

**Model Cooperative Research and  
Development Agreement (CRADA)  
Department of Defense**

**Director, Defense Research and Engineering  
Under Secretary of Defense for Acquisition and Technology**

**July 7, 2015**

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## DoD MODEL CRADA

### ARTICLE 1 – PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, October 20, 1986, as amended, and codified at 15 U.S.C. § 3710a), Federal Government Technical Activity [*insert name*] (“**Government**”) located at [*insert address*], and Non-Federal Collaborator, [*insert name*] (“**Collaborator**”), a corporation of the State of [*insert state of incorporation*], having a principal place of business at [*insert address*], (Government and Collaborator hereinafter referred to as “**Party**” or “**Parties**”) enter into this Cooperative Research and Development Agreement (“CRADA”) that will be binding upon each of the Parties according to the terms and conditions and for the duration set forth below.

NOW, THEREFORE, each of the Parties hereby agrees to the following:

### ARTICLE 2 – DEFINITIONS

“**Background Technology**” is any classified information, Controlled Unclassified information, Proprietary Information and any other intellectual property brought to this CRADA by either Party. Examples of Background Technology include Technical Data, Invention Disclosures, patent applications, Computer Software Databases, Computer Software Documentation, Computer Software, and trade secrets that are privileged or confidential under the meaning of section 552(b)(4) of title 5, Freedom of Information Act.

“**Classified**” means all information classified in accordance with the national security laws of the U.S.

“**Computer Database**” means a collection of information 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, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer Software does not include Computer Databases or Computer Software Documentation.

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

“**Controlled Unclassified**” means unclassified information exempt from public disclosure according to DoD Directive 5230.25 and DoD Directive 5400.7 or that is subject to export controls according to Title 22, C.F.R., parts 120-130, International Traffic in Arms Regulations (ITAR), or 15 C.F.R. 730 et seq., Export Administration Regulations (EAR).

“**Created**” when used in relation to any copyrightable Work means the work is fixed in any tangible medium of expression for the first time.

“**CRADA Invention**” means any Invention conceived or first actually reduced to practice under this CRADA.

“**CRADA Work**” means a Work Created in performance of this CRADA.

“**CRADA Technical Data**” means Technical Data Created in performance of this CRADA.

“**Foreign Personnel**” is any person who is not a citizen or a national of the United States of America.

“**Government Purpose**” means any activity in which the United States Government is a party but does not include use for commercial purposes.

“**Government**” refers to the Government of the United States of America or to any agency or other component of the United States federal government.

“**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 patentable under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

“**Joint Work Plan**” means a proposal describing the purpose and scope of the proposed CRADA that assigns rights and responsibilities among the Parties.

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

“**ORTA**” means the Office of Research and Technology Applications as established in accordance with 15 U.S.C. §§ 3710(b) and (c) to develop, manage and execute Government’s technology goals and programs. The term may be used to refer to the office, the person managing that office, or both.

“**Principal Investigator**” (PI) is the person assigned by each Party to manage and administer the specific CRADA technical matters and day-to-day performance of the CRADA.

“**Proprietary Information**” means information owned by the Collaborator that embodies trade secrets created prior to or independently of this CRADA (i.e., not created in performance of this CRADA), or that is business or financial information that is privileged or business confidential under the Freedom of Information Act, 5 U.S.C. Section 552(b)(4), providing that such information:

- (a) Is not generally known or available from other sources without obligations concerning their confidentiality;
- (b) Has not been made available by the owners to others without obligation concerning its confidentiality;  
or
- (c) Is not already available to the Government without obligation concerning its confidentiality.

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

“**Work**” or “**Works**” means anything fixed in tangible form, e.g., technical data and computer software.

### **ARTICLE 3 – RESERVED**

### **ARTICLE 4 – GENERAL PROVISIONS**

4.1 **Governing Law.** The laws applicable to the Government of the United States of America, as interpreted and applied in the federal courts of the U.S., are to govern the procedural and substantive construction, validity, performance, and effect of this CRADA for all purposes.

4.2 **Duration of CRADA.** This CRADA will automatically expire [*insert months*] months from the Effective Date of this CRADA, unless modified per Article 4.6.

**4.3 Effective Date.** This CRADA enters into force as of the date it is signed by the last authorized representative of the Parties.

**4.4 Signature Execution.** This CRADA can be executed in one or more counterparts by the signature of a person having authority to bind that Party and that Party's signature is required to be an original or digital signature, each of which when executed and delivered, by facsimile transmission, mail, or email delivery, will be an original, and all of the counterparts will constitute but one and the same CRADA.

**4.5 Assignment.** Neither Party to this CRADA can assign its rights and obligations in this CRADA without approval from the other Party. If the Parties mutually agree to the assignment, a new CRADA must be executed, at the same signature level as the original CRADA, by the new Party who assumes the rights and obligations under the CRADA and the remaining Party. If the original Parties to the CRADA are unable to mutually agree to the assignment, the CRADA is terminated by mutual consent in accordance with Paragraph 4.6.2.1.

#### **4.6 Modifications, Terminations, and Notices.**

##### **4.6.1 Modifications.**

4.6.1.1 Any change outside the scope of the executed CRADA must be made by a Modification.

4.6.1.2 **Modifications.** The Parties will confer in good faith to determine the desirability of a modification. A modification shall not be effective until a written modification is signed. Modifications within the scope of the CRADA may be signed by both executing officials of this CRADA or their successors. Modifications to this CRADA would include any changes to the CRADA, such as expanding the scope or duration of the CRADA, and must be approved at the same signature level as the original CRADA. Each Modification will be attached as a counterpart to this CRADA, a copy of which will be forwarded to the ORTA within thirty (30) days after each Modification is signed by all Parties.

