

**COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN _____
AND THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
ON A RESEARCH ASSOCIATE PROGRAM**

The National Institute of Standards and Technology, hereinafter referred to as NIST, agrees to supervise and administer on behalf of _____, hereinafter referred to as the Sponsor, a Research Associate Program relating to _____.

The parties agree as follows:

Article 1. Definitions

1.1 The term "cooperative research program" means the research activities described in Article 2 that are jointly undertaken by NIST and one or more non-Federal parties that have entered into a Cooperative Research and Development Agreement with NIST for that purpose.

1.2 The term "invention" means any invention or discovery which is or may be patentable 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. 7321 et seq.).

1.3 The term "made" in relation to any invention means the conception or first actual reduction to practice of such invention.

1.4 The term "Proprietary Information" means information 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 obligations 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 The term "Subject Data" means all recorded information first produced in the performance of this Agreement.

1.6 The term "Subject Invention" means any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

Article 2. Statement of Work

Cooperative research performed under this Agreement shall be performed in accordance with the Statement of Work attached hereto as Appendix A. Any

modification to this initial scope shall be by mutual agreement between the Sponsor and NIST.

The following activities which complement this Program are being pursued at NIST, primarily in the _____ :
(Name of NIST Organizational Unit)

Article 3. Program Details

3.1 The Program described in Appendix A shall be conducted during the period commencing on or about _____ and ending on or about _____, subject to extension by mutual agreement of the parties hereto, and to the provisions of sections 3.3 and 6.1.

3.2 NIST shall be the supervising agency, both administrative and scientific, for this Research Associate Program. _____,
(Name of Individual)

(Title)

(NIST Organizational Unit)

shall serve as NIST Supervisor.

3.3 The scientific and technical program of the Research Associate shall be reviewed at least quarterly by both parties of this Agreement and more frequently if deemed advisable by either party. Such review shall precede approval of the work program for each succeeding period. _____ shall represent the Sponsor in these reviews.

3.4 _____ shall serve as Research Associate for the Program described herein. The provisions applying to Research Associates as this term is used in this Agreement shall also apply to members of their supporting staff while serving at NIST as employees of the Sponsor.
(See Note 1)

3.5 While it shall be the privilege and responsibility of the Sponsor to select the Research Associates, they shall also be acceptable to NIST.

3.6 The Sponsor shall reimburse NIST for the cost of special supplies, special material, computation, technical assistance, and/or other special services provided the Research Associate(s) by NIST in connection with the Program covered by this Agreement. [The Sponsor shall, as of the starting date of the period covered by this Agreement, establish a fund of \$ _____ at NIST from which such reimbursement may be drawn.] (See Note 2)

3.7 Charges for such special supplies and/or services shall require the approval of the Research Associate and the NIST Supervisor for this Program. Such charges shall not exceed \$ _____ during the period covered by this Agreement without prior approval of the Sponsor. [Upon termination of the

Program, outstanding charges shall be deducted from the fund established with NIST by the Sponsor to cover such costs, and the remainder of such monies shall then revert to the Sponsor. All equipment, materials, instruments and supplies purchased during the term of this Agreement from funds in the account shall be and remain at all times the property of NIST.] (See Note 2)

3.8 Special equipment and instruments obtained by the Sponsor from sources external to NIST and provided by the Sponsor to NIST for use in connection with the Program covered by this Agreement will be returned to the Sponsor at the Sponsor's expense and risk as soon as practicable after termination of this Agreement. The Sponsor agrees to assume full responsibility for maintenance of such equipment and instruments and agrees to hold NIST free from liability for any loss thereof or damage thereto.

3.9 Remuneration to the Research Associate(s) for travel and related expenditures shall be provided directly by the Sponsor.

