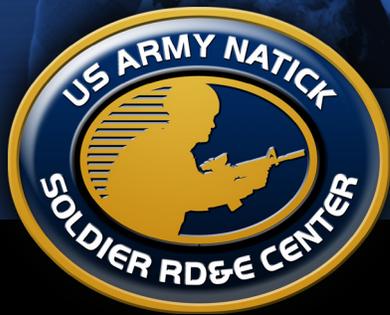




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**TECHNOLOGY DRIVEN. WARFIGHTER FOCUSED.**

**US ARMY NATICK  
SOLDIER RD&E CENTER  
HOW TO DO BUSINESS WITH  
THE NSRDEC GUIDEBOOK**



**HOW TO DO BUSINESS WITH  
THE  
U.S. ARMY  
NATICK SOLDIER RESEARCH,  
DEVELOPMENT AND  
ENGINEERING CENTER  
(NSRDEC)  
GUIDEBOOK**

**8TH EDITION – APRIL 2012**

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## INTRODUCTION

The Natick Soldier RD&E Center (NSRDEC) is located at the U.S. Army Natick Soldier Systems Center in Natick, Massachusetts, under the Army's Research, Development and Engineering Command (RDECOM). We have the dedicated mission to maximize the Warrior's survivability, sustainability, mobility, combat effectiveness and quality of life by treating the Soldier as a System. Situated near the birthplace of the Nation's Army, NSRDEC is also the birthplace of the Soldier as a System concept.

### **Mission:**

RD&E To Maximize The Warfighter's Survivability, Sustainability, Mobility, Combat Effectiveness And Field Quality Of Life By Treating The Warfighter As A System.

### **Vision:**

To Be the Recognized Center for Warfighter and Homeland Defender Related Research, Technologies and Systems.

### **Adding Value Through:**

- Technology Generation, Application, and Transition Enabling Rapid Fielding of the Right Equipment.
- Soldier Systems Technology Integration and Transition.
- Solving Field Problems Rapidly

For additional information about the NSRDEC please visit our website at: <http://nsrdec.natick.army.mil>.

This booklet serves as a general guide on how to do business with the NSRDEC. It also outlines the various vehicles used to partner with us. Inquiries regarding this guidebook may be directed to the program contact listed within each section.

Authority is granted for the release of this guidebook to interested parties within and outside of the U.S. Government.

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)

### WHAT IS A CRADA?

A Cooperative Research and Development Agreement (hereinafter referred to as a "CRADA") is a legal instrument that allows for federal and nonfederal parties to enter into agreements to conduct specified research and development related technology transfer activities that are consistent with the laboratory's mission. A CRADA is neither a procurement contract nor grant as defined in 31 U.S.C. 6303-6305 nor can it be used as substitute for one. Federal Laboratories can commit resources such as personnel, facilities or equipment (with or without reimbursement), but not funds, to the nonfederal parties. Nonfederal parties can commit funds as well as other resources as a part of the agreement.

CRADAs generally grant intellectual property rights to the CRADA partner. This area of the agreement is usually open to negotiations between the federal party and the CRADA partner, and depends on the type of CRADA work to be performed under the agreement.

### WHY IS A CRADA IMPORTANT?

A CRADA is important because it allows the private sector to take advantage of technology and expertise developed by the federal government. The Federal Technology Transfer Act of 1986 created CRADAs as a vehicle whereby federal technology and research and development could be acquired by the private sector for its own use. This is sometimes referred to as "technology transfer".

The benefits of a CRADA to the country, the federal laboratory and its employees include the facilitation of the transfer of results of federally funded R&D to the private sector to expedite commercialization and advancement of the technology; and the federal laboratory and its inventors are permitted to receive a percentage of royalties generated as a result of the commercialization effort.

The benefits to the private sector include the opportunity to obtain exclusive rights to commercialize inventions conceived or first reduced to practice in the performance of work done under the CRADA; and access to federal expertise, equipment, facilities and personnel.

### WHAT ARE THE CHARACTERISTICS OF A CRADA?

- The work to be done must be consistent with the laboratory's mission;
- Special consideration is given to small business;
- Provisions addressing a variety of intellectual property issues such as data rights, property, ownership, and rights to future inventions are contained in the CRADA; and
- The Government, at a minimum, must retain a nonexclusive, nontransferable, irrevocable, paid-up license to make or have made for governmental purposes any inventions made in the performance of work done under the CRADA.

### WHAT IS THE PROCESS FOR OBTAINING A CRADA?

TO ALLOW FOR TIMELY AND UNIFORM PROCESSING OF CRADAS, THE TECHNOLOGY TRANSFER MANAGER WILL ACCEPT THE APPLICATION AND STATEMENT OF WORK (SOW). THE PATENT LAWYER IN THE OFFICE OF CHIEF COUNSEL (OCC) WILL REVIEW CRADAS FOR THE U.S. ARMY NATICK SOLDIER RD&E CENTER (NSRDEC).

There are four (4) steps to obtaining a CRADA:

**Step 1:** Provide to the Technology Transfer Manager a completed application for a CRADA and a draft SOW, both in MS Word, through the appropriate channels. This draft SOW should contain a short objective of the effort, describe the technology that will be transferred from NSRDEC to its CRADA partner and from the CRADA partner to NSRDEC, and contain a statement of potential commercialization. The principal investigators of each party should review the SOW.

**Step 2:** The CRADA is drafted by the Technology Transfer Manager. The completed draft CRADA is then sent to the CRADA Partner for review and comment. This begins the negotiation stage.

**Step 3:** Upon agreement between both parties as to the provisions of the CRADA, the CRADA will be put into final form and two (2) original copies will be forwarded to the CRADA Partner for execution.

**Step 4:** Upon receipt of the executed copies, NSRDEC Director will sign the two (2) copies on behalf of the Government. One copy will be retained by the Technology Transfer Manager. The second copy of the CRADA will be sent to the Cooperating Party for its records and the CRADA will be in effect.

As noted above, a nonfederal party can commit funds to NSRDEC under a CRADA. NSRDEC can receive funds from the nonfederal party, including as reimbursement for such expenses.

A draft sample of a CRADA is included as Attachment B. Please note that the terms and provisions in this draft sample are subject to change. DO NOT use this as a "fill-in-the-blanks" CRADA. Each CRADA will be different based on the parties and the SOW, and will be drafted and negotiated by the Technology Transfer Manager and Office of the Chief Counsel. Paragraphs 4.2 - 4.5 are sample provisions when funds are to be received from the nonfederal party.

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

## APPLICATION FOR COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

- (1) Full Legal Name of Cooperating Party: \_\_\_\_\_
- (2) Address of Cooperating Party: \_\_\_\_\_
- (3) Organization of Cooperating Party: \_\_\_ Corporation \_\_\_ Partnership \_\_\_ Sole Proprietorship or Other: \_\_\_\_\_
- (4) State of Incorporation or Organization of the Cooperating Party: \_\_\_\_\_
- (5) Cooperating Party Point of Contact (POC): \_\_\_\_\_
- (6) Address of Cooperating Party POC (if different from above): \_\_\_\_\_
- (7) Cooperating Party POC Telephone Number: \_\_\_\_\_
- (8) Cooperating Party POC E-mail address: \_\_\_\_\_
- (9) NSRDEC POC: \_\_\_\_\_
- (10) NSRDEC POC Telephone Number: \_\_\_\_\_
- (11) NSRDEC Team proposing CRADA: \_\_\_\_\_
- (12) Will performance of any work under this CRADA by NSRDEC be accomplished by anyone other than a NSRDEC Federal employee, i.e., a support contractor? \_\_\_ Yes \_\_\_ No If yes, please attach an explanation.
- (13) Is the Cooperating Partner a small business? \_\_\_ Yes \_\_\_ No If no, please attach a statement as to whether NSRDEC has given "special consideration" to entering into the CRADA with a small business firm and/or the reason(s) why a small business firm was not selected for this CRADA.
- (14) Has NSRDEC given preference to business units located in the United States and/or an assurance that products embodying inventions made by the Cooperating Party under the CRADA will be manufactured substantially in the United States? \_\_\_ Yes \_\_\_ No
- (15) Are there any former government employees working for the Cooperating Party? \_\_\_ Yes \_\_\_ No If yes, how long have they been away from government employment?
- (16) Is any person expected to work on the CRADA, for NSRDEC or the Cooperating Party, working under a scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily for educational purposes? \_\_\_ Yes \_\_\_ No If yes, please attach an explanation.
- (17) Are there any existing NSRDEC CRADAs relating to the same technology? \_\_\_ Yes \_\_\_ No  
If yes, please attach a description of the procedures to insure separation of the work and results of each related CRADA.
- (18) Provide the name of the individual who will be signing the CRADA for the Cooperating Party \_\_\_\_\_ and his/her title \_\_\_\_\_. (This person must be able to legally bind the company.)
- (19) Will dollars be received under this CRADA from a non-federal partner(s)? \_\_\_ Yes \_\_\_ No  
If yes, please indicate the dollar amount. \_\_\_\_\_.
- (20) Please describe (one to two sentence) the NSRDEC technology area, resources and expertise to be used under this CRADA and the same for that of the partner. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (21) Please provide a background paragraph leading to this proposed relationship. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (22) Please list any equipment scheduled to be transferred/loaned to the partner under this Agreement. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

(23) Please provide the following information:

Circle all of the System Integration Domain/s (SID) and Technology Focus Team/s (TFT) that correlate with the proposed CRADA work objective. Please also provide a brief (one or two sentence) explanation.

SID:    Air                      Soldier                      Ground Effects                      C4ISR                      CBRNE

---

TFT:    Lethality    Protection                      Network                      SensorsPower & Energy                      Mobility & Logistics  
          Human Dimension & Training

---

(24) Please provide an estimate of NSRDEC and Partner resources expected to be applied toward accomplishment of the CRADA objectives. Example:

- NSRDEC Estimated Resources:
- a) Personnel (Total Estimated Personnel Cost): \$50K (0.25MY)
- b) Travel: \$5K
- c) Hardware: \$5K
- TOTAL ESTIMATED NSRDEC COSTS: \$60K

- Partner Estimated Resources:
- a) Personnel (Total Estimated Personnel Cost): \$175K (0.7MY)
- b) Travel: \$15K
- c) Hardware: \$20K
- TOTAL ESTIMATED PARTNER COSTS: \$210K

- (25) Please provide the potential benefits to the Partner, NSRDEC and Warfighter arising from this collaboration.
- a) Partner Benefit: [Ex: Potential benefits to the Partner arising from this proposed collaboration include the development of / knowledge to be gained / evaluation of / access to NSRDEC expertise/facilities/resources.
  - b) NSRDEC Benefit: [Ex: Potential benefits to NSRDEC arising from this proposed collaboration include the development of / knowledge to be gained / evaluation of / access to Partner expertise/ facilities/resources.
  - c) Warfighter Benefit: [Ex: Potential benefits to the Warfighter arising from this proposed collaboration include the development of /knowledge gained].

(26) Please indicate the length of time it will take to fully execute the Statement of Work\_\_\_\_\_.

(27) Please provide a Statement of Work in outline form as shown below.

## STATEMENT OF WORK

Background:

Scope:

Objective:

NSRDEC Responsibilities:

Partner Responsibilities:

Concluding Tasks / Additional Information:

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

28. Concurrence of NSRDEC Team Leader:

I concur with entering into this cooperative research and development activity.

