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| **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. |

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| 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 |
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| 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 |
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| **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 |
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| 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[[1]](#footnote-1)  (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 Agreement2 (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. |

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| 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[[2]](#footnote-2) | 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 5700.17A3 | 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**

1. Software evaluations can be done through a bailment agreement or a Limited Purpose CRADA. Consultation with local counsel is essential. [↑](#footnote-ref-1)
2. SECNAV 5700.17A is expected to be published by fiscal year 2018. [↑](#footnote-ref-2)