capabilities of the national laboratories.

Section 1615. Amends the SBA to authorize the Secretary and the Secretary concerned to use up to 1% of funds available to each under the SBIR for administrative expenses of DoD's Commercialization Readiness Program.

Section 3165. Authorizes the Secretary to carry out a two-year pilot program at a national laboratory for the purpose of accelerating T2 from national laboratories to the marketplace.

National Defense Authorization Act for FY 2014 (PL 113-66)

Section 801. Authorizes the Secretary and the Secretary of each military department to allow the heads of DoD laboratories to grant licenses for computer software and related documentation developed at a DoD laboratory, but only if: 1.) such software and documentation would be a trade secret if the information had been obtained from a non-Federal party, 2.) the public is notified of such availability and has a fair opportunity to submit license applications, 3.) such licenses comply with Federal requirements for the licensing of federally owned inventions, and 4.) the software was originally developed to meet DoD military needs. Requires such Secretaries to provide appropriate protections against the unauthorized disclosure of any such software or documentation. Provides for the DoD retention and use of royalties on such software and documentation. Terminates the authority under this section at the end of 2017 (amended by Section 818, NDAA for FY 2017).

Section 1603. Authorizes the establishment and implementation of the "Proof of Concept Commercialization Pilot Program" with the purpose of accelerating the commercialization of basic research innovations from qualifying institutions.

National Defense Authorization Act for FY 2016 (PL 114-92)

Section 213. Modifies the authority for education partnerships to permit institutions that support technology transition or transfer activities, such as business or law schools with technology management programs, to participate.

Section 216. Amends the NDAA for FY 2011 to reauthorize the Rapid Innovation Program to accelerate the fielding of innovative technologies. Requires the DoD to ensure that projects are selected using merit-based selection procedures and not subject to undue influence by Congress or other Federal agencies.

National Defense Authorization Act for FY 2017 (PL 114-328)

The NDAA for FY 2017 includes a five-year SBIR/STTR Reauthorization. The SBIR/STTR language included in this act calls for a simple five-year reauthorization with no allocation increase or pilot programs, pushing the expiration date back to September 30, 2022.

The Rapid Innovation Fund at the DoD, which awards over \$250 million in follow-on Phase III funding (~85% of which goes to small businesses), was made permanent.

Section 818. Extended the sunset date of Section 801 of the NDAA for FY 2014 (PL 113-66) to 2021.

National Defense Authorization Act for FY 2018 (PL 115-91)

Section 217. Authorizes the Secretary of Defense to establish one or more multi-institution task order contracts, consortia, cooperative agreements, or other arrangements to facilitate expedited access to university technical expertise in support of DoD mission areas including technology transfer and transition. (Amended by Section 236, NDAA for FY 2019)

Section 225. Authorizes support for national security innovation and entrepreneurial education programs which may include exchange and partnerships with DoD science and technology activities, activities consistent with the “Proof of Concept Commercialization Pilot Program” established under section 1603 of the NDAA for FY 2014, and other elements listed in section 225. Through this section the Secretary of Defense may ensure that any recipient of an award under the STTR program, SBIR program, and science and technology programs of the DoD has the option to participate in training under a national security innovation and entrepreneurial education program. The Secretary may also encourage Federal employees and members of the Armed Forces to participate in a national security innovation and entrepreneurial education program in order to gain exposure to modern innovation and entrepreneurial methodologies. (Amended by Section 233, NDAA for FY 2019)

National Defense Authorization Act for FY 2019 (PL 115-232)

Section 222. Authorizes the Secretary of Defense to carry out activities to prioritize innovative collaboration between DoD science and technology reinvention laboratories, industry, and academia. This section authorizes an open campus program for the DoD science and technology reinvention laboratories, modeled after the open campus program of the Army Research Laboratory.

Section 224. Codifies and reauthorizes the Defense Research and Development Rapid Innovation Program through the amendment of 10 U. S. Code by inserting section 2359a. Defense Research and Development Rapid Innovation Program, after § 2539. This program is defined as “a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, technologies developed by the defense laboratories and other innovative technologies (including dual use technologies).” “The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs...”