Signature: \_\_\_\_\_

Typed name: \_\_\_\_\_

NOTE: The technology transfer activities for this CRADA must be consistent with NSRDEC's mission, do not substantially compete with services available in the private sector, and are in compliance with any applicable export control regulations, military critical technology regulations and/or other procedures outlined in Army Regulation 70-57.

Please forward this application and all attachments electronically to the Technology Transfer Manager, [jeffrey.ditullio@us.army.mil](mailto:jeffrey.ditullio@us.army.mil) and Technology Transfer Specialist, [kristen.ryan@us.army.mil](mailto:kristen.ryan@us.army.mil).

Any questions may be discussed with either the Technology Transfer Manager at 508-233-4184 or Technology Transfer Specialist at 508-233-5667.

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

**SAMPLE** (Actual Agreements may vary)

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

This Cooperative Research and Development Agreement ("CRADA"), is entered into by and between (Name of Cooperating Party), and the U.S. Army Natick Soldier Research Development and Engineering Center, Natick, Massachusetts ("NSRDEC").

- A. WHEREAS**, the Congress in enacting the Federal Technology Transfer Act of 1986, Public Law No. 99-502, October 20, 1986, and any and all subsequent legislation related thereto, has found that Federal laboratories' development should be made accessible to private industry, state and local Governments, and has declared that one of the purposes of such Act is to improve the economic, environmental and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;
- B. WHEREAS**, the Federal Technology Transfer Act of 1986 among other technology transfer improvements has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into CRADAs with Federal or non-Federal entities including private firms and organizations for the purpose of providing to or obtaining from collaborating parties, personnel, services, property, facilities, equipment or other resources (but not funds of any Federal party) toward the conduct of specified research and development efforts which may include the disposition of patent rights in the inventions which may result from such collaboration;
- C. WHEREAS**, NSRDEC has performed substantial research with respect to \_\_\_\_\_, hereinafter referred to as "the Technology";
- D. WHEREAS**, NSRDEC possesses certain advanced scientific skills, testing facilities, special equipment, information, know-how, and expertise pertaining to the Technology;
- E. WHEREAS**, (Name of Cooperating Party) possesses certain advanced scientific skills, testing facilities, special equipment, information, know-how, and expertise pertaining to \_\_\_\_\_;
- F. WHEREAS**, NSRDEC and (Name of Cooperating Party) are interested in the further development and commercialization of the Technology;
- G. WHEREAS**, (Name of Cooperating Party) is willing to provide resources for further developments of the Technology and subsequently to explore applications of interest to the general public and consider marketing of products related to the Technology; and
- H. WHEREAS**, NSRDEC views its collaboration with (Name of Cooperating Party) to develop the Technology to be in the public interest;

**NOW, THEREFORE, the parties hereto agree as follows:**

### ARTICLE 1 - DEFINITIONS

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

- 1.1 **"Invention"** means any invention or discovery which is or may be patentable or otherwise protected 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.).
- 1.2 **"Made"** in relation to any Invention means the conception or first actual reduction to practice of such invention.
- 1.3 **"Proprietary Information"** means any information which embodies trade secrets developed at private expense or which is confidential, scientific, 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;
  - (iii) is not already available to the Government without obligation concerning its confidentiality; and
  - (iv) has not been developed independently by persons who had no access to the Proprietary Information.
- 1.4 **"Subject Data"** means all recorded information first produced in the performance of this CRADA.
- 1.5 **"Subject Invention"** means any Invention of (Name of Cooperating Party) or NSRDEC conceived or first actually reduced to practice in the performance of work under this CRADA.

### ARTICLE 2 - COOPERATIVE RESEARCH

2.1 **Statement of Work.** Cooperative research performed under this CRADA shall be performed in accordance with the Statement of Work ("SOW") attached hereto as Appendix A. NSRDEC and (Name of Cooperating Party) agree to perform the cooperative research and to utilize such personnel resources, facilities, equipment, skills, know-how and information as they consider necessary, consistent with their own policies, missions and requirements.

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

2.2 **Review of Work.** Periodic conferences shall be held between NSRDEC and (Name of Cooperating Party) personnel for the purpose of reviewing the progress of work. Each party shall have exclusive control and supervision over the conduct of its research. It is understood that the nature of this cooperative research is such that completion within the period of performance specified cannot be guaranteed. Accordingly, it is agreed that all cooperative research is to be performed on a reasonable best efforts basis.

2.3 **Principal Investigation.** NSRDEC will assign a substantial portion of its work to be performed pursuant to the SOW to the (Name of Team) at the U.S. Army Natick Soldier Research, Development and Engineering Center in Natick, Massachusetts. The work will be performed under the supervision of (Name of NSRDEC POC) (for NSRDEC) and (Name of Cooperating Party's POC) (for Name of Cooperating Party) or their successors, who, as principal investigators, have the responsibility for the scientific and technical conduct of this project.

2.4 **Scope Change.** If at any time the principal investigators determine that the research data justify a substantial change in the direction of the work, the parties shall make a good faith effort to agree on any necessary change to the SOW.

## ARTICLE 3 - REPORTS

3.1 **Interim Reports.** Commencing 6 months after the date of this CRADA, each party shall submit semiannual written reports to the other party during the term of this CRADA on the progress of its work under this CRADA and the results being obtained and shall make available to the other party, to a reasonable extent, other project information in sufficient detail to explain the progress of the work.

3.2 **Final Reports.** Each party shall submit to the other party a final written report of its results within 6 months after completing the SOW.

## ARTICLE 4 - FINANCIAL OBLIGATION

4.1 **Funding.** No funds shall be provided by NSRDEC to (Name of Cooperating Party) under this CRADA.

4.2 **Advance Payment.** The performance of research by NSRDEC under this CRADA is conditioned on the advance payment by (Name of Cooperating Party) of NSRDEC's full cost for the performance of such research.

4.3 **Deposit Account.** (Name of Cooperating Party) shall pay \$ XX.XX to NSRDEC for the performance of the research specified in Article 2. Such funds shall be deposited as follows:

\$ \_\_\_\_\_ to be deposited upon the execution of this CRADA; and

\$ \_\_\_\_\_ to be deposited within \_\_\_\_ months of the execution of this CRADA.

NSRDEC shall not be obligated to perform any of the research specified herein or to take any other action required by this CRADA if the agreed to funds are not deposited as required by this Article.

4.4 **Insufficient and Excess Funds.** NSRDEC shall not be required to continue its research and development activities under this CRADA if the funds provided by (Name of Cooperating Party) are insufficient to cover NSRDEC's full cost for such continued activities. Funds not expended by NSRDEC shall be returned to (Name of Cooperating Party) upon NSRDEC's submission of a final fiscal report to (Name of Cooperating Party).

4.5 **Accounting Records.** NSRDEC shall maintain separate and distinct current accounts, records, and other evidence supporting all its expenditures under this CRADA. NSRDEC shall provide (Name of Cooperating Party) a semi-annual report accounting for the use of (Name of Cooperating Party) funds and a final fiscal report within 6 months after completing the SOW or ending its research activities under this CRADA and the completion of the research work. These accounts and records of NSRDEC shall be available for reasonable inspection and copying by (Name of Cooperating Party) and its authorized representative.

## ARTICLE 5 - TITLE TO PROPERTY

5.1 **Capital Equipment.** All capital equipment developed or acquired under this CRADA shall be the property of the party developing or acquiring such equipment. The parties agree that any such equipment acquired by NSRDEC, including by expenditure of funds received by NSRDEC under this CRADA, shall be owned by NSRDEC. No exchange of equipment between the parties is contemplated under this CRADA.

5.2 **Transfer/Disposal of Materials.** Each party agrees to transfer and dispose of material developed or used under this CRADA and located at its facility at its own expense and in accordance with related Federal, State and Local requirements.

## ARTICLE 6 - PATENT RIGHTS

6.1 **Reporting.** NSRDEC shall promptly report to (Name of Cooperating Party) each Subject Invention reported to NSRDEC by its employees. (Name of Cooperating Party) shall promptly report to NSRDEC each Subject Invention reported to (Name of Cooperating Party) by its employees.

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

**6.2 (Name of Cooperating Party) Subject Inventions.** NSRDEC, on behalf of the U.S. Government, waives any ownership rights the U.S. Government may have in Subject Inventions made solely by (Name of Cooperating Party) employees (a (Name of Cooperating Party) Subject Invention) and agrees that (Name of Cooperating Party) shall retain title to any such (Name of Cooperating Party) Subject Invention. (Name of Cooperating Party) agrees to grant and hereby grants to the U.S. Government on any (Name of Cooperating Party) Subject Invention a nontransferable, nonexclusive, irrevocable, paid-up license to practice or have practiced the Subject Invention 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 (Name of Cooperating Party) in a form satisfactory to NSRDEC and (Name of Cooperating Party). (Name of Cooperating Party) may transfer its rights provided for by this Section to others subject to the license granted to NSRDEC.

**6.3 NSRDEC Subject Inventions and Joint Subject Inventions.** NSRDEC, on behalf of the U.S. Government shall have the initial option to retain sole title to each Subject Invention made solely by its employees (a NSRDEC Subject Invention). Any Subject Invention made jointly by a (Name of Cooperating Party) and a NSRDEC employee (a Joint Subject Invention) shall be jointly owned, and patents arising from such Joint Subject Inventions shall be assigned as joint property of the parties. Each party will own an undivided one-half interest in all such jointly owned Inventions, or such interest as a multiparty agreement may show without royalty or financial accounting to each other. Except as otherwise specified in this Agreement, neither party shall acquire any rights to any other invention or other intellectual property of the other party under this Agreement. NSRDEC agrees that in the event it does not wish to retain title to an NSRDEC Subject Invention or its title in a Joint Subject Invention, NSRDEC shall first offer (Name of Cooperating Party) the right to acquire such title under mutually acceptable terms which shall include provisions for royalty income to the U.S. Government in accordance with the principles set forth in Section 6.6.2 below, based upon the recognition that the title rights transferred to (Name of Cooperating Party) are at least equivalent to an exclusive license, and a reservation of a paid-up, nontransferable, nonexclusive, irrevocable license to practice and have practiced the Joint Subject Invention on behalf of the U.S. Government.

**6.4 Filing of Patent Applications.** The party retaining (or acquiring) title to a specific Subject Invention retains the right to file patent applications thereon and (Name of Cooperating Party) shall have the first right to file patent applications on Joint Subject Inventions; costs and cooperation shall be in accordance with Section 6.5 below. However, such party may elect not to file patent applications thereon and agrees to so advise the other party of such election promptly upon making such decision. 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, subject to Section 6.3 above, to the other party and cooperate with such party in the preparation and filing of patent applications thereon. In the event neither of the parties to this CRADA elects to file a patent application on a Subject Invention, either or both (if a Joint Subject Invention) may, at their sole discretion and subject to reasonable conditions, release the right to file to the inventor(s) subject to the retention by the parties hereto of nonexclusive, irrevocable, paid-up licenses to practice, or have practiced, the Subject Invention throughout the world.

**6.5 Patent Expenses.** The expenses attendant to the filing and prosecution of patent applications as specified in Section 6.4 above shall be borne by the party filing the patent application(s). Each party shall provide the other party with copies of the patent applications it files on any Subject Invention along with, upon written request, the power to inspect and make copies of all documents retained in the official patent application files by the applicable patent office. The party retaining title to a Subject Invention, and in the case of a jointly owned Subject Invention, the party filing the patent application, shall pay all required maintenance fees. If a party decides not to pay any such required maintenance fee, such party shall inform the other party of such decision in time so that said other party may pay such maintenance fee if it desires to keep such patent(s) active.

