WHAT IS A CRADA?

A Cooperative Research and Development Agreement (CRADA) is a legal agreement between a federal laboratory and a nonfederal party to conduct specified research or development efforts that are consistent with the missions of the federal laboratory (15 USC § 3710a(d)(1)). The Federal Technology Transfer Act of 1986 (Public Law 99-502) authorized federal laboratories to enter into CRADAs (15 USC § 3710a(a)(1)). The primary purpose of the act is to encourage the transfer of commercially useful technologies from federal laboratories to the private sector and to make accessible unique technical capabilities and facilities.

CRADAs are structured to offer the nonfederal partner an opportunity to leverage its resources with those of the federal laboratory by sharing the costs of research for the development of products. The nonfederal partner may provide funds, personnel, services, equipment, facilities, intellectual property, or other resources needed to conduct a specific research or development effort. The federal laboratory may provide similar resources but may not directly provide federal funds to the nonfederal CRADA partner.

The Government protects any proprietary information brought to the CRADA effort by the nonfederal partner. This provides a true collaborative opportunity. Federal scientists can work closely with their nonfederal counterparts, exchanging ideas and information while protecting company secrets. All parties can mutually agree to keep research results developed during performance of the CRADA confidential and free from disclosure through the Freedom of Information Act for up to five years. CRADAs also allow flexibility in patenting and patent licensing, enabling the Government and the collaborating partner to share patents and patent licenses, or permitting one partner to retain exclusive rights to a patent or patent license.

Sample CRADA begins on the next page.
Sample Crada

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)

FOR

[PURPOSE]

BETWEEN

[COMPLETE NAME AND ADDRESS OF GOVERNMENT ENTITY]

AND

[COMPANY]

COMPANY

Company Contact
Company Contact Title
Company Contact Phone Number

[Government Organization]
Dr. Xxx X. Xxxxx

[Government Title or Office]
( xxx) xxx-xxxx
<br>N A M E >
Principal Investigator
Principal Investigator's Phone Number

The purpose of this AGREEMENT is to establish a cooperative effort between the U.S. [Army, Navy, Air Force – “laboratory’] and (COMPANY) in order to develop XxxxxX technology. (SHORT DESCRIPTION OF CRADA). This work falls within the mission of the [XXX] Laboratories.

NTIS Category: _______________________

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A COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
Between
(COMpany)
And
[Government Organization]

A) Whereas, the Federal Technology Transfer Act of 1986, 15 USC 3710a, provides each Federal agency with the authority to permit the Directors of Government-operated Federal Laboratories to enter into Cooperative Research and Development Agreements (CRADA's) with Federal and non-Federal entities, including private firms and organizations. This authority allows Federal Laboratories to accept, retain, and use funds, personnel, services, and property from collaborating parties and to provide personnel, services, and property to collaborating parties. This authority also includes the disposition of patent rights, which are owned by the Government.

B) Whereas, [Government Organization] Laboratories ("lab's short name") has an array of unique technologies, in [Blank and Blank], and enabling technologies such as, [Blank, Blank, and Blank] and has the responsibility to make it's procedures, processes and technologies available for use and transfer to the private sector. lab's short name has unique technologies and facilities in specialized [BLANK] and has the responsibility to make these technologies available for use and transfer to the private sector.

C) Whereas, (COMPANY) wishes to utilize the Technology to develop or improve a new or product, process or service for commercial purposes and to improve the position of the U.S. economy in world trade; and

--OR--

C) Whereas, (COMPANY) and lab’s short name Laboratories desire to collaborate in the further advancement of the Technology which as commercial application to ______________ and military application to ______________; and

D) Whereas, the use by (COMPANY) of lab’s short name Laboratories Technology will benefit the overall [Army, Navy, Air Force, other] mission.

NOW, THEREFORE, the parties agree as follows:

Article I. Definitions.
As used in this Agreement, the following terms shall have the following meanings, and such meanings should be equally applicable to both the singular and the plural forms of the terms defined:

1.1 "Agreement" means this Cooperative Research and Development Agreement.

1.2 "Invention" means any invention or discovery, which is or may be patentable or otherwise protected, under Title 35 of the United States Code.
1.3 "Made" in relation to any Invention means the conception of first actual reduction to practice of such Invention.

