DARPA CRADA Template and Supplemental Instructions

Contents

[DARPA CRADA TEMPLATE 2](#_Toc47433094)

[APPENDIX A - STATEMENT OF WORK 30](#_Toc47433095)

[DARPA CRADA Supplemental Instructions 31](#_Toc47433096)

DARPA CRADA TEMPLATE

Below is the color legend used to distinguish the different texts used in this Template:

**Color Legend:**

**Black** – Required sections and text; if a section and/or text may not be inapplicable to the collaboration, discuss with DARPA GC to determining if deletion is appropriate.

**Green** – Suggested DARPA specific text to use; the content area must be addressed unless specifically inapplicable. The text instructions indicate where the section can be deleted.

**Red** – DARPA specific instructions and explanations.

**COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

BETWEEN

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY (DARPA)

AND

[Full name of NON-DOD COLLABORATOR then acronym]

AGREEMENT TITLE:

AGREEMENT NUMBER: CRADA**-**DARPA/**[tech office acronym]**-**[last two digits of FY] - [sequence number within tech office]**

**DARPA**

Technical Office/Program: **[insert name/acronym of DARPA technical office/program name]**

Program Manager/Principal Investigator: **[insert name, telephone number, e-mail address]**

Technical Office Point of Contact: **[insert name, telephone number, e-mail address]**

**[NON-DOD COLLABORATOR acronym]**

Principal Investigator: **[insert name, telephone number, e-mail address]**

Preferred Contact: **[insert name, telephone number, e-mail address]**

**TABLE OF CONTENTS**

**PREAMBLE ................................................................................................................................................................ 1**

**Article 1. DEFINITIONS ............................................................................................................................................1**

1.1 “Agreement” ...........................................................................................................................................................

1.2 “Classified Information (CI)” .................................................................................................................................

1.3 “Collaborator”.........................................................................................................................................................

1.4 “Controlled Unclassified Information (CUI)” ........................................................................................................

1.5 “Cooperative Work” ...............................................................................................................................................

1.6 “Data” ....................................................................................................................................................................

1.7 “Effective Date” ....................................................................................................................................................

1.8 “Exclusive Commercial License” .........................................................................................................................

1.9 “For Official Use Only (FOUO)” .........................................................................................................................

1.10 “Government” .....................................................................................................................................................

1.11 “Government Purpose Rights”............................................................................................................................

1.12 “Information” ......................................................................................................................................................

1.13 “Intellectual Property” .........................................................................................................................................

1.14 “Internal Use License” .........................................................................................................................................

1.15 “Invention” ..........................................................................................................................................................

1.16 “Invention Disclosure” ........................................................................................................................................

1.17 “Jointly Made Subject Invention” ........................................................................................................................

1.18 “Limited Rights” .................................................................................................................................................

1.19 “Made”.................................................................................................................................................................

1.20 “Nonexclusive Commercial License” .................................................................................................................

1.21 “Non-Subject Data” ............................................................................................................................................

1.22 “Non-Subject Invention” ....................................................................................................................................

1.23 “Patent Application” ...........................................................................................................................................

1.24 “Principal Investigator (PI)” ...............................................................................................................................

1.25 “Proprietary Information” ...................................................................................................................................

1.26 “Subject Data” ....................................................................................................................................................

1.27 “Subject Invention” ............................................................................................................................................

1.28 “Tangible Property” ............................................................................................................................................

1.29 “Technical Data” ................................................................................................................................................

1.30 “Technical Document” .......................................................................................................................................

1.31 “Technical Information” .....................................................................................................................................

1.32 “Unlimited Rights” .............................................................................................................................................

**Article 2. OBJECTIVES .........................................................................................................................................**

**Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE ..............................................**

3.1 Facilities and Supervision ...................................................................................................................................

3.2 Security Regulations and Directives ...................................................................................................................

**Article 4. REPRESENTATIONS AND WARRANTIES ....................................................................................**

4.1 **[DoD Collaborator]**’s Representations and Warranties ....................................................................................

4.2 DARPA’s Representations and Warranties .........................................................................................................

4.3 Joint Representations and Warranties .................................................................................................................

**Article 5. FUNDING ...............................................................................................................................................**

**Article 6. REPORTS AND PUBLICATIONS .....................................................................................................**

6.1 Interim Reports ...................................................................................................................................................

6.2 Final Reports .......................................................................................................................................................

6.3 Agreement to Confer Prior to Publication or Public Disclosure of Information .................................................

6.4 Public Presentation of Subject Data ....................................................................................................................

**Article 7. INTELLECTUAL PROPERTY ...........................................................................................................**

7.1 Rights Under Other Agreements .........................................................................................................................

7.2 Rights in Subject Data ........................................................................................................................................

7.2.1 Rights of Both Collaborators ...........................................................................................................................

7.2.2 Rights of DARPA............................................................................................................................................

7.2.3 Rights of [**Non-DoD Collaborator**] ...............................................................................................................

7.3 Rights in Non-Subject Data ................................................................................................................................

7.3.1 Rights of Both Collaborators ...........................................................................................................................

7.3.2 Rights of DARPA...........................................................................................................................................

7.3.3 Rights of **[Non-DoD Collaborator]** ...............................................................................................................

7.4 No Implied License .............................................................................................................................................

7.5 Protection of Data ...............................................................................................................................................

7.6 Release of Data Under the Freedom of Information Act ....................................................................................

7.7 Marking of Data ..................................................................................................................................................

7.7.1 Markings Required for Both Collaborators ....................................................................................................

7.7.1.1 Data Provided with Less than Unlimited Rights ........................................................................................

7.7.1.2 Data that are CI, CUI, or Otherwise Restricted .........................................................................................

7.7.1.3 For Official Use Only (FOUO) Marking ...................................................................................................

7.7.2 Markings Required for DARPA...................................................................................................................

7.7.2.1 Data that are Subject to 35 U.S. Code § 205 .............................................................................................

7.7.2.2 Data Protected Under Article 7.5 ..............................................................................................................

7.7.3 Markings Required for **[Non-DoD Collaborator]** ......................................................................................

7.7.3.1 Data that are Proprietary Information ........................................................................................................

