

# DRAFT

Date: Today's Date

S-CRADA funded-DEH-5/17/01  
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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-01-XXX

## AGREEMENT ADMINISTRATORS

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## 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 Street, City, State 12345-6789 enter into this Cooperative Research and Development (CRADA), which shall be binding upon both 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.

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NOW THEREFORE, the Collaborators agree as follows.

## ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have meanings that are equally applicable to both the singular and plural forms of nouns or any tense of verbs defined below.

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

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

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

1.4 “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).

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

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

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

1.8 “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.

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

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

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1.11 “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 Act. (15 USC 3703(9))

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

1.13 “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention. (15 USC 3703(10)).

1.14 “Militarily Critical Technologies (MCT)” means those technologies identified under the Export Administration Act of 1979, as amended.

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

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

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

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

1.19 “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; and

has not been developed independently by persons who have had no access to the information. (FAR/DFARS Definition)

1.20 “Restricted Access Information” means Subject 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

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Collaborators mutually may 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.

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

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

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

1.24 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data or Computer Programs in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

## ARTICLE 2. OBJECTIVES

The objective of the Parties to this Agreement 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, 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 XYZ PI.

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## 3.2 XYZ Personnel and Facilities

The Cooperative Work done by XYZ will be performed under the program guidance of Company Program Manager, XYZ PI, 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 research mission of NRL (15 USC 3710a(e)).

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 (State Name).

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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. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed

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as a license to export Information or to permit any disclosure in violation of law, regulation, or Department of Defense policy. The Collaborators are responsible for obtaining any export licenses that may be required by U.S. Federal law.

## ARTICLE 5. FUNDING

### 5.1 Payment Schedule

XYZ agrees to pay NRL the following fees/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.

The total funded amount 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.

Checks will be payable to:

Accounting Officer NRL-DFAS

**Each check and its cover correspondence shall refer to Navy CRADA number "NCRADA-NRL-01-XXX."**

Checks will be mailed to:

Accounting Officer  
Naval Research Laboratory, Code 3350  
4555 Overlook Avenue, S.W.  
Washington, D.C. 20375-5327

### 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, NRL may proceed to terminate the Agreement in accordance with Article 11.2.2 and may cancel any option for an exclusive license to a Subject Invention and may terminate any exclusive license granted pursuant to this Agreement.

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Advanced funds not obligated or expended by NRL 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 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 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.

### 6.3 Agreement to Confer Prior to Publication or Public Disclosure

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Restricted Access Information, Government Classified Information, or MCT Information is released and that patent rights are not compromised. Prior to any such publication or public disclosure of Subject Data, each Collaborator shall be offered a period not less than fifteen (15) days and not to exceed thirty

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

## 6.4 Classified Information

Any presentation that includes Subject Data that are Classified Information or otherwise restricted Data must have prior review and approval by NRL pursuant to the pertinent security laws, regulations, and directives.

## 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.

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## 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. XYZ shall request in writing if it wishes Subject Data generated by NRL 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 CRADA 01-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-01-XXX”;

(c) for Data that are Restricted Access Information, the marking shall read:

“RESTRICTED ACCESS INFORMATION – PROTECT IN ACCORDANCE WITH NCRADA-NRL-01-XXX UNTIL [INSERT DATE].”

### 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:

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

7.1.1.3.4 Data that are Classified Information, MCT, or Otherwise Restricted

Each Collaborator shall mark all Data that are Classified Information, MCT, or otherwise restricted by U.S. security or export control laws or regulations that it provides under this Agreement.

#### 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.

Classified Information, MCT, or otherwise restricted Information shall be protected in accordance with the security laws of the United States.

#### 7.1.1.5 Release of Data under the Freedom of Information Act

Data in the possession of NRL that are not marked 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 Proprietary Information of XYZ or Restricted Access Information from release under the FOIA for as long as the marked Data meet the definition of Proprietary Information or Restricted Access Information. Prior to release of

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any 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, the Collaborators shall have Unlimited Rights in all Subject Data that are not Proprietary Information or Restricted Access Information. Notwithstanding 15 USC 3710a, XYZ grants Government Purpose Rights in any Subject Data furnished by XYZ to NRL under this Agreement that are properly marked as Proprietary Information. The Government has Government Purpose Rights in Subject Data that are Restricted Access Information.

## 7.1.3 Rights in Non-Subject Data

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information delivered under this Agreement. NRL has a limited right to use, reproduce, and disclose only to Government employees for use in support of the Cooperative Work any Non-Subject Data 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 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.

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## 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, 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 Trademarks and Service Marks

### 7.3.1 Ownership of Trademarks and Service Marks

The Collaborator first establishing a trademark or service mark for goods or services with which the mark is used shall be considered the owner of the mark.

### 7.3.2 Obligation of Employees to Report Trademarks and Service Marks

Employees of both Collaborators shall report the adoption of a trademark or service mark associated with the Cooperative Work to their employer within thirty (30) days of the first use of the mark. Use includes internal use of any product or service of the Cooperative Work.

### 7.3.3 Obligation of Collaborators to Notify Each Other

Each Collaborator shall notify the other Collaborator within thirty (30) days of their employee’s report of the first use of a trademark or service mark.

### 7.3.4 Responsibility for Filing an Application for Trademark or Service Mark

The Collaborator owning a trademark or service mark shall establish the use of the mark in intra- and interstate commerce and shall be responsible for filing all applications for trademark or service mark registration as appropriate.

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## 7.3.5 License to Use Trademark or Service Mark

The Collaborator owning the trademark or service mark shall grant a paid-up, irrevocable, nonexclusive license to the other Collaborator for use of the trademark or service mark on the goods or services for which the mark is intended to be used.

## 7.4 Subject Inventions

### 7.4.1 Obligation to Report Subject Invention

#### 7.4.1.1 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.

#### 7.4.1.2 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 shall submit an Invention Disclosure with their respective employer.

#### 7.4.1.3 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 employee(s).

### 7.4.2 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.

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## 7.4.3 Title to and Ownership of Subject Inventions

Each Collaborator shall be entitled to own the Subject Inventions of its employees. 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. For any Invention Made jointly by employees of the Collaborators, each Collaborator shall have ownership of the Subject Invention in the form of an undivided interest.

## 7.4.4 Filing of Patent Applications

### 7.4.4.1 Filing of Patent Applications on Solely Made Inventions

Each Collaborator has primary responsibility for filing of Patent Applications on the Subject Inventions of its employee(s).

Notwithstanding primary responsibility, by mutual agreement, the Collaborators may identify which Collaborator shall file a Patent Application on any Subject Invention.

### 7.4.4.2 Filing of Patent Applications on Jointly Made Inventions

In the case of an Invention jointly Made 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.

### 7.4.4.3 Preserving Intellectual Property Rights

The Collaborator responsible for filing of a Patent Application on any 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 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 Subject Invention or have the Subject Invention practiced throughout the world by or on its behalf.

### 7.4.4.4 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

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any Patent Application and maintenance of any Patents on the Subject Invention. Notwithstanding the primary responsibility defined in Article 7.4.4.1, 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.

## 7.4.4.5 Copies and Inspection

### 7.4.4.5.1 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.

### 7.4.4.5.2 Access to Patent Application File and Right to Make Copies

Upon written request, the filing Collaborator shall give the other Collaborator an Associate 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, do all that is necessary to secure Intellectual Property protection for the Subject Invention.

## 7.4.4.6 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.

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.

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## 7.4.5 Nonexclusive License to Subject Inventions

### 7.4.5.1 Nonexclusive License Grant

Each Collaborator grants to the other Collaborator a nonexclusive, irrevocable, paid-up license to practice a Subject Invention Made by employees of the granting Collaborator or have the Subject Invention practiced throughout the world by or on behalf of the other Collaborator. No nonexclusive license granted under this Agreement shall permit licensee to grant sublicenses.

### 7.4.5.2 Confirmatory Nonexclusive License Agreement

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

## 7.4.6 Option for Exclusive License to Subject Inventions

NRL gives XYZ the option of acquiring an exclusive license for widgets 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 days (180) of the filing of a Patent Application. Unless another time period is mutually agreed upon between the Collaborators, XYZ must execute an exclusive 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).

## 7.4.7 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.

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## 7.4.8 Termination of License Granted and Cancellation of Exclusive License Option to Subject Inventions

### 7.4.8.1 Exclusive Licenses and Exclusive License Option

NRL may terminate any exclusive license or cancel any option for an exclusive license to a Subject Invention granted under this Agreement in the event that:

- (a) XYZ is in default for failure to make payment as agreed in Article 5.1; or
- (b) the Agreement is terminated unilaterally by XYZ.

NRL shall terminate any exclusive license or cancel any option for an exclusive license to a Subject Invention granted under this Agreement if XYZ becomes a foreign owned, controlled, or influenced (FOCI) organization or becomes owned, controlled, or influenced by a different FOCI entity than that identified in Article 4.2, and an objection is made pursuant to Executive Order 12591, Section 4(a).

