COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, October 20, 1986, as amended, and codified at 15 U.S.C. § 3710a), Massachusetts Institute of Technology Lincoln Laboratory (hereinafter referred to as “LABORATORY”), located at 244 Wood Street, Lexington, Massachusetts, a Department of Defense (DoD), Federally Funded Research and Development Center (FFRDC) operated and managed by the Massachusetts Institute of Technology (hereinafter “MIT”) and performing research under contract between the United States Air Force and MIT, and ____________ located at _______________ (hereinafter “CRADA PARTNER”) (LABORATORY and CRADA PARTNER hereinafter referred to as “Party” or “Parties”) enter into this Cooperative Research and Development Agreement (“CRADA” or “Agreement”), dated as of __________, that will be binding upon each of the Parties according to the terms and conditions and for the duration set forth below.

WHEREAS, LABORATORY has performed pre-competitive research and development with respect to ______________________ (known hereafter as "the Technology") and desires to make such Technology available to the public use and benefit;

WHEREAS, LABORATORY possesses certain advanced scientific skills, facilities, personnel, special equipment, information, computer software and know how pertaining to the Technology, and wishes to encourage and facilitate the transitioning of federally funded technology developments into the private sector for public commercial use;

WHEREAS, CRADA PARTNER is interested in the further development of the Technology resident at the LABORATORY for transfer to the public and desires to provide resources and funding exclusively for the further development of the Technology; and

WHEREAS, through an Agreement of Sponsorship Between the DoD and MIT, entered into on 19 March 2015, the Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)) has delegated authority to LABORATORY’s Director to enter into CRADAs on behalf of the DoD, and LABORATORY views its cooperation with CRADA PARTNER to develop and transfer the Technology to be in the furtherance of the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, CRADA PARTNER and LABORATORY agree to the following:

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 "Created" when in relation to any copyrightable software work means when the work is fixed in any tangible medium of expression for the first time, as provided for in 17 U.S.C. 101.

1.2 "Government" refers to the Government of the United States of America and to any agency or other component of the Government of the United States of America.

1.3 "Invention" means any invention or discovery (including software-related invention) 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. 7321 et seq.).

1.4 "LABORATORY Property" shall mean property belonging to MIT or property belonging to the U.S. Government located at MIT Lincoln Laboratory, for which MIT Lincoln Laboratory has property management responsibility.

1.5 "Made" when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention.

1.6 "Net Royalties or Other Income" means amounts received from any transaction less sales, use and or value added taxes (VAT) actually paid, import and/or export duties actually paid, transportation or shipping cost prepaid or allowed, amounts allowed or credited due to returns, outside sales commissions, if any, discounts allowed and taken, transportation insurance, if any, and reasonable out of pocket costs actually incurred in the original prosecution of a patent application or in registering a copyright. Such costs are limited to costs directly related to the transaction.

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

1.8 "Proprietary Information" means information which, at the time of disclosure, is designated in writing as "confidential" to the owning party and embodies trade secrets or is confidential technical, business, or financial information, provided that such information: (a) is not generally known, or is not available from other sources without obligation concerning its confidentiality; (b) has not been made available by the owners to others without obligation concerning its confidentiality; and (c) is not already available to the public or receiving party without obligation concerning its confidentiality. Proprietary Information may include information that can lawfully be withheld from disclosure under the Freedom of Information Act, 5 U.S.C. 552 et seq., as provided at 15 U.S.C. 3710a(c)(7)(A) & (B).

1.9 "Reviewing Official" means the LABORATORY director authorized to enter into CRADAs on behalf of the Department of Defense.

1.10 “Background Invention” means an Invention first conceived or reduced to practice by the Principal Investigator (solely or jointly with other inventors) of either or both parties developed (a) before the Effective Date, or (b) thereafter independently of the SOW, hereinafter defined.

1.11 “Blocking Background Invention” means any Background Invention owned or controlled by MIT that MIT reasonably believes could be necessary to the practice by CRADA PARTNER of Inventions expected to be conceived or reduced to practice by MIT personnel (solely or jointly with CRADA PARTNER personnel) during the course of performing this CRADA.