7.8 Subject Inventions ...........................................................................................................................................

7.8.1 Reporting of Subject Inventions ...................................................................................................................

7.8.2 Determination of Subject Inventions ............................................................................................................

7.8.3 Title to and Ownership of Subject Inventions ...............................................................................................

7.9 Non-Subject Inventions ....................................................................................................................................

7.9.1 Ownership of Non-Subject Inventions ..........................................................................................................

7.9.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work .......................................................

7.10 Filing of Patent Applications ...........................................................................................................................

7.10.1 Patent Filing ..................................................................................................................................................

7.10.2 Copies and Inspection ...................................................................................................................................

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

7.11 Licenses to Subject Inventions .........................................................................................................................

7.11.1 Internal Use License to **[Non-DoD Collaborator]** ......................................................................................

7.11.2 Government License ......................................................................................................................................

7.11.3 Option for Commercial License to Subject Inventions .................................................................................

7. 11.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions ....................

7.12 License to Non-Subject Inventions ...................................................................................................................

7.13 Copyrights ........................................................................................................................................................

**Article 8. TANGIBLE PROPERTY ....................................................................................................................**

8.1 Ownership of Tangible Property .......................................................................................................................

8.2 Tangible Property Operational and Disposition Costs ......................................................................................

8.3 Disposal of Tangible Property ..........................................................................................................................

**Article 9. LIABILITY ...........................................................................................................................................**

9.1 Extent of Government Liability ........................................................................................................................

9.2 Extent of **[Non-DoD Collaborator]** Liability ..................................................................................................

9.3 *Force Majeure* ...................................................................................................................................................

**Article 10. GENERAL PROVISIONS ..................................................................................................................**

10.1 Entire Agreement ..............................................................................................................................................

10.2 Severability .......................................................................................................................................................

10.3 Interpretation of Headings ................................................................................................................................

10.4 Governing Laws................................................................................................................................................

10.5 Independent Parties/Entities .............................................................................................................................

10.6 Subcontracting ..................................................................................................................................................

10.7 Assignment .......................................................................................................................................................

10.8 Disputes ............................................................................................................................................................

10.9 Use of Name or Endorsements .........................................................................................................................

10.10 Public Release Announcements of this Agreement ........................................................................................

10.11 Environment, Safety, and Health .....................................................................................................................

10.12 U.S. Competitiveness .......................................................................................................................................

10.13 Waivers .............................................................................................................................................................

**Article 11. MODIFICATIONS AND NOTICES ..................................................................................................**

11.1 Amendments ..................................................................................................................................................... 11.2 Unilateral Termination ...................................................................................................................................... 11.3 Notices ..............................................................................................................................................................

**Article 12. SURVIVING PROVISIONS .............................................................................................................**

**Article 13. DURATION ........................................................................................................................................**

**Article 14. SIGNATURES ....................................................................................................................................**

**APPENDIX A - STATEMENT OF WORK ........................................................................................................**

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY (DARPA)

AND

[Non-DoD Collaborator full name then acronym]

**PREAMBLE**

Under authority of the U.S. Federal Technology Transfer Act of 1986 (As amended and codified at 14 U.S.C. §§ 3701 et seq.), the Department of the Defense, **[DARPA, Tech Office, and address]**, and the Non-DoD Collaborator described below agree to and enter into this Cooperative Research and Development Agreement (CRADA).

**[Insert full name of Non-DoD Collaborator followed by acronym and address]**, is a corporation **[substitute appropriate alternate language for a different entity, e.g., a university]** duly organized, validly existing and in good standing under the laws of the **[State or Commonwealth]** of **[indicate name]**.

***[If the Non-DoD Collaborator is a FOCI (Foreign Owned or Controlled Institution), please add the following sentence in the above paragraph. Also, state the name of the parent company and the country in which it is incorporated.]***

Further, **[Non-DoD Collaborator]** is directly or indirectly controlled by a foreign company or government [Executive Order 12591 (1987)], Section 4 (a), specifically, **[insert name of parent company and the country in which it is incorporated]**.

DARPA has extensive expertise, capabilities, and information in **[state technology area]**, 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.

**[Non-DoD Collaborator]** has the interest, resources, capabilities, and technical expertise to transition the results of DARPA research and development for public use.

**Article 1. DEFINITIONS**

***[Specialized definitions required for this Agreement may be added alphabetically within the DEFINITIONS. If specialized definitions are added, they must be included in the Table of Contents.]***

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 and any tense of verbs.

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

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

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

1.4 “Controlled Unclassified Information (CUI)” means information the Government creates or possesses, or that an entity creates or possess on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. CUI does not include classified information or information a non-executive branch entity possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency. The DoD CUI Registry is located at [https://intelshare.intelink.gov/sites/ousdi/hcis/ sec/icdirect/information/CUI/Forms/AllItems.aspx](https://intelshare.intelink.gov/sites/ousdi/hcis/%20sec/icdirect/information/CUI/Forms/AllItems.aspx).

1.5 “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by DARPAor **[Non-DoD Collaborator]** 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 an Invention for commercial purposes.

1.9 “For Official Use Only (FOUO)” is the legacy marking for CUI. It was a protective marking to be applied to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the Freedom of Information Act. This includes information that qualifies for protection under the provisions of the Privacy Act of 1974, as amended. FOUO may not be applied to any newly generated CUI material. [If FOUO is not used in the markings in the document, please remove this definition.]

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

1.11 “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. Government Purpose Rights includes competitive procurement, but does not include the right to have or permit others to use Data for commercial purposes.

1.12 “Information” means all Data, trade secrets, and commercial and financial information.

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

1.14 “Internal Use License” means the grant by the owner of Intellectual Property of the right to make, have made, use, and import, but not commercially sell, an Invention or a product or service made using an Invention.

1.15 “Invention” means any creation 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.

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

1.17 “Jointly Made Subject Invention” means any Invention Made jointly by the Collaborators.

1.18 “Limited Rights” means that each Collaborator of this Agreement may use, reproduce, and disclose to their employees properly marked Non-Subject Data provided by the other Collaborator(s) for use in support only of this Cooperative Work.

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

1.20 “Nonexclusive Commercial License” means the grant by the owner of Intellectual Property of the nonexclusive right to make, use, or sell an Invention.

