

**COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(CRADA)**

between

THE UNITED STATES TRANSPORTATION COMMAND

and

<<COLLABORATOR>>

“Title”

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SECTION I STANDARD TERMS AND CONDITIONS

ARTICLE 1—PREAMBLE

1.1. This Cooperative Research and Development Agreement (“*Agreement*”) for performing the work described in the *Joint Work Plan* is entered into under the authority of the *Federal Technology Transfer Act of 1986*, codified at 15 U.S.C. § 3710a, and pursuant to United States Transportation Command Instruction 61-2, *Technology Transfer and Cooperative Research and Development Agreements*, by and between <<Collaborator>> (“*Collaborator*”), located at <<Address of Collaborator>>, and the United States of America as represented by the United States Transportation Command, (“*USTRANSCOM*”), located at 508 Scott Drive, Scott AFB, Illinois.

1.2. This *Agreement* is binding on *USTRANSCOM* and *Collaborator* according to the terms and conditions set forth as follows.

ARTICLE 2—DEFINITIONS

As used in this *Agreement*, the following terms have the following meanings and such meanings will be applicable to both the singular and plural forms of the terms.

2.1. “**Reviewing Official**” means the final authority of the United States Transportation Command.

2.2. “**Effective Date**” is the last date this *Agreement* is signed by either *Collaborator* or *USTRANSCOM* official.

2.3. “**Government**” means the Government of the United States of America including any agency or agencies thereof.

2.4. “**Invention**” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the *Plant Variety Protection Act* (7 U.S.C. § 2321 *et seq.*). See 35 U.S.C. § 201(d).

2.5. “**Created**” in relation to any copyrightable work means the work is fixed in any tangible medium of expression for the first time. See 17 U.S.C. § 101.

2.6. “**Made**” when used in relation to any *Invention* means the conception or first actual reduction to practice of such *Invention*. See 35 U.S.C. § 201(g).

2.7. “**Joint Work Plan**” (Section II) describes the purpose and scope of the *Agreement* and assigns rights and responsibilities among the parties. The *Joint Work Plan* specifically details any *Background Technology* brought to this *Agreement*; any property, equipment, maintenance or other support to be provided; and any reports, products or other deliverables expected to be

produced or provided as a result of the collaborative activities under this *Agreement*. To the extent any provision of the *Joint Work Plan* conflicts with any provision in Section I, *Standard Terms and Conditions*, such provision in Section I, *Standard Terms and Conditions*, shall control.

2.8. **“Under this Agreement”** means within the scope of work to be performed as described in the *Joint Work Plan*.

2.9. **“Proprietary Information”** is privileged or confidential information developed in whole or in part by *Collaborator Under this Agreement* which embodies trade secrets or which is confidential technical, business or financial information, provided such information is identified as such by labels or markings designating the information as proprietary. *Proprietary Information* does not include information which: (1) is generally known or is available from another source without obligations concerning its confidentiality; (2) has been made available by the owners to others without obligation concerning its confidentiality; or (3) is described in an issued patent, published patent application, or published copyrighted work.

2.10. **“Restricted Access Information”** is information developed solely by *USTRANSCOM Under this Agreement* that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a CRADA.

2.11. **“Protected Information”** is any information developed *Under this Agreement*, including both *Proprietary Information* and *Restricted Access Information*.

2.12. **“Background Technology”** is technology brought to this *Agreement* by either party consisting of restricted, sensitive, privileged or confidential information or intellectual property described in a patent, patent application or copyrighted work *Made, Created* or otherwise developed prior to the *Effective Date* of this *Agreement*. All *Background Technology* is specifically identified as such in the *Joint Work Plan*, along with the marking requirements and, if applicable, terms for delivery, storage and disposition of such *Background Technology*. Unless specifically stated otherwise in the *Joint Work Plan*, the receiving party will have no rights (other than use strictly for performing work *Under this Agreement*) in such *Background Technology* regardless of whether it is improved, refined or otherwise further developed *Under this Agreement*. *Background Technology* does not include oral, aural or visual information.

2.13. **“Special Purpose License”** means a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free and paid-up license to *USTRANSCOM* for or on behalf of *Government* to practice and have practiced an *Invention* for research or other government purposes and to use, duplicate, prepare derivative works, distribute or disclose copyrighted works or *Proprietary Information* in whole or in part and in any manner, and to have or permit others to do so, for research or other government purposes. Research or other government purposes include competitive procurement, but do not include the right to have or permit others to practice an *Invention* or use, duplicate, prepare derivative works, distribute or disclose copyrighted works or *Proprietary Information* for commercial purposes.

