

A LIMITED PURPOSE  
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (LP-CRADA)  
FOR EQUIPMENT OR MATERIAL TRANSFER

FROM

COMMANDER, NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

TO

UNIVERSITY OF SOUTHERN MISSISSIPPI

AGREEMENT NUMBER: LP-CRADA-CNMOG-04-01

AGREEMENT ADMINISTRATORS:

COMMANDER, NAVAL METEOROLOGY AND OCEANOGRAPHY COMMAND

Technology Transfer Office

Point of Contact: Brenda Smith, N542, 228-688-5339

Legal Counsel: Rob Young, 00L, 228-688-5867

UNIVERSITY OF SOUTHERN MISSISSIPPI

Preferred Contact: Dr. Cecil Burge, Asst VP for Research, 601-266-5116

Principal Investigator: Dr. Grayson Rayborn, 601-266-4934

Legal Counsel: Lee Gore, 601-266-5725

A LIMITED PURPOSE  
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (LP-CRADA)  
FOR EQUIPMENT OR MATERIAL TRANSFER  
(FROM NAVY PROVIDER TO NON-NAVY RECIPIENT)

PREAMBLE

Under authority of the U.S. Federal Technology Transfer Act of 1986 (Public Law 99-502, 20 October 1986, as amended), the Department of Navy Collaborator (PROVIDER) and Non-Navy Collaborator (RECIPIENT) described below agree and enter into this Limited Purpose Cooperative Research and Development Agreement (LP-CRADA) to transfer material according to the clauses and conditions and for the term and duration set in this Agreement.

The PROVIDER is Commander, Naval Meteorology and Oceanography Command (COMNAVMETOCOM), 1100 Balch Blvd., Stennis Space Center, MS 39529-5005 whose activity, Naval Oceanographic Office (NAVOCEANO), is a Federal laboratory of the United States Department of Navy wholly owned by the U.S. Government whose substantial purpose is the performance of development or engineering for ocean activities. Naval Oceanographic Office will act as the Executive agent and will supply the Material and assistance.

The RECIPIENT is University of Southern Mississippi (USM), 2701 Hardy St., Hattiesburg, MS 39406, an University duly organized, validly existing and in good standing under the laws of the State of Mississippi. The RECIPIENT is not a small business as defined in 15 USC 632 and implementing regulations (13 CFR 121.101 et seq.) of the Administrator of the Small Business Administration. Further, the RECIPIENT is not directly or indirectly controlled by a foreign company or government (Executive Order 12591, Section 4 (a)) as of the effective date of this Agreement.

Article 1. **MATERIAL TO BE TRANSFERRED:**

PROVIDER owns, controls, or otherwise has all rights in plans, designs, test data and other information for the construction and operation of the Navy's Environmental Acoustic Recording Systems (EARS) buoy, hereafter "MATERIAL". EARS is an autonomous underwater acoustic recording device. The existing systems were designed and developed by NAVO engineers and are currently deployed worldwide for U.S. Navy applications. A "second generation (G2)" EARS has been recently developed by NAVO and currently exists as an engineering prototype. This G2 EARS has substantially increased capabilities. PROVIDER has the right to and will transfer one (1) copy of the MATERIAL within 30 days to RECIPIENT for the conduct of the research, tests, evaluation, development or engineering efforts and purposes stated below.

Article 2. **PURPOSE FOR TRANSFER:**

(a) RECIPIENT agrees that it will use the Material to perform on Office of Naval Research Grant #N00014-01-1-0914 (PURPOSE) under the direction and control of RECIPIENT's Principal Investigator (PI), Dr. Grayson Rayborn, and will follow the United States Federal statutes, rules and regulations controlling the handling and use of research equipment and/or materials of the type described as the material, as applicable. These systems will be used by USM to perform acoustic research and development. USM agrees to fabricate no more than 10 systems under this agreement. RECIPIENT agrees that it will not use the material for any commercial or production purposes. This Agreement does

not constitute or create a joint venture, partnership or formal business entity of any kind. Parties have entered into a Statement of Work which further defines the cooperative work. (Appendix 1)

(b) This Agreement is not a license in Government Intellectual Property including patents or patent applications except for the limited PURPOSE stated. This Agreement shall not be interpreted to alter any pre-existing rights to the material. PROVIDER reserves the right to provide the material to others. RECIPIENT agrees not to produce, modify or duplicate the material for any purpose unless that intention is stated as part of the research PURPOSE, subparagraph 2(a) above.