##### **4.6.2 Terminations.**

4.6.2.1 **Termination by Mutual Consent.** The Parties may elect to terminate this CRADA at any time by mutual consent. Such termination will not be effective until a written termination is approved by all Parties.

4.6.2.2 **Unilateral Termination.** A Party may unilaterally terminate this entire CRADA at any time by giving the other Party written notice signed at the same signature level as the original CRADA, not less than thirty (30) days prior to the desired termination date. If a Party unilaterally terminates this CRADA, any option for an Exclusive License to a CRADA Invention and any Exclusive License to a CRADA Invention granted by or pursuant to this CRADA will simultaneously be terminated, unless the Parties mutually agree otherwise in writing.

4.6.2.3 **Rights and Obligations.** Termination of this CRADA will not affect the rights and obligations of the Parties accrued prior to the Effective Date of the termination of this CRADA.

4.6.2.4 **No New Commitments.** The Government will make no new commitments concerning this CRADA after receipt of a written termination notice from the Collaborator in accordance with Article 4.7 and will, to the extent practicable, cancel all outstanding commitments by the termination date. Should such cancellation result in any costs incurred by Government, Collaborator agrees that such costs will be chargeable against any funding that it provided to the Government.

##### **4.7 Notices.**

4.7.1 **Normal Notices.** All notices pertaining to or required by this CRADA, including modifications, disputes or terminations, and those pertaining solely to any copyright, invention, or any patent application, shall be in writing and will be signed by the Government (name(s) provided directly below) or the preferred contact for Collaborator (name(s) provided directly below), and all such notices will be addressed as follows:

If to [Government]:

[Use the Government's mailing address, phone number and e-mail address for the ORTA.]

(Include contact information for all Legal Advisors including the Intellectual Property Attorney)

(Include the name and contact information of the PI)

If to [Collaborator]:

(Include the name of the contact person and the PI)

(Note: for notice purposes it is recommended that the PIs, ORTA and Legal Advisors POC information be used, including e-mail addresses.)

**4.7.2 Delivery of Notices.** All notices will be delivered in a manner that ensures confirmation of receipt. Each Party will notify the other Party of a change of an address in the manner set forth above.

**4.7.3 Special Notices.** Notices pertaining solely to the prosecution of any jointly owned patent application, copyright or invention under this CRADA will be in writing and will be signed and sent to the other Party's Legal Advisor for Intellectual Property. The Government's Legal Advisor for Intellectual Property will send a copy of these notices to the ORTA. If either Party fails to identify such Legal Advisor upon request, then notices will be sent to the points of contact specified above.

#### **4.8 Security Obligations.**

**4.8.1 Host Facility.** Each Party will abide by the safety, and security regulations and directives of the host facility in which the work in support of the CRADA is being performed. Copies of all applicable safety and security regulations and directives should be provided to the non-hosting Party.

**4.8.2 Use of Foreign Personnel.** Due to the sensitive nature of the research under the CRADA, and the potential for export control restrictions, no Foreign Personnel will be engaged by the Collaborator in the performance of any of the work under this CRADA, without first identifying the proposed individual, his/her nationality and background, and the proposed work to be performed by the Foreign Personnel, for the review and written approval of the Government. It is entirely up to the discretion of the Government as whether to allow or deny the use of the proposed Foreign Personnel by the Collaborator. (Note: Foreign students are Foreign Personnel.)

**4.8.3 Compliance with Export Control.** This CRADA is subject to U.S. law and regulations controlling the export of Technical Data, Computer Software, laboratory prototypes and all other export controlled commodities. These laws include, but are not limited to, the Arms Export Control Act and Export Administration Act. All rights granted by this CRADA are contingent upon compliance with these laws and regulations. By granting rights in this CRADA, the U.S. Government does NOT represent that export authorization or an export license will not be unnecessary or that such authorization or export license will be granted.

**4.8.4 Classified Data.** The work performed under this CRADA may cover classified national security information and unclassified Military Critical Technology (MCT). All personnel working with classified information must have the appropriate security clearance and need to know. Any exchange of classified information with industry will comply with the National Industrial Security Program: Procedures for Government Activities Relating to Foreign Ownership, Control, or Influence (FOCI), April 17, 2014, DoD 5200.22-M, and the DD FORM 254, DoD Contract Security Classification Specification, provided as a separate removable attachment to this CRADA. If required, the Collaborator must also be certified by the Joint Certification Program (JCP) to receive MCT and Technical Data, as governed by DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure. This information must be controlled in accordance with the International Trade in Arms Regulations (ITAR).

**Commented [BJMCNS01]:**

George Winborne

GW: I don't believe that a USG attorney can prosecute a joint invention patent application owned with a non-USG party. So, generally, I would expect that it would be the private attorney sending notice to the USG, not the other way around. Your language is neutral though and ok, I think.

#### 4.9. Representations and Warranties.

4.9.1 **Representations and Warranties of the Collaborator.** Collaborator hereby represents and warrants the following:

4.9.1.1 **Corporate Organization.** The Collaborator, as of the date of the Effective Date of this CRADA, is a (indicate whether a *University, Corporation, Non-profit*) duly organized, and in good standing under the laws of the State of (*insert State or Commonwealth*).

4.9.1.2. **Statement of Ownership.** Collaborator is/is not (*indicate*) a foreign owned entity or a subsidiary of a foreign owned entity.

4.9.1.3 **Small Business.** Collaborator is/is not (*indicate*) a small business as defined by the U.S. Small Business Administration.

