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Cooperative Research and Development Agreement (CRDA) Handbook

R. November

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NAVAL OCEAN SYSTEMS CENTER

San Diego, California 92152-5000

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ADMINISTRATIVE INFORMATION

This document was prepared by Dr. R. November, R&D Programs Office, Code 0144, of the Naval Ocean Systems Center, San Diego, CA 92152-5000.

Released by
R. November
Deputy Program Director
for Industry Research
and Development Liaison

Under authority of
W. T. Rasmussen
Program Director for
Research and Tech-
nology

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Definition

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, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in Sections 6303, 6304, and 6305 of Title 31, U.S. Code.

Authorization

Public Law 96-480, "Stevenson-Wydler Technology of 1986" 20 October 1986 as implemented by Executive Order 12591, "Facilitating Access to Science and Technology," 10 April 1987 and codified as 15 U.S. Code Section 3710a, permits Government-operated Federal laboratories to enter into Cooperative Research and Development Agreements (CRDAs) with other Federal agencies, units of State or local governments, private industry, public and private foundations, academia, and individuals. DoD 3200.12-R-4 of 27 December 1988, Domestic Technology Transfer Program Regulation (NOTAL) and SECNAVINST 5700.16, Domestic Technology Transfer promulgate this authority and provide policy and general guidance for Department of the Navy components.

A Government-Operated Federal laboratory may

1. accept retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;
2. grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, retaining a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory deems appropriate;
3. waive, subject to reservation by the Government of 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, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party; and
4. to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

Types of Research and Development Agreements

1. CRDA

An Agreement directed toward the conduct of specified research or development efforts which are consistent with the missions of NAVOCEANSYSCEN. They are negotiated agreements with a mutually beneficial objective for both NAVOCEANSYSCEN and non-Government participant. The Agreement may

- a. co-develop/market a product/software
- b. use NAVOCEANSYSCEN facilities

c. fund NAVOCEANSYSCEN as principal research and development performer.

2. ICRDA (Investigative CRDA)

An Agreement directed toward studies or investigations pertaining to Navy needs and requirements related to future bidding interest. They provide access to DOD scientific/technical/planning information. The objective is to facilitate information access and exchange. They are reduced in scope from CRDAs. See ICRDA for more details.

3. CRDAs with Foreign Owned, Controlled or Influenced (FOCI) U.S. Organizations

See Appendix H.

PROCESS AT NAVOCEANSYSCEN FOR CRDA

The non-Government participant enrolling in the Cooperative Research and Development (CRDA) Program must:

1. FIND A NAVY TECHNICAL SPONSOR (A NAVOCEANSYSCEN LINE CODE) IN HIS AREA OF INTEREST.

DEFINE A RESEARCH AND DEVELOPMENT PROJECT WITH THIS SPONSOR ON WHICH YOUR FIRM AND NAVOCEANSYSCEN MAY BE WILLING TO EXECUTE A CRDA.

If the project involves access to classified information, your firm must have the clearances required. You must also have approved storage capacity to receive documents.

2. Contact the CRDA Focal Point (Dr. Richard November, Code 0144 ((619) 553-2103) or alternate Diana Jackson ((619) 553-2101)) to initiate procedure for CRDA. Submit request form (see Appendix A).
3. Requestor is then sent a letter (see Appendix B) for Statement of Work, etc. to initiate the process.
4. Naval Ocean Systems Center (NAVOCEANSYSCEN) will draft the Government side of the CRDA based on the Statement of Work and conditions for which NAVOCEANSYSCEN is willing to be obligated. Technical code is then sent this draft to comment and approve (see Appendix C).
5. CRDA draft is then retyped and forwarded to Code 001 for legal review. After review, the draft is sent to requestor for their legal and technical review. They may also be asked to add in some technical, etc. data needed to complete draft (see Appendix D).
6. Returned requestor comments are compared to NAVOCEANSYSCEN position and negotiation session arranged, if necessary, for final "draft" agreement.
7. Agreement draft forwarded to Office of Naval Technology for approval as per Technology Transfer Act of 1986.
8. If approved, CRDA is signed by Commanding Officer and initiated or renegotiate problems for approval/resubmission to ONT (repeat Steps 7 and 8).

PROCESS AT NAVOCEANSYSCEN FOR ICRDA

The non-Government participant enrolling in the Investigative Cooperative Research and Development (ICRDA) Program must:

1. FIND A NAVY TECHNICAL SPONSOR (A NAVOCEANSYSCEN TECHNICAL CODE) IN HIS AREA OF INTEREST.

DEFINE A STUDY OR INVESTIGATION PERTAINING TO NAVY NEEDS AND REQUIREMENTS RELATED TO FUTURE BIDDING INTERESTS WITH THIS SPONSOR ON WHICH YOUR FIRM AND NAVOCEANSYSCEN MAY BE WILLING TO EXECUTE AN ICRDA.

If the project involves access to *classified information*, your firm must have the clearances required. You must also have approved storage capacity to receive documents.

NOTE: The ICRDA

The objective of investigative CRDAs is to facilitate information access and exchanges, including software, between the participating non-Government organization and sponsoring DON component, in addition to permitting limited associated DON technical consultation. The exchange of, or access to, equipment, services, facilities, funds, or other resources by either party is excluded.

In addition, no contractual obligation or commitment to a future contract is assumed or implied on the part of the Government in furnishing documents and information under an investigative CRDA. That participation in an investigative CRDA and consequent receipt of Government documents in no obligates an organization to furnish reports, articles, services, or proposals to the Navy other than as prescribed in the Agreement, nor does it constitute a basis for a claim against the Government.

2. Contact the CRDA Focal Point (Dr. Richard November, Code 0144, ((619) 553-2103) or alternate Diana Jackson ((619) 553-2101) to initiate procedure for CRDA. Submit request form (see Appendix E).

NOTE: In order to qualify to participate in an investigative CRDA, applicants must:

- a. provide evidence of capability to perform needed research and/or development that has reasonable potential for eventually supporting a Navy need or requirement.

- b. submit a proposed statement describing how the desired information will support Navy needs or requirements in a specified area within the applicant's capability and interest. In order to substantiate need-to-know and evaluate investigative CRDA effectiveness, explanations of the intended use, and benefits to be derived from, the disclosed information will also be required.

3. Requestor sent letter with requirements to initiate process (see Appendix F).
4. Naval Ocean Systems Center (NAVOCEANSYSCEN) will draft the Government side of the ICRDA based on the Statement of Work and conditions for which NAVOCEANSYSCEN is willing to be obligated and it will be routed through technical sponsor/management for comment and approval (see Appendix G for ICRDA Draft Agreement Boiler Plate. The rest of Appendix is similar to Appendix C).
5. Requestor is sent draft ICRDA for their review of NAVOCEANSYSCEN position and to complete their side of ICRDA (similar to Appendix D).

6. Return requestor comments compared to NAVOCEANSYSCEN position and, if necessary, negotiation session arranged for final "draft" agreement.
7. Agreement draft forwarded to Office of Naval Technology for approval as per Technology Transfer Act of 1986.
8. If approved, Commanding Officer signs off and NAVOCEANSYSCEN initiates ICRDA (or renegotiates problems which repeats Steps 7 and 8).

**Process at NAVOCEANSYSCEN for CRDAs with
Foreign Owned, Controlled, or Influenced (FOCI)
U.S. Organizations**

See Appendix H.

APPENDIX A

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRDA)
REQUEST FORM

Submitted by: Name: _____ (NAVOCEANSYSCEN Code: _____ Telephone: _____ Contact) e-mail: _____ Company Name: _____ Address: _____ Contact: _____ Phone: _____ U.S. owned: _____ Foreign owned: _____ Security: Desired level of clearance: _____ Does Company have a facility clearance: _____ Intelligence data needed/typed: _____ Justifications required if intelligence or above SECRET: _____ GFE/GFM: _____	Technical Requestor: Name: _____ Code: _____ Phone: _____ Subject Title: _____ Abstract: _____ Patent involved/state number: _____ Software involved (define): _____ MCTL (ref: Oct 89 issue); state section(s) _____
---	--

APPENDIX B

Gentlemen:

We are pleased that you are interested in establishing a Cooperative Research and Development Agreement (CRDA) with the Naval Ocean Systems Center (NAVOCEANSYSCEN). In order to initiate a CRDA we request that you complete the attached request form (enclosure (1)) and provide a Statement of Work prepared according to the enclosed format (enclosure (2)).

In brief, there are two types of CRDAs:

- a. The Transfer of Government technology to a vendor. In case of a patent license, the inventor may work for the vendor to help translate patent technology to a commercial product.
- b. A joint Research and Development task where both parties perform to some extent in accordance with the subject agreement.

For your reference we have enclosed (enclosure (3)) sections of the Technology Transfer Act of 1986 which are applicable to CRDAs.

Upon receipt of the information we requested, the NAVOCEANSYSCEN will compile a draft CRDA and forward it to you for your company's legal and technical review. After receipt of your reply, a negotiation session shall be held to resolve any issues with the agreement. The final agreement will then be forwarded to the Department of the Navy for approval. The total CRDA process is defined on the attached CRDA Check Sheet. If you have any questions, please direct them to Dr. Richard November at (619) 553-2104.

Forward your response to:

Naval Ocean Systems Center
Deputy Program Director for Industry R&D Liaison
Dr. R. November, Code 0144
San Diego, CA 92152-5000

Sincerely,

R. NOVEMBER
Deputy Program Director for
Industry R&D Liaison
By direction of the Commander

Encl:

- (1) CRDA Request Form
- (2) Statement of Work Outline
- (3) Excerpts from the Technology Transfer Act of 1986
- (4) DD Form 1540

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT REQUEST FORM

Submitted by: _____	Name: _____	Technical Requestor: _____
(NAVOCEANSYSCEN Contact)	Code: _____ Telephone _____	Name: _____
	e-mail: _____	Code: _____ Phone: _____
Company Name: _____		Subject Title: _____
Address: _____		Abstract: _____
Contact: _____		_____
Phone: _____		_____
U.S. owned: _____	Foreign owned: _____	_____
Security: Desired level of clearance: _____		Patent involved/state number: _____
Does Company have a facility clearance: _____		_____
Intelligence data needed/typed: _____		Software involved (define): _____
Justifications required if intelligence or above SECRET: _____		_____
GFE/GFM: _____		MCTL (ref: Oct 89 issue); state section(s) _____

STATEMENT OF WORK OUTLINE

Complete the sections marked, in the left margin, with an "*."

In sections specified below, the Company shall enter what they "desire" from NAVOCEANSYSCEN:

Sections 2.3.2.1.1; 2.4.2.1; 2.4.2.2; 2.4.2.3; 2.4.2.4; 2.4.3.1; 2.4.3.1.1

NOTE: For Section 2.4.5 complete DD Form 1540 (only Part I - Items 1, 2, 5, 6, 7, 8 (from DD Form 2345), 9A, and 11. Part III - select subject fields).

INTRODUCTION

This is a Cooperative Research and Development Agreement (CRDA), dated as of this _____ day of _____, 19____, entered into pursuant to the provisions of the Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986) and implemented by Executive Order 12591 (10 April 1987). The Parties to this Agreement are the United States Government (hereafter referred to as "**Government**"), as represented by the Naval Ocean Systems Center (hereafter referred to as either "**NOSC**" or "**NAVOCEANSYSCEN**"), a laboratory of the Department of the Navy and _____ (hereafter referred to as "**Company**").

OBJECTIVE

- * The objective of this CRDA is to establish a joint research and development effort between NAVOCEANSYSCEN and _____ to _____
- _____
- _____

RECITALS

A. **WHEREAS**, in enacting the Federal Technology Act of 1986 (Act), the United States Congress has found that Federal laboratories' developments should be made accessible to private industry and State and local Governments, and has declared that one of the purposes of that Act is to improve the economic, environmental, and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;

B. **WHEREAS**, the Act, among other technology transfer improvements, has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into CRDAs with non-Federal entities including private firms and organizations for the purpose of providing to such entities personnel, services, property, facilities, equipment or other resources, except funds, and/or obtaining from such entities personnel, services, property, facilities, equipment or other resources, including funds, toward the conduct of specified research and development efforts;

C. **WHEREAS**, NAVOCEANSYSCEN has performed substantial research and development with respect to _____

(hereafter referred to as the "**Technology**");

D. **WHEREAS**, NAVOCEANSYSCEN possesses certain advanced scientific skills, facilities, special equipment, information, computer software, and/or know-how pertaining to the Technology;

E. **WHEREAS**, NAVOCEANSYSCEN desires to pursue the development of the Technology with the purpose of further developing and/or commercializing products related to such Technology.

F. **WHEREAS**, NAVOCEANSYSCEN is interested in the utilization of this Technology by the private and public sectors;

* G. **WHEREAS**, Company desires to support NAVOCEANSYSCEN's further development of the Technology; _____

H. **WHEREAS**, Company, upon the successful completion of development, desires to carry out a plan for marketing products or utilizing processes related to the Technology; and

I. **WHEREAS**, NAVOCEANSYSCEN views its collaboration with Company to develop the Technology and the commitment of Company to undertake commercialization of the Technology to be in the furtherance of the public interest;

Now, therefore, in consideration of the mutual promises contained in the Agreement and for other good and valuable consideration, **THE PARTIES AGREE TO THE FOREGOING OBJECTIVES AND RECITALS AND FURTHER AGREE AS FOLLOWS:**

Article 1. **Definitions**

As used in this Agreement, the following terms shall have the following meanings and are equally applicable to both singular and plural forms of the terms defined;

1.1 **"Agreement"** means this Cooperative Research and Development Agreement (CRDA).

1.2 **"Computer Software"** means computer programs and computer data bases.

1.3 **"Computer Software Documentation"** means Data including computer listings and printouts in human readable forms which (i) documents the design or details of Computer Software, (ii) explains the capabilities of the software, (iii) provides operating instructions for using the software.

1.4 **"Critical Technology"** (also referred to as Militarily Critical Technology (MCT) means technology that is characterized as MCT in the Militarily Critical Technology List (issue of October 1989, Office of the Under Secretary of Defense for Acquisition).

1.5 **"Data"** means all oral and recorded information including Proprietary Information of any kind or nature, including, but not limited to, technical data, Computer Software, and Computer Software Documentation and source code listings.

1.6 **"Government Purpose License Rights (GPLR)"** means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purpose only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use Data for commercial purposes.

1.7 **"Invention"** means any invention or discovery which is or may be patentable under any Federal law of the United States or under any law of any other country.

1.8 **"Made,"** when used in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

1.9 **"Parties"** means Company and NOSC.

1.10 **"Proprietary Information:"** means information including which embodies trade secrets developed at private expense or which is confidential business or financial information, 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 had no access to the Proprietary Information.

1.11 **"Patent Application"** means any U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Subject Invention.

1.12 **"Subject Data"** means all Data produced by Company in the performance of this Agreement, whether developed using NAVOCEANSYSCEN Technology or Data, or otherwise, including any previously developed Company Proprietary Information forming a part of such Data.

1.13 **"Subject Invention"** means any Invention Made in the performance of this Agreement.

1.14 **"NAVOCEANSYSCEN Technology"** means the

1.15 **"NAVOCEANSYSCEN Technology Data"** means the Data developed by NAVOCEANSYSCEN pertaining to NAVOCEANSYSCEN Technology that is useful or necessary in

1.16 **"Unlimited Rights"** means rights to use, duplicate, release, or disclose, in whole or in part, in any manner, and for any purpose whatsoever, and to have or permit others to do so.

Article 2. Cooperative Research Description

* 2.1 Background

* 2.2 Technical Basis for Activity

* 2.3 Statement of Work

* 2.3.1 Objective(s)

* 2.3.2 Approach(es)

2.3.2.1 Work Schedule

2.3.2.1.1 Naval Ocean Systems Center

* 2.3.2.1 Company

2.4 Division of Responsibility

2.4.1 Company

Company agrees to provide the following services, property, facilities, equipment, and other resources in the performance of this Agreement during the times, periods, and conditions specified below.

* 2.4.1.1 Contractor Site/Facilities

* 2.4.1.2 Personnel/Length of Assignment

* 2.4.1.3 Expertise/Principal Investigator

2.4.2 Naval Ocean Systems Center

NAVOCEANSYSCEN agrees to provide the following services, property, facilities, equipment, and other resources in the performance of this Agreement during the times, periods, and conditions specified below.

2.4.2.1 Facilities

2.4.2.2 Personnel/Length of Assignment

2.4.2.3 Expertise/Principal Investigator

2.4.2.4 GFI/GFE/GFM

2.4.2.4.1 Government Furnished Information (GFI)

This refers to item specified in paragraphs 1.14 and 1.15 and as follows:

2.4.2.4.2 Government Furnished Equipment (GFE)

2.4.2.4.3 Government Furnished Material(s) (GFM)

2.4.3.1 Naval Ocean Systems Center

NAVOCEANSYSCEN shall make available to the Company at NAVOCEANSYSCEN site:

NAVOCEANSYSCEN shall make available to _____ the use of
_____ and its (equipment) located at
_____.

* 2.4.3.2 Company

Company shall make available to NAVOCEANSYSCEN at Company site:

* 2.4.5 Defense Technical Information Center Access

Unclassified, non-critical technology access shall be arranged using Department of Defense Form 1540, Oct. 86. See attached Department of Defense Form 1540.

EXCERPTS FROM THE TECHNOLOGY TRANSFER ACT OF 1986

"(d) Definition. - As used in this section -

"(1) 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, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code; and

"(2) the term 'laboratory' means 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.

"(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.

"(f) Relationship to Other Laws. - Nothing in this section is intended to limit or diminish existing authorities of any agency."

A Government-Operated Federal laboratory may

"(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

"(2) grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, retaining a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory deems appropriate; and

"(3) waive, subject to reservation by the Government of 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, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party; and

"(4) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States."

APPENDIX C

MEMORANDUM

From: Head, Industry R&D Programs Office, Code 0144

To: _____, Code _____

Subj: REVIEW OF COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT WITH

Ref: (a) U.S. DR&E, The Military Critical Technologies List, Oct. 89

Encl: (1) CRDA Draft
(2) CRDA Check List
(3) DD Form 1540 Worksheet

1. Review the proposed Cooperative Research and Development Agreement (CRDA) (enclosure (1)) with _____ in accordance with enclosure (2). Specific items to complete are:

a. DD Form 1540 (enclosure (3)).

(1) Confirm level of classification requested. (Note current authority authorizes only unclassified. Navy is in sign off process for classified levels. If you desire above unclassified, we will start unclassified and upgrade when authorized.)

(2) Confirm which data areas (Part III) are required or should be added/deleted. Restrict data access to minimum necessary for the task.

b. Data management requirements.

(1) State frequency and type reports desired. At a minimum, annual reports and a final report are mandatory.

(2) Consider the data to be produced; that is recorded data regardless of form or characteristic, of a scientific or technical nature. Is there any data the Government should have "unlimited right" to?

c. Security requirements.