(c) If RECIPIENT desires to use the material for purposes other than the PURPOSE, RECIPIENT agrees, before beginning any such use, to negotiate a full CRADA and/or a license for any patent or other intellectual property, specific for that use, in good faith with PROVIDER as provided by Federal law. It is understood by RECIPIENT that PROVIDER shall have no obligation to grant such a license or enter into a CRADA with RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others as provided by law.

### Article 3. **PROPRIETARY INFORMATION:**

RECIPIENT agrees to protect PROVIDER's information protected by 35 U.S. Code sec 205 in the same manner in which it protects its own PROPRIETARY INFORMATION. The Parties shall confer and agree what information provided or created by the Navy PROVIDER shall be designated RESTRICTED ACCESS INFORMATION. RECIPIENT will treat RESTRICTED ACCESS INFORMATION in a manner equivalent to the manner the Government treats PROPRIETARY INFORMATION. It is RECIPIENT's responsibility to properly identify all PROPRIETARY INFORMATION.

"PROPRIETARY INFORMATION" means information that embodies trade secrets developed at private expense or business, commercial, or financial information that is privileged or confidential 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 Government without obligation concerning its confidentiality; and (d) has not been developed independently by persons who have had no access to the information.

"RESTRICTED ACCESS INFORMATION" means Subject Data generated by Navy Collaborator that would be Proprietary Information if the information had been obtained from a non-Federal Collaborator participating in a CRADA (15 USC 3710a). Under 15 USC, Section 3710a(c)(7)(B) the Collaborators mutually may agree to provide appropriate protection to Subject Data generated by the Navy Collaborator (Restricted Access Information) against public dissemination or release under the Freedom of Information Act (FOIA) for a period of up to five (5) years after development of the Information. PROVIDER and RECIPIENT will designate all RESTRICTED ACCESS INFORMATION.

"Subject Data" means that Data first recorded in the performance of the Cooperative Work.

"DATA" means all recorded information of any kind regardless of the form or method of the recording, including computer software.

"Government" means the Government of the United States of America.

The attached Nondisclosure Agreement (Appendix 2) is incorporated as part of this Agreement. If there is a conflict between the terms and conditions of Appendix 2 and this Agreement, this Agreement shall control except for time periods.

Article 4. **PUBLICATIONS:**

RECIPIENT agrees to provide appropriate acknowledgement of the source of the material in all publications. PROVIDER and RECIPIENT agree to confer and consult to provide a reasonable review period 30 days prior to the publication or presentation of DATA regarding the material to assure that no Proprietary or otherwise protected information is released and that patent rights are protected. Publication and/or presentation will be delayed for a reasonable time to afford needed protection. The RECIPIENT shall provide a report of the research results to the PROVIDER within 90 days from the testing of the material.

Article 5. **WARRANTY:**

RECIPIENT agrees that PROVIDER makes no representations and extends no warranty of any kind, either expressed or implied regarding the material. There are no expressed or implied warranties of merchantability or fitness for a particular purpose, or that the use of material will not infringe any patent, copyright, trademark, or other rights.

Article 6. **LIABILITY:**

RECIPIENT agrees to assume all risks, direct or consequential, from their use of the material. RECIPIENT is solely responsible for its actions and the actions of those acting for RECIPIENT in the performance of this Agreement and for any damages that might arise from any suit, action, or claim, and for any costs from or incidental to any suit, action, or claim, including but not limited to settlement and defense costs. Further RECIPIENT agrees that any suit, action, or claim brought by anyone not a party to this Agreement based on actions of the RECIPIENT, RECIPIENT shall not pursue any actions to enter the Government as a party to such suit, action, or claim unless the Government has some liability under the Federal Tort Claims Act.

Article 7. **RETURN OF MATERIAL:**

RECIPIENT agrees that any and all material and information regarding this material received from PROVIDER, including copies of information, shall remain the property of PROVIDER. These items will be promptly returned or destroyed at the termination of this Agreement in accordance with the directions of the PROVIDER. All requests and responses must be in writing. The material and information will be returned at no expense to the PROVIDER.

Article 8. **PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS:**

Except as expressly provided in this Agreement, no rights are provided to RECIPIENT under any pre-existing patents, patent applications, protected information or other intellectual property of PROVIDER.