4.9.1.4 **Suspension or Debarment.** The Collaborator hereby represents and warrants that it is not suspended, proposed for debarment or debarred from eligibility for federal procurements (i.e., contracts, grants, cooperative agreement). The Collaborator will timely notify (seven days or less) the Government, should this status or representation change.

4.9.2 **Representation and Warranties of Government.** Government hereby represents the following:

4.9.2.1 **No Warranty.** Government makes no express or implied warranty as to any matter whatsoever, including the conditions of the research or any Invention or information exchanged, whether tangible or intangible, without limitation, made, or developed under this CRADA, nor does the Government make any express or implied warranty with regard to merchantability, or fitness for a particular purpose of the research or any Invention.

4.9.2.2 **Mission.** The performance of the work under this CRADA is consistent with the mission of the Government Lab involved.

4.9.2.3. **Statutory Compliance.** Reviews and approvals required by regulations or law have been obtained by Government prior to the execution of this AGREEMENT and Government official executing this AGREEMENT has the requisite authority to do so.

#### 4.10 Disputes.

4.10.1 **Settlement.** The Parties recognize that disputes or claims arising under this CRADA are best resolved by the Parties directly involved. Any dispute arising under this CRADA that is not disposed of by the CRADA Parties at the working level will be submitted jointly to the Deputy Commander/Director [*insert name of appropriate title*] of the Government's activity or his/her designee and the signatory of the Collaborator. Such designation will be in writing. In the event, the matter cannot be resolved at the above-identified level; the matter will be forwarded to the Commander or Director of the Government's activity, for final resolution.

4.10.2 **Continuation of Work.** Pending resolution of any dispute or claim pursuant to this CRADA, the Parties agree that performance of all obligations will be pursued diligently and in good faith in accordance with the Joint Work Plan. (Optional, an Agency may wish to include ADR provisions to resolve disputes. See Sample provided in Section IV, Explanatory Notes.)

#### 4.11 Title to Property.

4.11.1 **Title to Preexisting or Acquired Tangible Property.** Each Party will retain title to all tangible property to which it had title prior to the Effective Date of this CRADA or to which it acquired or acquires title, by purchase or by fabrication, outside of the scope of this CRADA. Consumable property to be used in the performance of this CRADA will remain the property of the original owning Party until consumed.

**4.11.2 Title to Developed Property.** All tangible property fabricated or acquired under this CRADA with all components provided by one Party will remain the property of that Party. Tangible property having any component purchased or supplied by the Government will be the property of the U.S. Government, unless such tangible Government components can be separated from Collaborator's components without damage to any of the individual components comprising the tangible property. After termination of this CRADA, the Parties may, by mutual consent, separate the tangible property into its components and the separated components will remain the property of the Party who originally acquired or fabricated the same.

**4.11.3 Tangible Property Operational and Disposition Costs.** Unless otherwise agreed in writing by the Parties, each Party will be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all tangible property to which it has title.

**4.11.4 Disposal of Tangible Property.** Unless otherwise agreed in writing, each Party will take possession of its respective tangible property within sixty (60) days of termination of this CRADA. Each Party will cooperate with the other Party in the recovery or disposition of the other Party's property.

**4.11.5 Inventory Sheet.** Separate inventory sheets shall be written as required for transfer of property from one Party to the other. Government will not be responsible for damages to any property of the Collaborator except to the extent that such loss, claim, damage or liability arise from the negligence of Government or its employees, as specified in the provisions of the Federal Tort Claims Act.

**4.12 Publication.** Each Party that seeks to publish or publicly disclose information, including scientific articles, press releases, or in case of publication in an Request for Proposal pertaining to work performed under this CRADA, will submit to the other Party any proposed written publications not less than thirty (30) days prior to submission for publication. If the receiving Party has any objection to the publication, the Party receiving the proposed publication will, provide a written response within thirty (30) days. A proposed publication that contains information marked "proprietary" or is considered protected and marked as such by the Government, including military critical technology, classified or Controlled Unclassified information, export controlled or other controlled or sensitive information, by either Party requires written consent by both Parties in order for the publication of the information or press release to be released. Such consent will not be unreasonably withheld or delayed. No rights in potential patent applications shall be jeopardized before the filing and publication of any patent application by any Party. By entering into this CRADA, neither Party directly nor indirectly endorses any product or service provided or to be provided by the other Party. The Collaborator will not use the Government's name or the Government's Activity's name for any type of endorsement. Additional paragraphs in Section IV, Explanatory Notes.

**4.13 Special Provisions.**

(If required, the following provisions might be included in "Art 7 Special Provisions")

**4.13.1 Subcontracts and Government Support Contractors/SMEs.** The Government may (and most likely does) use contractor subject matter experts (SMEs) and/or covered government support contractors to participate in performance of the Joint Work Plan. If the Collaborator has reservations about the participation of a Government's contractor SMEs or a covered support contractor, it should advise the Government, and provide appropriate restrictive language on the face of Proprietary Materials to prevent access by such contractors. Neither Party is to use outsiders to perform work under this CRADA nor any tasks and/or analysis, without first identifying the proposed contractor, and obtaining written approval of the Government or Collaborator. Any third-party Collaborator agreement to perform a Party's performance under the CRADA will include "flow-down" terms, consistent with this CRADA.

**4.13.2 Disposal of Toxic Waste or Other Waste.** Each Party will be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this CRADA in accordance with all applicable laws and regulations.

**4.14 Insert or Attach Reference Materials.** Insert or attach as appropriate DoD and Government's Base Security Regulations.



4.15 **Assignment of Personnel.** If it is contemplated that either Party will assign personnel to the other Party's facility as part of this CRADA, such personnel assigned by the assigning Party to participate in or to observe the research to be performed under this CRADA, will not, during the period of such assignments, be considered employees of the receiving Party for any purposes.