### 7.4.8.2 Nonexclusive Licenses

NRL shall terminate any nonexclusive license to a Subject Invention granted under this Agreement if XYZ becomes a FOCI organization or becomes owned, controlled, or influenced by a different FOCI entity than that identified in Article 4.2, and an objection is made pursuant to Executive Order 12591, Section 4(a).

## 7.5 Non-Subject Inventions

### 7.5.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

### 7.5.2 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 the XYZ and the Government.

### 7.5.3 No License to Non-Subject Inventions

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

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## 7.5.4 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 technology needed for its commercial operations in accordance with 35 USC 207.

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

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

## 7.6 Research License

No license to practice any Non-Subject Invention represented in any Patent or Patent Application owned by the Government or XYZ shall be required to perform the Cooperative Work.

## 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 prior to 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. Tangible Property having any component purchased by NRL shall be the property of the Government, unless such

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Tangible Property can reasonably be separated without damage to the other individual components. After this Agreement is completed, expired, or terminated, if separation of components can be made without damage, the Collaborators may, by mutual agreement, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that purchased them.

## 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.

## 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

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

### 9.3 *Force Majeure*

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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.

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## 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

Pending the resolution of any dispute or claim pursuant to this Article, except those disputes covered by the Antideficiency Act (31 USC 665), performance of all obligations under this Agreement shall be diligently pursued. In accordance with the

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Antideficiency Act, if payments are not made to NRL by XYZ according to the provisions of Article 5, NRL may discontinue work.

## 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 his/her 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 patent 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

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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 Intellectual Property 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 Article 5 or 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 an exclusive license to a Subject Invention and any exclusive license to a Subject Invention granted by or pursuant to this Agreement shall simultaneously be terminated.

### 11.3 Notices

All notices pertaining to or required by Articles of this Agreement, except those pertaining solely to the prosecution of any Patent, trademark, or service mark, shall be in writing

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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:

XYZ Corporation  
123 Main Street  
City, State 12345-6789

A Collaborator shall notify the other Collaborator of a change of address in the manner set forth above.

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 each Collaborator shall send a copy of any such notice to the Technology Transfer Office for Intellectual Property 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.

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## ARTICLE 13. DURATION

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

## ARTICLE 14. SIGNATURES

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 \_\_\_\_\_ 20\_\_\_\_,

By: \_\_\_\_\_

Title: \_\_\_\_\_

For the Department of the Navy:

I, the undersigned, by 15 U.S. Code 10(a) 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 \_\_\_\_\_ 20\_\_\_\_,

By: \_\_\_\_\_

D.H. RAU  
Captain, U.S. Navy

Title: Commanding Officer

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## APPENDIX A STATEMENT OF WORK

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

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## 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. Conduct a market analysis to identify the target market and application for initial product development.
3. 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);
  - (c) define the widget requirements, and;
  - (d) generate initial product cost estimates.

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

- 1.
- 2.
- 3.

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APPENDIX B

CONFIRMATORY LICENSE AGREEMENT

## APPENDIX B

<p><b>CONFIRMATORY LICENSE AGREEMENT</b></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 practice the identified Subject Invention or have that Subject Invention practiced throughout the world by or on behalf of the receiving party, and of all other rights acquired by the receiving party by the referenced clause.</p> <p>This license is granted to</p> <p style="margin-left: 40px;"> <input type="checkbox"/> the Government  <input type="checkbox"/> Non-Navy Activity identified in Box 6         </p> <p style="text-align: right; margin-right: 100px;">(Select one)</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> <div style="margin-top: 20px;"> <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 50%; border-bottom: 1px solid black;"></td> <td style="border: none; width: 50%;">ACTIVITY NAME OF LICENSOR</td> </tr> <tr> <td style="border: none; border-bottom: 1px solid black;"></td> <td style="border: none;">SIGNATURE</td> </tr> <tr> <td style="border: none; border-bottom: 1px solid black;"></td> <td style="border: none;">NAME (Typed or Printed)</td> </tr> <tr> <td style="border: none; border-bottom: 1px solid black;"></td> <td style="border: none;">TITLE</td> </tr> <tr> <td style="border: none; border-bottom: 1px solid black;"></td> <td style="border: none;">BUSINESS TELEPHONE</td> </tr> </table> </div>			ACTIVITY NAME OF LICENSOR		SIGNATURE		NAME (Typed or Printed)		TITLE		BUSINESS TELEPHONE
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