

**COOPERATIVE RESEARCH AND  
DEVELOPMENT AGREEMENT**

BETWEEN

**THE NATIONAL SECURITY AGENCY/CENTRAL SECURITY  
SERVICE (NSA/CSS)**

AS REPRESENTED BY THE

[Insert Directorate]

AND

[Company Name]

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### ARTICLE 1 – PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, October 20, 1986, as amended, and codified at 15 U.S.C. § 3710a), the Government of the United States, as represented by the Director of the National Security Agency/Central Security Service (“Government” or “NSA/CSS”), located at 9800 Savage Road, Suite 6843, Fort George G. Meade, Maryland, 20755-6843, and Non-Federal Collaborator, **[Insert Company]** (“Collaborator”), a corporation of the State of **[Insert State]**, having a principal place of business at **[Insert Address]** (Government and Collaborator hereinafter referred to as “Party” or “Parties”) enter into this Cooperative Research and Development Agreement (“CRADA”) that will be binding upon each of the Parties according to the terms and conditions and for the duration set forth below.

NOW, THEREFORE, each of the Parties hereby agrees to the following:

### ARTICLE 2 – DEFINITIONS

“**Background Technology**” is any pre-existing classified information, Controlled Technical Information, Proprietary Information and any other intellectual property (“IP”) brought to this CRADA by either Party. Examples of Background Technology include Technical Information, Invention Disclosures, patent applications, Computer Software Databases, Computer Software Documentation, Computer Software, and trade secrets that are privileged or confidential under the meaning of section 552(b)(4) of title 5, Freedom of Information Act.

“**Classified**” means all information classified in accordance with the national security laws of the U.S.

“**Computer Database**” means a collection of information 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, 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 Databases or Computer Software Documentation.

“**Computer Software Documentation**” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the software.

“**Controlled Technical Information**” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information is to be marked with one of the distribution statements B-through-F, in accordance with DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“**Created**” when used in relation to any copyrightable Work means the work is fixed in any tangible medium of expression for the first time.

“**CRADA Computer Software**” means Computer Software developed in performance of this CRADA.

“**CRADA Invention**” means any Invention conceived or first actually reduced to practice under this CRADA.

“**CRADA Work**” means a Work Created in performance of this CRADA.

“**CRADA Technical Information**” means Technical Information Created in performance of this CRADA.

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“**Foreign Personnel**” are any personnel who are not citizens or nationals of the United States of America.

“**Government Purposes**” means any activity in which the United States Government is a party but does not include use for commercial purposes.

“**Invention**” means any Invention or discovery which is or may be patentable or otherwise protected under title 35 or any novel variety of plant which is or may be patentable under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

“**Joint Work Plan**” (“**JWP**”) means a proposal describing the purpose and scope of the proposed CRADA that assigns rights and responsibilities among the Parties.

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

“**ORTA**” means the Office of Research and Technology Applications as established in accordance with 15 U.S.C. §§ 3710(b) and (c) to develop, manage and execute Government’s technology goals and programs. The term may be used to refer to the office, the person managing that office, or both.

“**Principal Investigator**” (“**PI**”) is the person assigned by each Party to manage and administer the specific CRADA technical matters and day-to-day performance of the CRADA.

“**Project Manager**” (“**PM**”) is the person responsible for the overall management, administration, and execution of CRADA task(s).

“**Proprietary Information**” means information owned by the Collaborator that embodies trade secrets created prior to or independently of this CRADA (i.e., not created in performance of this CRADA), or that is business or financial information that is privileged or business confidential under the Freedom of Information Act, 5 U.S.C. Section 552(b)(4), providing that such information:

- (a) Is not generally known or available from other sources without obligations concerning their confidentiality;
- (b) Has not been made available by the owners to others without obligation concerning its confidentiality; or
- (c) Is not already available to the Government without obligation concerning its confidentiality.

“**Technical Information**” means technical data or computer software, as those terms are defined in the clause at Defense Federal Acquisition Regulation Supplement (“DFARS”) 252.227-7013, Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this CRADA. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

“**Work**” or “**Works**” means anything fixed in tangible form, e.g., Technical Information.

**ARTICLE 3 – OBJECTIVES**

The purpose of this CRADA is to provide both Parties a flexible mechanism for the collaboration and development of [Insert objective], as identified in the Joint Work Plan (“JWP”). The JWP is incorporated in Appendix C of this CRADA.