3.10 Research Associates shall pursue their activities at NIST on the work schedule and under the Government security and conduct regulations that apply to NIST employees. Research Associates shall conform to the requirements of Department of Commerce Administrative Orders 202-735 and 202-735-A, as amended, hereby made part of this Agreement, to the extent that these orders prohibit private business activity or interest incompatible with the best interests of the Department. (See Note 4)

Article 4. Patent Rights

4.1 Reporting. NIST shall promptly report to the Sponsor each Subject Invention disclosed to NIST by its employees. The Sponsor shall promptly report to NIST each Subject Invention disclosed to it by the Research Associate.

4.2 Research Associate Inventions. NIST, on behalf of the U.S. Government, waives any ownership rights the U.S. Government may have in Subject Inventions made by the Research Associate under the project and agrees that the Research Associate, or the Research Associate's Sponsor pursuant to any existing employment agreement, shall have the option to retain title to any such employee Subject Invention. If either the Sponsor or the Research Associate elects to take title to a Subject Invention under this section, that party shall promptly notify NIST upon making the election and shall file patent applications on such Subject invention at its own expense and in a timely fashion. Any party electing to take title to a Subject Invention under this section agrees to grant to the U.S. Government a nonexclusive, irrevocable, paid-up license in the patents covering a Subject Invention to practice the invention, or to have it practiced, throughout the world by or on behalf of the U.S. Government. Such nonexclusive license shall be evidenced by a confirmatory license agreement prepared by the Sponsor in a form satisfactory to NIST. (See 4.4)

4.3 NIST Employee Inventions. NIST, on behalf of the U.S. Government, shall have the initial option to retain title to each Subject Invention made by its employees and in each Subject Invention made jointly by a Research

Associate and an NIST employee. In the event that the NIST informs the Sponsor that it elects to retain title to such joint Subject Invention, the Sponsor agrees to assign whatever right, title and interest it has in and to such joint Subject Invention. NIST may release the rights provided for by this paragraph to employee inventors or to the Sponsor subject to a license in NIST. (See 4.4)

4.4 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 thereon provided it so advises the other party within 90 days from the date it reports the Subject Invention to the other party. Thereafter, the other party may elect to file patent applications on such Subject Invention and the party initially reporting such Subject Invention agrees to assign its right title and interest in such Subject Invention to the other party and cooperate with such party in the preparation and filing of patent applications thereon. 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. In the event neither of the parties to this Agreement elect to file a patent application on Subject Invention, either or both (if a joint invention) may, at their sole discretion and subject to reasonable conditions, release the right to file to the inventor(s) with a license in each party of the same scope as set forth in the immediate preceding sentence.

4.5 Patent Expenses. All of the expenses attendant to the filing of patent applications as specified in 4.4 above, shall be borne by the party filing the patent application. Any post filing and post patent fees shall also be borne by the same party. 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.

4.6 Exclusive License

4.6.1 Grants. NIST, on behalf of the Government, hereby agrees to grant to the Sponsor an exclusive license in each U.S. patent application, and patents issued thereon, covering a Subject Invention, which is filed by NIST on behalf of the U.S. Government subject to the reservation of an irrevocable, royalty-free license to practice and have practiced the Subject Invention on behalf of the U.S. Government, and such other terms and conditions as are specified by NIST in such exclusive license.

4.6.2 Exclusive License Terms. Upon filing of a patent application on a Subject Invention by NIST, the Sponsor shall have the option to acquire an exclusive license in the resulting patents at reasonable royalty rates upon the execution of an exclusive license agreement. The specific royalty rate shall be negotiated promptly after the Subject Invention is filed in the U.S. Patent and Trademark Office, provided that this option must be exercised by the Sponsor by written notice to NIST within three months from the date the U.S. Patent Application is so filed. The reasonable royalty rate for each exclusive license shall be based upon a portion of the selling price of the item

attributable to the presence of claimed subject matter where such item is a machine, article of manufacture, product made by a process, or composition of matter as defined by the claims of the patents. Where the claimed subject matter relates to a process or method to be practiced under the claims of the patent, the royalty will be based upon the net savings attributable to the implementation of said process or method.