1.4 "Proprietary Information" means information marked with a proprietary legend, which embodies trade secrets developed at private expense, or which is confidential business or financial information, provided that such information:
   (i) Is not generally known or available from other sources without obligation concerning its confidentiality.
   (ii) Has not been made available by the owners to others without obligation concerning its confidentiality; and
   (iii) Is not already available to the government without obligation concerning its confidentiality.

1.5 "Subject Data" means all recorded information first produced in the performance of this Agreement.

1.6 "Subject Invention" means any invention made in the performance of work under this Agreement.

1.7 "Subject Improvement" means any improvement first produced in the performance of this Agreement.

1.8 "Government License" means non-exclusive, irrevocable, paid-up license to use, practice or have practice a Subject Invention, Subject software, or Subject Data throughout the world by or on behalf of the U.S. Government.

1.9 "Final Products" means any product produced for sale by (COMPANY) or any other duly authorized third party which embodies Subject Data, Subject Software, or Subject Invention as defined in 1.6 above or Government owned patent(s) which are licensed to (COMPANY) by the Government.

Article 2. Cooperative Research.

2.1 Statement of Work. Cooperative research performed under this Agreement shall be performed in accordance with Statements of Work (SOW), incorporated subsequent to this Agreement. Each party agrees to participate in the cooperative research and to utilize such personnel, resources, facilities, equipment, skills, know-how and information, as it considers necessary, consistent with its own policies, missions, and requirements. Statements of Work will become part of this Agreement and recorded as Appendix A. Statements of work will be task-or-performance oriented.

2.2 Multiple Parties and Separate Technologies. lab’s short name has unique technologies in several related but distinct areas to include, but not limited to:
   __________, __________, and __________ and their enabling sciences and disciplines. In addition, lab’s short name has localized support expertise located within [where is the lab located?] . The (COMPANY) may choose to size their selection of technologies based upon a joint lab’s short name and (COMPANY) management and technology review.
2.3 Review of Work. Periodic conferences shall be held between lab’s short name personnel and (COMPANY) personnel for the purpose of reviewing the progress of the work. It is explicitly understood that due to the unique nature of this cooperative research, completion within the period of performance specified, or within the limit of financial support allocated, cannot be guaranteed. Accordingly, it is agreed that the performance of all sponsored research is on a best effort and good faith basis. It is agreed that individual Statement of Works will make use of project management techniques detailing where appropriate, costs, schedule and technical milestone considerations to mitigate and control risk.

2.4 Change in Scope. The parties shall make a good faith effort to agree on any necessary changes(s) to the SOW and make the change(s) by written notice. The parties agree that increases and decreases in effort may, by mutual agreement, not be considered a change in scope, minimizing administrative delays in the execution of effort.

2.5 Research and Development (R&D) Team. To the extent that the conduct of sponsored research requires a joint technical effort, (COMPANY) and lab’s short name agree to establish a joint research and development team (the "TEAM"). The TEAM shall conduct cooperative research in accordance with the SOW. Each party shall pledge to make available to the TEAM such resources, facilities, equipment, skills, know-how, and information as it considers necessary and appropriate. Both parties pledge to support the TEAM in a mutually cooperative manner, on a best effort and good faith basis, consistent with their respective policies, missions, and requirements. Each party may support changes to the SOW or to the scope and direction of the effort which, if agreed to by the other parties, shall first be made to the SOW, and then implemented by the TEAM. While assigned to the TEAM, members shall continue to remain employed by their respective employers with full benefits and salary, and will not be considered employees of the other party for any reason. Each party shall be solely responsible for the composition of their TEAM members.

Article 3. Reports.

3.1 Progress Reports. After this Agreement enters into force, lab’s short name shall develop brief one to two page quarterly written reports during the term of this Agreement on the progress of its government sponsored work, any results being obtained, and shall make available to the extent reasonably requested, other project information in sufficient detail to explain the progress of work that may be requested by (COMPANY).

3.2 Final Report. A written report, summarizing the work conducted by lab’s short name, will be due to (COMPANY) on (DATE). This report shall set forth the technical progress made, identifying such problems as may have been encountered, and establishing any recommendations for improving commercialization potential. Inclusion of Proprietary Information or Subject Information in deliverable reports shall be subject to the provisions of Article 7.2. In addition, a portion of the results not including Proprietary Information, may be prepared for publication in a journal or
conference, as appropriate, by lab’s short name and/or (COMPANY), with co-authorship, as appropriate.