Section 229. Authorizes Under Secretaries to use cooperative agreements and public-private and public-public partnerships (including CRADAs) to facilitate development of advanced manufacturing techniques in support of the defense industrial base.

Section 230. Establishes national security innovation activities. The Under Secretary of Defense for Research and Engineering is directed to establish activities to develop interaction between the DoD and the commercial technology industry and academia with regard to emerging hardware products and technologies with national security applications. "...the Under Secretary may transfer such personnel, resources, and authorities that are under the control of the Under Secretary...to carry out the activities established..." Transfers are contingent upon sufficient private sector investment, sufficient personnel with expertise, and identification of relevant technologies and systems without further Government funding as authorized by this section. A nonprofit entity may be established or funded to carry out program activities. CRADAs may be used.

Section 231. Amends 10 U.S. Code § 2368. A new subsection (f) is inserted:

“(f) Use of Partnership Intermediaries to Promote Defense Research and Education.— (1) Subject to the approval of the Secretary or the head of the another department or agency of the Federal Government concerned, the Director of a Center may enter into a contract, memorandum of understanding or other transition with a partnership intermediary that provides for the partnership intermediary to perform services for the Department of Defense that increase the likelihood of success in the conduct of cooperative or joint activities of the Center with industry or academic institutions.

(2) In this subsection, the term ‘partnership intermediary’ means an agency of a State or local government, or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government, that assists, counsels, advises, evaluates, or otherwise cooperates with industry or academic institutions that need or can make demonstrably productive use of technology-related assistance from a Center.”

Section VIII - 1h

Presidential Memorandum - Accelerating Technology Transfer and Commercialization of Federal Research in Support of High-Growth Businesses, 28 October 2011

The following description of this Presidential Memorandum (PM) is an excerpt from the NIST website, <https://www.nist.gov/tpo/agency-responses-presidential-memorandum>:

This PM recognized the importance of Federal laboratory T2 and instructed agencies to increase the successful outcomes of these activities significantly over the next 5 years, while simultaneously achieving excellence in our basic and mission focused research activities.

The President required agencies with Federal research laboratories to develop and implement their own mission-specific plans to improve the rate of T2 and thereby improve the economic impact of Federal research. These plans include agency-defined goals and metrics to measure progress and evaluate the success of new efforts to encourage T2 activities.

Links to agency plans and Interagency Workgroup on Technology Transfer reports are available on the NIST website.

A copy of the DoD “Strategy & Action Plan for Accelerating Technology Transfer (T2) and Commercialization of Federal Research in Support of High Growth Businesses” is provided with the electronic version of this handbook.

Section VIII - 1i

American Innovation and Competitiveness Act

(PL 114-329, 6 January 2017)

Innovation and Technology Transfer

- Promotes entrepreneurship by authorizing and expanding the National Science Foundation's (NSF's) Innovation Corps program to promote entrepreneurship education, training, and mentoring of federally funded researchers.
- Authorizes and expands grants to translate Federal funded research into commercial applications.
- Promotes expansion of research into optics and photonics to promote U.S. competitiveness in that industry.
- Authorizes the position of United States Chief Technology Officer as one of the Office of Science and Technology Policy Associate Directors.

Leveraging the Private Sector

- Expands opportunities for science prize competitions by reducing barriers to public-private partnerships and providing participants with IP protections.
- Expands opportunities for crowdsourcing research input and citizen science participation by organizations and individuals to benefit Federal science agency missions. Requires report to include analysis of benefits of crowdsourcing or citizen science projects over other options available to the agencies.

Improving Research Coordination

- Updates and improves the Networking and Information Technology Research and Development program, which coordinates the Federal R&D investment portfolio in unclassified networking, computing, software, and cybersecurity.
- Directs research to help better protect Federal computer systems from cyber threats, including research to improve agency accountability by evaluating challenges to Federal agencies' implementation of NIST standards for Federal information systems.
- Improves coordination of research across the Federal Government in neuroscience, the physical sciences, and chemistry.