Article 5. Data and Publication

5.1 Release Restrictions. NIST shall have the right to use all Subject Data for any Governmental purpose, but shall not release such Subject Data publicly except: (i) NIST when reporting on the results of sponsored research may publish Subject Data, subject to the provisions of paragraph 5.3 below; and (ii) NIST may release such Subject Data where such release is required pursuant to a request under the Freedom of Information Act (5 U.S.C. Section 552); provided, however, that such data shall not be released to the public if a patent application is to be filed (35 U.S.C. Section 205) until the party having the right to file has had a reasonable time to file.

5.2 Proprietary Information. The Sponsor shall place a Proprietary notice on all information it delivers to NIST under this Agreement which the Sponsor asserts is proprietary. NIST agrees that any information designated as proprietary which is furnished by the Sponsor to NIST under this Agreement, or in contemplation of this Agreement, shall be used by NIST only for the purpose of carrying out this Agreement. Information designated as proprietary shall not be disclosed, copied, reproduced or otherwise made available in any form whatsoever to any other person, firm, corporation, partnership, association or other entity without the consent of the Sponsor except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. 552). NIST agrees to use its best efforts to protect information designated as proprietary from unauthorized disclosure. The Sponsor agrees that NIST is not liable for the disclosure of information designated as proprietary which, after notice to and consultation with the Sponsor, NIST determines may not lawfully be withheld or which a court of competent jurisdiction requires disclosed.

5.3 Publication.

5.3.1 Work completed by Research Associates shall be made available to the public under the same conditions as work performed by NIST employees. In no event, however, shall the name of the Sponsor or any of its trademarks and tradenames be used in NIST publications without its prior written consent.

5.3.2 NIST and the Sponsor agree to confer and consult prior to the publication of 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 opportunity to review such proposed publication and to file patent applications in a timely manner, if it is so entitled under this Agreement.

Article 6. Termination

6.1 The Sponsor and NIST each have the right to terminate this Agreement, or the association with any individual Research Associate, upon 60 days notice in writing to the other party.

6.2 In the event of termination by NIST, NIST shall repay the Sponsor any prorated portion of payments previously made to NIST pursuant to Article 3 of this Agreement in excess of actual costs incurred by NIST in pursuing this project. A report on results to date of termination will be prepared by NIST and the cost of the report will be deducted from any amounts due to participants from NIST.

Article 7. Disputes

7.1 Settlement. Any dispute arising under this Agreement which is not disposed of by agreement of the parties 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.

7.2 If the signatories are unable to jointly resolve a dispute within a reasonable period of time after submission of the dispute for resolution, the matter shall be submitted to the Director of NIST or his designee for resolution.

7.3 Continuation of Work. Pending the resolution of any dispute or claim pursuant to this Article, the parties agree that performance of all obligations shall be pursued diligently in accordance with the direction of the NIST signatory.

Article 8. Liability

8.1 Property. The U.S. Government shall not be responsible for damages to any property of the Sponsor provided to NIST or acquired by NIST pursuant to this Agreement.

8.2 Indemnification.

8.2.1 Research Associates are not employees of NIST. The Sponsor and the Research Associate agree to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind involving the Research Associate arising in connection with this Agreement, except to the extent that such loss, claim, damage or liability arises from the negligence of NIST or its employees. NIST shall be solely responsible for the payment of all claims for the loss of property, personal injury or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this Agreement.

8.2.2 The Sponsor holds the U.S. Government harmless and indemnifies the Government for all liabilities, demands, damages, expenses and losses arising out of the use by the Sponsor, or any party acting on its behalf or under its authorization, of NIST's research and technical developments or out of any

use, sale or other disposition by the Sponsor or others acting on its behalf or with its authorization, of products made by the use of NIST's technical developments. This provision shall survive termination of this Agreement.