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

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

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

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

1.25 “Proprietary Information” means Information that:

(i) embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential provided that such information (a) is not known or available from other sources without obligations concerning its confidentiality, (b) has not been made available by the owners to others without obligation concerning its confidentiality, (c) is not already available to the Government without obligation concerning its confidentiality, and (d) has not been developed independently by persons who have had no access to the information; or (ii) has been generated by DARPA during the performance of this Agreement, and would have qualified as Proprietary Information if it had been generated by the Non-DoD Collaborator, and that the Collaborators have agreed to treat as Proprietary Information for a term of up to five years from generation.

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

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

1.28 “Tangible Property” means personal or real property having or possessing physical form.

1.29 “Technical Data” means recorded Information relating to experimental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair or overhaul material, including, but not limited to graphic or pictorial delineations in media.

1.30 “Technical Document” means recorded Information that conveys scientific and Technical Information or Technical Data.

1.31 “Technical Information” means Information relating to research, development, engineering, test, evaluation, production, operation use, and maintenance of munitions and other military supplies and equipment.

1.32 “Unlimited Rights” means the right to use, modify, reproduce, release, disclose, perform, or display Data 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**

***[Describe the specific, realizable results or benefits to be gained by each Collaborator at the conclusion of this Agreement. State the desired outcome by each Collaborator, including any intentions for commercialization, if appropriate. This Article and the Statement of Work, Appendix A, are the defining articles for the Cooperative Work to be done by the Collaborators.]***

**Article 3. RESPONSIBILITIES FOR PERSONNEL AND FACILITIES USE**

3.1 Facilities and Supervision

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

The Cooperative Work done by each Collaborator will be performed under the program guidance of its PI, who has the responsibility for the scientific and technical conduct of the Cooperative Work performed within that Collaborator’s facilities or done on behalf of that Collaborator by third parties in support of this Agreement. Personnel who perform Cooperative Work at the other Collaborator’s facilities will be supervised by their own PI.

3.2 Security Requirements

Each Collaborator will abide by the safety and security regulations and directives of the host facility in which the Cooperative Work is being performed. Copies of all applicable safety and security regulations and directives will be provided to the non-hosting Party.

***[This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators’ facilities. If the Cooperative Work covers classified topics*** ***the non-DOD collaborator*** ***would be require to establish a security program in accordance with the National Industrial Security Policy (NISP) and be subject to oversight and inspection by either DCSA (collateral) or DARPA Special Access Program Central Office (SAPCO) for SAP Programs. A Facility Clearance must be put in place for the Non-DoD Collaborator’s facilities along with Security Clearances of personnel prior to the initiation of classified work. Access to SAP or SCI information have additional requirements and will be coordinated with DARPA (SAPCO) or DARPA Special Security Office (SSO). All classified security requirements will be out lined using a DoD Contract Security Classification Specification, DD Form 254, coordinated through DARPA SID Industrial Security. Collateral classified processing is under the cognizance of DCSA and is governed by the DCSA Assessment and Authorization Process Manual (DAAPM). Special Access processing is under the DARPA SAPCO cognizance and is governed by the Joint SAP Implementation Guide (JSIG) If Export Control is needed, attach DD Form 2345, called a “Militarily Critical Technology Data Agreement” to this Agreement. Any CRADA that deals with Export Control will be coordinated with DARPA SID International Security If the Cooperative Work covers classified topics and the Non-DoD Collaborator is FOCI (directly or indirectly owned, controlled, or influenced by a different foreign company or government), the Non-DoD Collaborator will adhere to Volume 3 of the DoD 5220.22, “Procedures for Government Activities Relating to Foreign Ownership, Control, or Influence (FOCI),” April 17, 2014 and a FOCI Mitigation Instrument may be required. Refer to the DARPA Transition and Commercialization Factsheet or the SBIR/STTR Transition and Commercialization Strategy Development Guide. All FOCI National Interest Determinations (NID) issues should be coordinated with DARPA SID Industrial Security.***

**Article 4. REPRESENTATIONS AND WARRANTIES**

4.1 DARPA’s Representations and Warranties

DARPA hereby warrants and represents to **[Non-DoD Collaborator]** that the performance of the activities specified by this Agreement is consistent with the **[specify the appropriate mission area]** and technology transition missions of DARPA. DARPA is a Federal agency of the U.S. Department of the DoD, as defined by 15 U.S.C. § 3710a(d)(2)(A) (“a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government”) and Department of Defense Instruction 5535.8, Department of Defense Directive 5134.10(7)(j) and Department of Defense Directive 5535.3.

***[The following Article 4.2 is for a single commercial entity. Choose the appropriate alternatives to Article 4.2 from those listed in the DoD T2 Handbook according to the nature of the Non-DoD Collaborator(s): A university, nonprofit entity, State or local government, an entity directly or indirectly foreign owned, controlled, or influenced (FOCI), an entity comprised of multiple Collaborators.]***

4.2 **[Non-DoD Collaborator]**’s Representations and Warranties

**[Non-DoD Collaborator]** hereby warrants and represents to **[DoD Collaborator]** as follows:

**[Non-DoD Collaborator**], as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth**].

**[Non-DoD Collaborator] [is/is not]** a small business as defined in 15 U.S.C. § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

***[The following paragraph is to be used only if the Non-DoD Collaborator is not a FOCI as of the signature date of this Agreement.]***

If **[Non-DoD Collaborator]** 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), the **[Non-DoD Collaborator]** or its successor or assignee shall promptly notify **[DoD Collaborator]** to that effect.

***[If on the signature date of this Agreement the Non-DoD Collaborator is a FOCI, insert the following paragraph. In addition, an Amendment to this CRADA is required]***

If **[Non-DoD Collaborator]** or its successor or assignee becomes, during the term of this Agreement or thereafter, directly or indirectly owned, controlled, or influenced by a different foreign company or government (FOCI) then it or its successor or assignee shall promptly notify **[DoD Collaborator]** to that effect.

The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under, any agreement binding on **[Non-DoD Collaborator]**. 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 **[Non-DoD Collaborator]** is subject.

