

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
NOTIFICATION OF ASSISTANCE APPROVAL
(COOPERATIVE AGREEMENT)

PROJECT NUMBER: DTMA1H04004
TITLE:

EFFECTIVE DATE: September 13, 2004

TOTAL ESTIMATED AMOUNT OF THE COOPERATIVE AGREEMENT: \$300,000.00

ESTIMATED FEDERAL FUNDING: \$300,000.00

CURRENT FEDERAL OBLIGATION: \$25,000.00

OBLIGATION DATE: 10 September 2004

APPROPRIATION DATA: 4750 104 010 110000 GAL002 2523 11N46570

This Cooperative Agreement is entered into between the United States of America, hereinafter called the Government, represented by the Maritime Administration, (MARAD) and the Project Team, consisting of Parsons Brinckerhoff, Marine Engineers Beneficial Association, ABS Consulting, and Science Applications International Corporation

The parties to this Cooperative Agreement execute it by signing in the spaces provided below, as evidence and in acknowledgment of their intention to observe all the provisions hereof.

FOR THE Project Team

FOR THE THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION:

/Signed/
(Signature)

Wayne W. Leong
(Signature)

Richard Madenburg
Sr Vice President

Wayne W. Leong
Grants/Contracting Officer

Sep 9, 2004
(Date)

Sep 10, 2004
(Date)

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ARTICLE 1 - PARTIES

This COOPERATIVE AGREEMENT is entered into by and between the United States of America represented by the Maritime Administration (MARAD) and the Project Team. In addition, the following Project Partners are anticipated to be participating in this project: Department of Health and Human Services, and Department of Homeland Security.

ARTICLE 2 - AUTHORITY

MARAD enters into this Cooperative Agreement on behalf of the U.S. Department of Transportation, Security Administration (TSA) pursuant to: (1) Public Law 107-117; (2) the authority contained in the Merchant Marine Act of 1936, as amended (46 U.S.C. Appx. 1101, 1119 and 1120 and Section 207, of 46 U.S.C. Appx. 1117) pertaining to the entry into and performance of agreements and other transactions with public and private agencies, and the authorizations necessary for research and development activities.

ARTICLE 3 - SCOPE OF THE AGREEMENT

A. Background

Given the nature of recent natural phenomena (hurricanes, floods, earthquakes) as well as intentional man-caused incidents (9/11 attack, anthrax and ricin agent releases directed at the U.S. Congress) and accidental incidents (HAZMAT, industrial accidents), the need for a mobile, self-sustaining and isolatable rapid medical surge response capability is both real and immediate. The goal of this project is to identify the immediate medical and communications resources needed in the event of a terrorist attack or other disaster, match those requirements to the available vessel configurations in the reserve fleet, and examine the requirements to reconfigure the most appropriate vessels to meet the identified needs for resources. The Project Team will identify/develop the following under this Cooperative Agreement:

- Regional medical surge requirements (specific initial region to be determined)

- Characterization of medical surge vessel configuration requirements

- Review and evaluation criteria for MARAD fleet for "best fit" identification

- Cost estimates and schedules for the various program elements/phases

Draft mobilization and implementation plan
Briefing materials and documentation for U.S. Government
briefs

C. Goals/Objectives

1. The goal of this Cooperative Agreement is for the Government to assist the Project Team in the development of the requirements for Medical Surge Capabilities as outlined in the Statement of Work. The objective of this area is to develop and demonstrate innovative concepts to provide for medical surge, Command, Control, Communications, and Computers, and logistics support in the event of a terrorist attack or other disaster.
2. The Government will have continuous technical involvement with the Project Team. The Government will also obtain access to research results and certain rights in data and patents pursuant to subsequent Articles in this Cooperative Agreement. The Government and the Project Team are bound to each other by a duty of good faith and best research effort in achieving the goals of this Cooperative Agreement as set forth above and in the attached Statement of Work. The Parties agree that the principle purpose of this Cooperative Agreement is for the Government to increase the overall medical surge capability for the U.S. in the event of a terrorist attack or other disaster.

3. .