Administrative Regulatory Burden Reduction

- Establishes an interagency working group to reduce administrative burdens on federally-funded researchers by providing recommendations on issues such as micro-purchase approval and grant sub recipient monitoring. Directs the working group to develop a uniform grant format for Federal science agencies and establish a centralized researcher profile database.

- Establishes a body under the National Science and Technology Council to identify and coordinate international science and technology cooperation and identify barriers.
- Requires the heads of relevant Federal science agencies to revise current policies and streamline processes for attendance at scientific and technical workshops while ensuring appropriate oversight, accountability, and transparency.

Science, Technology, Engineering, and Math Education

- Requires NSF to develop and implement practices for increasing the retention of teachers funded under the Robert Noyce Teacher Scholarship Program.
- Improves coordination and improvement of Science, Technology, Engineering, and Mathematics (STEM) education programs across the Federal Government by requiring the Committee on STEM Education of National Science and Technology Council to collaborate with a STEM Education Advisory panel of outside experts to guide Federal STEM education program decision making.
- Improves that National Space Grant College and Fellowship program to train a STEM workforce in the fields of space and aeronautics.
- Authorizes additional programs in informal STEM, undergraduate STEM education, STEM mentoring, STEM fellowships, STEM workshops, and expanding STEM opportunities.

This legislation incorporates House-passed provisions from the following bills:

- H.R. 1806, *America COMPETES Reauthorization Act of 2015* introduced by Chairman Lamar Smith
- H.R. 1119, *Research and Development Efficiency Act* introduced by Rep. Barbara Comstock (R-VA)
- H.R. 1156, *International Science and Technology Cooperation Act* introduced by Rep. Daniel Lipinski (D-IL)
- H.R. 1162, *Science Prize Competition Act* introduced by Rep. Don Beyer (D-VA)
- H.R. 1764, *United States Chief Technology Officer Act* introduced by Rep. Barry Loudermilk (R-GA)
- H.R. 1924, *Hispanic Opportunity Program in Education and Science Act* introduced by Rep. Jose Serrano (D-NY)
- H.R. 3293, *Scientific Research in the National Interest Act* introduced by Chairman Lamar Smith
- H.R. 5049, *NSF Major Facility Research Reform Act* introduced by Rep. Barry Loudermilk
- H.R. 5312, *Networking and Information Technology Research and Development (NITRD) Modernization Act of 2016* introduced by Rep. Darin LaHood (R-IL)
- H.R. 5636, *National Institute of Standards and Technology Campus Security Act* introduced by Rep. Barry Loudermilk
- H.R. 5639, *National Institute of Standards and Technology Improvement Act* introduced by Rep. John Moolenaar (R-MI)

Section VIII - 2

Other Relevant Public Laws and Guidance

1. FEDERAL ACQUISITION

Federal Acquisition Regulation/Defense Federal Acquisition Regulation Supplement

The Federal Acquisition Regulation (FAR) System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The FAR System consists of the FAR, which is the primary document, and agency acquisition regulations that implement or supplement the FAR.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

2. MONEY AND FINANCE

31 U.S. Code § 1341

Title 31 - Money and Finance

§ 1341 Limitations on expending and obligating amounts

(a)(1) An officer or employee of the U.S. Government or of the District of Columbia government may not:

- (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;
- (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;
- (C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or
- (D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(a)(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the U.S. Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

31 U.S. Code § 1535

Economy Act Orders (Additional Reference: DoD Financial Management Regulation, Volume IIA, Chapter 3; <http://comptroller.defense.gov/FMR.aspx>)

Title 31 - Money and Finance

§ 1535 Agency Agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the U.S. Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

3. SMALL BUSINESS

13 C.F.R. § 121.101

Reference: Code of Federal Regulations (Annual Edition), 2017; website of the U.S. Government Publishing Office, <https://www.gpo.gov>

Title 13, Chapter I--Small Business Administration, Part 121--Small Business Size Regulations

“§ 121.101 What are SBA size standards?”