**[Non-DoD Collaborator]** is not currently subject to debarment or suspension by any agency of the Government. Should **[Non-DoD Collaborator]** be debarred or suspended during the term of this Agreement or thereafter, **[Non-DoD Collaborator]** will notify **[DoD Collaborator]** within thirty (30) calendar days of receipt of a final notice. **[DoD Collaborator]** may then elect to terminate this Agreement and any licenses and options granted under this Agreement.

4.3 Joint Representations and Warranties

The Collaborators make the following Representations and Warranties:

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.

***[Discuss SID for approved alternative language to the following paragraph.]***

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. This Agreement does not authorize nor imply a license to export Information. The exporting Collaborator is responsible for obtaining any export licenses or foreign disclosure reviews required by U.S. Federal law. **[Non-DoD Collaborator]** will provide written notification to DARPAimmediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.

The work proposed in the Statement of Work, Appendix A, may require the introduction or generation of CUI. 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 DoD policy.

When this Agreement requires **[Non-DoD Collaborator]** access to CNSI pursuant to Executive Order 13526, the **[Non-DoD Collaborator]** must comply with security requirements for access, which may include requirements for DoD personnel security clearance paperwork and signing a Classified Information Nondisclosure Agreement (SF 312) or formal indoctrination to other accesses. In these circumstances, the **[Non-DoD Collaborator]** will receive security guidance in the form of a DoD Contract Security Classification Specification (DD Form 254) and access to a program security classification guide.

**Article 5. FUNDING**

Each Collaborator will fund its own efforts.

DARPA cannot provide non-DoD collaborator with funding. DARPA may receive funding from non-DoD Collaborators.

***[Consult with COMP and DARPA GC if funding will be provided to DARPA by non-DoD Collaborator under the CRADA.]***

**Article 6. REPORTS AND PUBLICATIONS**

6.1 Interim Reports

The Collaborators shall submit **[insert number or frequency for each interim written report]** interim written reports to each other on the progress of the Cooperative Work.

6.2 Final Reports

The PIs shall submit to DARPA and **[Non-DoD Collaborator]** preferred contact 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 of Information

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.

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government CNSI, or CUI, 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 to exceed thirty (30) calendar days, to review any proposed abstract, publication, presentation, or other document for public disclosure. All publications containing Subject Data shall be approved by DARPA Public Affairs Office and DARPASecurity prior to public disclosure. All public disclosure will be in accordance with DARPA Instruction 65 “Clearance of DARPA Information for Public Release and other pertinent DoD policy”. For public release inquiries, please contact the Public Release Center at (571) 218-4235 or PRC@darpa.mil.

If a Collaborator objects to a proposed public disclosure, that Collaborator must so notify the other Collaborator within thirty (30) calendar days of the date of notice of intent to disclose publicly. Neither Party may proceed with such publication or public disclosure within thirty (30) calendar days of providing a copy, summary, or description of such publication or public disclosure without the express written consent of the other Party.

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

If a Collaborator objects on the grounds that patent rights may be compromised, a Patent Application must be filed by the responsible Collaborator before the 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, 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, or is no longer covered by U.S. security laws or regulations.

6.4 Public Presentation of Subject Data

Any presentation intended for public consumption that includes Subject Data that are CNSI or CUI require review and approval by the DARPA Program Manager and Personnel Security Officer DARPA’ prior to the date of the presentation pursuant section 6.3 of this agreement.

**Article 7. INTELLECTUAL PROPERTY**

7.1 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 **[Non-DoD Collaborator]** and the Government.

7.2 Rights in Subject Data

7.2.1 Rights of Both Collaborators

Each Collaborator shall have title to all Subject Data generated by that Collaborator. Each Collaborator agrees to provide all Subject Data to the other Collaborator and hereby grants Unlimited Rights in Subject Data that does not contain Proprietary Information.

7.2.2 Rights of **[DoD Collaborator]**

For Subject Data that contains **[Non-DoD Collaborator]**’s Proprietary Information, the Government has rights to: 1) Use, modify, reproduce, release, perform, display, or disclose Technical Data within the Government without restriction; and 2) Release or disclose Subject Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Subject Data for any U.S. Government purpose including competitive procurement.

7.2.3 Rights of [**Non-DoD Collaborator**]

For Subject Data that contains DARPA’s Proprietary Information, **[Non-DoD Collaborator**] has rights to use, modify, reproduce, release, perform, display, or disclose Technical Data within **[Non-DoD Collaborator]**’s organization, in whole or in part, and in any manner, for any internal purpose excluding commercial purposes. If **[Non-DoD Collaborator]** is subsequently awarded a Government contract that entails deliverables that incorporate the DARPA’s Proprietary Information, such deliverables must be delivered with at least Government Purpose Rights, as defined in the DFARS § 252.227-7013(a)(13).

**[Non-DoD Collaborator]** shall have a Limited Right to use, reproduce, or disclose Subject Data that may describe one or more Inventions in which the Government owns or may own a right, title, or interest, if such Subject Data are provided by DARPAunder this Agreement. This Limited Right does not grant the **[Non-DoD Collaborator]** any License to any Invention in which the Government owns or may own a right, title, or interest. In accordance with Article 7.5 below, such Subject Data are to be held in confidence.

7.3 Rights in Non-Subject Data

7.3.1 Rights of Both Collaborators

The Collaborators shall have Unlimited Rights in any Non-Subject Data that are not Proprietary Information or protected under 35 U.S.C. § 205 provided under this Agreement.

7.3.2 Rights of DARPA

DARPA 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 **[Non-DoD Collaborator]** under this Agreement. Such Proprietary Information can be used only for the purpose of performing the Cooperative Work unless written consent to other use or disclosure is obtained from **[Non-DoD Collaborator]**.

7.3.3 Rights of **[Non-DoD Collaborator]**

**[Non-DoD Collaborator]** 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 DARPAunder this Agreement. Such Non-Subject Data shall be properly marked by DARPA.

7.4 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 Non-Subject 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.

7.5 Protection of Data Considered Proprietary

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 provided, followed within fifteen (15) calendar 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. 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.

