

Date: Today's Date

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NON-STANDARD
NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN
THE NAVAL RESEARCH LABORATORY (NRL)
AND
XYZ CORPORATION (XYZ)

AGREEMENT TITLE: Widget Research

AGREEMENT NUMBER: NCRADA-NRL-14-XXX

AGREEMENT ADMINISTRATORS

NRL:

Technology Transfer Office:

Dr. Rita C. Manak, Head
Code 1004, (202) 767-3083

Legal Counsel:

Mr. James N. McCutcheon,
Code 1008, (202) 767-2244

Program Manager:

NRL Program Manager, Code XXXX,
202-404-XXXX

XYZ:

Preferred Contact:

XYZ Program Manager
XXX-XXX-XXXX

Legal Counsel:

XYZ Legal Counsel
XXX-XXX-XXXX

TABLE OF CONTENTS

PREAMBLE 1

ARTICLE 1. DEFINITIONS..... 1

 1.1 ‘Agreement’ 1

 1.2 ‘Classified Information (CI)’ 1

 1.3 ‘Collaborator’ 2

 1.4 ‘Controlled Unclassified Information (CUI)’ 2

 1.5 ‘Cooperative Work’ 2

 1.6 ‘Data’ 2

 1.7 ‘Effective Date’ 2

 1.8 ‘Exclusive Commercial License’ 2

 1.9 ‘Government’ 2

 1.10 ‘Government Purpose Rights’ 2

 1.11 ‘Information’ 2

 1.12 ‘Intellectual Property’ 2

 1.13 ‘Invention’ 2

 1.14 ‘Invention Disclosure’ 2

 1.15 ‘Made’ 3

 1.16 ‘Militarily Critical Technologies’ (MCT)..... 3

 1.17 ‘Nonexclusive Commercial License’ 3

 1.18 ‘Non-Subject Data’ 3

 1.19 ‘Non-Subject Invention’ 3

 1.20 ‘Patent Application’ 3

 1.21 ‘Principal Investigator’ 3

 1.22 ‘Proprietary Information’ 3

 1.23 ‘Restricted Access Information’ 3

 1.24 ‘Subject Data’ 3

 1.25 ‘Subject Invention’ 4

 1.26 ‘Tangible Property’ 4

 1.27 ‘Unlimited Rights’ 4

ARTICLE 2. OBJECTIVE 4

ARTICLE 3. RESPONSIBILITIES.....	4
3.1 NRL Personnel and Facilities	4
3.2 XYZ Personnel and Facilities	4
3.3 Security Regulations and Directives	4
ARTICLE 4. REPRESENTATIONS AND WARRANTIES.....	5
4.1 NRL’s Representations and Warranties.....	5
4.2 XYZ’s Representations and Warranties.....	5
4.3 Joint Representations	6
ARTICLE 5. FUNDING.....	6
5.1 Payment Schedule.....	6
5.2 Insufficient and Excess Funds	7
5.3 No New Commitments	7
5.4 Accounting Records.....	8
ARTICLE 6. REPORTS AND PUBLICATIONS.....	8
6.1 Interim Reports	8
6.2 Final Reports.....	8
6.3 Agreement to Confer Prior to Publication or Public Disclosure.....	8
ARTICLE 7. INTELLECTUAL PROPERTY	9
7.1 Data.....	9
7.1.1 General Provisions Applying to All Data	9
7.1.1.1 Ownership	9
7.1.1.2 No Implied License.....	9
7.1.1.3 Marking of Data.....	9
7.1.1.3.1 Data Provided With Less Than Unlimited Rights	9
7.1.1.3.2 Data that are Proprietary Information or Restricted Access Information	9
7.1.1.3.3 Data that are Subject to 35 USC 205	10
7.1.1.4 Protection of Data	10
7.1.1.5 Release of Data under the Freedom of Information Act.....	10
7.1.2 Subject Data	10
7.1.2.1 Delivery of Requested Subject Data	10
7.1.2.2 Rights in Subject Data	11

7.1.3 Rights in Non-Subject Data	11
7.2 Copyrights.....	11
7.2.1 Copyright by XYZ.....	11
7.2.2 Copyright License to the Government.....	11
7.2.3 Copyright Statement	12
7.3 Subject Inventions.....	12
7.3.1 Obligation to Report Subject Invention	12
7.3.1.1 Collaborators’ Instructions to Employees.....	12
7.3.1.2 Timely Invention Disclosure by Inventors	12
7.3.1.3 Obligation to Provide Invention Disclosures to the Other Collaborator.....	12
7.3.2 Determination of Subject Inventions	12
7.3.3 Title to and Ownership of Subject Inventions	12
7.3.4 Filing of Patent Applications	13
7.3.4.1 Filing of Patent Applications on Solely Made Inventions.....	13
7.3.4.2 Filing of Patent Applications on Jointly Made Subject Inventions	13
7.3.4.3 Preserving Intellectual Property Rights	13
7.3.4.4 Filing Deadlines	13
7.3.4.5 Copies and Inspection.....	13
7.3.4.5.1 Copies of Prosecution Papers.....	13
7.3.4.5.2 Access to Patent Application File and Right to Make Copies	14
7.3.4.6 Rights of Inventors if the Collaborators Decline to File a Patent Application	14
7.3.5 Nonexclusive Noncommercial License to Subject Inventions	14
7.3.5.1 Nonexclusive Noncommercial License Grant	14
7.3.5.2 Confirmatory Nonexclusive License Agreement.....	14
7.3.6 Option for Commercial License to Subject Inventions.....	14
7.3.7 Limitation on Assignment of Licenses Granted Under this Agreement.....	15
7.3.8 Termination of License Granted and Cancellation of Commercial License Option to Subject Inventions.....	15
7.3.8.1 Cancellation of the Commercial License Option and Termination of Commercial Licenses.....	15
7.3.8.2 Withholding and Termination of Confirmatory Nonexclusive Licenses.....	15