(a) SBA’s size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

(b) NAICS is described in the North American Industry Classification Manual—United States, which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1 (800) 553-6847 or 1 (703) 605-6000; or via the Internet at <http://www.ntis.gov/products/naics.aspx>. The manual includes definitions for each industry, tables showing relationships between 1997 NAICS and 1987 Standard Industrial Classifications, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad

sectors. Section 121.201 provides a full table of small business size standards matched to the U.S. NAICS industry codes. A full table matching a size standard with each NAICS industry or U.S. industry code is also published annually by SBA in the Federal Register.

[65 FR 30840, May 15, 2000, as amended at 67 FR 52602, Aug. 13, 2002; 74 FR 46313, Sept. 9, 2009]”

15 U.S. Code § 632

Title 15 - Commerce and Trade

“§ 632. Definitions

(a) Small business concerns

(1) In general

For the purposes of this chapter, a small-business concern...shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

(2) Establishment of size standards

(A) In general

In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this chapter or any other Act.”

Additional criteria, requirements and factors for determining business size standards are addressed in § 632 (a)(2)(B) and (a)(2)(C), (a)(3), (a)(4).

15 U.S. Code § 638

Title 15 - Commerce and Trade, Chapter 14A - Aid to Small Business

§ 638. Research and Development

-Codified the Small Business Innovation Development Act of 1982, Public Law 97-219, which was re-authorized by the Small Business Research and Development Enhancement Act of 1992, the Small Business Innovation Research Program Reauthorization Act of 2000, and the 2012 Defense Authorization Act.

-Established the Small Business Innovation Research (SBIR) Program and the Small Business Technology Transfer (STTR) Program.

-Codified the STTR Act of 1992, Public Law 102-564, re-authorized by the Small Business Reauthorization Act of 1997, the Small Business Technology Transfer Program Reauthorization Act of 2001 and the SBIR/STTR Reauthorization Act of 2011.

4. TECHNOLOGY INNOVATION DEFINITIONS

15 U.S. Code § 3703 (4), (7) and (8)

Title 15 - Commerce and Trade, Chapter 63 - Technology Innovation

§ 3703. Definitions

(4) “Federal laboratory” means any laboratory, any federally funded research and development center, or any center established under section 3705 or 3707 of this title that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

(7) “Invention” means any invention or discovery which is or may be patentable or otherwise protected under Title 35 or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S. Code § 2321 et seq.).

(8) “Made” when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

5. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

15 U.S. Code § 3710a (c)(7)(B), (d)(2), and (e)

Title 15 - Commerce and Trade, Chapter 63 - Technology Innovation

§ 3710a. Cooperative research and development agreements

(c)(7)(B) The director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of information that results from research and development activities conducted under this chapter and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from Subchapter II of Chapter 5 of Title 5.

(d)(2) the term “laboratory” means:

(A) a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

(B) a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a substantial purpose of the contract is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and

(C) a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government,

(e) Determination of laboratory missions.

For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

10 U.S. Code § 2371a

Title 10 - Armed Forces; Subtitle A - General Military Law;

Part IV - Service, Supply, and Procurement; Chapter 139 - Research and Development

§ 2371a Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

“The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S. Code § 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S. Code § 3710, 3710a).”

6. DoD COOPERATIVE AGREEMENTS, GRANTS, AND OTHER TRANSACTIONS

10 U.S. Code §§ 2358 and 2371

Title 10 - Armed Forces; Subtitle A - General Military Law;

Part IV - Service, Supply, and Procurement; Chapter 139 - Research and Development

§ 2358 Research and development projects

(b) The Secretary of Defense or the Secretary of a military department may perform research and development projects-

(1) by contract, cooperative agreement, or grant, in accordance with Chapter 63 of Title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the DoD; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

§ 2371 Research projects: transactions other than contracts and grants

Additional Forms of Transactions Authorized. - The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

31 U.S. Code §§ 6304 and 6305

§ 6304 Using Grant Agreements

An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the U.S. Government and a State, a local government, or other recipient when-

(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the U.S. instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government; and

(2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

§ 6305 Using Cooperative Agreements

An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the U.S. Government and a State, a local government, or other recipient when-

(1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the U.S. instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government; and

(2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

7. WORK FOR PRIVATE PARTIES AGREEMENTS

10 U.S. Code §§ 2539b(a)(3), 2539b(a)(4) and 2563; 10 U.S. Code § 7303

Title 10 - Armed Forces; Subtitle A - General Military Law;
Part IV - Service, Supply, and Procurement; Chapter 148 - National Defense Technology and Industrial Base, Defense Reinvestment, and Defense Conversion, and Chapter 152 - Issue of Supplies, Services, and Facilities

§ 2539b Availability of samples, drawings, information, equipment, materials, and certain services.