Proprietary information that is provided by **[Non-DoD Collaborator]** in the performance of this Agreement, and is appropriately marked as a trade secret or commercial or financial information that is privileged or confidential under 5 U.S.C. § 552(b)(4), shall not be disclosed by DARPA. **[Non-DoD Collaborator]** shall agree to not disclose, for five (5) years, unclassified Data that is produced by DARPAand that would have been considered a trade secret, business, commercial, or financial information that is privileged or confidential if it had been produce by **[Non-DoD Collaborator]** in accordance with 15 U.S.C. § 3710a.

7.5.1 Marking of Data Considered Proprietary

DARPAshall place a proprietary marking on each medium used for recording unclassified Data that DARPA provides to **[Non-DoD Collaborator]**, where the Collaborators have agreed, under the second paragraph of Article 7.5 of this Agreement, to protect such unclassified Data for up to five (5) years. The DARPA unclassified proprietary marking shall state:

“DARPADATA SHALL BE PROTECTED BY THE **[Non-DoD Collaborator]** FOR A PERIOD OF **[state a number up to five years]** FROM **[state the date of generation]**.” This is not a public release decision.

For public release, refer to section 6.3 of this agreement.

7.6 Release of Data under the Freedom of Information Act

DARPAwill comply with the Freedom of Information Act, as updated by Executive Order 12600.

7.7 Marking of Data

7.7.1 Markings Required for Both Collaborators

7.7.1.1 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.

7.7.1.2 Data that are CNSI, CUI, or Otherwise Restricted

Each Collaborator shall mark all Data that is CNSI in accordance with applicable U.S. Federal laws, applicable DoD policy and pertinent security classification guides. Further guidance is available in the attached DD 254.

Each Collaborator shall mark and safeguard all Data that is CUI or otherwise restricted information in accordance with DoDM 5200.48 and CUI processed on non-DOD Collaborator systems must be certified as compliant with NIST SP 800.

7.7.1.3 CUI Marking

CUI is the marking used for documents/products containing material that requires safeguarding or dissemination controls based on law, regulation, or Government-wide policy.. This includes Technical Information and Technical Data.

Use of the CUI marking is the responsibility of the originator of the Information.

Technical Documents which contain Technical Information and/or Technical Data are considered CUI documents and must be appropriately marked in accordance with DoDI 5200.48 and DoDI 5230.24.

***[For further information associated with CUI markings discuss with DARPA SID.]***

7.7.2 Markings Required for DARPA

7.7.2.1 Data in which the Federal Government owns or may own a right, title, or interest under 35 U.S.C. § 205.

DARPA 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 U.S.C. § 205. Such Data shall be marked:

“DARPADATA PROTECTED FROM RELEASE OR DISCLOSURE UNDER 35 U.S.C. § 205.”

7.7.3 Markings Required for **[Non-DoD Collaborator]**

7.7.3.1 Data that are Proprietary Information

**[Non-DoD Collaborator]** shall place a proprietary marking on each medium used for recording Data that **[Non-DoD Collaborator]** provides to **[DoD Collaborator]** under this Agreement that **[Non-DoD Collaborator]** asserts is Proprietary Information. This information will be protected in accordance with 15 USC § 3710a(c)(7). Any information subject to this law may only be reproduced or disclosed if authorized under that CRADA and every such reproduction or disclosure must also be prominently marked with this legend.

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

For Non-Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-DoD Collaborator]** – **[DoD Collaborator]** MAY USE ONLY FOR PURPOSE OF CRADA NUMBER CRADA – **[DoD Collaborator]** – [last two digits of FY] – [lab CRADA sequence number]” This information will be protected in accordance with 15 USC § 3710a(c)(7). Any information subject to this law may only be reproduced or disclosed if authorized under that CRADA and every such reproduction or disclosure must also be prominently marked with this legend.

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

For Subject Data that are Proprietary Information the Marking shall state:

“PROPRIETARY INFORMATION OF **[Non-DoD Collaborator]** – GOVERNMENT HAS CERTAIN RIGHTS UNDER CRADA NUMBER CRADA – **[DoD Collaborator]** – [last two digits of FY] – [lab CRADA sequence number].” This information will be protected in accordance with 15 USC § 3710a(c)(7). Any information subject to this law may only be reproduced or disclosed if authorized under that CRADA and every such reproduction or disclosure must also be prominently marked with this legend.

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

7.8 Subject Inventions

7.8.1 Reporting of Subject Inventions

Within sixty (60) calendar days of Making an Invention resulting from the Cooperative Work, and prior to disclosure of the Invention to any third parties, 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 to their respective employer. Each Collaborator shall provide the other Collaborator with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) calendar days of receiving the Invention Disclosure from its inventor(s).

7.8.2 Determination of Subject Inventions

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

7.8.3 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 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.

7.9 Non-Subject Inventions

7.9.1 Ownership of Non-Subject Inventions

Each Collaborator owns its Non-Subject Inventions.

***[Article 7.9.2 is optional. It should be used only if DARPA and/or Non-DoD Collaborator have preexisting Non-Subject Inventions that are pertinent to this CRADA.]***

7.9.2 Preexisting Non-Subject Inventions Pertinent to the Cooperative Work

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[DoD Collaborator]** include but are not limited to the following:

***[List Invention title, inventor name(s), patent number, or DoD case number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]***

Non-Subject Inventions Made prior to the Effective Date of this Agreement and pertinent to the Cooperative Work that are specifically identified as property of **[Non-DoD Collaborator]** include but are not limited to the following:

***[List Invention title, inventor name(s) patent number, or attorneys docket number if an Invention Disclosure, or Patent Application serial number, and date of issue (for patents only).]***

7.10 Filing of Patent Applications

By mutual agreement, the Collaborators shall identify which Collaborator shall file a Patent Application on any Subject Invention. The Collaborator responsible for filing of a Patent Application on any Subject Invention shall file such Patent Application at least sixty (60) calendar days prior to any bar date and prior to publication, or one year from the date the Invention Disclosure was received, whichever comes first. In the case of a Jointly Made Subject Invention, if no Patent Application is filed within the specified time period by the responsible Collaborator, the other Collaborator may assume control of filing the Patent Application and take title to the Jointly Made Subject Invention on ten (10) calendar days with 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.

