

EQUIPMENT TRANSFER AGREEMENT

This Equipment Transfer Agreement ("ETA" or "Agreement") is entered into between the Naval Research Laboratory, a United States Federal Government Laboratory of the Department of the Navy ("NRL"), having a place of business located at 4555 Overlook Avenue SW, Washington, D.C. 20375 and **Instituto Geofísico del Perú**, a research institute ("Recipient"), located at **Calle Badajoz 169, Urb. Mayorazgo, IV Etapa - Ate, Lima PERU**. NRL and Recipient may be referred to herein individually as a "Party" or collectively as the "Parties." The "Effective Date" of this Agreement shall be the date of last signature below of the authorized representatives of the Parties. In consideration of the mutual covenants set forth below, the sufficiency of which is acknowledged by each Party, the Parties agree as follows:

1. EQUIPMENT TRANSFER

1.1 Under the authority of 10 U.S.C. § 2539b, NRL shall loan to Recipient four (4) NWRA ITS33 receivers (collectively, the "Equipment") for the limited purpose of installing, maintaining and collecting data from the NRL CERTO beacon in support of the CARE experiment to determine the effect of charged particle layers on the scatter of MF, HF, VHF, UHF, L-Band and S-Band radars ("Purpose"). Recipient may use the Equipment only as provided in this Agreement for the Purpose described herein. No other rights to the Equipment are provided under this Agreement. Other than as permitted by this Agreement, Recipient shall not transfer the Equipment, or any portion or derivative thereof or data related thereto, to any third party without the prior written consent of NRL. Recipient shall use the Equipment in compliance with all applicable laws, rules and regulations relating to the handling and use of such Equipment. No monetary compensation will be paid by either Party for the rights and obligations under this Agreement, except to the extent that a) NRL shall bear all reasonable expenses relating to the shipment and importation of the Equipment into Peru; and b) Recipient shall bear all reasonable expenses relating to the operation and maintenance of the Equipment, the primary source of which is via funding from its Jicamarca project, subject to availability.

1.2 ALL MATERIAL IS PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY WARRANTIES OF ACCURACY OR COMPLETENESS OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE OR VIOLATE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY (WHETHER DIRECTLY OR INDIRECTLY). Recipient agrees to rely solely upon its own opinion of the Equipment with regard to its suitability for any purpose.

2. OWNERSHIP; RECORDS; INTELLECTUAL PROPERTY

2.1 Recipient acknowledges that all of the Equipment transferred to it under this Agreement by NRL is the sole property of NRL. This Agreement does not constitute a sale of the Equipment from NRL to Recipient and does not create in Recipient any rights in the Equipment other than expressly provided for in this Agreement. Recipient agrees that the Equipment is not for resale, whether in its original state as provided, altered, or as a part of any product produced by Recipient. Upon the written request of NRL, Recipient promptly shall return the Equipment to NRL.

2.2 Recipient shall maintain records related to its disposition of the Equipment to the extent required by applicable law and

regulation. NRL shall have the right to view such records at reasonable times upon reasonable notice to the extent permitted by law and regulation.

2.3 The Parties mutually acknowledge that the provisions of 35 U.S.C. §§ 200-212 (which establish rights of the United States in inventions made in the performance of work funded, in whole or in part, by the United States Government) and 37 C.F.R. § 501.6(a)(1) (which establishes rights of the United States in inventions made by Government Employees) apply to the use of the Equipment by Recipient for the Purpose described herein. To the extent the Recipient asserts it is entitled to rights in inventions made using the Equipment, it shall notify NRL in writing.

2.4 Nothing in this Agreement shall, by express grant, implication, estoppel or otherwise, create in the Recipient any right, title, interest, or license in or to the inventions, patents, technical data, computer software, software documentation or other intellectual property of NRL.

3. NON-DISCLOSURE

3.1 Recipient receiving information from NRL that is clearly marked/identified as or acknowledged to be confidential or proprietary, or that should reasonably be considered to be confidential or proprietary due to its nature or the context of its disclosure ("Protected Information"), shall maintain all such information in confidence and not use, disclose or grant the use of such information except as provided for in this Article 3.

3.2 Recipient shall use at least the same level of measures to protect NRL's Protected Information as it takes to protect its own Protected Information of like importance. Recipient may not copy NRL's Protected Information, or reverse engineer or disassemble any technology or tangible objects that utilize such Protected Information. Recipient shall promptly notify NRL upon discovery of any unauthorized use or disclosure of NRL's Protected Information.

3.3 Recipient may make disclosures to its agents, service contractor employees, collaborators and other non-Parties to this Agreement who reasonably require such access in order to accomplish the Purpose. Before any such non-Party organizations or individuals are granted access to Protected Information, Recipient shall notify and obtain the concurrence of NRL by requiring the non-Party organization/individual to execute the Supplemental Agreement at Appendix A prior to any such disclosure.

3.4 The non-disclosure obligations in Section 3.1 above shall not apply to the extent that (a) Recipient is required to disclose information by law, order or regulation of a governmental agency or a court of competent jurisdiction, provided that the Recipient provides written notice thereof to NRL prior to any disclosure and sufficient opportunity to object to any such disclosure or to request confidential treatment thereof, or (b) Recipient can demonstrate that (i) the disclosed information was public knowledge at the time of such disclosure to Recipient, or

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thereafter became public knowledge, other than as a result of actions of Recipient in violation hereof; (ii) the disclosed information was rightfully known by the Recipient without restriction (as shown by its written records) prior to the date of disclosure to Recipient hereunder; or (iii) the disclosed information was disclosed to Recipient on an unrestricted basis from a source unrelated to any Party to the Agreement and not under a duty of confidentiality to NRL. Recipient shall, at NRL's request and expense, cooperate with NRL in contesting or limiting requests that may arise under part (a) of this Section 3.4.