**3.1. The Government will at its sole discretion:**

1. Provide access to Agency Subject Matter Expert(s) (“SME”) personnel and other sources of information deemed necessary to accomplish work within the scope of each task. The Government will provide access to adequate workspace, systems, and tools deemed necessary to assist in task completion.
2. Share feedback pertaining to work performed under the JWP incorporated in Appendix C with the Collaborator.
3. Recommend suggestions for improvements, modifications and/or integration of the Government’s technology into Collaborator systems.
4. Support the necessary security requirements in order to allow the Collaborator access to classified information. This may include items such as:
  - (i) sponsorship of personnel security clearances;
  - (ii) support and approval for Sensitive Compartmented Information Facilities (“SCIFs”) at selected Collaborator locations;
  - (iii) facility clearances for classified storage, classified automated data processing;
  - (iv) classified communications access between Government and Collaborator SCIFs; and
  - (v) support or sponsor Collaborator to maintain a Defense Courier Account for shipping classified equipment and material between Collaborator SCIFs and Government or other Government-approved SCIFs.
5. Provide access to and copies of Government data, Government Intellectual Property (“IP”), Government software or hardware tools, or other Government tangible property as necessary in accordance with paragraph 5.5 and identified in Appendix A2, in support of the tasks outlined in the JWP.

**3.2. The Collaborator will at its sole discretion:**

1. Provide appropriate SME and business and technical resources to accomplish all of the tasks of the JWP effectively and efficiently, and as further defined during the preliminary activities of the JWP.
2. Work with the Government to ensure that proper security protocols are implemented to protect activities conducted under the JWP.
3. Share information about experiences and outcomes relevant to the task(s) under the JWP.
4. Provide informal reports, recommendations, advice, and instruction responsive to the activity conducted in the JWP. This information will be provided under the direction of the respective Project Manager/Principal Investigator and/or their designated technical lead(s).

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5. Provide access to and copies of data, IP, software or hardware tools, or other tangible property as necessary in accordance with paragraph 5.5 and identified in Appendix B, in support of the tasks outlined in the JWP.

## ARTICLE 4 – GENERAL PROVISIONS

**4.1. Governing Law.** The laws applicable to the Government of the United States of America, as interpreted and applied in the federal courts of the U.S., are to govern the procedural and substantive construction, validity, performance, and effect of this CRADA for all purposes.

**4.2 Duration of CRADA.** This CRADA will automatically expire sixty (60) months from the Effective Date of this CRADA, unless modified per Article 4.6. This CRADA will be reviewed annually on or around the anniversary of its effective date.

**4.3 Effective Date.** This CRADA enters into force as of the date it is signed by the last authorized representative of the Parties.

**4.4 Signature Execution.** This CRADA can be executed in one or more counterparts by the signature of a person having authority to bind that Party and that Party's signature is required to be an original or digital signature, each of which when executed and delivered, by facsimile transmission, mail, or email delivery, will be an original, and all of the counterparts will constitute but one and the same CRADA.

**4.5 Assignment.** Neither Party to this CRADA can assign its rights and obligations in this CRADA without approval from the other Party. If the Parties mutually agree to the assignment, a new CRADA must be executed, at the same signature level as the original CRADA, by the new Party who assumes the rights and obligations under the CRADA and the remaining Party. If the original Parties to the CRADA are unable to mutually agree to the assignment, the CRADA is terminated by mutual consent in accordance with Paragraph 4.6.2.1.

### 4.6 Modifications, Terminations, and Notices.

#### 4.6.1 Modifications.

**4.6.1.1** Any change outside the scope of the executed CRADA must be made by a Modification.

**4.6.1.2 Modifications.** The Parties will confer in good faith to determine the desirability of a modification. A modification shall not be effective until a written modification is signed. Modifications within the scope of the CRADA may be signed by both executing officials of this CRADA or their successors. Modifications to this CRADA would include any changes to the CRADA, such as expanding the scope tasks, or duration of the CRADA, and must be approved at the same signature level as the original CRADA. Each Modification will be attached as a counterpart to this CRADA.

#### 4.6.2 Terminations.

**4.6.2.1 Termination by Mutual Consent.** The Parties may elect to terminate this CRADA at any time by mutual consent. Such termination will not be effective until a written termination is approved by all Parties.

**4.6.2.2 Unilateral Termination.** A Party may unilaterally terminate this entire CRADA at any time by giving the other Party written notice signed at the same signature level as the original CRADA, not less than thirty (30) calendar days prior to the desired termination date.

**4.6.2.3 Rights and Obligations.** Termination of this CRADA will not affect the rights and obligations of the Parties accrued prior to the Effective Date of the termination of this CRADA unless otherwise specified herein.

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### 4.7 Notices.