Article 4. Financial Obligation

Salary and Travel. lab’s short name and (COMPANY) shall provide support to its respective personnel in performance of this Agreement. Attached statements of work or Appendix will detail financial terms and conditions. If or when appropriate and required by a scope of work, reimbursement required by lab’s short name will be provided by (COMPANY). It is noted that reimbursement does not constitute a sale or transfer of ownership of property.

Article 5. Title to Property

5.1 Equipment. All equipment first acquired under this Agreement, and all Government Furnished Equipment (GFE), if any, shall be the property of lab’s short name except that title to items of equipment developed or purchased by (COMPANY), or provided to lab’s short name by (COMPANY) or acquired by lab’s short name with funds supplied by (COMPANY), shall remain or vest in (COMPANY). Any GFE shall be used solely for the performance of the effort contemplated by this Agreement. Upon completion of research under this Agreement, (COMPANY) shall be responsible for all costs attendant to the maintenance, removal, storage, and shipping of their equipment to their own facility. Prototype hardware, designed, produced and transferred by the Government to (COMPANY) will be considered GFE, with the Government retaining title. The Government retains the option to transfer title of GFE to (Company) at the conclusion of the effort.

5.2 Software.

5.2.1. (COMPANY) Employee Software. (COMPANY) shall hold title to any copyright in software written by (COMPANY) employees in the course of performance of this Agreement.

5.2.2. Joint Employee Software. Title to any copyright in software written jointly by lab’s short name and (COMPANY) employees in the course of performance of this Agreement, shall be held by (COMPANY). (COMPANY) agrees to grant to the U.S. government an exclusive, revocable, paid-up license to use or have used, throughout the world by the U.S. Government, the copyright covering said software.

5.2.3. Limited Scope. (COMPANY) shall retain ownership in any software or algorithms to which (COMPANY) has title prior to this Agreement.

5.2.4. lab’s short name Employee Software. The parties agree that (COMPANY) shall enjoy the right to use software written by lab’s short name employees in the course of performance of this Agreement.

5.2.5. lab’s short name Laboratories may provide interface drawings and other technical data to collaborators as required or negotiated for purposes other than for
production of [lab’s expertise or stated restrictions]. In this instance, [further definition of lab’s stated restrictions]

-- AND/OR --

5.2.6. [Additional restrictions that may compete with the laboratory’s expertise]

Article 6. Inventions and Patents

6.1 Reporting. The parties shall promptly report to each other all Subject Inventions reported to either party by its employees. All Subject Inventions made during the performance of this Agreement shall be listed in the Final Report required by this Agreement.

6.2 Employee Inventions. lab’s short name, on behalf of the U.S. Government, agrees that (COMPANY) shall retain title to any (COMPANY) employee Subject Inventions. (COMPANY) may file patent applications on such Subject Inventions at its own expense.

6.3 lab’s short name Employee Inventions. lab’s short name, on behalf of the U.S. Government, shall have the initial option to retain title to, and file patents on, each Subject Invention made by its employees. lab’s short name may file patent applications thereon at its own expense. lab’s short name on behalf of the U.S. Government, agrees to grant to (COMPANY) on those lab’s short name employee Subject Inventions upon which the U.S. Government has exercised the option to retain title to, an exclusive license for non-Defense applications in fields of use supported by a commercialization plan submitted by (COMPANY).

6.4 Joint Employee Inventions. Title to joint inventions shall be held jointly between (COMPANY) and lab’s short name. (COMPANY) shall have the initial option to file patent applications at its own expense on joint inventions, subject to the conditions specified in Paragraph 6.5.

6.5 Filing of Patent Applications. The party having the right to retain title and file patent applications on a specific Subject Invention may elect not to file patent applications, provided it so advised the other party within 120 days from the date it reports the Subject Inventions to the other party. Thereafter, the other party may elect to file patent applications on the Subject Invention and the party initially reporting the Subject Invention agrees to assign its right, title, and interest in the Subject Invention to the other party. The assignment of the entire right, title, and interest to the other party, pursuant to this paragraph, shall be subject to the retention by the party assigning title of a nonexclusive, irrevocable, paid-up license to practice, or have practiced, the Subject Invention throughout the world.