3.5 All Protected Information of NRL shall remain the property of NRL and will be returned to NRL or destroyed at its request or within thirty (30) days of the expiration or termination of this Agreement. Within thirty (30) days of receiving such a request from the NRL, Recipient shall comply with the request and provide a written certification, signed by an officer, of its compliance.

3.6 Recipient shall not disclose Protected Information to any person (including its own employees), nor shall Recipient 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. Recipient shall first obtain the written consent of NRL before requesting authority to export Protected Information from the United States.

3.7 The individuals identified below are designated as the primary point of contact for the exchange of Protected Information pursuant to this Agreement:

Naval Research Laboratory	Instituto Geofísico del Perú
ATTN: Dr. Paul Bernhardt	ATTN: Dr. Jorge Chau
Code 6754	
4555 Overlook Ave SW	Apartado 13-0207
Washington, DC 20375	Lima 13 PERU
202-767-0196	(51)-1-3172313
Paul.bernhardt@nrl.navy.mil	jorge.chau@igp.gob.pe

4. TERM & TERMINATION

4.1 The term of this Agreement shall be five (5) years from the Effective Date, and shall automatically renew thereafter until project completion, unless earlier terminated at any time by either Party upon thirty (30) days' prior written notice to the other Party. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by Recipient 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.

4.2 Expiration or termination of the Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination. The provisions of Sections 1.2, 2, 3, 4.2, 5, and 6 shall survive any expiration or termination of this Agreement.

5. LIABILITY

5.1 Recipient shall be solely liable for all claims and/or damages which may arise from Recipient's use, storage or disposal of the Equipment under this Agreement. Recipient shall not be liable to NRL for any damage or loss incurred by NRL, or for any claim, action or demand made against NRL, due to or arising from the use of the Equipment by NRL, except to the

extent any such claim, action, or demand results from the gross negligence or willful misconduct of a person acting for Recipient.

5.2 NRL shall be solely responsible for any damage or loss resulting from the acts of NRL employees in performance of this Agreement to the extent that such liability may be established and pursued against NRL under the Federal Tort Claims Act (FTCA, 28 U.S.C. §§ 2671 *et seq.*) and implementing regulations and/or under other applicable U.S. Federal laws that specifically waive the sovereign immunity of the United States. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the United States.

6. GENERAL

6.1 Governing Law. If a dispute, controversy, or claim between the Parties relating to this Agreement shall arise, the Parties shall first attempt to settle such matter through informal dispute resolution. If any such matter can not be resolved informally, applicable U.S. Federal laws shall govern this Agreement for all purposes.

6.2 Equitable Relief. Recipient acknowledges that any disclosure or unauthorized use of the Equipment could constitute a material breach of this Agreement and possibly cause substantial harm to NRL for which damages might not be a fully adequate remedy. In the event of any such breach, in addition to other available remedies, NRL shall have the right to seek injunctive relief without being required to post any bond or other security.

6.3 Submissions and Notices. Delivery of all matters required or permitted to be submitted in writing under this Agreement shall be considered timely made if, by the due date, they: (1) have been personally delivered or delivered through U.S. Mail; or, (2) properly addressed and sent prepaid via (a) commercial overnight delivery service or (b) facsimile (followed by telephonic confirmation). Each Party from time-to-time may change the point-of-contact/address information listed below by notice to the other Party. The individuals identified below are designated as the primary point of contact for receiving notices under this Agreement:

Naval Research Laboratory	Instituto Geofísico del Perú
ATTN: Patricia Festin	ATTN: Dra. Mary Amayo
Office of Counsel	Legal Department
4555 Overlook Ave SW	Calle Badajoz 169
	Urb. Mayorazgo, IV Etapa
Washington, DC 20375	Ate - Lima PERU
(202) 767-7608	+51-1-3172300
Patricia.festin@nrl.navy.mil	mary.amayo@igp.gob.pe

6.4 Assignment. Neither Party shall transfer, delegate, or assign this Agreement or any portion thereof without the other Party's prior written consent. Any attempted assignment by a Party in violation of this Section shall be null-and-void. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

6.5 Independent Contractors. 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 partnership, joint venture, agency, contract, subcontract, or other business relationship with the other Party. Neither Recipient nor NRL shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior consent of the Party to do so.

6.6 Entire Agreement. This Agreement (including all exhibits attached hereto) contains the entire agreement between the Parties and supersedes any prior and/or contemporaneous understandings, proposals and agreements, whether written or oral, between the Parties relating to the subject matter of the Agreement. No modification or waiver of this Agreement shall be binding unless made in writing and signed by the Parties to this Agreement. Failure by either Party to enforce any provision of

this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

6.7 Severability. If any provision or term of this Agreement is held to be invalid by a court of competent jurisdiction, then such provision or term will be enforced to the maximum extent possible so as to affect the intent of the Parties and the remaining terms of this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed and delivered the Agreement as of the Effective Date set forth above.

INSTITUTO GEOFISICO DEL PERU:

Signature: Ronald Woodman

Name: Dr. Ronald F. Woodman

Title: Executive President

Date: 5/17/2011

NAVAL RESEARCH LABORATORY:

Signature: John Montgomery

Name: Dr. John Montgomery

Title: Director of Research

Date: 5/22/2011

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