8.3 Force Majeure. Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civic disturbance or disobedience, strikes, labor dispute, or failure, threat of failure, or sabotage of the NIST facilities, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

Article 9. Miscellaneous

9.1 Governing Law. The construction validity, performance and effect of this Agreement for all purposes shall be governed by the laws applicable to the Government of the United States.

9.2 Amendments. If either party desires a modification in this Agreement, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the parties hereto by their representatives duly authorized to execute such amendment.

9.3 Notices. All notices pertaining to or required by this Agreement shall be in writing and shall be directed to the signator(s).

9.4 Independent Contractors. The relationship of the parties to this Agreement is that of independent contractors and not as agents of each other or as joint venturers or partners. NIST shall maintain sole and exclusive control over its personnel and operations.

9.9 Use of Name or Endorsements. (a) The Research Associate or Sponsor shall not use the name of NIST or the Department of Commerce 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 NIST. (b) By entering into this Agreement NIST does not directly or indirectly endorse any product or service provided, or to be provided, by the Sponsor its successors, assignees, or licensees. The Sponsor shall not in any way imply that this Agreement is an endorsement of any such product or service.

Article 10. Duration of Agreement and Effective Date

10.1 Duration of Agreement. The Program described in Appendix A shall be conducted during the period commencing on or about _____ and ending on or about _____ subject to extension by mutual agreement of the parties hereto.

10.2 Effective Date. This Agreement shall enter into force as of the date of the last signature of the parties.

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

Signed For the Sponsor:

(Title)

(Date)

Signed By the Research Associate:

(Title)

(Date)

For NIST:

DEPUTY CHIEF COUNSEL

(Date)

MOU DIRECTOR

(Date)

DIRECTOR, ORTA

(Date)

NOTES TO ASSIST IN PREPARATION
OF A MEMORANDUM OF AGREEMENT
FOR A RESEARCH ASSOCIATE PROGRAM

1. If more than one Research Associate will be involved, one will normally be designated as "Principal Research Associate."
2. Make best estimate of total requirement; if total is large, arrangements can be made for periodic payments to fund; show total estimate in space provided in 3.7. If only a nominal or no requirement for special items is foreseen, the bracketed portions of Articles 3.6 and 3.7 on page 2 will be omitted. If the amount of technician assistance likely to be required is anticipated to be in excess of that which NIST is in a position to provide, the Sponsor should consider bringing in a technician of his own to assist the Research Associate. (Note: Some Sponsors have found it possible to hire students or others locally to satisfy this requirement).

On occasions, effective pursuit of a program may be dependent on the use of professional services (e.g., mathematical analysis, computer programming, etc.) in excess of the nominal amount of consultation and guidance normally provided by NIST as part of its contribution to a Research Associate Program. In these instances, the cost of such services shall be borne by the Sponsor. If such a requirement is foreseen, Article 3.6 will be renumbered 3.6(a) and the following statement added to the Agreement:

3.6(b) If for effective pursuit of this program, the Research Associate should require professional assistance beyond normally available NIST supervision and consultation, such assistance may be solicited from NIST or other sources, but only with the written approval of the Sponsor. When provided by NIST, such assistance will be furnished on a cost reimbursable basis to be negotiated on the basis of the need as determined in each instance, and NIST shall invoice the Sponsor separately for the service rendered. Such services shall not be charged to any fund established under Article 3.6(a) above.

3. If the program involves more than one Research Associate, Article 3.7 would reference the Principal Research Associate (see Note 1).
4. When it is agreed that a program can be benefited by a Research Associate's pursuing certain portions of the work at the Sponsor's facilities, or a Research Associate is engaged in a formal educational program external to NIST, the Research Associate's schedule can be adjusted accordingly. In such cases, the first sentence of Item 3.10 will be changed to read:

"Research Associates shall pursue their activities at NIST on the work schedule(s) mutually agreed upon between them, the Sponsor, and the NIST Supervisor designated in Article 3.2 hereof; and under the Government security and conduct regulations that apply to NIST employees."