

VISITING FEDERAL GOVERNMENT SCIENTIST
SABBATICAL AGREEMENT

THIS AGREEMENT is made by and between the Secretary of the Navy as represented by the Naval Research Laboratory (NRL) (the "Government") and _____ (the "Institution"). The Government and the Institution may be referred to herein individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish the rights and responsibilities of the Parties as regards Intellectual Property that may be used or generated in relation to the sabbatical visit (the "Sabbatical") of the following named Federal Government Scientist (the "Government Scientist") (_____) to the Institution. The Research that the Government Scientist will participate in at the Institution during the Sabbatical is described in Appendix A. The terms and conditions of the agreement between the Parties establishing the Sabbatical under NRL's Advanced Graduate Research Program are (incorporated herein by reference) (attached hereto in Appendix B).

2. Status and Responsibilities of the Federal Government Scientist.

a. In relation to this Agreement and the Sabbatical, the Government Scientist shall at all times be an employee of the United States, and at no time will the Government Scientist be construed to be an employee or agent of the Institution. The Government (through NRL's Advanced Graduate Research Program) will pay directly to the Government Employee his/her salary and applicable benefits and entitlements (including for travel and transportation and *per diem*) during the Term of the Sabbatical unless expressly otherwise agreed to between the Parties in writing. No funds are to be exchanged between the Government and the Institution in relation to the Sabbatical.

b. The Government will be responsible for providing performance appraisals, managing time and attendance records (including leave), travel and transportation (including per diem expenses) for the Government Scientist in accordance with terms and conditions for participation in NRL's Advanced Graduate Research Program. The Institution will provide input relative to the Government Scientist's performance under the Sabbatical. The Government Scientist will remain subject to and comply with all applicable Navy and Government laws and regulations applicable to Government employment and Ethical Standards of Conduct. The Government Scientist will comply with all applicable facility, research, safety, confidentiality, and security requirements and restrictions (contained in law, regulation, and policy) of the Government and of the Institution while participating in the Sabbatical at the Institution.

3. Term. The Effective Date of this Agreement shall be the date of last signature of the authorized representatives of the Parties below. The Term of this Agreement shall be from the Effective Date through _____ calendar months from the Effective Date unless extended or sooner terminated by the written agreement of the Parties.

Intellectual Property Provisions

4. Background Intellectual Property. All Background Intellectual Property introduced by either Party in connection with the Sabbatical shall remain the property of the Party introducing the same. "Background Intellectual Property" means intellectual property owned by, and/or at the free disposal of a Party, and not generated in the performance of the Sabbatical. Nothing contained in this Agreement shall be construed to grant to either Party any rights with respect to the other Party's Background Intellectual Property.

5. Foreground Intellectual Property. Foreground Intellectual Property shall include all Intellectual Property generated by either Party in connection with the performance of Research under the Sabbatical. Intellectual Property shall include inventions, copyrights, trademarks, know-how, and all results first made in performance of Research under the Sabbatical.

6. Rights in Foreground Intellectual Property. All Intellectual Property generated solely by the Government Scientist in performance of Research under the Sabbatical shall be exclusively owned by the Government in accordance with applicable United States Federal laws and regulations for assignment of such rights to the United States expressly and by operation of law. Ownership of all Intellectual Property generated solely by employee(s) and/or agent(s) of the Institution in performing Research in connection with the Sabbatical shall be determined in accordance with such agreements as the Institution has with its employees and agents (and subject to applicable State and Federal laws and regulations). This Agreement is made expressly subject to the provisions of Title 35, U.S. Code (U.S.C.), Chapter 18, and to Part 401 of Chapter 37 of the Code of Federal Regulations (C.F.R.). It is understood that if the U. S. Government (through any of its agencies or otherwise) may have funded Research covered by this Agreement, the U. S. Government is entitled, as a right, under the provisions of 35 U.S.C. § 200-204 and applicable regulations of Chapter 37 of the C.F.R. to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced inventions made in the performance of Government funded research; and, any licenses that may be granted to a licensee to practice such inventions shall be subject to such right of the Government.

7. Rights in Jointly Generated Intellectual Property. All Intellectual Property generated jointly by the Government Scientist and employees and/or agents of the Institution in performance of Research related to the Sabbatical shall be Jointly Owned Intellectual Property of the Government and the Institution subject to all applicable United States laws and regulations. The Parties intend to cooperate in the commercial exploitation of Jointly Generated Inventions made in performance of or in relation to the Sabbatical. The Parties shall cooperate to achieve commercial exploitation of all such Jointly Generated Inventions and use reasonable efforts to negotiate a written supplemental Agreement Between Joint Owners for that purpose. The Agreement Between Joint Owners shall establish which Party shall have the exclusive right and responsibility (as the agent of the other Party) to prepare, file, prosecute, maintain, re-examine, and reissue Invention Rights in Jointly Generated Inventions, and the right and responsibility to negotiate and execute license agreements for Invention Rights in Jointly Generated Inventions. Each Party shall be responsible for obtaining the cooperation and assistance of its Joint Inventor(s) for preparing, filing, prosecuting, defending, and maintaining the Invention Rights in Jointly Generated Inventions.

8. Copyright by the Institution. The Institution may copyright works of authorship prepared pursuant to this Agreement if such works are eligible for copyright protection under Title 17 U.S.C. Institution grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship (including software) prepared pursuant to this Agreement for any purpose.