ARTICLE 4 - DEFINITIONS

As used throughout this Cooperative Agreement, the following terms shall have the meaning set forth below:

1. The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or the Maritime Administrator or Deputy Maritime Administrator of the Department of Transportation; and the term "duly authorized representative" means any person or persons or board (other than the Agreement Officer) authorized to act for the head of the agency.

2. The terms "Grants Officer" and/or Contracting Officer" means the person executing this Cooperative Agreement on behalf of MARAD, and any other employee who is a properly warranted Federal Contracting Officer.

3. Except as otherwise provided in this Cooperative Agreement, the term "subcontracts" includes purchase orders.

4. The term "MARAD" means the Maritime Administration.

5. The term "Project Team" means the commercial organization(s) participating in and legally responsible for this Agreement.

6. The term "subcontractor" means a contractor to the Project Team and all tiers of subcontractors thereunder.

7. The term "Project Partners" refers to the Cooperative Agreement's partners in the agreement.

ARTICLE 5 - REPORTING REQUIREMENTS

The Project Team shall provide the following reports to the Government:

1. Standard Form SF 269 Financial Status Report, Attachment 3, this report shall be submitted to the Agreement Officer every three months during Agreement performance and upon completion of the Agreement. Each report shall be submitted within 30 days after the conclusion of the reporting period.

3. A Final Project Report for each phase of the Cooperative Agreement, shall be submitted within 30 days after completion of this project; one copy to the Grants Officer and one copy to the Grant Officer's Technical Representative. This report should include the background leading up to the project, the goals and objectives and how they were met, and any other pertinent outcomes of performance. This report shall contain the following distribution statement on the cover page:

"Distribution authorized only to U.S. Government Agencies to protect information not owned by the U.S. Government and protected by a Project Team's "confidentiality" statement, or received with the understanding that it not be routinely transmitted outside the U.S. Government. Any requests for this document shall be referred to the Maritime Administration Office of Acquisition who will review such requests in coordination with the Office of the Chief Counsel and the Project Team."

4. In addition to any other financial reports provided or required, the Project Team shall notify the Grants Officer if any contribution from a Consortium Member or Project Partner is not made as required and the Project Team's plan of action regarding such contribution.

ARTICLE 6 - MEETINGS

1. The Grant Officer's Technical Representative and any other Government personnel deemed appropriate may participate in the regularly scheduled project meetings of the participant. The intent of such participation is to facilitate the project and to allow the Government to stay abreast of the project status.

2. The Project Team is responsible for establishing a schedule of technical/stakeholder meetings. The Cooperative Agreementtee shall notify Government representatives of the established meeting schedule and the proposed subject of each meeting. In the event of changes to the schedule, the Project Team shall notify the Government representatives with as much advanced notice as possible prior to the next scheduled meeting.

ARTICLE 7 - PERIOD OF PERFORMANCE

The period of performance of this Cooperative Agreement shall commence as of the effective date as indicated on the front of this document and shall remain in full force and effect for 12 consecutive months in accordance with its provisions, unless sooner terminated as provided for herein or extended by mutual agreement in accordance with the article entitled Modifications.

ARTICLE 8 - CONSIDERATION OF THE PARTIES

(a) The total estimated cost to accomplish this project is \$ 300,000.00 over a 12 () month period. The parties agree to provide the funding as set forth below.

ARTICLE 9 - PROJECT MANAGEMENT

1. The following are the list of Project Parnters in this project.

2. It is the full and complete responsibility of the Project Team to effectively manage this project in accordance with the terms and conditions of this Cooperative Agreement. The Grant Officer's Technical Representative shall be responsible for the review and verification of payments to the Project Team and shall have continuous interaction to cause effective collaboration between the Government and the Project Team.

ARTICLE 10 - MODIFICATIONS

1. As a result of quarterly meetings, annual reviews, or at any time during the term of the Cooperative Agreement, research progress or results may indicate that changes would be beneficial to program objectives. Minor project changes do not require prior Government approval. The following are changes that would require Government approval by written modification:

a. Major changes to the Statement of Work that effect Task/Sub-Task Milestones.

b. Changes to the budget that affect Payable Milestones.

c. Changes to the schedule that would necessitate an extension to the Period of Performance.

d. Changes to the Partnership Agreement, if such changes substantially alter the relationship or responsibilities between the members of the partnership originally agreed upon when the Cooperative Agreement was executed. This includes the replacement of any members.

e. Changes that would substantially affect the Party's contributions to the project from that which was originally agreed upon when the Cooperative Agreement was executed.

2. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted

by the Project Team to the Grants Officer with a copy to the Grants Officer's Technical Representative. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. The Grants Officer shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Cooperative Agreement, Statement of Work, Payable Milestones, or other proposed changes to the terms and conditions of this Cooperative Agreement.

3. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestone Schedule is formally revised by the Grants Officer and made a part of this Cooperative Agreement.

4. For minor or administrative Cooperative Agreement modifications (e.g., changes in the paying office or appropriation data, changes to the Government personnel identified in the Cooperative Agreement, etc.) no signature is required by the Project Team.

ARTICLE 11 - AGREEMENT ADMINISTRATION

Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

MARAD: Rilla A. Gaither, Grants Officer
DOT/Maritime Administration
Office of Acquisition, MAR-380
400 Seventh Street, SW., Room 7310
Washington, DC 20590
(202) 366-1942

Project Team:

Technical matters under this Cooperative Agreement shall be referred to the following representatives:

MARAD:

Grants Officer's Technical Representative
DOT/Maritime Administration

Project Team Representative: _____

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE 12 - GRANTS OFFICER'S TECHNICAL REPRESENTATIVE (GOTR)

(a) William Cahill is hereby designated as the GOTR for this Cooperative Agreement and is located at the address given above.

(b) The GOTR is responsible for the technical aspects of the project and technical liaison with the Project Team.

(c) The GOTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the price, terms or conditions of this Cooperative Agreement. Any Project Team request for changes shall be referred to the Grants/ Contracting Officer directly or through the GOTR. No such changes shall be made without the expressed prior authorization of the Grants/Contracting Officer. The GOTR may designate assistant GOTR(s) to act for him by naming such assistants in writing and transmitting a copy of such designation through the Grants Officer to the Project Team.

ARTICLE 13 - PAYABLE MILESTONES

Payment under this Agreement will be accomplished at predetermined intervals based on progression of work on this project. These predetermined intervals will be referred to as Payable Milestones. The Payable Milestones on this project are contained in the Statement of Work attached to this Cooperative Agreement. If at any time the proposed costs associated with the progression of work change significantly, the Payable Milestones will be modified accordingly by written modification to this Cooperative Agreement.

ARTICLE 14 - PAYMENT REQUIREMENTS

1. Prior to the submission of invoices to MARAD by the Project Team, the Project Team shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles, and with the requirements of this Cooperative Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds.

2. In no case shall the Government's financial liability exceed the amount obligated under this Cooperative Agreement. No legal liability on the part of the Government for any payment may arise for performance under this Cooperative Agreement beyond the funds obligated unless and until funds are made available to the Grants Officer for performance and until the Project Team receives written notice of availability from the Grants Officer.

3. Invoices shall be submitted on the n an original and three copies to DOT/Maritime Administration, MAR-333, Room 7325, 400 Seventh Street, SW., Washington, DC 20590. To constitute a proper invoice, the following information and/or attached documentation must be included:

- (a) Name of the business concern and invoice date.
- (b) Agreement number.
- (c) Adequate description of payable milestone.
- (d) Other substantiating documentation or information as required by the Grants Officer to support completion of such milestone.

4. The Project Team shall maintain adequate records to account for Federal funds received under this Cooperative Agreement, as well as Project Team funds contributed under this Cooperative Agreement. The Cooperative Agreement's relevant financial records are subject to examination or audit by the Government in accordance with OMB Circular A-133. The Grants Officer or designee shall have direct access to sufficient records and information of the Project Team, to ensure full accountability for all funding under this Cooperative Agreement. Such audit, examination, or access shall be performed during normal business hours on normal business days.

ARTICLE 15 - METHOD OF PAYMENT

(a) Payments under this Agreement will be made by wire transfer through the Treasury Financial Communications System. Payment will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The Project Team shall forward the following information in writing to the Grants Officer not later than 7 days after receipt of notice of award.

(1) Cooperative Agreement Number.