2. STATEMENT OF WORK

2.1 The cooperative research and development program performed under this CRADA shall be performed in accordance with the Scope of Work (SOW) incorporated hereto as Attachment 1. Any modifications of the SOW shall be by mutual agreement between the parties and shall be incorporated herein by a formally executed written amendment to this CRADA.
2.2 The utilization of LABORATORY's personnel, resources, facilities, equipment, skills, know how, computer software and information (but not funds) will be consistent with its own policies, missions and requirements.

2.3 LABORATORY shall use best efforts to perform to the scope of work set forth in the SOW within the limitations of the funds provided by CRADA PARTNER. Under no circumstances shall LABORATORY be required to perform services beyond the amount of funds provided by CRADA PARTNER.

3. PERIOD OF PERFORMANCE AND FINANCIAL OBLIGATION

3.1 The term of this CRADA is for a period of approximately [insert number of months/years], effective upon receipt by LABORATORY of funds (“Effective Date”) and terminating on the last day of the [insert POP end date – minimum 6 months, e.g. sixth month], unless extended or otherwise modified in writing and agreed upon by the Parties.

3.2 The LABORATORY will not commence work on the program until the initial funding increment, as set forth below, has been received by the LABORATORY.

3.3 CRADA PARTNER will fund the LABORATORY $_______ to cover the costs of work under this project. Work will not start until the LABORATORY has received funds. Payments shall be made in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Due Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

All such payments shall be made payable to “MIT LINCOLN LABORATORY” and shall be used for performance of this CRADA. Funding provided will be utilized solely for the performance of the CRADA Statement of Work tasks. Payments should be made to the following address:

Financial Services Department
MIT Lincoln Laboratory
244 Wood Street, Room FR1-216-11
Lexington, MA  02421-6426

3.4 It is expressly understood and agreed that payments by CRADA PARTNER under this Agreement shall in no event exceed the maximum amount indicated in the first sentence of Article 3.3, except upon formal modification of this Agreement in writing signed by both Parties. The LABORATORY may discontinue performance under this CRADA if the funds provided by the CRADA PARTNER for performance by the LABORATORY are not provided as specified in Article 3 of this Agreement.

3.5 Notwithstanding any other provision or term of this Agreement, the LABORATORY will return surplus CRADA program funds to the addressee listed in Article 13 within a reasonable period of time after the end of the program.
4. TERMINATION AND DISPUTES

4.1 A Party may terminate this Agreement with thirty (30) days written notice of termination to the other Party. In the event that either Party shall be in breach, violation or default of any of its obligations under this Agreement and shall fail to remedy such default within ten (10) days after receipt of written notice thereof, the party not in default (reserving cumulatively all other remedies and rights under this Agreement and at law and in equity) shall have the option of terminating this Agreement upon written notice thereof.

4.2 Should this CRADA be terminated as provided above, then the LABORATORY will deduct the following amounts from the payments made by CRADA PARTNER pursuant to Article 3 hereof: (a) all costs for the project incurred up to the effective date stated in the termination notice; (b) all costs incurred in restoring LABORATORY property to its pre-CRADA condition as discussed in Article 5; and (c) all other non-cancelable commitments. Any funds in excess of these amounts will be promptly returned to CRADA PARTNER.

4.3 All disputes arising out of, or related to, this CRADA shall be resolved in accordance with this Article. The Parties recognize that disputes or claims arising under this CRADA are best resolved by the Parties directly involved (“Working Level”). In the event the matter cannot be resolved at the Working Level, the matter will be forwarded jointly by the parties (“Joint Submission”) to the Reviewing Official and the signatory of the CRADA PARTNER. In the event the matter cannot be resolved within ninety (90) days of the Joint Submission, the matter will be forwarded to USD AT&L for final resolution.

4.4 Termination of this CRADA for any reason shall not affect the rights and obligations of the parties accruing prior to the effective date of termination. No termination of this CRADA, however effectuated, shall release the parties hereto from their rights, duties and obligations under Articles 1, 6, 7, 8, 10, 11 and 12.7.

5. FACILITIES, EQUIPMENT, AND PROPERTY

5.1 Each Party will abide by the safety, and security regulations and directives of the host facility in which the work in support of the CRADA is being performed. The non-hosting Party may request copies of all applicable safety and security regulations and directives from the hosting Party.