ARTICLE 3—FINANCIAL CONSIDERATIONS

3.1. **Expenses.** Except as otherwise stated in the *Joint Work Plan*, each party shall bear its own expenses in the performance of work *Under this Agreement*. <<The *Collaborator* will pay USTRANSCOM \$XX,000 US within thirty (30) days after the *Effective Date*. Subsequent payments will be paid as follows: >>

3.2. **Payments.** Except as provided for in paragraph 3.4, payments by *Collaborator* to USTRANSCOM under this Article shall be made payable to USTRANSCOM and mailed to the following address:

<<Address>>

3.3. **Notice to Accompany Payments.** Payments shall reference this *Agreement* by USTRANSCOM CRADA Number and by the names of the parties and shall state the purpose of the payments. A copy of the payment documents shall also be sent by ordinary mail to the address shown for formal notices in Article 12—“Notices.”

3.4. **Royalty Payments.** Royalty or other income from intellectual property will be paid in accordance with any separate license agreement hereafter entered into by the parties pursuant to Article 4—“Invention Disclosures & Patents” or Article 5—“Copyright Protection.”

ARTICLE 4—INVENTION DISCLOSURES & PATENTS

4.1. **Disclosure of Inventions.** Each party must report to the other party, in writing, each *Invention Made Under this Agreement*, promptly after the existence of each such *Invention*, in the exercise of reasonable diligence, becomes known.

4.2. **Rights in Inventions.**

4.2.1. **Ownership of Sole Inventions.** Each party will separately own any *Invention Made Under this Agreement* solely by its respective employees.

4.2.2. **Ownership of Joint Inventions.** *Inventions Made Under this Agreement* jointly by USTRANSCOM and *Collaborator* employees will be jointly owned by both parties.

4.2.3. **Option to Obtain Title.** Subject to the rights of third parties under paragraph 4.4, *Collaborator* shall have an option to obtain title to any *Invention Made Under this Agreement* in whole or in part by USTRANSCOM employees.

4.2.3.1. The option to obtain title may be exercised by *Collaborator* as provided for under paragraph 4.3.

4.2.3.2. In all cases where *Collaborator* obtains or retains title to any *Invention Made Under this Agreement*, USTRANSCOM will have a *Special Purpose License* in any such *Invention*. The *Collaborator* will promptly provide a confirmatory license upon request by *Government* for any *Invention Made Under this Agreement* that is owned by *Collaborator*.

4.2.4. **Option to Obtain Exclusive License.** The *Collaborator* will have the option to choose an exclusive license for a pre-negotiated field of use at a reasonable royalty rate, subject to the conditions set forth in 15 U.S.C. § 3710a(b)(1), in any *Invention Made Under this Agreement* in whole or in part by *USTRANSCOM* employees.

4.2.5. **License to Collaborator.** The *USTRANSCOM* will grant to *Collaborator*, upon request, a non-exclusive license in any *Invention Made Under this Agreement* in whole or in part by *USTRANSCOM* employees.

4.2.6. **Licensing of Federally Owned Inventions.** All licenses of *Inventions* granted to *Collaborator* by *Government* shall be subject to the restrictions set forth under 37 C.F.R. 404.5.

4.2.6.1. The *Collaborator* must exercise the option to obtain an exclusive license under paragraph 4.2.4, or request a non-exclusive license under paragraph 4.2.5, for an *Invention* within six (6) months of the filing of a non-provisional patent application on such *Invention*. The *Collaborator* may request such time be extended as necessary to understand the nature of the *Invention* and to permit diligence regarding the potential value thereof, which request will not be unreasonably refused by *USTRANSCOM*. Any such extensions approved by *USTRANSCOM* must be in writing.

4.2.6.2. The royalty rate, field of use and other terms and conditions of the license shall be set forth in a separate license agreement and shall be negotiated promptly.

4.2.6.3. The *Collaborator* will have the right of enforcement under chapter 29 of Title 35 for an exclusive license entered into under this Article.

4.2.7. **Special Purpose License to Government.** The *Collaborator* hereby grants to *USTRANSCOM*, in advance, a *Special Purpose License* in any *Invention Made Under this Agreement* in whole or in part by *Collaborator* employees.

4.3. **Filing Patent Applications.** The *Collaborator* will have the first option to file a non-provisional patent application on any *Invention Made Under this Agreement*, which option may be exercised by giving written notice to *USTRANSCOM* within two (2) months after disclosure of the *Invention* under paragraph 4.1 and by filing a non-provisional, provisional or international patent application in the U.S. Patent and Trademark Office within six (6) months after providing such notice.

4.3.1. **Copies of Patent Applications.** The party filing a provisional or non-provisional patent application on any *Invention Made Under this Agreement* must provide a copy thereof to the other party within thirty (30) days of filing such application with the United States Patent and Trademark Office.

4.3.2. **Assignment.** If *Collaborator* files a non-provisional patent application in accordance with this Article on an *Invention Made* in whole or in part by *USTRANSCOM* employees, *USTRANSCOM* will promptly assign title in that *Invention* to *Collaborator*, subject to the conditions set forth in 15 U.S.C. § 3710a(b)(1).

4.3.3. **Statement of Government Interest.** Any patent application filed on any *Invention Made Under this Agreement* must include in the patent specification the statement: "This invention was made in the performance of a Cooperative Research and Development

Agreement with the United States Transportation Command. The Government of the United States has certain rights to use the invention.”

4.3.4. **Notice Required to Protect Government Interest.** If *Collaborator* elects not to file, or not to continue prosecution of a patent application on, or otherwise abandons any such *Invention* in the United States, *Collaborator* must notify *USTRANSCOM* thereof at least three (3) months prior to the expiration of any applicable filing or response deadline, priority period or statutory bar date, or within thirty (30) days of any such election or decision not to file or continue prosecution, whichever is earlier.

4.3.5. **Prosecution by USTRANSCOM.** In any country in which *Collaborator* does not file, continue prosecution of, make any required payment on, or where it otherwise abandons any *Invention*, *USTRANSCOM* may file, or continue prosecution of, or make any required payment on, an application or patent, and *Collaborator* will promptly assign to *USTRANSCOM* all right, title and interest of *Collaborator* in such *Invention*.

4.3.6. **Cooperation.** The party not filing, prosecuting or administering any patent application or patent under this Article will fully cooperate with the party filing, prosecuting or administering the application or patent in promptly executing all necessary documents and obtaining cooperation of its employees in executing such documents related to such application or patent.

4.3.7. **Patent Expenses.** The party filing an application on any *Invention* is responsible for all patent application preparation and filing expenses and issuance, post issuance and patent maintenance fees associated with that application while this *Agreement* is in effect, unless otherwise agreed to under separate agreement.

4.4. **Rights of Third Parties.** Either party intending to use the support of any contractor or third party not identified in the *Joint Work Plan* to perform any of its obligations *Under this Agreement* shall provide written notice to the other party at least 30 days in advance of any involvement of such contractor or third party with activities *Under this Agreement*. If the party receiving such notice objects at any time to the use or involvement of such contractor or third party, the party providing such notice will not utilize or promptly cease utilizing the services of such contractor or third party to perform its obligations *Under this Agreement*.

4.4.1. **Third Party Support of USTRANSCOM.** *USTRANSCOM* may use the support and research services of the onsite contractor or contractors identified in the *Joint Work Plan*, if applicable, in performing its obligations *Under this Agreement*. The *Collaborator* understands that invention rights under the Bayh-Dole Act, 35 U.S.C. § 200 *et seq.*, or the applicable patents rights clause under the Federal Acquisition Regulation (FAR) or the Defense Federal Acquisition Regulation Supplement (DFARS) governing any such contract, or both, may conflict with the terms in this Article, and in such cases, may limit *Collaborator's* rights or options in such inventions under this Article.

4.4.2. **Third Party Support of Collaborator.** No information, material, equipment or other resources provided by *Collaborator Under this Agreement*, originating from any contractor or third party, shall have any restriction whatsoever on further use, release or disclosure beyond that specified in this *Agreement*, except as specifically identified, including a detailed description of any such limitations, in the *Joint Work Plan*. Any agreement with a third party to provide support to *Collaborator* for participation *Under this*

Agreement shall contain terms consistent with this provision and which are at least sufficient to provide *USTRANSCOM* all rights anticipated *Under this Agreement* as if *Collaborator* was providing the support itself.