(a) Authority. - The Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each-

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend Government equipment or materials to any person or entity-

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government;

(3) make available to any person or entity, at an appropriate fee, the services of any Government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any Government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

§ 2563 Articles and services of industrial facilities: sale to persons outside the DoD

(a) Authority to Sell Outside DoD. - (1) The Secretary of Defense may sell in accordance with this section to a person outside the DoD articles and services referred to in paragraph (2) that are not available from any U.S. commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) Designation of Participating Industrial Facilities. - The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) Conditions for Sales. - (1) A sale of articles or services may be made under this section only if-

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the U.S.;

(B) the purchaser agrees to hold harmless and indemnify the U.S., except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the DoD.

8. COPYRIGHTS

17 U.S. Code § 106

Title 17 - Copyrights, Chapter 1 - Subject Matter and Scope of Copyright

“§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 121, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion picture sand other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

9. PATENTS

Title 35 – Patents

This law established the U.S. Patent and Trademark Office as an agency of the U.S., within the Department of Commerce, and governs all aspects of patent law in the U.S.

AMERICA INVENTS ACT, AIA (PL 112-29 amended by PL 112-274)

References: U.S. Patent and Trademark Office website, <https://www.uspto.gov/patent/laws-and-regulations/america-invents-act-ia/resources>; and Summary of the America Invent Act on the American Intellectual Property Law Association website, www.aipla.org.

AIA made significant changes to U.S. patent law, Title 35. The following are some changes made to Title 35:

- In March 2013, the U.S. transitioned from a “First to Invent” patent system to a “First to File” system where priority is given to the first inventor to file a patent application. (Section 3)
- Electronic means of filing is incentivized. (Section 10)
- A patent may not be cancelled or invalidated based on an applicant’s failure to disclose “the best mode” of carrying out an invention. (Section 15)
- The AIA prohibits granting patents for human organisms. This does not apply to previously issued patents. (Section 33)
- A new definition of “prior art” is presented for Section 102 of Title 35. (Section 3)

- Under new Section 102(b) of Title 35, publication of a claimed invention by the inventor less than 1 year before the filing of a patent application may not act as prior art. (Section 3)

10. TRADEMARKS

15 U.S. Code Chapter 22

Title 15 - Commerce and Trade, Chapter 22 - Trademarks, Sections 1051 to 1141n

11. LICENSING OF GOVERNMENT OWNED INVENTIONS

37 C.F.R. PART 404 (Amended on May 14, 2018).

Reference: Code of Federal Regulations (Annual Edition), 2017; website of the U.S. Government Publishing Office, <https://www/gpo.gov>

Title 37 - Patents, Trademarks, and Copyrights, Chapter IV - National Institute of Standards and Technology, Department of Commerce, Part 404. Licensing of Government Owned Inventions

§ 404.1 Scope of part.

This part prescribes the terms, conditions, and procedures upon which a federally owned invention, other than an invention in the custody of the Tennessee Valley Authority, may be licensed. This part does not affect licenses which:

- (a) Were in effect prior to April 7, 2006;
- (b) May exist at the time of the Government's acquisition of title to the invention, including those resulting from the allocation of rights to inventions made under Government research and development contracts;
- (c) Are the result of an authorized exchange of rights in the settlement of patent disputes, including interferences; or
- (d) Are otherwise authorized by law or treaty, including 35 U.S. Code § 202(e), 35 U.S. Code § 207(a)(3) and 15 U.S. Code § 3710a, which also may authorize the assignment of inventions. Although licenses on inventions made under a CRADA are not subject to this regulation, agencies are encouraged to apply the same policies and use similar terms when appropriate. Similarly, this should be done for licenses granted under inventions where the agency has acquired rights pursuant to 35 U.S. Code § 207(a)(3).