(1) This is a research & development study project. State documentation that will classify work (OPNAV instructions, classification guides, system documentation, etc.).

(2) It is mandatory to state whether or not this project has Military Critical Technology (see reference (a)). State section within the Military Critical Technologies List that covers work.

(3) State whether or not classified automated data processing will be involved.

(4) **NOTE:** If intelligence data access is required (up to SECRET level), provide a justification of "need to know." This is necessary for Office of Naval Technology and NIC approval.

2. **Action:** Forward a memorandum that provides requested data and completed enclosure (1) via division and department to Dr. R. November, Code 0144, x32104, within 20 days.

R. NOVEMBER

DRAFT
(12-11-90) rev. 3

NAVAL OCEAN SYSTEMS CENTER

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

(NCRDA- -NOSC-)

FOR

BETWEEN

**NAVAL OCEAN SYSTEMS CENTER
SAN DIEGO, CA 92152-5000**

AND

Agreement Administrators:

NAVOCEANSYSCEN: POC Dr. R. November (619) 553-2103

Legal Counsel Tim Dowd (619) 553-4704

Company:

POC

Legal Counsel

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INTRODUCTION

This is a Cooperative Research and Development Agreement (CRDA), dated as of this _____ day of _____, 19____, entered into pursuant to the provisions of the Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986) and implemented by Executive Order 12591 (10 April 1987). The Parties to this Agreement are the United States Government (hereafter referred to as "**Government**"), as represented by the Naval Ocean Systems Center (hereafter referred to as either "**NOSC**" or "**NAVOCEANSYSCEN**"), a laboratory of the Department of the Navy and _____ (hereafter referred to as "**Company**").

OBJECTIVE

The objective of this CRDA is to establish a joint research and development effort between NAVOCEANSYSCEN and _____ to _____

RECITALS

A. **WHEREAS**, in enacting the Federal Technology Transfer Act of 1986 (Act), the United States Congress has found that Federal laboratories' developments should be made accessible to private industry and State and local Governments, and has declared that one of the purposes of that Act is to improve the economic, environmental, and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;

B. **WHEREAS**, the Act has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into CRDAs with non-Federal entities including private firms and organizations for the purpose of providing to such entities personnel, services, property, facilities, equipment or other resources, except funds, and/or obtaining from such entities personnel, services, property, facilities, equipment or other resources, including funds, toward the conduct of specified research and development efforts;

C. **WHEREAS**, NAVOCEANSYSCEN has performed substantial research and development with respect to _____

(hereafter referred to as the "**Technology**");

D. **WHEREAS**, NAVOCEANSYSCEN possesses certain advanced scientific skills, facilities, special equipment, information, computer software, and/or know-how pertaining to the Technology;

E. **WHEREAS**, NAVOCEANSYSCEN desires to pursue the development of the Technology with the purpose of further developing and/or commercializing products related to such Technology.

F. **WHEREAS**, NAVOCEANSYSCEN is interested in the utilization of this Technology by the private and public sectors;

G. **WHEREAS**, Company desires to support NAVOCEANSYSCEN's further development of the Technology; _____

H. **WHEREAS**, Company, upon the successful completion of development, desires to carry out a plan for marketing products or utilizing processes related to the Technology; and

I. **WHEREAS**, NAVOCEANSYSCEN views its collaboration with Company to develop the Technology and the commitment of Company to undertake commercialization of the Technology to be in the furtherance of the public interest;

Now, therefore, in consideration of the mutual promises contained in the Agreement and for other good and valuable consideration, **THE PARTIES AGREE TO THE FOREGOING OBJECTIVES AND RECITALS AND FURTHER AGREE AS FOLLOWS:**

Article 1. **Definitions**

As used in this Agreement, the following terms shall have the following meanings and are equally applicable to both singular and plural forms of the terms defined;

- 1.1 **"Agreement"** means this Cooperative Research and Development Agreement (CRDA).
- 1.2 **"Computer Software"** means computer programs and computer data bases.
- 1.3 **"Computer Software Documentation"** means Data including computer listings and printouts in human readable forms which (i) documents the design or details of Computer Software, (ii) explains the capabilities of the software, (iii) provides operating instructions for using the software.
- 1.4 **"Critical Technology"** (also referred to as Militarily Critical Technology (MCT) means technology that is characterized as MCT in the Militarily Critical Technology List (issue of October 1989, Office of the Under Secretary of Defense for Acquisition).
- 1.5 **"Data"** means all oral and recorded information including Proprietary Information of any kind or nature, including, but not limited to, technical data, Computer Software, and Computer Software Documentation and source code listings.
- 1.6 **"Government Purpose License Rights (GPLR)"** means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purpose only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use Data for commercial purposes.
- 1.7 **"Invention"** means any invention or discovery which is or may be patentable under any Federal law of the United States.
- 1.8 **"Made,"** when used in relation to any Invention, means the conception or first actual reduction to practice of such Invention.
- 1.9 **"Parties"** means Company and NOSC.

1.10 **"Proprietary Information"** means information including which embodies trade secrets developed at private expense or which is confidential business or financial information, 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 had no access to the Proprietary Information.

1.11 **"Patent Application"** means any U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Subject Invention.

1.12 **"Subject Data"** means all Data produced by Company in the performance of this Agreement, whether developed using NAVOCEANSYSCEN Technology or Data or otherwise, including any previously developed Company Proprietary Information forming a part of such Data.

1.13 **"Subject Invention"** means any Invention Made in the performance of this Agreement.

1.14 **"NAVOCEANSYSCEN Technology"** means the

1.15 **"NAVOCEANSYSCEN Technology Data"** means the Data developed by NAVOCEANSYSCEN pertaining to NAVOCEANSYSCEN Technology that is useful or necessary in

1.16 **"Unlimited Rights"** means rights to use, duplicate, release, or disclose, in whole or in part, in any manner, and for any purpose whatsoever, and to have or permit others to do so.

Article 2. Cooperative Research Description

2.1 Background

2.2 Technical Basis for Activity

2.3 Statement of Work

2.3.1 Objective(s)

2.3.2 Approach(es)

2.3.2.1 Work Schedule

2.3.2.1.1 Naval Ocean Systems Center

2.3.2.1.2 Company

2.4 Division of Responsibility

2.4.1 Company

Company agrees to provide fees/costs as stated in Article 16, and the following services, property, facilities, equipment, and other resources in the performance of this Agreement during the times, periods, and conditions specified below.

2.4.1.1 Contractor Site/Facilities

2.4.1.2 Personnel/Length of Assignment

2.4.1.3 Expertise/Principal Investigator

2.4.2 Naval Ocean Systems Center

NAVOCEANSYSCEN agrees to provide the following services, property, facilities, equipment, and other resources in the performance of this Agreement during the times, periods, and conditions specified below.

2.4.2.1 Facilities

2.4.2.2 Personnel/Length of Assignment

2.4.2.3 Expertise/Principal Investigator

2.4.2.4 GFI/GFE/GFM

2.4.2.4.1 Government Furnished Information (GFI)

This refers to item specified in paragraphs 1.14 and 1.15 and as follows:

2.4.2.4.2 Government Furnished Equipment (GFE)

2.4.2.4.3 Government Furnished Material(s) (GFM)

2.4.3 Use/Exchange of Facilities or Personnel or Data or Hardware

As agreed herein, NOSC will provide personnel, facilities, and equipment for its part (2.4.2) and the Company will provide personnel, facilities, and equipment for its part (2.4.1) to support the objectives of the CRDA.

Under conditions such as:

2.4.3.1 Naval Ocean Systems Center

NAVOCEANSYSCEN shall make available to the Company at NAVOCEANSYSCEN site:

NAVOCEANSYSCEN shall make available to _____ the use of
_____ and its (equipment) located at
_____.

2.4.3.2 Company

Company shall make available to NAVOCEANSYSCEN at Company site:

2.4.5 Defense Technical Information Center Access

Unclassified, non-critical technology access shall be arranged using Department of Defense Form 1540, Oct. 86. See attached Department of Defense Form 1540.

2.5 Review of Work

Periodic conferences shall be held between NAVOCEANSYSCEN and Company personnel for the purpose of reviewing the progress of work under this Agreement.

2.6 Supervision of Work

NAVOCEANSYSCEN shall have exclusive control and supervision over the conduct of all cooperative research performed by its employees under this Agreement or with the utilization of its services, property, facilities, equipment, or other resources.

2.7 Standard of Work

It is understood that the nature of the cooperative research performed under this Agreement is such that completion within the period of performance specified or within the limits of financial support allocated cannot be guaranteed by either Party. Accordingly, it is agreed that all cooperative research performed under this Agreement is to be performed on a best-effort basis.

2.8 Period of Performance

It is mutually recognized that the development program cannot be rigidly defined in advance, and that the contemplated time periods for completion of each phase are good faith guidelines, subject to adjustment by mutual agreement, to fit circumstances as the development program proceeds. In no case will this Agreement extend beyond _ years from the effective date of this Agreement, unless it is revised by mutual agreement between the Parties.

The period of performance of this Agreement shall be 3 years from the effective date unless otherwise mutually agreed to between the parties.

Article 3. Title to Property

Each Party shall retain title to its property used in the performance of this Agreement unless otherwise agreed to in writing.

Article 4. 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.

Article 5. Effective Date. This Agreement shall be binding on any Party only when signed by all Parties and shall be effective on the date this Agreement is signed by the last of the parties to sign it.

Article 6. Governing Laws. The Parties agree that United States Federal Law shall govern this Agreement for all purposes, including, but not limited to, determining the validity of this Agreement, the meaning of its provisions, and the rights, obligations, and remedies of the Parties.

Article 7. Termination

7.1 Survival of Provisions

Unless otherwise mutually agreed in writing, all provisions of this Agreement, except for Article 2, shall survive its termination.

7.2 Mutual Consent

Company and Government may elect to terminate this Agreement at any time by mutual consent in writing. In such event the Parties shall specify the disposition of any property rights not otherwise provided for in this Agreement and any other provisions of this Agreement that shall not survive its termination.

7.3 Unilateral Action

Either Party may unilaterally terminate this Agreement at any time by giving the other Party written notice, not less than thirty (30) days prior to the termination specified in the aforesaid notice. If Company unilaterally terminates this Agreement, (1) any and all licenses granted Company by the Government under this Agreement shall, at the option of the Government, be simultaneously terminated, unless the Parties mutually agree otherwise, and (2) no license granted by Company to Government shall terminate.

7.4 New Commitments

NAVOCEANSYSCEN shall, to the extent practicable, make no new commitments chargeable to Company after the termination date and shall, to the extent practicable, by the termination date, cancel all outstanding commitments and contracts entered into in the performance of this Agreement.

7.5 Termination Costs

Within ninety (90) days following termination of this Agreement, NAVOCEANSYSCEN shall submit to Company a statement of all costs/fees obligated or incurred prior to the termination date in the performance of this Agreement and Company shall pay NAVOCEANSYSCEN within thirty (30) days of receipt of such statement of costs/fees.

7.6 Covenant Against Gratuities

NOSC may, by written notice to Company, terminate this CRDA if it is found, after notice and hearing, by the Secretary of Defense, or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Company or any agent or representative of Company to any officer or employee of NOSC with a view toward securing a contract or an agreement, or the making of and determination with respect to the performing of such contract or agreement, provided that the existence of the facts upon which the Secretary of Defense, or his duly authorized representative, makes such finding shall be in issue and may be reviewed in any competent United States Court.

7.7 Covenant Against Contingent Fees

Company warrants that no person or agency has been employed or retained to solicit or secure this CRDA upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Company for securing business. For breach or violation of this warranty, NOSC shall have the right to annul the CRDA without liability, or, in its discretion, to add to the CRDA consideration of, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

Article 9. Dispute Resolution

Before NAVOCEANSYSCEN or Company may bring suit in any court concerning an issue relating to this CRDA, such participant must: (1) submit the issue to the Chief of Naval Research or his designee for resolution, and if the issue remains unresolved, then (2) seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the participants.

Article 9. Assignment/Sub Contracting

9.1 Assignment and Transfer

Except as otherwise provided in this Agreement, neither this Agreement nor any license acquired by any Party hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party. Should Company become foreign-owned, foreign-controlled, or foreign-influenced, then Company shall immediately notify NOSC of this situation. NOSC shall in turn promptly notify ONT Code 26, who will then determine whether any action is appropriate, depending on the specific circumstances.

9.2 Subcontracts with Foreign Entities

Company may not subcontract for any of its work to be performed under this Agreement to foreign persons or entities. For the purposes of this Article, a foreign entity is defined to be one in which either the majority ownership interest or effective control is held by persons who are not citizens of the United States of America.

9.3 Subcontracts with United States Entities/Flowdown

Subcontracting by Company to a United States entity must be by mutual agreement between the Parties. Company agrees that any subcontract agreement entered into between Company and any other entity shall include provisions whereby Company and such other party grant, agree to grant, convey, license, transfer, confer, and/or assign any and all rights and benefits to the Government to which the Government is entitled from Company under this Agreement; and no clause shall be used in such subcontract agreement that will diminish any right or benefit to the Government under this Agreement. Any work or performance by such other entity under such subcontract agreement shall be deemed to be work or performance of Company under this Agreement.

Article 10. Representations and Warranties

10.1 Naval Ocean Systems Center Representations and Warranties

NAVOCEANSYSCEN hereby represents and warrants as follows:

10.1.1 Organization

NAVOCEANSYSCEN, San Diego, California, is a Federal laboratory of the Department of the Navy. It is wholly owned by the Government of the United States, and the purpose of NAVOCEANSYSCEN is the performance of research, development, or engineering by employees of the Government.

10.1.2 Mission

The performance of the activities specified by this Agreement are consistent with the mission of NAVOCEANSYSCEN.

10.1.3 Statutory Compliance

Prior to entering into this Agreement, NAVOCEANSYSCEN has given special consideration to small business firms and consortia involving small business firms.

10.1.4 No Warranty

Except as otherwise provided in this Agreement, NOSC makes no express or implied warranty as to any matter whatsoever, including the conditions of research or any invention or product, whether tangible or intangible made or developed under this Agreement, or the ownership, **MERCHANTABILITY**, or **FITNESS FOR A PARTICULAR PURPOSE** of the research or any invention or product.

10.2 Company Representations and Warranties of Company

Company hereby represents and warrants as follows.

10.2.1 Organization

As of the effective date of this Agreement, Company is a duly organized, _____ validly existing and in good standing under the laws of the state of _____.

10.2.2 Power and Authority

Company has the requisite power and authority to enter into this Agreement and to perform according to the terms of this Agreement. Company has taken all actions required to be taken by law, to authorize the execution and delivery of this Agreement. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default, under any agreement binding on Company or any valid order of any court or any regulatory agency or other body having authority to which Company is subject.

10.2.3 Certification of Signatory

Each person signing this Agreement on behalf of Company, certifies by signing this Agreement that he is a duly authorized representative of Company authorized, empowered and entitled to sign for and in behalf of Company and to bind Company to the provisions of this Agreement and Company hereby warrants and certifies that all persons signing this Agreement on its behalf are authorized to do so and to bind Company hereto.

Article 11. Loan Agreement. NAVOCEANSYSCEN property may be loaned to Company in the performance of this Agreement. Company agrees to execute the "Loan Agreement" attached to this Agreement as Appendix A with respect to such loaned property.

Article 12. Miscellaneous

12.1 Severability

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

12.2 Notices

All notices pertaining to or required by this Agreement shall be in writing and shall be signed by an authorized representative and delivered by hand or sent by first class mail, with postage prepaid, addressed as follows:

If to Company:

If to NAVOCEANSYSCEN: Commander
Naval Ocean Systems Center
Code 0144
San Diego, CA 92152-5000

Any Party may change such address by notice given to the other Party in the manner set forth above.

12.3 Headings

Title 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.

12.4 No Benefits

No member of, or delegate to, the United States Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

12.5 Independent Contractors/Entities

The relationship of the Parties to this Agreement is that of independent contractors/entities and not as agents of each other or as joint venturers or partners. NOSC shall maintain sole and exclusive control over its personnel and operations. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall be construed to (i) grant either Party any right to control the other with respect to the conduct of its business; (ii) make any employee, agent or contractor of one Party an employee, agent or contractor of the other; (iii) make either Party a partner, joint venturer, agent or representative of the other; (iv) grant either Party any right or authority to assume or create any obligation on behalf or in the name of the other; provided, however, that any fees/costs payable by Company to NOSC under this Agreement may be obligated by NOSC to Company; (v) accept legal process or legal summons for the other; or (vi) bind the other in any manner whatsoever other than as provided for in this Agreement.

12.6 Use of Name or Endorsements

Company shall not use the name of NAVOCEANSYSCEN or any other Government entity on any product or service which is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of NAVOCEANSYSCEN. By entering into this Agreement, NAVOCEANSYSCEN does not directly or indirectly endorse any product or service provided, or to be provided, by Company, its successors, assignees, or licensees. Company shall not in any way imply that this Agreement is an endorsement of any such product or service.

12.7 Waivers

None of the provisions of this Agreement shall be considered waived by any Party hereto unless such waiver is given in writing to all other Parties. 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 rights provided herein or by law, shall not be deemed a waiver of any rights of any Party hereto.

12.8 Amendments

If either Party desires a modification in this Agreement, the Parties shall, upon reasonable notice of the proposed modification by the Party desiring change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the Parties hereto.

12.9 Noncompeting

The participation of NOSC in this Agreement with Company does not compete with the capability of private industry to perform the same services because NOSC is providing Technology (see Article 2.0) unique to the Navy for utilization in this Agreement.

Article 13. Liabilities

13.1 Naval Ocean Systems Center Liability for Company Property

The Government's responsibility for damages to or for the maintenance of any property Company provides to NAVOCEANSYSCEN or any Company property acquired by NAVOCEANSYSCEN or property developed pursuant to this Agreement will be in conformance with governing laws.

13.2 Indemnification by Company

Company 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 Company or other entity acting on behalf of or under the authorization of Company to this Agreement, and for all liabilities, claims, demands, damages, expenses, and losses of any kind arising out of the manufacture, use, sale or other disposition by Company or other entity acting on behalf of or under the authorization of Company of any machines, articles of manufacture, products, processes, compositions of matter, Data or developments of any kind made under or used in the performance of this Agreement.

13.3 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 performance 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.

13.4 Limits of Liability

Notwithstanding any and all other provisions of this Agreement, Government shall not be liable to Company for any loss of revenue, profits, or other indirect or consequential damages.

13.5 Allocation of Certain Risks

13.5.1 General

Certain liabilities arising out of this Agreement shall be allocated between Company and Government as provided for in sections 13.5.2 and 13.5.3 below.

13.5.2 Liabilities Assumed by Naval Ocean Systems Center

NAVOCEANSYSCEN assumes no express liability for the performance of this agreement.

13.5.3 Liabilities Assumed by Company

13.6 Disposal of Toxic Wastes

Company shall be responsible for the removal of any and all toxic or other material used, provided, or generated in the course of performing this Agreement. Company shall obtain at its own expense all necessary permits and licenses as required by local, State, and federal law and shall conduct such removal in a lawful and environmentally responsible manner.