(2) Full name (where practicable), title, phone number, company's IRS Taxpayer ID number, and complete mailing address of responsible official(s), (i) to whom checks are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(3) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Project Team representative name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this article shall be furnished to the Grants Officer in writing at least 30 days before the effective date of change. It is the Project Team's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraph (b) and (c) must be dated and contain the signature, title, and telephone number of the Cooperative Agreement official authorized to provide it, as well as the Project Team Representative name and Cooperative Agreement number.

(e) Failure to submit information required by this article could result in delay in processing of invoices for payment.

ARTICLE 16 - INDEMNITY

The Project Team agrees to hold the Government harmless from all liability for the Project Team's own acts and omissions and the results thereof. The Project Team assumes all risk, responsibility, and liability for itself, its agents, staff, employees and research personnel for monetary or other losses to persons, properties or entities resulting in any manner from the conduct of its operations in which the products and services identified herein are utilized and/or furnished to others. The Government assumes no liability for property damage, personal injuries, or death of any of the private parties, their officers,

employees, or agents, or any other person arising from, or incident to, this agreement. The Project Team agrees to indemnify the Government from and against any and all claims, suits, actions, damages, penalties, and/or causes of action, arising out of this agreement, and from and against all costs, counsel fees, expenses and liabilities incurred in connection with such claims, suits, actions, damages, penalties, and/or causes of action.

ARTICLE 17 - SUSPENSION OR TERMINATION

As prescribed by OMB Circular A-110, the following definitions apply under this Article:

Termination - The termination of a Cooperative Agreement or other agreement means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Suspension - The suspension of a Cooperative Agreement or other agreement is an action by a Federal sponsoring agency that temporarily suspends Federal sponsorship under the Cooperative Agreement or other agreement, pending corrective action by the Project Team or pending a decision to terminate the Cooperative Agreement or other agreement by the Federal sponsoring agency.

When the Project Team has failed to comply with the terms of this Cooperative Agreement, MARAD may, on reasonable notice to the Project Team Representative, suspend the Cooperative Agreement or other agreement, pending corrective action by the Project Team, or a decision by MARAD or the Project Team to terminate in accordance with the provisions listed below for termination for cause or termination for convenience. MARAD shall allow all necessary and proper costs that the Project Team could not reasonably avoid during the period of the suspension provided that they meet the provisions of the applicable Federal cost principles.

MARAD's provisions for the systematic settlement of terminated Cooperative Agreements or other agreement include the following:

- (1) Termination for Cause - MARAD may reserve the right to terminate any Cooperative Agreement or agreement in whole or

in part at any time before the date of completion, whenever it is determined that the Project Team has failed to comply with the conditions of the Cooperative Agreement. MARAD shall promptly notify the Project Team Representative in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Project Team or recoveries by MARAD under Cooperative Agreements or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

- (2) Termination for Convenience - MARAD or Project Team may terminate Cooperative Agreements and agreements in whole or in part when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds by either party. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Project Team shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. MARAD shall allow full credit to the Project Team for the Federal share of the noncancellable obligations, properly incurred by the Project Team prior to termination.

ARTICLE 18 - DISPUTES

All disputes of fact or of interpretation under this Cooperative Agreement not disposed of by mutual agreement shall be decided by the Grants/Contracting Officer who shall reduce the decision to writing and mail a copy thereof to the Project Team Representative. Within thirty (30) days of receipt of such written decision, the Project Team for Administration, Maritime Administration. The Associate Administrator for Administration will fix a date for written submissions or oral presentations, or both, by the Project Team Representative and the Grants/Contracting Officer, or their representatives. The Associate Administrator for Administration shall hand down a written decision which shall be final and conclusive upon the parties as to questions of fact. The Contract Disputes Act of 1977 does not apply to this Cooperative Agreement. Compliance with this Article does not preclude use of any other legal remedies by the Parties.

ARTICLE 19 - PATENT RIGHTS Revise

A. Definitions

1. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

3. "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system for either Government or **Commercial utilization**.

4. "Subject invention" means any invention of a Cooperative Agreement conceived or first actually reduced to practice in the performance of work under this Cooperative Agreement.

B. Allocation of Principal Rights

1. The Project Team shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of 35 U.S.C. 203. The Project Team shall disclose each subject invention to the Government within four months after Project Team acknowledges invention.