## **6.6 Exclusive License.**

**6.6.1 Grants.** NSRDEC, on behalf of the Government, hereby agrees to grant, subject to Section 6.6.2, below, to (Name of Cooperating Party) an exclusive license in each subject Invention, and in each U.S. patent application and corresponding foreign patent applications, and patents issued thereon, covering a Subject Invention, which is filed by NSRDEC on behalf of the U.S. Government, (a "Patented Subject Invention") subject to the reservation of an irrevocable, nontransferable, nonexclusive, 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 mutually agreed upon by NSRDEC and (Name of Cooperating Party) in such exclusive license. Such exclusive licenses shall be for an initial term ending five (5) years from the date of issuance of each patent and with respect to each such patent shall be renewable for successive five (5) year periods provided (Name of Cooperating Party) is then conducting research directed towards the commercialization of the subject matter covered by such patent and/or continues to commercialize the subject matter covered by such patent.

**6.6.2 Exclusive License Terms.** NSRDEC and (Name of Cooperating Party) shall negotiate in good faith a reasonable specific royalty rate within twelve (12) months from the date that a United States or foreign patent is filed for a Subject Invention. 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. Where an exclusive

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

license is based upon a patented Joint Subject Invention, the specific royalty rate for that patent will be adjusted to reflect the joint inventive contributions of (Name of Cooperating Party).

**6.7 Other NSRDEC Inventions.** This CRADA does not grant an implied license to (Name of Cooperating Party) with respect to any other government inventions, including any NSRDEC inventions not covered by Section 6.6. NSRDEC agrees to grant a nonexclusive license to (Name of Cooperating Party) to such other NSRDEC inventions if requested by (Name of Cooperating Party) on fair and reasonable terms, if such nonexclusive license is necessary for (Name of Cooperating Party) to practice any Subject Invention under this CRADA, but only to the extent that NSRDEC has an unencumbered right and/or authority to do so. Nothing in this CRADA shall be construed as a grant or an agreement to grant any license with respect to any invention made by any other U.S. Army laboratory or any other Government agency or laboratory.

**6.8 Commercialization of Subject Inventions.** (Name of Cooperating Party) agrees that if NSRDEC assigns title or grants an exclusive license to any NSRDEC Subject Invention or any Joint Subject Invention to (Name of Cooperating Party), the Government shall retain the right:

(i) to require (Name of Cooperating Party) to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the invention in the applicant's licensed field of use, on terms that are reasonable under the circumstances; or

(ii) if (Name of Cooperating Party) fails to grant such a license, to grant the license itself.

The Government may exercise such right only if the Government determines that:

(iii) the action is necessary to meet health or safety needs that are not reasonably satisfied by (Name of Cooperating Party); or

(iv) the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by (Name of Cooperating Party); or

(v) (Name of Cooperating Party) has failed to comply with any agreement that products embodying any Subject Inventions or products produced through the use of any Subject Inventions will be manufactured substantially in the United States.

This determination is subject to administrative appeal and judicial review under section 203(2) of title 35, United States Code.

### ARTICLE 7 - DATA AND PUBLICATION

**7.1 Rights.** NSRDEC agrees that information that results from research and development activities conducted under this CRADA and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from (Name of Cooperating Party) shall be protected against dissemination for a period of \_\_\_ years after development of said information.

**7.2 Proprietary Information.** (Name of Cooperating Party) shall place a Proprietary Notice on all Proprietary Information it delivers to NSRDEC under this CRADA, or advise NSRDEC, in writing, of the proprietary nature of such disclosure within thirty (30) days of such disclosure if made verbally or visually. NSRDEC agrees that any Proprietary Information, which is furnished by (Name of Cooperating Party) to NSRDEC under this CRADA, or in contemplation of this CRADA, shall be used by NSRDEC only for the purpose of carrying out this CRADA. Proprietary Information 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 prior written consent of (Name of Cooperating Party) except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. 552). NSRDEC agrees to use its best efforts to protect Proprietary Information from unauthorized disclosure. (Name of Cooperating Party) agrees that NSRDEC is not liable for the disclosure of Proprietary Information which, after notice to and consultation with (Name of Cooperating Party), NSRDEC determines may not lawfully be withheld or which a court of competent jurisdiction requires to be disclosed.

**7.3 Release Restrictions.** NSRDEC shall have the right to use all Subject Data for any Governmental purpose; but shall not release such Subject Data publicly except: (i) NSRDEC when reporting on the results of its research under this CRADA may publish Subject Data, subject to the provisions of Sections 7.1 and 7.2 above and Section 7.4 below, and provided (Name of Cooperating Party) is given a sixty (60) day opportunity to review the manuscript and provide suggestions before publication; and (ii) NSRDEC may release any Subject Data where such release is required pursuant to a request under the Freedom of Information Act (5 U.S.C. 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.

**7.4 Publication.** NSRDEC and (Name of Cooperating Party) agree to confer and consult prior to the publication of Subject Data to assure that no Proprietary Information protected from dissemination by Section 7.2, or that no privileged information protected from dissemination by Section 7.1 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 CRADA, or prior to publication if no such review is made, each party shall be offered an ample opportunity to review such proposed publication and to file patent applications in a timely manner, if it is so entitled under this CRADA.

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

7.5 International Traffic in Arms Regulations (ITAR). (Name of Cooperating Party) agrees to comply with the ITAR as it relates to any of the efforts contemplated under this Agreement. (The official version of the International Traffic in Arms Regulations can be found in Subchapter M, Title 22, Code of Federal Regulations, Parts 120 through 130 (22 CFR 120-130), and is published by the U.S. Government Printing Office.)

## ARTICLE 8 - COPYRIGHTS

8.1 **Works Created by (Name of Cooperating Party).** Ownership to copyrights for the original works of authorship created by employees of (Name of Cooperating Party) or for hire by (Name of Cooperating Party) in the course of performance of work under this CRADA shall be retained by (Name of Cooperating Party). (Name of Cooperating Party) hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display world-wide such copyrighted works by or on behalf of the Government for Government purposes.

8.2 **Works Created by NSRDEC.** Pursuant to 17 U.S.C. § 105, copyright protection is not available for works of the Government.

8.3 **Jointly Created Works.** Ownership of copyrights for original works of authorship created jointly by employees of (or for hire by) NSRDEC and (Name of Cooperating Party) in the course of performance of work under this CRADA are retained solely by (Name of Cooperating Party). (Name of Cooperating Party), however, hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display world-wide such copyrighted works by or on behalf of the Government for Government purposes.

8.4 **Software.** The Party creating software in the course of the performance of work under this CRADA will provide the other Party with the source code, object code, and minimum support documentation needed by a competent user to use the software.

## ARTICLE 9 - TRADEMARKS

9.1 **Trademark Use.** The Parties recognize that (Name of Cooperating Party) may seek to obtain trademark protection for goods developed under this CRADA which it subsequently commercially markets. Provided that such goods are of comparable quality to the goods marketed by (Name of Cooperating Party) under the subject trademarks, the Parties agree that the Government may indicate on any similar goods produced by or for the Government that the goods are a Government version of the goods protected by the trademark. The Government shall also have the right to use the trademark in print or communications media.

9.2 **Qualifying Notice.** Prior to the use of the trademark by the Government, the Parties will negotiate any reasonable qualifying language that must accompany the trademark and provided that the goods are of comparable quality to those marketed by (Name of Cooperating Party) under the subject trademarks.

## ARTICLE 10 - REPRESENTATIONS AND WARRANTIES

10.1 **Representations and Warranties of NSRDEC.** NSRDEC hereby represents and warrants to (Name of Cooperating Party) as follows:

10.1.1 **Organization.** NSRDEC is a Federal laboratory of the U.S. Army and is wholly owned by the U.S. Government. NSRDEC's substantial purpose is the performance of research, development and engineering by employees of said Government.

10.1.2 **Mission.** The performance of the activities specified by this CRADA is consistent with the mission of NSRDEC.

10.1.3 **Authority.** All prior reviews and approvals required by regulations or laws have been obtained by NSRDEC prior to the execution of this CRADA. The NSRDEC official executing this CRADA has the requisite authority to do so.

10.1.4 **Statutory Compliance.** NSRDEC's Laboratory Director, prior to entering into this CRADA, has given special consideration to the entering into CRADAs with small business firms and consortia involving small business firms.

10.2 **Representations and Warranties of (Name of Cooperating Party).** (Name of Cooperating Party) hereby represents and warrants to NSRDEC as follows:

10.2.1 **Corporate Organization.** (Name of Cooperating Party) as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of (Name of State).

10.2.2 **Power and Authority.** (Name of Cooperating Party) has the requisite power and authority to enter into this CRADA and to perform according to the terms thereof.

10.2.3 **Due Authorization.** The Board of Directors and stockholders of (Name of Cooperating Party) have taken all actions required to be taken by law, (Name of Cooperating Party)'s Certificate or Articles of Incorporation, its bylaws or otherwise, for the execution and delivery of this CRADA.

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

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

### ARTICLE 11 - TERMINATION

11.1 **Termination by Mutual Consent.** (Name of Cooperating Party) and NSRDEC may elect to terminate this CRADA, or portions thereof, at any time by mutual consent. The provisions of Article 6, Article 7, Section 5.2 of Article 5 and Section 13.4 of Article 13 shall survive the termination of this CRADA by such mutual consent.

11.2 **Termination by Unilateral Action.** Either party may unilaterally terminate this CRADA at any time by giving the other party written notice, not less than thirty (30) days prior to the desired termination date. The provisions of Article 6, Article 7, Section 5.2 of Article 5 and Section 13.4 of Article 13 shall survive the termination of this CRADA by such unilateral action.

### ARTICLE 12 - DISPUTES

12.1 **Settlement.** Any dispute arising under this CRADA, which is not disposed of by agreement of the principal investigators, shall be submitted jointly to the signatories of this CRADA. A joint decision of the signatories or their designees shall be the disposition of such dispute. Although the parties may use Alternate Dispute Resolution (ADR) techniques to resolve disputes, nothing in this CRADA, precludes either party from pursuing resolution of a dispute using other legal review available by law.

12.2 **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 NSRDEC signatory.

### ARTICLE 13 - LIABILITY

13.1 **Property.** The U.S. Government shall not be responsible for damages to any property of (Name of Cooperating Party) provided to NSRDEC or acquired by NSRDEC pursuant to this CRADA and (Name of Cooperating Party) shall not be responsible for damages to any property of NSRDEC or the U.S. Government provided to (Name of Cooperating Party) or acquired by (Name of Cooperating Party) pursuant to this CRADA.

13.2 **Employees.** (Name of Cooperating Party) agrees to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind involving an employee of (Name of Cooperating Party) arising in connection with this CRADA, except to the extent that such loss, claim, damage or liability arises from the negligence of NSRDEC or its employees. NSRDEC shall be 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 CRADA solely under the provisions of the Federal Tort Claims Act.

13.3 **No Warranty.** Except as specifically stated in Article 10, neither party makes any 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 CRADA, or the ownership, merchantability, or fitness for a particular purpose of the research or any invention or product.

13.4 **Indemnification.** (Name of Cooperating Party) holds the U.S. Government harmless and indemnifies the Government for all liabilities, demands, damages, expenses and losses arising out of the use by (Name of Cooperating Party) or any party acting on its behalf or under its authorization, of NSRDEC's research and technical developments or out of any use, sale or other disposition by (Name of Cooperating Party) or others acting on its behalf or with its authorization, of products made by the use of NSRDEC's technical developments. This provision shall survive termination of this CRADA.