Before filing a patent disclosing any possible classified subject matter, the Collaborator will transmit the proposed application to the Contracting Officer in accordance with 48 CFR § 52.227-10. DARPA will determine if the application should be protected CNSI. Classified patent applications will be marked and safeguarded commensurate with the level of classification. The Collaborator will not file the classified patent in any other country than the United States without first obtaining written approval of the Contracting Officer.

Unclassified patent applications that require CUI safeguarding and dissemination controls will be marked as a category of CUI in accordance with DoDI 5200.48.

7.10.1 Patent Filing

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 7.10, sixty (60) calendar 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 has the right to take action if the filing Collaborator declines.

7.10.2 Copies and Inspection

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) calendar days of receipt of such request. The filing Collaborator shall give the other Collaborator a limited power to inspect, with authorization to access the Patent Application, make copies, and, in the event that the filing Collaborator declines continued prosecution of the Patent Application, do all that is necessary to secure patent protection for the Jointly Made Subject Invention.

7.10.3 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, **[Non-DoD Collaborator]** 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.

7.11 Licenses to Subject Inventions

7.11.1 Internal Use License to **[Non-DoD Collaborator]**

Government grants to the **[Non-DoD Collaborator]** a nonexclusive, irrevocable, paid-up Internal Use License to a Subject Invention Made solely by employees of **[DoD Collaborator]**. No Internal Use License granted under this Agreement shall permit licensee to grant sublicenses. No Internal Use License granted under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor in interest of that part of **[Non-DoD Collaborator’s]** business to which such license pertains.

7.11.2 Government License

Pursuant to 15 U.S. Code § 3710a(b)(2), for Subject Inventions Made solely by an employee of **[Non-DoD Collaborator]**, **[Non-DoD Collaborator]** grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.11.3 Option for Commercial License to Subject Inventions

**DARPA** gives **[Non-DoD Collaborator]** the option of acquiring an Exclusive or Nonexclusive Commercial License for the field of **[Field of Use]** in the Government’s rights in any Subject Invention Made in whole or in part by a DARPA employee. The license shall be for reasonable consideration. In order to exercise this option, **[Non-DoD Collaborator]** must notify **[DoD Collaborator]** in writing within six (6) months of the filing of a Patent Application. **[Non-DoD Collaborator]** must execute an Exclusive Commercial or Nonexclusive Commercial License to the Subject Invention within six (6) months of election to exercise the option, or the Invention shall be made available for licensing by the public in accordance with 37 C.F.R. Part 404.

7.11.4 Termination of Licenses Granted and Cancellation of License Option to Subject Inventions

DARPAmay cancel the Exclusive or Nonexclusive Commercial License option and terminate any Exclusive or Nonexclusive Commercial Licenses and Internal Use Licenses provided for above made in whole or in part by Government employees in the event that:

(a) **[Non-DoD Collaborator]** is in default for failure to make payment as agreed in Article 5; or

(b) The Agreement is terminated unilaterally by **[Non-DoD Collaborator]** under Article 11.2; or

(c) **[Non-DoD Collaborator]** fails to perform according to the Statement of Work (Appendix A); or

(d) **[Non-DoD Collaborator]** becomes a foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by DARPAnot to qualify under the requirements of Executive Order 12591, Section 4(a) (A US company is considered to be under FOCI when a foreign interest has the power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the company in a manner which may result in unauthorized access to classified information or may affect adversely the performance of classified contracts. NISPOM, paragraph 2-300a, available at https://www.dcsa.mil/mc/ctp/foci/); or

(e) **[Non-DoD Collaborator]** which was a FOCI organization when the Agreement was signed has now become a different FOCI organization that is reasonably determined by DARPA not to qualify under the requirements of Executive Order 12591, Section 4(a).

7.12 License to Non-Subject Inventions

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 applications of Non-Subject Inventions, the **[Non-DoD Collaborator]** must obtain a License from DARPA, in accordance with applicable laws and regulations (including, but not limited to, 37 C.F.R. Part 404).

***[Article 7.13 is optional.]***

7.13 Copyrights

**[Non-DoD Collaborator]** may copyright works of authorship prepared pursuant to this Agreement if eligible for copyright protection under 17 U.S.C. § 106 **[Non-DoD Collaborator]** grants to the Government a nonexclusive, irrevocable, paid-up license in copyrighted works of authorship, including software, prepared pursuant to this Agreement for any purpose that is consistent with the rights in Data described in Article 7.2 and Article 7.3. **[Non-DoD Collaborator]** shall affix the applicable copyright notice of 17 U.S.C. §§ 401-403, and an acknowledgment of the scientific and technical contributions of DARPA. **[Non-DoD Collaborator]** grants to the U.S. Government a paid-up, non-exclusive, irrevocable, worldwide license to reproduce or have reproduced, prepare or have prepared in derivative form, and distribute or have distributed copies of publications and solely or jointly created Subject Data for Government purposes.

**Article 8. TANGIBLE PROPERTY**

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to its Tangible Property. All Tangible Property owned and provided by one Collaborator shall remain the property of that Collaborator. Tangible Property having any component purchased or supplied by the Government shall be the property of the Government, unless such tangible Government components reasonably can be separated from non-Government components without damage to any of the individual components comprising the Tangible Property. These separated components shall remain the property of the Collaborator that purchased them. After termination of this Agreement the collaborators may, by mutual consent, separate the Tangible Property into its components and the separated components shall remain the property of the Collaborator that originally owned the property.

8.2 Tangible Property Operational and Disposition Costs

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.

8.3 Disposal of Tangible Property

Unless otherwise agreed, each Collaborator shall take possession of its respective Tangible Property within sixty (60) calendar days of termination of this Agreement. Each Collaborator shall cooperate with the other Collaborator in the recovery or disposition of the other Collaborator's 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 liable for the negligent or wrongful acts of its officers and employees solely to the extent provided for in the Federal Tort Claims Act (28 U.S.C. § 2671 et. seq.) and in other applicable laws and regulations of the U.S. that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the U.S.