6.6 Patent Expenses. Expense attendant to the filing of patent applications shall be borne by the party filing the patent applications. Each party shall provide the other party with copies of the patent applications it files on any Subject Invention along with the power to inspect and make copies of all documents retained in the official patent application files by the applicable patent office. The parties agree to reasonably
cooperate with each other in the preparation and filing of patent applications resulting from this Agreement.

6.7 Maintenance Fees. The fees payable to the U.S. Patent and Trademark Office (USPTO), in order to maintain the patent's enforcement, will be payable by the owner of the patent, at the party's option.

Article 7. Data and Publication.

7.1 Rights. Subject Data shall be individually owned by the parties. Either party shall, upon request, have the right to review all Subject Data first produced under this Agreement which has not been delivered to the other party, except to the extend that such Subject Data is subject to a claim of confidence or privilege by a third party.

7.2 Proprietary Information. lab’s short name agrees that any proprietary information furnished by (COMPANY) to lab’s short name under this Agreement, or in contemplation of this Agreement, shall be used, reproduced and disclosed by lab’s short name only for the purpose of carrying out this Agreement, and shall not be released by lab’s short name to third parties unless consent to the release is obtained from (COMPANY). (COMPANY) shall place a proprietary notice on all information it delivers to lab’s short name under this Agreement, which it asserts is proprietary.

7.3 Release Restrictions. lab’s short name shall have the right to use all Subject Data for any internal U.S. Governmental purpose, but shall not release Subject Data publicly, or to Government Contractors except: (i) lab’s short name in reporting results of sponsored research, may publish Subject Data in technical articles and other documents to the extent it determines to be appropriate; and (ii) lab’s short name may release such Subject Data where such release is required by law or court order.

7.4 Publication. lab’s short name and (COMPANY) agree to confer prior to the publication of any Subject Data to assure that no Proprietary Information is released and that patent rights are not jeopardized. Prior to submitting a manuscript for review, which contains the results of the research under this Agreement, or prior to publication if no such review is made, each party shall be offered an ample opportunity to review such proposed manuscript and to file patent applications in a timely manner.

Article 8. Representations and Warranties.

8.1 Representations and Warranties.

8.1.1. Organization. lab’s short name is a federal laboratory and is wholly owned by the Government of the United States and whose substantial purpose is the performance of research, development, and engineering.

8.1.2. Mission. The performance of the activities specified by this Agreement is consistent with the mission of lab’s short name.

8.1.3. Authority. All prior reviews and approvals required by regulations or law have been obtained by lab’s short name prior to the execution of this Agreement. The lab’s short name official executing this Agreement has the requisite authority to do so.
Notwithstanding the delegation of authority to execute this Agreement to the individual designated, that is the Director of lab’s short name, the Secretary of the [Army, Navy, Air Force, other] has reserved to the Assistant Secretary of the [Army, Navy Air Force, other] the opportunity provided by 15 USC Sect.3710a(c)(5)(A), to disapprove or require the modification of this Agreement within 30 days of the date it is presented by lab’s short name.

8.1.4. Statutory Compliance. The lab’s short name Director, prior to entering into this Agreement, has given special consideration to entering into CRADA's with small business firms and consortia involving small business firms.

8.2. Representations and Warranties. (COMPANY) hereby represents and warrants to BENET as follows:

8.2.1. Organization. (COMPANY) as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of ________.

8.2.2. Power of Authority. (COMPANY) has the requisite power and authority to enter into this Agreement and to perform according to the terms thereof.

8.2.3. Due Authorization. (COMPANY) has taken all actions required to be taken by law, charter, Certificate or Articles of Incorporation, its bylaws or otherwise, to authorize the execution and delivery of this Agreement.

8.2.4. No Violation. The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under any material agreement binding on (COMPANY) or any valid order of any court, or any regulatory agency or other body having authority to which (COMPANY) is subject.

Article 9. Termination.

9.1 Termination by Mutual Consent. (COMPANY) and lab’s short name may elect to terminate this Agreement, or portions thereof, at any time by mutual consent.