13.5 **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 CRADA (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 NSRDEC or (Name of Cooperating Party) 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 periods of time as is necessary as a result of the force majeure event.

# COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

## ARTICLE 14 – MISCELLANEOUS

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

14.2 **Entire Agreement.** This CRADA constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

14.3 **Headings.** Titles and headings of the Articles, Sections and Subsections of this CRADA are for the convenience of references only and do not form a part of this CRADA and shall in no way affect the interpretation thereof.

14.4 **Waivers.** None of the provisions of this CRADA shall be considered waived by any party hereto unless such waiver is given in writing to all other parties. The failure of any party 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, shall not be deemed a waiver of any rights of any party hereto.

14.5 **Severability.** The illegality or invalidity of any provisions of this CRADA shall not impair, affect, or invalidate the other provisions of this CRADA.

14.6 **Amendments.** If either party desires a modification in this CRADA, 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.

14.7 **Assignments.** Neither this CRADA nor any rights or obligations of any such party hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party except that (Name of Cooperating Party) may assign this CRADA to the successors or assignees of a substantial portion of (Name of Cooperating Party) business interests to which this CRADA directly pertains.

14.8 **Notices.** All notices pertaining to or required by this CRADA 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, addressed as follows:

If to (Name of Cooperating Party): (Address of Cooperating Party)

If to NSRDEC: U.S. Army Natick Soldier Research, Development and Engineering Center  
Attn: RDNS-BOB-T (Jeffrey DiTullio)  
15 Kansas Street  
Natick, MA 01760

Any party may change such address by written notice given to the other party in the manner set forth above.

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

14.10 **Use of Name or Endorsements.** (a) Neither party shall use the name of the other or the U.S. Army on any product or service which is directly or indirectly related to this CRADA or any patent license or assignment agreement which implements this CRADA without the prior approval of the other party. (b) By entering into this CRADA, neither party directly or indirectly endorses any product or service provided, or to be provided, by the other party, its successors, assignees, or licensees. Neither party shall in any way imply that this CRADA is an endorsement of any such product or service.

14.11 **Export Control.** The parties understand that information and technology resulting from the performance of this CRADA may be subject to export control laws and regulations, and each party is responsible for its own compliance with such laws and regulations. Nothing in this CRADA waives any such statutory or regulatory requirement.

14.12 **U.S. Competitiveness.** The parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy. To the extent feasible, the parties agree to exercise reasonable efforts to manufacture substantially in the United States products embodying intellectual property developed under this CRADA.

**ARTICLE 15 - DURATION OF CRADA AND EFFECTIVE DATE**

15.1 **Duration.** It is mutually recognized that the development program cannot be rigidly defined in advance, and that the contemplated time periods for completion of each phase are good faith guidelines subject to adjustment by mutual agreement, to fit circumstances as the development program proceeds. In no case will this CRADA extend beyond \_\_\_\_ years from the effective date of this CRADA unless it is revised in accordance with Section 14.6 of this CRADA.

15.2 **Effective Date.** This CRADA shall enter into force as of the date of the last signature of the parties.

IN WITNESS THEREOF, each of the parties hereto has caused this CRADA to be executed by its duly authorized officers or representatives as follows:

For COMPANY: \_\_\_\_\_

(Name)

(Title)

Date: \_\_\_\_\_

For the U.S. Govt.: \_\_\_\_\_

John P. Obusek, Sc.D.  
Director, Natick Soldier Research,  
Development and Engineering Center

Date: \_\_\_\_\_

**APPENDIX A  
STATEMENT OF WORK**

Cooperative Research and Development Agreement (CRADA) between U.S. Army Natick Soldier Research, Development and Engineering Center ("NSRDEC") and (Name of Cooperating Party).

**Background:**

**Scope:**

**Objective:**

**(Name of Cooperating Party) Responsibilities:**

**NSRDEC Responsibilities:**

## MEMORANDUM OF AGREEMENT (MOA) and MEMORANDUM OF UNDERSTANDING (MOU)

### WHAT IS AN MOA?

A Memorandum of Agreement (MOA) is a Memoranda that define general areas of conditional agreement between two or more parties. The MOA describes that which one party does which is dependent on what the other party does. MOAs may establish responsibilities for providing reimbursable support. MOAs are available for use with academic, non-profit and other government organizations.

### WHAT IS AN MOU?

A Memorandum of Understanding (MOU) is a Memoranda that define general areas of understanding between two or more parties. The MOU explains what each party plans to do; however, what each party does is not dependent on what the other party does (e.g. does not require reimbursement or other support from receiver). MOUs are available for use with academic, non-profit and other government organizations.

# MEMORANDUM OF AGREEMENT AND MEMORANDUM OF UNDERSTANDING

**SAMPLE** (Actual Agreements may vary)

## MEMORANDUM OF AGREEMENT

between

U.S. ARMY NATICK SOLDIER RESEARCH, DEVELOPMENT  
AND ENGINEERING CENTER

and

DEFENSE RESEARCH AGENCY

### 1. **PURPOSE:**

This Memorandum of Agreement (MOA) between the U.S. Army Natick Soldier Research, Development and Engineering Center (NSRDEC) and Defense Research Agency (DRA) establishes [procedures, responsibilities, and funding for XYZ project].

### 2. **BACKGROUND:**

The ...

### 3. **SCOPE:**

The...

### 4. **RESPONSIBILITIES:**

a. NSRDEC will:

(1) ...

(2) ...

b. DRA will:

(1) ...

(2) ...

### 5. **POINTS OF CONTACT (POC):**

a. NSRDEC:

Name:

U.S. Army NSRDEC

ATTN:

Kansas Street

Natick, MA 01760-xxxx

Tel. (508) 233-xxxx

DSN 233-xxxx

E-Mail: xxx@us.army.mil

b. DRA:

Name:

Organization:

ATTN:

Kansas Street

Natick, MA 01760-xxxx

Tel. (508) 233-xxxx

DSN 233-xxxx

E-Mail: xxx@us.army.mil

# MEMORANDUM OF AGREEMENT AND MEMORANDUM OF UNDERSTANDING

## 6. FUNDING (\$):

[Describe funding requirements over time, who funds what, procedures for MIPR payments, table for \$?, ...]

	FY10	FY11	FY12	FY13
DRA	x	x	x	x
NSRDEC	x	x	x	x

## 7. EFFECTIVE DATE/CHANGES/TERMINATION:

This MOA becomes effective upon signing by all parties and will remain in effect [until <<date>>], unless modified or terminated. [This MOA will be reviewed quarterly and appropriate actions will be taken to modify, revise or terminate the arrangements as necessary]. All changes to this MOA must be agreed upon by both parties in writing. Either side may terminate this MOA with no less than one hundred eighty (180) days formal written notification, or at any time by written mutual agreement.

## 8. APPROVAL:

\_\_\_\_\_  
JOHN P. OBUSEK, Sc.D.  
Director, Natick Soldier Research,  
Development and Engineering Center

\_\_\_\_\_  
Name  
TITLE:  
ORGANIZATION:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## PATENT LICENSE AGREEMENT (PLA)

### WHAT IS A PATENT?

A patent is an exclusive right granted to the inventor by the U.S. Government for a limited time. The patent permits the owner of the invention to exclude or prohibit all others from making, using, selling or importing the patented invention throughout the United States for the life of the patent. The life of the patent is normally twenty (20) years from the date a patent application is filed in the U.S. Patent and Trademark Office.

### WHAT IS A PATENT LICENSE?

A patent license is a promise by the patent owner or one authorized to grant a license in a patent (licensor) to a licensee not to exclude the licensee from making, using, selling or importing the patented invention. The license may be nonexclusive, partially exclusive or exclusive. Since the license is an agreement, terms of the license are negotiable, for example, duration, geographic area, income/royalties, and types of products to which the invention applies.

### WHY GRANT A LICENSE?

A patent is personal property and has value. A patent license encourages a licensee to practice the patented invention and generate revenue. The licensor receives income from the licensee. In addition, technology transfer is often facilitated by the existence of a patent, which can be the subject of a license or a Cooperative Research and Development Agreement.

### HOW IS A LICENSE GRANTED?

An applicant submits an application for a patent license. The application should include a plan for developing/marketing the invention. If the application is for an exclusive or partially exclusive license, public notice of the proposed license is given in the Federal Register for 15 days to give the public an opportunity for written objection to such a license. The Patent Counsel, inventor and Technology Transfer Manager discuss strategy for negotiations. Terms and conditions are negotiated with the proposed licensee. Upon receipt of executed copies of the license from the licensee, the Director of the Natick Soldier RD&E Center signs the copies. The license is now in effect.

### HOW IS INCOME GENERATED FROM A PATENT LICENSE?

Each inventor receives \$2,000, and shares equally in 20% of the remainder of the royalties. Payments to an inventor from one or more licenses cannot exceed \$150,000 per year. Such payments are in addition to the regular pay of an inventor and any awards made to the inventor. The balance of income from a license is retained by the U.S. Army Natick Soldier RD&E Center and must be used or obligated by the end of the second fiscal year succeeding the fiscal year in which the funds were received.

### WHAT ARE THE MOST SIGNIFICANT CONSIDERATIONS INVOLVING A PATENT LICENSE GRANTED BY THE U.S. GOVERNMENT?

1. Licensee must submit a plan for developing/marketing the invention.
2. Licensee must submit periodic reports on the development/marketing of the invention.
3. The Government retains a nonexclusive, nontransferable, irrevocable, paid-up, worldwide license for Governmental purposes.
4. U.S. Preference - No grant to any person of an exclusive license to use or sell an invention in the U.S. unless the person agrees that any products embodying the invention or produced through use of the invention will be manufactured substantially in the U.S.
5. March-in-Rights - U.S. Government may require Exclusive Licensee to grant a nonexclusive, partially exclusive or exclusive license, or may grant such license itself.
6. U.S. Government may terminate license if licensee is not executing the development/marketing plan.
7. U.S. Government may terminate license if licensee is in breach of the agreement assuring U.S. Preference.
8. U.S. Government may terminate license to meet requirements for public use specified by Federal regulations issued after the date of the license.
9. No royalties are due from licensee on products distributed to or used by the U.S. Government.
10. No member of or delegate to Congress shall share in any benefit of the license.
11. There will be no grant of an exclusive or partially exclusive license if the license is inconsistent with antitrust laws, such as concentrating technology in certain sections of the country.
12. For a domestic (U.S.) exclusive and partially exclusive license - license shall give the U.S. Government the right to require the licensee to grant sublicenses to fulfill health and safety needs.
13. For domestic and foreign exclusive and partially exclusive licenses - U.S. Government has an irrevocable, royalty-free right to practice the invention for Governmental purposes on behalf of any foreign government or international organization pursuant to an existing or future treaty with the United States.
14. For domestic and foreign exclusive and partially exclusive licenses - license is subject to any license in force at the time of the grant of such exclusive or partially exclusive license.

# PATENT LICENSE AGREEMENT

## APPLICATION FOR PATENT LICENSE AGREEMENT

- (1) Name of Company: \_\_\_\_\_
- (2) Address: \_\_\_\_\_
- (3) Telephone No. \_\_\_\_\_ Fax: \_\_\_\_\_
- (4) Point of Contact (POC): \_\_\_\_\_
- (5) POC's Telephone No. \_\_\_\_\_ Fax: \_\_\_\_\_
- (6) POC's Address: \_\_\_\_\_
- (7) Website address: \_\_\_\_\_
- (8) E-mail address: \_\_\_\_\_
- (9) Place (State/Country) of Incorporation: \_\_\_\_\_
- (10) Title of U.S. Patent for which a license is requested: \_\_\_\_\_

(11) U.S. Patent No. \_\_\_\_\_ Serial No: \_\_\_\_\_

(12) Foreign Patent Application No. \_\_\_\_\_ Country: \_\_\_\_\_

(13) Type of License desired: \_\_\_ Exclusive \_\_\_ Partially Exclusive \_\_\_ Nonexclusive

(14) Please describe the nature and type of your business, identifying products or services, which you have successfully commercialized, and approximate number of employees in your company.