7.4 Non-Subject Inventions	16
7.4.1 Ownership of Non-Subject Inventions.....	16
7.4.2 Rights Under Other Agreements.....	16
7.4.3 No License to Non-Subject Inventions	16
7.4.4 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work	16
7.5 Research License	16
ARTICLE 8. TANGIBLE PROPERTY	17
8.1 Title to Preexisting Tangible Property.....	17
8.2 Tangible Property Purchased by Collaborators to Perform the Cooperative Work.....	17
8.3 Title to Developed Tangible Property.....	17
8.4 Tangible Property Operational and Disposition Costs.....	17
8.5 Disposal of Tangible Property	17
ARTICLE 9. LIABILITY	17
9.1 Extent of Government Liability	17
9.2 Extent of XYZ Liability.....	18
9.3 <i>Force Majeure</i>	18
ARTICLE 10. GENERAL PROVISIONS	18
10.1 Characteristics of the Agreement.....	18
10.1.1 Entire Agreement	18
10.1.2 Severability	18
10.1.3 Interpretation of Headings	18
10.2 Agreements Between Collaborators	18
10.2.1 Governing Laws.....	18
10.2.2 Independent Parties/Entities.....	19
10.2.3 Assignment/Subcontracting	19
10.2.4 Disputes.....	19
10.2.4.1 Settlement and Resolution	19
10.2.4.2 Continuation of Cooperative Work.....	19
10.2.5 Waivers	20
10.2.6 Use of Name or Endorsements	20
10.3 Environment, Safety, and Health.....	20

10.4 U.S. Competitiveness.....	20
10.5 Public Release of this Agreement.....	20
ARTICLE 11. MODIFICATIONS AND NOTICES	21
11.1 Amendments	21
11.2 Termination.....	21
11.2.1 Termination by Mutual Consent.....	21
11.2.2 Unilateral Termination.....	21
11.3 Notices	21
11.3.1 General Notices and Notices Pertaining to Publication.....	21
11.3.2 Notices Pertaining to Patent Prosecution, Trademarks, or Service Marks	22
ARTICLE 12. SURVIVING PROVISIONS	22
ARTICLE 13. DURATION.....	22
ARTICLE 14. SIGNATURES.....	23
APPENDIX A. STATEMENT OF WORK.....	24
APPENDIX B. CONFIRMATORY LICENSE AGREEMENT	26

NON-STANDARD
NAVY COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN
THE NAVAL RESEARCH LABORATORY (NRL)
AND
XYZ CORPORATION (XYZ)

PREAMBLE

Under authority of the Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Naval Research Laboratory (NRL), located at 4555 Overlook Ave., SW, Washington, DC 20375, and XYZ Corporation (XYZ), whose corporate headquarters are located at 123 Main St., City, State 12345, enter into this Non-Standard Cooperative Research and Development Agreement (CRADA), which shall be binding upon the Collaborators and their assignees according to the clauses and conditions hereof and for the term and duration set forth.

The U.S. Federal Technology Transfer Act of 1986, as amended, provides for making the expertise, capabilities, and technologies of U.S. Federal laboratories accessible to other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or individuals in order to improve the economic, environmental, and social well-being of the United States by stimulating utilization of U.S. Federally funded technology developments and/or capabilities.

NRL has extensive expertise, capabilities, and information in widget development and in accordance with the U.S. Federal Technology Transfer Act, desires to make this expertise and technology available for use in the public and private sectors.

XYZ has the interest, resources, capabilities, and technical expertise to transition the results of Naval research and development for public use.

NOW THEREFORE, the Collaborators agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings defined below, which are equally applicable to both the singular and plural forms of nouns or any tense of verbs. The terms “Limited Rights,” “Unlimited Rights,” and “Restricted Access Information” are used solely as defined herein to identify and protect Data rights.

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

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

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

1.4 “Controlled Unclassified Information (CUI)” means unclassified Government Data, Information, or materials provided to or resulting from this Agreement to which access or distribution limitations are applicable in accordance with U.S. statutes, regulations, executive orders, and applicable security guidelines. CUI specifically includes (but is not limited to) information that is determined to be exempt from public disclosure, covered by U.S. export control laws and regulations [listed on the U.S. Munitions List (USML) under the International Traffic in Arms Regulation (ITAR) or listed on the Commerce Control List (CCL) under the Export Administration Regulations (EAR)], and information pertaining to technologies identified on the Militarily Critical Technologies List (MCTL).