ARTICLE 5—COPYRIGHT PROTECTION

5.1. **Ownership of Copyrighted Works.** The *Collaborator* owns the copyright in all works *Created* in whole or in part by *Collaborator Under this Agreement* which are copyrightable under Title 17, United States Code.

5.2. **License in Published Copyrighted Works.** The *Collaborator* hereby grants in advance to the *Government* a *Special Purpose License* in all published copyrighted works *Created Under this Agreement*. The *Collaborator* will prominently mark each such published copyrighted work with the words: “This work was created in the performance of a Cooperative Research and Development Agreement with the United States Transportation Command. The Government of the United States has certain rights to use this work.”

5.3. **Copies of Published Copyrighted Works.** The *Collaborator* must furnish to *USTRANSCOM*, at no cost to *USTRANSCOM*, one copy of each published copyrighted work *Created* in whole or in part by *Collaborator Under this Agreement*.

ARTICLE 6—BACKGROUND TECHNOLOGY AND PROTECTED INFORMATION

6.1. **Disclosure of Oral and Visual Information.** Information disclosed orally or visually, if identified as information that is to be protected under this *Agreement* at the time of disclosure, will be deemed *Protected Information* under this *Agreement* for thirty (30) days and thereafter if, within thirty (30) days after such oral or visual disclosure, such information is reduced to writing, properly marked in accordance with Article 2—“Definitions” and the *Joint Work Plan* and submitted to the other party.

6.2. **Disclosure of Background Technology.** All *Background Technology* provided to the other party must be specifically identified in the *Joint Work Plan*. Unless otherwise expressly provided in the *Joint Work Plan*, *Background Technology* may only be released to those having a need for the information in connection with their duties *Under this Agreement*.

6.3. **Computer Software and Computer Software Documentation.** All computer software and computer software documentation *Made, Created* or developed *Under this Agreement* by *Collaborator* shall be treated as *Proprietary Information* for purposes of determining rights in such computer software and computer software documentation.

6.4. **Proprietary Information.** The *Collaborator* grants a *Special Purpose License* to *USTRANSCOM* in all *Proprietary Information* developed by *Collaborator Under this Agreement*.

6.5. **Restricted Access Information.** All *Restricted Access Information* may be exempt from release under the Freedom of Information Act for a period of five (5) years as provided for at 15 U.S.C. § 3710a(c)(7)(B). The *Collaborator* may use or disclose, in confidence, and authorize

others to use or disclose, in confidence, *Restricted Access Information* developed by USTRANSCOM Under this Agreement.

6.6. **Marking of Background Technology and Protected Information.** All *Background Technology* and *Protected Information* will be conspicuously marked as such and will reference this CRADA by number. Neither party will be liable for the release of unmarked *Background Technology* or *Protected Information*. The party receiving *Background Technology* or *Protected Information* must comply with all appropriate requirements governing the treatment of such information as described in the *Joint Work Plan*. The failure to properly mark any information shall not adversely affect the rights of the party receiving such information.

6.7. **Mandatory Government Provisions.** In accordance with Section 620 of Public Law 108-447, the following provisions are included as required by law.

6.7.1. This *Agreement* does not bar disclosures to Congress or to an authorized official of an executive agency or the United States Department of Justice that are essential to reporting a substantial violation of law.

6.7.2. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; 5 U.S.C. § 7211 (governing disclosures to Congress); 10 U.S.C. § 1034 as amended by the *Military Whistleblower Protection Act* (governing disclosure to Congress by members of the military); 5 U.S.C. § 2302(b)(8) as amended by the *Whistleblower Protection Act* (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the *Intelligence Identities Protection Act of 1982* (50 U.S.C. § 421 *et seq.*) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including 18 U.S.C. §§ 641, 793, 794, 798 & 952, and section 4(b) of the *Subversive Activities Act of 1950* (50 U.S.C. § 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this *Agreement* and are controlling.

ARTICLE 7—TERM OF AGREEMENT, MODIFICATIONS & TERMINATION

7.1. **Term of Agreement.** This *Agreement* commences on the *Effective Date* of this *Agreement* and shall terminate at the expiration date identified above the signatures in Section III, *Signatures*, unless both parties hereto agree in writing to extend it further in accordance with paragraph 7.2. Expiration of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to expiration.

7.2. **Modifications.** Any change or extension within the scope of this *Agreement* may be made by *Modification*, which shall be entered into by mutual written agreement signed by the parties' representatives authorized to execute this *Agreement*. Each *Modification* will be attached hereto.