Article 9. **INVENTION LICENSE:**

The RECIPIENT shall retain title to any Invention of its employees made in the performance of the PURPOSE. RECIPIENT shall notify PROVIDER of the receipt of any Invention disclosure regarding use or modification of the material. RECIPIENT grants the Government a nonexclusive, irrevocable, paid-up license to practice the Invention, or have the Invention practiced throughout the world by or on behalf of the Government. Upon request, RECIPIENT shall give the Government a written instrument, prepared in a form satisfactory to the Government confirming such rights as appropriate. "Invention" means any invention or discovery which is or may be patentable under Title 35 of the United States Code.

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

**Article 10. DELIVERY:**

It is agreed that the PROVIDER will deliver the material upon execution of this Agreement to the RECIPIENT within 30 days from the effective date of this Agreement.

**Article 11. DURATION:**

This Agreement will terminate on the earliest of the following dates:

- (1) upon completion of RECIPIENT's proposed research studies with the material, or
- (2) upon thirty (30) days written notice by either Collaborator to the other, or
- (3) 1 year from the effective date of this Agreement.

**Article 12. AMENDMENT:**

This Agreement can be amended only by a written amendment mutually agreed to and signed by the Agreement signatories or their successors.

**Article 13. ENTIRE AGREEMENT:**

This Agreement is the entire Agreement between the Collaborators concerning the PURPOSE and supersedes any prior understanding or written or oral agreement relative to the PURPOSE.

**Article 14. GOVERNING LAW:**

United States Federal Law shall govern this Agreement for all purposes.

**Article 15. FUNDS:**

It is agreed and understood that the material is furnished and the Agreement is entered into at no cost to the PROVIDER.

No funds are transferred under this Agreement from the Navy PROVIDER to the Non-Navy RECIPIENT.

**Article 16. TITLE:**

Each Collaborator shall retain title to all tangible property to which it had title prior to the effective date of this Agreement.

**Article 17. USE OF NAME OR ENDORSEMENTS:**

RECIPIENT shall not use the name of the PROVIDER or any other Government entity on any product or service that is directly or indirectly related to this Agreement without the prior approval of PROVIDER.

Article 18. **PUBLIC RELEASE OF THIS AGREEMENT:**

This Agreement document is releasable to the public.

Article 19. **EFFECTIVE DATE:**

The effective date of this Agreement is the date of execution by the last to sign.

Article 20. **NOTICES:**

All notices will be sent to the Agreement administrators or their successors at the addresses shown in the PREAMBLE.

Article 21. **SURVIVING PROVISIONS:**

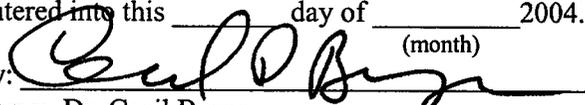
All the Articles of this Agreement shall survive its termination.

Article 22. **SIGNATURES:**

Accepted for RECIPIENT:

I, the undersigned, am duly authorized to bind University of Southern Mississippi to this Agreement and do so by affixing my signature hereto.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

By:   
(month)

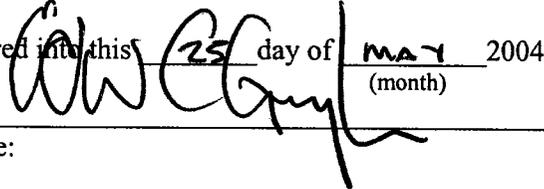
Name: Dr. Cecil Burge

Title: Associate Vice President for Research and Technology  
University of Southern Mississippi

Accepted for PROVIDER:

I, the undersigned, am duly authorized to bind COMNAVMETOCOM to this Agreement and do so by affixing my signature hereto.

Entered into this 25 day of MAY 2004.

By:   
(month)

Name:

Title:

Naval Organization:  
Commander, Naval Meteorology and Oceanography Command

## **APPENDIX 1**

### **STATEMENT OF WORK**

#### **BETWEEN**

**COMMANDING OFFICER, NAVAL OCEANOGRAPHIC OFFICE (NAVOCEANO)**

#### **AND**

**UNIVERSITY OF SOUTHERN MISSISSIPPI (USM)**

#### 1.0 Scope

Under this CRADA, NAVOCEANO will provide support to USM for the fabrication of the Navy's proprietary Environmental Acoustic Recording Systems (EARS). EARS is an autonomous underwater acoustic recording device. The existing systems were designed and developed by NAVOCEANO engineers and are currently deployed worldwide for U.S. Navy applications. A "second generation (G2)" EARS has been recently developed by NAVOCEANO and currently exists as an engineering prototype. This G2 EARS has substantially increased capabilities. Working with NAVOCEANO personnel and a potential 3<sup>rd</sup>-party fabricator, USM will fabricate and test the new design for the EARS buoys to determine its value in performing ocean related research and development activities.

#### 2.0 NAVOCEANO will be responsible for the following tasks:

2.1. Provide USM with timely access and limited license to NAVOCEANO engineering documentation for the 2D generation (G2) EARS buoy on a non-interference basis. Non-interference is defined as not wholly, solely, or substantially precluding the primary purpose of the system which is the conduct of normal activities and functions from being performed by NAVOCEANO and contracted personnel, including USM personnel assigned under this agreement.

2.2. Grants to USM a limited nonexclusive license and rights to fabricate no more than 10 EARS systems and to use unclassified data and information received under this agreement for government contracts or grants for the term of the CRADA.

2.3. Accommodate USM personnel assigned to perform tasks delineated in this agreement on a no cost basis. Accommodate is defined to include provisions of workspace and work environment equivalent to that provided for other contractor personnel.

2.4 Provide USM access to the in-place data access infrastructure.

3.0 USM will be responsible for the following tasks:

3.1 Use the EARS systems to perform acoustic research and development pursuant to Office of Naval Research Grant #N00014-01-1-0914 and other federal contracts and grants.

3.2 Build no more than 10 systems. Upon completion of the system fabrication, all documentation (original and modified) will be returned to NAVOCEANO.

3.3 Select the fabricator from the current Navy vendor list of either Neptune Sciences of Slidell, LA or OMNI Technologies of New Orleans, LA to build the buoys. Currently these (2) two local vendors have been certified by NAVOCEANO in the fabrication of EARS. This is to ensure the quality of system assembly and the concomitant utility of the engineering performance data.

3.4 Provide to NAVOCEANO system performance data and any required modifications to the prototype engineering documentation during the term of the CRADA. These modifications will include error identification and assembly efficiencies.

3.5 Provide to NAVOCEANO future EARS engineering performance data and upgraded assembly modifications for a period of 3 years with a paid up nonexclusive license to use the data for government purposes only.

3.6 Comply with licensing requirements, non-disclosure agreements, and technology transfer restrictions identified by the Counsel, Naval Meteorology and Oceanography Command (COMNAVMETOCOM).

3.7 Provide to NAVOCEANO all ocean acoustic data collected by the EARS buoys for inclusion in NAVOCEANO databases for a period of 3 years.

4.0 NAVOCEANO and USM will be responsible for the following joint tasks:

4.1 NAVOCEANO and USM will establish a Joint CRADA Working Group (JCWG) that will meet periodically to assess the status of this agreement and to ensure effective interactions between the parties. The responsibilities of the JCWG will include:

4.1.1. Engineering challenges in fabricating the new G2 EARS buoys;

4.1.2. Quality of data collected by the G2 EARS buoys;

4.1.3. New technologies to be incorporated in future models.

5.0 Review of Work.

This statement of work will be reviewed and amended by the Parties as needed throughout the lifetime of the CRADA.

Celso B... 5/21/04  
USM Date Title

Daniel Murphy 5/25/04 CO NAVO  
NAVOCEANO Date Title

## APPENDIX 2

### LIMITED GOVERNMENT PURPOSE LICENSE AND NONDISCLOSURE AGREEMENT FOR THE PRACTICE OF U.S. NAVAL OCEANOGRAPHIC OFFICE INVENTIONS FOR OR ON BEHALF OF THE UNITED STATES

**This Agreement** is entered into by and between the Naval Oceanographic Office (“NAVOCEANO”), a United States Federal Government Laboratory of the Department of the Navy, located at 1002 Balch Blvd, Stennis Space Center, MS, and University of Southern Mississippi (hereinafter “USM”) whose principal address is located at 2701 West Hardy Street, Hattiesburg, MS 39406 (hereinafter referred to individually as a Party or collectively as the Parties). This Agreement shall become effective upon the date of the last signature by the authorized representatives of each of the Parties.

#### THE PARTIES AGREE AS FOLLOWS:

**STATED PURPOSE:** The Stated Purpose of this Agreement is to provide authority to USM to use NAVOCEANO Environmental Acoustic Recording System (EARS) buoy design and related information for the purpose of performing work under Grant #N00014-01-1-0914 with the United States Navy/Office of Naval Research (USN/ONR).

#### I. SOFTWARE USAGE PROVISIONS

1. **Background.** The Naval Oceanographic Office (NAVOCEANO) has developed an engineering design primarily known as EARS. The term EARS as used herein refers to all versions of the EARS buoy. The EARS buoy is a major advancement in the state of the art of acoustic buoys. EARS and its supporting documentation may embody one or more inventions in which the Federal Government, as represented by the Secretary of the Navy, owns or may own a right, title, or interest, which is subject to confidentiality at least under 35 U.S.C. 205.

2. The EARS buoys and supporting documentation have been requested by USM for use in performing work under Grant No. N00014-01-1-0914 with the USN/ONR. NAVOCEANO hereby authorizes USM to use the EARS buoys and related documentary information for the purpose of accomplishing the work it is required to perform under USN/ONR Grant No. N00014-01-1-0914 and any other federal agency grant.

3. USM shall provide NAVOCEANO with any additions and/or modifications to the EARS buoys that it may make as part of its work under the USN/ONR contract, complete with documentation of the change or modification, to include test results. USM shall also grant NAVOCEANO Government Purpose License Rights in any such additions or modifications. Any addition or modification that USM may make in performance of the USN/ONR contract shall be referred to as USM’s version of the NAVOCEANO EARS buoys and will retain the NAVOCEANO designated name.

4. All exchanges of information under this Agreement shall be subject to the following Nondisclosure Provisions.

## II. NONDISCLOSURE PROVISIONS

1. DEFINITIONS AND SPECIFIC REQUIREMENTS. As used in this Agreement, the following terms shall have the meanings as defined.

1.1. Information. As used in this Agreement, the term "Information" includes, but is not limited to, knowledge relating to research, inventions, trade secrets, technology (including designs and specifications of components and systems, the composition of matter, methods and processes, machines and articles of manufacture, applications, and performance data), and business and financial records.

1.2. Disclosure of Information. As used in this Agreement, "Disclosure of Information" shall mean the exchange of Information orally, visually, or on any human or machine readable medium including, but not limited to, oral and visual expressions, demonstrations, audio tapes, video tapes, drawings, computer memory devices, models, prototypes and samples.

1.3. Disclosing Party. As used in this Agreement, "Disclosing Party" shall mean the Party making a Disclosure of Information to the other. Under this Agreement, either or both Parties may be a Disclosing Party.

1.4. Receiving Party. As used in this Agreement, "Receiving Party" shall mean the Party receiving a "Disclosure of Information" from the other. Under this Agreement, either or both Parties may be a Receiving Party.

1.5. Protected Information. As used in this Agreement, "Protected Information" shall mean Information provided by a Disclosing Party to a Receiving Party under this Agreement that has been clearly identified through the use of an appropriate marking that puts the Receiving Party on notice that the Disclosing Party considers the Information to be Protected Information under the terms of this Agreement. Protected Information shall not include, and the identification of Information as Protected Information shall not affect the rights of the Parties to use or disclose, Information that:

1.5.1. was available in the public domain at the time of disclosure and receipt, or subsequently becomes available in the public domain from a source other than the Receiving Party, or

1.5.2. was in the possession of or known by the Receiving Party prior to the time of the receipt from the Disclosing Party, or

1.5.3. becomes available to the Receiving Party without restriction as to its disclosure or use from a third party under circumstances permitting its disclosure by the Receiving Party, or

1.5.4. is developed at any time by or for the Receiving Party independently of the Protected Information.

1.6. APPROPRIATE MARKINGS. As used in this Agreement, "Appropriate Markings" shall mean any reasonable method by which a Disclosing Party clearly identifies to a Receiving Party that Information is being disclosed under this Agreement, and is considered by the Disclosing Party to be Protected Information. Protected Information that is disclosed in tangible form shall be clearly marked with a human readable legend, stamp or other written identification prominently affixed or attached to the medium in which the Information is conveyed. This human readable legend, stamp, or other written identification shall reference this Agreement, or shall identify the date that the Receiving Party's obligations with respect to the Protected Information will expire. Use of the marking "Protected Information" is preferred, but the Parties will also recognize other appropriate markings such as "Sensitive Information," "Proprietary Information," "Nondisclosure Information," and "Business Sensitive Information". The terms Confidential, Secret and Top Secret are established security classifications within the U.S. Government and shall not be used to mark or identify Information as Protected Information.

1.6.1. If Protected Information is disclosed orally or visually in an intangible form, the Disclosing Party shall, prior to disclosure, provide oral or written notice to the Receiving Party that it considers the Information to be Protected Information, and the Receiving Party shall treat such intangible Information as Protected Information. Within thirty (30) calendar days after notice and disclosure, the Disclosing Party shall provide an appropriately marked written summary of the intangible Information to the Receiving Party. If a properly marked written summary is not provided by the Disclosing Party within thirty (30) calendar days, the Information previously conveyed in intangible form will not be Protected Information under this Agreement.

1.6.2. If a Receiving Party has any objection to a marking placed on Information or to any summary of intangible Information transferred to it by the Disclosing Party as Protected Information, the Receiving Party shall, within ten (10) working days of receipt of such Information or summary of intangible Information, bring such objection to the attention of the Disclosing Party. If the Parties are unable to mutually resolve the objection, the Receiving Party shall immediately return the challenged Information or summary to the Disclosing Party.

## 2. AUTHORIZED ACCESS AND DISCLOSURE.

2.1. A Receiving Party shall not use or disclose Protected Information other than in accordance with the terms and conditions of this Agreement.

2.2. A Receiving Party shall take reasonable and appropriate measures to safeguard Protected Information from misuse, theft, loss, destruction, and unauthorized disclosure. Such measures shall be no less than that degree of care the Receiving Party normally takes to preserve and safeguard its own proprietary Information. The Parties shall not be liable for the use or disclosure of Protected Information used or disclosed despite the exercise of reasonable care provided that, upon discovery of any unauthorized use or disclosure, it promptly notifies the

Disclosing Party in writing and takes action to prevent further disclosure and to recover any Protected Information already disclosed.

2.3. If Protected Information is included in any analyses, reports, or other documents or physical embodiments prepared by the Receiving Party, all such documents and embodiments shall be appropriately protected by the Receiving Party in the same manner as the Receiving Party protects the source Protected Information.

2.4. A Receiving Party may provide access to Protected Information to its own employees who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Prior to being granted access to Protected Information, employees of a Receiving Party shall be advised concerning the requirements and restrictions of this Agreement, directed to use and protect the Protected Information properly, and not to disclose Protected Information without proper authorization. The Receiving Party will document which of its employees have been granted access to Protected Information and so advise the Disclosing Party upon request.

2.5. A Receiving Party may provide access to Protected Information to its agents, service contractor employees, collaborators and other non-Parties to this Agreement who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Before any such non-Party organizations or individuals are granted access to Protected Information, the Receiving Party shall notify and obtain the concurrence of the Disclosing Party. The Receiving Party shall also require non-Party organizations and individuals (other than U.S. Government officers and employees who are prohibited by the Trade Secrets Act, 18 U.S.C. 1905, from making unauthorized use or disclosure of Protected Information) to execute the Supplemental Agreement at Appendix I prior to disclosing any Protected Information.

2.6. A Receiving Party shall not disclose Protected Information to any person (including its own employees), nor shall a Receiving Party export any Protected Information from the United States, if such disclosure or export would violate the Arms Export Control Act, the International Traffic in Arms Regulation (22 C.F.R. Part 121 *et seq.*), the Export Administration Act, the Department of Commerce Export Regulation (15 C.F.R. Part 770 *et seq.*), the DoD Industrial Security Regulation (DoD 5220.22-R), or any other law or regulation of the United States. A Receiving Party shall first obtain the written consent of the Disclosing Party before requesting authority to export Protected Information from the United States.

2.7. The following individuals are designated as the principal points of contact for the transmittal and receipt of Protected Information under this Agreement.

For NAVOCEANO:

For USM:

Dr. Mike Wild

Dr. Cecil Burge

### 3. GENERAL PROVISIONS.

3.1. All Protected Information owned by a Disclosing Party shall remain the property of the Disclosing Party. Protected Information in tangible form may be retained in the possession of the Receiving Party after termination or expiration of this Agreement only to the extent expressly authorized by the Disclosing Party. Within thirty (30) days after termination or expiration of this Agreement, or upon receipt of a written demand from the Disclosing Party for the return of Protected Information, the Receiving Party shall promptly return (or destroy, if so requested) all tangible forms of Protected Information received from the Disclosing Party. If destruction is requested, the Receiving Party will provide written notification to the Disclosing Party certifying that the destruction has been accomplished.

3.2. If samples, models, prototypes, computer programs, or other such embodiments are disclosed as Protected Information, the Receiving Party will not attempt to reverse engineer or otherwise analyze such items unless the written approval of the Disclosing Party is obtained prior to engaging in reverse engineering or analysis.

3.3. Each Party shall bear its own costs and expenses incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party.

3.4. This Agreement shall not be construed as a Teaming Agreement, Joint Venture, or any other such agreement nor shall it be construed as a commitment to procure or provide any specific products or services. Nothing contained herein shall be construed to grant or confer any rights other than to use the Protected Information for the Stated Purpose under the terms of this Agreement, nor shall anything herein be construed to grant license or other rights to any patents, trademarks, copyrights or other intellectual property whatsoever. The Parties expressly agree that this is an Agreement for protecting Information only.

3.5. A receiving Party shall accept all protected information and embodiments thereof on an "as is" basis. The disclosing party makes no warranty or representation of merchantability or fitness for any purpose.

3.6. Either Party, upon thirty (30) days written notice to the other Party, may terminate this Agreement.

a. Duration. Unless sooner terminated, this Agreement shall expire one (1) year from its effective date.

b. Effective Period. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by a Receiving Party with respect to protection, use, disclosure and return or destruction of Protected Information shall survive and remain in effect for three (3) years from the date the Protected Information was received.

3.7. This Agreement may not be assigned by either Party without the prior express written authorization of the other Party. All obligations incurred by a Receiving Party under this Agreement with respect to Protected Information shall be binding on its authorized successors and assigns.

3.8. This Agreement shall be governed by the Federal laws of the United States.

3.9. In the event a Receiving Party is subjected to any legal process that seeks to require it to produce Protected Information for inspection or review in a judicial or administrative proceeding, the Receiving Party shall promptly provide notice and a copy of the legal process to the Disclosing Party in order that the Disclosing Party may have an opportunity to challenge the legal process or seek a protective order. If, in the absence of a protective order, a Receiving Party is compelled to produce Protected Information to a tribunal or be found liable in contempt and subjected to a penalty, the Receiving Party may disclose such Protected Information to the tribunal provided the Protected Information so disclosed is clearly marked as Protected Information.

III. MODIFICATION and TERMINATION PROVISIONS

1. This Agreement constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreements, representations and understandings of the Parties with respect to the disclosure of Information covered by this Agreement. It shall not be suspended, modified, or amended except by written agreement of the Parties. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be found invalid or unenforceable.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized representatives who also warrant their authority to enter into the Agreement on behalf of their respective Parties:

FOR THE NAVAL OCEANOGRAPHIC OFFICE:

\_\_\_\_\_  
Name:

Title:

Date: 5-26-04

FOR THE UNIVERSITY OF SOUTH MISSISSIPPI:

\_\_\_\_\_  
Name:

Title:

Date: 5/21/04

ANNEX I  
SUPPLEMENTAL NONDISCLOSURE AGREEMENT

In consideration of being allowed access to Protected Information under the above basic Nondisclosure Agreement between the Naval Oceanographic Office and \_\_\_\_\_, the Undersigned agrees that:

The basic Nondisclosure Agreement has been read and the requirements and restrictions with respect to the use, protection, disclosure, and return or destruction of Protected Information are understood. The terms of the Agreement with respect to the use, protection, disclosure, and return or destruction of Protected Information will be complied with by the Undersigned to the same extent as if the Undersigned were an original Party and signatory to the basic Nondisclosure Agreement. When the Undersigned signs this Agreement as the representative of an Organization, the Undersigned will ensure that all individuals who are authorized access to Protected Information through the Organization will sign and enter into this Supplemental Nondisclosure Agreement before being granted access to Protected Information.

IN WITNESS WHEREOF, the Undersigned has hereto subscribed individually and/or as representatives of the named Organization.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (Print or Type)

\_\_\_\_\_  
DATE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name and Address of Organization