(15) Please identify the source of information where you learned of the availability for license of this invention:  
\_\_\_\_\_ Federal Register \_\_\_\_\_ Inventor \_\_\_\_\_ NSSC/NSRDEC Website \_\_\_\_\_ Other

(16) Is your company a small business? \_\_\_ Yes \_\_\_ No

(17) Please identify any licenses previously granted to your company under Federally-owned inventions:

(18) Please attach a detailed description of your plan for development or marketing of the invention, or both, which includes the following:

- (a) A statement of time, nature and amount of anticipated investment of capital and other resources which your company believes will be required to bring the invention to practical application.
- (b) A statement as to your company's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financing and technical resourcing.
- (c) A statement of geographic areas in which your company intends to manufacture any products embodying the invention and geographic areas where your company intends to use or sell the invention.
- (d) A statement of the fields of use for which your company intends to practice the invention.
- (e) A statement containing your company's knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please mail the application package for license and any attachments to the U.S. Army Natick Soldier Research, Development and Engineering Center, RDNS-BOB-T (Technology Transfer Manager), 15 Kansas Street, Natick, MA 01760, or e-mail application and attachments to Jeffrey.DiTullio@us.army.mil.

Questions pertaining to the application process may be directed to either Mr. Jeffrey DiTullio, 508-233-4184 or Mr. Roger Phillips, Patent Attorney, 508-233-4510.

# PATENT LICENSE AGREEMENT

**SAMPLE** (Actual Agreements may vary)

## **U.S. ARMY NATICK SOLDIER RESEARCH, DEVELOPMENT & ENGINEERING CENTER PATENT LICENSE AGREEMENT**

Between the

U.S. Army Natick Soldier Research, Development and Engineering Center  
15 Kansas Street, Natick, Massachusetts 01760

and

Name and Address of Company

### **POINTS OF CONTACT:**

Technology Transfer Manager

508-233-4184

Company Representative

XXX-XXX-XXXX

### **ABSTRACT**

This is a Patent License from the U.S. Army Natick Soldier Research, Development and Engineering Center to Name of Company under U.S. Serial No. \_\_\_\_\_ and foreign patents derived therefrom for the production of \_\_\_\_\_ for commercial markets.

**PATENT LICENSE AGREEMENT**

between

U.S. ARMY NATICK SOLDIER RESEARCH, DEVELOPMENT AND ENGINEERING CENTER

and

Name of LICENSEE

The Director of the Natick Soldier Research, Development and Engineering Center (hereinafter referred to as "LICENSOR") as the representative of the United States of America; and Company Name, a corporation existing under the laws of \_\_\_\_\_, and having a principal place of business at \_\_\_\_\_ (hereinafter referred to as "LICENSEE"), hereby agree as follows:

**ARTICLE I - Background**

1.1 The United States of America is the owner by assignment recorded in the U.S. Patent and Trademark Office at Reel/ Frame: (hereinafter referred to as "LICENSED PATENT APPLICATION"), of the joint right, title and interest to the products, methods and processes described and claimed in the LICENSED PATENT APPLICATION.

1.2 Under the authority of the Federal Technology Transfer Act, Title 15 of the United States Code, Section 3710a, the LICENSOR has custody of the products, methods and processes described and claimed in, and the right to issue licenses under, the LICENSED PATENT APPLICATION.

1.3 LICENSOR desires that the products, methods and processes claimed and described in the LICENSED PATENT APPLICATION be brought to the POINT OF PRACTICAL APPLICATION in the shortest possible time and be made available to the public, thereby serving the public interest and broadening the potential supply base for the LICENSOR and other Government agencies.

1.4 The LICENSEE desires to obtain a [non-exclusive] [exclusive] license to be granted by the LICENSOR under the LICENSED PATENT APPLICATION for the purpose of making, using and selling the Invention, identified in the LICENSED PATENT APPLICATION.

**ARTICLE II - Definitions**

2.1 Terms in this Agreement (other than the names of the parties and Article headings) which are set forth in upper case letters have the meaning established for such terms in the succeeding paragraphs of this Article II.

2.2 LICENSED PATENT APPLICATION means U.S. Serial No. \_\_\_\_\_, issued \_\_\_\_\_, and such other patent applications (foreign and domestic) and patents (foreign and domestic) as may be derived from the aforesaid LICENSED PATENT APPLICATION including any and all continuations, divisions, continuations-in-part, reissues, renewal or extensions thereof; and which are owned or controlled by the LICENSOR during the term of this Agreement, or in respect to which the LICENSOR has or may acquire during the term of this Agreement the right to grant licenses of the scope to be granted in Article III of this Agreement. The LICENSOR shall have the duty to update this Agreement from time to time to incorporate additional patents based on the LICENSED PATENT APPLICATION if any are issued.

2.3 LICENSED PRODUCTS means any and all machines, articles of manufacture, products made by a process or compositions of matter as recited in the claims or description of the LICENSED PATENT APPLICATION, which are packaged and/or marketed and usable in their packaged and/or marketed form as Invention.

2.4 LICENSED METHODS or LICENSED PROCESSES means any and all products, methods, processes and uses which are claimed or described in the LICENSED PATENT APPLICATION or which employ any of the same as claimed or described in the LICENSED PATENT APPLICATION, for the purposes of making, using and selling the Invention, and/or making, using and selling any and all machines, articles of manufacture, products or composites of matter as recited in the claims or description of the LICENSED PATENT APPLICATION.

2.5 LICENSED AREA means the United States of America, its territories and possessions, and/or any other country in which a LICENSED PATENT APPLICATION claiming a particular LICENSED PRODUCT is in force.

2.6 ROYALTY-BASED PRODUCTS means any and all LICENSED PRODUCTS sold in the LICENSED AREA and/or any and all LICENSED PRODUCTS directly resulting from the practice, in the LICENSED AREA, of LICENSED METHODS and/or PROCESSES claimed in the LICENSED PATENT APPLICATION.

## PATENT LICENSE AGREEMENT

2.7 LICENSOR'S REPRESENTATIVE means the Director of the Natick Soldier Research, Development and Engineering Center, 15 Kansas Street, Natick, Massachusetts 01760, United States of America.

2.8 The POINT OF PRACTICAL APPLICATION means to develop the products, methods and processes claimed in the LICENSED PATENT APPLICATION for marketing under such conditions as to establish that the products, methods and processes are being utilized for these particular purposes and that their benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms within one (1) year of the date of this Agreement, and to continue during the term of this Agreement to make the benefits of the products, methods and processes reasonably accessible to the public.

2.9 GROSS SALES means the amount billed or invoiced on sales FOB the place of manufacture of any ROYALTY-BASED PRODUCTS other than such ROYALTY-BASED PRODUCTS which are billed or invoiced on sales for the replacement of a ROYALTY-BASED PRODUCTS which have been rejected by a customer or, in the event of disposal of any ROYALTY-BASED PRODUCTS other than as scrap prior to its shipment from its place of manufacture or other than by sales, the amount billed or invoiced for a like quantity and quality of ROYALTY-BASED PRODUCTS on or about the time of such disposal.

### ARTICLE III - License Grant

3.1 The LICENSOR grants to the LICENSEE a [non-exclusive] [exclusive] license under the LICENSED PATENT APPLICATION to make, have made, use and/or sell the LICENSED PRODUCTS, METHODS and PROCESSES described and claimed therein throughout the LICENSED AREA for the term set forth in Article X of this Agreement. This license may be sublicensed by the LICENSEE (A) subject to the approval of the LICENSOR, and each such sublicense shall make reference to this license, including the rights retained by the Government, and a copy of any such sublicense shall be furnished to the LICENSOR, and (B) as provided in paragraph 9.1 of Article IX of this Agreement.

### ARTICLE IV - Royalties and Payments

4.1 The LICENSEE shall pay the LICENSOR royalties at the rate of \_\_\_percent (\_\_\_\_%) on GROSS SALES of all ROYALTY-BASE PRODUCTS if LICENSEE produces and sells products directly utilizing this patent application.

4.2 In case for any reason, including no GROSS SALES of ROYALTY-BASE PRODUCTS, the periodic royalties due from the LICENSEE do not aggregate a minimum of \_\_\_\_\_dollars (\$ \_\_\_\_\_) at each anniversary of the effective date of this Agreement the LICENSEE shall, at the next-occurring semiannual royalty payment date specified in paragraph 4.5 of this Article IV, make up the deficiency of the royalties actually paid to such minimum sum. The parties agree that any such first minimum payment shall be due \_\_\_\_\_. Therefore, the minimum royalty due from the LICENSEE per year with or without GROSS SALES is \_\_\_\_\_dollars (\$\_\_\_\_\_) beginning at \_\_\_\_\_.

The LICENSEE's duty to pay the minimum aggregate royalties, as is provided for by this section, shall not apply and such royalties shall not be due, in the event that LICENSEE is not able to achieve the minimum aggregate royalties due to the presence of a patent which could be infringed by either the LICENSEE's use or sale of the LICENSED PRODUCTS and/or the LICENSEE's use of the LICENSED METHODS and/or PROCESSES.

4.3 Pass Through Royalties. In addition to all other royalties payable hereunder, LICENSEE shall pay to NSRDEC a "pass through royalty" on all royalty payments and all other considerations received by LICENSEE for sales of LICENSED PRODUCT (S) by SUBPARTNER or for grants of sublicenses for the TECHNOLOGY by LICENSEE to any SUBPARTNER. The pass through royalty shall be \_\_\_\_\_ percent (\_\_\_\_%) of all such consideration received by LICENSEE which shall specifically include, but not be limited to, all license issue fees and initial payments, earned royalties, minimum royalties, equity interests and any other thing(s) of value of whatever kind and nature. Pass through royalty payments shall be paid to NSRDEC in conjunction with LICENSEE's earned royalty payments. Pass through royalty payments shall be accompanied by written reports, as required with LICENSEE's earned royalty payments.

4.4 Royalties shall be payable in U.S. currency (dollars) hereunder, and shall be determined on the basis of the official rate of exchange applicable to each such payment on the payment date thereof. All payments shall be made without deduction of taxes, assessments, or other charges of any kind which may be imposed on the LICENSOR by the Government of the United States of America and/or any foreign government or any political subdivision thereof with respect to any amounts payable to LICENSOR pursuant to this Agreement.

The royalties shall be paid by check made payable to: "**DFAS-Columbus**" and mailed to: "**U.S. Army Natick Soldier Research, Development and Engineering Center, Attn: RDNS-BOB-T(Jeffrey DiTullio), 15 Kansas Street, Natick, MA 01760.**" On the statement accompanying the check, the LICENSEE shall identify the NSRDEC co inventor by name, \_\_\_\_\_ and the LICENSED PATENT APPLICATION by its respective U.S. Serial No. \_\_\_\_\_, and it should be noted that the money is for **royalty income or licensing fees.**

4.5 The LICENSEE shall pay royalties accrued as the result of sales made subject to such royalties during each six (6) month period following the effective date of this Agreement, on the following April 15th or October 15th, whichever date next occurs, the LICENSEE, shall submit with its payment the written report required in Article V, paragraph 5.2, of this Agreement. If no royalties are due, the report shall so state. Sales shall be considered made, for the purposes of this paragraph and paragraph 4.2 above, when billed out, except that upon any termination of this Agreement, all shipments made on or prior to the day of such termination which have not been billed out prior thereto shall be considered as sold

(and therefore subject to royalty). Royalties paid on sales of ROYALTY-BASE PRODUCTS which are not accepted by the customer shall be credited to the LICENSEE.