**4.7.1 Normal Notices.** All notices pertaining to or required by this CRADA, including modifications, disputes or terminations, and those pertaining solely to any copyright, invention, or any patent application, shall be in writing and will be signed by the Government (name(s) provided directly below) or the preferred contact for the Collaborator (name(s) provided directly below), and all such notices will be addressed as follows:

#### **If to the Government:**

NSA Technology Transfer Program  
9800 Savage Road; Suite 6843  
Fort George G. Meade, MD. 20755-6843  
Attn: Linda Burger Director, Office of Research and Technology Applications  
Phone: 443-634-3518  
email: llburg2@nsa.gov

#### **If to the Collaborator:**

[Insert Address]

**4.7.2. Delivery of Notices.** All notices will be delivered in a manner that ensures confirmation of receipt. Each Party will notify the other Party of a change of an address in the manner set forth above.

### 4.8. Security Obligations.

**4.8.1. Host Facility.** Each Party will abide by the safety and security regulations and directives of the host facility in which the work in support of the CRADA is being performed. Copies of all applicable safety and security regulations and directives should be provided to the non-hosting Party.

**4.8.2. Compliance with Export Control.** This CRADA is subject to U.S. law and regulations controlling the export of Technical Data, Computer Software, laboratory prototypes and all other export-controlled commodities. These laws include, but are not limited to, the Arms Export Control Act and Export Administration Act. All rights granted by this CRADA are contingent upon compliance with these laws and regulations. By granting rights in this CRADA, the U.S. Government is not representing that export authorization or an export license is unnecessary or that, if necessary, such authorization or export license will be granted.

**4.8.3. Classified Data.** The work performed under this CRADA may cover classified national security information. All personnel working with classified information must have the appropriate security clearance and need to know. Any exchange of classified information with industry will comply with the National Industrial Security Program: Procedures for Government Activities Relating to Foreign Ownership, Control, or Influence (“FOCI”), April 17, 2014, DoD 5200.22-M, and the DD FORM 254, DoD Contract Security Classification Specification, provided as a separate removable attachment to this CRADA. If required, the Collaborator must also be certified by the Joint Certification Program (“JCP”) to receive Military Critical Technology (“MCT”) and Technical Data, as governed by DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure. This information must be controlled in accordance with the International Trade in Arms Regulations (“ITAR”).

### 4.9. Representations and Warranties.

**4.9.1. Representations and Warranties of the Collaborator.** The Collaborator hereby represents and warrants the following:

**4.9.1.1. No Warranty.** The Collaborator makes no express or implied warranty as to any matter whatsoever, including the conditions of the research or any Invention or information exchanged, whether tangible or intangible, without limitation, made, or developed under this CRADA, nor does the Collaborator make any express or implied warranty with regard to merchantability, or fitness for a particular purpose of the research or any Invention.

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**4.9.1.2. Corporate Organization.** The Collaborator, as of the date of the Effective Date of this CRADA, is a Corporation duly organized, and in good standing under the laws of the State of **[Insert State]**.

**4.9.1.3. Statement of Ownership.** The Collaborator is not a foreign owned entity or a subsidiary of a foreign owned entity.

**4.9.1.4. Small Business.** The Collaborator **[is/is not]** a small business as defined by the U.S. Small Business Administration.

**4.9.1.5. Suspension or Debarment.** The Collaborator hereby represents and warrants that it is not suspended, proposed for debarment or debarred from eligibility for federal procurements (i.e., contracts, grants, cooperative agreement). The Collaborator will notify the Government in a timely manner ( i.e., seven calendar days or less) should this status or representation change.

**4.9.2. Representation and Warranties of Government.** The Government hereby represents the following:

**4.9.2.1. No Warranty.** The Government makes no express or implied warranty as to any matter whatsoever, including the conditions of the research or any Invention or information exchanged, whether tangible or intangible, without limitation, made, or developed under this CRADA, nor does the Government make any express or implied warranty with regard to merchantability, or fitness for a particular purpose of the research or any Invention.

**4.9.2.2. Mission.** The performance of the work under this CRADA is consistent with the mission of the Government Lab involved.

**4.9.2.3. Statutory Compliance.** Reviews and approvals required by regulations or law have been obtained by the Government prior to the execution of this agreement and the Government official executing this agreement has the requisite authority to do so.

### **4.10. Disputes.**

**4.10.1. Settlement.** The Parties recognize that disputes or claims arising under this CRADA are best resolved by the Parties directly involved and preferably at the working level. Any dispute arising under this CRADA that is not disposed of by the CRADA Parties at the working level will be submitted jointly to the individuals identified in Section 4.7 or their designees. In the event the matter cannot be resolved by these individuals, the matter will be elevated as necessary within each Party's management chain until an acceptable resolution is reached. In the absence of an amicable resolution, the matter will ultimately be forwarded to the NSA/CSS Director and the Collaborator's executive-level counterpart for final resolution.