7.3. **Amendments.** Any change outside the scope of this *Agreement* may be made by *Amendment*, which shall be entered into by mutual written agreement signed by the parties' representatives authorized to execute this *Agreement*.

7.4. **Termination.** Either party may terminate this *Agreement* for any reason upon delivery of written notice to the other party at least thirty (30) days prior to expiration of this *Agreement*. The written notice shall specify an effective date of termination at least thirty (30) days after receipt by the other party. Termination of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this *Agreement*. In the event of termination by either party, each party shall be responsible for its own costs incurred through the effective date of termination, as well as its own costs incurred after the effective date of termination and which are related to the termination. If *USTRANSCOM* terminates this *Agreement*, it shall not be liable to *Collaborator* or its contractors or subcontractors for any costs resulting from or related to the termination, including, but not limited to, consequential damages or any other costs.

ARTICLE 8—DISPUTES

8.1. **Resolution of Disputes.** All disputes arising out of or related to this *Agreement* will be resolved in accordance with this Article. The parties should attempt to resolve disputes between themselves. Resolution attempts must be documented and kept on file by the local technology transfer focal point for *USTRANSCOM*. Either party may refer in writing any dispute which is not disposed of by agreement of the parties to the *Reviewing Official* for decision.

8.2. **Decision by Reviewing Official.** The *Reviewing Official* must, within sixty (60) days of the receipt of the dispute, notify the parties of the decision. This decision shall be binding on the parties.

8.3. **Agency Decision.** The decision of the United States Transportation Command is final and conclusive. Nothing in this *Agreement* may be interpreted to deny or limit *Collaborator* the right thereafter to seek relief in federal court.

8.4. **Continuation of Work.** Pending the resolution of any such dispute, work under this *Agreement* not subject to dispute may continue as specified in the *Joint Work Plan*.

ARTICLE 9—REPRESENTATIONS

9.1. **USTRANSCOM.** The *USTRANSCOM* hereby represents to *Collaborator* as follows:

9.1.1. **Mission.** The performance of the activities specified by this *Agreement* is consistent with the mission of *USTRANSCOM*.

9.1.2. **Authority.** The *USTRANSCOM* has obtained, prior to the execution of this *Agreement*, all prior reviews and approvals required by law or regulation. The *USTRANSCOM* officials signing and executing this *Agreement* have the requisite authority to do so.

9.1.3. **Statutory Compliance.** *USTRANSCOM*, prior to entering into this *Agreement*, has: (1) given special consideration to entering into cooperative research and development agreements with small business firms and consortia involving small business firms; (2) given preference to business units located in the United States which agree that products embodying an *Invention Made Under this Agreement* or produced through the use of such

Invention will be manufactured substantially in the United States; and (3) taken into consideration, in the event this *Agreement* is made with an industrial organization or other person subject to the control of a foreign company or government, whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements with such foreign country.

9.2. **Collaborator.** The *Collaborator* hereby represents to *USTRANSCOM* as follows:

9.2.1. **Corporate Organization.** The *Collaborator*, as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of <<State>>.

9.2.2. **Statement of Ownership.** The *Collaborator* <<is>> <<is not>> a foreign owned or a subsidiary of a foreign owned entity. The *Collaborator* has the right to assignment of all *Inventions Made* and copyrightable works *Created* by its employees *Under this Agreement*.

9.2.3. **Authority.** The *Collaborator* official executing this *Agreement* has the requisite authority to enter into this *Agreement* and *Collaborator* is authorized to perform according to the terms thereof.

9.2.4. **Infringement.** The *Collaborator* will not knowingly, without appropriate authorization or license agreement, infringe any third-party's intellectual property rights. The *Collaborator* will immediately notify *USTRANSCOM* of any potential infringement under this *Agreement* upon receipt of a notice of infringement, or after otherwise becoming aware of any possible infringement of a third party's intellectual property.

9.2.5. **Lawful Compliance.** The *Collaborator* will perform all activities under this *Agreement* in compliance with all applicable laws, regulations and policies.

9.2.6. **Certification.** Neither the *Collaborator* nor any of its principals are currently debarred, suspended, proposed for debarment, declared ineligible or otherwise excluded from participating in transactions with *Government*. The *Collaborator* will promptly notify *USTRANSCOM* if such status changes during this *Agreement*.