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

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

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

1.8 “Exclusive Commercial License” means the grant by the owner of Intellectual Property of the exclusive right to make, use, or sell a patented invention.

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

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

1.11 “Information” means all Data, trade secrets, and commercial and financial information. (Chapter 5 Subsection II of Title 5 USC)

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

1.13 “Invention” means any invention or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be patentable under the Plant Variety Protection Act. (15 USC 3703(7))

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

1.15 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention. (15 USC 3703(8)).

1.16 “Militarily Critical Technologies” (MCT) means those technologies identified in the Militarily Critical Technologies List and under the Export Administration Act of 1979 and DoD Instruction 3020.46 as essential to the design, development, production, operation, application, or maintenance of an article or service which makes or could make a significant contribution to the military potential of any country, including the United States. This includes, but is not limited to, know-how, technical data, keystone equipment, and inspection and test equipment.

1.17 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell a patented invention.

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

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

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

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

1.22 “Proprietary Information” means information that embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information:

- is not known or available from other sources without obligations concerning its confidentiality;
- has not been made available by the owners to others without obligation concerning its confidentiality;
- is not already available to the Government without obligation concerning its confidentiality; or
- has not been developed independently by persons who have had no access to the information.

1.23 “Restricted Access Information” means Data generated by NRL that would be Proprietary Information if the Information had been obtained from a non-Federal collaborator participating in a CRADA (15 USC 3710a). Under 15 USC 3710a(c)(7)(B), the Collaborators may mutually agree to provide appropriate protection to Subject Data generated by NRL (Restricted Access Information) against public dissemination or release under the Freedom of Information Act (FOIA) for a period of up to five (5) years after development of the Information.

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

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

1.26 “Tangible Property” means personal or real property that can be physically touched or held.

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

ARTICLE 2. OBJECTIVE

The objective of this CRADA is to conduct basic widget research and evaluate innovative concepts.

ARTICLE 3. RESPONSIBILITIES

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

3.1 NRL Personnel and Facilities

The Cooperative Work done by NRL will be performed under the program guidance of NRL Program Manager, NRL Principal Investigator (PI), NRL Code XXXX, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within the facilities of NRL or done on behalf of NRL by third parties in support of this Agreement.

XYZ personnel who perform Cooperative Work at NRL facilities will be supervised by the XYZ PI.

3.2 XYZ Personnel and Facilities

The Cooperative Work done by XYZ will be performed under the program guidance of the XYZ Principal Investigator (XYZ PI), Company Program Manager, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within the facilities of XYZ or done on behalf of XYZ by third parties in support of this Agreement.

NRL personnel who perform Cooperative Work at XYZ facilities will be supervised by the NRL PI.

3.3 Security Regulations and Directives

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

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

4.1 NRL's Representations and Warranties

NRL hereby warrants and represents to XYZ as follows:

4.1.1 NRL is a Federal laboratory of the U.S. Department of the Navy (Navy) as defined by 15 USC 3710a(d)(2)(A) and Department of Defense Instruction 5535.8, dated May 14, 1999.

4.1.2 The performance of the activities specified by this Agreement is consistent with the widget development and technology transfer missions of NRL (15 USC 3710a).

4.1.3 The Department of the Navy official executing this Agreement for NRL has the requisite power and authority to enter into this Agreement and to bind NRL to perform according to the terms of this Agreement.

4.2 XYZ's Representations and Warranties

XYZ hereby warrants and represents to NRL as follows:

4.2.1 XYZ is not directly or indirectly controlled by a foreign company or government (Executive Order 12591, Section 4 (a)). XYZ, as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of the State of «CO_StateCorp».

4.2.2 The official executing this Agreement for XYZ has the requisite power and authority to enter into this Agreement and to bind XYZ to perform according to the terms of this Agreement.

4.2.3 The Board of Directors and stockholders of XYZ have taken all actions required by law, its Certificate or Articles of Incorporation, its bylaws or otherwise, to authorize the execution and delivery of agreements, such as this Agreement.

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

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

4.2.6 XYZ is/is not a small business as defined in 15 USC 632 and implementing regulations (13 CFR 121.101 et seq.) of the Administrator of the Small Business Administration.

4.3 Joint Representations

The Collaborators make the following representations.

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

4.3.2 The use and dissemination of Information and materials exchanged under this Agreement will be in accordance with all U.S. Federal laws and regulations, with particular regard to those pertaining to national security and export control.

4.3.2.1 Nothing in this Agreement shall be construed as a license to export Information or to permit any disclosure in violation of law, regulation, or Department of Defense or Navy policies. To the extent that any Information or materials may be exported (including deemed exports made in the United States), the exporting Collaborator is responsible for complying with all applicable export licensing requirements under U.S. Federal laws and regulations.

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

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

ARTICLE 5. FUNDING

5.1 Payment Schedule

XYZ agrees to pay NRL the following costs in accordance with the payment schedule below:

XYZ shall provide one (1) payment of X thousand dollars (\$X,000) to NRL within fifteen (15) days after the CRADA has been signed by both parties.