Article 14. Data and Publications

14.1 Pre-Publication Review

NAVOCEANSYSCEN and Company agree to confer, consult, and concur prior to the publications, presentation, or release outside of Government or Company of Subject Data, to assure that no information is released which might jeopardize patent rights, Proprietary Information, MCT, or classified data. Each Party shall be offered an ample opportunity by the other to review such Subject Data and to file patent applications in a timely manner, if it is so entitled under this Agreement.

14.2 Classified, Militarily Critical Technology Information

All publications and presentations by Company of Subject Data must be unclassified material and must be cleared for public release prior to presentation or publication by cognizant NAVOCEANSYSCEN authority to ensure that no classified, MCT, or otherwise restricted data are included.

14.3 Subject and Other Data Rights

Data generated by NOSC shall be the property of the U.S. Government. Subject Data shall be the property of Company. Government shall, upon request to Company, have the right to review and delivery of all Subject Data. Company shall deliver Subject Data within two (2) weeks from the request for same by Government. Except as otherwise provided in this Agreement, Company grants to Government and Government shall have Government Purpose License Rights (GPLR) in any and all Subject Data for five (5) years from the effective date of this Agreement or until Subject Data no longer meets the definition of Proprietary Information (Section 1.10); thereafter, GPLR shall expire and Government shall have Unlimited Rights in Subject Data. Company shall be obligated to deliver to Government all Subject Data prior to completion of performance under this Agreement. NOSC grants to Company Unlimited Rights in all NOSC originated Data provided by NOSC to Company in the performance of this Agreement.

14.4 Proprietary Information Legends

Company shall place the following proprietary legend on all Subject Data that is Proprietary Information:

"This Data is proprietary to Company. The United States Government has Government Purpose License Rights in this Data until _____; (insert date that is five (5) years from effective date) thereafter, the Government Purpose License Rights shall expire and the Government shall have unlimited rights in this Data."

NAVOCEANSYSCEN agrees to use its best efforts to protect properly legended Proprietary Information from unauthorized disclosure.

14.5 Naval Ocean Systems Center Reports

NAVOCEANSYSCEN shall submit _____ written reports to Company during the term of this Agreement on the progress of its work and the results being obtained and shall make available to Company, to the extent reasonably requested, other Data produced by NAVOCEANSYSCEN in the performance of this Agreement in sufficient detail to explain the progress of the work under this Agreement. NAVOCEANSYSCEN shall submit a final report to Company of its results within four (4) months after completing its performance under this Agreement.

14.6 Company Reports

Company shall submit _____ written reports to NOSC during the term of this Agreement of its work and the results being obtained and shall make available to NOSC, to the extent reasonably requested, other Data produced by Company in the performance of this Agreement in sufficient detail to explain the progress of work under this Agreement. Company shall submit a final report to NOSC of its results within four (4) months after completing its performance under this Agreement.

Article 15. Patent Rights/Copyrights

15.1 Reporting of Inventions

Parties shall each maintain a system for reporting Subject Inventions to their respective personnel responsible for patent matters and shall require their employees to file invention disclosures describing any Subject Inventions with such patent personnel within ninety (90) days from the date of conception or reduction to practice, whichever occurs first. Each Party shall, in writing, promptly provide to the other a copy of the invention disclosure describing any Subject Invention made by one or more of its employees. The invention disclosure shall be sufficiently complete so that the receiving Party may evaluate the Subject Invention to determine its operation, component parts, steps of implementation, uses, and potential patentability. For the purposes of Section 15.1, "promptly" means within ninety (90) days from receipt by its aforesaid patent personnel of a complete invention disclosure or no later than 45 days before a statutory bar date, whichever is earlier.

15.2 Ownership of Patents and Inventions

Except as otherwise provided herein, each Party shall own the entire right, title, and interest in (1) all Subject Inventions Made by its employees and (2) all Patent Applications and U.S. and foreign patents thereon; provided, however, that each Party shall own an undivided one-half interest in (1) all Subject Inventions Made jointly by Government and Company employees and (2) all Patent Applications and U.S. and foreign patents on such jointly Made Subject Inventions.

15.2.1 Filing of Patent Applications

The Party having the sole right to retain title to a Subject Invention pursuant to paragraph 15.2 may elect not to file Patent Applications thereon provided it so advises the other party within ninety (90) days from the date it decides not to so file. Thereafter, the other Party may elect to file Patent Applications on such Subject Invention and the party initially having the right to retain title to such Subject Invention agrees to assign its right, title, and interest in such Subject Invention to the other Party and cooperate with such Party in the preparation and filing of Patent Applications thereon.

15.3 License Rights

Each Party grants to the other a world-wide, non-exclusive, irrevocable, paid-up license to any and all Subject Inventions under all Patent Applications and U.S. and/or foreign patents on Subject Inventions to make, use, or sell (1) any and all Subject Inventions and (2) any and all processes, machines, manufactures and compositions of matter the, making, using, or selling of which would, except for this license, infringe any claim of any Patent Applications and/or U.S. and/or foreign patents on Subject Inventions. Any such non-exclusive licenses shall be evidenced by a license agreement prepared by Government in a form and language satisfactory to Government.

15.3.1 No Express Patent License

Unless otherwise expressly stated in writing, nothing stated in this Agreement shall imply or grant a license to Company under any Government patent, patent application, or invention disclosure.

15.4 Assignment and Transfer

No license described in paragraph 15.3 above shall be assigned, licensed, or otherwise disposed of except as otherwise contemplated herein.

15.5 Power to Inspect

Each Party that files a Patent Application on any Subject Invention grants to the other the power to inspect and make copies of any Patent Application or Patent Application files on such Subject Invention.

15.6 Assistance and Cooperation

Each Party agrees to provide the other with all reasonable assistance in obtaining patent protection and preparing and prosecuting any Patent Application filed by the other Party, and shall cause to be executed licenses, powers to inspect and make copies, and all other instruments and documents as the other Party may consider necessary or appropriate to carry out the provisions of this Article 15. The Party filing a Patent Application on any Subject Invention shall, within six (6) months of the filing date of the application, provide to the other Party a copy of and the serial number of each such Patent Application.

15.7 Patent Costs

It is agreed that the Party that prepares, files, prosecutes, and/or maintains any patent applications and/or patents on jointly owned Subject Inventions shall bear all the costs of doing so.

15.8 Election to File on Joint Subject Inventions

Government shall have the right to elect to file any and all Patent Applications, continuations, continuations-in-part, divisionals, reissues, and reexaminations on Subject Inventions made jointly by Government and Company employees. Company shall not file any Patent Applications on Subject Inventions made jointly by Government and Company employees until the Government has elected not to file. Government will notify Company in writing of any election to file within one hundred twenty (120) days from the date of disclosure of the Subject Invention to its NAVOCEANSYSCEN Patent Personnel.

15.9 Company License to Existing Government Patents/Inventions

15.10 Copyrights

Company hereby grants to Government a royalty free, paid up, world-wide license under any copyright owned or acquired by Company in any mask work or work of authorship created in the performance of this Agreement or relating to any Data, machine, article of manufacture, composition of matter or process made or created in the performance of this Agreement or prepared for or acquired by the Government from Company or provided by Company to Government under this Agreement. The scope and extent of such license shall be commensurate with the scope of other rights of the Government set forth in paragraph 14.3. Company shall include the following statement on any work of authorship created in the performance of this Agreement:

"The United States Government has a copyright license in this material pursuant to a Cooperative Research and Development Agreement with the Naval Ocean Systems Center."

Article 16. Fees

16.1 Installment

Company agrees to pay NAVOCEANSYSCEN the following fees/costs in accordance with the payment schedule and for the items indicated below:

Each payment herein, shall be tendered to: Naval Ocean Systems Center, Code 103, San Diego, CA 92152-5000.

16.2 Insufficient and Excess Funds

NAVOCEANSYSCEN is not required to continue performance under this Agreement if the funds provided by Company for performance by NAVOCEANSYSCEN are insufficient to cover NAVOCEANSYSCEN's cost for such performance. In the event Company fails to tender the Government a payment within fifteen (15) days after its respective due date above, then Company shall be deemed to be in default of this Agreement. Advanced funds not expended by NAVOCEANSYSCEN shall be returned to Company upon NAVOCEANSYSCEN's submission of a final fiscal report to Company.

16.3 Accounting Records

NAVOCEANSYSCEN shall maintain separate and distinct current accounts, records, and other evidence supporting all its expenditures chargeable to Company under this Agreement and shall retain such records for at least twenty-four (24) months after the calendar year in which such expenditures were made. NAVOCEANSYSCEN shall provide Company a report within four (4) months after completing performance under this Agreement. The accounts and records of NAVOCEANSYSCEN shall be available for reasonable inspection and copying by Company.

16.4 Naval Ocean Systems Center Instruction 7030.1

Unless otherwise specifically provided for in this Agreement, costs/fees payable by Company to NAVOCEANSYSCEN under this Agreement shall be charged to Company in accordance with NAVOCEANSYSCEN Instruction 7030.1, attached hereto as Appendix B.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as follows:

(Title)

For Company, on this _____ of _____, 1990, in the City of _____
and the State of _____.

Date _____

(Title)

For NAVOCEANSYSCEN on this _____ of _____, 1990, in the City of San Diego
and the State of California.

Date _____

APPENDIX A

LOAN AGREEMENT

between

NAVAL OCEAN SYSTEMS CENTER (NAVOCEANSYSCEN)
San Diego, CA 92152-5000

and

THIS LOAN AGREEMENT, entered into as of the ____ day of _____, 19 __, by and between the Department of the Navy represented by the Commander, Naval Ocean Systems Center (hereinafter referred to as the "Navy") or his duly authorized representative executing this Loan Agreement,
and _____ (hereinafter referred to as "Borrower") represented by an official thereof authorized by Borrower to execute this Agreement.

WHEREAS, the Borrower has requested a loan of the property listed in the schedule hereto attached (hereinafter referred to as the "Items") for the purpose of

and

WHEREAS, the Navy is willing to loan the property covered by this Agreement;

Now THEREFORE, in consideration of the premises and the terms and conditions hereinafter set forth, the Parties hereto agree as follows:

1. The Navy does hereby loan to the Borrower the Items listed in the schedule hereto attached.
2. The use of the property by the Borrower shall terminate _____ months after the date first above written unless the Loan Agreement is sooner terminated by the Navy pursuant to paragraph 7 hereof.
3. The Navy makes no representation of warranty either as to the condition of the property or as to its usefulness for any purpose whatsoever.
4. Title to the property shall remain with the Navy during the period of this loan.
5. The Borrower shall:
 - a. Pay all costs incident to preparation of the Items for shipment and transportation and, upon expiration or termination of the loan period, pay all costs incident to the return of the Items, including costs necessary to prepare the Items for storage or reinstallation.

b. Maintain, protect, preserve, and repair the **Items**, including necessary replacement of parts, and return such **Items** in as good a condition as when received, normal wear and tear excepted.

c. Replace the **Items** in the event of loss or damage, or, at the option of the **Navy**, reimburse **Navy** for value thereof.

d. Not transfer custody or possession of the **Items** or authorize use thereof for purposes other than specified in the first above recital.

6. The **Borrower** shall protect all proprietary, patent, and industrial rights in the property, the information furnished with the property, and the information derived from it.

7. The **Navy** reserves the right to terminate this **Agreement** as to the **Item(s)** loaned whenever it determines that it requires immediate use thereof.

In **WITNESS WHEREOF**, the Parties hereto have duly executed this **Agreement** as of the day and year first above written.

NAVAL OCEAN SYSTEMS CENTER
(NAVOCEANSYSCEN)
San Diego, CA 92152-5000

By _____

By _____

Title _____

Title _____

By _____

By _____

Title _____

Title _____



DEPARTMENT OF THE NAVY
NAVAL OCEAN SYSTEMS CENTER
SAN DIEGO, CALIFORNIA 92152-5000

NOSCINST 7030.1C
121/PC:ghe
18 March 1985

NOSC INSTRUCTION 7030.1C

From: Commander, Naval Ocean Systems Center

To: Branch Heads, Project Office Heads, and above

Subj: WORK FOR OTHER (NON-DOD) GOVERNMENT DEPARTMENTS OR PRIVATE PARTIES

Ref: (a) NAVCOMPT Manual, Volume 3, paragraph 035750

(b) NAVCOMPT Manual, Volume 5, paragraph 054856

(c) NAVMATINST 7030.7A, Work for other government departments or private parties

(d) NOSCINST 7300.1B, Administration of funds

(e) NOSCINST 5216.1A, Revised correspondence procedures (R)

(f) NOSCINST 7030.2C, Pricing procedures for foreign military sales (FMS) (R)

- Encl: (1) Procedures for Committing NOSC Resources to Private Parties and Non-DOD Government Agencies
(2) Estimating Costs of Work Done for Non-DOD Government Sponsors and Private Parties
(3) Financial Requirements - Private Parties and Non-Federal Agencies
(4) NOSC Certification Form
(5) Indemnity Agreement

1. Purpose. To establish policy and procedures for services to other (non-DOD) Government departments and private parties.

2. Cancellation. NOSCINST 7030.1B. (R)

3. Background. The Center frequently does work for other (non-DOD) Government departments and private parties. Policies governing the acceptance and methods of pricing such work are contained in references (a), (b), and (c). Reference (d) outlines overall Center policy for administration of funds. Reference (e) delegates authority to approve various levels of proposed program effort. Reference (f) gives specific guidelines and procedures for foreign military sales (FMS) funded work.

4. Policy. Center policy on work for other (non-DOD) Government departments and private parties conforms to references (a), (b), (c), and (d). Specific financial requirements and policies governing work for non-Federal agencies and private parties are listed in enclosure (3). The following criteria shall be met before such work is accepted:

a. Other Federal Government Departments (Non-DOD) and State and Local Governments

(1) Security demands call for accomplishment of the work in a Government activity; or

(2) Work, services, or facilities requisitioned cannot reasonably be obtained from private agencies due to their lack of equipment, skills, trained personnel, or inability to meet deadline completion dates; or

(3) The cost to the ordering government department of obtaining the required work, services, or facilities from private industry is greater than the cost of obtaining them from NOSC.

b. Armed Forces Sponsored Activities. NOSC may provide work, services, and facilities to armed forces sponsored exchange, welfare, and recreation groups, including messes, employee associations, and similar organizations, when the Center directly benefits thereby. Otherwise such work, services, or facilities may be furnished only if they cannot reasonably be obtained elsewhere.

c. Private Parties. Work, services, and facilities may be provided to private parties if it is in the interest of the Navy to perform such work and there is no issue of competition with private industry.

d. Foreign Governments and Foreign Private Parties. Requests received from foreign governments or foreign private parties should be referred to the Chief of Naval Operations (CNO) (OP-63) for appropriate action. Reference (f) provides policy and procedures for foreign military sales (FMS) funded work.

5. Conditions of Acceptance. In addition to the specific criteria listed in paragraph 4, the following general requirements apply to work done for the above parties.

a. The work shall not interfere with the mission of the Center or work assigned by the Technical Director.

b. The work shall be done essentially by Center personnel within existing ceiling assignments.

c. All non-Federal agencies and private parties are required to execute a NOSC Certification Form, NOSC-SD 7030/1, (enclosure (4)). The Indemnity Agreement, 11ND NOSC 7030/2, (enclosure (5)) must be executed by those non-Federal agencies and private parties who are not charging the work and any attendant insurance expense to a Government reimbursement-type contract. Enclosure (3) gives detailed guidelines on these requirements.

d. Other (non-DOD) Government departments and private parties are required to provide funds in advance to cover the cost of the work.

e. The terms of acceptance of such work shall not require special accounting or other record keeping and reports not currently in use at the Center.

6. Use of Center Facilities

a. When work is done for private parties or non-Federal agencies, Center equipment and facilities will be operated by Center employees. The Center Commander will approve exceptions to this policy only in special instances when it is determined to be in the best interests of the Navy to have non-Center operators. Under these conditions, the private party will be required to employ operators satisfactory to the Commander.

b. The Center Commander may permit a private party to operate its equipment on Center property when it is in the best interests of the Navy. The private party must execute the Indemnity Agreement in enclosure (5) and agree to pay for any damage and/or costs incurred by the Navy incident to Government property use.

c. The use of Center facilities for nonwork purposes by private parties will generally be limited to cases where the facilities are not available from commercial sources.

7. Costs to be Charged

a. Basis for Charging. All work will be done on a cost-reimbursable basis. Fixed price agreements cannot be used for non-Federal sponsors or private parties. For non-DOD sponsors and private parties, an advance cash deposit must be received by the Center before work can be started.

b. Types of Costs. Costs chargeable to other (non-DOD) Government departments and private parties are significantly different from those charged to DOD sponsors. Included are additional cost factors over and above the normal direct costs for labor, overhead, material, services, travel, etc. The additional costs are referred to as "unfunded" costs. These are existing costs to the Federal Government which are not passed on to the Center's DOD sponsors but are required to be charged to non-DOD sponsors. Included are military labor, acceleration, and various other charges. Enclosure (2) spells out in detail how these costs are applied and how they should be used in preparing cost estimates. It should be noted that where private parties are charging work to be done by the Center to a Federal Government cost-reimbursement type contract, the additional cost factors described above will not be applied. Enclosure (4) provides the means for making this determination.

c. Rental of Equipment. The charges for use of Government-owned equipment will be at rates established by NAVCOMPT Manual, paragraph 035881.2, except that the rate charged to private parties shall not be less than the prevailing local commercial rental rate of like equipment.

8. Authority. Work assignments from non-DOD sponsors must be approved by the Technical Director in accordance with reference (e), except for routine test and service jobs of \$5,000 or less which may be approved by department or division heads.

9. Procedures

a. Other Federal Agencies. Procedures for proposing work to other Federal agencies will vary depending on specific agency requirements. Cost estimates will be based on the same factors as for Navy sponsors, plus some unfunded costs. Stabilized rates will be charged for all labor hours worked. An advance deposit is necessary.

b. Non-Federal Agencies and Private Parties. Enclosure (1) describes procedures for estimating, accepting, and accounting for services provided to private parties and non-Federal agencies. Enclosure (2) provides guidance for preparing cost estimates. Copies of enclosures (3), (4), and (5) to this instruction shall be sent with all proposals and cost estimates to non-Federal agencies and private parties.

NOSCINST 7030.1C
18 March 1985

10. Forms Availability. The NOSC Certification Form, NOSC-SD 7030/1, and Indemnity Agreement, 11ND NOSC 7030/2, are available in the Programs and Budget Branch, Code 121, Bldg. 33, Rms. 2209 or 2621, or Bldg. 1, Rm. A526.

- R) 11. Directive Responsibility. The Head, Central Staff, Code 10, is responsible for keeping this instruction current.