(a) The Parties will be responsible for the pay, expenses and supervision of its own personnel.

(b) Each Party agrees to use due care while on the other's Party's premises, to comply with all security, environmental safety and health rules and regulations during all visits, and to enter only those areas previously designated by those in charge of each visit.

## **ARTICLE 5 – INTELLECTUAL PROPERTY**

### **5.1 Background Technology.**

5.1.1 **License to Background Technology.** The designation of technology as Background Technology does not grant any rights in Background Technology to the receiving party, other than the right to use or reproduce the Background Technology provided for the purpose of performing work under this CRADA. Nothing in this CRADA will be construed to otherwise alter or affect any rights of either Party to any technology listed as Background Technology that exist or are modified outside this CRADA. No license, express or implied, for commercial application(s) is granted to either Party. For commercial applications of any Background Technology, a license must be obtained from the owner.

### **5.2 CRADA Technical Data.**

5.2.1 **Oral and Visual Information.** Information imparted orally or visually will not be protected under this CRADA, unless such information is subsequently reduced to tangible form within fifteen (15) days of disclosure and a copy is furnished to the Party that received the information.

5.2.2 **CRADA Technical Data Created by a CRADA Party.** CRADA Technical Data Created solely by one of the Party's employees during performance under this CRADA will be owned by that Party and the other Party will have a non-exclusive license in this Technical Data to use, reproduce, modify, perform, display, release and disclose depending on the disclosure and releasability of the content.

5.2.3 **CRADA Technical Data Jointly Created.** All Technical Data that is jointly Created during performance of this CRADA will be jointly owned by the Parties. The Collaborator agrees and will immediately provide the Government with a nonexclusive, paid-up, irrevocable license to use or have used for Government Purposes the CRADA Technical Data that was jointly created. The Government must determine whether the CRADA Technical Data is classified or Controlled Unclassified information or restricted information from release by DoD Regulations, Directives or Instructions. The Collaborator must determine whether the CRADA Technical Data is releasable to the public.

5.2.4 **CRADA Technical Data owned by Collaborator or by the Government.** See 15 U.S.C. § 3710(c)(7)(A) and 15 U.S.C. § 3710a(c)(7)(B).

### **5.3 CRADA Works and Inventions.**

5.3.1 **Solely Developed.** Ownership of Works, including CRADA Computer Software and CRADA Inventions, developed solely by one of the Parties while performing under this CRADA, belong to that Party.

5.3.2 **CRADA Works and CRADA Inventions.** Jointly created Works and Inventions will be jointly owned by both Parties. For copyrightable Works, the Collaborator herein provides the Government with a nonexclusive, paid-up, irrevocable Copyright License in order for the Government to be able to use, modify, reproduce, perform, display, release or disclose the CRADA Work, including CRADA Computer Software, for any Government Purpose. The CRADA Work will have the following marking:

**“This Work was created in the performance of a Cooperative Research and Development Agreement (CRADA Number) with the Department of the (Insert the name, and the Activity/Lab). The Government of the United States has certain rights to use this Work.”**

The Collaborator can commercialize the CRADA Work, including CRADA Computer Software, if both Parties determine in writing that no patent protection will be sought and upon terms and conditions to be negotiated in writing between the Parties.

**5.3.3 Title to and Ownership of CRADA Invention.** Each Party will own the CRADA Inventions Made solely by its employees. Unless otherwise agreed to by the Parties, for any CRADA Invention Made by inventor-employees of both Parties, each Party will have ownership in accordance with the laws of the country of invention. Each Party will cooperate with the other Party to obtain each inventor’s signatures on patent applications, assignments or other documents required to secure intellectual property protection.

**5.3.1 Invention Disclosure.** Within sixty (60) days of an Invention being Made resulting from the performance of the CRADA, and prior to disclosure of the Invention to any third-parties, unless a shorter time period is required by circumstances, the inventor(s) will submit an Invention Disclosure to his/her/their employer(s). In the case of an Invention Made jointly by inventors from both Parties, the inventors of each Party will submit an Invention Disclosure to his/her employer. Each Party will provide the other Party with a copy of each Invention Disclosure reporting the CRADA Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

**5.4 Determination of CRADA Invention.** The Parties will review each Invention Disclosure, and confer and consult with each other to determine whether an Invention Disclosure represents a CRADA Invention.

**5.4.1 Filing of Patent Applications.** By mutual agreement, the Parties may identify the Party who will own the CRADA Invention and resulting patent, and which Party will file a Patent Application on any CRADA Invention. The Party responsible for filing of a patent application on any CRADA Invention will file the 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 CRADA Invention, if no patent application is filed within the specified time period by the responsible Party, the other Party may assume control of filing the patent application and the responsible Party will assign it to the other Party so that that other Party will then be able to take title to the jointly made CRADA Invention on ten (10) days written notification. The Party that relinquished the responsibility to file will retain a nonexclusive, irrevocable, paid-up license to practice the jointly made CRADA Invention or have the jointly made CRADA Invention practiced throughout the world by or on its behalf.

**5.4.2 Patent Application Filing on CRADA Invention.** The Party responsible for filing any patent application for a CRADA Invention will notify the other Party of all filing deadlines for prosecution of any patent application and maintenance of any patent on the CRADA Invention. Notwithstanding the primary responsibility set forth in Article 5.4.1, sixty (60) days prior to any filing deadline, the Parties will confer to determine if the filing Party intends to respond to the filing deadline. The non-filing Party will be permitted to respond if the filing Party declines.