9. Confidentiality. Pursuant to 35 U.S.C § 205, the Government is authorized to withhold from disclosure to the public information disclosing any invention in which Government owns or may own a right, title, or interest (including a non-exclusive license) for a reasonable time in order for a patent application to be filed. With respect to any Jointly Generated Invention, the Government shall be deemed to have exercised that authority, and the Institution agrees to comply with the Government's exercise of that authority. Subject to the publication rights set forth below, the Parties will retain in confidence, and will not disclose to a third party, in whole or in part, Jointly Generated Intellectual Property, except under such non-disclosure terms the Parties use to protect their own proprietary information. Exchanges of proprietary information between the Parties shall be pursuant to a separate non-disclosure agreement as may be executed between the Parties. Each Party shall comply with the restrictive markings on information provided by the other Party. Each Party may challenge restrictive markings, but shall comply with such markings pending resolution of any such challenges.

10. Publication. The Parties may publish results of Research performed under the Sabbatical in scientific journals. In furtherance of this publication right, each Party shall provide to the other a copy of any manuscript prior to submission for publication in order to permit evaluation of whether the manuscript contains patentable subject matter. At the request of the Party to whom the manuscript is submitted, the submission of the manuscript for publication shall be delayed in order to enable the preparation and filing of a patent application on any patentable subject matter described in the manuscript. In implementation of the foregoing, within thirty (30) calendar days after receipt of a manuscript for review, the Party receiving the manuscript will notify the other Party whether a patent application should be filed in accordance with the terms and conditions of this Agreement. If at the end of such thirty (30) calendar day period, the Parties are not able to agree to a date for submission of the manuscript, the Party supplying the manuscript shall notify the other Party of its intention to submit such manuscript for publication without the other Party's approval and may do so thirty (30) calendar days after giving such notice.

11. Other Limitations Upon the Scope of This Agreement. Neither Party acquires any intellectual property rights other than those specifically granted under this Agreement. This Agreement imposes no obligation on either Party to purchase, sell, license, transfer or otherwise dispose of any technology, services or products. This Agreement does not create any agency or partnership relationship except as may be provided in a supplemental Agreement Between Joint Owners. In the event either Party now or in the future holds or acquires an interest in technology that can compete with any part of any Jointly Generated Invention(s), whether as a consequence of this Agreement or otherwise, the Parties agree that each of them may so proceed in their efforts to commercialize such technology (other than rights in the Jointly Generated Inventions covered by an Agreement Between Joint Owners) as, in their sole and best judgment, each deems appropriate. Furthermore, this Agreement in no way restricts either Party from cooperating with or receiving funding from

other public and private agencies, organizations, and individuals with respect to any of the normal activities of either of the Parties.

12. Reports. Nothing contained herein shall preclude the Parties from making required reports or disclosures to a Federal Agency or any other organizations which provided funding for Research covered by this Agreement. Each Party shall mark any potentially patentable material in said reports as such, and shall require that it be treated as protected material.

General Provisions

13. Modifications. The Parties may at any time by mutual written agreement modify the terms of this Agreement. This Agreement may be terminated by either Party upon thirty (30) days' written notice to the other Party. To be effective, any modification or termination must be made in writing and signed by the authorized representative(s) of the Parties. Notwithstanding the expiration or termination of this Agreement, all obligations regarding confidentiality and safeguarding information from unauthorized use and disclosure shall survive and remain in effect until fully complied with.

14. Applicable Law. This Agreement shall be governed by and construed in accordance with the applicable Federal laws and regulations of the United States of America.

15. Entire Understanding of the Parties. This Agreement constitutes the entire understanding between the Parties with reference to the subject matter hereof, and no statements or agreements by or between the Parties, whether orally or in writing, made prior to the effective date hereof, shall vary or modify the written terms of this Agreement.

16. Invalidity. If one or more of the provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided that the intent of the Parties in entering into the Agreement is not materially affected.

17. Use of Names and Titles. The Government confers no right to use the name "U. S. Navy" or "U.S. Naval Research Laboratory" without the prior written consent of the Government. Neither Party may use the name of the other Party in any way for advertising or publicity without the express written consent of the other Party.

18. Limitations Upon Construction of the Agreement. Nothing contained in this Agreement shall be construed against either Party as: (1) a warranty or representation as to the validity or scope of any patent application or patent filed or issued; (2) granting by implication, estoppel, or otherwise, any rights under patents other than those that may issue on subject matter of Jointly Generated Inventions; (3) an obligation to bring, or prosecute, actions against third parties for infringement; (4) an obligation to furnish any manufacturing or technical information; or (5) conferring any immunity from, or defenses under, antitrust laws, patent misuse laws, or any other state or United States Federal Law.

19. Communications. Any communication required or permitted under this Agreement shall be made in writing and sent by facsimile transmission confirmed by personal delivery by commercial messenger services or by U.S. prepaid, first class, certified mail, return

receipt requested. Communications shall be addressed as set forth below or as subsequently designated by notice from one Party to the other. However, if the communication involves an alleged breach or termination of this Agreement, such communication shall also be promptly communicated by telephone.

Communications to Institution shall be addressed to:

Communications to GOVERNMENT shall be addressed to:

Technology Transfer Office
Code 1004
Naval Research Laboratory
4555 Overlook Avenue, SW
Washington, DC 20375
Telephone:

20. Execution. This Agreement may be signed in duplicate originals, or in separate counterparts, which are as effective as if the parties signed a single original. A facsimile of an original signature transmitted to the other party is effective as if the original was sent to the other Party. This Agreement shall be effective upon the date of last signature of the authorized representatives of the Parties. The persons signing on behalf of the Institution and the Government hereby warrant and represent that they have authority to execute this Agreement on behalf of the Party for whom they have signed.

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have duly executed this Agreement on the dates indicated below.

FOR THE INSTITUTION

By:

Printed Name:

Title:

Date:

FOR THE NAVAL RESEARCH LABORATORY

By:

Printed Name:

Title:

Date:

ANNEX A

Description of the Research and Guidelines for Participation in the Sabbatical