

STANDARD
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN
COMMANDER, NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND
AND
USER SYSTEMS INCORPORATED

Agreement Title:

Agreement Number: NCRADA - CNMOC - 96-002

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TABLE OF CONTENTS

Article 1.	<u>INTRODUCTION</u>
Article 2.	<u>SUMMARY</u>
Article 3.	<u>BACKGROUND</u>
Article 4.	<u>DEFINITIONS</u>
	4.1 "Agreement"
	4.2 "Computer Software"
	4.3 "Computer Software Documentation"
	4.4 "Cooperative Research"
	4.5 "Data"
	4.6 "Government Purpose License Rights"
	4.7 "Invention"
	4.8 "Made"
	4.9 "Partner(s)"
	4.10 "Patent Application"
	4.11 "Proprietary Information"
	4.12 "Restricted Access Information"
	4.13 "Subject Data"
	4.14 "Subject Invention"
	4.15 "Unlimited Rights"
Article 5.	<u>OBJECTIVES</u>
Article 6.	<u>SCOPE AND RESPONSIBILITIES</u>
	6.1 <u>Scope</u>
	6.2 <u>Responsibilities</u>
	6.2.1 CNMOC
	6.2.2 USI
Article 7.	<u>REPRESENTATIONS AND WARRANTIES</u>
	7.1 <u>of CNMOC</u>
	7.2 <u>of USI</u>
Article 8.	<u>FUNDING</u>
Article 9.	<u>REPORTING AND PUBLICATIONS</u>
	9.1 <u>USI Reports</u>
	9.2 <u>CNMOC Reports</u>
	9.3 <u>Agreement to Confer Prior to Publication</u>
	9.4 <u>Classified or Militarily Critical Technologies (MCT) Information</u>
Article 10.	<u>INTELLECTUAL PROPERTY</u>

- 10.1 Subject Data and Proprietary Information: Ownership, Rights and Use
 - 10.1.1 Ownership and Rights in Subject Data
 - 10.1.2 Use and Protection of Subject Data and Proprietary Information
 - 10.1.2.1 Protection from Release under FOIA
 - 10.1.2.2 Government Purpose License Rights in Subject Data that is Proprietary Information
 - 10.1.2.3 Rights in Proprietary Information that is Not Subject Data
 - 10.1.3 Determination and Marking of Proprietary and Restricted Access Information
- 10.2 Copyrights
 - 10.2.1 Copyright by USI
 - 10.2.2 Copyright License to the Government
 - 10.2.3 Copyright Statement
- 10.3 Patent Rights

Article 11. PROPERTY

- 11.1 Title to Pre-Existing Facilities and Equipment
- 11.2 Items Purchased by Partners
- 11.3 Title to Developed Property
- 11.4 Property Costs
- 11.5 Disposal of Property

Article 12. LIABILITIES

- 12.1 Government Liability
- 12.2 Indemnification by USI
- 12.3 Force Majeure

Article 13. GENERAL PROVISIONS

- 13.1 Characteristics of the Agreement
 - 13.1.1 Entire Agreement
 - 13.1.2 Severability
 - 13.1.3 Headings
- 13.2 Agreements between Partners
 - 13.2.1 Governing Laws
 - 13.2.2 Independent Contractors/Entities
 - 13.2.3 Amendments
 - 13.2.4 Assignment/Subcontracting
 - 13.2.5 Termination
 - 13.2.5.1 Termination by Mutual Consent
 - 13.2.5.2 Unilateral Termination
 - 13.2.5.3 No New Commitments
 - 13.2.6 Notices
 - 13.2.7 Disputes
 - 13.2.7.1 Settlement
 - 13.2.7.2 Continuation of Work
 - 13.2.8 Waivers
 - 13.2.9 Use of Name or Endorsements
- 13.3 Disposal of Toxic Wastes

- 13.4 Officials Not to Benefit
- 13.5 U.S. Competitiveness
- 13.6 Public Release of this Agreement Document

Article 14. EFFECTIVE DATE AND DURATION

Article 15. SURVIVING PROVISIONS

Article 16. SIGNATURES

APPENDIX/ATTACHMENT:

A- STATEMENT OF WORK

**STANDARD
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN
COMMANDER, NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND
AND
USERS SYSTEMS INCORPORATED**

ARTICLE 1. INTRODUCTION

Under the authority of the Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 Oct 1986), the Commander, Naval Meteorology and Oceanography Command (COMNAVMETOCCOM), and Users System Incorporated (USI), of Chesapeake Beach, MD do hereby and do enter into this Cooperative Research and Development Agreement (CRADA), which shall be binding upon both parties and their assigns according to the clauses and conditions hereof and for the term and duration set out herein.

ARTICLE 2. SUMMARY

COMNAVMETOCCOM possesses leading-edge technical skills in meteorology and oceanography which are critical to developing and maintaining a competitive world position for many U.S. corporations. USI is a small business which has participated in federal technology transfer programs and concentrates on radar signal processing systems and Synthetic Aperture Radar image processing systems. The purpose of this CRADA is to facilitate the transfer of technology between COMNAVMETOCCOM and USI.

ARTICLE 3. BACKGROUND

The Federal Technology Transfer Act of 1986, as amended, provides for making Federal laboratories' developments accessible to private industry, and to state and local governments, and for the improvement of economic, environmental and social well-being of the United States by stimulating the civil utilization of Federally-funded technology developments.

COMNAVMETOCCOM, through FLENUMMETOCCEN, has created Meteorological and Oceanographic (METOC) software programs, models, analysis techniques and databases which can be of use to the private sector. COMNAVMETOCCOM, as a result of continuing technical programs, has created leading edge technology in many METOC areas which are critical to developing and maintaining a competitive world position for many U.S. corporations, and in keeping with the Federal Technology Transfer Act, desires to make this expertise and technology available for use in the private sector.

USI has the interest, resources, and technical expertise to incorporate the Navy-developed work in products intended for sale. USI is a commercial partner in the Earth Observations Commercial Applications Program (EOCAP) and is developing data processing and presentation programs for use in weather forecasting needed by the public.

Therefore, in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the Partners agree to the foregoing objectives and recitals and further agree to the articles following.

ARTICLE 4. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings and are equally applicable to both singular and plural forms of the terms defined:

4.1 “Agreement” means this Cooperative Research and Development Agreement (CRADA).

4.2 “Computer Software” means a combination of associated computer instructions and computer data definitions required to enable computer hardware to perform computational or control functions. Computer programs and computer data bases are included.

4.3 “Computer Software Documentation” means data including computer listings and printouts in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software.

4.4 “Cooperative Research” means research performed under this Agreement pursuant to the objectives, scope and responsibilities, and statement of work by FLENUMMETOCEN or USI alone or working together.

4.5 “Data” means recorded information of any kind of a scientific or technical nature, regardless of the form or method of the recording.

4.6 “Government Purpose License Rights” (GPLR) means the right 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 data for commercial purposes.

4.7 “Invention” means any invention or discovery which is or may be patentable under Title 35 or the United States Code.

4.8 “Made”, when used in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

4.9 “Partner(s)” means the Navy participant(s) and/or the non-Navy participant(s).

4.10 “Patent Application” means U.S. or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination on any Subject Invention.

4.11 “Proprietary Information” means information which embodies trade secrets developed at private expense or which is confidential business or financial information, provided that such information:

(a) is not known or available from other sources without obligations concerning its confidentiality;

(b) has not been made available by the owners to others without obligation concerning its confidentiality;

(c) is not already available to the Federal Government without obligation concerning its confidentiality; and,

(d) has not been developed independently by persons who had no access to the Proprietary Information.

4.12 “Restricted Access Information” means Subject Data for which the Partners mutually agree that a Government Agency may provide appropriate protection, under 15 U.S.C. Section 3710a(c)(7)(B), against dissemination for a period of up to five (5) years after development of the information

in an activity conducted under 15 U.S.C. Section 3710a, provided the information would be Proprietary Information if the information had been obtained from a non-Federal Party.

4.13 “Subject Data” means all Data first produced in the performance of the Agreement.

4.14 “Subject Invention” means any Invention Made in the performance of work under this Agreement.

4.15 “Unlimited Rights” means the right to use, duplicate, release or disclose Data or Computer Software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Article 5. OBJECTIVES

The objective of this Agreement is to cooperative in the creation and improvement of software programs which processes microwave radar signals and measure near surface wind velocity over global oceans. The information derived is critical in determining regional weather partners and global climate. The Parties will exchange oceanographic surface wave model data, Advanced Earth Observing Satellite (ADEOS) satellite scatterometry data and Marine Winds Broadcast System software to display scatterometry and ocean waves data. The cooperative exchange of data, software and mutual testing of these capabilities will allow both parties to further develop this cutting edge technology.

Article 6. SCOPE AND RESPONSIBILITIES

6.1 Scope.

As agreed herein, the Partners provide data, personnel and facilities to perform cooperative research and development specified in the objectives, scope, responsibilities and statement of work. Such efforts shall support the meteorological, oceanographic and other missions of COMNAVMETOCCOM. Each party shall perform the Statement of Work (SOW), Appendix A, attached hereto by utilizing such personnel, services, facilities, or equipment as it considers necessary for its performance.

6.2 Responsibilities.

To achieve the Cooperative Research, the Partners shall provide facilities, equipment, and/or personnel for their respective tasks as set forth in Appendix A, The Statement of Work.

6.2.1 Navy Personnel, Facilities and Equipment

COMNAVMETOCCOM shall provide the personnel, facilities and equipment as it considers necessary to carry out performance under the statement of work.

6.2.2 USI Personnel, Facilities and Equipment

USI shall provide the personnel, facilities and equipment as it considers necessary to carry out performance under the statement of work.

6.3 Performance.

All technical cooperation performed will be coordinated between the parties and carried out either jointly or separately. Each party shall have exclusive control and supervision for safety purposes over operations related to this cooperation within its own facilities.

6.4 Program Management.

The work performed by COMNAVMETOCCOM will be coordinated under the program guidance of Mr. Bill Burnett, who, as the Atmospheric Programs Officer, has the responsibility for coordination of work performed on behalf of COMNAVMETOCCOM by the third parties in support of this agreement.. LCDR Don Conlee will corrdinate work within the facilities of FLENUMMETOCCEN. The exception to this will be the case of any USI representative who may perform experiments at COMNAVMETOCCOM facilities whose work will be supervised by the USI Program Manager.

The work performed by USI will be accomplished under the program guidance of Mr. Walt McCandless, who, as the USI President has the responsibility for the scientific and technical conduct of this project within the facilities of USI or facilities of other organizations working for USI in support of this Agreement and for supervision of any USI representative working at COMNAVMETOCCOM, except as stated otherwise herein.

6.5 Review of Work.

Conferences shall be held between COMNAVMETOCCOM, FLENUMMETOCCEN, and USI personnel at mutually satisfactory times and locations for the purpose of reviewing the progress of technical cooperation. It is understood that the nature of this technical cooperation is such that completion within the period of performance in the SOW cannot be guaranteed.

6.6 Change in Scope.

If at any time the parties determine that it is necessary to change the SOW, the parties shall negotiate any necessary change. Changes to the SOW that involve a change in the scope of this Agreement or extension of time beyond that stated in Article 14 shall be made in accordance with Article 13. Any changes to the SOW agreed to under the supervision of this section shall be as binding as if present when the original Agreement was signed, and the Agreement, as amended, shall remain in full force and effect.

Article 7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of COMNAVMETOCCOM

COMNAVMETOCCOM hereby represents and warrants to USI as follows:

7.1.1 COMNAVMETOCCOM is a Federal "laboratory" (P.L. 99-502) of the U.S. Navy, wholly owned by the U.S. Government, and whose substantial purpose is the performance of research, development, or engineering by employees of said Government (15 U.S.C. Section 3710a(d)(2)(A)).

7.1.2 The performance of the activities specified by this Agreement is consistent with the mission of COMNAVMETOCCOM.

7.1.3 The Official executing this Agreement has the requisite authority to do so.

7.1.4 COMNAVMETOCCOM makes no express or implied warranty as to the information or any Invention or product, whether tangible or intangible, made or developed under this Agreement, or the merchantability, or fitness for a particular purpose of the information or any Invention or product.

7.2 Representations and Warranties of USI

USI hereby warrants and represents to COMNAVMETOCCOM as follows:

7.2.1 USI, as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland.

7.2.2 USI has the requisite power and authority to enter into this Agreement and to perform according to the terms thereof.

7.2.3 The Board of Directors of USI have taken all actions required to be taken by law to authorize the execution and delivery of this Agreement.

7.2.4 The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under any material agreement binding on USI or any valid order of any court, or any regulatory agency or other body having authority to which USI is subject.

7.2.5 USI is not presently subject to debarment or suspension by an agency of the Government. Should USI be debarred or suspended, USI will so notify COMNAVMETOCCOM, who may elect to terminate the Agreement.

7.2.6 USI is not directly or indirectly controlled by a foreign company or government (Executive Order 12591, Section 4.(a)).

7.2.7 USI is a small business as defined in 15 U.S.C. Section 632 and implementing regulations (13 C.F.R. Section 121.101 et seq.) of the Administrator of the Small Business Administration. In simplest terms, this means fewer than 500 employees (see 13 C.F.R. Section 121.601).

7.2.8 USI makes no express or implied warranty as to the conditions of research or any Invention or product, whether tangible or intangible, made or developed under this Agreement, or the merchantability, or fitness for a particular purpose of the research or any Invention or product.

Article 8. FUNDING

Each Partner will fund its own efforts, including any travel which must be done to accomplish this CRADA.

Article 9. REPORTING AND PUBLICATIONS

9.1 USI Reports

USI shall submit a written report to COMNAVMETOCCOM during the term of this Agreement on the progress of its work and the results being obtained and shall make available to COMNAVMETOCCOM, to the extent reasonably necessary, Subject Data produced by USI in sufficient detail to explain the progress of the work under this Agreement. USI shall issue a final report of its results, including a listing of all Subject Inventions, to COMNAVMETOCCOM within four (4) months after completing its performance under this Agreement.

9.2 COMNAVMETOCCOM Reports

COMNAVMETOCCOM shall submit a written report to USI during the term of this Agreement on the progress of its work and the results being obtained and shall make available to USI, to the extent reasonably necessary, Subject Data produced by COMNAVMETOCCOM in sufficient detail to explain the progress of the work under this Agreement. COMNAVMETOCCOM shall issue a final report of its results, including a listing of all Subject Inventions, to USI within four (4) months after completing its performance under this Agreement..

9.3 Agreement to Confer Prior to Publication

COMNAVMETOCCOM and USI agree to confer and consult prior to the publication of Subject Data to assure that no Proprietary Information is released and that patent rights are not jeopardized. Prior to submitting a manuscript for review which contains the results of research under this Agreement, or prior to publication if no such review is made, each Partner shall be offered an ample opportunity to review such proposed publication and to file patent applications in a timely manner, if it is so entitled under this Agreement.

9.4 Classified or Militarily Critical Technologies (MCT) Information

All publications and presentations by USI of Subject Data must be unclassified material and must be cleared by COMNAVMETOCCOM for public release prior to presentation or publication to ensure that no classified, MCT (in accordance with the guidelines in the MCT list), or otherwise restricted data are included.

Article 10. INTELLECTUAL PROPERTY

10.1 Subject Data and Proprietary Information: Ownership, Rights, and Use

10.1.1 Ownership and Rights in Subject Data

Each Partner shall have title to Subject Data generated by that Partner. Each Partner, upon request to the other Partner, shall have the right to review and to request delivery of all Subject Data and delivery shall be made to the requesting Partner within two weeks of the request. USI grants to the Federal Government and Government shall have Unlimited Rights in any Subject Data generated by USI which is not Proprietary Information of USI. USI shall have Unlimited Rights in all Subject Data generated by or other data provided under this Agreement by COMNAVMETOCCOM. Each Partner will hold in confidence and treat as company Proprietary Information all Restricted Access Information for a period up to five years, as mutually agreed between the Partners. In accordance with 15 U.S.C. Section 3710a(c)(7)(B), Restricted Access Information will be protected by COMNAVMETOCCOM from release under the Freedom of Information Act, 5 U.S.C. Section 552 as long as the information meets the definition of Restricted Access Information.

10.1.2 Use and Protection of Subject Data and Proprietary Information

10.1.2.1 Protection from Release under FOIA

Subject Data which is Proprietary Information of USI is the property of USI and shall be protected by COMNAVMETOCCOM from release under the Freedom of Information Act (FOIA) for as long as the Data meets the definition of Proprietary Information. COMNAVMETOCCOM may release other USI Subject Data where such release is required pursuant to a request under the Freedom of Information Act (5 U.S.C. Section 552). COMNAVMETOCCOM shall notify USI promptly of any such request for release of USI Subject Data.

10.1.2.2 Government Purpose License Rights in Subject Data that is Proprietary Information

The Government shall have Government Purpose License Rights in any Subject Data Proprietary Information furnished by USI to COMNAVMETOCCOM under this Agreement. USI shall place a proprietary notice, in accordance with Article 10.1.3, on all information it delivers to COMNAVMETOCCOM under this Agreement which it asserts is proprietary.

10.1.2.3 Rights in Proprietary Information that is not Subject Data

COMNAVMETOCCOM agrees that any Proprietary Information that is not Subject Data and is furnished by USI to COMNAVMETOCCOM under this Agreement shall be used, reproduced and disclosed by COMNAVMETOCCOM only for the purpose of carrying out this Agreement, unless consent to other use or release is obtained from USI. USI shall place a proprietary notice, in accordance with Article 10.1.3, on all information it delivers to COMNAVMETOCCOM under this Agreement which it asserts is proprietary.

10.1.3 Determination and Marking of Proprietary and Restricted Access Information

USI shall place a proper Proprietary notice on each page of all information it delivers to COMNAVMETOCCOM under this Agreement which USI asserts is Proprietary Information. Restricted Access Information will be marked in a manner similar to the following: "RESTRICTED ACCESS INFORMATION - TREAT AS PROPRIETARY TO USI".

COMNAVMETOCCOM will review all such designated Proprietary and Restricted Access Information and, in consultation with USI, will determine whether it qualifies as "Proprietary Information" in accordance with the criteria of Articles 4.11 and 4.12.

10.2 Copyrights

10.2.1 Copyright by USI

USI may copyright works of authorship prepared pursuant to this CRADA that may be copyrighted under Title 17, U.S. Code.

10.2.2 Copyright License to the Government

USI grants a nonexclusive, nontransferable, irrevocable, royalty-free copyright license throughout the world in the exclusive rights in copyrighted works of authorship (17 U.S.C. Section 106) prepared pursuant to this Agreement to the Federal Government for Government purposes, including the right to permit others to use this license for Government purposes.

10.2.3 Copyright Statement

USI shall include the following statement on any mask work or work of authorship created in the performance of this Agreement:

"The U.S. Government has a copyright license in this work pursuant to a CRADA with Commander, Naval Meteorology and Oceanography Command and User Systems Incorporated."

10.3 Patent Rights

Employees of either Partner making a Subject Invention will report the Invention to their employer within 90 days. The Partner receiving such a report will report the same to the other Partner within 90 days after receipt of such a report. After reporting the Invention to the other Partner, the Partner entitled to own the Subject Invention shall have 90 days in which to decide whether to file, and to notify the other Partner of the decision. Upon being notified that the entitled Partner declines, or upon the expiration of the 90 days without notification, the other Partner shall have an opportunity to file and take title to the Invention, subject to the retention of a nonexclusive, irrevocable, paid-up license to practice the

Subject Invention throughout the world by or on behalf of the Partner whose employees Made the Subject Invention. Each Partner shall be entitled to own the Subject Inventions of its employees. Each Partner whose employees contributed to the Making of a jointly Made Subject Invention shall have title, in the form of an undivided interest, in the Subject Invention. COMNAVMETOCCOM gives USI the option, to be exercised within 180 days after the filing of an Application for Patent, of acquiring an exclusive license in the Government's rights in any Subject Invention. An exclusive license will be subject to a reasonable royalty. Each Partner hereby grants to the other Partner a nonexclusive, irrevocable, paid-up license to practice a Subject Invention Made by employees of the granting Partner or have that Subject Invention practiced throughout the world by or on behalf of that other Partner. Each Partner shall provide to the other Partner a written instrument, prepared in a form satisfactory to that Partner, confirming such rights to the Federal Government or to USI, as appropriate. In the event both Partners decline to file a Patent Application, both Partners renounce their entitlement and leave all rights to the inventors who may retain ownership of the Invention, subject to the granting to the Partners of a nonexclusive, irrevocable, paid-up license to practice the Invention or have the Invention practiced throughout the world by or on behalf of each Partner. No nonexclusive license conveyed under this Agreement shall be assigned, licensed or otherwise disposed of except to the successor of that part of USI business to which such license pertains.

Article 11. PROPERTY

11.1 Title to Pre-Existing Facilities and Equipment

Each Partner shall retain title to all its pre-existing property, facilities, equipment or other resources provided under the Agreement.

11.2 Items Purchased by Partners

Each Partner shall retain title to all property, facilities,, equipment or other resources which they purchased. Property purchased by the Government with USI funds shall be Federal Government Property.

11.3 Title to Developed Property

All equipment developed under this Agreement shall be the property of the developing Partner. Jointly-developed equipment having components provided by both Partners shall be the property of the Federal Government. Jointly-developed equipment having all components provided by USI shall be the property of USI.

11.4 Property Costs

During the period of and upon completion of this Agreement, each Partner shall be responsible for all costs of maintenance, removal, storage, repair, and shipping of all equipment to which it retains title.

11.5 Disposal of Property

Disposal of property will be in accordance with applicable disposal laws and regulations.

Article 12. LIABILITIES

12.1 Government Liability

The Government's responsibility for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment will be in conformance with the Federal Tort Claims Act (28 U.S.C. Section 2671 et seq.) . Except as provided by the Federal Tort Claims Act, the Government shall not be liable to USI for any claims whatsoever, including loss of revenue, profits, or other indirect or consequential damages.

12.2 Indemnification by USI

USI holds the Government harmless and agrees to indemnify the Government for all liabilities, claims, demands, damages, expenses, and losses of any kind arising out of the performance by USI or other entity acting on behalf of or under the authorization of USI under this Agreement.

12.3 Force Majeure

No Partner shall be liable for the consequences of any unforeseeable *force majeure* event that (1) is beyond their reasonable control, (2) is not caused by the fault or negligence of such Partner, (3) causes such Partner to be unable to perform its obligations under this Agreement and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a *force majeure* event, the Partner unable to perform shall promptly notify the other Partner. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the *force majeure* event.

Article 13. GENERAL PROVISIONS

13.1 Characteristics of the Agreement

13.1.1 Entire Agreement

This Agreement, with a Statement of Work, if included, constitutes the entire agreement between the Partners concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

13.1.2 Severability

The illegality or invalidity of any provisions of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

13.1.3 Headings

Title and headings of the sections and subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

13.2 Agreements between Partners

13.2.1 Governing Laws

The Partners agree that United States Federal Law shall govern this Agreement for all purposes.

13.2.2 Independent Contractors/Entities

The relationship of the Partners to this Agreement is that of independent contractors and not as agents of each other or as joint ventures or partners. Each Partner shall maintain sole and exclusive control over its personnel and operations.

13.2.3 Amendments

If any Partner desires a modification in this Agreement, the Partners shall, upon reasonable notice of the proposed modification by the Partner desiring 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 the Agreement signatories or their successors.

13.2.4 Assignment/Subcontracting

13.2.4.1 If either Partner subcontracts or grants to a third Party any portion of the work to be accomplished under this Agreement, then the contracting Partner shall remain fully responsible for that portion of the work, and the subcontractor is not a Partner to the Agreement.

13.2.4.2 Except as otherwise provided in this Agreement, this Agreement or any license thereunder shall not be assigned or otherwise transferred by any Partner without the prior written consent of the other Partner, except to the successor of that part of USI operations to which this Agreement or such license pertains.

13.2.4.3 In the event that USI or its successors or assignees shall become, during the term of this Agreement, directly or indirectly controlled by a foreign company or government (Executive Order 12591, Section 4.(a)), then USI shall immediately notify COMNAVMETOCCOM to that effect. If USI becomes foreign-controlled during the term of this Agreement, COMNAVMETOCCOM, after consultation with the U. S. Trade Representative in accordance with Executive Order 12591, may cancel any option for an exclusive or partially exclusive license to a Subject Invention and may terminate any exclusive or partially exclusive licenses of patents in Subject Inventions entered into which the Government has title, and which have been licensed under this Agreement.

13.2.5 Termination

13.2.5.1 Termination by Mutual Consent.

USI and COMNAVMETOCCOM may elect to terminate this Agreement at any time by mutual consent. In such event the Partners shall specify the disposition of all Subject Inventions and other results of work accomplished or in progress, arising from or performed under this Agreement, and they shall specify the disposal of all property in a manner consistent with this Agreement, any license hereunder and the property disposal laws and regulations.

13.2.5.2 Unilateral Termination

Either Partner may unilaterally terminate this entire Agreement at any time by giving the other Partner written notice, not less than thirty (30) days prior to the desired termination date. If USI unilaterally terminates this Agreement, any option for an exclusive or partially exclusive license to a Subject Invention and any exclusive or partially exclusive license to a Subject Invention entered into by the Partners shall be simultaneously terminated unless the Partners agree to retain such option or exclusive license.

13.2.5.3 No New Commitments

COMNAVMETOCCOM shall make no new commitments after receipt of a written termination notice from USI and shall, to the extent practicable, cancel all outstanding commitments by the termination date.

13.2.6 Notices

All notices pertaining to or required by this Agreement shall be in writing and shall be signed by an authorized representative and shall be delivered by hand or sent by certified mail, return receipt requested, with postage prepaid, addressed as follows:

If to USI:

Mr. Walt McCandless
President
User Systems, Incorporated
8195 Windward Key Dr.
Chesapeake Beach, MD 20732

If to COMNAVMETOCCOM:

Mr. Bill Burnett
Commander Naval Meteorology and Oceanography Command
1020 Balch Blvd
Stennis Space Center, MS 39529-5005

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

13.2.7 Disputes

13.2.7.1 Settlement

COMNAVMETOCCOM and USI agree to use all reasonable efforts to reach a fair settlement of any dispute. If such efforts are unsuccessful, remaining issues in dispute will be referred to the signatories or their successors for resolution. If a dispute continues, the remaining issues may be submitted to the Chief of Naval Research, or his designee, for resolution. Nothing in this Agreement is intended to prevent USI from pursuing disputes in a Federal Court of competent jurisdiction.

13.2.7.2 Continuation of Work

Pending the resolution of any dispute or claim pursuant to this Article, the Partners agree that performance of all obligations under this Agreement shall be diligently pursued.

13.2.8 Waivers

None of the provisions of this Agreement shall be considered waived by any Partner unless such waiver is given in writing to the other Partner. The failure of any Partner 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 right of any Partner hereto.

13.2.9 Use of Name or Endorsements

13.2.9 Use of Name or Endorsements

Except as provided for in Article 10.2.3, USI shall not use the name of COMNAVMETOCCOM or any other Government entity on any product or service which is directly or indirectly related to either this Agreement or any patent license or assignment associated with this Agreement without the prior approval of COMNAVMETOCCOM. By entering into this Agreement, COMNAVMETOCCOM does not directly or indirectly endorse any product or service provided, or to be provided, by USI, its successors, assignees, or licensees. USI shall not in any way imply that this Agreement is an endorsement of any such product or service.

13.3 Disposal of Toxic Wastes

Each Partner shall be responsible for the removal of any and all toxic or other material that it used, provided, or generated in the course of performing this Agreement. Each Partner shall obtain at its own expense all necessary permits and licenses as required by local, state, and federal law and shall conduct such removal in a lawful and environmentally responsible manner.

13.4 Officials Not to Benefit

No member of or delegate to the United States Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

13.5 U.S. Competitiveness

USI agrees that any products, processes or services using intellectual property arising from the performance of this Agreement shall be manufactured substantially in the United States.

13.6 Public Release of this Agreement Document

This Agreement document is releasable to the public.

Article 14. EFFECTIVE DATE AND DURATION

14.1. This Agreement shall enter into force on the date of the last signature of the Partners.

14.2. This Agreement shall terminate three (3) years after its effective date.

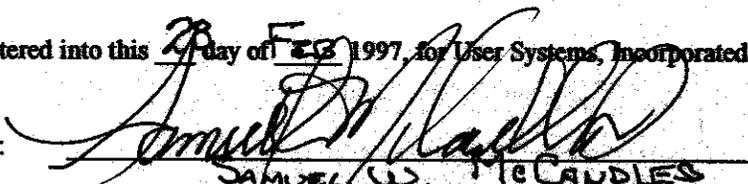
Article 15. SURVIVING PROVISIONS

The articles covering Definitions, Funding, Reporting and Publications, Intellectual Property, Property, Liabilities, General Provisions, and Surviving Provisions shall survive the termination of this Agreement.

Article 16. SIGNATURES

Entered into this 28 day of FEB 1997, for User Systems, Incorporated

By:


SAMUEL W. MCCAULES

Title: President

Entered into this 17 day of MAR 1997, for the Department of the Navy

By:



Title: Commander, Naval Meteorology and Oceanography Command

Appendix A

STATEMENT OF WORK

The Commander, Naval Meteorology and Oceanography Command (COMNAVMETOCCOM) possesses leading-edge technical skills in specific areas which are critical to developing and maintaining a competitive world position for many U.S. corporations. User Systems, Incorporated (USI) of Chesapeake Beach, MD is a participant in the National Aeronautics and Space Administration (NASA) Earth Observations Commercial Applications Program (EOCAP) handled by NASA Stennis Space Center (SSC). EOCAP is a three year effort which began in May 1995. USI is developing a product called WINDSTAR which utilizes ADEOS scatterometry data for commercial television station display purposes.

USI will be responsible for the following actions to be performed under this Agreement:

1) Provide Advanced Earth Observing Satellite scatterometry data to the following COMNAVMETOCCOM commands: FLENUMMETOCCEN Monterey, CA; NAVOCEANO Warfighting Support Center, Stennis Space Center, MS; NAVLANTMETOCCEN Norfolk, VA.; NAVEURMETOCCEN Rota, Spain; NAVPACMETOCCEN Pearl Harbor, HI; and NAVPACMETOCCEN West, Guam.

2) Provide WINDSTAR Marine Winds Broadcast System software and WINDSTAR Ocean Wave software to the following COMNAVMETOCCOM commands: FLENUMMETOCCEN Monterey, CA; NAVOCEANO Warfighting Support Center, Stennis Space Center, MS; NAVLANTMETOCCEN Norfolk, VA; NAVEURMETOCCEN Rota, Spain; NAVPACMETOCCEN Pearl Harbor, HI; NAVPACMETOCCEN West, Guam.

3) Provide the technical expertise to install, integrate, and test all hardware and software necessary to accomplish the actions listed in subparagraphs 1) and 2) above.

4) Provide operator training to personnel to be identified in the locations listed in subparagraphs 1) and 2) above on the WINDSTAR Marine Winds Broadcast System software and WINDSTAR Ocean Wave software. The training may be a combination of hands-on or classroom. The focus shall be operator hands-on through the various functions of the WINDSTAR Marine Winds Broadcast System software and WINDSTAR Ocean Wave software. Training will also include diagnostics, troubleshooting, and testing of new hardware for identified Navy technicians at each site in (1) and (2) above. All training will be accomplished concurrently with the installation of the hardware and software.

5) Provide an WINDSTAR Marine Winds Broadcast System software and WINDSTAR Ocean Wave software operator's manual for each of the subordinate COMNAVMETOCCOM commands listed in paragraphs 1) and 2) above.

6) Procure the IDL, Inc. computer language for modification as USI desires.

COMNAVMETOCCOM will be responsible for the following actions performed under this Agreement:

1) COMNAVMETOCCOM will coordinate with its subordinate commands to provide USI with technical assistance to encode and decode gridded model products from FLENUMMETOCCEN Monterey, CA.

2) COMNAVMETOCCOM will coordinate with its subordinate commands to provide USI with technical assistance in validating NSCAT wind ambiguities (i.e., the 180° problem).

3) FLENUMMETOCCEN Monterey, CA will provide USI with modeled surface wave data created from Global Wave Model, Cycle 4 output. Modeled surface wave data will be

6) Procure the IDL, Inc. computer language required for modifying the software under COMNAVMETOCOCOM SOW Item 4 as USI desires.

COMNAVMETOCOCOM will be responsible for the following actions performed under this Agreement:

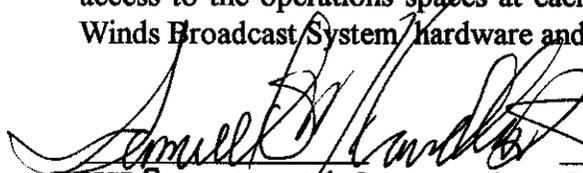
1) COMNAVMETOCOCOM will coordinate with its subordinate commands to provide USI with technical assistance to encode and decode gridded model products from FLENUMMETOCOCEN Monterey, CA.

2) COMNAVMETOCOCOM will coordinate with its subordinate commands to provide USI with technical assistance in validating NSCAT wind ambiguities (i.e., the 180° problem).

3) FLENUMMETOCOCEN Monterey, CA will provide USI with modeled surface wave data created from Global Wave Model, Cycle 4 output. Modeled surface wave data will be disseminated, twice daily, via Internet connections to USI. Data dissemination will terminate once USI receives modeled surface wave data from the National Centers for Environmental prediction (NCEP), who is chartered for public wave forecasting. COMNAVMETOCOCOM will coordinate with USI and NCEP to transfer responsibility.

4) FLENUMMETOCOCEN Monterey, CA will provide technical assistance to transfer their wave data display program to USI. The wave data display program shall be considered "Proprietary Information" for the purposes of this CRADA. USI may use the program for developmental purposes. USI will grant COMNAVMETOCOCOM rights in accordance with 10.1.2.2 if it develops a commercial version of the wave data display program. No further use or dissemination of the software program is permitted.

5) COMNAVMETOCOCOM will coordinate with its subordinate commands to provide the necessary classroom space, training aids (e.g., overhead projectors, whiteboard, markers, etc.), and access to the operations spaces at each subordinate command for installation of WINDSTAR Marine Winds Broadcast System hardware and software.


USI SAMUEL W. McCandless, Jr. COMNAVMETOCOCOM *ADDM USI*
Name & Date 28 FEB, 1997 Name & Date 3/17/97

PRESIDENT
Title

COMMANDER
Title