NCRADA-NRL-14-XXX
DATE

The total amount that XYZ pays shall be X thousand dollars (\$X,000). The funded amount will be used to support NRL's research as described in the Statement of Work (Appendix A).

If mutually agreed, XYZ may provide funding to NRL under one or more amendments to this CRADA.

Checks will be payable to:

Defense Finance and Accounting Service

Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-NRL-14-XXX."

Checks will be mailed to:

Naval Research Laboratory

Attn: Code 3353

4555 Overlook Avenue, S.W.

Washington, D.C. 20375-5320

5.2 Insufficient and Excess Funds

NRL may discontinue performance under this Agreement if the funds provided by XYZ for performance by NRL are insufficient or are not provided as specified in Article 5.1. In the event XYZ fails to tender the Government the required payment within fifteen (15) days after its respective due date, XYZ shall be in default under this Agreement for failure to make payments. If XYZ is in default for this reason, NRL shall notify XYZ. If XYZ does not cure the default within fifteen (15) days of mailing date of notice, NRL may proceed to terminate the Agreement in accordance with Article 11.2.2, may cancel any option for an Exclusive License to a Subject Invention, and may terminate any Exclusive License granted pursuant to this Agreement.

Funds that XYZ paid under Article 5.1 and that NRL has not obligated or expended at the time of completion, expiration, or termination of this Agreement shall be returned to XYZ after NRL's submission of a final fiscal report to XYZ.

5.3 No New Commitments

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

5.4 Accounting Records

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

ARTICLE 6. REPORTS AND PUBLICATIONS

6.1 Interim Reports

The Collaborators shall submit interim written reports to each other on the progress of the Cooperative Work as mutually agreed.

6.2 Final Reports

The Collaborators shall submit to each other a final report within four (4) months of the completion, termination, or expiration of this Agreement that includes the results obtained and a list of all Subject Inventions Made. A copy of the final report shall be submitted to the Technology Transfer Office, Naval Research Laboratory, at the address shown in Article 11.3.

6.3 Agreement to Confer Prior to Publication or Public Disclosure

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

Each Collaborator shall be offered a period of thirty (30) days, unless otherwise mutually agreed in writing by the Collaborators, to review any proposed abstract, publication, presentation, or other document for public disclosure that contains Subject Data. For the purposes of this Article, the term "disclosure" shall include, but not be limited to, submission of any manuscript for peer review prior to publication. It is the responsibility of the Collaborator intending to make public disclosure of Subject Data to notify the other Collaborator of such intent.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the other Collaborator within thirty (30) days of the date of notice of intent to disclose publicly. If no objection is received by the Collaborator intending to make public disclosure, concurrence is assumed. If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator within ninety (90) days of the date of notification of intent to make public disclosure, or by another date mutually agreed to by the Collaborators. If a Collaborator objects to the release of Information

on the grounds that the Information is Proprietary Information, Restricted Access Information, or Information whose dissemination is restricted by U.S. security laws or regulations, the disclosure shall be postponed until the Information no longer meets the definitions of Proprietary Information, Restricted Access Information, or is no longer covered by U.S. security laws or regulations.

ARTICLE 7. INTELLECTUAL PROPERTY

7.1 Data

7.1.1 General Provisions Applying to All Data

7.1.1.1 Ownership

Each Collaborator shall have title to all Data generated by that Collaborator.

7.1.1.2 No Implied License

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

7.1.1.3 Marking of Data

7.1.1.3.1 Data Provided With Less Than Unlimited Rights

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

7.1.1.3.2 Data that are Proprietary Information or Restricted Access Information

XYZ shall place a proper proprietary marking on each medium used for recording Data that XYZ delivers to NRL under this Agreement that XYZ asserts is Proprietary Information. NRL shall inform XYZ whenever Subject Data generated by NRL is to be marked as Restricted Access Information. The Collaborators together shall confer to determine if such marking is appropriate, with reference to the Definitions of Article 1. If the Collaborators mutually agree to the marking then:

(a) For Non-Subject Data that are Proprietary Information, the marking shall read: “PROPRIETARY INFORMATION OF XYZ CORPORATION - NRL MAY USE ONLY FOR PURPOSE OF CRADA NUMBER NCRADA-NRL-14-XXX”;

(b) For Subject Data that are Proprietary Information, the marking shall read: “PROPRIETARY INFORMATION OF XYZ CORPORATION – GOVERNMENT HAS GOVERNMENT PURPOSE RIGHTS UNDER NCRADA-NRL-14-XXX”;

(c) For Data that are Restricted Access Information, the marking shall read: “RESTRICTED ACCESS INFORMATION – PROTECT IN ACCORDANCE WITH NCRADA-NRL-«CRADA_no» UNTIL [INSERT DATE]: wherein the date to be inserted will not exceed five (5) years from the generation of a Restricted Access Information document”.

7.1.1.3.3 Data that are Subject to 35 USC 205

NRL shall mark Data it provides under this Agreement that disclose one or more Inventions in which the Government owns or may own a right, title or interest, and that are subject to confidentiality under 35 USC 205. Such Data shall be marked:

“NAVAL RESEARCH LABORATORY DATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 USC 205.”

7.1.1.4 Protection of Data

Except for the rights granted in Article 7.1.2.2, Data shall be protected in accordance with the proper markings of its owner and as provided by, at a minimum, the requirements of 15 USC 3710a. Proprietary Information will be protected only if it is properly marked as such. Information provided in intangible form that is Proprietary Information must be designated Proprietary Information at the time it is delivered, followed within fifteen (15) days by a writing summarizing the exact Information to be protected. The Collaborator receiving Information in an intangible form that is designated as Proprietary Information shall be responsible for protecting the Information as Proprietary Information during the fifteen (15) day notification period. After the fifteen (15) day period, if no written summary has been received, the receiving Collaborator need not continue to protect the Information received in intangible form.

Restricted Access Information shall be protected from public dissemination for up to five (5) years, as mutually agreed.

7.1.1.5 Release of Data under the Freedom of Information Act

Data in the possession of NRL that are not marked CUI, Proprietary Information of XYZ or Restricted Access Information must be released by NRL where such release is required pursuant to a request under the Freedom of Information Act (FOIA) (5 USC 552). NRL shall protect Data that are properly marked CUI, Proprietary Information of XYZ or Restricted Access Information from release under the FOIA for as long as the marked Data meet the definition of CUI, Proprietary Information or Restricted Access Information. Prior to release of any such Data, NRL shall promptly notify XYZ of any request for Data of XYZ regardless of whether the requested Data are marked Proprietary Information.

7.1.2 Subject Data

7.1.2.1 Delivery of Requested Subject Data

Each Collaborator shall have the right to review and receive delivery of all Subject Data generated by the other Collaborator. Requested Subject Data shall be delivered to the requesting Collaborator within fifteen (15) days of the request.

7.1.2.2 Rights in Subject Data

Except as represented in Article 4.3.2, XYZ shall have Unlimited Rights in all Subject Data, including source code, that are not Restricted Access Information. NRL shall have Unlimited Rights in all Subject Data, including source code, that are not Proprietary Information. Notwithstanding 15 USC 3710a, XYZ grants Government Purpose Rights in any Subject Data, including source code, furnished by XYZ to NRL under this Agreement that are properly marked as Proprietary Information. The Government has Government Purpose Rights in Subject Data, including source code, that are Restricted Access Information.

7.1.3 Rights in Non-Subject Data

The Collaborators shall have Unlimited Rights in any Non-Subject Data, including source code, that are not Proprietary Information or protected under 35 USC 205 delivered under this Agreement.

NRL has a limited right to use, reproduce, and disclose (“Limited Right”) only to Government employees for use in support of the Cooperative Work any Non-Subject Data, including source code, that are properly marked as Proprietary Information and are provided by XYZ under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless consent to other use or disclosure is obtained from XYZ in writing.

XYZ shall have a Limited Right to use, reproduce, or disclose Non-Subject Data, including source code, that may describe one or more Inventions in which the Government owns or may own a right, title or interest, if such Non-Subject Data are provided by NRL under this Agreement. In accordance with 35 USC 205, such Non-Subject Data are to be held in confidence. Such Non-Subject Data shall be properly marked by NRL and the limited rights of XYZ shall be defined by a separate non-disclosure agreement.

7.2 Copyrights

7.2.1 Copyright by XYZ

XYZ may copyright works of authorship prepared pursuant to this Agreement if eligible for copyright protection under Title 17 USC.

7.2.2 Copyright License to the Government

XYZ grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software (17 USC 106), prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.1.

7.2.3 Copyright Statement

XYZ shall include the following statement on any text, drawing, mask work or other work of authorship, that may be copyrighted under 17 USC, that is created in the performance of this Agreement:

“The U.S. Government has a copyright license in this work pursuant to a Cooperative Research and Development Agreement with the Naval Research Laboratory.”

7.3 Subject Inventions

7.3.1 Obligation to Report Subject Invention

7.3.1.1 Collaborators’ Instructions to Employees

Each Collaborator shall instruct its employees to submit an Invention Disclosure to that Collaborator for all innovations, solutions to technical problems, or unique increases to the general body of knowledge resulting from the Cooperative Work. For the purposes of this Article, these innovations, solutions, and increases to knowledge shall be deemed Inventions.

7.3.1.2 Timely Invention Disclosure by Inventors

Within ninety (90) days of Making an Invention resulting from the Cooperative Work, unless a shorter time period is required by circumstances, the inventor(s) shall submit an Invention Disclosure to their employer.

In the case of an Invention Made jointly by inventors from both Collaborators, the inventors of each Collaborator shall submit an Invention Disclosure with their respective employer.

7.3.1.3 Obligation to Provide Invention Disclosures to the Other Collaborator

Each Collaborator shall provide the other Collaborator with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) days of receiving the Invention Disclosure from its inventor(s).