F. M. PESTORIUS

Distribution:
C

PROCEDURES FOR COMMITTING NOSC RESOURCES TO
PRIVATE PARTIES AND NON-DOD GOVERNMENT AGENCIES

1. Cost Estimate

a. Within the policies outlined in paragraphs 4 through 7 of this instruction, written cost estimates will be sent to the prospective sponsor. All cost estimates must be routed to the Programs and Budget Branch, Code 121, for review before release. Enclosure (2) provides guidance on preparing cost estimates. (R)

b. Copies of enclosures (3), (4), and (5) should be sent to the sponsor with the cost estimate. These enclosures outline specific financial policies and requirements and provide a certification statement and the required format for the indemnity agreement. Forms will be provided by Code 121.

2. Acceptance/Allocation

a. All checks received from private parties or non-DOD Government agencies should be forwarded immediately to Disbursing, Code 12212.

b. The cognizant division will acknowledge receipt of deposits when requested by private parties or non-Federal agencies but should not sign any acknowledgement copies of purchase orders or other procurement documents. (R)

c. The Programs and Budget Branch, Code 121, will obtain internal acceptance by the cognizant division and will allocate funds and establish job orders. (R)

3. Accounting. The Accounting Branch, Code 122, will record the deposit and collect cost information. A bill will be sent monthly to the private party or non-DOD Government agency showing the account balance. (R)

4. Completion of Work

a. If work sponsored by the private party or non-DOD Government agency cannot be completed with the funds available, the cognizant division shall either stop work before funds are depleted or obtain additional funds from the sponsor. (R)

b. The cognizant division will advise the Programs and Budget Branch by memorandum when work has been completed and all charges recorded. The Accounting Branch, upon notification by the Programs and Budget Branch, will refund any available balance to the private party or non-DOD Government agency. (R)

ESTIMATING COSTS OF WORK DONE FOR
NON-DOD GOVERNMENT SPONSORS AND PRIVATE PARTIES

1. Elements of Cost. Costs chargeable to non-DOD Government sponsors and private parties include the normally "funded" costs of civilian labor, overhead, material, contracts, travel, etc., which are chargeable to Navy or other DOD sponsors. In addition, "unfunded" costs are also charged to non-DOD Government sponsors and private parties to recover the full cost of military and civilian labor and support. These are based on statistical computations developed by the Navy. These additional cost factors are not applied when work for a private party is in connection with a Federal Government cost-reimbursement type contract. This is determined using enclosure (4).

2. Federal, Non-DOD Customers. Federal non-DOD customers will be billed at the approved stabilized hourly rates as are DOD customers. In addition, Federal non-DOD customers will be billed a proportionate share of the following unfunded costs:

	<u>Cost Estimate or Source</u>
a. Direct military labor when required in performance of work.	NAVCOMPT Manual 035750
b. Acceleration of military labor added to item (a) above to recover military benefits.	Officers - 27.4% Enlisted - 45.1%
c. Surcharges on material carried in a Federal supply system inventory:	
(1) 3.5% - Packing, handling, crating	
(2) 3.75% - Second destination transportation costs	

3. Private Parties. Private parties will be billed in the following manner:

	<u>Cost Estimate or Source</u>
a. Direct civilian labor	Latest Federal pay schedule
b. Civilian labor acceleration added to basic labor rates for leave and fringe benefits	NOSCNOTE 7600 (latest FY rates)
c. 22.5% acceleration of direct civilian labor to recover full civilian retirement costs	(R)

	<u>Cost Estimate or Source</u>	
d. Direct military labor when required in performance of work	NAVCOMPT Manual 035750	
e. Acceleration of military labor added to item (d) above to recover military benefits	Officers - 27.4% Enlisted - 45.1%	(R) (R)

	<u>Cost Estimate or Source</u>
f. Stabilized indirect and general overhead rates applied to all direct hours (<u>military</u> and <u>civilian</u>)	NOSCNOTE 7600 (latest FY rates)
g. Unfunded indirect and general overhead rates applied to all direct civilian and military hours	NOSCNOTE 7600 (latest FY rates)
h. All other direct costs such as material, travel, contracts, service center usage	Actual cost
i. Use of Government-owned equipment by private parties. Use NAVCOMPT source cited; however, rate charges to private party may not be less than prevailing local commercial rate	NAVCOMPT Manual 035881.2
j. An asset usage charge of approximately 2% will be added to the sum of all costs included in items (a) through (i) above	NOSCNOTE 7600 (latest FY rates)
k. Surcharge on material carried in a Federal supply system inventory:	
(1) 3.5% - Packing, handling, crating	
(2) 3.75% - Second destination charges	
1. A 3% administrative surcharge will be added to the sum of all costs included in items (a) through (k) above.	
4. <u>Sample - Federal (Non-DOD) Customers</u>	
a. Civilian labor - 100 regular direct hours X \$22.00 (stabilized labor rate)	\$2,200.00
R) b. Indirect and general overhead -	2,500.00*
R) 100 hours X $\frac{IND}{\$8.00} + \frac{GEN}{\$17.00}$	
c. Material and travel estimate	1,000.00
d. Military direct labor - 50 hours X \$12.55 (E-7 rate)	627.50
e. Military acceleration - 45.1% of \$627.50	127.63

*Assumes civilian and military personnel are in a technical department (direct cost center) applying both indirect and general overhead. Rates used are for illustration only and are not keyed to an actual cost center.

f. Indirect and general overhead applicable to military direct labor -	1,250.00*	(P)
50 hours x $\frac{\text{IND}}{\$8.00} + \frac{\text{GEN}}{\$17.00}$		(R)
Total cost of job	\$7,705.13	(R)
5. <u>Sample - Private Parties</u>		
a. Civilian labor - 100 regular direct hours X \$14.12 (GS-12, step 1)	\$1,412.00	
b. Civilian labor acceleration - 32.0% X \$1,412.00	451.84	
c. Unfunded civilian retirement - 22.5% X \$1,412.00	317.70	(R)
d. Military direct labor - 50 hours X \$12.55 (E-7 rate)	627.50	
e. Military acceleration - 45.1% of \$627.50	283.00	(R)
f. Indirect and general overhead -	3,750.00*	(R)
150 hours x $\frac{\text{IND}}{\$8.00} + \frac{\text{GEN}}{\$17.00}$		
g. Unfunded indirect and general overhead rates - 150 hours (military and civilian) X $\frac{\text{IND}}{\$.19} + \frac{\text{GEN}}{\$1.71}$	285.00*	(R)
h. Material and travel estimate	1,000.00	
i. Rental of Equipment 4-ton panel truck used by private party sponsor - 1 day X \$40.00 per day + 30 miles X \$.20 per mile (local prevailing rate)	46.00	
Subtotal	\$8,173.04	(R)
j. Asset usage charge - 2% of subtotal	163.46	(R)
Total cost of job	\$8,336.50	(R)
k. Administrative surcharge - 3% of total	250.09	(R)
TOTAL COST ESTIMATE	\$8,586.59	(R)

*Assumes civilian and military personnel are in a technical department (direct cost center) applying both indirect and general overhead. Rates used are for illustration only and are not keyed to an actual cost center.

FINANCIAL REQUIREMENTS - PRIVATE PARTIES AND NON-FEDERAL AGENCIES

The following Navy policies and procedures govern work done by the Naval Ocean Systems Center (NOSC) for private parties or non-Federal agencies.

1. NOSC is authorized to provide work, services, and facilities to non-Federal agencies and private parties when it is in the interest of the Navy to do so, when such services or facilities are not available from private industry, and when there is no issue of competition with private industry. To avoid competition with private industry, the NOSC Certification Form (enclosure (4)) should be signed by an appropriate company official.
2. It is contrary to Government policy for NOSC to execute a contractual document such as a purchase order where NOSC is being requested to perform services. Receipt of such orders will be acknowledged if requested, but not signed. They are useful mainly as a description of the services requested.
3. Bids, as such, cannot be furnished by NOSC.
4. Estimates of cost can be furnished.
5. No promise or guarantee can be given as to time of completion.
6. Work will be undertaken on a cost-reimbursable basis. The cost estimate is not a fixed price, and there is no guarantee regarding completion of work within the estimate. Although no guarantee can be made, in the event it becomes apparent the project cannot be completed within the estimate, NOSC will immediately inform the sponsor and discuss the course of action desired. The sponsor will be given a monthly report of expenditures showing total costs plus surcharge and available balance.
7. Work cannot begin until a NOSC Certification Form, an Indemnity Agreement (as required in paragraph 9 below), and an advance deposit covering the estimated cost of work are received by NOSC. Checks should be made payable to the Naval Ocean Systems Center and mailed to the Naval Ocean Systems Center, Attn: Code 12212, San Diego, CA 92152-5122. (R)
8. NOSC is required by Navy regulations to apply special cost factors to work for private parties and non-Federal agencies. These factors are referred to as "unfunded costs" and include military personnel costs, the full cost of fringe benefits, and a surcharge for depreciation of Center assets. These "unfunded costs" may be waived if the work ordered is financed through a Federal Government cost-reimbursement type contract. Paragraph 3 of the NOSC Certification Form provides for a determination of the appropriate category of the work.
9. An executed indemnity agreement in the format of enclosure (5) must be received by NOSC before any work may start. However, this indemnity agreement is not needed for a Government contractor charging work and any attendant insurance expense to a Government cost-reimbursement contract. The NOSC Certification Form, paragraph 4, provides for a determination of the appropriate category of the work.

NOSCINST 7030.1C
18 March 1985

10. When work is done by NOSC for private parties in connection with a Government contract, any supplies furnished by NOSC shall not be considered to be Government-furnished material or Government-furnished property within the meaning of any Government procurement contract, and the Government does not warrant the suitability of such work for any particular purpose.

R) For additional information about NOSC's financial policy, please contact Mr. N. Workman, Code 12, Naval Ocean Systems Center, San Diego, CA 92152-5000, telephone (619) 225-2027.

NOSC CERTIFICATION FORM
(To be completed by private parties requesting services
from the Naval Ocean Systems Center)

1. Description of work or services to be performed by NOSC:

2. Commercial facilities or services are not available to perform the work described in paragraph 1 above.

3. (Check a or b)

☐ a. This work is not being charged to a Federal Government cost-reimbursement type contract

☐ b. This work is being charged to a Federal Government cost-reimbursement type contract number _____, sponsored by _____
(U.S. GOVERNMENT AGENCY)

4. (Check a or b)

☐ a. This work and related insurance expense is not being charged to a Federal Government cost-reimbursement contract. A fully executed Indemnity Agreement is enclosed.

☐ b. This work and related insurance expense is being charged to Federal Government cost-reimbursement type contract number _____, sponsored by _____
(U.S. GOVERNMENT AGENCY)

Therefore, the Indemnity Agreement has not been executed in accordance with your instructions.

5. It is understood that if this work is for a Federal Government contractor any supplies furnished by the Naval Ocean Systems Center shall not be deemed to be Government-furnished material or Government-furnished property within the meaning of any Government procurement contract and the Government does not warrant the suitability of such work for any particular purpose.

Certified by: _____

Title: _____

INDEMNITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned _____,
(NAME OF CORPORATION)
a corporation organized and existing under the laws of the State of _____,
in consideration of permission
granted for (DESCRIBE WORK, SERVICES, OR FACILITIES REQUISITIONED)

at _____,
(LOCATION)

and as a condition precedent thereto, does hereby expressly agree to indemnify and hold harmless the United States Government, its agencies and instrumentalities against all suits, actions, claims, costs, or demands (including without limitation, suits, actions, claims, costs, or demands for death, personal injury, and property damage) to which the Government, its agencies, and instrumentalities may be subject by reason of damage or injury (including death) to the property or person of anyone, whomsoever they may be, arising or resulting from any and all operations hereafter performed either by the Naval Ocean Systems Center, San Diego, or by the undersigned, its agents, employees, or subcontractors in (ENTER DESCRIPTION OF WORK)

or effecting any other work which the undersigned may require at _____ during the time
(LOCATION)

that the above described work is performed, or in any other way arising therefrom or connected therewith.

NOSCINST 7030.1C
18 March 1985

The undersigned hereby waives any and all claims which, but for this waiver, it may have, or which it may hereafter acquire, against the United States Government, arising out of the operations above described.

IN WITNESS WHEREOF, this waiver has been duly executed this

_____ day of _____, 19____

(Corporation)

(CORPORATE SEAL)

By _____
President

CERTIFICATE

I, _____, certify that I am the

_____ Secretary of the Corporation

executing this waiver; that _____, who signed this waiver on behalf of said corporation was then President thereof, that the seal affixed to this waiver is the corporate seal of said Corporation, and that said waiver was duly signed for and in behalf of the said Corporation and said corporate seal was affixed thereto by authority of its governing body.

Secretary

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT PROPOSAL
APPROVAL CHECK LIST

1. Security level:
2. Security access to intelligence data, restricted data, NATO, above SECRET require a justification to be attached.

3. DD 1540 - Data areas - Part III

a. Approved as submitted:

b. Data Areas:

Additional _____	Remove _____
_____	_____
_____	_____

4. Militarily Critical Technologies List (ref. October 1989 issue).

a. Military Critical Technology: Yes _____ No _____

b. Sections of Militarily Critical Technologies List applicable:

5. Classified automated data processing required: Yes _____ No _____

6. Review of Cooperative Research and Development Agreement Draft:

Review all sections in CRDA and comment. Use red ink if comments are to be placed on draft CRDA enclosed. Provide specific data for: .

a. "Recitals" sections C, D, E, F, and I

b. Section 2.1

c. Section 2.4

APPENDIX D

3912
Ser 0144/

Gentlemen:

Enclosed is the draft Cooperative Research and Development Agreement entitled,

You are requested to perform a legal and technical review of the draft Cooperative Research and Development Agreement in accordance with the attached "Cooperative Research and Development Agreement Proposal Approval Check List."

Forward completed response to:

Naval Ocean Systems Center
Deputy Program Director for Industry R&D Liaison
Dr. R. November, Code 0144
San Diego, CA 92152-5000

Sincerely,

R. NOVEMBER
Deputy Program Director
for Industry R&D Liaison
By direction of the Commander

Encl:

- (1) Draft CRDA
- (2) CRDA Proposal Approval Check List
- (3) DD Form 2345

NAVAL OCEAN SYSTEMS CENTER

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

(NCRDA- -NOSC-)

FOR

BETWEEN

**NAVAL OCEAN SYSTEMS CENTER
SAN DIEGO, CA 92152-5000**

AND

Agreement Administrators:

NAVOCEANSYSCEN: POC Dr. R. November (619) 553-2103

Legal Counsel Tim Dowd (619) 553-4704

Company: POC _____

Legal Counsel _____

SEE APPENDIX C FOR SAMPLE OF A TOTAL CRDA

Enclosure (1)

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT **CHECK LIST**

This list is referenced to the draft Cooperative Research and Development Agreement (CRDA).

1. Requestor will review entire CRDA, which represents the Naval Ocean Systems Center position, for comments.

2. Agreement sections to be completed by requestor.

- a. "Recitals", paragraphs G and H
- b. Section 1.9
- c. Section 2.4.1
- d. Sections 3.2
- e. Section 3.3
- f. Section 10.2.1
- g. Section 12.2
- h. Section 13.5.3
- i. Section 14.4
- j. Section 14.6
- k. Section 15.9
- l. Section 16.1
- m. Section 16.4
- n. Appendix A

3. Security.

If other than unclassified (unlimited distribution), the following items shall be provided:

- a. Copy of facility clearance and authorized storage capacity.
- b. DD 2345, if Military Critical Technology is involved.
- c. Justification if intelligence data, NATO data, restricted data, or above SECRET is involved.
- d. Provide documentation on clearances of projected involved personnel.

e. Provide address of an approved storage capacity and GAGE number.

4. DD 1540 (Registration for Scientific and Technical Information Services) (necessary for access to Defense Technical Information Center (DTIC) database)

a. Complete only Parts I and III. (Do not fill in Part I, Item 4.) Be sure to justify Part III areas. Address must be the one used on DD 1541. NOTE: Part I, Item 8, is the certification number received on validated DD 2345.

b. The DD 1540 defines the subject areas and highest security classification of data to be furnished under the CRDA. The level of clearance and subject fields of interest which are circled should be geared to the CRDA project. The DD 1540 is incorporated on the DTIC Dissemination Authority List. The list, in turn, governs access for the participant to DTIC and CRDA holdings, to counterpart Army and Air Force offices, and to data from other Research, Development, Test, and Evaluation organizations.

c. NOTE: Selection of Data Area 1504 (Part III) or any Item 10, Part I requires a written justification of "need to know." These areas will delay approval a minimum of 90 days.

DO NOT REMOVE ANY PAGES OF SNAP SET. AN ORIGINAL COMPLETED COPY WILL BE PROVIDED IN CRDA PACKAGE.

NOTE: Part II is not used. No subcontracting is permitted.

MILITARILY CRITICAL TECHNICAL DATA AGREEMENT				Form Approved OMB No. 0704-0201 Expires Dec 31, 1987	
1. TYPE OF SUBMISSION (X one)		INITIAL SUBMISSION	RESUBMISSION	REVISION	5-YEAR RENEWAL
2. INDIVIDUAL OR ENTERPRISE DATA (Referred to as a "certified contractor" upon acceptance of certification by the U.S./Canada - JCO)					
a. NAME			b. ADDRESS (Street, City, State/Province and Zip/Postal Code)		
c. NAME OF SUBSIDIARY/DIVISION					
d. FSCM/FSCNM/CAGE/DSS VENDOR CODE			e. PHONE NO.		
3. DATA CUSTODIAN					
a. NAME OR POSITION DESIGNATION (See Instructions)			b. ADDRESS (Street, City, State/Province and Zip/Postal Code)		
c. PHONE NO.					
d. TITLE					
4. DESCRIPTION OF RELEVANT BUSINESS ACTIVITY					
5. AS A CONDITION OF RECEIVING MILITARILY CRITICAL TECHNICAL DATA, THE INDIVIDUAL OR ENTERPRISE CERTIFIES THAT:					
a. (1) Citizenship/Residency Status The individual designated either by name or position designation in item 3, who will act as custodian of the militarily critical technical data on behalf of the contractor, is (X one - (a), (b), (c), or (d)) ☐ (a) a U.S. citizen ☐ (b) a Canadian citizen ☐ or a person admitted lawfully for permanent residence into ☐ (c) the United States ☐ (d) Canada (2) Business Location: Business of individual listed in item 3 is located in ☐ (X) (a) or (b)) ☐ (a) the United States ☐ (b) Canada			(2) agrees not to disseminate militarily critical technical data in a manner that would violate applicable U.S. or Canadian export control laws and regulations d. It will not provide access to militarily critical technical data to persons other than its employees, or persons acting on its behalf unless such access is permitted by U.S. DoDD 5230.25, Canada's TDCR, or by the U.S. or Canadian Government agency that provided the technical data e. No person employed by it, or acting on its behalf, who will have access to militarily critical technical data, is debarred, suspended, or otherwise ineligible to perform on U.S. or Canadian Government contracts or has violated U.S. or contravened Canadian export control laws or has had a certification revoked under the provisions of U.S. DoDD 5230.25 or Canada's TDCR f. It is not itself debarred, suspended, or otherwise ineligible to perform on U.S. or Canadian Government contracts and has not violated U.S. or contravened Canadian export control laws and has not had a certification revoked under the provisions of U.S. DoDD 5230.25 or Canada's TDCR		
6. CONTRACTOR CERTIFICATION					
I certify that the information and certifications made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (For U.S. Contractor see U.S. Code, Title 18, Section 1001 and for Canadian Contractor see Section 21 of the Defence Production Act.)					
a. TYPED NAME (Last, First, Middle Initial)		b. TITLE		c. SIGNATURE	
				d. DATE SIGNED	
7. CERTIFICATION ACTION (X one)					
a. CERTIFICATION ACCEPTED: This certification number, along with a statement of intended data use, must be included with each request for militarily critical technical data.				NUMBER	
b. RETURNED - Insufficient information:					
c. REJECTED - Does not meet eligibility requirements of DoDD 5230.25 or of Canada's TDCR					
8. DoD OFFICIAL			9. CANADIAN OFFICIAL		
a. TYPED NAME (Last, First, Middle Initial)			a. TYPED NAME (Last, First, Middle Initial)		
b. TITLE			b. TITLE		
c. SIGNATURE		d. DATE SIGNED	c. SIGNATURE		d. DATE SIGNED

DD Form 2345, APR 86

Previous editions are obsolete

INSTRUCTIONS FOR COMPLETION OF DD FORM 2345

Privacy Act Statement

AUTHORITY: For U.S. individuals and enterprises: 10 USC, Section 140c, as added by PL 98-94, Section 1217, September 24, 1983, and implemented by DoDD 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984 (32 CFR Part 250).