ARTICLE 10—LIABILITY AND LIMITATIONS

10.1. **Property.** No property or equipment may be furnished to the other party unless specifically identified in the *Joint Work Plan*.

10.1.1. All such property and equipment identified in the *Joint Work Plan* is furnished "AS IS" and the parties make NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE for any property or equipment furnished *Under this Agreement*.

10.1.2. All government property and equipment furnished to *Collaborator* must be returned to *USTRANSCOM* on or before the termination or expiration of this *Agreement*. The *Collaborator* shall immediately return or provide immediate access to any *Government* property or equipment provided to it under this *Agreement* that is deemed essential for national security or mission needs at the absolute discretion of the *Reviewing Official*.

10.1.3. All property and equipment furnished to the receiving party, unless otherwise specified in the *Joint Work Plan*, shall be returned in the same condition in which it was received, wear and tear excepted.

10.2. **Intellectual Property.** The parties make NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, including the conditions of the research or any *Invention* or other intellectual property, or product, whether tangible or intangible, provided, *Made, Created* or developed *Under this Agreement*, or the merchantability, or fitness for a particular purpose of the research or any *Invention* or other intellectual property, or product. The parties further make no warranty that the use of any *Invention* or other intellectual property or product provided, contributed, *Made, Created* or developed *Under this Agreement* will not infringe any other United States or foreign patent or other intellectual property right.

10.3. **DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

10.4. **No Waiver of Sovereign Immunity.** Notwithstanding any provision to the contrary, *Collaborator* understands that *Government* will not be liable to any party to this *Agreement*, whether directly or by way of contribution or indemnity, for any claim made by any person or other entity for personal injury or death or for property damage or loss, arising in any way from this *Agreement*, including, but not limited to, the later use, sale or other disposition of research and technical developments, whether by resulting products or otherwise, whether *Made* or developed *Under this Agreement* or contributed by either party pursuant to this *Agreement*, except as provided under the Federal Tort Claims Act (28 U.S.C. § 2671 *et seq.*) or other federal law where sovereign immunity has been explicitly waived.

ARTICLE 11—GENERAL TERMS & PROVISIONS

11.1. **Disposal of Toxic or Other Waste.** The *Collaborator* is responsible for either the removal and disposal from *USTRANSCOM* premises of all additional toxic and hazardous materials and wastes over and above amounts or different from types which would be produced during operations of *USTRANSCOM* facilities in the absence of this *Agreement* or for the costs associated with such additional removal or disposal, if any. The *Collaborator* must obtain at its own expense all necessary permits and licenses as required by local, state, and Federal law and regulation and will conduct such removal and disposal in a lawful and environmentally responsible manner.

11.2. **Force Majeure.** Neither party will be in breach of this *Agreement* for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform must promptly notify the other party and in good faith maintain such part performance as is reasonably possible and resume full performance as soon as is reasonably possible.

11.3. **Relationship of the Parties.** The parties to this *Agreement* and their employees are independent contractors and are not agents of each other, joint venturers, partners or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter,

and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.

11.4. **Publicity/Use of Name Endorsement.** Any public announcement of this *Agreement* must be coordinated between *Collaborator*, *USTRANSCOM* and the public affairs office supporting *USTRANSCOM*. By entering into this *Agreement*, neither *USTRANSCOM* nor the *Government* directly or indirectly endorses any product or service provided, or to be provided, by *Collaborator*, its successors, assignees, or licensees. The *Collaborator* may not in any way imply that this *Agreement* is an endorsement of any such product or service.

11.5. **Publication.** The parties agree to confer and consult with each other prior to publication or other public disclosure of the results of collaborative work *Under this Agreement* to ensure that no *Background Technology*, *Protected Information*, military critical technology or other controlled or sensitive information is inappropriately released.

11.5.1. At least thirty (30) days prior to submitting a manuscript for publication or making a public disclosure, each party will submit to the other party a copy of such proposed publication or disclosure to allow the other party to submit objections to such publication or disclosure and to take suitable steps to secure intellectual property protection in a timely manner.

11.5.2. Where submission of a copy of the proposed publication or disclosure is limited by law or regulation or where such submission is impractical, the party proposing such publication or disclosure shall provide a summary or description of the relevant information subject to publication or disclosure.

11.5.3. Failure to object to such proposed publication or disclosure within ninety (90) days after such proposed publication or disclosure was received by the other party shall constitute assent to such publication or disclosure.