7.3.2 Determination of Subject Inventions

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

7.3.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to solely own the Subject Inventions Made solely by its employees. For any Invention Made jointly by employees of the Collaborators, (hereinafter called a “Jointly-Made Subject Invention”), each Collaborator shall

have ownership of the Subject Invention in the form of an undivided interest, without a right of accounting. Each Collaborator shall cooperate with the other Collaborator to obtain inventor signatures on patent applications, assignments or other documents required to secure Intellectual Property protection.

7.3.4 Filing of Patent Applications

7.3.4.1 Filing of Patent Applications on Solely Made Inventions

Each Collaborator has primary responsibility for filing Patent Applications on the Subject Inventions of its employee(s). Notwithstanding such primary responsibility, by mutual agreement, the Collaborators may identify which Collaborator shall file a Patent Application on any Subject Invention.

7.3.4.2 Filing of Patent Applications on Jointly-Made Subject Inventions

In the case of an Invention Made jointly by employees of both Collaborators, the Collaborators shall confer and agree as to which Collaborator will file any Patent Application. Officers of the non-filing Collaborator shall cooperate with the filing Collaborator to obtain signatures on documents that are needed to file a Patent Application.

7.3.4.3 Preserving Intellectual Property Rights

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

7.3.4.4 Filing Deadlines

The Collaborator responsible for filing any Patent Application for a Subject Invention shall notify the other Collaborator of all filing deadlines for prosecution of any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.3.4.1, sixty (60) days prior to any filing deadline, the Collaborators shall confer to determine if the filing Collaborator intends to respond to the filing deadline. The non-filing Collaborator will be permitted to take action if the filing Collaborator declines.

7.3.4.5 Copies and Inspection

7.3.4.5.1 Copies of Prosecution Papers

Each Collaborator filing a Patent Application on a Subject Invention shall provide the other Collaborator with a copy of any communication

relating to prosecution of said Patent Application within thirty (30) days of receipt of such communication.

7.3.4.5.2 Access to Patent Application File and Right to Make Copies

Upon written request, the filing Collaborator shall give the other Collaborator a limited Power of Attorney, with authorization to access the Patent Application, make copies, and, in the event the filing Collaborator fails or declines to take action, the other Collaborator may do all that is necessary to secure patent protection for the Jointly-Made Subject Invention.

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

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

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

7.3.5 Nonexclusive Noncommercial License to Subject Inventions

7.3.5.1 Nonexclusive Noncommercial License Grant

Each Collaborator grants to the other Collaborator a nonexclusive, irrevocable, paid-up license to make, have made, use, and import, but not to commercially sell, a Subject Invention or a product or service made using a Subject Invention (“Nonexclusive Noncommercial License”) Made by employees of the granting Collaborator. Any nonexclusive license granted to XYZ shall be in the field of widget applications. No nonexclusive noncommercial license granted under this Agreement shall permit licensee to grant sublicenses.

7.3.5.2 Confirmatory Nonexclusive License Agreement

Each Collaborator has the obligation to provide a Confirmatory License Agreement (Appendix B) to the other Collaborator for each Nonexclusive Noncommercial License within ninety (90) days of the date of filing.

7.3.6 Option for Commercial License to Subject Inventions

NRL gives XYZ the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of widget applications in the Government’s rights in any Subject Invention Made in whole or in part by a NRL employee. The license shall be for

reasonable consideration. In order to exercise this option, XYZ must notify NRL in writing within one hundred and eighty (180) days of the filing of a Patent Application. Unless another time period is mutually agreed upon between the Collaborators, XYZ must execute an Exclusive or Nonexclusive Commercial License to the Subject Invention within one hundred and eighty (180) days of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 CFR Part 404.

Any Exclusive License granted by the Government in a Subject Invention is subject to the statutorily required reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have that Subject Invention practiced throughout the world by or on behalf of the Government (15 USC 3710a).

7.3.7 Limitation on Assignment of Licenses Granted Under this Agreement

No license granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of XYZ's business to which such license pertains.

7.3.8 Termination of License Granted and Cancellation of Commercial License Option to Subject Inventions

7.3.8.1 Cancellation of the Commercial License Option and Termination of Commercial Licenses

NRL may cancel the Exclusive or Nonexclusive Commercial License Option and terminate any Exclusive or Nonexclusive Commercial Licenses provided for under Article 7.3.6 for Subject Inventions made in whole or in part by Government Employees in the event that:

- (a) XYZ is in default for failure to make payment as agreed in Article 5; or
- (b) The Agreement is terminated unilaterally by XYZ under Article 11.2.2; or
- (c) XYZ fails to perform according to the Statement of Work (Appendix A); or
- (d) XYZ becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by NRL not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.3.8.2 Withholding and Termination of Confirmatory Nonexclusive Licenses

NRL may withhold or terminate any confirmatory nonexclusive license agreement provided for under Article 7.3.5 for Subject Inventions made in whole or in part by Government Employees in the event that XYZ becomes a FOCI organization that is

reasonably determined by NRL not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.4 Non-Subject Inventions

7.4.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

7.4.2 Rights Under Other Agreements

Nothing in this Agreement is intended to change the rights in Intellectual Property acquired by the Collaborators in any other contract or agreement between XYZ and the Government.