2. If the Project Team determines that it does not intend to retain title to any such invention, the Project Team shall notify the Government, in writing, within eight months of disclosure to the Government of such decision. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government to a date that is not more than sixty calendar days prior to the end of the statutory period.

C. March-in Rights

If the Government determines that such action is necessary because the Project Team or assignee has not taken, or is not expected to take within two years from the termination of the Project Team, effective steps to achieve practical application of the subject invention then the Government has the right to

require the Project Team, an assignee, or exclusive licensee of a subject invention to Cooperative Agreement a nonexclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Project Team, assignee, or exclusive licensee refuses such a request, the Government has the right to Cooperative Agreement such a license itself.

D. Conditions when the Government May Obtain Title

Under the Government's written request, the Project Team shall convey title to any subject invention to the Government if the Project Team fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that the Government may only request title within sixty calendar days after learning of the failure of the Project Team to disclose or elect within the specified times.

E. Lower Tier Cooperative Agreements

The Project Team shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier Cooperative Agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE 20 - DATA RIGHTS

A. Additional Definitions

1. "Government purpose license rights" (GPLR), as used in this article, means rights to use, duplicate, or disclose data, 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 technical data for commercial purposes.

2. "Unlimited rights", as used in this article, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

3. "Data", as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to technical data, software, and trade secrets. The term does not include financial,

administrative, cost, pricing or management information and does not include subject inventions included under the Article entitled PATENT RIGHTS.

4. "Technical Data", as used in this article, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software, or data incidental to agreement administration, such as financial and/or management information.

B. Data Categories

The Parties agree to the following categories of Data.

1. Category A (Software) is the Project Team data developed and paid for totally by private funds prior to the effective date of this Agreement and is Data to which the Project Team retains all rights.

2. Category B (Software) is the Project Team Developed and Government funded Data which cannot be disclosed without compromising the Project Team's competitive position in the industry.

3. Category C is the Project Team Developed Data excluding Category A and B Data. None

C. Allocation of Principal Rights

2. No deliveries in Category A and B are contemplated or required under this Agreement; therefore, no rights in Category A and B Data shall be granted to the Government.

3. The Government shall have Government Purpose License Rights to Category C data for a period of two years after conclusion of the Agreement, after which two-year period, the Government shall have Unlimited Rights to Category C Data.

D. Marking of Data

Any Data delivered under this Agreement shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement No. DTMA91 _____ between the Government and the Project Team.

E. Lower Tier Cooperative Agreement

The Project Team shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier Cooperative Agreement, regardless of tier, for experimental, developmental or research work.

ARTICLE 21- FOREIGN ACCESS TO TECHNOLOGY

A. Definition

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-How" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines related to the project described in the Statement of Work.

"Technology" means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this Agreement.

B. General

The Parties agree that research findings and technology developments that may occur under this agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls

contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and

the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3 and below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company and sales or licensing of Technology.

Transfers do not include:

- (a) sales of products or components, or
- (b) licenses of software or documentation related to sales of products or components, or
- (c) transfer to foreign subsidiaries of the Project Participants for purposes related to this Agreement, or
- (d) transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. For a period of 5 years from the date of completion of the project, the Project Team shall provide written notice to the Government Program Manager and Agreement Officer of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Project Team's written notification, the Government Cooperative Agreement Administrator shall advise the Project Team whether it consents to the proposed transfer. In cases where the Government does not concur or sixty (60) calendar days after receipt and the Government provides no decision, the Project Team may utilize the procedures under the Disputes Article. No transfer shall take place until a decision is rendered.

3. For a period of 5 years upon the completion date of this project, the Project Team shall provide written notice to the Agreement Officer within 60 days prior to any proposed transfers from the Project Team of technology developed with Government funding under this agreement to Foreign Firms or Institutions. If the technology transfer is approved by the Government, the Project Team shall (a) refund to the Government funds paid for the development of the Technology and (b) negotiate a license with the Government to the Technology under terms that are reasonable under the circumstances. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Project Team, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Project Team.

D. Lower Tier Cooperative Agreement

The Project Team shall include this Article, suitably modified, to identify the Parties, in all subcontract or lower tier Cooperative Agreement, regardless of tier, for experimental, developmental or research work.