11.5.4. Under no circumstances shall any review or assent of a proposed publication relieve the publishing party of their obligations under Executive Order 13292, "Classified National Security Information," Arms Export Control Act and the Export Administration Act.

11.5.5. Subject to the restrictions under paragraph 11.4, any such publication or other public disclosure of work *Under this Agreement* must, unless waived by the other party in writing, include a statement to the effect that the project or effort was made in the performance of a Cooperative Research and Development Agreement with the other party to this *Agreement*.

11.5.6. *Collaborator* acknowledges that *USTRANSCOM* may share with industry and the general public its evolving views about emerging technologies or techniques and the potential for these to enable future capabilities. *USTRANSCOM* agrees not to include in such releases the *Collaborator's Protected Information*. *USTRANSCOM* agrees to provide *Collaborator* an opportunity to comment in advance on a proposed release of information under this paragraph.

11.6. **Governing Law.** The construction, validity, performance and effect of this *Agreement* will be governed, for all purposes, by the laws applicable to *Government*.

11.7. **Waiver of Rights.** Any waiver must be in writing and provided to all other parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, will not be deemed a waiver of any rights of any party hereto.

11.8. **Entire Agreement.** This *Agreement* represents the entire agreement of the parties and is the complete and exclusive statement of their agreement.

11.9. **Severability.** The illegality or invalidity of any provision of this *Agreement* will not impair, affect or invalidate the other provisions of this *Agreement*.

11.10. **Survivability.** All rights and responsibilities incurred under Section I, *Standard Terms and Conditions*, shall survive the expiration or termination of this *Agreement*.

11.11. **Assignment.** Neither this *Agreement* nor any rights or obligations of either party hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party.

11.12. **Controlled Information.** The parties understand that information and materials provided pursuant to or resulting from this *Agreement* may be export controlled or unclassified sensitive and protected by law, executive order or regulation. Nothing in this *Agreement* may be construed to permit any disclosure in violation of these restrictions.

11.13. **Classified Information.** No classified information will be submitted, received, discussed or otherwise transferred between the parties under this *Agreement*.

11.14. **Records.** The *USTRANSCOM* will maintain a record of this *Agreement*, including a signed copy of this *Agreement*, an archive of all *Background Technology* and *Protected Information* provided by either party which shall be used only for the purpose of documenting *USTRANSCOM's* obligations under this *Agreement*, and all formal notices received by or delivered to *Collaborator* under Article 12—"Notices," in accordance with 15 U.S.C. § 3710a(c)(6).

11.15. **Texting.** *Collaborator* agrees to encourage its employees, contractors and subcontractors not to text while driving while engaged in activities *Under this Agreement*. For purposes of this paragraph, "Text," "Texting" or "Text Messaging" mean reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. "Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

ARTICLE 12—NOTICES

Notices specified in this *Agreement* must be addressed and sent as follows:

12.1. **Formal Notices.** Send formal notices under this *Agreement*, including copyright, invention and patent correspondence, by prepaid, certified U.S. Mail to:

USTRANSCOM

Attn: <<ORTA>>
<<ORTA Address-Line1>>
<<ORTA Address-Line2>>
Scott AFB, IL 62225
Phone:
Email:

Collaborator

Attn: <<Collaborator POC>>
<<Collaborator Address-Line1>>
<<Collaborator Address-Line2>>
<<Collaborator Address-Line3>>
Phone:
Email:

12.2. **Technical Matters.** Send correspondence on technical matters by prepaid ordinary U.S. Mail to:

USTRANSCOM

Attn: <<USTC-TPOC>>
<<USTC-TPOC Address>>
Scott AFB, IL 62220
Phone:
Email:

Collaborator

Attn: <<Collaborator-TPOC>>
<<Collaborator-TPOC Address>>
<<Collaborator-TPOC Address>>
Phone:
Email:

SECTION II JOINT WORK PLAN

“Title”

ARTICLE A—PROJECT DESCRIPTION. [Provide brief abstract of the collaboration.]

ARTICLE B—OBJECTIVES

B.1. **CRADA Objective.** [Briefly describe the overall objective of this *Agreement*. That is, if everything goes as planned and the work is successful, what will this *Agreement* achieve.]