7.4.3 No License to Non-Subject Inventions

This Agreement does not grant any Collaborator a license, express or implied, to any Non-Subject Invention.

7.4.4 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date and pertinent to the Cooperative Work that are specifically identified as property of NRL include but are not limited to the following:

[List Invention Title, inventor name(s), patent number, or Navy case number if an Invention disclosure, or Patent Application Serial Number, and date of issue (for patents only).]

XYZ shall obtain any necessary license to NRL-owned Non-Subject Inventions needed for its commercial operations in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

7.5 Research License

Each Collaborator shall allow the other Collaborator to practice any of its Non-Subject Inventions for the purpose of performing the Cooperative Work.

No license, express or implied, for commercial application(s) is granted to either Collaborator in Non-Subject Inventions by performing the Cooperative Work.

For commercial application(s) of Non-Subject Inventions, a license must be obtained from the owner.

ARTICLE 8. TANGIBLE PROPERTY

8.1 Title to Preexisting Tangible Property

Each Collaborator shall retain title to all Tangible Property to which it had title before the Effective Date of this Agreement.

8.2 Tangible Property Purchased by Collaborators to Perform the Cooperative Work

Each Collaborator shall retain title to all Tangible Property that it purchases during the period of this Agreement. XYZ cannot take title to any Government Tangible Property under this Agreement. Collaborator consumables to be used in the Cooperative Work of this Agreement are the property of the purchasing Collaborator until consumed.

8.3 Title to Developed Tangible Property

All Tangible Property developed under this Agreement with all components purchased by one Collaborator shall be the property of that Collaborator. The Collaborators may, by mutual agreement, decide which Collaborator shall own the Tangible Property, or separate the Tangible Property into its components. These separated components shall remain the property of the Collaborator that purchased them, aside from any exceptions stated in Appendix A.

8.4 Tangible Property Operational and Disposition Costs

During the period of and upon completion, expiration, or termination of this Agreement, each Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, disposal, and shipping of all Tangible Property to which it has title, aside from any exceptions stated in Appendix A.

8.5 Disposal of Tangible Property

Disposal of Tangible Property shall be in accordance with applicable U.S. Federal, state, and local property disposal laws, environmental laws, and regulations.

ARTICLE 9. LIABILITY

9.1 Extent of Government Liability

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

9.2 Extent of XYZ Liability

XYZ is solely responsible for its actions and the actions of those, other than any Government officer or employee, acting for XYZ in the performance of this Agreement and for any damages that may arise from any suit, action, or claim resulting from such actions, and for any costs from or incidental to any such suit, action, or claim, including but not limited to settlement and defense costs. Further, XYZ agrees that it shall not pursue litigation or any other judicial or administrative recourse against the Government in, or take any action to enter the Government as party to, any such suit, action, or claim in which XYZ may become involved.

9.3 *Force Majeure*

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

ARTICLE 10. GENERAL PROVISIONS

10.1 Characteristics of the Agreement

10.1.1 Entire Agreement

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

10.1.2 Severability

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

10.1.3 Interpretation of Headings

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

10.2 Agreements Between Collaborators

10.2.1 Governing Laws

United States Federal laws shall govern this Agreement for all purposes.

10.2.2 Independent Parties/Entities

The relationship of the Collaborators to this Agreement is that of independent parties and not as agents of each other, partners, or participants in a joint venture. Each Collaborator shall maintain sole and exclusive control over its personnel and operations.

10.2.3 Assignment/Subcontracting

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

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

10.2.3.3 If XYZ or its successor or assignee is a U.S. company, and becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a foreign company or government (FOCI), then XYZ or its successor or assignee shall promptly notify NRL to that effect.

10.2.4 Disputes

10.2.4.1 Settlement and Resolution

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

10.2.4.2 Continuation of Cooperative Work

If payments or installment payments are to be made as stated under Article 5, NRL will not start or continue Cooperative Work until payments or installment payments are received.

10.2.5 Waivers

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

10.2.6 Use of Name or Endorsements

Except as provided for in Article 7.2.3, XYZ shall not use the name of NRL or any other Government entity on any product or service that is directly or indirectly related to either this Agreement or any license or assignment associated with this Agreement without the prior approval of NRL. By entering into this Agreement, NRL does not directly or indirectly endorse any product or service provided, or to be provided, by XYZ, its successors, assignees, or licensees. XYZ shall not in any way imply that the Department of the Navy endorses any such product or service.

10.3 Environment, Safety, and Health

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

10.4 U.S. Competitiveness

XYZ agrees that any product, process, or service using Subject Inventions arising from the performance of this Agreement shall be manufactured substantially in the United States.

10.5 Public Release of this Agreement

This Agreement, without funding information (Article 5) and Appendices, may be released to the public.

ARTICLE 11. MODIFICATIONS AND NOTICES

11.1 Amendments

If a Collaborator wishes to modify this Agreement, the Collaborators shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by both executing officials of this Agreement or their successors.

11.2 Termination

11.2.1 Termination by Mutual Consent

The Collaborators may elect to terminate this Agreement at any time by mutual consent. Such termination shall not be effective until a written termination agreement is signed by both executing officials of this Agreement or their successors.