9.2 Extent of **[Non-DoD Collaborator]** Liability

**[Non-DoD Collaborator]** is solely responsible for its actions and the actions of those acting for **[Non-DoD Collaborator]** 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, **[Non-DoD Collaborator]** agrees that in any suit, action or claim brought by anyone not a Collaborator to this Agreement based on actions of **[Non-DoD Collaborator]**, **[Non-DoD Collaborator]** shall not pursue any actions to enter the Government as a Collaborator in such suit, action or claim unless the Government has some liability under the Federal Tort Claims Act. This provision shall survive termination of this Agreement.

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 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.

10.2 Severability

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

10.3 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.

10.4 Governing Laws

U.S. Federal laws shall govern this Agreement for all purposes.

10.5 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.

10.6 Subcontracting

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 of this Agreement. Any third-party agreement to perform a portion of the Cooperative Work shall contain terms consistent with this Agreement.

***[Discuss with CMO and GC for guidance on issues related to the use of contractors during the execution of a CRADA.]***

10.7 Assignment

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 **[Non-DoD Collaborator]**’s business to which this Agreement pertains.

10.8 Disputes

DARPA and **[Non-DoD Collaborator]** 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 Deputy Director, DARPA, or the 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 Deputy Director, DARPA, or the designee, decides the dispute, or until sixty (60) calendar days after the dispute was first submitted to the Deputy Director, DARPA, or the designee, whichever comes first.

10.9 Use of Name or Endorsements

**[Non-DoD Collaborator]** shall not use the name of DARPAor 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 DARPA. By entering into this Agreement, DARPAdoes not directly or indirectly endorse any product or service provided, or to be provided, by **[Non-DoD Collaborator]**, its successors, assignees, or licensees. **[Non-DoD Collaborator]** shall not in any way imply that the Department of the DoD endorses any such product or service.

10.10 Public Release Announcements of This Agreement

Information regarding this Agreement, excluding funding information (Article 5), the Statement of Work, and associated Appendices, may be released to the public following section 6.3 of this agreement

10.11 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.

10.12 U.S. Competitiveness

**[Non-DoD Collaborator]** agrees that any product, process, or service using Intellectual Property arising from the performance of this Agreement shall be manufactured substantially in the U.S.

10.13 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.

**Article 11. MODIFICATIONS AND NOTICES**

11.1 Amendments

Any modifications to this Agreement shall be jointly agreed upon and shall not be effective until a written amendment is signed by both executing officials of this Agreement or their successors.

11.2 Unilateral Termination

**[Non-DoD Collaborator]** and DARPAeach have the right to unilaterally terminate this Agreement upon thirty (30) calendar days written notice to the other Collaborator.

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 and shall be signed by an authorized representative of DARPA or the preferred contact for **[Non-DoD Collaborator]**. All such notices shall be delivered in a manner that ensures confirmation of receipt.

If to DARPA:

***[Use the official DARPA mailing address for the relevant Technical Office]***

If to **[Non-DoD Collaborator]**:

***[Specify the mailing address for the preferred contact.]***

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.

**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 **[specify a time no greater than four (4) years]** after its Effective Date, unless otherwise extended in writing according to the provisions of Article 11.

***[If necessary, write “Signatures for the Agreement follow on next page”.]***

**Article 14. SIGNATURES**

For **[Non-DoD Collaborator]**:

I, the undersigned, am duly authorized to bind **[Non-DoD Collaborator]** to this Agreement and do so by affixing my signature hereto.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_20 \_\_\_.

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

Title:

For DARPA:

I, the undersigned, by 15 U.S.C. § 3710a, DoD regulations, and under delegated authority from the Director, DARPA, am duly authorized to bind the U.S. DoD to this Agreement and do so by affixing my signature hereto.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_20\_\_\_.

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

Title:

# **APPENDIX A - STATEMENT OF WORK**

BETWEEN

Defense Advanced Research Projects Agency (DARPA)

AND

[**Non-DoD Collaborator**]

The Collaborators agree to perform the following tasks:

DARPA will be responsible for the following tasks (list as applicable):

1.

2.

3.

**[Non-DoD Collaborator]** will be responsible for the following tasks (list as applicable):

1.

2.

3.

DARPAand **[Non-DoD Collaborator]** will be responsible for the following joint tasks:

1.

2.

3.

# **DARPA CRADA Supplemental Instructions**

**Definitions for Related Terms**

• “Computer database” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

• “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

• “Computer software” means computer programs, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

**The Collaborative Work Involves Export Controlled Technology**

CRADAs involving export controlled technology are to be considered Non-Standard. Consult with MSO/SID International Security when dealing with export controlled technology.

Article I-1a is to be altered if the Collaborative Work involves export controlled technology. Also, per the instruction paragraph associated with this Article, an appropriate DD 2345, called a “Militarily Critical Technology Data Agreement” may be required to be attached to the CRADA as an appendix.

**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.

***[This is the place to add any special security requirements for personnel doing Cooperative Work at the Collaborators’ facilities. If the Cooperative Work covers classified topics the non-DOD collaborator*** ***would be required to establish a security program in accordance with the National Industrial Security Policy (NISP) and be subject to oversight and inspection by either DCSA (collateral) or DARPA Special Access Program Central Office (SAPCO) for SAP Programs. A Facility Clearance must be put in place for the Non-DoD Collaborator’s facilities that may include appropriate accredited space for storage and processing along with Security Clearances of personnel prior to the initiation of classified work. Access to SAP or SCI information have additional requirements and will be coordinated with DARPA SAPCO or DARPA SSO. All classified security requirements will be outlined using a DoD Contract Security Classification Specification, DD Form 254, coordinated through DARPA SID Industrial Security. Collateral classified processing is under the cognizance of DCSA and is governed by the DCSA Assessment and Authorization Process Manual (DAAPM). Special Access processing is under the DARPA SAPCO cognizance and is governed by the Joint SAP Implementation Guide (JSIG) If Export Control is needed, attach DD Form 2345, called a “Militarily Critical Technology Data Agreement” to this Agreement. Any CRADA that deals with Export Control will be coordinated with DARPA MSO/SID International Security If the Cooperative Work covers classified topics and the Non-DoD Collaborator is FOCI (directly or indirectly owned, controlled, or influenced by a different foreign company or government), the Non-DoD Collaborator will adhere to Procedures for Government Activities Relating to Foreign Ownership, Control, or Influence (FOCI), April 17, 2014, DoD 5200.22-M and a FOCI Mitigation Instrument may be required. Refer to the DARPA Transition and Commercialization Factsheet or the SBIR/STTR Transition and Commercialization Strategy Development Guide. All FOCI NID issues should be coordinated with DARPA SID Industrial Security.***

***[If a DD Form 254 and/or 2345 are required, insert a copy as an attachment to the CRADA.]***

***[If needed, sample statements to be added include the following:]***

Part of the work on this Agreement will involve access to and work on export controlled technical data that must be controlled in accordance with the International Traffic in Arms Regulations (ITAR). Prior to obtaining access or working on export controlled technical data under this Agreement, **[Non-DoD Collaborator]** must have a current militarily critical technical data certification and a copy of its Militarily Critical Technical Data Agreement, DD Form 2345, must be submitted to DARPA.

**[Non-DoD Collaborator]**’s work on this Agreement requires access to information that requires a security clearance. [**Non-DoD Collaborator]** must have an approved DoD Contract Security Classification Specification, DD Form 254 and a ***Facility Clearance must be put in place for the Non-DoD Collaborator’s facilities that may include appropriate accredited space for storage and processing along with Security Clearances of personnel prior to the initiation of classified work.***

**The Non-DoD Collaborator is a State or Local Government Entity**

The CRADA sample Article 3 reads as follows:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth].**

**[Non-DoD Collaborator]**, **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

For a **State or local government entity**, substitute the following:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a **[State or local]** government entity duly organized, validly existing, and in good standing under the laws of the **[State or Commonwealth].**

**The Non-DoD Collaborator is a Public or Private Foundation that is not a Corporation**

The CRADA sample Article 4 reads as follows:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth].**

**[Non-DoD Collaborator]**, **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

For a **U.S. public or private foundation that is not a corporation**, substitute the following:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is an organization duly organized, validly existing, and in good standing under the laws of the **[State or Commonwealth].**

**The Non-DoD Collaborator is a U.S. College or University**

The CRADA sample Article 4.2 reads as follows:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth].**

**[Non-DoD Collaborator]**, **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

**For a U.S. College or University, substitute the following**:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a **[college or university]** duly organized, validly existing, and in good standing under the laws of the **[State or Commonwealth].**

**The Non-DoD Collaborator is a Single Individual Who is not a Business:**

Replace all labels **[Non-DoD Collaborator]** with the full name of the Non-DoD Collaborator or shortened form of name if desired.

**Non-DoD Collaborator]’s Representations and Warranties**

The CRADA sample Article 4 reads as follows:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth].**

**[Non-DoD Collaborator]**, **[is/is not]** a small business as defined in 15 U.S. Code § 632 and implementing regulations (13 C.F.R. 121.101 et seq.) of the Administrator of the Small Business Administration.

**Substitute the following for a single individual:**

**[Non-DoD Collaborator],** as of the Effective Date of this Agreement, is a citizen of the United States and a resident of **[State or Commonwealth]**.

**The Non-DoD Collaborator is Foreign Owned, Controlled or Influenced (FOCI):**

If the Non-DoD Collaborator is directly or indirectly owned or controlled by a FOCI, the CRADA is considered non-standard. The U.S. Trade Representative (USTR) must be consulted.

There are many categories of FOCI entities, such as universities, companies, and U.S. subsidiaries of foreign companies. Article 4,2 must be revised appropriately for the case of organizations that are organized in a foreign country.

The CRADA sample Article 4 reads as follows:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of **[State or Commonwealth].**

Substitute the following for a FOCI that was organized in a foreign country:

**[Non-DoD Collaborator]**, as of the Effective Date of this Agreement, is a **[corporation, college, university, or organization]** duly organized, validly existing, and in good standing under the laws of **[indicate Country]**.”

**Joint Representations and Warranties**

The bold italics below can be added to Article 4 if needed.

**Article 4.** **Joint Representations and Warranties**

The Collaborators make the following Representations and Warranties:

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.

***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 policies. To the extent that any Information or materials may be exported (including deemed exports made in the U.S.), the exporting Collaborator is responsible for complying with all applicable export licensing requirements under U.S. Federal laws and regulations. [Non-DoD Collaborator] shall provide written notification to DARPA immediately upon their awareness that an export or disclosure has been made without the required export license or disclosure authorization.***

The work proposed in the Statement of Work (Appendix A) may require the introduction or generation of CUI, ***or result in the generation of CUI because it is Proprietary 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 DoD regulations.

***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 DARPA Security shall be immediately notified.***

**Agreement to Confer Prior to Publication or Public Disclosure of Information**

The Collaborators agree to confer and consult prior to any publication or public disclosure of Subject Data to ensure that no Proprietary Information, Government CNSI, or CUI, 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 X; all other notices and communications shall be sent according to Article X. All publications containing Subject Data shall be approved by DARPA Public Affairs Office and DARPASecurity prior to public disclosure. All public disclosure will be in accordance with DARPA Instruction 65 “Clearance of DARPA Information for Public Release and other pertinent DoD policy. For public release inquiries please contact the Public Release Center at (571) 218-4235 or PRC@darpa.mil.

**Ownership of Tangible Property**

8.1 Ownership of Tangible Property

Each Collaborator shall retain title to all Tangible Property to which it had title before the Effective Date of this Agreement, aside from any exceptions stated in Appendix A. All Tangible Property developed under this Agreement with all components purchased by one Collaborator shall be the property of that Collaborator. In the case of Tangible Property containing components provided by both Collaborators, 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.

**Article 10. General Provisions (Additional Language Regarding Duplicate Originals)**

“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.”

**Amendments**

Amendments must be signed prior to the latest expiration date of the CRADA. A CRADA cannot be amended once it has expired.

Typical acceptable reasons for amendments are:

1. Administrative changes (e.g., change in points of contact, principal investigator, address, contact information, collaborator name)

2. Collaborator status changed (e.g., merger, company purchased by another)

3. Duration (extend period of performance, up to two years)

4. Addition of collaborator

5. Modification of specific tasks that are within the scope of original SOW

6. Addition/deletion of security requirements

\*\*Consult GC regarding any amendment. \*\*