9.2 Termination by Unilateral Action. Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice, no less than 30 days prior to the desired termination date. Termination will consider any work in process and the financial effects on the parties.

9.3 Termination Procedures. In the event of termination, the parties shall specify by written notice the disposition of all property, patents, and other results of work accomplished or in progress, arising from or performed under this Agreement. Upon the receipt of written termination notice, the parties shall not make any new commitments that relate to this Agreement. Notwithstanding any other provision of this Agreement, any exclusive license entered into by the parties relating to this
Agreement shall be simultaneously terminated, considered null and void, unless the parties agree to retain such exclusive license.

Article 10. Disputes.

10.1 Settlement. Any dispute arising under this Agreement which is not disposed of by agreement of the co-principal investigators, shall be submitted jointly to the signatories of this Agreement. A joint decision of the signatories or their designees shall be the disposition of such dispute. However, nothing in this section shall prevent any party from pursuing any and all administrative and/or judicial remedies, which may be allowable.

Article 11. Liability.

11.1 Property. Neither party shall be responsible for damages to an property provided to, or acquired by, the other party pursuant to this Agreement.

11.2 No Warranty. Except as specifically stated elsewhere in this Agreement, lab’s short name makes no express or implied warranty as to any matter whatsoever, including the conditions of the research or any invention or product, whether tangible or intangible, made, or developed under this Agreement, or the ownership, merchantability, or fitness for a particular purpose of the research or any Invention or Product.

Article 12. Miscellaneous.

12.1 No Benefits. No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, nor to any benefit that may arise therefrom; but this provision shall not be construed to end to this Agreement, if made with a corporation for its general benefit.

12.2 Governing Law. This Agreement shall be governed by the laws of the United States Government.

12.3 Fair Access. This agreement shall not restrict either party from entering into similar agreements with other entities.

12.4 Notices. All notices pertaining to or required by this Agreement, shall be in writing and shall be signed by an authorized representative, and shall be delivered by hand or sent by certified mail, return receipt requested, with postage prepaid.

12.5 Independent Contractors. The relationship of (COMPANY) to lab’s short name to this Agreement is that of independent contractors and not as agents of each other or as joint ventures or partners.

12.6 Use of Name or Endorsement. (i) (COMPANY) shall not use the name of lab’s short name, lab’s short name Laboratories, [Government location] or the Department of the [Defense, Army, Navy, Air Force other], on any product or service which is directly or indirectly related to either this Agreement or any patent license or
assignment agreement, which implements this Agreement without the prior approval of lab’s short name. (ii) By entering into this Agreement, lab’s short name does not directly or indirectly endorse any product or service provided, or to be provided, by (COMPANY), its successors, assignees, or licensees. (COMPANY) shall not in any way imply that this Agreement is any endorsement of such products or service.

12.7 The rights specified in provision of this Agreement covering "Inventions", "Patents", "Data and Publication", and "Liability", shall survive the termination or expiration of this Agreement.

Article 13. Duration of Agreement and Effective Date.

13.1 Expiration of Agreement. This Agreement will automatically expire on [DATE] unless it is revised by written notice and mutual consent.

13.2 Effective Date. This Agreement shall enter into force as of the date it is signed by the last authorized representative of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as follows:

For: (COMPANY):

__________________________    __________
(Signature)           (Date)
Name: 
Title: 
Address: 

FOR: lab’s short name and the U.S. Government:

__________________________    __________
(Signature)           (Date)
Government Official
Director, 
lab’s short name Laboratories

Appendix A
STATEMENT OF WORK

BACKGROUND
Briefly describe the dual-use (military application/civilian application) importance of this research collaboration. What are the strengths that lab’s short name brings to this CRADA? What are the strengths that the COMPANY brings to this CRADA?

OBJECTIVE
Through cooperative research and development, the parties intend to (describe the objectives of the effort).
APPROACH
(Describe the major tasks and milestones for each party.)

lab’s short name:
COMPANY

Appendix B
RESOURCE ESTIMATE OF THE PARTIES

Describe the technological expertise, facilities, equipment, funds, software, intellectual property, and other resources each party expects to contribute to the collaborative effort.

COMPANY will provide:

lab’s short name will provide: