



**NCCoE CONSORTIUM
EXAMPLE
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

Article 1. Introduction

- 1.1 This Cooperative Research and Development Agreement (“**Agreement**”) is entered into by and between **[Collaborator]** (“**Collaborator**”) and the National Institute of Standards and Technology (“**NIST**”) (individually or collectively known as “**Party**” or “**Parties,**” as appropriate). The Agreement will be effective when signed by all Parties (“**Effective Date**”).

Article 2. Purpose and Authority

- 2.1 The purpose of the National Cybersecurity Center of Excellence (“**NCCoE**”) EXAMPLE Consortium (“**Consortium**”) is to demonstrate and document a security platform that **[objective of consortium]** (“**Purpose**”). NIST does not evaluate commercial products under this Agreement and will not endorse any product or service used pursuant to this Agreement. Collaborator understands and agrees that NIST intends to enter into identical agreements with all participants (“**Consortium Members**”) in order to achieve the Consortium’s Purpose.
- 2.2 The Parties enter into this Agreement pursuant to the authority granted to NIST under Title 15, United States Code, §3710a.

Article 3. Research Plan

- 3.1 The research and development project which will be undertaken by this Consortium is detailed in the Statement of Work (“**SoW**”) which is included as part of Appendix A, incorporated herein by reference. The Consortium will be managed by NIST’s Principal Investigator (“**Consortium Manager**”) as identified in Appendix A.
- 3.2 Collaborator agrees to dedicate resources, as necessary, for the installation and configuration of its product, in addition to resources needed for any integration of its product with other Consortium Members’ products to support the Purpose. The research under this Agreement shall be performed on a reasonable efforts basis.
- 3.3 Each Party’s contribution to this Agreement, including personnel (“**Project Team**”) is listed in Appendix A. NIST cannot contribute funds under this Agreement. Collaborator agrees that each member of its Project Team will abide by all applicable regulations, policies and procedures applicable to NIST personnel relating to safety, security, and conduct while on NIST premises, and will adhere to applicable building and restricted area access controls.
- 3.4 **NIST Contractors.** Collaborator acknowledges and agrees that non-federal researchers (“**NIST Contractors**”), who are not employees of NIST, may work with NIST to perform research activities described in the SoW. The NIST Contractors are identified in Appendix A. NIST shall only be responsible for NIST employees to the extent permitted by the Federal Torts Claims Act.

Article 4. Proprietary Information and Publication

- 4.1 **“Proprietary Information”** means scientific, business, or financial information, including data created under this Agreement solely by Collaborator at Collaborator’s research facilities and developed exclusively at private expense, except if such information:
- i. was in NIST’s possession before receipt from Collaborator; or
 - ii. is or becomes a matter of public knowledge through no fault of NIST; or
 - iii. is received by NIST from a third party without a duty of confidentiality; or
 - iv. is disclosed by Collaborator to a third party without a duty of confidentiality on the third party; or
 - v. is independently disclosed by NIST with Collaborator’s prior written approval; or
 - vi. is independently developed by NIST without reference to information disclosed hereunder.;
- 4.2 The Parties agree that no Proprietary Information will be disclosed by either Party to the other Party under this Agreement.

Article 5. Intellectual Property

- 5.1 The Parties do not intend to conceive of any intellectual property under this Agreement. The Parties agree that all intellectual property conceived (**“CRADA Inventions”**) in the performance of the attached SoW shall be dedicated to the public domain to be freely used by all. Neither Party shall seek patent protection for CRADA Inventions nor copyright protection for any works authored in the performance of the SoW. Collaborator affirmatively declines the option to license or to acquire other interests in CRADA Inventions conceived by NIST’s employees under this Agreement. Although neither Party shall seek patent protection for any CRADA Invention, Collaborator grants to NIST, on behalf of the U.S. Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced any CRADA Invention conceived solely by Collaborator’s Project Team, throughout the world by or on behalf of the U.S. Government. Pursuant to Chapter 18 of Title 35, United States Code (commonly referred to as the Bayh-Dole Act), a NIST Contractor may elect to retain title to any subject invention conceived by the NIST Contractor under the NIST Contractor’s funding agreement. An ownership right devolving from a NIST Contractor’s election is not subject to the provisions of this Agreement.
- 5.2 Collaborator grants NIST the right to use the Collaborator’s materials, equipment, and/or software, as listed in Appendix A (**“Collaborator Equipment”**) for the Purpose of this Consortium. Collaborator agrees to work with the other Consortium Members if necessary to achieve the Consortium’s Purpose. Except for the right granted to NIST under this Agreement to use Collaborator Equipment, no other rights or licenses are granted herein by Collaborator. Collaborator Equipment provided to NIST is and shall remain at all times the property of Collaborator. NIST shall return or Collaborator shall retrieve Collaborator Equipment at Collaborator’s expense and risk as soon as practical upon expiration or termination of the Agreement, upon amendment of Appendix A, or upon receipt of subsequent updates of any Collaborator Equipment as described in Appendix A.

Article 6. Termination

- 6.1 **Termination Notices.** Collaborator and NIST each have the right to terminate this Agreement upon thirty (30) days written notice to the other Party. NIST may terminate this Agreement immediately if direct or indirect control of the Collaborator is transferred to a foreign company or government or, if Collaborator is already controlled by a foreign company or government, that control is transferred to another foreign company or government.

- 6.2 **Amendments.** Should a need arise to modify the Collaborator Project Team, description of Collaborator’s contribution or Collaborator’s contact information, Collaborator shall notify the Consortium Manager of the need for such modifications so that NIST may prepare an amendment. NIST may propose to each Consortium Member identical modifications to the terms and conditions of this Agreement or to the SoW. NIST will require all Consortium Members to adopt the same modifications to the Agreement. NIST may terminate this Agreement immediately if an amendment for such modification by NIST is not signed by Collaborator within the time prescribed by NIST. No amendment to this Agreement will be effective until fully signed by both Parties.

Article 7. Miscellaneous

- 7.1 This Agreement constitutes the entire agreement of the parties with respect to matters set forth in this Agreement, and supersedes and replaces in the entirety any prior understanding, written or oral, between the Parties concerning such matters. The Parties understand and agree that this Agreement supersedes and replaces in the entirety any subsequent software license or other type of license or evaluation agreement, including but not limited to any end-user license agreement (EULA), “shrink wrap,” or any other type of license or other agreement provided with, or required by Collaborator in connection with the use of, Collaborator Equipment, as defined above in Article 5.2.
- 7.2 Collaborator and NIST agree not to sell, distribute, sublicense, modify, translate, disassemble, reverse engineer, or otherwise alter the Collaborator Equipment belonging to and provided by other Consortium Members. The U.S. Government shall not be responsible for damage to Collaborator Equipment or other property acquired by NIST pursuant to this Agreement.
- 7.3 **NO WARRANTY. ALL MATERIALS, EQUIPMENT OR SOFTWARE PROVIDED BY EACH PARTY UNDER THIS AGREEMENT ARE PROVIDED “AS IS” WITHOUT EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITIONS OF ANY RESEARCH OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 7.4 **Advertising and Use of Name.**
- 7.3.1 Collaborator shall not use the names of NIST, the NCCoE or the Department of Commerce on any advertisement, product or service, which is directly or indirectly related to this Agreement without prior written approval by NIST. Nothing in this section prohibits Collaborator from referencing or referring to any publically available NIST or NCCoE reports and materials provided Collaborator does not imply an endorsement of any product or service.
- 7.3.2 Collaborator may use the following text on its websites, publications and promotional material without further approval by NIST.
- “[Collaborator] is working with the NCCoE in the [EXAMPLE] Use Case/Building Block to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services. NIST does not evaluate commercial products under this Consortium and does not endorse any product or service used. Additional information on this Consortium can be found at: [EXAMPLE].”

- 7.5 Collaborator agrees to comply with United States export laws and regulations, including but not limited to the International Traffic in Arms Regulations (22 C.F.R. Part 121 *et seq.*) and the Department Of Commerce Export Administration Regulations (15 C.F.R. Part 730 *et seq.*). Collaborator agrees that during the performance of work under this Agreement, no technical data created under this Agreement which is controlled by U.S. export laws and regulations shall be disclosed to any foreign national, firm, or country, including foreign nationals employed by Collaborator, without Collaborator first obtaining the appropriate licenses or approvals, if necessary.
- 7.6 Neither this Agreement 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.
- 7.7 IN NO EVENT WILL THE PARTIES BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES. Collaborator has entered into this Agreement with the understanding that each Consortium Member will agree to the preceding sentence in this Article.

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

Signatory for Collaborator:

(Signature)
Name: _____
Title: _____

Date

Address for Written Notices:

Signatories for NIST:

Henry N. Wixon
Chief Counsel for NIST

Date

Charles H. Romine
Director, Information Technology Laboratory

Date

Paul R. Zielinski
Director, Technology Partnerships Office

Date

NIST's Address for Written Notices:

NIST Technology Partnerships Office
CRADA Administrator
100 Bureau Drive, Gaithersburg, MD 20899-2200
ipp@nist.gov

Appendix A

PART I. Building Block Details

1. **Title:** [EXAMPLE] *(Parties may use this title for public disclosure and management reporting.)*
2. **NIST's Principal Investigator and Consortium Manager:** *(The P.I. for NIST may change at NIST management's sole discretion.)*

[EXAMPLE]

3. **Duration of the Agreement:** From the Effective Date to [EXAMPLE]
4. **NIST Personnel, Services, Facilities, Intellectual Property, and/or Equipment Contributions:** *(NIST management reserves the right to replace its personnel at NIST's sole discretion.)*

NIST Personnel:

- [EXAMPLE]

NIST Contractors:

- [EXAMPLE]

NIST will contribute:

- Access to ITL facilities located at 9700 Great Seneca Highway, Rockville, Maryland 20850.
- Hardware: servers, switches, disks, racks, power units, UPS, and connectivity to the internet and server capacity to accomplish goals; and
- Software: virtualization, operating systems, and appropriate software applications.

Part II. Collaborator Information

PLEASE CHECK ALL THE APPROPRIATE BOX(ES) BELOW.

1. **Collaborator Eligibility.** Collaborator certifies the following to NIST, and the Collaborator agrees to notify NIST within thirty (30) days of any change in the following:
 - Collaborator certifies that it is incorporated or organized under the laws of one of the states or territories of the United States.
 - Collaborator certifies that it is **not** subject to the control of any foreign government or foreign company.
 - Collaborator certifies that it **is** subject to the control of the following foreign government:
 - Collaborator certifies that it **is** subject to the control of the following foreign company (please also specify country):
 - Collaborator certifies that it has a manufacturing presence in the United States.
2. **Participation in other Federally Funded Projects:** Collaborator certifies that:
 - Collaborator's participation in this Consortium is not related to any research supported by other Federal or NIST Funds.

Collaborator's participation in this Consortium is related to research supported by Federal funding, which is identified as follows: _____ (attach additional pages if necessary).

3. **Collaborator's Principal Investigator(s):**

4. **Collaborator Project Team, Services, Facilities, Intellectual Property, and Equipment:** (*This section may be amended as necessary in accordance with Article 6.2.*)

Part III. Statement of Work

Objective

[EXAMPLE]

Collaborating organizations shall provide one or more of the following project components:

[EXAMPLE]

Components provided by the collaborator shall be accessible to any customers for the building block. That is, it must be available off the shelf, or as a public beta, prior to publication of the NCCoE guide that tells the public how to use the building block to satisfy security requirements.

Any cryptographic components that are provided shall include a mode conformant to Federal Information Processing Standard 140-2 (FIPS-140-2).

[EXAMPLE]