This rule and 37 C.F.R. § 401 were amended on May 14, 2018.

12. FREEDOM OF INFORMATION ACT (FOIA)

5 U.S. Code § 552 FOIA

Title 5 - Government Organization and Employees, Part I - The Agencies Generally, Chapter 5 - Administrative Procedure

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

This section regulates the information that is to be made available to the public.

35 U.S. Code § 205 - Confidentiality (relating to inventions)

Title 35 - Patents, Part II - Patentability of Inventions and Grant of Patents
Chapter 18 - Patent Rights in Inventions Made with Federal Assistance

§ 205. Confidentiality

Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the U.S. Patent and Trademark office or with any foreign patent office.

DoD Manual 5400.07 - DoD Freedom of Information Act (FOIA) Program

Excerpts from Section 5 of this manual:

For detailed explanation of FOIA exemptions, the Department of Justice Guide to the FOIA should be consulted at <http://www.usdoj.gov/oip/foiaguide.html>).

Information responsive to a FOIA request will be withheld only if the DoD Component reasonably foresees that disclosure would harm an interest protected by one or more of the FOIA exemptions, or disclosure is prohibited by law.

When a DoD Component determines that information contained within a record is exempt from release, it will consider whether a partial release of the record is possible by taking reasonable steps to conduct a line-by-line review to segregate and release nonexempt information contained within the record.

There are nine types of exempt information:

- (1) Records properly and currently classified in the interest of national defense or foreign policy, pursuant to an existing Executive Order, are exempt from disclosure;
- (2) Records related solely to the internal personnel rules and practices of the DoD or any of the DoD Components are exempt from disclosure;
- (3) Records concerning matters that another statute specifically establishes criteria for withholding are exempt from disclosure (including, personally identifying information of DoD personnel per Section 130b, Title 10 U.S. Code, sensitive information of foreign governments and international organizations per Section 130c, Title 10 U.S. Code, critical infrastructure security information per Section 130e, Title 10 U.S. Code, military flight operations quality assurance system data file per Section 2254a, Title 10 U.S. Code);

- (4) Certain non-Government financial information is exempt from disclosure (for example, trade secrets; or information that is commercial or financial, obtained from a person or entity outside of the U.S. Government, and privileged or confidential; commercial or financial information received in connection with loans, bids, contracts, or proposals; scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with applications for research grants or with a report while research is in progress; technical and scientific data developed by a contractor exclusively at private expense or developed in part with Federal funds and in part at private expense);
- (5) Inter- or intra-agency memoranda or letters containing information considered privileged in civil litigation are exempt from disclosure;
- (6) Information in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, is exempt from disclosure;
- (7) Records or information compiled for law enforcement purposes are exempt from disclosure upon the identification of one of six conditions delineated in paragraph 5.2.g(1) of DoD Manual 5400.07;
- (8) Records in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions are exempt from disclosure; and
- (9) Records containing geological and geophysical information and data (including maps) concerning wells are exempt from disclosure.

13. INTERGOVERNMENTAL PERSONNEL ASSIGNMENT

5 U.S. Code § 3372

Title 5 - Government Organization and Employees; Subpart B - Employment and Retention;
Chapter 33 - Examination, Selection, and Placement

§ 3372 General Provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of-

(1) an employee of his agency, other than a non-career appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency; for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years.

14. TORT CLAIMS PROCEDURE

28 U.S. Code § 2671

Title 28 - Judiciary and Judicial Procedure, Part VI - Particular Proceedings, Chapter 171 - Tort Claims Procedure, § 2671 to 2680.

15. OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Public Law 100-418, 19 U.S. Code § 2901 et seq.

Title 19 - Customs Duties, Chapter 17 - Negotiation and Implementation of Trade Agreements

Provides the overall and principal trade negotiating objectives of the U.S. including its principal negotiating objectives regarding IP which are to seek the enactment and effective enforcement by foreign countries of laws which recognize and adequately protect IP, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and provide protection against unfair competition.

Appendix

[Appendix](#) Acronym List

APPENDIX

Acronym List

ADOR	Associate Director of Research
AIA	America Invents Act
BIS	Bureau of Industry and Security
CAGE	Commercial and Government Entity
CCL	Commerce Control List
CFR	Code of Federal Regulations
CNR	Chief of Naval Research
COMSEC	Communications Security
CRADA	Cooperative Research and Development Agreement
CUI	Controlled Unclassified Information
DDR&E	Department of Defense Research and Engineering
DDTC	Directorate of Defense Trade Controls
DFARS	Defense Federal Acquisition Regulation Supplement
DLIS	Defense Logistics Information Service
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDGARs	Department of Defense Grant and Agreement Regulations
DoDI	Department of Defense Instruction
DoDM	Department of Defense Manual
DOE	Department of Energy
DON	Department of the Navy
DSS	Defense Security Service
DTIC	Defense Technical Information Center
DTSA	Defense Technology Security Administration
EA	Executive Agent
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ECFR	Electronic Code of Federal Regulations
EO	Executive Order
EPA	Education Partnership Agreement
EPA	Environmental Protection Agency

APPENDIX

Acronym List

FAR	Federal Acquisition Regulation
FCL	Facility Clearance
FDA	Food and Drug Administration
FDD	Foreign Disclosure Determination
FFRDC	Federally Funded Research and Development Center
FLC	Federal Laboratory Consortium
FN	Foreign National
FOCI	Foreign Owned, Controlled or Influenced
FOIA	Freedom of Information Act
FOUO	For Official Use Only
FR	Federal Register
FTCA	Federal Tort Claims Act
FY	Fiscal Year
GOGO	Government-Owned, Government-Operated
GPS	Global Positioning Satellite
GSA	General Services Administration
IEC	Independent Ethics Committee
IP	Intellectual Property
IRB	Institutional Review Board
IS	Information Systems
ISOO	Information Security Oversight Office
ITAR	International Traffic in Arms Regulations
LP-CRADA	Limited Purpose-CRADA
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding

APPENDIX

Acronym List

NAICS	North American Industry Classification System
NCRADA	Navy Cooperative Research and Development Agreement
NDA	Non-Disclosure Agreement
NDAA	National Defense Authorization Act
NDTTIS	Navy Defense Technology Transfer Information System
NIH	National Institutes of Health
NIPO	Navy International Programs Office
NISP	National Industrial Security Program
NISPOM	National Industrial Security Program Operating Manual
NIST	National Institute of Standards and Technology
NNC	Non-Navy Collaborator
NSF	National Science Foundation
ODDR&E	Office of the Department of Defense Research and Engineering
OGC	Office of the General Counsel
ONR	Office of Naval Research
OPSEC	Operations Security
ORTA	Office of Research and Technology Applications
OSD	Office of the Secretary of Defense
PAO	Public Affairs Office
PBX	Private Branch Exchange
PI	Principal Investigator
PIA	Partnership Intermediary Agreement
PL	Public Law
PLA	Patent License Agreement
PM	Presidential Memorandum
POC	Point of Contact
R&D	Research and Development
RDT&E	Research, Development, Test and Evaluation

APPENDIX

Acronym List

S&T	Science and Technology
SBA	Small Business Administration
SBC	Small Business Concern
SBIR	Small Business Innovation Research
SCA	Security Control Agreement
SCI	Sensitive Compartmented Information
SECNAV	Secretary of the Navy
SECNAVINST	Secretary of the Navy Instruction
SOW	Statement of Work
SSA	Special Security Agreement
STEM	Science Technology Engineering and Mathematics
STTR	Small Business Technology Transfer
T2	Technology Transfer
TOC	Table of Contents
TTO	Technology Transfer Office
USC	United States Code
USML	United States Munitions List
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative
WFPPA	Work for Private Parties Agreement