**5.4.3 Rights of the Government.** Language that must be included in a patent application filed by the Collaborator follows. “This invention was made with Government support from the [insert name]. The Government of the United States has the right to practice or have practiced on behalf of the United States this subject invention throughout the world.”

**5.4.4 Copies and Inspection.** Each Party filing a patent application on a CRADA Invention will provide the other Party with a copy of the patent application as filed and copies of all correspondence, e.g., all patent applications, office actions, responses between the USPTO and the filing Party after filing with the United States Patent and Trademark Office (USPTO) [and/or other relevant patent office] or from the USPTO [and/or other relevant patent office] relating to prosecution of the patent application within thirty (30) days of receipt. The filing Party will give the other Party a limited power to inspect, with authorization to access the patent application, make

copies, and, in the event that the filing Party declines continued prosecution of the patent application, do all that is necessary to secure patent protection for the jointly made CRADA Invention.

#### **5.5 Licenses to CRADA Inventions, Including Computer Software.**

**5.5.1 License.** In accordance with 15 U.S. Code § 3710a(b)(2), for CRADA Inventions Made, CRADA Technical Data, and CRADA Works Created solely or in part by an employee of the Government, the Government may grant or may agree in advance to the Collaborator to patent licenses or assignments or options thereto, subject to section 209 of title 35 of the United States Code. The Government may grant a license to an invention that is federally owned, for which a patent application was filed before the signing of this CRADA, and directly within the scope of the work under this CRADA for reasonable compensation when appropriate. The Collaborator will have an option to choose an exclusive license for a pre-negotiated field of use, for such CRADA Invention if there were more than one Collaborator that the Collaborators are offered the option to hold licensing rights that collectively encompass the rights that would be held under such exclusive license by one Party. Unless otherwise agreed to in writing by the Parties, Collaborator's option to choose an exclusive license must be requested within six (6) months of being notified (or by its own employee/inventor in the case of jointly Made Inventions) of the CRADA Invention. Grants of exclusive licenses under this paragraph will be subject to the Government retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Invention or have the Invention practiced throughout the world by or on behalf of the Government.

**5.5.2 Collaborator's CRADA Intellectual Property.** The Collaborator retains title to each CRADA Invention, CRADA Technical Data and CRADA Work made solely by its employees and grants the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the CRADA Invention or have the Invention practiced throughout the world by or on behalf of the Government for Government Purposes.

**5.6 Termination of Licenses Granted and Cancellation of License Option to CRADA Inventions.** Government may cancel the Exclusive or Nonexclusive License option and terminate any Exclusive or Nonexclusive Licenses provided for above for CRADA Inventions Made in whole or in part by Government Employees in the event that:

- (a) Collaborator is in default for failure to make payment agreed as agreed to herein; or
- (b) The CRADA is terminated unilaterally by Collaborator under Article; 4.6.2.2; or
- (c) Collaborator fails to perform according to the Joint Work Plan; or
- (d) Collaborator becomes a new or different foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by Government not to qualify under the requirements of Executive Order 12591, Section 4(a).

**5.7 Use of Open Source Software.** No Open Source Software (OSS) of the Collaborator or others may be used in the performance of this CRADA, unless the Collaborator first identifies the proposed OSS and provides a copy of the applicable license for review and receives written approval by the Government. This restriction applies to Collaborator's subcontractors and any others proposed to perform work under this CRADA.

**5.8 Trademarks.** All trademarks or service marks to be used by either Party in performing the obligations under the Joint Work Plan must be identified. A description of how the trademark or service mark will be used and rights of use by the other Party must be stated in the Joint Work Plan.

### **ARTICLE 6 – LIABILITY**

**6.1 Force Majeure.** Neither Party will be liable for the consequences of any *force majeure* that (1) is beyond 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 CRADA; and (4) cannot be reasonably overcome by the exercise of due diligence. In the event of the occurrence of a force majeure, the Party unable to perform will promptly notify the

other Party. The Parties will suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and will use its best efforts to resume performance as quickly as possible.

**6.2 Indemnification and Liability.** Collaborator agrees to hold the Government harmless and to indemnify the Government for all liabilities, demands, damages, expenses and losses arising out of the use by Collaborator, or any party acting on its behalf or under its authorization of Government's research and technical developments or out of any use, sale or other disposition of products made by the use of Government's research and technical developments, for any purpose of the CRADA unless due to the negligence or willful misconduct of the Government, or Government's employees. The Government has no statutory authority to indemnify the Collaborator. Each Party otherwise will be liable for any claims or damages it incurs in connection with this CRADA, except the Government, as an agency of the U.S. Government, assumes liability only to the extent provided under the Federal Tort Claims Act, 28 U.S.C. Chapter 171.

**6.3 Collaborator's Employees.** Collaborator hereby indemnifies and holds harmless the Government for any loss, claim, damage, or liability of any kind involving an employee of Collaborator, arising in connection with Collaborator's performance under this CRADA, except to the extent that such loss, claim, damage or liability arising from the negligence of the Government or its employees, as specified in the provisions of the Federal Tort Claims Act.

#### **ARTICLE 7 – FINANCIAL OBLIGATIONS**

**7.1 Parties Payment of Costs/Fees.** Except as otherwise stated in the Joint Work Plan, each Party will bear its own expenses and costs, including but not limited to costs of labor, supplies, materials, patent applications, prosecutions and maintenance, equipment, overhead, and other expenses (hereafter "costs/fees"), direct and indirect, in the performance of work under this CRADA.

**7.2 Government.** Government will not provide any federal or other funds to the Collaborator under this CRADA.

**7.3 Payment of Costs/Fees.** In the event the Parties mutually agree in the Joint Work Plan that Collaborator will pay to the Government costs/fees, the purpose of such funds shall be described in and payment made as described in Articles 7.4 and 7.5. The Government will acknowledge to the Collaborator deposit of funds, and work under this CRADA can begin once funds have been deposited.