11.2.2 Unilateral Termination

A Collaborator may unilaterally terminate this entire Agreement at any time by giving the other Collaborator written notice signed by the executing official of this Agreement or his/her successor, not less than thirty (30) days prior to the desired termination date. If XYZ unilaterally terminates this Agreement, any option for a commercial license to a Subject Invention and any commercial license to a Subject Invention granted by or pursuant to this Agreement shall simultaneously be terminated.

11.3 Notices

11.3.1 General Notices and Notices Pertaining to Publication

Prior to submission for publication or public disclosure, the NRL PI and XYZ PI shall confer and consult on any such publication or public disclosure as per Article 6.3 above. All notices pertaining to or required by Articles of this Agreement, including notices pertaining to publication or public disclosure and a copy of any proposed publication or public release, but excluding those pertaining solely to the prosecution of any patent, trademark, or service mark, shall be in writing and shall be signed by an authorized representative of the Technology Transfer Office for NRL or the preferred contact for XYZ, and all such notices shall be delivered by hand, sent by courier with proper registration, or sent by certified mail, return receipt requested, with postage prepaid, addressed as follows:

If to NRL:

Head, Technology Transfer Office
Naval Research Laboratory, Code 1004
4555 Overlook Avenue, S.W.
Washington, DC 20375-5320

If to XYZ:

Company Program Manager
XYZ Corporation
123 Main Street
City, State 12345-6789

The above contacts shall be responsible for the receiving Collaborator's review as required under Article 6.3. A Collaborator shall notify the other Collaborator of a change of address in the manner set forth above.

11.3.2 Notices Pertaining to Patent Prosecution, Trademarks, or Service Marks

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

ARTICLE 12. SURVIVING PROVISIONS

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

ARTICLE 13. DURATION

This Agreement expires (duration of time) after its Effective Date, unless otherwise terminated or extended in writing according to the provisions of Article 11.

ARTICLE 14. SIGNATURES

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

For XYZ Corporation:

I, the undersigned, am duly authorized to bind XYZ Corporation to this Agreement and do so by affixing my signature hereto.

Entered into this ____ day of _____ 2014,

By: _____

Print or Type Name: _____

Title: _____

For the Department of the Navy:

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

Entered into this ____ day of _____ 2014,

By: _____

M. C. BRUINGTON
Captain, U.S. Navy

Title: Commanding Officer

APPENDIX A
STATEMENT OF WORK

BETWEEN
THE NAVAL RESEARCH LABORATORY (NRL)
AND
XYZ CORPORATION (XYZ)
ON
WIDGET RESEARCH

STATEMENT OF WORK

NRL will be responsible for the following tasks:

1. Draw on the literature and their extensive in-house experience to educate specific members of XYZ's technical staff on the widget research developed at NRL. This will include a review of (a) system design, (b) software approach, (c) hardware requirements, (d) basic fabrication, and (e) system capabilities.

XYZ will be responsible for the following tasks:

1. Learn about the technical approach(es) and detection capabilities of widget research developed at NRL.
2. Use market knowledge along with information gained from NRL (and other experts) to:
 - (a) generate an initial product definition and basic (top level) system design;
 - (b) define the specific detection goals (species, levels, and sensitivity); and
 - (c) define the widget requirements.

NRL and XYZ will jointly be responsible for the following tasks:

- 1.
- 2.
- 3.

APPENDIX B

CONFIRMATORY LICENSE AGREEMENT

APPENDIX B

<p>CONFIRMATORY LICENSE AGREEMENT</p>	<p>1. APPLICATION FOR (Title of invention)</p>
<p>2. INVENTOR(S) AND AFFILIATION</p>	
<p>3. PATENT APPLICATION SERIAL NO.</p>	<p>4. PATENT APPLICATION FILING DATE</p>
<p>5. NAVY ACTIVITY (Name, address, point of contact)</p>	<p>6. NON-NAVY ACTIVITY (Name, address, point of contact)</p>
<p>7. CRADA AGREEMENT NO.</p>	<p>8. DATE OF THIS AGREEMENT</p>
<p>9. The invention identified above is a "Subject Invention" under Article 7 Intellectual Property included with the CRADA identified in Box 7 between the Department of the Navy and Non-Navy Activity identified in Box 6.</p> <p>This document is confirmatory of the nonexclusive, irrevocable, paid-up license to make, have made, use, and import, but not to commercially sell, the identified Subject Invention and of all other rights acquired by the receiving party by the referenced clause.</p> <p>This license is granted to</p> <p>_____ the Government (Select one)</p> <p>_____ Non-Navy Activity identified in Box 6</p> <p>Under this CRADA in the identified invention, patent application and any resulting patent.</p> <p>The licensee is hereby granted an irrevocable power to inspect and make copies of the above-identified patent application.</p> <p>_____ ACTIVITY NAME OF LICENSOR</p> <p>_____ SIGNATURE</p> <p>_____ NAME (Typed or Printed)</p> <p>_____ TITLE</p> <p>_____ BUSINESS TELEPHONE</p>	

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