5.2 Each Party will retain title to all tangible property to which it had title prior to the Effective Date of this CRADA or to which it acquired or acquires title, by purchase or by fabrication, outside of the scope of this CRADA. At the completion of the CRADA program, title to equipment, hardware, and other items of facility purchased by LABORATORY with CRADA funds will vest in the U.S. Government, unless otherwise stipulated in this Agreement.

5.3 The LABORATORY reserves the right to audit the use of LABORATORY Property made available to the CRADA PARTNER in the performance of this Agreement. Such property may be repaired or modified at CRADA PARTNER's expense only after obtaining the written approval of the LABORATORY. Any repair or modification of the property shall not affect the title of the Government. Unless the LABORATORY hereafter otherwise agrees, CRADA PARTNER shall, at no expense to the LABORATORY, return all LABORATORY Property after termination or expiration of this Agreement in the condition in which it was received, with normal wear and tear excepted.

5.4 When shipping materials, equipment or other items of property to LABORATORY for use in the performance of this program, the CRADA PARTNER shall clearly identify, on both the shipping
documents and the outside of the shipping container, the following information: (a) CRADA program name; (b) Program number; and (c) LABORATORY staff/point of contact name. The Party sending a shipment to the other Party to this Agreement shall be responsible for the risk of loss of, or damage to, the shipment while in transit, until it is delivered to, and accepted by, the receiving Party.

5.5 Each Party will be responsible for the handling, control, and disposition of any and all hazardous substances or waste in its custody during the course of this CRADA in accordance with all applicable laws and regulations.

6. USE OF NAME, ENDORSEMENTS, AND PUBLICATIONS

6.1 CRADA PARTNER shall not use the name of LABORATORY or MIT on any product or service which is directly or indirectly related to either this CRADA or any patent license or assignment agreement which implements this CRADA without the prior written approval of LABORATORY or MIT, as appropriate.

6.2 By entering into this CRADA, LABORATORY and MIT do not directly or indirectly endorse any product or service provided, or to be provided, by CRADA PARTNER, its successors, assignees, or licensees. CRADA PARTNER shall not in any way imply that this CRADA is an endorsement by MIT or LABORATORY of any such product or service.

6.3 LABORATORY and CRADA PARTNER agree to confer and consult with each other prior to publication or other public disclosure of the results of work under this CRADA to ensure that no Proprietary Information belonging to CRADA PARTNER or potentially patentable material is released. Furthermore, prior to submitting a manuscript for publication or before any other public disclosure, each party will offer the other party ample opportunity to review such proposed publication or disclosure, to submit objections, and to file applications for letters patent in a timely manner provided that such review period shall not exceed thirty (30) days unless otherwise mutually agreed.

7. INTELLECTUAL PROPERTY

7.1 PATENTS

7.1.1 LABORATORY and CRADA PARTNER shall disclose to one another, in writing, each Invention Made pursuant to this CRADA within three (3) months after its existence becomes known. The parties will exercise reasonable diligence to identify any and all such Inventions. CRADA PARTNER and LABORATORY will jointly cooperate to identify any and all joint Inventions Made as a consequence of this CRADA. For purposes of this Agreement, Invention disclosures shall be considered Proprietary Information without the need for designating as “confidential”.

7.1.2 CRADA PARTNER shall retain title to any Invention, and any intellectual property rights therein, Made pursuant to this CRADA solely by CRADA PARTNER personnel. With respect to any such Invention, CRADA PARTNER agrees that LABORATORY shall have a right to use such Invention for research and purposes related to its performance under this CRADA, and, further, if such Invention is Made solely by CRADA PARTNER employees utilizing LABORATORY facilities, then the U.S. Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice the Invention or have the Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes. CRADA PARTNER shall provide LABORATORY with a duly executed instrument confirmatory of such license. CRADA PARTNER shall notify LABORATORY of its intent to file patent applications on Inventions which are the subject of this Article.
7.1.3 **CRADA PARTNER** and MIT shall jointly own any Inventions under this CRADA Made jointly by **CRADA PARTNER** and LABORATORY personnel. With respect to any such jointly owned Inventions, **CRADA PARTNER** shall have the option to obtain from MIT, if a patent application is filed under 7.1.5, an exclusive license to MIT’s rights in the joint Invention at a reasonable royalty rate to be negotiated in good faith between **CRADA PARTNER** and MIT. **CRADA PARTNER** shall indicate its intention to exercise its option to obtain an exclusive license to MIT’s rights in such an Invention by giving written notice to MIT of its intent to enter into such a license agreement within nine (9) months (“Election Period”) after disclosure or identification of the Invention pursuant to Article 7.1.1. The specific royalty rate and other terms and conditions of the license agreement shall be negotiated promptly after notice is given. The parties hereby grant the U.S. Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice the Invention or have the Invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