**7.4 Payment Schedule.** Collaborator agrees to pay Government the following costs/fees in accordance with the payment schedule below:

*[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.]*

Payments made by check by the Collaborator to the Government under this Article will be made payable to [insert organization with authority to receive funds for the Government and include the CRADA number on the check] and mailed to the following address:

*[Insert address - Provide address even when payment is not anticipated]*

#### **7.5 Insufficient and Excess Funds.**

**7.5.1 Insufficient Funds.** Government may discontinue performance under this CRADA if the funds provided by the Collaborator for performance by the Government are insufficient or are not provided as specified in Article 7.4 In the event the Collaborator fails to tender to the Government the required payment within fifteen (15) days after its respective due date, the Collaborator will be in default under this CRADA for failure to make payments. If the Collaborator is in default for this reason, the Government will notify Collaborator. If Collaborator does not cure the default within fifteen (15) days of mailing date of notice, the Government may proceed to terminate this CRADA in accordance with Article 4.6.2.2, may cancel any option for an Exclusive License to a CRADA Subject Invention, and may terminate any Exclusive License granted pursuant to this CRADA.

7.5.2 **Excess Funds.** Funds that Collaborator paid under Article 7.4 and that the Government has not obligated or expended at the time of completion, expiration, or termination of this CRADA will be returned to the Collaborator after the Government's submission of a final fiscal report to Collaborator.

7.6 **Accounting Records.** The Government will maintain current accounts, records, and other evidence supporting all its expenditures against funding provided by Collaborator under this CRADA and will retain the records for at least 12 months after the completion, expiration, or termination of this CRADA. Government will provide Collaborator a fiscal report within four (4) months after completion, expiration, or termination of this CRADA.

#### **ARTICLE 8 – REPORTS**

8.1 **Interim Reports.** Commencing not less than six (6) months after execution of this CRADA, the Government PI and/or the Collaborator, as designated by the parties, will submit interim reports (not less than every six (6) months) to the Collaborator during the term of this CRADA. These reports will set forth the technical progress made, identifying such problems as may have been encountered and establishing goals and objectives requiring further effort and any CRADA Inventions Made and other intellectual property developed or Created, including Works, and their respective owners. The Collaborator will make available, to the extent reasonably requested, other project information in sufficient detail to explain the progress of the work. Government and Collaborator will have the opportunity to request additional detail from the preparer if it were deemed necessary to better understand the technical progress made, and identify problems encountered and establish goals and objectives requiring further effort.

8.2 **Final Report.** Government and Collaborator will prepare a written report within three (3) months after expiration of this CRADA. This report will set forth the technical progress made, identifying outcomes that have been achieved, and identifying such problems as may have been encountered and establishing goals and objectives requiring further effort. The final report will identify any CRADA Inventions owned jointly or severally, and Works Created, and jointly or severally owned by each Party.

## Section II – Joint Work Plan

“Add Title”

**ARTICLE A—PROJECT DESCRIPTION.** [Provide publicly releasable abstract of the collaboration.]

### ARTICLE B—OBJECTIVES

B.1. **CRADA Objective.** [Briefly describe the overall objective of this CRADA. That is, if everything goes as planned and the work is successful, what will this CRADA achieve?]

B.2. **Benefit to Government.** [Describe the objective of the CRADA in terms that show it serves the Government’s mission. Answer the question, “What does the Government expect to receive out of this CRADA?”]

B.3. **Benefit to Collaborator.** [Describe the objective from the Collaborator’s perspective. How does it benefit the Collaborator?]

### ARTICLE C—PARTIES AND OTHER PARTICIPANTS

C.1. **Relationship of Parties.** Provide description as to how this relationship, between Government Activity and Collaborator, developed. Explain why the Parties are partnering with each other.

C.2. **Other Participants.** [Provide the name and address of business entities, if any that may contribute to the R&D effort under this CRADA. Provide the role(s) that each participant will have. Identify whether the other participant(s) is foreign owned or controlled or influenced.] [Examples of other participants include: Government on-site contractors; Collaborator sub-contractors and/or R&D partners.]

### ARTICLE D—TECHNICAL TASKS AND ASSOCIATED RESOURCES

D.1. **Government Activity.** [Describe the specific tasks the Government will perform. Describe and estimate the value of the Government’s resources the Government commits to provide in the form of personnel, services, intellectual property, facilities, equipment or other resources. Describe all property and equipment to be furnished under the CRADA by the Government’s Activity and establish, for each item, the date of purchase or approximate age of the item, approximate value, who will be responsible for the transportation/cost of furnishing the item, when it will be transferred and when it will be returned and who is responsible for returning the item, if applicable.]

D.2. **Collaborator Activity.** [Describe the specific tasks the Collaborator will perform. Describe and estimate the value of the resources the Collaborator commits to provide in the form of funds, personnel, services, intellectual property, facilities, equipment or other resources. Describe all property and equipment to be furnished under the CRADA by the Collaborator and establish, approximate value, who will be responsible for the transportation/cost of furnishing the item, when it will be transferred and when it will be returned and who is responsible for returning the item, if applicable.]

D.3. **Joint Activity.** [Describe the specific tasks the Parties will jointly perform.]

D.4. **Property and Equipment.** Unless specified in paragraphs D.1 and D.2, no property or equipment will be furnished by either party under this CRADA.

### ARTICLE E—INTELLECTUAL PROPERTY NEED TO COORDINATE THIS ARTICLE WITH ARTICLE 5 ON IP

E.1. **Background Technology.** A designation of relevant *Background Technology*, if any, each Party brings to this CRADA may be listed in this section, along with a detailed description or appropriate citation (e.g., patent

number, software version, etc.) for each item and the type of intellectual property protection that applies (e.g., trade secret, copyright, patent or patent application, etc.).

E.1.1. **Collaborator’s Background Technology.** [None.]

E.1.2. **Government’s Background Technology.** [None.]

E.2. **Marking of Background Technology.** All *Background Technology* will be identified as such with a marking. For example:

**[PARTY NAME] – BACKGROUND TECHNOLOGY**

The right to use, modify, reproduce, release, perform, display, disclose or dispose of information revealed herein is restricted in accordance with CRADA No. FY-### - LAB-##.

This information will be protected in accordance with 15 USC § 3710a(c)(7). Any information subject to this legend may only be reproduced or disclosed if authorized under that CRADA and every such reproduction or disclosure must also be prominently marked with this legend.

If you are not permitted to receive this information under that CRADA, you must immediately return it to an authorized representative.

Fig1. Marking of *Background Technology*

E.3. **Marking of Proprietary Information.** All *Proprietary Information* will be identified as such with a marking. For example:

**[PARTY NAME] – PROPRIETARY INFORMATION**

The right to use, modify, reproduce, release, perform, display, disclose or dispose of information revealed herein is restricted in accordance with CRADA No. FY#### - LAB-##.

This information will be protected in accordance with 15 USC § 3710a(c)(7). Any information subject to this legend may only be reproduced or disclosed if authorized under that CRADA and every such reproduction or disclosure must also be prominently marked with this legend.

If you are not permitted to receive this information under that CRADA, you must immediately return it to an authorized representative.

Fig2. Marking of *Proprietary Information*

## ARTICLE F—DELIVERABLES

F.1. **Reports.** Identify any reports that will be provided describing the results of the CRADA, including the format, who will produce them, and when they will be delivered. All reports to be delivered under this CRADA will be delivered to the individuals specified in Articles (*insert Articles*). **Other Deliverables.** Identify technical data, computer software, prototypes, simulations and models, and all other products expected to be generated under this CRADA.

**ARTICLE G—MILESTONES.** [Give the dates for specific milestones within the term of the CRADA on which each party is expected to complete its tasks.]

Activity	Start	End	Reference to Joint Work Plan	Notes
CRADA Signature				
Kickoff				
Initial Resources Deadline				
Technical Work				
Milestone/Review				
IP Review				
Technical Work				
Milestone/Review				
IP Review				
Milestone/Review				
IP Review				
CRADA Closeout				
<b>Recurring Activities</b>				
- Weekly communications				
- Tests				
- Status Reports				



**SECTION III**  
**SIGNATURES**

**I. Expiration.** This *Agreement* Expires <<N (N) Months>> from the *Effective Date* unless duly modified in accordance with paragraph 4.6 and attached hereto.

**II. Survivability of Rights and Responsibilities.** All rights and responsibilities of the Parties under this CRADA, including any modifications, shall survive the completion, expiration or termination of this CRADA. In the event that one or more provisions of this CRADA are determined by a federal Court not to be valid, the remaining rights and responsibilities of the Parties will survive and be enforced. At least the Articles for Reports, Indemnification, Title to Property and Publications will survive.

**III. Entire CRADA.** This CRADA and its counterparts constitute the entire agreement between the Parties concerning the subject matter of this CRADA and supersede any prior understanding or written or oral agreement relative to said matter.

**IV. IN WITNESS WHEREOF,** the Parties have executed this CRADA in duplicate through their duly authorized representatives having authority to execute this CRADA as follows:

***Federal Government***

***Non-Federal Government Collaborator***

\_\_\_\_\_  
*Name of Official*

\_\_\_\_\_  
*Name of Official*

\_\_\_\_\_  
*Signature of Official*

\_\_\_\_\_  
*Signature of Official*

\_\_\_\_\_  
*Title of Official*

\_\_\_\_\_  
*Title of Official*

\_\_\_\_\_  
*Address & Email of Official*

\_\_\_\_\_  
*Address & Email of Official*

\_\_\_\_\_  
*Date Signed*

\_\_\_\_\_  
*Date Signed*

## **DoD MODEL CRADA EXPLANATORY NOTES**

The following notes provide additional guidance and clarification of specific articles in the DoD model CRADA and may be useful to users.

### **ARTICLE 1 – PREAMBLE**

Expand the last two paragraphs as appropriate to include specific background information.

### **ARTICLE 4 – GENERAL PROVISIONS**

#### **4.3 Modifications and Terminations**

Modification is the proper term for contract and CRADA changes. The term Amendment is normally only used by contract practitioners for changes to a solicitation. So in the case of CRADAs it can be used to refer to revisions to the CRADA before execution/award, or revisions to a Joint Work Statement before it is finalized.

#### **4.4.2 Special Notices**

Agencies may wish to revise this provision to fit their needs. Some agencies prefer to identify and provide contact information for the PI, AO such as the ORTA, and legal counsel in the Preamble, to reduce searching the CRADA document for POCs.

#### **4.8 Security**

This is the place to add any special security requirements for personnel doing Joint Work Plan at the Collaborator's facilities. If the Joint Work Plan covers unclassified Military Critical Technology (MCT), the Collaborator must be certified to handle MCT data. MCT data must be controlled in accordance with the International Trade in Arms Regulations (ITAR). MCT certification is established using DD Form 2345, called an "Export-Controlled DoD Technical Data CRADA." If the Joint Work Plan covers classified topics, a security clearance must be put in place for the Collaborator's facilities and personnel using a DoD Contract Security Classification Specification, DD Form 254, completed through Government Collaborator's Security Office. Refer to Agency CRADA Handbook or other guidance.

#### **4.9.1.3 Power and Authority**

Add any higher level review requirement here, such as: "unless the Agreement includes a foreign Party, in that case, higher level approval by the (designate the authority) is required, in which case it is assumed that if the higher level authority has not responded within thirty (30) days of the last signature, that there are no objections to the Agreement.

#### **4.X No Violation**

The purpose of 4.X is to clarify that the act of signing is not outside the scope of the articles of incorporation, authority of the Board of Directors, or the person executing the document.

### **ARTICLE 5 – INTELLECTUAL PROPERTY**

#### **5.3.2 CRADA Works and Inventions**

The reference to "certain rights to use this Work" may refer to the Government's ownership or licensing rights in the Works and Inventions.

## 5.5 Licenses to CRADA Inventions, Including Computer Software

The patentability of software is a complex issue and should be discussed with the agency's patent or Intellectual Property counsel. Guidance on the patentability of software is available on the U.S. Patent and Trademark Office's web site at <http://www.uspto.gov/patent/laws-and-regulations/examination-policy/2014-interim-guidance-subject-matter-eligibility-0>.

## ARTICLE 8 – INTERIM REPORTS AND PUBLICATIONS

### 8.1 Interim Reports

The format of the report and the level of detail provided will be in the discretion of the report preparer taking into account limitations with respect to Protected Data and Export Control restrictions.

### MISCELLANEOUS NOTES

**ADR Process.** Either Party may, at any time prior to a request for a final agency decision, submit a written request for ADR to the other Party. The Parties agree to use ADR as an alternative to litigation or formal administrative proceedings whenever appropriate in accordance with Department of Defense Directive 5145.5, *Alternative Dispute Resolution (ADR)* (22 April 1996). The *Activity* shall, within sixty (60) Days of receiving or submitting a request for ADR, identify in writing a neutral third-party suitable for the requested ADR process and provide an estimate or cost basis for the process. In identifying such third-party, *Activity* will, with the assistance of the General Counsel, make use of existing government ADR resources to avoid unnecessary expenditure of time and money. The Party in receipt of a request for ADR may provide a written rejection of the requested ADR process, which must include a detailed description of why the requested ADR process is not appropriate. Failure to provide such rejection to the other Party within thirty (30) Days of the identification of a neutral third-party shall be deemed as an acceptance of the requested ADR process.

### Insurance (Optional)

The Collaborator will, at its own expense, provide and maintain during the entire performance of this CRADA, at least the kinds and amounts of minimum insurance required by State's laws and regulations. Before commencing work under this contract, the Collaborator will notify the Government, in writing, that the required insurance has been obtained. The policies evidencing required insurance will contain an endorsement to the effect that the Government (ORTA or PI) will be promptly notified of any cancellation or any material change adversely affecting the Government, (a) For such period as the laws of the State in which this CRADA is to be performed; **or**

- (a) Until 30 days after the insurer or the Collaborator gives written notice to the Government, whichever period is longer.

**and**

- (b) The Government will insert the substance of this clause, including this paragraph (b), in CRADA subcontracts under this CRADA that require work on a Government installation and will require subcontractors to provide and maintain the insurance required by laws of the State in which this CRADA is performed. The Collaborator will maintain a copy of all subcontractors' proofs of required insurance, and will make copies available to the ORTA's upon request.

**Liability to Third-Person.** The Collaborator will provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Government may require under this CRADA.

**Insurance Approval.** The Contractor agrees to submit for Government's approval, to the extent and in the manner required by the Government, any other insurance that is maintained by Collaborator in connection with the performance of this CRADA and for which the Collaborator seeks reimbursement.

**Publication or Public Disclosure.** The Parties agree to confer and consult with each other prior to publication or

other public disclosure of information obtained from, or results derived from, collaborative activities Under this CRADA to ensure that no Background Technology, classified information, Controlled Unclassified, military critical technology, export controlled, or other controlled or sensitive information is inappropriately released.

Each Party will provide a complete copy of any such proposed publication or public disclosure to the other Party as soon as practicable, subject to the limitations under paragraph xx, to allow the other Party to submit objections to such publication or disclosure and to take suitable steps to secure appropriate protection in a timely manner.

Where submission of a complete copy of the proposed publication or disclosure is limited by law or regulation or where such submission is impractical, the party proposing such publication or disclosure will provide a summary or description of the relevant information subject to publication or disclosure. Such summary or description will be as reasonably complete as possible to allow the party to assess the need to protect sensitive information.

Neither Party may proceed with such publication or public disclosure within thirty (30) Days of providing a copy, summary, or description of such publication or public disclosure under paragraph XX, without the express written consent of the other Party.

Failure to object to such proposed publication or disclosure within ninety (90) Days after such proposed publication or disclosure was received from the other Party, or prior to the actual publication or public disclosure, subject to paragraph XX, whichever is earlier, will constitute implied assent to such publication or disclosure.

In all cases, a Party proposing to publish or publicly disclose information obtained from the other Party that is marked with a restriction limiting the distribution of such information, may not proceed with such publication or public disclosure without the express written consent of the other Party.

Under no circumstances will any review or assent of a proposed publication relieve the publishing Party of its obligations under Executive Order 13526, "*Classified National Security Information*," Arms Export Control Act, and the Export Administration Act.

Subject to the restrictions under paragraph XX, any such publication or other public disclosure of work or results Under the CRADA must, unless waived by the other Party in writing, include a statement to the effect that the project or effort was made in the performance of a Cooperative Research and Development Agreement with the other Party to this CRADA.