4.6 The LICENSEE shall pay within thirty (30) days from any termination of this Agreement royalties (including minimum royalties) accrued or accruable for payment at the time of any such termination.

4.7 Royalty payments not received by the LICENSOR by the due date shall be subject to interest charges computed at ten percent (10%) per annum.

4.8 No royalty shall be payable under this Agreement for direct sales of ROYALTY-BASE PRODUCTS by LICENSEE to the U.S. Government or any of its agencies for governmental purposes.

## **ARTICLE V - Reports and Records**

5.1 The LICENSEE shall provide at each anniversary of the effective date of this Agreement a written progress report detailing its efforts to bring the products, methods and processes licensed under this Agreement to the POINT OF PRACTICAL APPLICATION.

5.2 Concurrently, with each payment of royalties as required in Article IV of this Agreement, or at the time such payments are due although no royalties have accrued, the LICENSEE shall submit a written report setting forth for the period of accrual of such royalties the amount of ROYALTY-BASE PRODUCTS made, sold or otherwise disposed of by LICENSEE in the LICENSED AREA, the GROSS SALES thereof, and the amount of royalties due thereon. If no royalties are due the LICENSOR for any report period, the report shall so state.

5.3 The reports required under this Article V shall also be made within thirty (30) days of the termination of this Agreement.

5.4 The LICENSEE agrees to keep records showing the sales or other disposition of ROYALTY-BASE PRODUCTS sold or otherwise disposed of under the license granted in this Agreement in sufficient detail to enable the royalties payable hereunder by the LICENSEE to be determined, and further agrees to permit its books and records so kept to be examined from time to time to the extent necessary to verify the reports provided for in this Article V, such examinations to be made at the expense of the LICENSOR by any auditor appointed by the LICENSOR who shall be acceptable to the LICENSEE, or at the option and expense of the LICENSEE, by a certified public accountant appointed by the LICENSOR.

## **ARTICLE VI - Government Approval Authority**

6.1 All prior reviews and approvals required by regulations or law have been obtained by the LICENSOR prior to the execution of this Agreement. The LICENSOR official executing this Agreement has the requisite authority to do so.

## **ARTICLE VII - LICENSEE Performance**

7.1 LICENSEE shall expend reasonable efforts and resources to carry out the development and marketing of the licensed invention as a Invention and to bring the products, methods and processes described and claimed in the LICENSED PATENT APPLICATION to the POINT OF PRACTICAL APPLICATION for said purposes.

7.2 After bringing the products, methods and processes described and claimed in the LICENSED PATENT APPLICATION to the POINT OF PRACTICAL APPLICATION as A Invention in the LICENSED AREA, the LICENSEE agrees to make ROYALTY-BASE PRODUCTS marketed and usable as an Invention available to the public on reasonable terms during the term of this Agreement. The LICENSEE shall promptly report any discontinuance of its making the ROYALTY-BASE PRODUCTS reasonably accessible to the public.

F7.3 ailure to comply with the terms of this Article VII shall be cause for modification or termination of this Agreement in accordance with the provisions of Article X below.

## **ARTICLE VIII - Patent Enforcement**

8.1 The LICENSOR and LICENSEE shall notify each other promptly in writing of any infringement of the LICENSED PATENT APPLICATION which becomes known to either of them. The LICENSEE shall notify the LICENSOR promptly of any action taken in accordance with this Article VIII to eliminate such infringement.

8.2 The LICENSEE is authorized pursuant to the provisions of Chapter 29, Title 35, U.S. Code, or other statutes:

(A) To bring suit in its own name, or if required by law, jointly with LICENSOR, at its own expense and on its own behalf, for infringement of the LICENSED PATENT APPLICATION; and

(B) In any such suit, to enjoin infringement and to collect for its use damages, profits and awards of whatever nature recoverable for such infringement.

8.3 In the event the LICENSOR shall bring to the attention of the LICENSEE any unlicensed infringement of the LICENSED PATENT APPLICATION and LICENSEE shall not, within six (6) months,

(A) Secure cessation of the infringement, or

(B) Enter suit against the infringer, the LICENSOR shall thereafter have the right to sue for the infringement at

the LICENSOR's own expense, and to collect for its own use all damages, profits and awards of whatever nature recoverable for such infringement.

8.4 The LICENSOR and LICENSEE mutually agree to furnish technical and other necessary assistance to each other in conducting any litigation necessary to enforce the LICENSED PATENT APPLICATION against others. Reasonable expenses for such assistance will be paid by the party requesting such assistance.

8.5 The LICENSEE shall defend at its own cost and expense any action, suit, claim or proceeding for infringement by the LICENSEE of any third party's patents based upon the LICENSEE's manufacture, use, sale, or lease of products, processes or services based upon, utilizing, or incorporating the LICENSED PATENT APPLICATION. LICENSOR shall cooperate with the LICENSEE in any way reasonably necessary but without expense to the LICENSOR in the defense of any such action, suit, claim or proceeding.

### ARTICLE IX - Reservation of Rights

9.1 The license granted in Article III of this Agreement shall be subject to the irrevocable, royalty-free right of the U.S. Government to practice and have practiced on behalf of the U.S., and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the U.S., the products, methods and processes described and claimed in the LICENSED PATENT APPLICATION.

9.2 Notwithstanding the restrictions on sublicensing imposed upon the LICENSEE in Article III, paragraph 3.1, the LICENSOR reserves the right to require the LICENSEE to grant sublicenses to responsible applicants on reasonable terms to the extent that the LICENSED PATENT APPLICATION is required for public use, by government regulations or when necessary to fulfill public health, welfare or safety needs. Any decision by the LICENSOR to require such a sublicense may be appealed by the LICENSEE under the procedures set forth in Article XI.

### ARTICLE X - Term, Termination and Effective Date

10.1 The term of this Agreement begins on the date when it has been executed by both parties. Unless sooner terminated or otherwise modified as provided for in this Article X, the term of this Agreement shall run for \_\_\_\_ years from the effective date of this Agreement. The effective date of this Agreement is the date on which the LICENSOR'S REPRESENTATIVE signs the Agreement; the LICENSOR'S REPRESENTATIVE shall be the last to sign.

10.2 The LICENSOR may modify or terminate this license, in whole or in part, if:

- (A) The LICENSEE fails to meet the obligations set forth in Article VII above;
- (B) The LICENSOR determines that such action is necessary to meet requirements for public use specified by federal regulations issued after the date of this Agreement and such requirements are not reasonably satisfied by the LICENSEE;
- (C) The LICENSEE has willfully made a false statement of, or willfully omitted, a material fact in the license application or in any report required by this Agreement;
- (D) The LICENSEE commits a breach of a covenant or agreement contained in this Agreement;
- (E) The LICENSEE defaults in making any payment or report by this Agreement;
- (F) The LICENSEE is adjudged a bankrupt or has its assets placed in the hands of a receiver or makes any assignment or other accommodation for the benefit of a creditor; or
- (G) The LICENSEE misuses the LICENSED PATENT APPLICATION.

The LICENSEE retains the right to terminate this Agreement in the event that it disagrees with any modification thereof made by LICENSOR under this section and no relief satisfactory to it has been forthcoming upon request for the same under paragraph 11.7 and/or 11.8. Any such termination must be made in writing.

10.3 At any time after \_\_\_\_ years from the effective date of this Agreement, the LICENSEE shall have the right to terminate this Agreement in its entirety at the end of any calendar year, provided that the manufacture, sale and marketing of the LICENSED PRODUCTS, METHODS and PROCESSES as a Invention are not economically feasible to the LICENSEE, and being exercisable by written notice to terminate given by the LICENSEE to the LICENSOR at least sixty (60) days prior to the end of such year.

10.4 Upon expiration or termination of this Agreement, neither party shall be obligated to the other, except as set forth in paragraph 10.6 hereof, and the LICENSEE may dispose of any LICENSED PRODUCTS, METHODS and PROCESSES which are on hand or in progress at the time of such expiration or termination; provided that all payments then due are first made to the LICENSOR, and statements and payments with respect to products sold after the expiration or termination are thereafter made in accordance with this Agreement.

10.5 Prior to any modification or termination of this Agreement, the LICENSOR shall furnish the LICENSEE with a written notice of intention to modify or terminate, and the LICENSEE shall be allowed sixty (60) days after the date of such notice to remedy any breach or default of any covenant or agreement of this Agreement or to show cause why this Agreement should not be modified or terminated. If this Agreement has been modified or terminated, in whole or in part by the

LICENSOR, the LICENSEE may appeal to the Department of the Army any decision or determination concerning the modification or termination of this agreement.

10.6 The words "termination" and "expiration" and cognate words, such as "term" and "terminate", used in Article X and elsewhere in this Agreement, are to be read, except where the contrary is specifically indicated, as omitting from their effect the following rights and obligations, all of which survive any termination or expiration to the degree necessary to permit their complete fulfillment or discharge:

- (A) The LICENSEE's obligation to supply reports as specified in Article V, paragraph 5.3 of this Agreement;
- (B) The LICENSOR's right to receive or recover, and LICENSEE's obligation to pay royalties (including minimum royalties) accrued or accruable for payment at the time of any termination as specified in Article IV, paragraph 4.5 of this Agreement;
- (C) The LICENSEE's obligation to maintain records and the LICENSOR's right to conduct a final audit as provided in Article V, paragraph 5.4 of this Agreement; and
- (D) Any cause of action or claim of the LICENSOR accrued or to accrue because of any breach or default by the LICENSEE.

10.7 This Agreement may be modified or terminated upon the mutual agreement of the LICENSOR and LICENSEE.

### ARTICLE XI - General

11.1 This Agreement shall extend to any reissued or reexamination patent which may be derived from the LICENSED PATENT APPLICATION, provided that the LICENSOR has custody of the rights thereto and is able to grant a license without incurring liability to third parties; this Agreement shall not apply to the rights to any other invention, patent or patent application.

11.2 The Agreement shall not be transferred or assigned by the LICENSEE to any party other than to an affiliate or a successor or assignee of the entire business interest of the LICENSEE without the approval of the LICENSOR'S REPRESENTATIVE.

11.3 This Agreement does not confer any immunity from or defenses under the antitrust laws, the laws and regulations pertaining to or administered by the Food and Drug Administration, or the export laws nor does it confer immunity from a charge of patent misuse. Furthermore, the LICENSEE's acquisition and exercise of rights hereunder are not immunized from the operation of any state or federal law by reason of the source of the grant. This Agreement does not constitute an endorsement by the LICENSOR of any LICENSED PRODUCTS, METHODS, PROCESSES or ROYALTY-BASE PRODUCTS and the LICENSEE shall not state or imply in any medium that such endorsement exists as a result of this Agreement.

11.4 The LICENSOR makes no warranty, express or implied, regarding the patentability or viability of the LICENSED PATENT APPLICATION and no representations whatsoever with regard to the scope of the LICENSED PATENT APPLICATION or that the LICENSED PATENT APPLICATION may be exploited without infringing other patents.

11.5 The LICENSOR agrees to maintain the LICENSED PATENT APPLICATION in force during the term of this Agreement by paying, when due, the fees required by the applicable law, such as 35 U.S. Code Section 41(b).

11.6 The LICENSOR assumes no liability resulting from the LICENSEE's exercise of its rights under this Agreement or from the LICENSOR's exercise of rights under this Agreement, including modification or termination thereof.

11.7 Any dispute arising under this Agreement shall be disposed of by agreement of the persons designated as points of contact in paragraph 11.10 of this Agreement (\_\_\_\_\_ for LICENSEE and \_\_\_\_\_ for LICENSOR) or their successors performing the same function. Both designated points of contact shall act in good faith in jointly disposing of any dispute(s).

11.8 In the event that a dispute arising under this Agreement cannot be disposed of by resort to the procedures of paragraph 11.7, and subject to the LICENSEE's right to terminate under paragraph 10.2, the dispute shall be submitted jointly to the signatories of this Agreement or their successors or their designees for resolution. Although the parties agree to use alternate dispute resolution (ADR) techniques to resolve disputes, nothing in this Agreement precludes either party from pursuing resolution of a dispute using other legal review available by law. Pending such resolution, the LICENSOR and LICENSEE shall proceed diligently with the performance of their obligations under this Agreement.

11.9 LICENSEE agrees that ROYALTY-BASE PRODUCTS used, sold or otherwise disposed of in the LICENSED AREA by the LICENSEE will be manufactured substantially in the United States.

# PATENT LICENSE AGREEMENT

11.10 The parties shall notify each other of any changes in name, address or business status, and any notice, payment or report required to be given under the provisions of this Agreement shall be considered duly given if mailed by first class mail, postage prepaid and addressed as follows:

- (A) If to LICENSOR: U.S. Army Natick Soldier Research, Development and Engineering Center  
Attn: RDNS-BOB-T (Jeffrey DiTullio)  
15 Kansas Street  
Natick, MA 01760
- (B) If to LICENSEE: XXXXXXXXXXXXXXXXXXXXXXX

- 11.11 This License Agreement shall be subject to any licenses in force at the time of the grant of this license.
- 11.12 The interpretation and application of the provisions of this Agreement shall be governed by the laws of the United States as interpreted and applied by the federal courts in the District of Columbia, United States.
- 11.13 The illegality or invalidity of any provision(s) of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.
- 11.14 In publicizing anything made, used or sold under this Agreement, the LICENSEE shall not use the name of the LICENSOR or otherwise refer to any organization related to the LICENSOR, except with the written approval of the LICENSOR.
- 11.15 The LICENSEE shall place in a conspicuous location on the LICENSED PRODUCTS, a patent notice in accordance with 35 U.S. Code Section 287. The LICENSEE agrees to mark any products made using a process covered by any PATENT or improvement with the number of each such patent and, with respect to such PATENTS and improvements, to respond to any request for disclosure under 35 U.S. Code Section 287(b)(4)(B) by only notifying the LICENSOR of the request for disclosure.
- 11.16 This Agreement constitutes the entire understanding between the parties and neither party shall be obligated by any condition or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

IN WITNESS THEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers or representatives as follows.

For LICENSEE: \_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_  
LICENSEE

For LICENSOR: \_\_\_\_\_  
John P. Obusek, Sc.D. \_\_\_\_\_ Date \_\_\_\_\_  
Director, Natick Soldier Research,  
Development and Engineering Center

## UNSOLICITED PROPOSAL PROGRAM

The NSRDEC has an interest in receiving proposals that contain new ideas, suggestions, and innovative concepts pertaining to our program areas. "Unsolicited Proposal" is the term used to describe a unique and innovative proposal, which is not in response to a formal or informal request. The NSRDEC welcomes unsolicited proposals. We appreciate the contributions they make toward ensuring the superiority of the U.S. Army's Soldiers.

### DEFINITIONS OF UNSOLICITED OFFERINGS

**Unsolicited Proposal:** A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs).

**Commercial Product Offer:** An offer of a commercial product, submitted to an agency on the initiative of the submitter, that is usually sold to the general public and that the vendor wishes to see introduced into the Government's supply system as an alternate or replacement for an existing supply item. This does not eliminate commercial items offered for development or militarization.

**Advertising Material:** Material designed to acquaint the Government with a prospective contractor's present products or potential capabilities or to determine the Government's interest in buying these products. Advertising material can be submitted in support of a commercial product offer.

**Contribution:** A concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it in the Government's behalf. There is no government funding associated with contributions.

**Technical Correspondence:** Written request for information regarding Government interest in research areas, submission of research descriptions, preproposal explorations, and other written technical inquiries.

### PREPARATION INSTRUCTIONS FOR UNSOLICITED PROPOSALS

If after reading the last section, you feel that your item best fits the description of an unsolicited proposal, you must write a formal proposal that can be evaluated by the NSRDEC. There is no required format for an unsolicited proposal; however, any proposal should include the following:

- Offeror's name, address and type of organization, e.g., profit, nonprofit, educational, small business.
- Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes.
- Identity of proprietary data to be used only for evaluation purposes.
- Names of other Federal, State, local agencies, or parties receiving the proposal or funding the proposed effort.
- Date of submission.
- Signature of a person authorized to represent and contractually obligate the offeror.
- A completed form, "NONDISCLOSURE POLICY STATEMENT" (Form is found at the end of this Unsolicited Proposal Program Section.)

#### Technical information:

- Concise title and abstract (approximately 200 words) of the proposed effort.
- A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help support NSRDEC's mission.
- Names and biographical information on the offeror's key personnel who would be involved, including alternates.
- Type of support needed from the agency, e.g., facilities, equipment, materials, or personnel resources.

#### Supporting information including:

- Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation.
- Period of time for which the proposal is valid (a 6 month minimum is suggested).
- Type of contract preferred.
- Proposed duration of effort.
- Brief description of the organization, previous experience in the field, and facilities to be used.
- Required statements, if applicable, about organizational conflicts of interest, security clearances and environmental impacts.

## LIMITED USE OF DATA

Unsolicited proposals may include proprietary data, which you do not want, disclosed to the public or used by the Government for any purpose other than proposal evaluation. DOD cannot assume responsibility for use of such data unless it is specifically and clearly marked with the following legend on the title page:

## USE AND DISCLOSURE OF DATA

The data in this proposal shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided that if a contract is awarded to the offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in Sheets\_\_\_\_\_.

You must also mark each restricted sheet with the following legend:

"Use or disclosure of proposal data is subject to the restriction on the title page of this proposal."

## SUBMISSION AND EVALUATION

Unsolicited proposals and other unsolicited offerings may be sent to:

- U.S. Army Natick Soldier RD&E Center  
ATTN: RDNS-BO-B, Team Leader  
Kansas Street  
Natick, MA 01760  
Email: i gUfa m'bUH[W] "bgfXYWw VI "bUH! Ua gfX! bgWUX! V4 a U]"a ]

Appropriate technical personnel will conduct an evaluation. If the evaluator requests further information, submission will be at your expense and risk and shall create no obligation on the Government. The following are some factors considered by Army technical personnel when evaluating unsolicited proposals:

- Unique and innovative approaches or ideas.
- Overall scientific, technical, or socio-economic merits of the proposal.
- Potential contribution of the effort to NSRDEC's mission.
- Your capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposed objectives.
- The qualifications, capabilities, and experience of your proposed principal investigator, team leader, or key personnel who are critical in achieving the proposed objectives.
- Realism of the proposed cost and availability of funds.

## CONTRACTING

You must be aware that a favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. For example, we must reject your unsolicited proposal if it:

- Is available to the Government without restriction from another source.
- Closely resembles a pending or existing competitive solicitation.
- Is otherwise not sufficiently innovative and unique to justify a sole-source award.

If we reject your proposal, you will be informed of the reason for rejection. We retain a copy of all rejected unsolicited proposals to avoid any future misunderstanding regarding what was submitted.

Unsolicited proposals which are recommended by our technical offices may never be funded due to higher priority requirements.

Please note that only duly appointed contracting officers have authority to contractually bind the Government. All other personnel who receive, handle, or evaluate unsolicited proposals are not authorized to commit the Government.

**NONDISCLOSURE POLICY STATEMENT**

- (1) The Army has a continuing interest in receiving items for testing or evaluation, which contain new ideas, suggestions, and inventive concepts for weapons, supplies, facilities, devices and equipment. However, Government personnel and contractors are constantly engaged in research and development activities and the substance of your submitted item may already be known to Government employees or contractors, or may even be in the public domain. Therefore, we have found it desirable to insure that persons submitting items for testing or evaluation are aware of the conditions under which the items will be considered by the Army.
- (2) You should understand that the receipt and testing or evaluation of your item by the Army does not imply a promise to pay, a recognition of novelty or originality, or any relationship which might require the Government to pay for use of information to which it is otherwise lawfully entitled. However, you may be sure the Army has no intention of using any submission in which you have a recognizable property right without proper compensation.
- (3) Due care will be exercised to insure that your proprietary information will not be disclosed to the public for any purpose or used by the Government for any purpose other than testing or evaluation. In order to protect your proprietary information, you are required to place at the top of each page containing proprietary information the following notice: THIS PAGE CONTAINS PROPRIETARY INFORMATION. In the event that oral presentations contain proprietary information, you should identify what information is proprietary and submit the proprietary information in writing.
- (4) Your voluntary submissions of proprietary data will be handled in accordance with established Government procedures for safeguarding such information against unauthorized disclosure. Government employees are subject to 18 U.S.C. § 1905 sanctions for unauthorized disclosures. In addition, proprietary data forming a part of or constituting the submitted items will not be disclosed outside the Government or be duplicated, used or disclosed in whole or in part by the Government, except for record purposes, testing or evaluation. This restriction does not limit the Government's right to use information, if it is obtained from another source or is in the public domain. Liability by reason of unauthorized disclosure of the information by the Government will under no circumstances extend beyond the actual damage to the submitter caused by the acts of the Government and cognizable in law. Furthermore, the Government accepts no liability for failure to safeguard information, unless the information consists of a patentable invention, copyrighted material, or data constituting a trade secret and is conspicuously marked as such.
- (5) No contract awards are contemplated at this time as a result of the testing or evaluation of the submitted item. However, in the event that a future contract is awarded pertaining to the subject matter of the submitted item, the provisions of that contract will supersede this policy statement and will govern the rights of the parties.

**THE UNDERSIGNED AGREES TO HAVE THE ITEM SUBMITTED FOR TESTING OR EVALUATION TREATED IN ACCORDANCE WITH THIS POLICY STATEMENT.**

Company/Organization Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature/Title: \_\_\_\_\_ Date: \_\_\_\_\_

Item Submitted: \_\_\_\_\_

## GOVERNMENT SOLICITATIONS AND OPPORTUNITIES

The last section of this guidebook explained unsolicited proposals. There is no specific funding associated with unsolicited proposals or offerings. The following is a list of alternate programs, which can help you initiate work with the NSRDEC. One of these may fit your needs more appropriately than an unsolicited proposal.

### CONTRACT

A Contract is a legally binding agreement between the United States Government and a private party whereby the seller furnishes supplies and services and the buyer provides consideration. Government Contract Law is governed by the Federal Acquisition Regulation (FAR) and other implementing policies. Contracts include all types of commitments that require the Government to disperse appropriated funds, and that, unless otherwise indicated, are in writing.

Program contact: 508-233-6190

### GRANT

A Grant is an agreement between the Federal Government and private organizations or state and local government whereby funds, property or services are provided, usually for research and development initiatives. Typically, there is no substantial involvement between the Federal Government and the recipient. Grants are not subject to FAR regulations.

Program contact: 508-233-6190

### TECHNOLOGY INVESTMENT AGREEMENT (TIA)

A Technology Investment Agreement (TIA) is used when a Grant, or Contract is not feasible or appropriate and is a form of either a Cooperative Agreement or Other Transaction.

They must not be duplicative of other DoD research.

Government funds provided do not exceed cost share of other parties.

They are an opportunity to develop innovative approaches to carry out basic, applied and advanced research.

Program contact: 508-233-6190

### COOPERATIVE AGREEMENT (CA)

A Cooperative Agreement (CA) is another legal tool used to transfer funds, property or services to a recipient. CA's differ from grants in that substantial involvement is expected between the Government and the recipient. Parties entering into a CA have increased freedom to structure the terms and conditions of the agreement. As such, CA's are not subject to FAR regulations.

Program contact: 508-233-6190

### OTHER TRANSACTION (OT)

Other Transaction (OT) is an additional procurement mechanism when the above methods are not applicable. OT is specifically designed to encourage non-traditional defense contractors to participate in government business. Typically, this tool has been used for advanced research projects and prototypes. As with other non-traditional contracting methods, the FAR does not apply. Substantial involvement is expected between the Government and the recipient.

Program contact: 508-233-6190

## **BROAD AGENCY ANNOUNCEMENT (BAA)**

The Broad Agency Announcement (BAA) is an open solicitation for proposals in the areas of research interest and technical excellence. It is funded to fulfill requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge and understanding as a means of eliminating current technology barriers. The BAA does not focus on specific systems or hardware solutions. The BAA is revised every 2 years to reflect the Natick's R&D requirements. The solicitation is divided into several topic groups, e.g., clothing and food service. Each topic area describes technologies and products that are of interest to the NSRDEC and gives a point of contact for that area. Detailed instructions on submitting a proposal are included in the official BAA. The BAA will fund programs, which meet NSRDEC R&D needs and show sufficient technical promise. The current BAA is available online at: <https://www3.natick.army.mil/ssbaa.html>. If you are unable to access the BAA online, a hard copy can be obtained by calling 508-233-4995, or by writing to:

- U.S. Army Natick Soldier Systems Center  
Army Contracting Command  
Natick Contracting Division  
Kansas Street  
Natick, MA 01760

## **SMALL BUSINESS INNOVATION RESEARCH (SBIR)**

The Army Small Business Innovation Research (SBIR) program funds early-stage R&D at small technology companies and is designed to: stimulate technological innovation; increase private sector commercialization of federal R&D; increase small business participation in federally funded R&D; and foster participation by minority and disadvantaged firms in technological innovation. Each Army and Department of Defense R&D organization includes topics in the SBIR solicitation requesting proposals, which will be evaluated for possible funding. The Army SBIR pre-solicitation is announced in May and the solicitation opens in June of each year through the Defense Technical Information Center, and is announced in the Federal Business Opportunities list at <https://www.fbo.gov>. This solicitation covers not only the NSRDEC, but also the entire Army. The SBIR solicitation can be found online at <http://www.acq.osd.mil/osbp/sbir>.

Program contact: 508-233-5372

## **TESTING SERVICE AGREEMENT (TSA)**

A Testing Service Agreement (TSA) provides statutory authority enabling federal laboratories to perform fee-for-service commercial test and evaluation activities for private industry, academic institutions, and individuals. Under a TSA, a federal laboratory performs a testing or evaluation service for a fee. The fee must cover all direct and indirect costs. Materials, processes, equipment, models, devices, computer software, etc., may all be tested. Unlike cooperative type agreements the TSA does not include a research or development component and all inventions and data belong to the TSA Partner.

We offer:

- Low-cost Services
- Unique Testing Facilities
- Highly Rated and Experienced Staff
- State-of-the-art Equipment
- Test Plan Development, Data Analysis and Report Preparation

Our Testing Facilities and Equipment Brochure can be found at:

[http://nsrdec.natick.army.mil/media/print/facilities&Equipment\\_Web.pdf](http://nsrdec.natick.army.mil/media/print/facilities&Equipment_Web.pdf)

Program contact: 508-233-5667 / 508-233-4184

Email: [igUfa m'bUHjW\\_bgfXYWVa VI "bUHj! Ua gfX! bgWUX! V4 a Uj" a \]](mailto:igUfa m'bUHjW_bgfXYWVa VI )

**SAMPLE** (Actual Agreements may vary)

**TESTING SERVICE AGREEMENT**

BETWEEN

U.S. ARMY NATICK SOLDIER RESEARCH, DEVELOPMENT AND ENGINEERING CENTER  
AND  
COMPANY NAME

**NAME OF TEST OR NATURE OF SERVICE:** (Brief Description)

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**SPECIFIC ITEM TO BE TESTED:** (List or Explain)

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**PURPOSE:** (Include one sentence purpose statement and reference attached Statement of Work)

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**WHEREAS 10U.S.C. 2539 (a)(3)** gives the secretaries of the military departments authority to make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items.

**WHEREAS** (Insert company Name ) a (Insert state of incorporation) corporation with a principal place of business at (Insert company address) \_\_\_\_\_ (hereinafter referred as the purchaser) has requested, and the U.S. Army Natick Soldier Research, Development and Engineering Center (hereinafter referred as the NSRDEC) has agreed to conduct and /or furnish, certain tests and/or test services as described above, the purchaser, after having indicated that this test is not in direct competition with private industry, and NSRDEC do now therefore agree to the following terms and conditions which shall govern the conduct and/or furnishing of such tests and/or Test Services:

a. It is understood that NSRDEC will accept the item(s) listed above for the stated test and any information submitted for use in such test shall not be disclosed outside the government, except that such information may be disclosed to foreign governments when tests are conducted for/or on behalf of private foreign industry. Unless otherwise specified herein, the results of the stated test are confidential and may not be disclosed outside the government without the consent of the purchaser.

b. The test and/or test services shall be conducted and/or furnished at (Insert building name and number) \_\_\_\_\_ NSRDEC to commence on a date and at a time convenient to NSRDEC as determined by the laboratory director, who will notify the purchaser of such scheduled date and the estimated completion date. The aforementioned beginning and estimated completion dates are to be furnished for planning purposes only, and NSRDEC may, at its discretion, change such dates or terminate the test prior to completion with or without prior notice to the purchaser, and the government shall not become liable to the purchaser as a result of or because of such changes or termination.

c. (1) In consideration of the test and/or test services to be conducted and/or furnished by NSRDEC, the purchaser agrees to pay NSRDEC the cost thereof as determined by NSRDEC, it being mutually agreed that such cost will include the amount necessary to recoup both direct and indirect costs involved that are incurred by NSRDEC to provide for the testing.

## GOVERNMENT SOLICITATION AND OPPORTUNITIES

(2) Additionally, it is understood and agreed that the purchaser will bear all costs for transportation, packing, crating and drayage relating to the item(s) submitted for testing, including that which the NSRDEC may, for its own convenience, perform or cause to be performed.

d. It being estimated by NSRDEC that the cost of the test and/or testing services to be provided by NSRDEC will not exceed the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) which sum includes:

- Performing the task outlined in the purchaser's Statement of Work,
- The purchaser will pay to the NSRDEC prior to commencement of the test and/or test services, the sum of \$ \_\_\_\_\_ by cashier's check, certified check, bank money order or U.S. Postal money order, payable to the United States Treasury.

**The purchaser shall note on the check and in an accompanying cover letter that the payment is for Testing Service Agreement.**

In addition, the purchaser shall note the following information within the cover letter; (1) the project name (2) the purchaser's name and (3) the government technical point of contact.

**Check should be made payable to the United States Treasury.**

**The purchaser shall mail the payment to the following address:**

**U.S. Army Natick Soldier Research, Development and Engineering Center  
ATTN: RDNS-BOB-T (Kristen Ryan)  
15 Kansas Street  
Natick, MA 01760-5021**

- It is understood and agreed that NSRDEC will not incur costs in excess of the estimated amount without notice to the purchaser of a revised estimated cost, and deposit with NSRDEC by the purchaser of such additional sum as may be required to cover the additional estimated costs.

e. The purchaser and NSRDEC agree that:

- (i) The government shall not be liable for loss or destruction of or damage to the test item(s), or any other damages, whether direct or consequential.
- (ii) Upon completion or termination of the test and/or test services, and upon receipt by the purchaser of notification of such completion or termination, the purchaser will promptly remove the test item(s) from the government's premises.
- (iii) All transfers of property or services of whatever nature made pursuant to this agreement shall be without any express or implied warranty whatsoever, including the warranties of merchantability and fitness for a particular purpose.

f. The purchaser agrees:

(i) To hold harmless and indemnify the government against the following insofar as they may result from the performance and/or furnishing of test and/or test services described above:

- (A) Claims (including reasonable expense of litigation or settlement) by third persons (including employees of the purchaser) for death, bodily injury (including sickness or disease) or loss of, damage to, or loss of use of property, and
- (B) loss of or damage to property of the government or property in its custody, and loss of use of such property, and

(ii) that he will, at the request of and to the satisfaction of NSRDEC, furnish bond, U.S. Postal money Order, certified check or other security to guarantee compliance with part (1) of this clause.

g. The purchaser agrees not to circulate, refer to, or other wise use for publicity or adverting purposes the results of the

# GOVERNMENT SOLICITATION AND OPPORTUNITIES

tests conducted by NSRDEC in any manner that will bear a connotation of endorsement of a product by NSRDEC or any other agency of the government.

h. NSRDEC reserves the right to limit the number and terms of visits of observers and/or test participators.

**U.S. Army Natick Soldier RD&E Center  
15 Kansas Street  
Natick, MA 01760-5000**

**Company Name  
Address**

**BY:**

**BY:**

\_\_\_\_\_  
**(Project Officer Signature)**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Printed name)**

\_\_\_\_\_  
**(Printed name)**

\_\_\_\_\_  
**(Title)**

\_\_\_\_\_  
**(Title)**

\_\_\_\_\_  
**(Date)**

\_\_\_\_\_  
**(Date)**

**BY:**

\_\_\_\_\_  
**(Signature - Testing Service Agreement Officer)**

\_\_\_\_\_  
**(Date)**

## Statement of Work

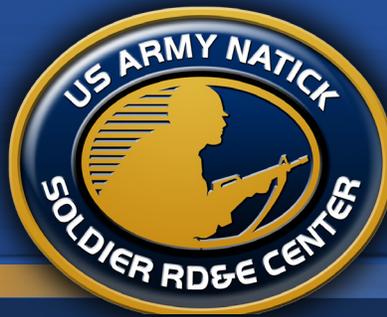
**Objective:**

**Technical Approach:**

**Cost:**

**POC:**





***THE SCIENCE BEHIND THE WARRIOR: YESTERDAY, TODAY AND TOMORROW.***

**US ARMY NATICK SOLDIER  
RESEARCH, DEVELOPMENT & ENGINEERING CENTER**

Kansas Street, Natick, MA 01760

**BUSINESS INQUIRIES:**

(508) 233-4184, [usarmy.natick.nsrdec.mbx.nati-amsrd-nsc-ad-b@mail.mil](mailto:usarmy.natick.nsrdec.mbx.nati-amsrd-nsc-ad-b@mail.mil)

**MEDIA INQUIRIES:**

(508) 233-6938

**ON THE WEB:**

[nsrdec.natick.army.mil](http://nsrdec.natick.army.mil)