ARTICLE 22 - INSPECTIONS

The Government, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If any inspection or evaluation is made by the Government on the premises of the Project Team or the subcontractor, the Project Team shall provide and shall require all subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay the work.

ARTICLE 23 - RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

a. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Project Team and any subcontractors shall be retained for a period of 3 years, following expiration of this Agreement. If any litigation, claim or audit is started before the expiration

of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. The retention period starts from the date of the submission of the final expenditure report.

c. The head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Project Team and its subcontractors to make audits, examinations, excerpts and transcripts.

d. Unless otherwise required by law, MARAD shall not place restrictions on the Project Team that will limit public access to the records of the Project Team that are pertinent to this Agreement except when MARAD can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal sponsoring agency.

ARTICLE 24 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this provision does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

ARTICLE 25 - COVENANT AGAINST CONTINGENT FEES

The Project Team warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Project Team for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Agreement without liability or in its discretion to recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 26 - PERMITS, LICENSES AND RESPONSIBILITIES

The Project Team shall, without expense to the Government, be responsible for obtaining any necessary licenses and permits and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to performance of any work accomplished under this Agreement. The Project Team shall also be responsible for all damages to persons or property that occur, and shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

ARTICLE 27 - PAYMENT OF INTEREST ON PROJECT TEAM'S CLAIMS

If an appeal is filed by the Project Team from a final decision under the Disputes Article, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Project Team. Such interest shall be at the rate determined pursuant to Public Law 103-160 and shall be computed from the date of the request for decision by the Associate Administrator for Administration.

ARTICLE 28 - EQUAL OPPORTUNITY

During performance of this Agreement, the Project Team agrees as follows:

(1) The Project Team shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Project Team shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Project Team shall, in all solicitations or advertisement for employees placed by or on behalf of the Project Team, state that all qualified applicants will receive

consideration for employment without regard to race, color, religion, sex, or national origin.

(4) The Project Team shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(5) The Project Team shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Project Team's compliance with the applicable rules, regulations, and orders.

(6) If the Government determines that the Project Team is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Project Team may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Project Team as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(7) The Project Team shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.

ARTICLE 29 - DRUG-FREE WORKPLACE

The Certification regarding a Drug-Free Workplace is contained in Attachment 5 and is incorporated into this Agreement. The Project Team shall abide by the rules set forth in 49 CFR Part 29 Subpart F, incorporated herein by reference, with regard to maintaining a drug-free workplace and shall implement this requirement in all subawards under this Cooperative Agreement.

ARTICLE 30 - DEBARMENT AND SUSPENSION

The Project Team shall comply with the nonprocurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are

debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

ARTICLE 31 - CLEAN AIR AND FEDERAL WATER POLLUTION

The Project Team shall comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) during performance on this Agreement. Any subawards in excess of \$100,000 shall contain a provision that requires the Project Team to agree to comply with all applicable standards, orders or regulations issued pursuant to the above acts. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

ARTICLE 32 - ORDER OF PRECEDENCE

The terms set forth in the partnership Agreement, Attachment 2 to this Agreement, are subordinate to the terms and conditions of this Agreement. In the event of conflict, the terms of this Agreement, excluding Attachments, shall prevail.

ARTICLE 33 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) Definitions.

"Agency," as used in this article means executive agency as defined in 2.101.

"Covered Federal action," as used in this article, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal Cooperative Agreement.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, Cooperative Agreement, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this article, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this article, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Project Team," as used in this article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person

for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this article, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of title 31, United States Code, among other things, prohibits a Project Team of a Federal contract, Cooperative Agreement, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal Cooperative Agreement; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, Cooperative Agreement, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, Cooperative Agreement, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b) (3) (i) (A) of this article, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b) (3) (i) (A) of this article are permitted under this agreement.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b) (1) of this article, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b) (3) (ii) (A) of this article, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b) (3) (ii) (A) (1) and (2) of this article are permitted under this article.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure. (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b) (1) of this article, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c) (1) of this article. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this article.

(e) Penalties. (1) Any person who makes an expenditure prohibited under paragraph (a) of this article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this article makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this article will not be made allowable under any other provision.