7.1.4 MIT shall retain title to any Invention, and any intellectual property rights therein, Made solely by LABORATORY employees pursuant to this CRADA. With respect to any such Invention, MIT grants **CRADA PARTNER** an option to obtain an exclusive or nonexclusive license on terms and conditions comparable with the provisions of Article 7.1.3.

7.1.5 **Filing of Patent Applications.** **CRADA PARTNER** shall prepare, file, and prosecute ("file") a patent application in the U.S. Patent and Trademark Office for any Invention Made pursuant to this CRADA for which it gives notice, pursuant to Article 7.1.2. MIT, in its sole discretion, shall file patent applications in the U.S. Patent and Trademark Office on any Invention Made solely by LABORATORY personnel under Article 7.1.4. The parties shall mutually agree on which party shall file on Inventions Made jointly or owned jointly under Article 7.1.3. In any event, the party not filing will fully cooperate with the other, including executing all necessary documents and obtaining the cooperation of its employees in executing such documents, in the preparation and filing of any patent application based upon an Invention Made as a consequence of this CRADA. Both parties shall exercise all reasonable efforts to file a patent application or allow the other to file a patent application before any time bar prescribed by Title 35 of the United States Code.

7.1.6 **Patent Expenses and Copies.** Unless otherwise agreed, all expenses attendant to the filing of any patent application shall be borne by the party filing the patent application. Any post-filing and post-patent fees shall also be borne by that party unless otherwise agreed between the parties. Each party shall provide the other party with a copy of each patent application it files on Inventions Made as a consequence of this CRADA, along with the power to inspect and make copies of all documents retained in the official patent application files of **CRADA PARTNER** and LABORATORY.

7.1.7 **Background Intellectual Property.** NOTE: Only use this Article if Applicable. Neither party to this CRADA gains access to the Background Inventions of the other party except as set forth in this Article 7.1.7. As of the Effective Date of this CRADA, MIT has identified the following Blocking Background Invention(s):

<table>
<thead>
<tr>
<th>MIT Case #</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

The identified Blocking Background Invention(s) are available for licensing. Until the expiration of the Election Period as specified in Article 7.1.3, MIT will, to the extent that it is legally able to do so, offer a non-exclusive license to the available Blocking Background Inventions to **CRADA PARTNER** upon
mutually agreeable terms and at reasonable royalties or other compensation, solely as necessary for CRADA PARTNER to practice any commercial license obtained by CRADA PARTNER under Article 7.1.3 or 7.1.4 above.

7.2 COPYRIGHTS

7.2.1 CRADA PARTNER and MIT each shall own the copyright to their own copyrightable works, including software, developed under this CRADA. Copyrightable works which are co-authored by employees of CRADA PARTNER and employees of the LABORATORY shall be jointly owned by CRADA PARTNER and MIT, who shall each have the independent, unrestricted right to dispose of such copyrightable materials and their share of the copyrights therein as they deem appropriate, without an obligation to account except as provided under Article 7.2.6. The parties shall mark any such works with an appropriate copyright notice as prescribed under Title 17, United States Code.

7.2.2 Copyrighted works solely owned by MIT may be used and distributed by CRADA PARTNER subject to the provisions of Article 7.2. Copyrighted works owned solely by CRADA PARTNER may be used internally by the LABORATORY for purposes of performance under this CRADA and, if developed using the LABORATORY Property, shall be subject to a non-exclusive, irrevocable, paid-up, worldwide license granted to the U.S. Government to use, duplicate or disclose the copyrighted work, in whole or in part and in any manner, for Government purposes only and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use the copyrighted works for commercial purposes. CRADA PARTNER will clearly mark all copyrighted work subject to a Government purpose license with the words "Government Purpose License."

7.2.3 Each party shall deliver to the other, one copy of each software document or other work developed in whole or in part by each party under this CRADA, subject to the terms and conditions of Article 7.2.

7.2.4 CRADA PARTNER shall pay to MIT a percentage as reasonably negotiated between the parties, of any Net Royalties or Other Income received by CRADA PARTNER or its affiliates from the licensing, lease, and/or rental (hereinafter called "Disposition") of any copyrighted work Created under this CRADA which is solely authored by LABORATORY employees and owned by MIT, except where such Disposition is made to the U.S. Government or one of its agencies. Payments by CRADA PARTNER to MIT shall be made payable to MIT and submitted not later than sixty (60) days after the calendar year ending December 31st in which CRADA PARTNER receives the Net Royalties or Other Income. CRADA PARTNER's obligation to pay royalties to MIT shall survive the termination of this CRADA.

7.2.5 Concurrently with each payment of royalties, as required in Article 7.2 of this CRADA, or at such other time as payments are due, CRADA PARTNER shall submit a written report setting forth for the period for which the payment is made, the amount and a description of the copyrighted works upon which a royalty is payable as provided at Article 7.2, the Net Royalties and Other Income received therefrom by CRADA PARTNER and the amount of royalties due thereon. If no royalties are due LABORATORY for any report period, the report shall so state.

7.2.6 CRADA PARTNER agrees to keep records showing the Disposition of the copyrighted works upon which royalties are due under the provisions of Article 7.2 in sufficient detail to enable the royalties payable hereunder by CRADA PARTNER to be determined.
7.2.7 **CRADA PARTNER** further agrees to permit its books and records to be examined from time to time during its ordinary business hours and not more often than once a year to the extent necessary to verify the reports provided for in Article 7.2. Such examination will be made at the expense of MIT by any auditor from a certified public accounting firm appointed by MIT. In the event the royalty report(s) of **CRADA PARTNER** shall be found to be more than ten percent (10%) below the findings of the auditor, **CRADA PARTNER** promptly pay to MIT the balance of royalties due pursuant to the audit and shall reimburse MIT for the cost of the audit.

**8. PROPRIETARY INFORMATION**

The Parties agree to protect the other’s Proprietary Information disclosed under this Agreement by using at least the same degree of care, but no less than reasonable care, to prevent the unauthorized use, disclosure, or publication of the Proprietary Information as the receiving party uses to protect its own proprietary information of like nature. **CRADA PARTNER** hereby grants the LABORATORY, to the extent necessary for LABORATORY performance under this CRADA, a right to use, duplicate and disclose such proprietary information in confidence.

**9. INDEPENDENT CONTRACTORS**

9.1 **CRADA PARTNER** and the LABORATORY are independent contractors and are not agents of each other, joint venturers, partners, or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty, or representation as to any matter, and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.

9.2 **CRADA PARTNER** agrees that (a) it may not submit a proposal as either a prime contractor or a subcontractor which identifies that LABORATORY will contribute to the performance of any resulting contract; and (b) it may not use LABORATORY’s services in the performance of any contract. The technology conveyed under this CRADA, consistent with the other provisions of this CRADA, is available for use by the **CRADA PARTNER** in the performance of any contract. If either party should become aware that continued performance under this CRADA would cause violation of these stipulations, either party may terminate this CRADA in accordance with the procedures provided in Article 4.

**10. REPRESENTATIONS AND WARRANTIES**

10.1 LABORATORY hereby represents and warrants as follows:

10.1.1 The performance of the work under this CRADA is consistent with the mission of LABORATORY.

10.1.2 LABORATORY, prior to entering into this CRADA, has (1) given special consideration to entering into CRADAs with small business firms and consortia involving small business firms; (2) has given preference to business units located in the United States which agree that products embodying Inventions made under the Agreement or produced through the use of such Inventions will be manufactured substantially in the United States, and; (3) in the event this CRADA is made with an industrial organization or other person subject to the control of a foreign company or government, taken into consideration whether such foreign government permits United States agencies, organizations, or other persons to enter into CRADAs and licensing agreements with such foreign country.

10.2 **CRADA PARTNER** hereby represents and warrants as follows:
10.2.1 CRADA PARTNER, as of the Effective Date of this CRADA, is a ________________ duly organized, validly existing, and in good standing under the laws of the State of ________.

10.2.2 CRADA PARTNER is neither foreign owned nor a subsidiary of a foreign owned entity.

10.2.3 The CRADA PARTNER hereby represents and warrants that it is not suspended, proposed for debarment or debarred from eligibility for federal procurements (i.e., contracts, grants, cooperative agreement). The CRADA PARTNER will provide timely notice (seven days or less) to the LABORATORY should this status or representation change.

11. LIABILITY

11.1 Neither Party will be liable for the consequences of any force majeure that (1) is beyond reasonable control; (2) is not caused by the fault or negligence of such Party; (3) causes such Party to be unable to perform its obligations under this CRADA; and (4) cannot be reasonably overcome by the exercise of due diligence. In the event of the occurrence of a force majeure, the Party unable to perform will promptly notify the other Party. The Parties will suspend performance only for such period of time as is necessary to overcome the result(s) of the force majeure and will use its best efforts to resume performance as quickly as possible.

11.2 Subject to Article 5.4 herein, the LABORATORY will not otherwise bear any responsibility for any property of CRADA PARTNER consumed, damaged or destroyed in performance of this CRADA. CRADA PARTNER agrees that it will release the U.S. Government from any like responsibility.

11.3 LABORATORY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE RESEARCH OR ANY INTELLECTUAL PROPERTY RIGHTS AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF MIT OR THIRD PARTIES, VALIDITY, ENFORCEABILITY, AND SCOPE OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

IN NO EVENT SHALL EITHER PARTY, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, AND AFFILIATES, BE LIABLE FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR LOST PROFITS, REGARDLESS OF WHETHER THE PARTY WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.

11.4 CRADA PARTNER hereby indemnifies and holds harmless the U.S. Government and MIT for any loss, claims, damage, or liability of any kind involving an employee of CRADA PARTNER, arising in connection with this CRADA, except to the extent that such loss, claim, damage, or liability arises solely from the negligence of LABORATORY or its employees. CRADA PARTNER shall be solely responsible for the payment of all claims for the loss of property, personal injury, or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this CRADA.

11.5 CRADA PARTNER holds the U.S. Government and MIT harmless and will indemnify them both for all liabilities, demands, damages, expenses, and losses arising out of the use by CRADA PARTNER,
or any party acting on its behalf or under its authorization, of LABORATORY’s research and technical developments or out of any use, sale, or other disposition by CRADA PARTNER, or others acting on its behalf or with its authorization, of products made by the use of LABORATORY's technical developments. The Government has no statutory authority to indemnify the CRADA PARTNER. This provision shall survive termination of this CRADA.

12. MISCELLANEOUS

12.1 No Benefits. No member of, or delegate to, the United States Congress or resident commissioner shall be admitted to any share or part of this CRADA, nor to any benefit that may arise therefrom. This Article shall not be construed to extend to this CRADA if CRADA PARTNER is a corporation and CRADA PARTNER enters into this CRADA for its general benefit.

12.2 Governing Law. The construction, validity, performance, and effect of this CRADA for all purposes shall be governed by the laws and regulations of the United States and applicable Commonwealth of Massachusetts laws that do not conflict with these Federal laws and regulations.

12.3 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.

12.4 Waivers and Severability. 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. The illegality or invalidity of any provisions of this CRADA shall not impair, affect, or invalidate the other provisions of this CRADA.

12.5 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.

12.6 Assignment. Neither this CRADA nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party.

12.7 Export Controls. Information and/or products developed pursuant to this CRADA may contain information for which export is restricted by the Arms Control Act (22 USC 2571 et seq.) or the Export Administration Act (50 USC 2401 et seq.). Nothing in this CRADA shall be construed to permit any disclosure in violation of those restrictions.

13. NOTICES

Notices and communications hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice or communication at the address given below, or such other address as may hereafter be designated by notice in writing. Formal notices under this Agreement shall be addressed as follows:
14. SIGNATURES

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

For LABORATORY:

By: Marc Bernstein
Title: Associate Director
Date:

For CRADA PARTNER:

By: 
Title: 
Date:

For MIT:

By: Michael P. Corcoran
Title: Assistant Director, Grant &Contract Administration
Date:

GOVERNMENT REVIEWING OFFICIAL:

By: Eric D. Evans
Title: Director, MIT Lincoln Laboratory
Date:
ATTACHMENT 1 - Scope of Work

[RESERVED]