B.2. **Technology Transfer.** [Describe the objective of the *Agreement* in terms that show it meets the statutory requirement of the *Federal Technology Transfer Act* – that is, that it **serves “to transfer federally owned or originated technology to State and local governments and to the private sector.”**]

B.3. **Benefit to USTRANSCOM Mission.** [Describe the objective of the *Agreement* in terms that show it serves the USTRANSCOM mission. Answer the question, “What does USTRANSCOM get out of this *Agreement*?” The activities under this *Agreement* must be **directed “toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory.”**]

B.4. **Benefit to Collaborator.** [Describe the objective from *Collaborator’s* perspective. How does it benefit *Collaborator*?]

B.5. **Estimate of Benefit.** [What is the estimated benefit of the CRADA? Describe the benefit in quantitative terms.]

[If the benefit is monetary—either USTRANSCOM receives money or saves money—how much?

If the benefit is achieving a capability that can’t be done alone, describe the benefit and define how much it’s worth or explain why it’s important.

If the benefit is reduced labor—being able to accomplish something with fewer personnel—quantify the benefit in man hours and monetary savings.]

ARTICLE C—PARTIES AND OTHER PARTICIPANTS

C.1. **Relationship of Parties.** [What does each party bring to the table? Provide description of how this relationship, between *USTRANSCOM* and *Collaborator*, developed. Explain why the parties are partnering with each other. It should be clear that *USTRANSCOM*: (1) is providing equal opportunity to other qualified companies; (2) is not competing with the private sector; and (3) is not establishing a sole source for future procurement needs. See DoDI 5535.8, Enclosure 2.]

C.2. **Other Participants.** [Provide the name and address of business entities that may contribute to the R&D effort under this *Agreement*. Provide the role(s) that each participant will have. Identify whether the other participant(s) is foreign owned or controlled.] [Examples of other participants include: Government on-site contractors; Collaborator sub-contractors and/or R&D partners.]

ARTICLE D—TECHNICAL TASKS

D.1. **USTRANSCOM.** [Describe the specific tasks *USTRANSCOM* will perform and describe and estimate the value of the government resources it is to provide in the form of personnel, services, intellectual property, facilities, equipment or other resources. The manpower and other resources that will be called upon to accomplish the tasks should be defined with specificity.]

D.2. **Collaborator.** [Describe the specific tasks *Collaborator* will perform and describe and estimate the value of the resources it is to provide in the form of funds, personnel, services, intellectual property, facilities, equipment or other resources.]

ARTICLE E—BACKGROUND TECHNOLOGY

E.1. **Intellectual Property.** [Describe all background technology and intellectual property each party brings to this Agreement that is not in the public domain. List trade secrets, copyrighted material, trademarks, patents and patent applications, etc.]

E.2. **Marking of Background Technology.** All Background Technology will be identified as such with a marking. For example,

[PARTY NAME] – BACKGROUND TECHNOLOGY

The right to use, modify, reproduce, release, perform, display, disclose or dispose of information revealed herein is restricted to evaluation purposes only under CRADA No. FY-###-LAB-##. If you are not permitted to receive this information under that Agreement, you must immediately return it to an authorized representative. The reproduction of any information marked with this legend, or any portion thereof, must be authorized under that Agreement and must be marked with this legend.

ARTICLE F—DELIVERABLES

F.1. **Property and Equipment.** No property or equipment will be furnished by either party *Under this Agreement*. [Otherwise, describe all property and equipment to be furnished under the CRADA and establish, for each item, the date of purchase or approximate age of the item, approximate value, who will be responsible for the transportation/cost of furnishing the item, when it will be transferred and when it will be returned and who is responsible for returning the item, if applicable.]

F.2. **Reports.** Identify any reports that will be provided describing the results of the CRADA, including the format, who will produce them, and when they will be delivered.

F.3. **Other Deliverables.** Identify technical data, computer software, and all other products expected to be generated *Under this Agreement*.

ARTICLE G—MILESTONES. [Give the dates for specific milestones within the term of the CRADA on which each party is expected to complete its tasks.]

**SECTION III
SIGNATURES**

I. Expiration. This *Agreement* Expires <<N (N) Months>> from the *Effective Date* unless duly modified in accordance with paragraph 7.2 and attached hereto.

II. IN WITNESS WHEREOF, the Parties have executed this *Agreement* in duplicate through their duly authorized representatives as follows:

USTRANSCOM

Collaborator

<<Collaborator>>

Name of Official

Name of Official

Signature of Official

Signature of Official

Title of Official

Title of Official

Address & Email of Official

Address & Email of Official

Date Signed

Date Signed