**4.10.2. Continuation of Work.** Pending resolution of any dispute or claim pursuant to this CRADA, the Parties agree that performance of all obligations will be pursued diligently and in good faith in accordance with the JWP.

### **4.11. Title to Property.**

**4.11.1. Title to Preexisting or Acquired Tangible Property.** Each Party will retain title to all tangible property to which it had title prior to the Effective Date of this CRADA or to which it acquired or acquires title, by purchase or by fabrication, outside of the scope of this CRADA.

**4.11.2. Title to Developed Property.** All tangible property fabricated or acquired under this CRADA with all components provided by one Party will remain the property of that Party. Tangible property having any component purchased or supplied by the Government will be the property of the U.S. Government, unless such



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tangible Government components can be separated from the Collaborator's components without damage to any of the individual components comprising the tangible property. After termination of this CRADA, the Parties may, by mutual consent, separate the tangible property into its components and the separated components will remain the property of the Party who originally acquired or fabricated the same.

**4.11.3. Tangible Property Operational and Disposition Costs.** Unless otherwise agreed in writing by the Parties, each Party will be responsible for all costs of maintenance, removal, storage, repair, disposal and shipping of all tangible property to which it has title.

**4.11.4. Disposal of Tangible Property.** Unless otherwise agreed in writing, each Party will take possession of its respective tangible property within sixty (60) calendar days of termination of this CRADA. Each Party will cooperate with the other Party in the recovery or disposition of the other Party's property.

**4.11.5. Inventory Sheet.** Separate inventory sheets shall be written as required for transfer of property from one Party to the other. The Government will not be responsible for damages to any property of the Collaborator except to the extent that such loss, claim, damage or liability arise from the negligence of the Government or its employees, as specified in the provisions of the Federal Tort Claims Act.

**4.12. Publication.** Each Party that seeks to publish or publicly disclose information, including scientific articles, press releases, or in case of publication in a Request for Proposal ("RFP"), pertaining to work performed under this CRADA, will submit to the other Party any proposed written publications not less than thirty (30) calendar days prior to submission for publication. If the receiving Party has any objection to the publication, the Party receiving the proposed publication will, provide a written response within thirty (30) calendar days. A proposed publication that contains information marked "proprietary" or is considered protected and marked as such by the Government, including MCT, classified or Controlled Technical Information, export controlled or other controlled or sensitive information, by either Party requires written consent by both Parties in order for the publication of the information or press release to be released. Such consent will not be unreasonably withheld or delayed. No rights in potential patent applications shall be jeopardized before the filing and publication of any patent application by any Party. By entering into this CRADA, neither Party directly nor indirectly endorses any product or service provided or to be provided by the other Party. The Collaborator will not use the Government's name, initials, or seal in connection with any marketing or to imply any type of endorsement without obtaining prior written consent.

### **4.13. Special Provisions.**

**4.13.1. Subcontracts and Government Support Contractors/SMEs.** The Government may (and most likely will) use contractor SMEs and/or covered government support contractors to participate in performance of the JWP. If the Collaborator has reservations about the participation of a Government's contractor SMEs or a covered support contractor, the Collaborator and the Government will work together to define a process for sharing proprietary information (e.g., NDA or other agreement) to mitigate concerns. The Collaborator shall not use other contractors to perform work under this CRADA nor any tasks and/or analysis, without first identifying the proposed contractor, and obtaining written approval of the Government. Any third-party Collaborator agreement to perform a Party's performance under the CRADA will include "flow-down" terms, consistent with this CRADA.

### **4.14.1 Personnel**

**4.14. Assignment of Personnel.** If it is contemplated that either Party will assign personnel to the other Party's facility as part of this CRADA, such personnel assigned by the assigning Party to participate in or to observe the research to be performed under this CRADA, will not, during the period of such assignments, be considered employees of the receiving Party for any purposes.

4.14.1 The Parties each will be responsible for the pay, expenses and supervision of its own personnel.

4.14.2 Each Party agrees to use due care while on the other's Party's premises, to comply with all security, environmental safety and health rules and regulations during all visits, and to enter only those areas previously designated by those in charge of each visit.

**ARTICLE 5 – INTELLECTUAL PROPERTY**

**5.1. Background Technology.**

**License to Background Technology.**

A designation of relevant Background Technology, if applicable, that each Party brings to this CRADA is listed in Article 9. Each Party acknowledges that each Party has put forth reasonable efforts to provide a complete list of Background Technology. However, each Party acknowledges and agrees that additional Background Technology relevant to conduct activities under the CRADA may be incorporated by modification to this CRADA. In the performance of this CRADA, the parties agree to limit the use of Background Technology to those identified in Article 9 or in a modification made in accordance with section 4.6.1. Technology developed by either Party after the Effective Date shall not be listed as Background Technology without mutual agreement of the Parties. Acknowledgement of each Party's Background Technology list is not acquiescence to the Party's ownership of the Background Technology or negation of any pre-existing rights held by the Government.

The designation of technology as Background Technology does not grant any rights in Background Technology to the receiving Party, other than the right to use or reproduce the Background Technology provided for the purpose of performing work under this CRADA. Background Technology must be returned to the owner of the technology upon the expiration or termination of this CRADA or destroyed; the Collaborator will provide the Government with written certification of destruction. Nothing in this CRADA will be construed to otherwise alter or affect any rights of either Party to any technology listed as Background Technology that exist, are developed, or are modified outside this CRADA. No license, express or implied, for commercial application(s) is granted to either Party. For commercial applications of any Background Technology, a license must be obtained from the owner.

**5.2. CRADA Technical Information.**

**5.2.1. Oral and Visual Information.** Information imparted orally or visually will not be protected under this CRADA, unless such information is subsequently reduced to tangible form within thirty (30) calendar days of disclosure and a copy is furnished to the Party that received the information.

**5.2.2 CRADA Technical Information Created by a CRADA Party.**

**CRADA Technical Information Created solely by the Government:**

CRADA Technical Information Created solely by Government employees during performance under this CRADA will be owned by the Government and the Collaborator will have a nonexclusive, paid-up, irrevocable license in this Technical Information to use, reproduce, modify, perform, display, release and disclose, unless restricted due to classification, the proprietary nature of the information, or other restriction as outlined below. The Government must determine whether the CRADA Technical Information is classified, Controlled Unclassified Information, or Controlled Technical Information, or information restricted from release by DoD Regulations, Directives or Instructions. If the Government determines CRADA Technical Information to be classified, to the extent possible, the Government agrees to work with appropriate Government personnel and appropriately cleared Collaborator personnel to identify information that is releasable to the public and, to the extent feasible, to confirm that the scope and level of such classification is the lowest level permitted by law. If determined to be eligible for release, the parties will work together to determine the best course of action to execute the release of CRADA Technical Information to the public.

**CRADA Technical Information Created solely by the Collaborator:**

CRADA Technical Information Created solely by Collaborator employees during performance under this CRADA will be owned by the Collaborator and the Government will have a non-exclusive, paid-up, irrevocable

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license for Government Purposes in this Technical Information to use, reproduce, modify, perform, display, release and disclose.

### 5.2.3 CRADA Technical Information Jointly Created.

All Technical Information that is jointly Created during performance of this CRADA, if any, will be jointly owned by the Parties. The Government shall determine whether the CRADA Technical Information is classified, Controlled Unclassified Information, or Controlled Technical Information or information restricted from release by DoD Regulations, Directives, or Instructions. If determined to be eligible for release, the parties will work together to determine the best course of action to execute the release of CRADA Technical Information to the public.

### 5.3. CRADA Works and Inventions.

**5.3.1. Solely Developed.** Ownership of Works, including CRADA Computer Software and CRADA Inventions, developed solely by one of the Parties while performing under this CRADA, belong to that Party.

**5.3.2. CRADA Works and CRADA Inventions.** Jointly created Works and Inventions will be jointly owned by both Parties. For copyrightable Works, the Collaborator herein provides the Government with a nonexclusive, paid-up, irrevocable Copyright License in order for the Government to be able to use, modify, reproduce, perform, display, release or disclose the CRADA Work, including CRADA Computer Software, for any Government Purpose. The CRADA Work will have the following marking:

**“This Work was created in the performance of a Cooperative Research and Development Agreement with the National Security Agency. The Government of the United States has certain rights to use this Work.”**

**5.3.3. Invention Disclosure.** Within sixty (60) calendar days of an Invention being Made resulting from the performance of the CRADA, and prior to disclosure of the Invention to any third parties, unless a shorter time period is required by circumstances, the inventor(s) will submit an Invention Disclosure to his/her/their employer(s). In the case of an Invention Made jointly by inventors from both Parties, the inventors of each Party will submit an Invention Disclosure to his/her employer. Each Party will provide the other Party with a copy of each Invention Disclosure reporting the CRADA Invention within sixty (60) calendar days of receiving the Invention Disclosure from its inventor(s).

**5.4. Determination of CRADA Invention.** The Parties will review each Invention Disclosure, and confer and consult with each other to determine whether an Invention Disclosure represents a CRADA Invention.

**5.4.1. Filing of Patent Applications.** The Parties will identify the Party that will own the CRADA Invention and resulting patent, and which Party will file a Patent Application on any CRADA Invention in accordance with the above provisions. The Party responsible for filing of a patent application on any CRADA Invention will file the 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 CRADA Invention, if no patent application is filed within the specified time period by the responsible Party, the other Party may assume control of filing the patent application and the responsible Party will assign the CRADA Invention to the other Party so that that other Party will then be able to take title to the jointly made CRADA Invention on ten (10) calendar days written notification. The Party that relinquished the responsibility to file will retain a nonexclusive, irrevocable, paid-up license to practice the jointly made CRADA Invention or have the jointly made CRADA Invention practiced throughout the world by or on its behalf.

**5.4.2. Rights of the Government.** Unless otherwise instructed by the Government, language that must be included in a patent application filed by the Collaborator for any CRADA Invention is as follows: “This invention was made with Government support from the National Security Agency. The Government of the United States has

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the right to practice or have practiced on behalf of the Government for research or other Government Purposes this subject invention throughout the world.”

### 5.5. Licenses to CRADA Inventions, Including Computer Software.

**5.5.1. License.** In accordance with 15 U.S.C. § 3710a(b)(2), for CRADA Inventions Made, CRADA Technical Information, and CRADA Works Created solely or in part by an employee of the Government, to the extent such CRADA Inventions are not jointly owned by the Parties (pursuant to the sections described above), the Government may grant or may agree in advance to grant the Collaborator patent licenses or assignments or options thereto, subject to section 209 of title 35 of the United States Code. The Government may grant a license to an invention that is Government owned, for which a patent application was filed before the signing of this CRADA, and directly within the scope of the work under this CRADA for reasonable compensation when appropriate. The Collaborator may have an option to choose an exclusive license, which will be negotiated by both Parties. Unless otherwise agreed to in writing by the Parties, Collaborator’s option to choose an exclusive license must be requested within six (6) months of being notified (or by its own employee/inventor in the case of jointly Made Inventions) of the CRADA Invention. Grants of exclusive licenses or assignments under this paragraph will be subject to the Government retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Invention or have the Invention practiced throughout the world by or on behalf of the Government.

**5.5.2. Collaborator’s CRADA Intellectual Property.** The Collaborator retains title to each CRADA Invention, CRADA Technical Information and CRADA Work made solely by its employees and grants the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the CRADA Invention or have the Invention practiced throughout the world by or on behalf of the Government for Government Purposes.

**5.5.3. The Government’s CRADA Intellectual Property.** The Government retains title to each CRADA Invention, CRADA Technical Information and CRADA Work made solely by its employees and grants the Collaborator a nonexclusive, nontransferable, paid-up license to practice the CRADA Invention or have the Invention practiced throughout the world.

**5.6. Termination of Licenses Granted and Cancellation of License Option to CRADA Inventions.** The Government may cancel the Exclusive or Nonexclusive License option or terminate any Exclusive or Nonexclusive Licenses provided for above for CRADA Inventions Made in whole or in part by Government employees, in accordance with 35 USC 404.5(8) in the event that:

- (a) The Collaborator is in default for failure to make payment as agreed to herein;
- (b) The Collaborator fails to perform according to the JWP; or
- (c) The Collaborator becomes a new or different foreign owned, controlled, or influenced (FOCI) organization that is reasonably determined by the Government not to qualify under the requirements of Executive Order 12591, Section 4(a); or
- (d) CRADA is terminated unilaterally by the Collaborator under 4.6.2.2.

**5.7. Trademarks.** The parties cannot use the other party’s trademarks without authorization. All trademarks or service marks to be used by either Party in performing the obligations under the JWP must be identified. A description of how the trademark or service mark will be used and rights of use by the other Party must be stated in the JWP.

## ARTICLE 6 – LIABILITY

**6.1. Force Majeure.** Neither Party will be liable for the consequences of any *force majeure* that (1) is beyond reasonable control; (2) is not caused by the fault or negligence of such Party; (3) causes such Party to be unable to perform its obligations under this CRADA; and (4) cannot be reasonably overcome by the exercise of due diligence. In the event of the occurrence of a force majeure, the Party unable to perform will promptly notify the other Party.

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The Parties will suspend performance only for such period of time as is necessary to overcome the result(s) of the *force majeure* and will use its best efforts to resume performance as quickly as possible.

**6.2. Indemnification and Liability.** The Collaborator agrees to hold the Government harmless and to indemnify the Government for all liabilities, demands, damages, expenses and losses arising out of the use by Collaborator, or any party acting on its behalf or under its authorization of Government's research and technical developments or out of any use, sale or other disposition of products made by the use of Government's research and technical developments, for any purpose unless due to the negligence or willful misconduct of the Government, or Government's employees. The Government has no statutory authority to indemnify the Collaborator. Each Party will be liable for any claims or damages it incurs in connection with this CRADA, except the Government, as an agency of the U.S. Government, assumes liability only to the extent provided under the Federal Tort Claims Act, 28 U.S.C. Chapter 171.

**6.3. Collaborator's Employees.** The Collaborator hereby indemnifies and holds harmless the Government for any loss, claim, damage, or liability of any kind involving an employee of the Collaborator, arising in connection with Collaborator's performance under this CRADA, except to the extent that such loss, claim, damage or liability arises from the negligence of the Government or its employees, as specified in the provisions of the Federal Tort Claims Act.

## ARTICLE 7 – FINANCIAL OBLIGATIONS

**7.1. Parties' Payment of Costs/Fees.** Except as otherwise stated in the JWP, each Party will bear its own expenses and costs, including but not limited to costs of labor, supplies, materials, patent applications, prosecutions and maintenance, equipment, overhead, and other expenses (hereafter "costs/fees"), direct and indirect, in the performance of work under this CRADA.

**7.2 Government.** Government will not provide any federal or other funds to the Collaborator under this CRADA.

**7.3 Payment of Costs/Fees.** In the event the Parties mutually agree in the Joint Work Plan that Collaborator will pay to the Government costs/fees to include travel, clearances, and network access based on work performed under the JWP and included in Appendix B, the purpose of such funds shall be described in and payment made as described in Articles 7.4, 7.5 and the JWP. Work under this CRADA can begin once funds have been deposited.

**7.4 Payment Schedule.** Collaborator and Government will identify a payment schedule of fees and provide as a modification in accordance with Article 4.6.

Payments made by check by the Collaborator to the Government under this Article will be made payable to "United States Treasury" and mailed to the following address:

NSA Technology Transfer Program  
9800 Savage Road; Suite 6843  
Fort George G. Meade, MD. 20755-6843  
Attn: Linda Burger Director, Office of Research and Technology Applications (ORTA)

### 7.5 Insufficient and Excess Funds.

**7.5.1 Insufficient Funds.** Government may discontinue performance under this CRADA if the funds provided by the Collaborator for performance by the Government are insufficient or are not provided as specified in Article 7.3 In the event the Collaborator fails to tender to the Government the required payment within fifteen (15) calendar days after its respective due date, the Collaborator will be in default under this CRADA for failure to make payments. If the

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Collaborator is in default for this reason, the Government will notify Collaborator of such default. If Collaborator does not cure the default within fifteen (15) calendar days of mailing date of notice, the Government may proceed to terminate this CRADA in accordance with Article 4.6.2., may cancel any option for an Exclusive License to a CRADA Subject Invention, and may terminate any Exclusive License granted pursuant to this CRADA.

### ARTICLE 8 – REPORTS

**8.1** Formal and informal recommendations, advice and reports will be provided in both verbal and written form as deemed necessary by both the Government and Collaborator Project Manager or Principal Investigator(s). All written communication should contain appropriate classification and/or proprietary markings.

**8.1.1 Interim Reports.** Within thirty (30) calendar days of (i) January 1 and (ii) July 1 of each year of this CRADA, the Collaborator will deliver reports to the Government during the term of this CRADA. These reports will set forth the technical progress made, identifying such problems as may have been encountered, and establishing goals and objectives requiring further effort and any CRADA Inventions Made and other intellectual property developed or Created, including CRADA Works, and their respective owners. The Collaborator will make available, to the extent reasonably requested, other project information in sufficient detail to explain the progress of the work. The Government will have the opportunity to request additional detail from the preparer if it is deemed necessary to better understand the technical progress made, and identify problems encountered and establish goals and objectives requiring further effort.

### ARTICLE 9 –LISTING OF BACKGROUND TECHNOLOGY AND MARKINGS

#### 9.1 Marking of Background Technology

**9.1.1 Collaborator’s Background Technology.** The Collaborator’s Background Technology is listed in Appendix A of this CRADA.

**9.1.2. Government’s Background Technology.** The Government’s Background Technology is listed in Appendix B of this CRADA.