For Canadian individuals and enterprises: Defence Production Act

PRINCIPAL PURPOSE: To identify individuals and enterprises eligible to receive militarily critical technical data.

ROUTINE USE: To support decisions regarding dissemination or withholding of militarily critical technical data. Information provided on this form describing your business may be published from time to time for the benefit of other "certified contractors."

DISCLOSURE: Voluntary; however, failure to provide the information may result in a denial of access to militarily critical technical data.

Mail the original, completed copy of this form and any attachments to:

United States/Canada Joint Certification Office
Defense Logistics Services Center
Federal Center
Battle Creek, Michigan, USA 49017-3084

SPECIFIC INSTRUCTIONS

- | | |
|--|---|
| <p>1. Mark only one box. Mark "RESUBMISSION" only if your previous submission was returned or rejected. Mark "REVISION" (of a previously accepted submission) to show revised information, such as addresses or business description. Mark "5-YEAR RENEWAL" in response to a renewal notice from U.S./Canada-JCO. When either the "REVISION" or "5-YEAR RENEWAL" box is marked, enter your current Certification Number in Item 7 a.</p> | <p>controlling the data to determine whether the militarily critical technical data which you may request from time to time are reasonably related to your stated business activity. For example, state that you design and construct high-pressure, high-volume hydraulic pumps for use in connection with aircraft control surfaces; do not state simply "hydraulic pumps." Provide concise statements within the space provided.</p> |
| <p>2. a. For an individual, show full name (Last, First, Middle Initial). For an enterprise, show full name of corporate parent, or institution.
b. Enter the mailing address of the individual or enterprise making the certification. If a P.O. Box is used for mailing purposes, include street address as well.
c. Each corporate subsidiary or division that is to receive militarily critical technical data must be certified separately. If not applicable, so state.
d. For U.S. individual or enterprise, enter the Federal Supply Code for Manufacturers (FSCM) or Non-Manufacturers (FSCNM) or Commercial and Government Entity (CAGE) code assigned to the individual or enterprise making the certification. For a Canadian individual or enterprise enter the Department of Supply and Services Vendor Code assigned to the individual or enterprise making the certification. If none, so state. If a subsidiary or division is certified, enter the organization's code.
e. Show telephone number of the certifying official identified in Item 6. Include the area code.</p> | <p>5. If certifications 5 e. and 5 f. cannot be made, provide (on a separate sheet) a description of any extenuating circumstances that may give sufficient reason to accept your certification.</p> |
| <p>3. Show the name, address, phone number (including area code) and title of the individual who will receive militarily critical technical data and be responsible for its further dissemination. A position designation may be used only when conditions described in Item 5 a. (1) and (2) are prerequisites for holding that position.</p> | <p>6. If Item 2 identifies an individual, that individual must sign. If Item 2 identifies an institution or a corporate entity, a person who can legally obligate the enterprise to a contract must sign.</p> |
| <p>4. Describe the business activity of the entity identified in Item 2 in sufficient detail for the U.S. or Canadian Government agency</p> | <p>7. Explanation of Certification Action.
a. ACCEPTED The U.S./Canada-JCO has assigned the individual or enterprise identified in Item 2 a., a Certification Number which will identify the individual or enterprise as a "certified contractor" as defined in U.S. DoDD 5230.25 or in Canada's TDCR. The acceptance is valid for a period of five years from the acceptance date unless sooner revoked under the provisions of U.S. DoDD 5230.25 or Canada's TDCR. If at any time a certified contractor is unable to adhere to the conditions under which a certification was accepted, the contractor's certification is considered to be void, and the contractor will either submit a revised certification or surrender all militarily critical technical data obtained under this agreement to the data controlling offices specified on the documents.
b. RETURNED Your submission did not contain all information required to process your certification. Please review any comments provided with the returned submission and resubmit in accordance with the applicable instructions.
c. REJECTED Reasons for rejection include, for example, debarment, a business activity that does not fall within the scope of U.S. DoDD 5230.25 or Canada's TDCR, or failure to make all of the required certifications.</p> |

ABBREVIATIONS

"DoD" is Department of Defense
 "DoDD" is Department of Defense Directive
 "U.S./Canada-JCO" is United States/Canada Joint Certification Office
 "DSS" is Department of Supply and Services
 "TDCR" is Technical Data Control Regulations
 "Militarily Critical Technical Data" means unclassified technical data as governed by U.S. DoDD 5230.25 or Canada's TDCR

DD Form 2345 Reverse, APR 86

APPENDIX E

INVESTIGATIVE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (ICRDA)
REQUEST FORM

Submitted by: Name: _____	Technical Requestor: _____
(NAVOCEANSYSCEN Code: _____ Telephone _____	Name: _____
Contact) e-mail: _____	Code: _____ Phone: _____
Company Name: _____	Subject Title: _____
Address: _____	Abstract: _____
Contact: _____	_____
Phone: _____	_____
U.S. owned: _____ Foreign owned: _____	Supports Navy needs/requirements in: _____
Security: Desired level of clearance: _____	_____
Does Company have a facility clearance: _____	_____
Intelligence data needed/typed: _____	_____
Justifications required if intelligence or above SECRET: MCTL (ref: Oct 89 issue); state section(s) _____	Intended use: _____
_____	_____
_____	Benefits to be derived from GFI: _____
GFI: _____	_____
Software involved (define): _____	_____
_____	_____

APPENDIX F

3912
Ser 0144/

Gentlemen:

We are pleased that you are interested in establishing an Investigative Cooperative Research and Development Agreement (ICRDA) with the Naval Ocean Systems Center. In order to initiate an ICRDA we request that you complete a proposal prepared according to the enclosed format (enclosure (1)). Enclosures (2) through (4) are keyed to enclosure (1).

Upon receipt of the information we requested, Naval Ocean Systems Center will compile a draft ICRDA and forward it to you for your company's legal and technical review. After receipt of your reply, a negotiation session shall be held to resolve any issues with the agreement. The final agreement will then be forwarded to the Department of the Navy for approval. The total ICRDA process is defined on the attached ICRDA Check Sheet and is estimated to take 3 to 5 months. If you have any questions, please direct them to Dr. Richard November at (619) 553-2103.

Forward your response to:

Naval Ocean Systems Center
Deputy Program Director for Industry R&D Liaison
Dr. R. November, Code 0144
San Diego, CA 92152-5000

Sincerely,

R. NOVEMBER
Deputy Program Director for
Industry R&D Liaison
By direction of the Commander

Encl:

- (1) ICRDA Request Form
- (2) ICRDA Check List
- (3) DD Form 1540
- (4) DD 2345

INVESTIGATIVE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (ICRDA)
REQUEST FORM

Submitted by:	Name:	Technical Requestor:
(NAVOCEANSYSCEN	Code:	Name:
Contact)	e-mail:	Code:
		Phone:
Company Name:		Subject Title:
Address:		Abstract:
Contact:		
Phone:		
U.S. owned:	Foreign owned:	Supports Navy needs/requirements in:
Security: Desired level of clearance:		
Does Company have a facility clearance:		
Intelligence data needed/typed:		
Justifications required if intelligence or above SECRET:		
MCTL (ref: Oct 89 issue); state section(s)		Intended use:
GFI:		Benefits to be derived from GFI:
Software involved (define):		

INVESTIGATIVE COOPERATIVE RESEARCH AND DEVELOPMENT

AGREEMENT CHECK LIST

1. Security

If other than unclassified (unlimited distribution), the following items shall be provided:

- a. Copy of facility clearance (DD 1541) and provide documentation on authorized storage capacity.
- b. DD 2345, if Military Critical Technology is involved.
- c. Justification if intelligence data, NATO data, restricted data, or above SECRET is involved.
- d. Provide documentation on clearances of projected involved personnel.

2. DD 1540 (Registration for Scientific and Technical Information Services) (necessary for access to Defense Technical Information Center (DTIC) database).

a. Complete only Parts I and III. (Do not fill in Part I, Item 4.) Be sure to justify Part III areas. Address must be the one used on DD 1541. NOTE: Part I, Item 8, is the certification number received on validated DD 2345.

b. The DD 1540 defines the subject areas and highest security classification of data to be furnished under the CRDA. The level of clearance and subject fields of interest which are circled should be geared to the CRDA project. The DD 1540 is incorporated on the DTIC Dissemination Authority List. The list, in turn, governs access for the participant to DTIC and CRDA holdings, to counterpart Army and Air Force offices, and to data from other Research, Development, Test, and Evaluation organizations.

c. NOTE: Selection of Data Area 1504 (Part III) or any Item 10, Part I requires a written justification of "need to know." These areas will delay approval a minimum of 90 days.

DO NOT REMOVE ANY PAGES OF SNAP SET. AN ORIGINAL COMPLETED COPY WILL BE PROVIDED IN CRDA PACKAGE.

NOTE: Part II is not used. No subcontracting is permitted.

3. Complete the appropriate sections (marked "••") on the following pages.

INTRODUCTION

This is an Investigative Cooperative Research and Development Agreement (ICRDA), dated as of this _____ day of _____, 19____, entered into pursuant to the provisions of the Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986) and implemented by Executive Order 12591 (10 April 1987). The Parties to this Agreement are the United States Government (hereafter referred to as "Government"), as represented by the Naval Ocean Systems Center (hereafter referred to as either "NOSC" or "NAVOCEANSYSCEN"), a laboratory of the Department of the Navy and _____ (hereafter referred to as "Company").

OBJECTIVE

- * The objective of this ICRDA is to facilitate information access and exchanges, including software, effort between NAVOCEANSYSCEN and _____ to _____
- _____
- _____
- _____

RECITALS

A. WHEREAS, in enacting the Federal Technology Transfer Act of 1986 (Act), the United States Congress has found that Federal laboratories' developments should be made accessible to private industry and State and local Governments, and has declared that one of the purposes of that Act is to improve the economic, environmental, and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;

B. WHEREAS, the Act, among other technology transfer improvements, has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into CRDAs with non-Federal entities including private firms and organizations for the purpose of providing to such entities personnel, services, property, facilities, equipment or other resources, except funds, and/or obtaining from such entities personnel, services, property, facilities, equipment or other resources, including funds, toward the conduct of specified research and development efforts. An ICRDA excludes the exchange of, or access to equipment, services, facilities, or funds, or other resources by either party.

C. WHEREAS, the Navy/Government possesses certain advanced scientific skills, facilities, special equipment, information, computer software, and/or know-how pertaining to the Technology;

- * D. WHEREAS, Company desires to support NAVOCEANSYSCEN's further development of the Technology by defining needs and/or requirements for _____
- _____

Now, therefore, in consideration of the mutual promises contained in the Agreement and for other good and valuable consideration, THE PARTIES AGREE TO THE FOREGOING OBJECTIVES AND RECITALS AND FURTHER AGREE AS FOLLOWS:

Article 1. Definitions

As used in this Agreement, the following terms shall have the following meanings and are equally applicable to both singular and plural forms of the terms defined;

- 1.1 **"Agreement"** means this Investigative Cooperative Research and Development Agreement (ICRDA).
- 1.2 **"Computer Software"** means computer programs and computer data base.
- 1.3 **"Computer Software Documentation"** means Data including computer listings and printouts in human readable forms which (i) documents the design or details of Computer Software, (ii) explains the capabilities of the software, (iii) provides operating instructions for using the software.
- 1.4 **"Critical Technology"** (also referred to as Militarily Critical Technology (MCT) means technology that is characterized as MCT in the Militarily Critical Technology List (issue of October 1989, Office of the Under Secretary of Defense for Acquisition).
- 1.5 **"Data"** means all oral and recorded information including Proprietary Information of any kind or nature, including, but not limited to, technical data, Computer Software, and Computer Software Documentation and source code listings.
- 1.6 **"Government Purpose License Rights (GPLR)"** means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purpose only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use Data for commercial purposes.
- 1.7 **"Invention"** means any invention or discovery which is or may be patentable under any Federal law of the United States or under any law of any other country.
- 1.8 **"Made,"** when used in relation to any Invention, means the conception or first actual reduction to practice of such Invention.
- 1.9 **"Need"** as set forth by Office of Management and Budget Circular A-109 means a deficiency in existing capabilities or an opportunity to establish new capabilities. For example, a Mission-Need Statement (MNS).
- 1.10 **"Requirement"** means a specific "Need" for resolution. For example, an Operational Requirement (OR) document.
- 1.11 **"Planning Information"** means documentation developed to support the Planning, Programming, and Budgeting System (PPBS).
- 1.12 **"Parties"** means Company and NOSC.

1.13 **"Proprietary Information"** means information including which embodies trade secrets developed at private expense or which is confidential business or financial information, 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 had no access to the Proprietary Information.

1.14 **"Patent Application"** means any U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Subject Invention.

1.15 **"Subject Data"** means all Data produced by Company in the performance of this Agreement, whether developed using Navy/Government scientific, technical, and planning information or otherwise, including any previously developed Company Proprietary Information forming a part of such Data.

1.16 **"Subject Invention"** means any Invention Made in the performance of this Agreement.

1.17 **"Unlimited Rights"** means rights to use, duplicate, release, or disclose, in whole or in part, in any manner, and for any purpose whatsoever, and to have or permit others to do so.

Article 2. Agreement Description

* 2.1 Background

* 2.1 Technical Problem

* 2.1.2 Company Capability

* 2.1.3 Threat(s)/Need(s)/Requirement(S) Supported

2.2 Statement of Work

* 2.2.1 Objective(s)

- * 2.2.2 Approach(es)

- 2.2.2.1 Work Schedule

- 2.2.2.1.1 Naval Ocean Systems Center

- * 2.2.2.1.2 Company

- * 2.3 Company Product

- * 2.3.1 Benefits Derived from GFI and Results

- * 2.3.2 Intended Use of GFI and Results

- * 2.4 Government Furnished Information (GFI)

Receipt of Government documents in no way obligates an organization to furnish reports, articles, services, or proposals to the Navy other than as prescribed in Agreement, nor does it constitute a basis for claim against the Government. Specific scientific, technical, and planning information to be provided is:

- * 2.5. Consultation

As agreed herein, NOSC personnel and the Company personnel shall

- 2.5.1 Naval Ocean Systems Center

NAVOCEANSYSCEN shall

- * 2.5.2 Company

Company shall

* 2.6 Defense Technical Information Center Access

Unclassified, non-critical technology access shall be arranged using Department of Defense Form 1540, Oct. 86. See Appendix A, Department of Defense Form 1540.

SUBJECT FIELD AND GROUP STRUCTURE									
12 MATHEMATICAL AND COMPUTER SCIENCES (Continued)									
07 AVIATION TECHNOLOGY	01 Aerodynamics	07 CHEMISTRY	01 Industrial Chemistry and Chemical Processing	12 MECHANICAL, INDUSTRIAL, CIVIL AND MARINE ENGINEERING	16 GUIDED MISSILE TECHNOLOGY (Continued)	20 PHYSICS	21 PROPULSION, ENGINES AND FUELS	22 SPACE TECHNOLOGY	23 BIOTECHNOLOGY
	02 Military Aircraft Operations		02 Organic Chemistry						
03 Aircraft Reliability	03 Organic Chemistry	08 EARTH SCIENCES AND OCEANOGRAPHY	03 Physical and Dynamic Oceanography	01 Air Conditioning, Heating, Light and Ventilation	04 01 Air- and Space-Launched Guided Missiles	01 Acoustics	01 Air Breathing Engines (Unconventional)	01 Astronautics	01 Biomedical Instrumentation and Biotechnology
04 Bombers	04 Physical Chemistry		04 Geodesy	02 Civil Engineering	04 02 Undersea-Launched Guided Missiles	02 Crystallography	02 Combustion and Ignition	02 Unmanned Spacecraft	02 Biotechnology
05 Air and Space Vehicle Aircraft	05 Radiation and Nuclear Chemistry	05 Geology	05 Geophysics	03 Construction Equipment, Materials and Supplies	04 03 Undersea-Launched Guided Missiles	03 Fluid Mechanics	03 Electric and Ion Propulsion	03 Spacecraft Trajectories and Reentry	03 Human Factors, Engineering and Man-Machine Systems
06 Air and Space Vehicle Aircraft	06 Polymer Chemistry	06 Geochemistry and Mineralogy	06 Geochemistry and Mineralogy	04 Couplers, Fasteners, Joints, Equipment	05 Guided Missile Reentry Vehicles	04 Atomic and Molecular Physics and Spectroscopy	04 Fuels	04 Ground Support Systems and Facilities	04 Machine Systems
07 Training Aircraft		07 Petrology, Limnology, and Potamology	07 Petrology, Limnology, and Potamology	05 Surface Effect Vehicles and Amphibious Vehicles		05 Optics	05 Rocket Engines	05 Manned Spacecraft	05 Blanks
08 Guided and Parajumpers		08 Mining Engineering	08 Mining Engineering	06 Surface Effect Vehicles and Amphibious Vehicles		06 Particle Accelerators	06 Reciprocating and Rotating Engines		06 Protective Equipment
09 Guided and Parajumpers		09 Soil Mechanics	09 Soil Mechanics	07 Marine Engineering		07 Plasma Physics and Magnetohydrodynamics	07 Reciprocating and Rotating Engines		07 Life Support Systems
10 Lighter-than-Air Aircraft		10 Snow, Ice and Permafrost	10 Snow, Ice and Permafrost	08 Marine Engineering		08 Quantum Theory and Relativity	08 Rocket Engines		08 Escape, Rescue and Survival
11 Research and Experimental				09 Marine Engineering		09 Thermodynamics	09 Rocket Propellants		
12 Flight Control and Instrumentation				10 Marine Engineering		10 Electromagnetic Waves Propagation	10 Liquid Rocket Propellants		
13 Terminal Flight Facilities				11 Marine Engineering		11 Electromagnetic Waves Propagation	11 Solid Rocket Propellants		
14 Commercial and General Aviation				12 Marine Engineering					
08 AGRICULTURE									
01 Agricultural Chemistry									
02 Agricultural Economics									
03 Agricultural Engineering									
04 Agronomy, Horticulture and Aquaculture									
05 Veterinary Medicine									
06 Forestry									
03 ASTRONOMY AND ASTROPHYSICS									
01 Astronomy									
02 Astrophysics									
03 Celestial Mechanics									
04 ATMOSPHERIC SCIENCES									
01 Atmospheric Physics									
02 Meteorology									
03 BEHAVIORAL AND SOCIAL SCIENCES									
01 Administration and Management									
02 Information Science									
03 Economics and Cost Analysis									
04 Government and Political Science									
05 Geography and Cartography									
06 History and Philosophy									
07 Linguistics									
08 Psychology									
09 Personnel Management and Labor Relations									
06 BIOLOGICAL AND MEDICAL SCIENCES									
01 Biochemistry									
02 Bioengineering and Biotechnology									
03 Botany									
04 Anatomy and Physiology									
05 Medicine and Medical Research									
06 Microbiology									
07 Food, Food Service and Nutrition									
08 Hygiene and Sanitation									
09 Stress Physiology									
10 Toxicology									
11 Medical Facilities, Equipment and Supplies									
12 Veterinary Medicine									
13 Weapons Effects (Biological)									
14 Pharmacology									
15 Immunology									

DD Form 1540 Reverse, OCT 86

MILITARILY CRITICAL TECHNICAL DATA AGREEMENT (Please read Privacy Act Statement and Instructions on reverse before completion.)				Form Approved OMB No. 0704-0207 Expires Dec 31, 1987	
1. TYPE OF SUBMISSION (X one)		INITIAL SUBMISSION	RESUBMISSION	REVISION	5-YEAR RENEWAL
2. INDIVIDUAL OR ENTERPRISE DATA (Referred to as a "certified contractor" upon acceptance of certification by the U.S. / Canada - JCO)					
a. NAME			b. ADDRESS (Street, City, State/Province and Zip/Postal Code)		
c. NAME OF SUBSIDIARY / DIVISION					
d. FSCM / FSCNM / CAGE / DSS VENDOR CODE			e. PHONE NO.		
3. DATA CUSTODIAN					
a. NAME OR POSITION DESIGNATION (See Instructions)			b. ADDRESS (Street, City, State/Province and Zip/Postal Code)		
c. PHONE NO.					
d. TITLE					
4. DESCRIPTION OF RELEVANT BUSINESS ACTIVITY					
5. AS A CONDITION OF RECEIVING MILITARILY CRITICAL TECHNICAL DATA, THE INDIVIDUAL OR ENTERPRISE CERTIFIES THAT:					
a. (1) Citizenship / Residency Status The individual designated either by name or position designation in Item 3, who will act as custodian of the militarily critical technical data on behalf of the contractor, is: (X one - (a), (b), (c), or (d))			(2) agrees not to disseminate militarily critical technical data in a manner that would violate applicable U.S. or Canadian export control laws and regulations		
(a) a U.S. citizen			(b) a Canadian citizen		
or a person admitted lawfully for permanent residence into			d. It will not provide access to militarily critical technical data to persons other than its employees, or persons acting on its behalf unless such access is permitted by U.S. DoDD 5230.25, Canada's TDCR or by the U.S. or Canadian Government agency that provided the technical data		
(c) the United States			(d) Canada		
f. Business Location: Business of individual listed in item 3 is located in			e. No person employed by it, or acting on its behalf, who will have access to militarily critical technical data, is debarred, suspended, or otherwise ineligible to perform on U.S. or Canadian Government contracts or has violated U.S. or contravened Canadian export control laws or has had a certification revoked under the provisions of U.S. DoDD 5230.25 or Canada's TDCR		
(X (a) or (b)) (a) the United States (b) Canada					
b. The data are needed to bid or perform on a contract with any agency of the U.S. Government or the Canadian Government or for other legitimate business activities in which the contractor is engaged, or plans to engage					
c. It (1) acknowledges all responsibilities under applicable U.S. export control laws and regulations (including the obligation, under certain circumstances, to obtain an export license from the U.S. Government prior to the release of militarily critical technical data within the United States) or applicable Canadian export control laws and regulations, and			f. It is not itself debarred, suspended, or otherwise ineligible to perform on U.S. or Canadian Government contracts, and has not violated U.S. or contravened Canadian export control laws, and has not had a certification revoked under the provisions of U.S. DoDD 5230.25 or Canada's TDCR		
6. CONTRACTOR CERTIFICATION					
I certify that the information and certifications made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (For U.S. Contractor see U.S. Code, Title 18, Section 1001 and for Canadian Contractor see Section 21 of the Defence Production Act.)					
a. TYPED NAME (Last, First, Middle Initial)		b. TITLE		c. SIGNATURE	
				d. DATE SIGNED	
7. CERTIFICATION ACTION (X one)					
a. CERTIFICATION ACCEPTED: This certification number, along with a statement of intended data use, must be included with each request for militarily critical technical data.				NUMBER	
b. RETURNED - Insufficient information					
c. REJECTED - Does not meet eligibility requirements of DoDD 5230.25 or of Canada's TDCR					
8. DoD OFFICIAL			9. CANADIAN OFFICIAL		
a. TYPED NAME (Last, First, Middle Initial)			a. TYPED NAME (Last, First, Middle Initial)		
b. TITLE			b. TITLE		
c. SIGNATURE		d. DATE SIGNED	c. SIGNATURE		d. DATE SIGNED

DD Form 2345, APR 86

Previous editions are obsolete.

INSTRUCTIONS FOR COMPLETION OF DD FORM 2345

Privacy Act Statement

AUTHORITY: For U.S. individuals and enterprises: 10 USC, Section 140c, as added by PL 98-94, Section 1217, September 24, 1983, and implemented by DoDD 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984 (32 CFR Part 250).

For Canadian individuals and enterprises: Defence Production Act.

PRINCIPAL PURPOSE: To identify individuals and enterprises eligible to receive militarily critical technical data.

ROUTINE USE: To support decisions regarding dissemination or withholding of militarily critical technical data. Information provided on this form describing your business may be published from time to time for the benefit of other "certified contractors."

DISCLOSURE: Voluntary; however, failure to provide the information may result in a denial of access to militarily critical technical data.

Mail the original, completed copy of this form and any attachments to:

United States/Canada Joint Certification Office
Defense Logistics Services Center
Federal Center
Battle Creek, Michigan, USA 49017-3084

SPECIFIC INSTRUCTIONS

- | | |
|--|---|
| <p>1. Mark only one box. Mark "RESUBMISSION" only if your previous submission was returned or rejected. Mark "REVISION" (of a previously accepted submission) to show revised information, such as addresses or business description. Mark "5-YEAR RENEWAL" in response to a renewal notice from U.S./Canada-JCO. When either the "REVISION" or "5-YEAR RENEWAL" box is marked, enter your current Certification Number in Item 7 a.</p> | <p>controlling the data to determine whether the militarily critical technical data which you may request from time to time are reasonably related to your stated business activity. For example, state that you design and construct high-pressure, high-volume hydraulic pumps for use in connection with aircraft control surfaces; do not state simply "hydraulic pumps." Provide concise statements within the space provided.</p> |
| <p>2. a. For an individual, show full name (Last, First, Middle Initial). For an enterprise, show full name of corporate parent, or institution.

b. Enter the mailing address of the individual or enterprise making the certification. If a P.O. Box is used for mailing purposes, include street address as well.

c. Each corporate subsidiary or division that is to receive militarily critical technical data must be certified separately. If not applicable, so state.

d. For U.S. individual or enterprise, enter the Federal Supply Code for Manufacturers (FSCM) or Non-Manufacturers (FSCNM) or Commercial and Government Entity (CAGE) code assigned to the individual or enterprise making the certification. For a Canadian individual or enterprise enter the Department of Supply and Services Vendor Code assigned to the individual or enterprise making the certification. If none, so state. If a subsidiary or division is certified, enter the organization's code.

e. Show telephone number of the certifying official identified in Item 6. Include the area code.</p> | <p>5. If certifications 5.e. and 5.f. cannot be made, provide (on a separate sheet) a description of any extenuating circumstances that may give sufficient reason to accept your certification.</p> <p>6. If Item 2. identifies an individual, that individual must sign. If Item 2. identifies an institution or a corporate entity, a person who can legally obligate the enterprise to a contract must sign.</p> |
| <p>3. Show the name, address, phone number (including area code) and title of the individual who will receive militarily critical technical data and be responsible for its further dissemination. A position designation may be used only when conditions described in Item 5.a. (1) and (2) are prerequisites for holding that position.</p> | <p>7. Explanation of Certification Action</p> <p>a. ACCEPTED The U.S./Canada-JCO has assigned the individual or enterprise identified in Item 2 a., a Certification Number which will identify the individual or enterprise as a "certified contractor" as defined in U.S. DoDD 5230.25 or in Canada's TDCR. The acceptance is valid for a period of five years from the acceptance date unless sooner revoked under the provisions of U.S. DoDD 5230.25 or Canada's TDCR. If at any time a certified contractor is unable to adhere to the conditions under which a certification was accepted, the contractor's certification is considered to be void, and the contractor will either submit a revised certification or surrender all militarily critical technical data obtained under this agreement to the data controlling offices specified on the documents.</p> <p>b. RETURNED Your submission did not contain all information required to process your certification. Please review any comments provided with the returned submission and resubmit in accordance with the applicable instructions.</p> <p>c. REJECTED Reasons for rejection include: for example, debarment, a business activity that does not fall within the scope of U.S. DoDD 5230.25 or Canada's TDCR, or failure to make all of the required certifications.</p> |
| <p>4. Describe the business activity of the entity identified in Item 2 in sufficient detail for the U.S. or Canadian Government agency</p> | |

ABBREVIATIONS

"DoD" is Department of Defense
 "DoDD" is Department of Defense Directive
 "U.S./Canada-JCO" is United States/Canada Joint Certification Office
 "DSS" is Department of Supply and Services
 "TDCR" is Technical Data Control Regulations
 "Militarily Critical Technical Data" means unclassified technical data as governed by U.S. DoDD 5230.25 or Canada's TDCR

DD Form 2345 Reverse, APR 86

APPENDIX G

DRAFT
(11-5-90) rev. 2

NAVAL OCEAN SYSTEMS CENTER

INVESTIGATIVE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

(NCRDA- -NOSC- -I)

FOR

BETWEEN

NAVAL OCEAN SYSTEMS CENTER
SAN DIEGO, CA 92152-5000

AND

Agreement Administrators:
NAVOCEANSYSCEN: POC Dr. R. November (619) 553-2103
Legal Counsel Tim Dowd (619) 553-4704
Company: POC _____
Legal Counsel _____

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Appendix A - DD Form 1540

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Appendix C - DD Form 254 (DoD Contract Security Classification Specification)

INTRODUCTION

This is an Investigative Cooperative Research and Development Agreement (ICRDA), dated as of this _____ day of _____, 19____, entered into pursuant to the provisions of the Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986) and implemented by Executive Order 12591 (10 April 1987). The Parties to this Agreement are the United States Government (hereafter referred to as "**Government**"), as represented by the Naval Ocean Systems Center (hereafter referred to as either "**NOSC**" or "**NAVOCEANSYSCEN**"), a laboratory of the Department of the Navy and _____ (hereafter referred to as "**Company**").

OBJECTIVE

The objective of this ICRDA is to facilitate information access and exchanges, including software, effort between NAVOCEANSYSCEN and _____ to _____

RECITALS

A. **WHEREAS**, in enacting the Federal Technology Transfer Act of 1986 (Act), the United States Congress has found that Federal laboratories' developments should be made accessible to private industry and State and local Governments, and has declared that one of the purposes of that Act is to improve the economic, environmental, and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;

B. **WHEREAS**, the Act, among other technology transfer improvements, has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into CRDAs with non-Federal entities including private firms and organizations for the purpose of providing to such entities personnel, services, property, facilities, equipment or other resources, except funds, and/or obtaining from such entities personnel, services, property, facilities, equipment or other resources, including funds, toward the conduct of specified research and development efforts. An ICRDA excludes the exchange of, or access to equipment, services, facilities, or funds, or other resources by either party.

C. **WHEREAS**, the Navy/Government possesses certain advanced scientific skills, facilities, special equipment, information, computer software, and/or know-how pertaining to the Technology;

D. **WHEREAS**, Company desires to support NAVOCEANSYSCEN's further development of the Technology by defining needs and/or requirements for _____

Now, therefore, in consideration of the mutual promises contained in the Agreement and for other good and valuable consideration, THE PARTIES AGREE TO THE FOREGOING OBJECTIVES AND RECITALS AND FURTHER AGREE AS FOLLOWS:

Article 1. Definitions

As used in this Agreement, the following terms shall have the following meanings and are equally applicable to both singular and plural forms of the terms defined;

- 1.1 **"Agreement"** means this Investigative Cooperative Research and Development Agreement (ICRDA).
- 1.2 **"Computer Software"** means computer programs and computer data base.
- 1.3 **"Computer Software Documentation"** means Data including computer listings and printouts in human readable forms which (i) documents the design or details of Computer Software, (ii) explains the capabilities of the software, (iii) provides operating instructions for using the software.
- 1.4 **"Critical Technology"** (also referred to as Militarily Critical Technology (MCT) means technology that is characterized as MCT in the Militarily Critical Technology List (issue of October 1989, Office of the Under Secretary of Defense for Acquisition).
- 1.5 **"Data"** means all oral and recorded information including Proprietary Information of any kind or nature, including, but not limited to, technical data, Computer Software, and Computer Software Documentation and source code listings.
- 1.6 **"Government Purpose License Rights (GPLR)"** means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purpose only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use Data for commercial purposes.
- 1.7 **"Invention"** means any invention or discovery which is or may be patentable under any Federal law of the United States.
- 1.8 **"Made,"** when used in relation to any Invention, means the conception or first actual reduction to practice of such Invention.
- 1.9 **"Need"** as set forth by Office of Management and Budget Circular A-109 means a deficiency in existing capabilities or an opportunity to establish new capabilities. For example, a Mission-Need Statement (MNS).
- 1.10 **"Requirement"** means a specific "Need" for resolution. For example, an Operational Requirement (OR) document.
- 1.11 **"Planning Information"** means documentation developed to support the Planning, Programming, and Budgeting System (PPBS).
- 1.12 **"Parties"** means Company and NOSC.

1.13 **"Proprietary Information"** means information including which embodies trade secrets developed at private expense or which is confidential business or financial information, 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 had no access to the Proprietary Information.

1.14 **"Patent Application"** means any U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Subject Invention.

1.15 **"Subject Data"** means all Data produced by Company in the performance of this Agreement, whether developed using Navy/Government scientific, technical, and planning information or otherwise, including any previously developed Company Proprietary Information forming a part of such Data.

1.16 **"Subject Invention"** means any Invention Made in the performance of this Agreement.

1.17 **"Unlimited Rights"** means rights to use, duplicate, release, or disclose, in whole or in part, in any manner, and for any purpose whatsoever, and to have or permit others to do so.

Article 2. Agreement Description

2.1 Background

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2.3.1 Benefits Derived from GFI and Results

2.3.2 Intended Use of GFI and Results

2.4 Government Furnished Information (GFI)

Receipt of Government documents in no way obligates an organization to furnish reports, articles, services, or proposals to the Navy other than as prescribed in Agreement, nor does it constitute a basis for claim against the Government. Specific scientific, technical, and planning information to be provided is:

2.5 Consultation

As agreed herein, NOSC personnel and the Company personnel shall

2.5.1 Naval Ocean Systems Center

NAVOCEANSYSCEN shall

2.5.2 Company

Company shall

2.6 Defense Technical Information Center Access

Unclassified, non-critical technology access shall be arranged using Department of Defense Form 1540, Oct. 86. See Appendix A, Department of Defense Form 1540.

2.7 Review of Work

Periodic conferences shall be held between NAVOCEANSYSCEN and Company personnel for the purpose of reviewing the progress of work under this Agreement.

2.8 Standard of Work

It is understood that the nature of the investigation performed under this Agreement is such that completion within the period of performance specified cannot be guaranteed by either Party. Accordingly, it is agreed that all efforts performed under this Agreement is to be performed on a best-effort basis.

2.9 Period of Performance

It is mutually recognized that the effort cannot be rigidly defined in advance, and that the contemplated time periods for completion of each phase are good faith guidelines, subject to adjustment by mutual agreement, to fit circumstances as the Agreement proceeds. In no case will this Agreement extend beyond _ years from the effective date of this Agreement, unless it is revised by mutual agreement between the Parties.

The period of performance of this Agreement shall be from the effective date unless otherwise mutually agreed to between the parties.

Article 3. 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.

Article 4. Effective Date

This Agreement shall be binding on any Party only when signed by all Parties and shall be effective on the date this Agreement is signed by the last of the parties to sign it.

Article 5. Governing Laws

The Parties agree that United States Federal Law shall govern this Agreement for all purposes, including, but not limited to, determining the validity of this Agreement, the meaning of its provisions, and the rights, obligations, and remedies of the Parties.

Article 6. Termination

6.1 Survival of Provisions

Unless otherwise mutually agreed in writing, all provisions of this Agreement, except for Article 2, shall survive its termination.

6.2 Mutual Consent

Company and Government may elect to terminate this Agreement at any time by mutual consent in writing. In such event the Parties shall specify the disposition of any GFI and Data not otherwise provided for in this Agreement and any other provisions of this Agreement that shall not survive its termination.

6.3 Unilateral Action

Either Party may unilaterally terminate this Agreement at any time by giving the other Party written notice, not less than thirty (30) days prior to the termination specified in the aforesaid notice.

6.4 Covenant Against Gratuities

NOSC may, by written notice to Company, terminate this CRDA if it is found, after notice and hearing, by the Secretary of Defense, or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Company or any agent or representative of Company to any officer or employee of NOSC with a view toward securing a contract or an agreement, or the making of and determination with respect to the performing of such contract or agreement, provided that the existence of the facts upon which the Secretary of Defense, or his duly authorized representative, makes such finding shall be in issue and may be reviewed in any competent United States Court.

6.5 Covenant Against Contingent Fees

Company warrants that no person or agency has been employed or retained to solicit or secure this ICRDA upon agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Company for securing business. For breach or violation of this warranty, NOSC shall have the right to annul the ICRDA without liability, or, in its discretion, to add to the ICRDA consideration of, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 7. Dispute Resolution.

Before NAVOCEANSYSCEN or Company may bring suit in any court concerning an issue relating to this CRDA, such participant must: (1) submit the issue to the Chief of Naval Research or his designee for resolution, and if the issue remains unresolved, then (2) seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the participants.

Article 8. Assignment/Subcontracting

This Agreement shall not be assigned or otherwise transferred to another party nor may Company subcontract for any of this Agreement. Should Company become foreign-owned, foreign-controlled, or foreign-influenced, then Company shall immediately notify NOSC of this situation. NOSC shall in turn promptly notify ONT Code 26, who will then determine whether any action is appropriate, depending on the specific circumstances. For the purpose of this Article, a foreign entity is defined to be one in which either the majority ownership interest or effective control is held by persons who are not citizens of the United States of America.

Article 9. Representations and Warranties

9.1 Naval Ocean Systems Center Representations and Warranties

NAVOCEANSYSCEN hereby represents and warrants as follows:

9.1.1 Organization

NAVOCEANSYSCEN, San Diego, California, is a Federal laboratory of the Department of the Navy. It is wholly owned by the Government of the United States, and the purpose of NAVOCEANSYSCEN is the performance of research, development, or engineering by employees of the Government.

9.1.2 Mission

The performance of the activities specified by this Agreement are consistent with the mission of NAVOCEANSYSCEN.

9.1.3 Statutory Compliance

Prior to entering into this Agreement, NAVOCEANSYSCEN has given special consideration to small business firms and consortia involving small business firms.

9.1.4 No Warranty

Except as otherwise provided in this Agreement, NOSC makes no express or implied warranty as to any matter whatsoever, including the conditions of research or any invention or product, whether tangible or intangible made or developed under this Agreement, or the ownership, **MERCHANTABILITY**, or **FITNESS FOR A PARTICULAR PURPOSE** of the research or any invention or product.

9.2 Company Representations and Warranties of Company

Company hereby represents and warrants as follows.

9.2.1 Organization

As of the effective date of this Agreement, Company is a duly organized, _____
validly existing and in good standing under the laws of the state
of _____.

9.2.2 Power and Authority

Company has the requisite power and authority to enter into this Agreement and to perform according to the terms of this Agreement. Company has taken all actions required to be taken by law, to authorize the execution and delivery of this Agreement. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default, under any agreement binding on Company or any valid order of any court or any regulatory agency or other body having authority to which Company is subject.

9.2.3 Certification of Signatory

Each person signing this Agreement on behalf of Company, certifies by signing this Agreement that he is a duly authorized representative of Company authorized, empowered and entitled to sign for and in behalf of Company and to bind Company to the provisions of this Agreement and Company hereby warrants and certifies that all persons signing this Agreement on its behalf are authorized to do so and to bind Company hereto.

Article 10. Miscellaneous

10.1 Severability

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

10.2 Notices

All notices pertaining to or required by this Agreement shall be in writing and shall be signed by an authorized representative and delivered by hand or sent by first class mail, with postage prepaid, addressed as follows:

If to Company:

If to NAVOCEANSYSCEN: Commander
Naval Ocean Systems Center
Code _____
San Diego, CA 92152-5000

Any Party may change such address by notice given to the other Party in the manner set forth above.

10.3 Headings

Title 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.

10.4 No Benefits

No member of, or delegate to, the United States Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. No contractual obligation or commitment to a future contract is assumed or implied on the part of the Government in furnishing documents and information under an ICRDA.

10.5 Independent Contractors/Entities

The relationship of the Parties to this Agreement is that of independent contractors/entities and not as agents of each other or as joint venturers or partners. NOSC shall maintain sole and exclusive control over its personnel and operations. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall be construed to (i) grant either Party any right to control the other with respect to the conduct of its business; (ii) make any employee, agent or contractor of one Party an employee, agent or contractor of the other; (iii) make either Party a partner, joint venturer, agent or representative of the other; (iv) grant either Party any right or authority to assume or create any obligation on behalf or in the name of the other; provided, however, that any fees/costs payable by Company to NOSC under this Agreement may be obligated by NOSC to Company; (v) accept legal process or legal summons for the other; or (vi) bind the other in any manner whatsoever other than as provided for in this Agreement.

10.6 Waivers

None of the provisions of this Agreement shall be considered waived by any Party hereto unless such waiver is given in writing to all other Parties. 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 rights provided herein or by law, shall not be deemed a waiver of any rights of any Party hereto.

10.7 Amendments

If either Party desires a modification in this Agreement, the Parties shall, upon reasonable notice of the proposed modification by the Party desiring change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the Parties hereto.

Article 11. Liabilities

11.1 Indemnification by Company

Company 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 Company or other entity acting on behalf of or under the authorization of Company to this Agreement, and for all liabilities, claims, demands, damages, expenses, and losses of any kind arising out of the manufacture, use, sale or other disposition by Company or other entity acting on behalf of or under the authorization of Company of any machines, articles of manufacture, products, processes, compositions of matter, Data or developments of any kind made under or used in the performance of this Agreement.

11.2 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 performance 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.

11.3 Limits of Liability

Notwithstanding any and all other provisions of this Agreement, Government shall not be liable to Company for any loss of revenue, profits, or other indirect or consequential damages.

11.4 Allocation of Certain Risks

11.4.1 General

Certain liabilities arising out of this Agreement shall be allocated between Company and Government as provided for in sections 13.5.2 and 13.5.3 below.

11.4.2 Liabilities Assumed by Naval Ocean Systems Center

NAVOCEANSYSCEN assumes no express liability for the performance of this agreement.

11.4.3 Liabilities Assumed by Company

Article 12. Data and Publications

12.1 Pre-Publication Review

NAVOCEANSYSCEN and Company agree to confer, consult, and concur prior to the publications, presentation, or release outside of Government or Company of Subject Data, to assure that no information is released which might jeopardize patent rights, Proprietary Information, MCT, or classified data. Each Party shall be offered an ample opportunity by the other to review such Subject Data and to file patent applications in a timely manner, if it is so entitled under this Agreement.

12.2 Classified, Militarily Critical Technology (MCT) Information

All publications and presentations by Company of Subject Data must be reviewed/cleared prior to presentation or publication by cognizant NAVOCEANSYSCEN authority for classification, MCT, or otherwise restricted data marking. MCT shall conform to Appendix B. Appendix C shall control classified data.

12.3 Subject and Other Data Rights

Data generated by NOSC shall be the property of the U.S. Government. Subject Data shall be the property of Company. Company shall deliver Subject Data within two (2) weeks from the request for same by Government. Except as otherwise provided in this Agreement, Company grants to Government and Government shall have Government Purpose License Rights (GPLR) in any and all Subject Data for five (5) years from the effective date of this Agreement or until Subject Data no longer meets the definition of Proprietary Information (Section 1.13); thereafter, GPLR shall expire and Government shall have Unlimited Rights in Subject Data. Company shall be obligated to deliver to Government all Subject Data prior to completion of performance under this Agreement. NOSC grants to Company Unlimited Rights in all NOSC originated Data provided by NOSC to Company in the performance of this Agreement.

12.4 Proprietary Information Legends

Company shall place the following proprietary legend on all Subject Data that is Proprietary Information:

"This Data is proprietary to Company. The United States Government has Government Purpose License Rights in this Data until _____; (insert date that is five (5) years from effective date) thereafter, the Government Purpose License Rights shall expire and the Government shall have unlimited rights in this Data."

NAVOCEANSYSCEN agrees to use its best efforts to protect properly legended Proprietary Information from unauthorized disclosure.

12.5 Company Reports

Company shall submit _____ written reports to NOSC during the term of this Agreement of its work and the results being obtained and shall make available to NOSC, to the extent reasonably requested, other Data produced by Company in the performance of this Agreement in sufficient detail to explain the progress of work under this Agreement.

Article 13. Patent Rights/Copyrights

13.1 Ownership of Patents and Inventions

Except as otherwise provided herein, each Party shall own the entire right, title, and interest in (1) all Subject Inventions Made by its employees and (2) all Patent Applications and U.S. and foreign patents thereon; provided, however, that each Party shall own an undivided one-half interest in (1) all Subject Inventions Made jointly by Government and Company employees and (2) all Patent Applications and U.S. and foreign patents on such jointly Made Subject Inventions.

13.1.1 Filing of Patent Applications

The Party having the right to retain title to a Subject Invention may elect not to file Patent Applications thereon provided it so advises the other party within ninety (90) days from the date it decides not to so file. Thereafter, the other Party may elect to file Patent Applications on such Subject Invention and the party initially having the right to retain title to such Subject Invention agrees to assign its right, title, and interest in such Subject Invention to the other Party and cooperate with such Party in the preparation and filing of Patent Applications thereon.

13.2 License Rights

Each Party grants to the other a world-wide, non-exclusive, irrevocable, paid-up license to any and all Subject Inventions under all Patent Applications and U.S. and/or foreign patents on Subject Inventions to make, use, or sell (1) any and all Subject Inventions and (2) any and all processes, machines, manufactures and compositions of matter the, making, using, or selling of which would, except for this license, infringe any claim of any Patent Applications and/or U.S. and/or foreign patents on Subject Inventions. Any such non-exclusive licenses shall be evidenced by a license agreement prepared by Government in a form and language satisfactory to Government.

13.2.1 No Express Patent License

Unless otherwise expressly stated in writing, nothing stated in this Agreement shall imply or grant a license to Company under any Government patent.

13.3 Assignment and Transfer

No license described in paragraph 15.3 above shall be assigned, licensed, or otherwise disposed of.

13.4 Power to Inspect

Each Party that files a Patent Application on any Subject Invention grants to the other the power to inspect and make copies of any Patent Application or Patent Application files on such Subject Invention.

13.5 Assistance and Cooperation

Each Party agrees to provide the other with all reasonable assistance in obtaining patent protection and preparing and prosecuting any Patent Application filed by the other Party, and shall cause to be executed licenses, powers to inspect and make copies, and all other instruments and documents as the other Party may consider necessary or appropriate to carry out the provisions of this Article 16. The Party filing a Patent Application on any Subject Invention shall, within six (6) months of the filing date of the application, provide to the other Party a copy of and the serial number of each such Patent Application.

13.6 Patent Costs

It is agreed that the Party that prepares, files, prosecutes, and/or maintains any patent applications and/or patents on jointly owned Subject Inventions shall bear all the costs of doing so.

13.7 Election to File on Joint Subject Inventions

Government shall have the right to elect to file any and all Patent Applications, continuations, continuations-in-part, divisionals, reissues, and reexaminations on Subject Inventions made jointly by Government and Company employees. Company shall not file any Patent Applications on Subject Inventions made jointly by Government and Company employees until the Government has elected not to file. Government will notify Company in writing of any election to file within one hundred twenty (120) days from the date of disclosure of the Subject Invention to its NAVOCEANSYSCEN Patent Counsel.

13.8 Copyrights

Company hereby grants to Government a royalty free, paid-up, world-wide license under any copyright owned or acquired by Company in any mask work or work of authorship created in the performance of this Agreement or relating to any Data, machine, article of manufacture, composition of matter or process made or created in the performance of this Agreement or prepared for or acquired by the Government from Company under this Agreement. The scope and extent of such license shall be commensurate with the scope of such other rights the Government has in such work of authorship or "mask" work (e.g., GPLR) according to this Agreement. Company shall include the following statement on any mask work or work of authorship created in the performance of this Agreement:

"The United States Government has a copyright license in this material pursuant to a Cooperative Research and Development Agreement with the Naval Ocean Systems Center."

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as follows:

(Title)

For Company, on this _____ of _____, 1990, in the City of _____
and the State of _____.

Date _____

(Title)

For NAVOCEANSYSCEN on this _____ of _____, 1990, in the City of San Diego
and the State of California.

Date _____

REGISTRATION FOR SCIENTIFIC AND TECHNICAL INFORMATION SERVICES (No carbon paper required)									
1. ORGANIZATION NAME		2. TELEPHONE NUMBER		3. NEW DTIC USER		4. PRIME CONTRACT GRANT PROGRAM		FOR DTIC USE ONLY	
5. ADDRESS (Street, City, State and Zip Code)		6. COMMERCIAL () 7. AUTODOM ()		8. SECURITY CLASSIFICATION REQUIRED (if applicable)		9. SPECIAL SECURITY CLASSIFICATION REQUIRED (if applicable)		DOD USER CODE	
10. ATTN LINE OF RECIPIENT (insert in the user return same recipient on all applications)		11. REQUESTING OFFICIAL		12. DEMAND PRODUCTS SERVICES (if applicable)		13. CONTRACT SECURITY CLEARANCE (if applicable)		CHARGE CATEGORY CODE	
14. REQUESTING OFFICIAL		15. TITLE		16. UNCLASSIFIED		17. NATO		CONTRACT SPONSOR	
18. SIGNATURE		19. DATE SIGNED		20. UNCLASSIFIED		21. NATO		CONTRACT SECURITY CLEARANCE	
22. PART II - PRIME CONTRACTOR APPROVAL (If Part I is a Subcontractor)		23. TELEPHONE NUMBER		24. COMMERCIAL ()		25. AUTODOM ()		CONTRACT SECURITY CLEARANCE	
26. ADDRESS (Street, City, State and Zip Code)		27. SUBCONTRACT NUMBER		28. EXPIRATION DATE		29. DATE SIGNED		CONTRACT SECURITY CLEARANCE	
30. REQUESTING OFFICIAL		31. SIGNATURE		32. DATE SIGNED		33. PART IV - CERTIFICATION AND APPROVAL		CONTRACT SECURITY CLEARANCE	
34. ORGANIZATION NAME		35. ADDRESS (Street, City, State and Zip Code)		36. TELEPHONE NUMBER		37. COMMERCIAL ()		CONTRACT SECURITY CLEARANCE	
38. APPROVING OFFICIAL		39. SIGNATURE		40. DATE SIGNED		41. DTIC/FDRB MUST BE NOTIFIED OF ANY CHANGES IN THE ABOVE INFORMATION (for DTIC use only)		CONTRACT SECURITY CLEARANCE	

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COPY DESIGNATION: White - DTIC, Green - DTIC, Yellow - Approving Official, Pink - Prime Contractor or OUSDR&E, Gold - Originator

APPENDAGE TO COOPERATIVE RESEARCH & DEVELOPMENT AGREEMENT
(when unclassified Military Critical Technology is furnished)

1. Military Critical Technology (MCT) is technical data whose acquisition by another national would significantly enhance the military operational capability of such nation. A list of technologies defined as MCT is contained in "DOD Militarily Critical Technologies List," published by the Office of the Deputy Under Secretary for International Programs and Technology (Office of the Under Secretary of Defense for Acquisition) and dated 1 October 1989. Critical elements 1.2.1, 1.3.1.
2. MCT is subject to export control laws. With the exception of U.S. Government employees acting in an official capacity, anyone who exports such information or releases it to foreign nationals without first obtaining an export license is in violation of the International Traffic in Arms Regulations. The release of this information to the public is tantamount to foreign disclosure. Such a violation is subject to a penalty of up to 2 years imprisonment and/or a fine of \$100,000 under 22 U.S. Code 2778.
3. MCT may be retained for the duration of the agreement.
 - a. All documents containing MCT obtained or originated under this agreement will be returned upon termination of the agreement.
 - b. Materials originated from use of MCT documents will be considered to contain MCT.
 - c. Documents containing MCT must be secured when not in actual use.
4. The Cooperative Research and Development Agreement participant is responsible for annually providing the Navy sponsor a listing of MCT documents held under this agreement. This listing shall include title, author(s), issuing organization, control number, issue date, and to whom disclosed within the organization.

NOTICE TO ACCOMPANY THE DISSEMINATION OF EXPORT-CONTROLLED
TECHNICAL DATA

1. Export of information contained herein, which includes, in some circumstances, release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.
2. Under 22 U.S. Code 2778, the penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, a fine of \$100,000, or both. Under 50 U.S. Code, Appendix 2410, the penalty for unlawful export of items or information controlled under the EAR is a fine of up to \$1,000,000, or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years, a fine of up to \$250,000, or both.
3. In accordance with your certification that establishes you as a "qualified U.S. contractor," unauthorized dissemination of this information is prohibited and may result in your disqualification as a qualified U.S. contractor, and may be considered in determining your eligibility for future contracts with the Department of Defense. A qualified U.S. contractor desiring to disseminate technical data received from a Navy command in a manner not expressly permitted, shall seek authority to do so from the originator of the technical data. If the originator cannot be determined, the qualified U.S. contractor shall request this authority from the Chief of Naval Operations (OP-009P), Washington, DC 20350-2000. Unauthorized dissemination of technical data by a qualified U.S. contractor can take place by the publishing of articles in open literature, publishing advertising or promotional materials, utilizing the technical data in conducting educational and training courses, and by similar means whereby persons or entities not authorized by the Department of the Navy to have access to the technical data can obtain such access.
4. The U.S. Government assumes no liability for direct patent infringement or contributory patent infringement or misuse of technical data.
5. The U.S. Government does not warrant the adequacy, accuracy, currency, or completeness of the technical data.
6. The U.S. Government assumes no liability for loss, damage, or injury resulting from manufacture or use for any purpose of any product, article, system, or material involving reliance upon any or all technical data furnished in response to the request for technical data.
7. If the technical data furnished by the Government will be used for commercial manufacturing or other profit potential, a license for such use may be necessary. Any payments made in support of the request for data do not include or involve any license rights.
8. A copy of this notice shall be provided with any partial or complete reproduction of these data that are provided to qualified U.S. contractors.

DEPARTMENT OF DEFENSE CONTRACT SECURITY CLASSIFICATION SPECIFICATION (The requirements of the DoD Industrial Security Manual apply to all security aspects of this effort.)				1. CLEARANCE AND SAFEGUARDING	
				a. FACTORY CLEARANCE REQUIRED	
				b. LEVEL OF SAFEGUARDING REQUIRED	
2. THIS SPECIFICATION IS FOR: (X and complete as applicable)			3. THIS SPECIFICATION IS: (X and complete as applicable)		
X a. Cooperative Research and Development Agreement, NCRDA- -NOSC-			X a. ORIGINAL (Complete date in all cases)		Date (YYMMDD)
b. SUBCONTRACT NUMBER			b. REVISED (Supersedes all previous specs)		Revision No. Date (YYMMDD)
c. SOLICITATION OR OTHER NUMBER		Due Date (YYMMDD)	c. FINAL (Complete Item 3 in all cases)		Date (YYMMDD)
4. IS THIS A FOLLOW-ON CONTRACT? ☐ YES ☒ NO If Yes, complete the following: Classified material received or generated under _____ (Preceding Contract Number) is transferred to this follow-on contract					
5. IS THIS A FINAL DD FORM 2547 ☐ YES ☒ NO If Yes, complete the following: In response to the contractor's request dated _____, retention of the identified classified material is authorized for the period of _____					
6. CONTRACTOR (Include Commercial and Government Entity (CAGE) Code)					
a. NAME, ADDRESS, AND ZIP CODE		b. CAGE CODE	c. COGNIZANT SECURITY OFFICE (Name, Address, and Zip Code)		
7. SUBCONTRACTOR					
a. NAME, ADDRESS, AND ZIP CODE		b. CAGE CODE	c. COGNIZANT SECURITY OFFICE (Name, Address, and Zip Code)		
8. ACTUAL PERFORMANCE					
a. LOCATION		b. CAGE CODE	c. COGNIZANT SECURITY OFFICE (Name, Address, and Zip Code)		
9. GENERAL IDENTIFICATION OF THIS PROCUREMENT					
CPDA entitled, "					
10. THIS CONTRACT WILL REQUIRE ACCESS TO:					
a. COMMUNICATIONS SECURITY (COMSEC) INFORMATION	YES	NO	11. IN PERFORMING THIS CONTRACT, THE CONTRACTOR WILL:		
b. RESTRICTED DATA		X	a. HAVE ACCESS TO CLASSIFIED INFORMATION ONLY AT ANOTHER CONTRACTOR'S FACILITY OR A GOVERNMENT ACTIVITY	YES	NO
c. CRITICAL NUCLEAR WEAPON DESIGN INFORMATION		X	b. RECEIVE CLASSIFIED DOCUMENTS ONLY		X
d. FORMERLY RESTRICTED DATA		X	c. RECEIVE AND GENERATE CLASSIFIED MATERIAL	X	
e. INTELLIGENCE INFORMATION		X	d. FABRICATE, MODIFY, OR STORE CLASSIFIED HARDWARE		X
(1) Sensitive Compartmented Information (SCI)		X	e. PERFORM SERVICES ONLY		X
(2) Non-SCI		X	f. HAVE ACCESS TO U.S. CLASSIFIED INFORMATION OUTSIDE THE U.S., PUERTO RICO, U.S. POSSESSIONS, AND TRUST TERRITORIES		X
f. SPECIAL ACCESS INFORMATION		X	g. BE AUTHORIZED TO USE THE SERVICES OF DEFENSE TECHNICAL INFORMATION CENTER (DTIC) OR OTHER SECONDARY DISTRIBUTION CENTER	X	
g. NATO INFORMATION		X	h. REQUIRE A COMSEC ACCOUNT		X
h. FOREIGN GOVERNMENT INFORMATION		X	i. HAVE TEMPEST REQUIREMENTS		X
i. LIMITED DISSEMINATION INFORMATION		X	j. HAVE OPERATIONS SECURITY (OPSEC) REQUIREMENTS		X
j. FOR OFFICIAL USE ONLY INFORMATION		X	k. BE AUTHORIZED TO USE THE DEFENSE COUNSEL SERVICE		X
k. OTHER (Specify)			l. OTHER (Specify)		
STUB NO.					

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Previous editions are obsolete

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12. PUBLIC RELEASE. Any information (classified or unclassified) pertaining to this contract shall not be released for public dissemination except as provided by the Industrial Security Manual or unless it has been approved for public release by appropriate U.S. Government authority. Proposed public releases shall be submitted for approval prior to release.		
☐ Direct ☒ Through (Specify):		
Commander, Naval Ocean Systems Center, Code 0144 (CRDA Focal Point), San Diego, CA 92152-5000		
to the Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs)* for review. * In the case of non-DoD User Agencies, requests for disclosure shall be submitted to that agency.		
13. SECURITY GUIDANCE. The security classification guidance needed for this classified effort is identified below. If any difficulty is encountered in applying this guidance or if any other contributing factor indicates a need for changes in this guidance, the contractor is authorized and encouraged to provide recommended changes; to challenge the guidance or the classification assigned to any information or material furnished or generated under this contract; and to submit any questions for interpretation of the guidance to the official identified below. Pending final decision, the information involved shall be handled and protected at the highest level of classification assigned or recommended. (Fill in as appropriate for the classified effort. Attach, or forward under separate correspondence, any documents/guidance extracts referenced herein. Add additional pages as needed to provide complete guidance.)		
Contractor will require access to background/reference material classified up to and including SECRET.		
The DD Form 254 attachment entitled, "CRDA Security Requirements," applied to this DD Form 254 and is made a part hereof.		
This is a research and development study project and information generated will be classified by the following:		
<u>Classification guidance:</u>		
Subcontracting under this CRDA Program is <u>NOT</u> AUTHORIZED		
The CRDA Focal Point for this effort is Dr. R. November, Code 0144, telephone (619) 553-2103; alternatively, Diana Jackson, (619) 553-2101.		
14. ADDITIONAL SECURITY REQUIREMENTS. Requirements, in addition to ISM requirements, are established for this contract. (If Yes, identify the pertinent contractual clauses in the contract document itself, or provide an appropriate statement which identifies the additional requirements. Provide a copy of the requirements to the cognizant security office. Use item 13 if additional space is needed.)		
☐ Yes ☐ No		
15. INSPECTIONS. Elements of the contract are outside the inspection responsibility of the cognizant security office. (If Yes, explain and identify specific areas or elements covered out and the activity responsible for inspections. Use item 13 if additional space is needed.)		
☐ Yes ☐ No		
16. CERTIFICATION AND SIGNATURE. Security requirements stated herein are complete and adequate for safeguarding the classified information to be released or generated under this classified effort. All questions shall be referred to the official named below.		
a. TYPED NAME OF CERTIFYING OFFICIAL P. A. TALLEY	b. TITLE CONTRACTING OFFICER'S REPRESENTATIVE FOR SECURITY MATTERS	c. TELEPHONE (Include Area Code) (619) 553-3195
d. ADDRESS (Include Zip Code) Commander Naval Ocean Systems Center, Code 152 San Diego, CA 92152-5000	17. REQUIRED DISTRIBUTION	
e. SIGNATURE	☒ a. CONTRACTOR ☐ b. SUBCONTRACTOR ☒ c. COGNIZANT SECURITY OFFICE FOR PRIME AND SUBCONTRACTOR ☐ d. U.S. ACTIVITY RESPONSIBLE FOR OVERSEAS SECURITY ADMINISTRATION ☒ e. ADMINISTRATIVE CONTRACTING OFFICER NOSC CODE ☒ f. OTHERS AS NECESSARY NOSC CODES 152,	

DD Form 254 (Rev. 1-78)

NCRDA- NOSC-

Date:

Reference (a): Industrial Security Manual, DoD 5220.22-M

Insofar as the provisions of reference (a) are concerned:

- The terms "prime contract" or "contract" mean the Agreement for participation in the CRDA Program.

- The phrase "contracting officer or his authorized representative" will mean the CRDA Focal Point of the Naval Ocean Systems Center.

Information or materials, hereafter called documents, provided or obtained through the CRDA Program may be retained for the duration of the Agreement for participation in the CRDA Program unless otherwise directed when transmitted. (For this Agreement that date is _____.)

All classified documents obtained or originated through use of the Agreement will be destroyed or returned when no longer needed or upon termination of said Agreement in accordance with reference (a), paragraphs 5-700, 5-701, 5-704, 5-706, 5-707, 5-709, 5-710, and 5-711, unless further retention authority has been granted in accordance with reference (a), paragraph 5-702.

Material originated from use of documents obtained through this program will carry the same classification as appears in the source if not covered by the guide(s) cited in connection with item 13 or narrative(s) provided in connection with item 13 of this DD 254. The downgrading/declassification marking on pre-1 August 1982 documents used in material originated under this Agreement shall be converted to meet the requirements of Executive Order 12356 where the source document contains a date for declassification review. (See Appendix II of reference (a).)

Foreign national employees of CRDA participants, including those who possess a German Federal Republic, Canadian, or United Kingdom reciprocal clearance, are not authorized access to classified information resulting from, or used in the performance of, this Agreement unless authorized in writing by the Naval Ocean Systems Center.

Classified information received under and/or resulting from this project is not releasable to foreign national visitors unless the visit is duly authorized by the Department of Defense through established channels or if authorized under the International Traffic in-ARMS Regulations.

Documentation generated that is classified shall be marked in accordance with reference (a), Chapter 4.

The downgrading/declassification and markings shall be in accordance with reference (a), as directed by Item 13 of DD 254 and shall include CRDA number and DD 254 date. Markings of multiple sources requires retention of source documents with the original copy of the material. The most restrictive review or declassification date shall be applied to information generated (refer to paragraph 4-208 of reference (a)) based on the requirements of the above referenced security classification guides and/or source documents which may be used for generating classified information.

DD 254 Attachment

CRDA Security Requirements, Item 13

NCRDA- NOSC-

Date:

Continuation of DD 254, Item 13:

APPENDIX H

CRDAs WITH FOREIGN OWNED, CONTROLLED OR INFLUENCED

(FOCI) U.S. ORGANIZATIONS

1. INTRODUCTION

Navy components are permitted and encouraged to enter into unclassified and classified CRDAs under references (a) - (e), provided that classified and unclassified sensitive information protected by law, regulation, or Executive Order shall be appropriately safeguarded. Permissible United States CRDA partners are: other Federal agencies; unit of State and local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); other person (including licensees of inventions owned by the Federal agency); and foreign-owned U.S. companies (the latter is the subject of this attachment). Such agreements shall advance a component's program missions, and it is highly desirable that they also have applicability for potential spin-off benefits to the U.S. public and/or private sectors.

2. PRINCIPLES INVOLVED IN CRDAs WITH FOCI COMPANIES

a. The Avoidance of Detrimental Economic Impact from CRDAs with FOCI U.S. Companies

Sections 2 and 11 of reference (b) of the basic letter (the "Technology Transfer Act" as amended) contain information that underlies the Navy's instructions regarding CRDAs with foreign owned, controlled or influenced (FOCI) U.S. companies, as regards the avoidance of detrimental economic impact from CRDAs.

Sections 2(5) and 2(6) point out that: industrial and technological innovation in the United States may be lacking compared to historical patterns **and other industrialized nations** (emphasis added); and increased technological innovation **would reduce trade deficits**, stabilize the dollar, **increase productivity gains, increase employment**, and stabilize prices (emphasis added again). These sections emphasize the need to ensure that any impact of CRDAs on the U.S. economy is positive.

Section 11(c)(4)(B) is quoted here in its entirety, as establishing the basic principle for the Navy's implementation:

"(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall-

(B) give preference to **business units located in the United States** which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions **will be manufactured substantially in the United States** and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government **permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements**" (emphasis added).

These concepts dictate economic considerations for potential CRDAs with FOCI U.S. companies. In addition, security considerations must be taken into account.

b. Security Considerations for CRDAs with FOCI U.S. Companies

FOCI U.S. Companies that have one of the facility security clearances described in Section 4 below may be considered for CRDAs that involve classified material, or unclassified sensitive material (or, of course, unclassified information that is not sensitive militarily critical).

FOCI U.S. Companies that are not covered by one of the facility clearances described in 4 below may be considered only for unclassified CRDAs that do not involve sensitive, militarily critical information; further, the procedures of 6 are to be carried out.

3. CONDITIONS FOR AVOIDANCE OF DETRIMENTAL ECONOMIC EFFECTS

A FOCI U.S. company that has one of the facility security clearances detailed in 4 below has, in the process of qualifying for the clearance, automatically met the requirements for the avoidance of a detrimental economic effect (in addition to having met the security requirements), and is qualified for consideration for a CRDA.

A FOCI U.S. company that is not covered by one of the facility security clearances in 4 below must meet the requirements in 5 below, which cover actions to be taken by the foreign country involved, the FOCI U.S. company, and the Navy component, to establish that no economic effect detrimental to the U.S. will result from the carrying out of the CRDA.

4. DEPARTMENT OF DEFENSE POLICY ON RELEASE OF DATA TO FOCI U.S. COMPANIES

USD Memo I-90/10652 of 22 February 1990 clarifies Department of Defense (DOD) policy on the release of export controlled technical data to foreign-owned U.S. firms. It specifically applies to contractors, but applicability is extended to CRDA participants. It provides that:

- a. Such companies are not foreign companies. They are incorporated in the U.S. and are subject to U.S. laws and regulations, including the Arms Export Control Act (AECA) and Export Administration Act (EAA).
- b. There are no restrictions on release to these companies of unclassified technical data controlled by the AECA or EAA, provided access within the company is limited to U.S. citizens and intending citizens (formerly immigrant aliens). Any U.S. company, foreign-owned or U.S.-owned, must obtain the appropriate license or other written U.S. Government approval before the technical data can be exported or provided to foreign national employee or other foreign person.
- c. Decisions on the release of classified technical data to foreign-owned U.S. companies are dependent on the type of information involved and type of facility security clearance under which the company is operating, as specified in DOD 5200.22-R, Industrial Security Regulation. The most frequently employed arrangements to mitigate or negate foreign control or influence are described below:
 - (1) The voting trust is used to transfer legal control of a company to trustees who are U.S. citizens. Under this arrangement the foreign owner retains equity ownership rights; however, the company is insulated from the foreign control and influence. Foreign nationals cannot have access to classified information or supervise classified contracts (or CRDAs). There are not restrictions on access to classified information provided the firm is cleared at the appropriate level, and requires access to perform on a Government contract (or CRDA).

(2) The proxy arrangement provides for the voting rights of stock owned by the foreign interests to be conveyed to proxy holders by means of an irrevocable proxy agreement. Legal title remains with the foreign interests but the company is nevertheless insulated from foreign control and influence. This arrangement, and access to classified information, otherwise is similar to the voting trust arrangement.

(3) The special security agreement is a mechanism which allows the foreign parent firm to exercise general management of the company. However, the company must be managed by U.S. citizens and foreign nationals cannot have access to classified information or supervise classified contracts. Special security agreements require a determination by the sponsoring component that the arrangement is in the best interest of the U.S.

(4) A company may be eligible for a reciprocal facility security clearance when the foreign ownership, control, or influence stems from a country with which the U.S. has concluded a government-to-government security agreement that provides for this type of arrangement. Because foreign ownership or control remains in place, and foreign nationals may be employed by the company, reciprocally cleared companies may only have access to classified information determined to be releasable to the government of the ultimate parent company.

d. In summary, a foreign-owned U.S. company that has been cleared under (1) a voting trust, (2) a proxy arrangement, or (3) a special security agreement may compete, without any further determinations, for U.S. classified defense contracts and may participate in CRDAs. Only in the case of (4), a reciprocally cleared firm, is a "foreign disclosure decision required.

5. CONDITIONS FOR A CRDA WITH A FOCI U.S. COMPANY COVERED UNDER SECTION 4

Because of the militarily critical nature of research and development performed by the Navy, Navy components are permitted to enter into classified CRDAs, or CRDAs involving unclassified sensitive, militarily critical information, with industrial organizations or persons, including academic institutions, subject to the control or influence of a foreign company or government, ONLY in cases where those organizations, persons or institutions qualify for access to such information under the provisions of paragraph 4.

6. CONDITIONS FOR A CRDA WITH A FOCI U.S. COMPANY NOT COVERED UNDER SECTION 4

Provided conditions a. through f. below are met, it may be beneficial for Navy components to enter into unclassified CRDAs involving no sensitive, militarily critical information with ANY industrial organization or other person subject to the control of a foreign company or government. Naval activities faced with carrying out these provisions are advised that there are not official forms or structures for them. Preparers of CRDAs requiring these procedures should complete the information to the best of their ability, and with the cooperative assistance of the FOCI partner and its parent. Communication with ONT Code 26 (Dr. R. M. Culpepper) is suggested in case of difficulties.

A description in writing of the actions taken, or of the situation that exists, as appropriate, in response to items a. through f. below, is to be submitted to ONT Code 26 separately from and preferably prior to, the submission of the CRDA.

a. Adherence to DOD Directives

(1) All agreements shall adhere to DOD Directive 2040.2 (International Transfers of Technology, Goods, and Munitions).

(2) Any agreement with a foreign government, international organization, or any other entity or establishment owned or controlled by a foreign government or international organization, which is subject to DOD Directive 5530.3, "International Agreements," shall be processed in accordance with that directive.

b. Requirements regarding the Foreign Country involved:

(1) The Navy component shall consider, in consultation with the U.S. Trade Representative, whether the foreign government involved has 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 (COCOM) or through other international agreements to which the U.S. and such foreign governments are signatories (where cooperative research might involve data, technologies, or products subject to such controls under U.S. laws).

(2) The Navy component shall consider whether the foreign participant's home market affords reciprocal treatment to U.S. companies comparable to that afforded the foreign participant in the U.S., as evidenced by:

(a) affording comparable opportunities for U.S. laboratories to participate in any joint ventures similar to CRDAs;

(b) encouraging local investment opportunities for U.S. companies that are comparable to investment opportunities for foreign companies in the U.S.; and,

(c) affording adequate and effective protection for the intellectual property rights of U.S. companies.

c. Requirements on the FOCI U.S. Company

(1) The FOCI U.S. company must be prepared to make substantive contributions to the proposed CRDA, and the sponsoring Navy component must certify that the foreign contribution and participation in the CRDA would be in U.S. interests.

(2) The FOCI U.S. company must have already made and agreed to continue to make a substantial commitment to the U.S. market, as evidenced by (1) investments in the U.S. in long-term research, development, and manufacturing (including the domestic manufacture of major components and subassemblies); (2) significant contributions to employment in the U.S.; and (3) agreement, with respect to any technology arising from the joint venture to manufacture within the U.S. products resulting from that technology, to procure parts and materials from competitive North American suppliers, and to support a North American supplier infrastructure.

(3) The parent and affiliate organizations of the FOCI U.S. company shall not have been identified on two or more occasions within the previous five years as a foreign manufacturer, producer, or exporter within the meaning of Section 771(9)(A) of the Tariff Act of 1930 (19 U.S.C. 1677(9)(A) in proceedings that have resulted in or involved a final dumping or countervailing duty determination.

d. Requirements on the Navy Component

(1) The sponsoring Navy component shall prepare a strategy or plan for U.S. utilization/development that capitalizes on U.S. involvement to avoid foreign gain at U.S. expense.

(2) The sponsoring Navy component shall monitor and report the performance of any of its respective foreign company CRDA participants to the ASN(RE&S), and shall suspend further participation by that company in the CRDA if the Navy determines that the foreign company or its home market fail to satisfy any of the criteria set forth above.

e. Requirements to be Included in the Agreement

(1) All agreements require signature authority from the Chief of Naval Research.

(2) All agreements shall ensure that intellectual property rights are properly protected.

(3) All agreements shall ensure that access to research and development opportunities and facilities, and the flow of scientific and technological information, are, to the maximum extent practicable, equitable, and reciprocal for both parties.

(4) Agreement conditions shall ensure appropriate control or release of CRDA intellectual property rights and results/*products* to protect or enhance U.S. interests.

f. Requirements from Office of Chief of Naval Research

The DON may specify other terms and conditions as deemed appropriate on a case-by-case basis.

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