**9.2 Marking of Background Technology.** All Background Technology will be identified as such with a marking. For example:

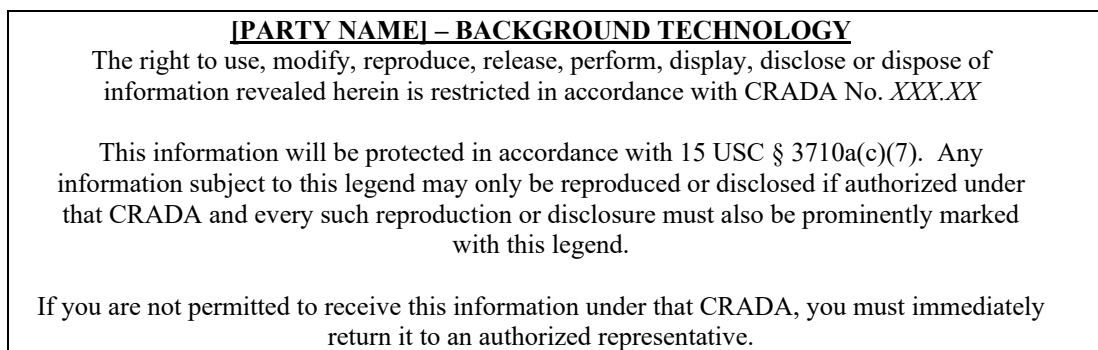


Fig 1. Marking of Background Technology

**9.3 Marking of Proprietary Information.** All Proprietary Information will be identified as such with a marking. For example:

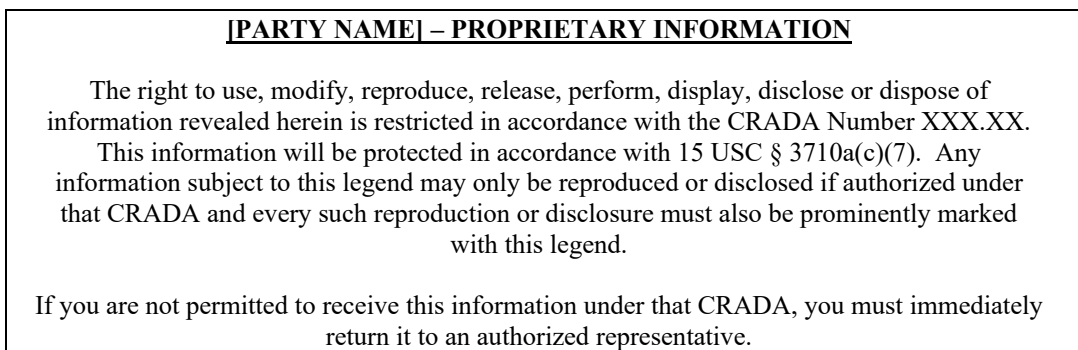


Fig 2. Marking of Proprietary Information

**ARTICLE 10 –SIGNATURES**

**10.1 Expiration.** This Agreement expires in accordance with paragraph 4.2 unless duly modified in accordance with paragraph 4.6.

**10.2 Survivability of Rights and Responsibilities.** All rights and responsibilities of the Parties under this CRADA, including any modifications, shall survive the completion, expiration or termination of this CRADA. In the event that one or more provisions of this CRADA are determined by a federal court not to be valid, the remaining rights and responsibilities of the Parties will survive and be enforced. At least the Articles for Reports, Indemnification, Title to Property and Publications will survive.

**10.3 Entire CRADA.** This CRADA and its counterparts constitute the entire agreement between the Parties concerning the subject matter of this CRADA and supersede any prior understanding or written or oral agreement relative to said matter.

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**10.4 IN WITNESS WHEREOF**, the Parties have executed this CRADA in duplicate through their duly authorized representatives having authority to execute this CRADA as follows:

*National Security Agency*

*[Insert Company Name]*

\_\_\_\_\_  
*Linda L Burger, Director*  
*Office of Research and Technology Applications*

\_\_\_\_\_  
<NAME, TITLE>

\_\_\_\_\_  
*Date Signed*

\_\_\_\_\_  
*Date Signed*



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**APPENDIX A- COLLABORATOR'S BACKGROUND TECHNOLOGY**

[List Technology]

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**APPENDIX B- GOVERNMENT'S BACKGROUND TECHNOLOGY**

[ List Technology]

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**APPENDIX C- JOINT WORK PLAN**

**Background**

**Scope of Work**

**Task 1: Name of Task**

**Points of Contact**

**A. Government**

Title: Project Manager

Name:

Phone:

Email:

Title: Principal Investigator

Name:

Phone:

Email:

**B. Collaborator:**

Title: Project Manager

Name:

Phone:

Email:

Title: Principal Investigator

Name:

Phone:

Email: