



Department of the Air Force Model Technology Transfer Agreements

Section J

Introduction

This section includes model technology transfer agreements to be used as guidance when executing a transfer or initiating a technology transfer activity. All agreements, including deviations from the model must be coordinated with your servicing legal office.

Model Agreement *Page Number*

I. Patent Licenses

- A. Nonexclusive Patent License under AFI 51-303.....1
- B. Exclusive Patent License under AFI 51-303.....11
- C. Exclusive Patent License Under a CRADA..... 23



II. Patent Assignments



- A. Patent Assignment under 61-302..... 35
- B. Patent Assignment under 35 U.S.C. 202(e)..... 45

III. Cooperative Research and Development Agreement



- A. Suggested Format 51
- B. Use of CRADA Income, Patent Royalties, and Statutory Awards Authority Under the Federal

- Technology Transfer Act.....53
- C. Model Agreement.....71

IV. Education Partnership

- Agreement.....82

V. Commercial Test

- Agreement.....91



VI. Partnership Intermediary Memorandum

- of Understanding.....99

VII. Other

- Transactions.....117



VIII. Nondisclosure Agreement.....139

IX. Unsolicited Proposal Guide..... 142

X. Technology Investment

- Agreement..... 167



I. PATENT LICENSES

A. Nonexclusive Patent License Under AFI 51-303

PATENT LICENSE AGREEMENT BETWEEN
THE DEPARTMENT OF THE AIR FORCE
AND
(LICENSEE NAME)
NONEXCLUSIVE LICENSE

PREAMBLE

This Nonexclusive License Agreement, (hereinafter called "LICENSE") is made and entered into by and between the United States of America as represented by the Secretary of the Air Force (hereinafter called "LICENSOR"), and (Company), a corporation of _____, having a place of business at (Address), (hereinafter called "LICENSEE").

WITNESSETH:

Whereas, Public Law 96-517, Chapter 38 "Patent Rights In Inventions Made with Federal Assistance," as amended, and Title 37 of the Code of Federal Regulations, Part 404 entitled "Licensing of Government Owned Inventions" set forth the terms and conditions under which licenses under federally owned inventions may be granted;

Whereas, Air Force Instruction 51-303 sets forth the policy for licensing of rights in federally owned patents and patent applications in the custody of the Department of the Air Force;

Whereas, the above-cited authorities support the proposition that licensing of Government inventions will best serve the public interest when such inventions are developed to the point of PRACTICAL APPLICATION and made available to the public in the shortest possible time;

Whereas, LICENSOR has determined that the grant of this LICENSE will neither tend to substantially lessen competition nor result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, nor create nor maintain other situations inconsistent with the antitrust laws;

Whereas, LICENSOR has an assignment of title in U.S. Patent (Application) No. entitled, ("Title") and issued on (date).

Whereas, LICENSEE has submitted a plan to undertake the development and marketing of the LICENSED INVENTION and has expressed its intention to carry out this plan upon the granting of this LICENSE; and

Whereas, LICENSOR has considered the capabilities of LICENSEE to undertake development and marketing of the LICENSED INVENTION and has found that the LICENSEE is a responsible party for negotiating this LICENSE on terms and conditions most favorable to the public interest and that to grant this LICENSE would be in the public interest;

NOW THEREFORE, in accordance with and to the extent provided by the aforementioned authorities and in consideration of the foregoing premises and of the covenants and obligations hereinafter set forth to be well and truly performed, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE 1 - Definitions

The parties to this LICENSE agree that the following definitions shall apply to the defined words where such words are used in this LICENSE:

1. The "LICENSED INVENTION" or "LICENSED PATENT" means the invention as described and claimed in the following patent(s) or patent application(s), including continuations, divisions, reexaminations, and reissues thereof, assigned to the LICENSOR:

U.S. Patent (Application) No. (Number) patented on (Date), entitled "(Title)," Serial No. (Number) filed (Date).

2. "CALENDAR QUARTERS" are those three month periods commencing on January 1, April 1, July 1 and October 1.

3. "LICENSE YEAR" - The first LICENSE YEAR commences on the EFFECTIVE DATE of this LICENSE and extends to the start of the next calendar quarter plus the following four full CALENDAR QUARTERS. The second LICENSE YEAR commences at the expiration of the first LICENSE YEAR and extends for the next succeeding four CALENDAR QUARTERS. Later LICENSE YEARS commence on the anniversary date of the start of the second LICENSE YEAR.

4. The "EFFECTIVE DATE" of this LICENSE shall be the date of the signing of this LICENSE without modifications by the Secretary of the Air Force or his designee, after execution thereof by the LICENSEE.

5. "ROYALTY BEARING PRODUCT" means a product produced by the LICENSEE or a SUBLICENSEE incorporating the LICENSED INVENTION.

6. "GROSS SALES PRICE" means the invoice price or lease income of the ROYALTY BEARING PRODUCT sold or leased by LICENSEE to an arms length buyer (or if not sold to an arms length buyer, the invoice price of a like quality and quantity of product). This includes packaging and shipping costs paid by the purchaser. Sales tax, excise tax, use tax or similar taxes are subtracted from the GROSS SALES PRICE before determining royalty.

Where the ROYALTY BEARING PRODUCT is not sold or leased separately, but is sold or leased in combination with or as part of other products, the GROSS SALES PRICE shall be calculated for the purpose of computing royalties due by applying to the GROSS SALES PRICE of each of the combined or composite products a fractional multiplier having as its

denominator the total manufacturing cost of the combined or composite products (determined in accordance with LICENSEE's customary accounting procedures), and as its numerator the manufacturing cost of the included ROYALTY BEARING PRODUCT (similarly determined).

7. "LICENSED TERRITORY" means the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia.

8. "PRACTICE THE LICENSED INVENTION" means to make, have made, use, lease, sell, or otherwise dispose of a ROYALTY BEARING PRODUCT incorporating the LICENSED INVENTION by or for the account of the LICENSEE or SUBLICENSEE.

9. "PRACTICAL APPLICATION" means to manufacture or utilize the LICENSED INVENTION under such conditions as to establish that its benefits are, to the extent permitted by law or Government regulation, made available to the public on reasonable terms.

10. A "SUBSIDIARY" is a legal entity that is at least 50% owned, or otherwise controlled by LICENSEE. The term "LICENSEE" includes a "SUBSIDIARY" of LICENSEE under this LICENSE. Thus a SUBSIDIARY is not an arms length buyer of Section 6 of this Article.

11. "SUBLICENSES" are licenses granted by the LICENSEE to a third party other than a SUBSIDIARY, to enable such third party to exploit the LICENSED INVENTION for its own account.

12. "DEVELOPMENT PLAN" means the plan set out in an application for license submitted to the Department of the Air Force by letter from LICENSEE directed to (Air Force Organization).

ARTICLE 2 - License Grant

1. LICENSOR grants to LICENSEE a nonexclusive, royalty bearing license to PRACTICE THE LICENSED INVENTION in the LICENSED TERRITORY.

2. This LICENSE shall be nonassignable by LICENSEE without prior written approval of LICENSOR, except to the successor of that part of the LICENSEE's business to which the LICENSED INVENTION pertains.

ARTICLE 3 - Royalties, Royalty Report and Payment

1. Upon execution of this LICENSE by LICENSEE, LICENSEE shall pay LICENSOR, a sum in the amount of (Dollars) Dollars (\$) for initial nonexclusive use of the LICENSED PATENT.

2. LICENSEE shall pay LICENSOR a running royalty of (Royalty)% of the GROSS SALES PRICE of each ROYALTY BEARING PRODUCT sold or otherwise disposed of by LICENSEE in accordance with this LICENSE until the expiration date of the patent

licensed hereunder. Payment of the running royalty shall be made at the end of each LICENSE YEAR in the manner set forth in the following section.

Should LICENSEE otherwise use the LICENSED INVENTION to earn revenue, running royalties payable to LICENSOR shall be (Royalty)% of such revenues received from third parties, other than sublicensees, attributed to such use.

3. LICENSEE shall furnish LICENSOR with a statement, within two months following the end of each LICENSE YEAR, setting forth the quantity and net sales price of ROYALTY BEARING PRODUCTS sold or otherwise disposed of by LICENSEE under this LICENSE during the LICENSE YEAR, and the royalty payment due. Payment shall accompany the statement. If no royalty is owed, the statement shall so indicate. A product shall be considered sold when billed-out, or shipped, or paid for, whichever occurs first.

4. Should LICENSEE fail to make timely payments in accordance with this LICENSE, LICENSOR may put LICENSEE on written notice of such default, and LICENSEE may remedy the default by payment of all monies due LICENSOR within one (1) month of the date of transmission of the written notice, to maintain this LICENSE in effect. Should the default not be cured by the end of said month, LICENSOR has the right to terminate this LICENSE by giving written notice of termination to LICENSEE, whereupon this LICENSE becomes terminated. However, termination for any reason does not relieve LICENSEE of the obligation to pay past running royalties accrued prior to the effective date of termination.

5. Sales to or for the Government are not subject to the earned running royalties set forth hereinabove, provided that LICENSEE identifies such sales by Government contract number or other suitable evidence, submitted with the aforesaid royalty reports.

6. Should LICENSEE receive sublicensing royalty payments from sublicensees in accordance with this LICENSE, LICENSEE shall pay LICENSOR (Sublicense Royalty) percent of such sublicensing royalty payments along with the written royalty statement, indicating the amounts of royalties paid LICENSEE by its sublicensee during the LICENSE YEAR.

7. All payments due LICENSOR under this LICENSE shall be made by check, payable to the Treasurer of the United States and sent to LICENSOR at the address set out in Article 17.

ARTICLE 4 - Records, Books and Examination

1. LICENSEE agrees to keep, for at least the six most current LICENSE YEARS, accurate books and records of the number and type of all ROYALTY BEARING PRODUCTS sold or disposed of and all net income received under this LICENSE, the amount of sales thereof, the royalties owed LICENSOR, and all income received from any sublicensees which may be licensed hereunder.

2. LICENSOR may, on reasonable notice and not more than once a year, have its duly authorized agent or representative, inspect, check, and verify all such books and records either at LICENSEE's business premises or at a place mutually agreed upon. The agent's reports and the aforesaid royalty statements, and the information contained therein shall be maintained in

confidence by LICENSOR on a best efforts basis, if labeled PROPRIETARY, for a period of three years from the date of receipt thereof and will not be subject to disclosure under the Freedom of Information Act.

ARTICLE 5 - License Period

This LICENSE shall commence on its EFFECTIVE DATE and shall extend to the expiration date of the LICENSED PATENT or any reissue patent of the LICENSED PATENT.

ARTICLE 6 - Licensee's Performance

1. In furtherance of this LICENSE, LICENSEE agrees to perform the following:

(a) Subject to LICENSEE'S right to terminate this LICENSE in accordance with the provisions of Article 12.6, LICENSEE shall, on a best efforts basis, carry out the DEVELOPMENT PLAN submitted to LICENSOR by LICENSEE in its license application and shall bring the LICENSED INVENTION to the point of PRACTICAL APPLICATION including compliance with any applicable laws and all necessary approvals from Government agencies within (reasonable time frame) from the EFFECTIVE DATE of this LICENSE.

(b) Subject to LICENSEE'S right to terminate this LICENSE in accordance with the provisions of Article 12.6, LICENSEE shall, on a best efforts basis, proceed with manufacturing and will thereafter continue to make the benefits of the LICENSED INVENTION readily accessible to the public for the remaining period of this LICENSE.

(c) LICENSEE agrees to report promptly to LICENSOR any change in its mailing address, name or company affiliation during the term of this LICENSE and to report promptly of its decision to discontinue making the benefits of the LICENSED INVENTION reasonably accessible to the public.

(d) LICENSEE agrees that any product embodying the LICENSED INVENTION or produced through the use of the LICENSED INVENTION will be manufactured substantially in the United States.

ARTICLE 7 - Sublicensing and Royalty Sharing

1. LICENSEE may grant SUBLICENSES under this LICENSE upon terms and conditions that LICENSEE may arrange provided that:

(a) Each sublicense shall be in writing and make reference to this LICENSE and be subject to the terms and conditions thereof including the rights retained by LICENSOR under Article 9 of this LICENSE;

(b) Each sublicense shall include the condition that the sublicense shall be automatically modified or terminated or expire upon the modification, termination, or expiration of this LICENSE;

(c) Before any sublicense is issued by LICENSEE hereunder, the written approval of LICENSOR shall first be obtained for each sublicense;

(d) Within one month after the issuance or modification of any sublicense hereunder, LICENSEE shall furnish LICENSOR with a true and complete copy of the sublicense or modification thereof;

(e) The granting of any sublicense by LICENSEE shall in no way relieve LICENSEE from any of the requirements of this LICENSE; and

(f) LICENSOR's share of all royalties received by LICENSEE from its sublicensees under this LICENSE shall be (Sublicense Royalty) percent, paid in accordance with Article 3.7

ARTICLE 8 - Patent Marking and Non-Endorsement

1. LICENSEE hereby agrees to mark each ROYALTY BEARING PRODUCT with the notation "Licensed from the United States of America under U.S. Patent No. (Number).

2. LICENSEE agrees not to create the appearance that LICENSOR endorses LICENSEE's business or endorses or warrants its products. LICENSOR is not to be connected directly or impliedly with any advertising or promotional program of LICENSEE, except that LICENSEE may state that it is licensed under this LICENSE.

ARTICLE 9 - Representations and Warranties

1. LICENSOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALIDITY OF ANY PATENT THAT HAS OR SHALL ISSUE UNDER THE LICENSED INVENTION OR OF THE SCOPE OF ANY OF THE CLAIMS THEREOF, OR THAT THE EXERCISE OF THIS LICENSE WILL NOT RESULT IN THE INFRINGEMENT OF ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.

2. Nothing relating to the grant of this LICENSE, nor the grant itself, shall be construed to confer upon LICENSEE or any sublicensees hereunder, any immunity from or defense under the antitrust laws or from any charge of patent misuse, and the acquisition and use of rights pursuant to this LICENSE, shall not be immunized from the operation of State or Federal law by reason of the source of the grant.

3. Nothing contained in this LICENSE shall be interpreted to grant to LICENSEE any rights with respect to any LICENSED INVENTION or patent other than the LICENSED INVENTION or LICENSED PATENT.

4. LICENSOR assumes no obligation to bring or prosecute actions or suits against third parties for infringement.

5. LICENSOR assumes no obligation to furnish any know-how.

6. NEITHER LICENSOR NOR ITS EMPLOYEES ASSUMES ANY LIABILITY WHATSOEVER FROM THE EXERCISE OF THIS LICENSE OTHER THAN AS MAY BE

EXPRESSLY STATED ELSEWHERE IN THIS LICENSE. LICENSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. LICENSEE shall defend, indemnify and hold LICENSOR harmless from and against all liability, demands, damages, expenses and losses for death, personal injury, illness or property damage arising out of the use by LICENSEE or its customers and other transferees of any licensed process, or out of any use, sale or other disposition of ROYALTY BEARING PRODUCTS by LICENSEE.

ARTICLE 10 - Progress Reports

1. LICENSEE agrees to submit to LICENSOR annual written reports on its efforts to achieve PRACTICAL APPLICATION of the LICENSED INVENTION in accordance with the DEVELOPMENT PLAN submitted to the Government (Air Force) by LICENSEE and on its efforts to continue to make the benefits of the LICENSED INVENTION reasonably accessible to the public. These reports shall contain information within the knowledge of the LICENSEE, or which it may acquire under normal business practice, pertaining to efforts expended, including expenditures to date, and other information which LICENSOR may determine is pertinent to Government licensing activities. LICENSEE agrees to submit the first such report to LICENSOR in writing within two (2) months after the expiration of the first LICENSE YEAR and subsequent reports annually thereafter.

2. Data within these progress reports, if labeled "PROPRIETARY" on each page thereof, shall be treated on a best efforts basis as privileged, confidential information, not subject to disclosure under the Freedom of Information Act, for a period of (Up to five) years from the date of receipt thereof. Failure of LICENSEE to mark such any information as "PROPRIETARY" prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclose of such information.

ARTICLE 11 - Modification and Termination

1. LICENSOR may modify or terminate this LICENSE in whole or in part if:

(a) LICENSOR determines that LICENSEE is not executing the DEVELOPMENT PLAN submitted in its application for a license and LICENSEE cannot otherwise demonstrate to the satisfaction of LICENSOR that it has taken or can be expected to take within a reasonable time, effective steps to achieve PRACTICAL APPLICATION of the LICENSED INVENTION; or

(b) LICENSOR determines that such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by LICENSEE, its subsidiaries and/or sublicensees; or

(c) LICENSEE commits a substantial breach of any covenant contained in this LICENSE agreement; or

(d) LICENSEE has willfully made a false statement or willfully omitted a material fact in the aforesaid license application or in any written report required by this LICENSE; or

(e) LICENSEE intends to file a voluntary petition in bankruptcy or if a third party intends to file an involuntary petition forcing said LICENSEE into bankruptcy. LICENSEE must provide notice to LICENSOR of such intention at least thirty (30) days prior to filing such petition. Failure to provide such notice shall be deemed a material, pre-petition incurable breach of this LICENSE.

2. This LICENSE may be modified or terminated upon mutual consent of both parties as evidenced in writing and signed by both parties.

3. LICENSEE may request modification of this LICENSE in writing sent to LICENSOR and stating the reasons therefor.

4. Before modifying or terminating this LICENSE for any cause, LICENSOR shall furnish LICENSEE and each sublicensee of record, a written notice of its intention to modify or terminate this LICENSE, and LICENSEE and any sublicensee shall be allowed one (1) month after receipt of the notice to remedy any breach of any covenant set forth herein or to show cause why this LICENSE shall not be modified or terminated.

5. LICENSEE has a right to appeal, in accordance with the procedures prescribed by The General Counsel of the Air Force, any decision concerning the interpretation, modification or termination of this LICENSE.

6. LICENSEE may terminate this LICENSE at any time, for whatever reason, upon written notice sent to LICENSOR at least one month prior to the effective date of termination, stating LICENSEE'S intention to terminate and signed by LICENSEE or its lawful agent. All rights and licenses granted herein shall cease immediately upon the effective date of such termination; and all past royalties and payments accrued up to the date of termination shall be paid to LICENSOR within two (2) months from the effective date of termination.

ARTICLE 12 - Patent Maintenance Fees

All patent maintenance fees shall be paid to the United States Patent and Trademark Office by LICENSOR at its sole option and discretion.

ARTICLE 13 - Technical Assistance

LICENSOR shall, upon request and at LICENSEES expense, from time to time, make available technical assistance at its own place of business or at an agreed upon site, one or more of its appropriate technical personnel to consult with LICENSEE to further the objectives of this LICENSE. This assistance may be in the form of a cooperative research and development agreement under AF Instruction 61-302. The availability of personnel and the number of days allocated to such assistance are within the sole discretion of LICENSOR. Should the furnishing of such assistance be burdensome to LICENSOR, no assistance need be provided.

ARTICLE 14 - Governing Law

The construction, validity, performance and effect of this LICENSE for all purposes shall be governed by the laws applicable to the Government of the United States.

ARTICLE 15 - Export Controls

The LICENSED INVENTION may be subject to the Arms Control Act (22 U.S.C. 2751 et seq.) or the Export Administration Act (50 U.S.C. 2401 et seq.). Nothing in this LICENSE shall be construed to modify or rescind LICENSEE's obligations under these laws.

ARTICLE 16 - Notice

All communications and notices required under this LICENSE shall be duly given if timely mailed by the U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

- a. If to LICENSOR:
SAF/GCQ
1500 Wilson Blvd., Suite 304
Arlington, VA 22209-2403

with a copy of such correspondence to:

(Address of servicing patent counsel)

- b. If to LICENSEE:

(Address)

In Witness Whereof, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

UNITED STATES OF AMERICA

DATE

BY _____

TITLE _____

(Name of Licensee)

DATE

BY _____

TITLE _____

B. Exclusive Patent License under AFI 51-303

PATENT LICENSE AGREEMENT BETWEEN
THE DEPARTMENT OF THE AIR FORCE
AND
(LICENSEE NAME)
EXCLUSIVE LICENSE

PREAMBLE

This Exclusive License Agreement, (hereinafter called "LICENSE") is made and entered into by and between the United States of America as represented by the Secretary of the Air Force (hereinafter called "LICENSOR"), and (LICENSEE name), a corporation (educational institution or non-profit organization) of _____, having a place of business _____ (LICENSEE Address) (hereinafter called "LICENSEE").

WITNESSETH:

Whereas, Title 35 United States Code, Chapter 18, as amended, as implemented by Title 37 Code of Federal Regulations, Part 404.1 et seq and Air Force Instruction 51-303 set forth the terms and conditions under which licenses under federally owned inventions may be granted;

Whereas, the above-cited authorities support the proposition that licensing of Government inventions will best serve the public interest when such inventions are developed to the point of PRACTICAL APPLICATION and made available to the public in the shortest possible time;

Whereas, LICENSEE has supplied LICENSOR with a plan for development and/or marketing of the LICENSED PATENT;

Whereas, LICENSOR has an assignment of title in U.S. Patent No. ----- entitled -----, and issued on -----, the LICENSED PATENT.

Whereas, LICENSEE intends to fully undertake development and marketing of the LICENSED INVENTION and has expressed its intention to carry out a plan to bring the LICENSED INVENTION to PRACTICAL APPLICATION upon the granting of this LICENSE;

Whereas, LICENSOR has considered the capabilities of LICENSEE to undertake the development and marketing of the LICENSED INVENTION and has found that the LICENSEE is a responsible party for negotiating this LICENSE on terms and conditions most favorable to the public interest and that to grant this exclusive LICENSE would be in the public interest; and

Whereas, LICENSOR has provided public notice of this LICENSE and an opportunity to file written objections and LICENSOR has determined that --

(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(E) the grant of this LICENSE will not tend to substantially lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology pertains, or to create or maintain other situations inconsistent with the antitrust laws; and

(F) LICENSOR has considered giving first preference for this LICENSE to small businesses.

NOW THEREFORE, in accordance with and to the extent provided by the aforementioned authorities and in consideration of the foregoing premises and of the covenants and obligations hereinafter set forth to be well and truly performed, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE 1 - Definitions

The parties to this LICENSE agree that the following definitions shall apply to the defined words where such words are used in this LICENSE:

1. The "LICENSED INVENTION" or "LICENSED PATENT" means the invention as described and claimed in the following patent, including continuations, divisions, reexaminations and reissues thereof, assigned to the LICENSOR:

U.S. Patent No. ----- patented on -----, entitled "-----," Serial No. --
---- filed ----- by -----.

2. "CALENDAR QUARTERS" are those three month periods commencing on January 1, April 1, July 1 and October 1.

3. "DEVELOPMENT PLAN" means the plan set out in an application for license submitted to the Department of the Air Force by letter from LICENSEE directed to (Air Force Organization).

4. "LICENSE YEAR" means a period of twelve (12) months in the Gregorian calendar. The first LICENSE YEAR commences on the EFFECTIVE DATE of this LICENSE and extends to the start of the next calendar quarter plus the following four full CALENDAR QUARTERS. The second LICENSE YEAR commences at the expiration of the first LICENSE YEAR and extends for the next succeeding four CALENDAR QUARTERS. Later license years commence on the anniversary date of the start of the second license year.

5. "END USER" means any person licensed to use ROYALTY BEARING PRODUCT(S) OR PROCESS(ES) for his or her personal use, or any ENTITY licensed to use ROYALTY BEARING PRODUCT(S) OR PROCESS(ES) in the regular conduct of its own business and not for licensing to other ENTITIES or individuals.

6. The "EFFECTIVE DATE" of this LICENSE shall be the date this LICENSE was last signed.

7. "ENTITY" means a corporation, an association, a joint venture, a partnership, a trust, a business, an individual, a government or political subdivision thereof, including an agency, or any other organization which can exercise independent legal standing.

8. "ROYALTY BEARING PRODUCT OR PROCESS" means a product, apparatus, method, or service of which the production, manufacture, sale, lease, use, or practice would infringe one or more valid LICENSED PATENT claims or which incorporates or makes use of the LICENSED PATENT. Where such a product, apparatus, method or service forms an integral part or component of a larger product, package of products, method or service, such larger product, package of products, method, or service shall be considered a ROYALTY BEARING PRODUCT OR PROCESS for purposes of this LICENSE.

9. "GROSS SALES PRICE" means the invoice price or lease income of the ROYALTY BEARING PRODUCT OR PROCESS sold or leased by LICENSEE to an arms length buyer (or if not sold to an arms length buyer, the invoice price of a like quality and quantity of product) or means the total amount of consideration received by LICENSEE for otherwise disposing of a ROYALTY BEARING PRODUCT OR PROCESS, except under a SUBLICENSE. This includes packaging and shipping costs paid by the purchaser. Sales tax, excise tax, use tax or similar taxes are subtracted from the GROSS SALES PRICE before determining royalty.

Where the ROYALTY BEARING PRODUCT OR PROCESS is not sold or leased separately, but is sold or leased in combination with or as part of other products or

services, the GROSS SALES PRICE shall be calculated for the purpose of computing royalties due by applying to the GROSS SALES PRICE of each of the combined or composite products or services, a fractional multiplier having as its denominator the total manufacturing or service cost of the combined or composite products or services (determined in accordance with LICENSEE's customary accounting procedures), and as its numerator the manufacturing or service cost of the included ROYALTY BEARING PRODUCT OR PROCESS (similarly determined).

10. "LICENSED TERRITORY" means the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia.

11. "PRACTICE THE LICENSED INVENTION" means to make, have made, use, lease, sell, or otherwise dispose of a ROYALTY BEARING PRODUCT OR PROCESS by or for the account of the LICENSEE or SUBLICENSEE.

12. "PRACTICAL APPLICATION" means to manufacture in the case of a composition or product, to practice in the case of a process, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

13. A "SUBSIDIARY" is a legal entity that is at least 50% owned, or otherwise controlled by LICENSEE. The term "LICENSEE" includes a "SUBSIDIARY" of LICENSEE under this LICENSE. Thus a SUBSIDIARY is not an arms length buyer of Section 6 of this Article.

14. "SUBLICENSEE" means any ENTITY, not a SUBSIDIARY of LICENSEE, which is licensed by LICENSEE, with rights to the LICENSED PATENT beyond those rights commonly granted an END USER.

15. "SUBLICENSES" are licenses granted by the LICENSEE to a third party other than a SUBSIDIARY, to enable such third party to exploit the LICENSED INVENTION for its own account.

ARTICLE 2 - License Grant

1. LICENSOR grants to LICENSEE an exclusive, royalty bearing license to PRACTICE THE LICENSED INVENTION in the LICENSED TERRITORY.

2. This LICENSE shall be nonassignable by LICENSEE without prior written approval of LICENSOR, except to the successor of that part of the LICENSEE's business to which the LICENSED INVENTION pertains.

ARTICLE 3 - Royalties, Royalty Report and Payment

1. Upon execution of this LICENSE by LICENSEE, LICENSEE shall pay LICENSOR, a sum in the amount of ----- Dollars (\$-----) for initial exclusive use of the LICENSED PATENT.

2. LICENSEE shall pay LICENSOR a running royalty of ---% of the GROSS SALES PRICE of each ROYALTY BEARING PRODUCT OR PROCESS sold or otherwise disposed of by LICENSEE in accordance with this LICENSE until the expiration date of the LICENSED PATENT. Payment of the running royalty shall be made at the end of each LICENSE YEAR in the manner set forth in the following section.

Should LICENSEE otherwise use the LICENSED INVENTION to earn revenue, running royalties payable to LICENSOR shall be ---% of such revenues received from third parties, other than SUBLICENSEES, attributed to such use.

3. LICENSEE shall furnish LICENSOR with a statement, within two months following the end of each LICENSE YEAR, setting forth the quantity and GROSS SALES PRICE of ROYALTY BEARING PRODUCTS OR PROCESSES sold or otherwise disposed of by LICENSEE under this LICENSE during the LICENSE YEAR, and the royalty payment due. Payment shall accompany the statement. If no royalty is owed, the statement shall so indicate. A product shall be considered sold when billed-out, or shipped, or paid for, whichever occurs first.

4. Should LICENSEE fail to make timely payments in accordance with this LICENSE, LICENSOR may put LICENSEE on written notice of such default, and LICENSEE may remedy the default by payment of all monies due LICENSOR within one (1) month of the date of transmission of the written notice, to maintain the LICENSE in effect. Should the default not be cured by the end of said month, LICENSOR has the right to terminate this LICENSE by giving written notice of termination to LICENSEE, whereupon this LICENSE becomes terminated. However, termination for any reason does not relieve LICENSEE of the obligation to pay past running royalties accrued prior to the EFFECTIVE DATE of termination.

5. Sales to or for the Government are not subject to the earned running royalties set forth hereinabove, provided that LICENSEE identifies such sales by Government contract number or other suitable evidence, submitted with the aforesaid royalty reports.

6. Should LICENSEE receive sublicensing royalty payments from SUBLICENSEES in accordance with this LICENSE, LICENSEE shall pay LICENSOR ---- percent (--%) of such sublicensing royalty payments along with the written royalty statement, indicating the amounts of royalties paid LICENSEE by its SUBLICENSEE during the LICENSE YEAR.

7. All payments due LICENSOR under this LICENSE shall be made by check, payable to the Treasurer of the United States and sent to LICENSOR at the address set out in Article 17.

ARTICLE 4 - Records, Books and Examination

1. LICENSEE agrees to keep, for at least the six most current LICENSE YEARS, accurate books and records of the number and type of all ROYALTY BEARING PRODUCTS OR PROCESSES sold or disposed of and all net income received under this LICENSE, the amount of sales thereof, the royalties owed LICENSOR, and all income received from any SUBLICENSEES which may be licensed hereunder.

2. LICENSOR may, on reasonable notice and not more than once a year, have its duly authorized agent or representative, inspect, check, and verify all such books and records either at LICENSEE's business premises or at a place mutually agreed upon. The agent's reports and the aforesaid royalty statements, and the information contained therein shall be maintained in confidence by LICENSOR on a reasonable efforts basis, if labeled PROPRIETARY, for a period of three years from the date of receipt thereof and will not be subject to disclosure under the Freedom of Information Act.

ARTICLE 5 - License Period

This LICENSE shall commence on its EFFECTIVE DATE and shall extend to the expiration date of U.S. Patent No. -----, the LICENSED PATENT. A LICENSED PATENT shall no longer be a LICENSED PATENT should all of the claims of any LICENSED PATENT be held invalid or the LICENSED PATENT has expired.

ARTICLE 6 - Licensee's Performance

In furtherance of this LICENSE, LICENSEE agrees to perform the following:

(a) Subject to LICENSEE'S right to terminate this LICENSE in accordance with the provisions of Article 12.6, LICENSEE shall, on a reasonable efforts basis, bring the LICENSED INVENTION to the point of PRACTICAL APPLICATION including compliance with any applicable laws and all necessary approvals from Government agencies pursuant to its DEVELOPMENT PLAN.

(b) Subject to LICENSEE'S right to terminate this LICENSE in accordance with the provisions of Article 12.6, LICENSEE shall, on a reasonable efforts basis, proceed with manufacturing and will thereafter continue to make the benefits of the LICENSED INVENTION readily accessible to the public for the remaining period of this LICENSE.

(c) LICENSEE agrees to report promptly to LICENSOR any change in its mailing address, name or company affiliation during the term of this LICENSE and to report promptly of its decision to discontinue making the benefits of the LICENSED INVENTION reasonably accessible to the public.

(d) LICENSEE agrees that any ROYALTY BEARING PRODUCT OR PROCESS which is used or sold in the United States and which embodies the LICENSED INVENTION or is produced through the use of the LICENSED INVENTION will be manufactured substantially in the United States of America.

ARTICLE 7 - Sublicensing and Royalty Sharing

1. LICENSEE may grant SUBLICENSES under this LICENSE upon terms and conditions that LICENSEE may arrange provided that:

(a) Each SUBLICENSE shall be in writing and make reference to this LICENSE and be subject to the terms and conditions thereof including the rights retained by LICENSOR under Article 9 of this LICENSE;

(b) Each SUBLICENSE shall include the condition that the SUBLICENSE shall be automatically modified or terminated or expire upon the modification, termination, or expiration of this LICENSE;

(c) Before any SUBLICENSE is issued by LICENSEE hereunder, the written approval of LICENSOR shall first be obtained for each SUBLICENSE, such written approval shall not be unreasonably withheld;

(d) Within one month after the issuance or modification of any SUBLICENSE hereunder, LICENSEE shall furnish LICENSOR with a true and complete copy of the SUBLICENSE or modification thereof;

(e) The granting of any SUBLICENSE by LICENSEE shall in no way relieve LICENSEE from any of the requirements of this LICENSE; and

(f) LICENSOR's share of all royalties received by LICENSEE from its sublicensees under this LICENSE shall be ----- percent (--%), paid in accordance with Article 3.7

ARTICLE 8 - Patent Marking and Non-Endorsement

1. LICENSEE hereby agrees to mark each ROYALTY BEARING PRODUCT OR PROCESS with the notation "Licensed from the United States of America under U.S. Patent No -----".

2. LICENSEE agrees not to create the appearance that LICENSOR endorses LICENSEE's business or endorses or warrants its products. LICENSOR is not to be connected directly or impliedly with any advertising or promotional program of LICENSEE, except that LICENSEE may state that it is licensed under this LICENSE.

ARTICLE 9 - Reservation of Rights

1. This LICENSE is expressly made subject to the irrevocable, royalty-free right of the Government of the United States to practice for governmental purposes and have practiced the LICENSED INVENTION on behalf of the Government of the United States for governmental purposes and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

2. After the fifth license year, LICENSOR may restrict this LICENSE to the fields of use or geographic areas, or both, in which the LICENSEE has brought the LICENSED INVENTION to PRACTICAL APPLICATION and continues to make the benefits of the LICENSED INVENTION reasonably accessible to the public.

ARTICLE 10 - Representations and Warranties

1. LICENSOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALIDITY OF ANY PATENT THAT HAS OR SHALL ISSUE UNDER THE LICENSED INVENTION OR OF THE SCOPE OF ANY OF THE CLAIMS THEREOF, OR THAT THE EXERCISE OF THIS LICENSE WILL NOT RESULT IN THE INFRINGEMENT OF ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.

2. Nothing relating to the grant of this LICENSE, nor the grant itself, shall be construed to confer upon LICENSEE or any sublicensees hereunder, any immunity from or defense under the antitrust laws or from any charge of patent misuse, and the acquisition and use of rights pursuant to this LICENSE, shall not be immunized from the operation of State or Federal law by reason of the source of the grant.

3. Nothing contained in this LICENSE shall be interpreted to grant to LICENSEE any rights with respect to any LICENSED INVENTION or patent other than the LICENSED INVENTION or LICENSED PATENT.

4. LICENSOR assumes no obligation to bring or prosecute actions or suits against third parties for infringement.

5. LICENSOR assumes no obligation to furnish any know-how.

6. NEITHER LICENSOR NOR ITS EMPLOYEES ASSUMES ANY LIABILITY WHATSOEVER FROM THE EXERCISE OF THIS LICENSE OTHER THAN AS MAY BE EXPRESSLY STATED ELSEWHERE IN THIS LICENSE. LICENSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. LICENSEE shall defend, indemnify and hold LICENSOR harmless from and against all liability, demands, damages, expenses and losses for death, personal injury, illness or property damage arising out of the use by LICENSEE or its customers and other transferees of any licensed process, or out of any use, sale or other disposition of ROYALTY BEARING PRODUCTS OR PROCESSES by LICENSEE.

ARTICLE 11 - Progress Reports

1. LICENSEE agrees to submit to LICENSOR annual written reports on its efforts to achieve PRACTICAL APPLICATION of the LICENSED INVENTION and on its efforts to continue to make the benefits of the LICENSED INVENTION reasonably accessible to the public. These reports shall contain information within the knowledge of the LICENSEE, or which it may acquire under normal business practice, pertaining to efforts expended, including expenditures to date, and other information which LICENSOR may determine is pertinent to Government licensing activities. LICENSEE agrees to submit the first such report to LICENSOR in writing within two (2) months after the expiration of the first LICENSE YEAR and subsequent reports annually thereafter.

2. Data within these progress reports, if labeled "PROPRIETARY" on each page thereof, shall be treated as privileged, confidential information, not subject to disclosure under the Freedom of Information Act.

ARTICLE 12 - Modification and Termination

1. LICENSOR may modify or terminate this LICENSE in whole or in part if:

(a) LICENSOR determines that LICENSEE is not executing its DEVELOPMENT PLAN and the LICENSEE cannot otherwise demonstrate to the satisfaction of LICENSOR that it has taken or can be expected to take within a reasonable time, effective steps to achieve PRACTICAL APPLICATION of the LICENSED INVENTION or to make the LICENSED INVENTION reasonably accessible to the public; or

(b) LICENSEE is in breach of its agreement set forth in

(b) LICENSOR determines that such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by LICENSEE, its subsidiaries and/or sublicensees; or

(c) LICENSEE commits a substantial breach of any covenant contained in this LICENSE agreement; or

(d) LICENSEE has willfully made a false statement or willfully omitted a material fact in the aforesaid license application or in any written report required by this LICENSE; or

(e) LICENSEE intends to file a voluntary petition in bankruptcy or if a third party intends to file an involuntary petition forcing said LICENSEE into bankruptcy. LICENSEE must provide notice to LICENSOR of such intention at least thirty (30) days prior to filing such petition. Failure to provide such notice shall be deemed a material, pre-petition incurable breach of this LICENSE.

2. This LICENSE may be modified or terminated upon mutual consent of both parties as evidenced in writing and signed by both parties.

3. LICENSEE may request modification of this LICENSE in writing sent to LICENSOR and stating the reasons therefor.

4. Before modifying or terminating this LICENSE for any cause, LICENSOR shall furnish LICENSEE and each sublicensee of record, a written notice of its intention to modify or terminate this LICENSE, and LICENSEE and any sublicensee shall be allowed one (1) month after receipt of the notice to remedy any breach of any covenant set forth herein or to show cause why this LICENSE shall not be modified or terminated.

5. LICENSEE has a right to appeal, in accordance with the procedures prescribed by General Counsel of the Air Force, any decision concerning the interpretation, modification or termination of this LICENSE.

6. LICENSEE may terminate this LICENSE at any time, for whatever reason, upon written notice sent to LICENSOR at least one month prior to the EFFECTIVE DATE of termination, stating LICENSEE'S intention to terminate and signed by LICENSEE or its lawful agent. All rights and licenses granted herein shall cease immediately upon the EFFECTIVE DATE of such termination; and all past royalties and payments accrued up to the date of termination shall be paid to LICENSOR within two (2) months from the EFFECTIVE DATE of termination.

ARTICLE 13 - Patent Maintenance Fees

All patent maintenance fees shall be paid to the United States Patent and Trademark Office by LICENSOR at its sole option and discretion.

ARTICLE 14 - Governing Law

The construction, validity, performance and effect of this LICENSE for all purposes shall be governed by the laws applicable to the Government of the United States.

ARTICLE 15 - Export Controls

The LICENSED INVENTION may be subject to the Arms Control Act (22 U.S.C. 2751 et seq.) or the Export Administration Act (50 U.S.C. 2401 et seq.). Nothing in this LICENSE shall be construed to modify or rescind LICENSEE's obligations under these laws.

ARTICLE 16 - Infringement Actions

1. Should either LICENSOR or LICENSEE become aware of any infringement or potential infringement of the LICENSED PATENT, they agree to give the other party written notice within 30 days providing sufficient information concerning the infringement or potential infringement.

2. LICENSEE shall have the right of enforcement of the LICENSED PATENT(S) under chapter 29 of title 35, United States Code.

3. At the expense of the requesting party, LICENSEE and LICENSOR agree to furnish data, records, evidence, testimony, technical assistance, and cooperation as reasonably necessary to facilitate any actions, including reexamination or reissue proceedings, brought by LICENSEE or LICENSOR to defend or enforce the LICENSED PATENT(S).

ARTICLE 17 - Notice

All communications and notices required under this LICENSE shall be duly given if timely mailed by the U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

- a. If to LICENSOR:
SAF/GCQ
1500 Wilson Blvd., Suite 304
Arlington, VA 22209-2403

with a copy of such correspondence to:

(Servicing Legal Office Patent Counsel)

b. If to LICENSEE:

(LICENSEE name and address)

In Witness Whereof, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

UNITED STATES OF AMERICA

DATE

BY _____

TITLE _____

(LICENSEE Name).

DATE

BY _____

TITLE _____

C. Exclusive Patent License under a CRADA

PATENT LICENSE AGREEMENT BETWEEN
THE DEPARTMENT OF THE AIR FORCE
AND
(CRADA PARTNER NAME)
EXCLUSIVE LICENSE

PREAMBLE

This Exclusive License Agreement, (hereinafter called "LICENSE") is made and entered into by and between the United States of America as represented by the Secretary of the Air Force (hereinafter called "LICENSOR"), and (CRADA Partner name), a corporation (educational institution or non-profit organization) of _____, having a place of business _____ (CRADA Partner Address) (hereinafter called "LICENSEE").

WITNESSETH:

Whereas, The Stevenson-Wydler Technology Innovation Act of 1980, as amended, and Air Force Instruction 61-303 set forth the terms and conditions under which licenses under federally owned inventions made under a Cooperative Research and Development Agreement may be granted;

Whereas, the above-cited authorities support the proposition that licensing of Government inventions will best serve the public interest when such inventions are developed to the point of PRACTICAL APPLICATION and made available to the public in the shortest possible time;

Whereas, LICENSOR has granted LICENSEE an option to obtain an exclusive license for any invention made under the Cooperative Research and Development Agreement previously entered into by the LICENSOR and the LICENSEE and LICENSEE has exercised this option;

Whereas, LICENSOR has an assignment of title in U.S. Patent No. ----- entitled -----, and issued on -----.

Whereas, LICENSEE intends to undertake development and marketing of the LICENSED INVENTION and has expressed its intention to carry out a plan to bring the LICENSED INVENTION to PRACTICAL APPLICATION upon the granting of this LICENSE; and

Whereas, LICENSOR has considered the capabilities of LICENSEE to undertake the development and marketing of the LICENSED INVENTION and has found that the LICENSEE is a responsible party for negotiating this LICENSE on terms and conditions most favorable to the public interest and that to grant this exclusive LICENSE would be in the public interest;

NOW THEREFORE, in accordance with and to the extent provided by the aforementioned authorities and in consideration of the foregoing premises and of the covenants and obligations hereinafter set forth to be well and truly performed, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE 1 - Definitions

The parties to this LICENSE agree that the following definitions shall apply to the defined words where such words are used in this LICENSE:

1. The "LICENSED INVENTION" or "LICENSED PATENT" means the invention as described and claimed in the following patent, including continuations, divisions and reissues thereof, assigned to the LICENSOR:

U.S. Patent No. ----- patented on -----, entitled "-----," Serial No. --
---- filed ----- by -----.

2. "CALENDAR QUARTERS" are those three month periods commencing on January 1, April 1, July 1 and October 1.

3. "LICENSE YEAR" means a period of twelve (12) months in the Gregorian calendar. The first LICENSE YEAR commences on the EFFECTIVE DATE of this LICENSE and extends to the start of the next calendar quarter plus the following four full CALENDAR QUARTERS. The second LICENSE YEAR commences at the expiration of the first LICENSE YEAR and extends for the next succeeding four CALENDAR QUARTERS. Later license years commence on the anniversary date of the start of the second license year.

4. "END USER" means any person licensed to use ROYALTY BEARING PRODUCT(S) OR PROCESS(ES) for his or her personal use, or any ENTITY licensed to use ROYALTY BEARING PRODUCT(S) OR PROCESS(ES) in the regular conduct of its own business and not for licensing to other ENTITIES or individuals.

5. The "EFFECTIVE DATE" of this LICENSE shall be the date this LICENSE was last signed.

6. "ENTITY" means a corporation, an association, a joint venture, a partnership, a trust, a business, an individual, a government or political subdivision

thereof, including an agency, or any other organization which can exercise independent legal standing.

7. "ROYALTY BEARING PRODUCT OR PROCESS" means a product, apparatus, method, or service of which the production, manufacture, sale, lease, use, or practice would infringe one or more valid LICENSED PATENT claims or which incorporates or makes use of the LICENSED PATENT. Where such a product, apparatus, method or service forms an integral part or component of a larger product, package of products, method or service, such larger product, package of products, method, or service shall be considered a ROYALTY BEARING PRODUCT OR PROCESS for purposes of this LICENSE.

8. "GROSS SALES PRICE" means the invoice price or lease income of the ROYALTY BEARING PRODUCT OR PROCESS sold or leased by LICENSEE to an arms length buyer (or if not sold to an arms length buyer, the invoice price of a like quality and quantity of product) or means the total amount of consideration received by LICENSEE for otherwise disposing of a ROYALTY BEARING PRODUCT OR PROCESS, except under a SUBLICENSE. This includes packaging and shipping costs paid by the purchaser. Sales tax, excise tax, use tax or similar taxes are subtracted from the GROSS SALES PRICE before determining royalty.

Where the ROYALTY BEARING PRODUCT OR PROCESS is not sold or leased separately, but is sold or leased in combination with or as part of other products or services, the GROSS SALES PRICE shall be calculated for the purpose of computing royalties due by applying to the GROSS SALES PRICE of each of the combined or composite products or services, a fractional multiplier having as its denominator the total manufacturing or service cost of the combined or composite products or services (determined in accordance with LICENSEE's customary accounting procedures), and as its numerator the manufacturing or service cost of the included ROYALTY BEARING PRODUCT OR PROCESS (similarly determined).

9. "LICENSED TERRITORY" means the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia.

10. "PRACTICE THE LICENSED INVENTION" means to make, have made, use, lease, sell, or otherwise dispose of a ROYALTY BEARING PRODUCT OR PROCESS by or for the account of the LICENSEE or SUBLICENSEE.

11. "PRACTICAL APPLICATION" means to manufacture in the case of a composition or product, to practice in the case of a process, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

12. A "SUBSIDIARY" is a legal entity that is at least 50% owned, or otherwise controlled by LICENSEE. The term "LICENSEE" includes a "SUBSIDIARY" of LICENSEE under this LICENSE. Thus a SUBSIDIARY is not an arms length buyer of Section 6 of this Article.

13. "SUBLICENSEE" means any ENTITY, not a SUBSIDIARY of LICENSEE, which is licensed by LICENSEE, with rights to the LICENSED PATENT beyond those rights commonly granted an END USER.

14. "SUBLICENSES" are licenses granted by the LICENSEE to a third party other than a SUBSIDIARY, to enable such third party to exploit the LICENSED INVENTION for its own account.

ARTICLE 2 - License Grant

1. LICENSOR grants to LICENSEE an exclusive, royalty bearing license to PRACTICE THE LICENSED INVENTION in the LICENSED TERRITORY.

2. This LICENSE shall be nonassignable by LICENSEE without prior written approval of LICENSOR, except to the successor of that part of the LICENSEE's business to which the LICENSED INVENTION pertains.

ARTICLE 3 - Royalties, Royalty Report and Payment

1. Upon execution of this LICENSE by LICENSEE, LICENSEE shall pay LICENSOR, a sum in the amount of ----- Dollars (\$-----) for initial exclusive use of the LICENSED PATENT.

2. LICENSEE shall pay LICENSOR a running royalty of ---% of the GROSS SALES PRICE of each ROYALTY BEARING PRODUCT OR PROCESS sold or otherwise disposed of by LICENSEE in accordance with this LICENSE until the expiration date of the LICENSED PATENT. Payment of the running royalty shall be made at the end of each LICENSE YEAR in the manner set forth in the following section.

Should LICENSEE otherwise use the LICENSED INVENTION to earn revenue, running royalties payable to LICENSOR shall be ---% of such revenues received from third parties, other than SUBLICENSEES, attributed to such use.

3. LICENSEE shall furnish LICENSOR with a statement, within two months following the end of each LICENSE YEAR, setting forth the quantity and GROSS SALES PRICE of ROYALTY BEARING PRODUCTS OR PROCESSES sold or otherwise disposed of by LICENSEE under this LICENSE during the LICENSE YEAR, and the royalty payment due. Payment shall accompany the statement. If no royalty is

owed, the statement shall so indicate. A product shall be considered sold when billed-out, or shipped, or paid for, whichever occurs first.

4. Should LICENSEE fail to make timely payments in accordance with this LICENSE, LICENSOR may put LICENSEE on written notice of such default, and LICENSEE may remedy the default by payment of all monies due LICENSOR within one (1) month of the date of transmission of the written notice, to maintain the LICENSE in effect. Should the default not be cured by the end of said month, LICENSOR has the right to terminate this LICENSE by giving written notice of termination to LICENSEE, whereupon this LICENSE becomes terminated. However, termination for any reason does not relieve LICENSEE of the obligation to pay past running royalties accrued prior to the EFFECTIVE DATE of termination.

5. Sales to or for the Government are not subject to the earned running royalties set forth hereinabove, provided that LICENSEE identifies such sales by Government contract number or other suitable evidence, submitted with the aforesaid royalty reports.

6. Should LICENSEE receive sublicensing royalty payments from SUBLICENSEES in accordance with this LICENSE, LICENSEE shall pay LICENSOR ----- percent (--%) of such sublicensing royalty payments along with the written royalty statement, indicating the amounts of royalties paid LICENSEE by its SUBLICENSEE during the LICENSE YEAR.

7. All payments due LICENSOR under this LICENSE shall be made by check, payable to the Treasurer of the United States and sent to LICENSOR at the address set out in Article 17.

ARTICLE 4 - Records, Books and Examination

1. LICENSEE agrees to keep, for at least the six most current LICENSE YEARS, accurate books and records of the number and type of all ROYALTY BEARING PRODUCTS OR PROCESSES sold or disposed of and all net income received under this LICENSE, the amount of sales thereof, the royalties owed LICENSOR, and all income received from any SUBLICENSEES which may be licensed hereunder.

2. LICENSOR may, on reasonable notice and not more than once a year, have its duly authorized agent or representative, inspect, check, and verify all such books and records either at LICENSEE's business premises or at a place mutually agreed upon. The agent's reports and the aforesaid royalty statements, and the information contained therein shall be maintained in confidence by LICENSOR on a reasonable efforts basis, if labeled PROPRIETARY, for a period of three years from the date of receipt thereof and will not be subject to disclosure under the Freedom of Information Act.

ARTICLE 5 - License Period

This LICENSE shall commence on its EFFECTIVE DATE and shall extend to the expiration date of U.S. Patent No. -----, the LICENSED PATENT. A LICENSED PATENT shall no longer be a LICENSED PATENT should all of the claims of any LICENSED PATENT be held invalid or the LICENSED PATENT has expired.

ARTICLE 6 - Licensee's Performance

In furtherance of this LICENSE, LICENSEE agrees to perform the following:

(a) Subject to LICENSEE'S right to terminate this LICENSE in accordance with the provisions of Article 12.6, LICENSEE shall, on a reasonable efforts basis, bring the LICENSED INVENTION to the point of PRACTICAL APPLICATION including compliance with any applicable laws and all necessary approvals from Government agencies within ---- (---) year(s) from the EFFECTIVE DATE of this LICENSE.

(b) Subject to LICENSEE'S right to terminate this LICENSE in accordance with the provisions of Article 12.6, LICENSEE shall, on a reasonable efforts basis, proceed with manufacturing and will thereafter continue to make the benefits of the LICENSED INVENTION readily accessible to the public for the remaining period of this LICENSE.

(c) LICENSEE agrees to report promptly to LICENSOR any change in its mailing address, name or company affiliation during the term of this LICENSE and to report promptly of its decision to discontinue making the benefits of the LICENSED INVENTION reasonably accessible to the public.

(d) LICENSEE agrees that any ROYALTY BEARING PRODUCT OR PROCESS which is used or sold in the United States and which embodies the LICENSED INVENTION or is produced through the use of the LICENSED INVENTION will be manufactured substantially in the United States.

ARTICLE 7 - Sublicensing and Royalty Sharing

1. LICENSEE may grant SUBLICENSES under this LICENSE upon terms and conditions that LICENSEE may arrange provided that:

(a) Each SUBLICENSE shall be in writing and make reference to this LICENSE and be subject to the terms and conditions thereof including the rights retained by LICENSOR under Article 9 of this LICENSE;

(b) Each SUBLICENSE shall include the condition that the SUBLICENSE shall be automatically modified or terminated or expire upon the modification, termination, or expiration of this LICENSE;

(c) Before any SUBLICENSE is issued by LICENSEE hereunder, the written approval of LICENSOR shall first be obtained for each SUBLICENSE, such written approval shall not be unreasonably withheld;

(d) Within one month after the issuance or modification of any SUBLICENSE hereunder, LICENSEE shall furnish LICENSOR with a true and complete copy of the SUBLICENSE or modification thereof;

(e) The granting of any SUBLICENSE by LICENSEE shall in no way relieve LICENSEE from any of the requirements of this LICENSE; and

(f) LICENSOR's share of all royalties received by LICENSEE from its sublicensees under this LICENSE shall be ----- percent (--%), paid in accordance with Article 3.7

ARTICLE 8 - Patent Marking and Non-Endorsement

1. LICENSEE hereby agrees to mark each ROYALTY BEARING PRODUCT OR PROCESS with the notation "Licensed from the United States of America under U.S. Patent No -----".

2. LICENSEE agrees not to create the appearance that LICENSOR endorses LICENSEE's business or endorses or warrants its products. LICENSOR is not to be connected directly or impliedly with any advertising or promotional program of LICENSEE, except that LICENSEE may state that it is licensed under this LICENSE.

ARTICLE 9 - Reservation of Rights

1. This LICENSE is expressly made subject to the irrevocable, royalty-free right of the Government of the United States to practice for governmental purposes and have practiced the LICENSED INVENTION on behalf of the Government of the United States for governmental purposes and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

2. After the fifth license year, LICENSOR may restrict this LICENSE to the fields of use or geographic areas, or both, in which the LICENSEE has brought the LICENSED INVENTION to PRACTICAL APPLICATION and continues to make the benefits of the LICENSED INVENTION reasonably accessible to the public.

3. LICENSOR reserves the right (i) to require the LICENSEE to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the LICENSED INVENTION in the applicant's field of use, on terms that are reasonable under the circumstances; or (ii) if the collaborating party fails to grant such a license to grant the license itself. LICENSOR may exercise this right only in exceptional circumstances and only if the LICENSOR determines that (i) the action is necessary to meet health and safety needs that are not reasonably satisfied by the LICENSEE; (ii) the action is necessary to meet requirements for public use specified by Federal Regulations, and such requirements are not reasonably satisfied by the LICENSEE; or (iii) the LICENSEE has failed to comply Article 6(d) of this LICENSE.

ARTICLE 10 - Representations and Warranties

1. LICENSOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALIDITY OF ANY PATENT THAT HAS OR SHALL ISSUE UNDER THE LICENSED INVENTION OR OF THE SCOPE OF ANY OF THE CLAIMS THEREOF, OR THAT THE EXERCISE OF THIS LICENSE WILL NOT RESULT IN THE INFRINGEMENT OF ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.

2. Nothing relating to the grant of this LICENSE, nor the grant itself, shall be construed to confer upon LICENSEE or any sublicensees hereunder, any immunity from or defense under the antitrust laws or from any charge of patent misuse, and the acquisition and use of rights pursuant to this LICENSE, shall not be immunized from the operation of State or Federal law by reason of the source of the grant.

3. Nothing contained in this LICENSE shall be interpreted to grant to LICENSEE any rights with respect to any LICENSED INVENTION or patent other than the LICENSED INVENTION or LICENSED PATENT.

4. LICENSOR assumes no obligation to bring or prosecute actions or suits against third parties for infringement.

5. LICENSOR assumes no obligation to furnish any know-how.

6. NEITHER LICENSOR NOR ITS EMPLOYEES ASSUMES ANY LIABILITY WHATSOEVER FROM THE EXERCISE OF THIS LICENSE OTHER THAN AS MAY BE EXPRESSLY STATED ELSEWHERE IN THIS LICENSE. LICENSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. LICENSEE shall defend, indemnify and hold LICENSOR harmless from and against all liability, demands, damages, expenses and losses for death, personal injury, illness or property damage arising out of the use by LICENSEE or its customers

and other transferees of any licensed process, or out of any use, sale or other disposition of ROYALTY BEARING PRODUCTS OR PROCESSES by LICENSEE.

ARTICLE 11 - Progress Reports

1. LICENSEE agrees to submit to LICENSOR annual written reports on its efforts to achieve PRACTICAL APPLICATION of the LICENSED INVENTION and on its efforts to continue to make the benefits of the LICENSED INVENTION reasonably accessible to the public. These reports shall contain information within the knowledge of the LICENSEE, or which it may acquire under normal business practice, pertaining to efforts expended, including expenditures to date, and other information which LICENSOR may determine is pertinent to Government licensing activities. LICENSEE agrees to submit the first such report to LICENSOR in writing within two (2) months after the expiration of the first LICENSE YEAR and subsequent reports annually thereafter.

2. Data within these progress reports, if labeled "PROPRIETARY" on each page thereof, shall be treated as privileged, confidential information, not subject to disclosure under the Freedom of Information Act.

ARTICLE 12 - Modification and Termination

1. LICENSOR may modify or terminate this LICENSE in whole or in part if:

(a) LICENSOR determines that LICENSEE cannot otherwise demonstrate to the satisfaction of LICENSOR that it has taken or can be expected to take within a reasonable time, effective steps to achieve PRACTICAL APPLICATION of the LICENSED INVENTION or to make the LICENSED INVENTION reasonably accessible to the public; or

(b) LICENSOR determines that such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by LICENSEE, its subsidiaries and/or sublicensees; or

(c) LICENSEE commits a substantial breach of any covenant contained in this LICENSE agreement; or

(d) LICENSEE has willfully made a false statement or willfully omitted a material fact in the aforesaid license application or in any written report required by this LICENSE; or

(e) LICENSEE intends to file a voluntary petition in bankruptcy or if a third party intends to file an involuntary petition forcing said LICENSEE into bankruptcy. LICENSEE must provide notice to LICENSOR of such intention at least thirty (30) days

prior to filing such petition. Failure to provide such notice shall be deemed a material, pre-petition incurable breach of this LICENSE.

2. This LICENSE may be modified or terminated upon mutual consent of both parties as evidenced in writing and signed by both parties.

3. LICENSEE may request modification of this LICENSE in writing sent to LICENSOR and stating the reasons therefor.

4. Before modifying or terminating this LICENSE for any cause, LICENSOR shall furnish LICENSEE and each sublicensee of record, a written notice of its intention to modify or terminate this LICENSE, and LICENSEE and any sublicensee shall be allowed one (1) month after receipt of the notice to remedy any breach of any covenant set forth herein or to show cause why this LICENSE shall not be modified or terminated.

5. LICENSEE has a right to appeal, in accordance with the procedures prescribed by General Counsel of the Air Force, any decision concerning the interpretation, modification or termination of this LICENSE.

6. LICENSEE may terminate this LICENSE at any time, for whatever reason, upon written notice sent to LICENSOR at least one month prior to the EFFECTIVE DATE of termination, stating LICENSEE'S intention to terminate and signed by LICENSEE or its lawful agent. All rights and licenses granted herein shall cease immediately upon the EFFECTIVE DATE of such termination; and all past royalties and payments accrued up to the date of termination shall be paid to LICENSOR within two (2) months from the EFFECTIVE DATE of termination.

ARTICLE 13 - Patent Maintenance Fees

All patent maintenance fees shall be paid to the United States Patent and Trademark Office by LICENSOR at its sole option and discretion.

ARTICLE 14 - Governing Law

The construction, validity, performance and effect of this LICENSE for all purposes shall be governed by the laws applicable to the Government of the United States.

ARTICLE 15 - Export Controls

The LICENSED INVENTION may be subject to the Arms Control Act (22 U.S.C. 2751 et seq.) or the Export Administration Act (50 U.S.C. 2401 et seq.). Nothing in this

LICENSE shall be construed to modify or rescind LICENSEE's obligations under these laws.

ARTICLE 16 - Infringement Actions

1. Should either LICENSOR or LICENSEE become aware of any infringement or potential infringement of the LICENSED PATENT, they agree to give the other party written notice within 30 days providing sufficient information concerning the infringement or potential infringement.

2. LICENSEE shall have the right of enforcement of the LICENSED PATENT(S) under chapter 29 of title 35, United States Code.

3. At the expense of the requesting party, LICENSEE and LICENSOR agree to furnish data, records, evidence, testimony, technical assistance, and cooperation as reasonably necessary to facilitate any actions, including reexamination or reissue proceedings, brought by LICENSEE or LICENSOR to defend or enforce the LICENSED PATENT(S).

ARTICLE 17 - Notice

All communications and notices required under this LICENSE shall be duly given if timely mailed by the U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

- a. If to LICENSOR:
SAF/GCQ
1500 Wilson Blvd., Suite 304
Arlington, VA 22209-2403

with a copy of such correspondence to:

(Servicing Legal Office Patent Counsel)

- b. If to LICENSEE:

(CRADA Partner name and address)

In Witness Whereof, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

UNITED STATES OF AMERICA

DATE

BY _____

TITLE _____

(CRADA Partner Name).

DATE

BY _____

TITLE _____

II. PATENT ASSIGNMENTS

A. Patent Assignment under 61-302

MODEL AIR FORCE ASSIGNMENT AGREEMENT
BETWEEN
THE DEPARTMENT OF THE AIR FORCE
AND
(CRADA PARTNER NAME)
ASSIGNMENT AGREEMENT

PREAMBLE

This Assignment Agreement, (hereinafter called "AGREEMENT") is made and entered into by and between the United States of America as represented by the Secretary of the Air Force (hereinafter called "ASSIGNOR"), and (CRADA Partner name), a corporation (educational institution or non-profit organization) of _____, having a place of business _____ (CRADA Partner Address) (hereinafter called "ASSIGNEE").

WITNESSETH:

Whereas, The Stevenson-Wydler Technology Innovation Act of 1980, as amended, and Air Force Instructions 61-301 through 303 set forth the terms and conditions under which assignments under federally owned inventions made under a Cooperative Research and Development Agreement may be granted;

Whereas, ASSIGNOR has an assignment of title in U.S. Patent No. ----- entitled -----, and issued on -----.

Whereas, ASSIGNOR has previously agreed to grant an assignment in any subject invention made under Air Force Cooperative Research and Development Agreement (CRDA) Number _____ and ASSIGNEE intends to undertake development and marketing of the ASSIGNED INVENTION and has expressed its intention to carry out a plan to bring the ASSIGNED INVENTION to PRACTICAL APPLICATION upon the granting of this AGREEMENT; and

NOW THEREFORE, in accordance with and to the extent provided by the aforementioned authorities and in consideration of the foregoing premises and of the covenants and obligations hereinafter set forth to be well and truly performed, and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE 1 - Definitions

The parties to this AGREEMENT agree that the following definitions shall apply to the defined words where such words are used in this AGREEMENT:

1. The “ASSIGNED INVENTION” or “ASSIGNED PATENT” means the invention as described and claimed in the following patent (or patent application), including continuations, divisions, reexaminations and reissues thereof, assigned to the ASSIGNOR:

U.S. Patent No. ----- patented on -----, entitled “-----,” Serial No. --
---- filed ----- by -----.

2. “CALENDAR QUARTERS” are those three month periods commencing on January 1, April 1, July 1 and October 1.

3. “AGREEMENT YEAR” means a period of twelve (12) months in the Gregorian calendar. The first AGREEMENT YEAR commences on the EFFECTIVE DATE of this AGREEMENT and extends to the start of the next calendar quarter plus the following four full CALENDAR QUARTERS. The second AGREEMENT YEAR commences at the expiration of the first AGREEMENT YEAR and extends for the next succeeding four CALENDAR QUARTERS. Later AGREEMENT YEARS commence on the anniversary date of the start of the second AGREEMENT YEAR.

4. “END USER” means any person licensed to use ROYALTY BEARING PRODUCT(S) OR PROCESS(ES) for his or her personal use, or any ENTITY licensed to use ROYALTY BEARING PRODUCT(S) OR PROCESS(ES) in the regular conduct of its own business and not for licensing to other ENTITIES or individuals.

5. The “EFFECTIVE DATE” of this AGREEMENT shall be the date this AGREEMENT was last signed.

6. “ENTITY” means a corporation, an association, a joint venture, a partnership, a trust, a business, an individual, a government or political subdivision thereof, including an agency, or any other organization which can exercise independent legal standing.

7. “ROYALTY BEARING PRODUCT OR PROCESS” means a product, apparatus, method, or service of which the production, manufacture, sale, lease, use, or practice would infringe one or more valid ASSIGNED PATENT claims or which incorporates or makes use of the ASSIGNED PATENT. Where such a product, apparatus, method or service forms an integral part or component of a larger product, package of products, method or service, such larger product, package of products, method, or service shall be considered a ROYALTY BEARING PRODUCT OR PROCESS for purposes of this AGREEMENT.

8. "GROSS SALES PRICE" means the invoice price or lease income of the ROYALTY BEARING PRODUCT OR PROCESS sold or leased by ASSIGNEE to an arms length buyer (or if not sold to an arms length buyer, the invoice price of a like quality and quantity of product) or means the total amount of consideration received by ASSIGNEE for otherwise disposing of a ROYALTY BEARING PRODUCT OR PROCESS, except under a LICENSE. This includes packaging and shipping costs paid by the purchaser. Sales tax, excise tax, use tax or similar taxes are subtracted from the GROSS SALES PRICE before determining royalty.

Where the ROYALTY BEARING PRODUCT OR PROCESS is not sold or leased separately, but is sold or leased in combination with or as part of other products or services, the GROSS SALES PRICE shall be calculated for the purpose of computing royalties due by applying to the GROSS SALES PRICE of each of the combined or composite products or services, a fractional multiplier having as its denominator the total manufacturing or service cost of the combined or composite products or services (determined in accordance with ASSIGNEE's customary accounting procedures), and as its numerator the manufacturing or service cost of the included ROYALTY BEARING PRODUCT OR PROCESS (similarly determined).

9. "PRACTICAL APPLICATION" means to manufacture in the case of a composition or product, to practice in the case of a process, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

10. A "SUBSIDIARY" is a legal entity that is at least 50% owned, or otherwise controlled by ASSIGNEE. The term "ASSIGNEE" includes a "SUBSIDIARY" of ASSIGNEE under this AGREEMENT. Thus a SUBSIDIARY is not an arms length buyer of Section 6 of this Article.

11. "LICENSEE" means any ENTITY, not a SUBSIDIARY of ASSIGNEE, which is licensed by ASSIGNEE, with rights to the ASSIGNED PATENT beyond those rights commonly granted an END USER.

12. "LICENSES" are licenses granted by the ASSIGNEE to a third party other than a SUBSIDIARY, to enable such third party to exploit the ASSIGNED INVENTION for its own account.

ARTICLE 2 - Assignment Grant

1. ASSIGNOR hereby assigns to ASSIGNEE its entire right, title and interest throughout the world in and to the ASSIGNED INVENTION subject to the Reservation of Rights set forth in Article 3.

ARTICLE 3 - Reservation of Rights

1. This AGREEMENT is expressly made subject to a reservation by the Government of the United States of America to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States of America the subject matter of the ASSIGNED INVENTION throughout the world.

2. Further, ASSIGNOR reserves the right (i) to require the ASSIGNEE to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the ASSIGNED INVENTION in the applicant's field of use, on terms that are reasonable under the circumstances; or (ii) if the collaborating party fails to grant such a license to grant the license itself. ASSIGNOR may exercise this right only in exceptional circumstances and only if the ASSIGNOR determines that (i) the action is necessary to meet health and safety needs that are not reasonably satisfied by the ASSIGNEE; (ii) the action is necessary to meet requirements for public use specified by Federal Regulations, and such requirements are not reasonably satisfied by the ASSIGNEE; or (iii) the ASSIGNEE has failed to comply Article 7.3 of this AGREEMENT.

3. ASSIGNEE may not assign its rights in the ASSIGNED INVENTION without prior written approval by ASSIGNOR, except to an ENTITY which has as one of its primary functions the management of inventions in the custody of ASSIGNEE, provided that such assignee shall be subject to the terms and conditions of this AGREEMENT

ARTICLE 4 - Royalties, Royalty Report and Payment

1. Upon execution of this AGREEMENT by ASSIGNEE, ASSIGNEE shall pay ASSIGNOR, a sum in the amount of ----- Dollars (\$-----).

2. ASSIGNEE shall pay ASSIGNOR a running royalty of ---% of the GROSS SALES PRICE of each ROYALTY BEARING PRODUCT OR PROCESS sold or otherwise disposed of by ASSIGNEE in accordance with this AGREEMENT until the expiration date of the ASSIGNED PATENT. Payment of the running royalty shall be made at the end of each AGREEMENT YEAR in the manner set forth in the following section.

Should ASSIGNEE otherwise use the ASSIGNED INVENTION to earn revenue, running royalties payable to ASSIGNOR shall be ---% of such revenues received from third parties, other than LICENSEES, attributed to such use.

3. ASSIGNEE shall furnish ASSIGNOR with a statement, within two months following the end of each AGREEMENT YEAR, setting forth the quantity and GROSS SALES PRICE of ROYALTY BEARING PRODUCTS OR PROCESSES sold or otherwise disposed of by ASSIGNEE under this AGREEMENT during the AGREEMENT YEAR, and the royalty payment due. Payment shall accompany the statement. If no royalty is owed, the statement shall so indicate. A product shall be considered sold when billed-out, or shipped, or paid for, whichever occurs first.

4. Should ASSIGNEE fail to make timely payments in accordance with this AGREEMENT, ASSIGNOR may put ASSIGNEE on written notice of such default, and ASSIGNEE may remedy the default by payment of all monies due ASSIGNOR within one (1) month of the date of transmission of the written notice, to maintain the AGREEMENT in effect. Should the default not be cured by the end of said month, ASSIGNOR has the right to terminate this AGREEMENT by giving written notice of termination to ASSIGNEE, whereupon this AGREEMENT becomes terminated. However, termination for any reason does not relieve ASSIGNEE of the obligation to pay past running royalties accrued prior to the EFFECTIVE DATE of termination.

5. Sales to or for the Government are not subject to the earned running royalties set forth hereinabove, provided that ASSIGNEE identifies such sales by Government contract number or other suitable evidence, submitted with the aforesaid royalty reports.

6. Should ASSIGNEE receive licensing royalty payments from LICENSEES in accordance with this AGREEMENT, ASSIGNEE shall pay ASSIGNOR ----- percent (--%) of such licensing royalty payments along with the written royalty statement, indicating the amounts of royalties paid ASSIGNEE by its LICENSEE(S) during the AGREEMENT YEAR.

7. All payments due ASSIGNOR under this AGREEMENT shall be made by check, payable to the Treasurer of the United States and sent to ASSIGNOR at the address set out in Article 15.

ARTICLE 5 - Records, Books and Examination

1. ASSIGNEE agrees to keep, for at least the six most current AGREEMENT YEARS, accurate books and records of the number and type of all ROYALTY BEARING PRODUCTS OR PROCESSES sold or disposed of and all net income received under this AGREEMENT, the amount of sales thereof, the royalties owed ASSIGNOR, and all income received from any LICENSEES which may be licensed hereunder.

2. ASSIGNOR may, on reasonable notice and not more than once a year, have its duly authorized agent or representative, inspect, check, and verify all such books

and records either at ASSIGNEE's business premises or at a place mutually agreed upon. The agent's reports and the aforesaid royalty statements, and the information contained therein shall be maintained in confidence by ASSIGNOR on a reasonable efforts basis, if labeled PROPRIETARY, for a period of three years from the date of receipt thereof and will not be subject to disclosure under the Freedom of Information Act.

ARTICLE 6 - Term

This AGREEMENT will have force and effect until all patents on the ASSIGNED INVENTION have expired, except, however, that ASSIGNEE's obligations to pay royalties or other income under Article 4 shall continue only as long as an ASSIGNED PATENT is valid.

ARTICLE 7 - Performance

1. ASSIGNEE shall, on a reasonable efforts basis, bring the ASSIGNED INVENTION to the point of PRACTICAL APPLICATION including compliance with any applicable laws and all necessary approvals from Government agencies.

2. ASSIGNEE agrees to report promptly to ASSIGNOR any change in its mailing address, name or company affiliation during the term of this AGREEMENT and to report promptly of its decision to discontinue making the benefits of the ASSIGNED INVENTION reasonably accessible to the public.

3. ASSIGNEE agrees that any ROYALTY BEARING PRODUCT OR PROCESS which is used or sold in the United States and which embodies the ASSIGNED INVENTION or is produced through the use of the ASSIGNED INVENTION will be manufactured substantially in the United States.

ARTICLE 8 - Licensing and Royalty Sharing

1. Any LICENSE that ASSIGNEE grants under this AGREEMENT shall provide that:

(a) Each LICENSE shall be in writing and make reference to this AGREEMENT and be subject to the terms and conditions thereof including the rights retained by ASSIGNOR under Article 3 of this AGREEMENT;

(b) Each LICENSE shall include the condition that the LICENSE shall be automatically modified or terminated or expire upon the modification, termination, or expiration of this AGREEMENT;

(c) Before any LICENSE is issued by ASSIGNEE hereunder, the written approval of ASSIGNOR shall first be obtained for each LICENSE, such written approval shall not be unreasonably withheld;

(d) Within one month after the issuance or modification of any LICENSE hereunder, ASSIGNEE shall furnish ASSIGNOR with a true and complete copy of the LICENSE or modification thereof;

(e) The granting of any LICENSE by ASSIGNEE shall in no way relieve ASSIGNEE from any of the requirements of this AGREEMENT; and

(f) ASSIGNOR's share of all royalties received by ASSIGNEE from its LICENSEE(S) under this AGREEMENT shall be ----- percent (--%), paid in accordance with Article 4.7

ARTICLE 9 - Patent Marking and Non-Endorsement

1. ASSIGNEE hereby agrees to mark each ROYALTY BEARING PRODUCT OR PROCESS with the notation "Assigned from the United States of America under U.S. Patent No -----".

2. ASSIGNEE agrees not to create the appearance that ASSIGNOR endorses ASSIGNEE's business or endorses or warrants its products. ASSIGNOR is not to be connected directly or impliedly with any advertising or promotional program of ASSIGNEE, except that ASSIGNEE may state that it is assigned certain rights under this AGREEMENT.

ARTICLE 10 - Representations and Warranties

1. ASSIGNOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALIDITY OF ANY PATENT THAT HAS OR SHALL ISSUE UNDER THE ASSIGNED INVENTION OR OF THE SCOPE OF ANY OF THE CLAIMS THEREOF, OR THAT THE EXERCISE OF THIS AGREEMENT WILL NOT RESULT IN THE INFRINGEMENT OF ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.

2. Nothing relating to the grant of this AGREEMENT, nor the grant itself, shall be construed to confer upon ASSIGNEE or any LICENSEE hereunder, any immunity from or defense under the antitrust laws or from any charge of patent misuse, and the acquisition and use of rights pursuant to this AGREEMENT, shall not be immunized from the operation of State or Federal law by reason of the source of the grant.

3. Nothing contained in this AGREEMENT shall be interpreted to grant to ASSIGNEE any rights with respect to any ASSIGNED INVENTION or patent other than the ASSIGNED INVENTION or ASSIGNED PATENT.

4. ASSIGNOR assumes no obligation to bring or prosecute actions or suits against third parties for infringement.

5. ASSIGNOR assumes no obligation to furnish any know-how.

6. NEITHER ASSIGNOR NOR ITS EMPLOYEES ASSUMES ANY LIABILITY WHATSOEVER FROM THE EXERCISE OF THIS AGREEMENT OTHER THAN AS MAY BE EXPRESSLY STATED ELSEWHERE IN THIS AGREEMENT. ASSIGNOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. ASSIGNEE shall defend, indemnify and hold ASSIGNOR harmless from and against all liability, demands, damages, expenses and losses for death, personal injury, illness or property damage arising out of the use by ASSIGNEE or its customers and other transferees of any licensed process, or out of any use, sale or other disposition of ROYALTY BEARING PRODUCTS OR PROCESSES by ASSIGNEE.

ARTICLE 11 - Patent Costs and Maintenance Fees

ASSIGNEE shall pay all U.S. and foreign fees or costs, including all patent application and prosecution fees and patent maintenance fees, licensing fees or commissions, and any other costs incurred by ASSIGNEE relating to the ASSIGNED INVENTION.

ASSIGNEE will not abandon any patent application or cease to pay maintenance fees on any patent on the ASSIGNED INVENTION without providing ASSIGNOR written notice at least sixty (60) days before the expiration of any time period in which action must be taken to prosecute the patent application or in which a maintenance fee must be paid without extra fee or surcharge. ASSIGNEE further agrees, upon request and at no cost to the ASSIGNOR, to assign to ASSIGNOR or another party which the ASSIGNOR directs, the entire right, title and interest in the ASSIGNED INVENTION if the ASSIGNEE intends to abandon or cease to maintain any patent application based on the ASSIGNED INVENTION.

ARTICLE 12 - Governing Law

The construction, validity, performance and effect of this AGREEMENT for all purposes shall be governed by the laws applicable to the Government of the United States.

ARTICLE 13 - Export Controls

The ASSIGNED INVENTION may be subject to the Arms Control Act (22 U.S.C. 2751 et seq.) or the Export Administration Act (50 U.S.C. 2401 et seq.). Nothing in this AGREEMENT shall be construed to modify or rescind ASSIGNEE's obligations under these laws.

ARTICLE 14 - Infringement Actions

1. Should either ASSIGNOR or ASSIGNEE become aware of any infringement or potential infringement of the ASSIGNED PATENT, they agree to give the other party written notice within 30 days providing sufficient information concerning the infringement or potential infringement.

2. ASSIGNEE, as owner of the ASSIGNED PATENT, shall have the right of enforcement of the ASSIGNED PATENT(S) under chapter 29 of title 35, United States Code. Enforcement of any patent on the ASSIGNED INVENTION against third party infringers shall solely be the responsibility of ASSIGNEE and not the ASSIGNOR or the United States Government. The extent of enforcement, if any, shall be at the sole discretion of ASSIGNEE. Any recoveries made as a result of said enforcement shall be shared with the ASSIGNOR consistent with the terms set forth in Article 4.

ARTICLE 15 - Notice

All communications and notices required under this AGREEMENT shall be duly given if timely mailed by the U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

- a. If to ASSIGNOR:
SAF/GCQ
1500 Wilson Blvd., Suite 304
Arlington, VA 22209-2403

with a copy of such correspondence to:

(Servicing Legal Office Patent Counsel)

- b. If to ASSIGNEE:

(CRADA Partner name and address)

In Witness Whereof, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

UNITED STATES OF AMERICA

DATE

BY _____

TITLE _____

(CRADA Partner Name).

DATE

BY _____

TITLE _____

B. Patent Assignment under 35 U.S.C. 202(e)

MODEL AIR FORCE ASSIGNMENT AGREEMENT
BETWEEN
THE DEPARTMENT OF THE AIR FORCE
AND
NONPROFIT ORGANIZATION OR SMALL BUSINESS

Preamble

This Agreement is entered into by and between the Government of the United States of America, as represented by the Secretary of the Air Force (hereinafter referred to as “Air Force”), and *Name of Nonprofit Organization or Small Business* located in *Address of Nonprofit Organization or Small Business*, (hereinafter referred to as “Contractor”).

WITNESS THAT:

WHEREAS, *Name(s) of Government employee(s)* while employed by the Air Force and *Name(s) of Contractor employee(s)* while employed by Contractor under Air Force contract *Contract number*, jointly made an invention entitled *Title of Invention* described in U.S. Patent Application Serial No. *Serial Number* and filed *Filing Date*;

WHEREAS, the entire right, title and interest of *Name(s) of Air Force employee(s)* in and to said invention, including foreign rights, is assigned to the Air Force;

WHEREAS, the entire right, title and interest of *Name(s) of Contractor employee(s)* in and to said invention, including foreign rights, is assigned to the Contractor;

WHEREAS, pursuant to the terms and conditions of contract *Contract Number*, Contractor elected to retain title in and to said invention and to the interests of *Name(s) of Contractor employee(s)* in said invention;

WHEREAS, Contractor filed a patent application in the U.S. Patent and Trademark Office on said invention;

WHEREAS, it is the goal of the Air Force and Contractor to promote the utilization of inventions arising from federally supported research and development;

WHEREAS, to achieve the mutual goal of the Air Force and the Contractor, the Air Force desires to assign and the Contractor desires to acquire the entire right, title and interest of the Air Force in and to said invention; and

WHEREAS, this Agreement is authorized by law, 35 U.S.C. 202(e).

NOW THEREFORE, in consideration of the premises, and the agreements, covenants and conditions herein contained, the parties agree as follows:

I. DEFINITIONS

a. "The Assigned Invention" means the invention entitled *Title of Invention* described in U.S. Patent Application Serial No. *Serial Number* and filed *Filing Date*, and any U.S. or foreign patent or patents issued thereon, including all divisions, continuations, continuations-in-part (subject to any intervening rights), if any, resissues, reexaminations, or extensions thereof.

b. "Effective Date of this Agreement" means the later of the dates of execution by the authorized representative of the Air Force and the Contractor.

II. ASSIGNMENT GRANT

The Air Force hereby assigns to the Contractor its entire right, title and interest throughout the world in and to the Assigned Invention, reserving to the Government of the United States of America a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States of America the subject matter of the Assigned Invention throughout the world.

III. COSTS AND CONDITIONS OF REASSIGNMENT

a. Contractor shall pay all U.S. and foreign fees or costs, including patent applications filing fees, prosecution fees and patent maintenance fees, licensing fees or commissions, and any other costs incurred by Contractor relating to the Assigned Invention.

b. The Contractor has filed a patent application on the Assigned Invention. The Contractor agrees not abandon any patent application or cease to pay maintenance fees on any patent on the Assigned Invention without providing the Air Force written notice at least sixty (60) days before the expiration of any time period in which action must be taken to prosecute the patent application or in which a maintenance fee must be paid without extra fee or surcharge. The Contractor further agrees, upon request and at no cost to the Air Force, to assign to the Air Force or other party whom the Air Force directs, the entire right, title and interest in the Assigned Invention if the Contractor intends to abandon or cease to maintain any patent application based on the Assigned Invention.

IV. CONSIDERATION

- a. The Contractor will pay to the Air Force *State percentage negotiated* of any royalties or other income received by the Contractor for licensing or otherwise disposing of the Assigned Invention following the Effective Date of this Agreement.
- b. All payments to the Air Force under this Agreement shall be made by check payable to "The Treasurer of the United States of America" and mailed to the Office of the General Counsel at the address in Article VII within one (1) month from the 31st of December for each calendar year this Agreement is effective.
- c. With each payment, the Contractor shall include an accounting and description of all royalties or other income received. If no payment is owing, then the accounting shall so state. The Contractor shall maintain for five (5) years after each accounting is due, books of accounts showing all royalties or other income received or receivable. The Air Force may inspect such books during normal business hours upon reasonable request.

V. TERM

This Agreement will have force and effect until all patents on the Assigned Invention have expired, except, however, that Contractor's obligations to pay royalties or other income under Article IV shall continue for as long as royalties or other income are received by the Contractor.

VI. ADDITIONAL REQUIRED PROVISIONS UNDER 35 U.S.C. 202(c)

This Agreement is made subject to the policies, rights and obligations of the parties set forth in Title 35, United States Code, Chapter 18, including, but not limited to, the following:

- a. The Contractor may not assign its rights in the Assigned Invention without prior written approval of the Air Force, except to an organization which has as one of its primary functions the management of inventions, provided that such assignee shall be subject to the same terms and conditions as this Agreement.
- b. The Contractor shall share any royalties or other income received with the Contractor's employee inventors.
- c. The balance of any income earned by the Contractor with respect to the Assigned Invention, after payment of expenses (including payments to the Air Force under this Agreement and to the Contractor employee inventor(s)) incidental to the administration of

the Assigned Invention, shall be utilized for the support of scientific research or education.

d. The Contractor will make efforts that are reasonable under the circumstances to attract licensees of the Assigned Invention that are small business firms as set forth in Federal Acquisition Regulation 52.227-11(k)(4).

e. The assignment grant of Article I is made subject to the march-in rights of the Air Force under 35 U.S.C. 203.

f. Unless waived by the Air Force under the provisions of 35 U.S.C. 204, an exclusive right to make, use or sell the Assigned Invention shall not be granted to any person or entity unless such person or entity agrees that any products embodying the Assigned Invention or produced through the use of the Assigned Invention will be manufactured substantially in the United States of America.

VII. EXCLUSIONS

a. Enforcement of any patent on the Assigned Invention against third party infringers shall be the sole responsibility of the Contractor and not the Air Force or the United States Government. The extent of enforcement, if any, shall be at the sole discretion of the Contractor. Any recoveries made as a result of said enforcement shall be shared with the Air Force set forth in Article IV. (Any legal fees or other court fees shall be excluded as administrative costs.)

b. Neither the Contractor nor the Air Force warrants the validity of any patent on the Assigned Invention or scope of claims, or that the practice of the Assigned Invention will not result in infringement of any existing patent.

c. This Agreement shall not be construed to confer on the Contractor any immunity from the antitrust laws or from a charge of patent misuse.

d. The Contractor agrees not to create the appearance that the Air Force or the Government on the United States of America endorses or warrants the Assigned Invention or any resulting product or service. The Air Force and the Government of the United States of America shall not be connected directly or impliedly with any advertising or promotional program for the Assigned Invention or any resulting product or service, except that it may be generally stated that the Assigned Invention has been obtained in part by assignment from the Air Force.

VIII. ADDRESSES

The address for the Air Force for receiving payments, notices, reports, and for any other purposes under this Agreement is :

Office of the General Counsel (Acquisition)
SAF/GCQ
1500 Wilson Blvd., Suite 304
Arlington, VA 22209

with a copy to:

*Servicing patent counsel; and
Local Contracting Officer*

The address for the Contractor for this Agreement is:

Address of Contractor

IX. EFFECTIVE DATE

This Agreement shall have an effective date of the later of the dates of the following signatures by the Contractor and the Air Force.

X. SIGNATURES

In Witness whereof, the parties hereto have caused this Agreement to be executed by their duly authorized representative.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

By _____
Title: Deputy Assistant Secretary of the Air Force (Acquisition)

Date _____

FOR *NAME OF CONTRACTOR*

By _____
Title:

Date _____

SUGGESTED FORMAT:

1.0 Title. Provide a descriptive title of the CRADA.

2.0 Objective: State the overall technical purpose of the CRADA, including a short description of benefits anticipated for the Government and the Collaborator. [The Work Plan must reflect a scenario of technology transfer underlying the subject CRADA as required by the Technology Transfer Act, that is "to transfer federally owned or originated technology to State and local governments and to the private sector" \(15 U.S.C. § 3710\(a\)\(1\)\).](#) The Objective should state what, if any, intellectual property (pre-existing inventions or patents, copyrights, software, trade secrets, data, etc) would be expected to be generated in the course of work under the Work Plan. If no intellectual property is expected to be generated, the Work Plan should so state.

3.0 Background: Include any pertinent historical information related to the proposed CRADA. State each party's responsibilities regarding health, safety, and environmental protection. Background rights in any intellectual property to be brought to the CRADA by either party should be defined with specificity. [If any Proprietary Information is to be generated under the Work Plan, a statement consistent with the provisions of Article 7 of the CRADA should be included defining what rights the government will acquire in the Proprietary Information and the disposition the government may make of the Proprietary Information.](#)

4.0 Technical Tasks: This section may include the following parts.

4.1 Collaborator: Describe the tasks that the Collaborator will perform and describe and estimate the value of the resources the Collaborator is to provide in the form of funds, personnel, services, intellectual property, facilities and equipment.

4.2 Air Force Activity: Describe the tasks that the Air Force Activity will perform and describe and estimate the value of government resources to be provided in the form of personnel, services, intellectual property, facilities and equipment. The manpower and other resources of the Air Force Activity that will be called upon to accomplish the tasks under the Work Plan should be defined with specificity.

5.0 Deliverables or Desired Benefits: This section may include the following.

Attachment J1, page 60

5.1 Benefits to the Collaborator: Describe what the Collaborator hopes to accomplish and how the Collaborator plans to benefit, directly or indirectly, from the CRADA.

5.2 Benefits to the Government: Describe how the Government will benefit directly or indirectly from the CRADA.

NOTE: Paragraphs 5.1 and 5.2 should describe whatever patentable methods might be developed together with any associated technology transfer, licensing, and royalty benefits which might accrue to each party. In Paragraph 5.2, benefits to the government should be described in terms of prospective cost recovery, royalty income from licensed intellectual property, broadening of our technology base, or the like.

6.0 Other: Give any other pertinent information that would help both parties understand their respective roles in the CRADA.

7.0 Milestones: Give the dates for specific milestones within the term of the CRADA on which each party is expected to complete its tasks.

8.0 Reports: List the reports each party is to generate and give a schedule for their completion. Parties should prepare and submit written progress reports at least every six (6) months, and a final report within two (2) months after the CRADA or work under the CRADA ends. Parties should coordinate the formats.

9.0 Release of Liability Agreements: If Collaborator employees will be working on Air Force premises under hazardous conditions as part of accomplishing the tasks under the Work Plan, consideration should be given to adding the following paragraph to the Work Plan and attaching Appendix B to the CRADA. If appropriate, the Release of Liability Agreement may identify the specific facilities to which it applies by adding after "facilities" (first occurrence) the phrase ", specifically the **[insert the name(s) of the hazardous facility(ies)]**".

9.0 RELEASE OF LIABILITY AGREEMENTS: All *Collaborator* personnel working at Air Force Research Laboratory premises *Under this Agreement* will sign and return to the *Air Force Activity*, at the address listed in Article 12.1, a Release of Liability Agreement (see Appendix B) before commencing any work *Under this Agreement* on Air Force Research Laboratory premises.

**USE OF CRADA INCOME, PATENT ROYALTIES, AND STATUTORY
AWARDS AUTHORITY UNDER THE FEDERAL TECHNOLOGY TRANSFER
ACT**

THOMAS L. KUNDERT
Director of Intellectual Property Law
Air Force Materiel Command Law Office
AFMC LO/JAZ, 2240 B St Rm 100
Wright-Patterson AFB OH 45433-7109
DSN 785-2838
(937) 255-2838
thomas.kundert@wpafb.af.mil

1995
(Revised and Updated 1999)

USE OF CRADA INCOME, PATENT ROYALTIES, AND STATUTORY AWARDS AUTHORITY UNDER THE FEDERAL TECHNOLOGY TRANSFER ACT

I. INTRODUCTION

This paper describes the statutory and regulatory authorities and policies affecting the treatment and disposition of funds received by a Federal laboratory under cooperative research and development agreements, and the legal and permissible uses of royalties or other income under the Federal Technology Transfer Act of 1986.¹ A cooperative research and development agreement is commonly referred to as a CRDA or CRADA. In this paper, the acronym CRADA will be used. In addition, while the statutes and many of the fiscal law principles discussed are applicable to Federal departments and agencies in general, the focus of this paper is specifically directed to the authorities and policies as they pertain to, or as they have been implemented by, the Department of the Air Force.

II. SPENDING AUTHORITY

Under 15 U.S.C. §3714, a Federal laboratory has spending authority to make payments and to enter into contracts to perform or accomplish the following without regard to whether funding has been provided in advance in appropriations Acts:

- i. To provide personnel, services, facilities, equipment, intellectual property, and other resources under a CRADA pursuant to 15 U.S.C. §3710a;
- ii. To develop and implement a cash awards program under 15 U.S.C. §3710b; and
- iii. To distribute royalties or other income from the licensing or assignment of an invention under 15 U.S.C. §3710c.

A laboratory may fund the costs and expenses associated with providing personnel, services, facilities, equipment, intellectual property, or other resources under a CRADA out of appropriations from the laboratory's direct budget authority, or reimbursable budget authority (supported by funds provided by the collaborating party to a CRADA), or a combination of the two. A laboratory may fund payments under 15 U.S.C. §3710c, including payments to inventors and awards to other scientific and technical personnel, solely from royalties or other income received from the licensing or assignment of Government owned inventions made at the laboratory. A laboratory may fund the costs of awards under 15 U.S.C. §3710b from the appropriation available to the

laboratory. The Air Force requires that cash awards based on statutory authority be funded out of the laboratory's operation and maintenance (O&M) type appropriation.²

III. AUTHORITY TO ACCEPT, RETAIN AND USE FUNDS DERIVED FROM CRADAs

A CRADA is excluded from being a statutorily defined Federal procurement contract but it has the attributes of a common law contract. It is a writing which contains the agreement of the parties, with the terms and conditions, and which serves as a proof of the obligations. 15 U.S.C. §3710a enumerates the following categories of contribution (consideration) applicable to CRADAs.

A laboratory may provide with or without reimbursement the following items to the collaborating party to a CRADA:³

- i. **Personnel.** Federal employees may be committed to the performance of a CRADA as part of their official duties.
- ii. **Services.** Work may be performed by Federal employees, or by contracting for services (pursuant to the Federal procurement rules and regulations) and then providing the services to the work of the CRADA. The guidelines for the latest Air Force Model CRADA recommend adding additional provisions to address an inconsistency currently in the law regarding disposition of patent rights when the services of a contractor are engaged to perform or conduct research and development in support of a CRADA.⁴
- iii. **Property.** Real and personal property, tangible and intangible property may be provided including intellectual property, facilities and equipment.

A laboratory may accept, retain, and use the following items provided by the collaborating party to a CRADA.⁵

- i. **Funds.** The express authority in 15 U.S.C. §3710a(b)(3)(A) to "accept, retain and use funds" received from a collaborating party under a CRADA provides an exception to the general prohibition on augmenting an

appropriation by permitting a Federal laboratory to retain funds received under a CRADA without violating the Miscellaneous Receipts Statute, 31 U.S.C. §3302(b). This statute provides that "Except as . . . [otherwise provided] . . . an official or agent of the government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practical without any deduction for any charge or claim."

Any funds received under 15 U.S.C. §3710a(b)(3)(A) and 15 U.S.C. §3710c are considered by the Defense Finance and Accounting Service to be treated as appropriated funds and normal appropriated funds regulations, limitations, and requirements apply.

- ii. **Personnel.** A Federal laboratory operating under a CRADA is authorized pursuant to 15 U.S.C. §3710a(b)(3)(B) to use funds received from a collaborating party to hire personnel to carry out the agreement who will not be subject to full-time equivalent restrictions of the agency.

As a precaution, it is recommended that the terms and conditions of a CRADA specify that the collaborating party warrants that it has a right of assignment to any intellectual property invented or created by its employees or contractors in the performance of work under the CRADA.

- iii. **Services.** Personal or otherwise.
- iv. **Property.** Real and personal property, tangible and intangible property, including intellectual property, facilities and equipment.

A. Limitations on use of income under 15 U.S.C. §3710a(b)(3)(A)

There are no specific limitations set forth in 15 U.S.C. §3710a(b)(3)(A) as to purpose, amount, or time with respect to funds received under a CRADA.

The Defense Finance and Accounting Service issued interim accounting procedures directing that income received under 15 U.S.C. §3710a(b)(3)(A) shall be sent

directly to the servicing accounting and finance office and deposited in a suspense account.⁶ The funds then may be used or obligated by appropriate documentation showing the withdrawal of the amount and commitment or obligation to the designated appropriation for the laboratory's usage. Such funds should be credited to the appropriation or fund responsible for the principal financial support of the services, facilities, or property furnished under the agreement. This could be research, development, testing, and evaluation (RDT&E), operation and maintenance (O&M), one of the procurement accounts, or Defense Working Capital funds (DWCF). With respect to a time limit on spending funds once deposited, the Defense Finance and Accounting Service has advised the Air Force that collections are available for obligation only until the end of the fiscal year in which the appropriation to which it is deposited expires for new obligations. Any funds not so obligated shall expire for new obligation purposes at that time.⁷

B. Reimbursable Budget Authority

Funds received under a CRADA and royalties or other income from the licensing or assignment of inventions fall within the category of reimbursable budget authority (as opposed to direct budget authority). The Defense Finance and Accounting Service has advised the Air Force that funds received under 15 U.S.C. §3710a(b)(3)(A), and patent royalties or other income received under 15 U.S.C. §3710c, are limited to the extent that the reimbursable program has been apportioned.⁸

Air Force Instruction 65-601, Volume 1 provides that reimbursements must be credited to appropriations based upon the type of work done.⁹ Reimbursements must be funded by appropriations that would fund similar direct program requirements.

IV. AGENCY GUIDELINES FOR PRICING SERVICES

A CRADA is defined in 15 U.S.C. §3710a(d)(1) as an agreement under which “. . . the Government, through its laboratories, may provide personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement . . .” It is therefore discretionary whether a CRADA will include payment to a Federal laboratory for the resources provided, given that other benefits realized by the Government may be adequate consideration to support the agreement. In those CRADAs where payment provisions are included, DOD Regulation 7000.14-R provides guidance on developing an equitable and uniform system of user charges for special services and for leasing property to persons or organizations outside DOD and outside the Federal Government.¹⁰ The Defense Finance and Accounting Service has advised the Air Force that DOD Regulation 7000.14-R is applicable to determining charges and fees for Government services, facilities and property furnished under a CRADA.¹¹ The following is a synopsis of the instruction guidance:

A. Establishing fees

- i. Basis is total cost or fair market value, whichever is higher.
- ii. Determine fair market value by applying sound business management principles in accordance with comparable commercial practices.
- iii. Fees and charges need not be limited to recovery of costs. They may produce net revenues to the Government. The Defense Finance and Accounting Service has advised the Air Force that charges or fees received pursuant to a CRADA that are in excess of costs may be retained by the laboratory and do not have to be turned over to the Treasury pursuant to the Miscellaneous Receipts Statute, 31 U.S.C. §3302(b), supra.¹²

B. Determining costs

All direct and indirect costs may be considered based on category of customer, including:

- Civilian salaries and fringe expenses including the full cost of benefits such as leave, retirement, and medical and life insurance.
- Military personnel costs and fringe expenses.
- Costs for materials, supplies, travel, training, communications, utilities, equipment and property purchase or rental, and maintenance of property and equipment.
- Depreciation and interest on investment.
- Costs of establishing standards, regulations and other documentation associated with the CRADA.
- Other general and administrative costs.

C. Collection and deposit

- i. Collect fees and charges in advance of rendering the service except when advance payment is impractical.
- ii. In the absence of advance payment, establish an accounts receivable to control collections.

- iii. Deposit fees and charges collected to the credit of the appropriation or fund responsible for the principal financial support of the services.

There is no statutory requirement under 15 U.S.C. §3710a(d)(1) for a laboratory to receive payment for services or other work provided under a CRADA. The laboratory may provide such services with or without reimbursement. Since performance under a CRADA is authorized by law without payment, the guidance in DOD 7000.14-R regarding advance payment is believed to be applicable only when practicable under the circumstances. In many instances, requiring advance payment would be impractical such as when payment is based on income generated pursuant to the CRADA including a percentage of future sales of products or inventions made under the CRADA. However, whenever advance payment is feasible, it should be required. It is always permissible for the laboratory to refund unused moneys collected in advance from an outside source for the performance of services.

The Defense Finance and Accounting Service has advised the Air Force that fees and charges collected under authority of 15 U.S.C. §3710a(b)(3)(A) should be credited to the appropriation or fund responsible for the principal financial support of the services, facilities, or property furnished.¹³

V. PATENT ROYALTIES

15 U.S.C. §3710c provides that royalties received by an agency from the licensing or assignment of an invention pursuant to a CRADA or pursuant to 35 U.S.C. §207, or pursuant to any other provision of law, shall be distributed as follows:

- each year the first \$2,000, and thereafter at least 15% to the inventor or coinventors.
- the balance to the agency's laboratories, with a majority share going to the laboratory where the invention occurred.

The Defense Finance and Accounting Service has issued interim accounting procedures to the Air Force directing that patent royalties or other income received under 15 U.S.C. §3710c be sent to the Office of the General Counsel (Acquisition), SAF/GCQ,¹⁴ and deposited in a suspense account set up for the sole purpose of collecting and dispersing royalty income in accordance with Air Force Instruction 61-301.¹⁵ There are special limitations both as to time and purpose/use with respect to these appropriations, as will be discussed below.

Concern that agencies underutilized their authority to pay cash awards for scientific and technical contributions reportedly led to the provision for royalty sharing as a supplemental or alternate means of rewarding employees. It was envisioned that an agency may balance the incentive awards statutory authority with royalty sharing to more effectively encourage creativity and innovativeness among scientists, engineers and technical personnel, and to boost employees' morale by making individuals aware that their contributions are important and appreciated.¹⁶

A. Payments to inventors

The following principals apply to payments to inventors under 15 U.S.C. §3710c:

- i. Any obligation to pay an inventor shall continue after the inventor leaves the laboratory or agency.¹⁷
- ii. Payments may not exceed \$150,000 per year to any one person, unless the President approves a larger award.¹⁸
- iii. Any payment made to a laboratory employee is in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he or she is otherwise entitled to or is eligible, or limit the amount thereof.¹⁹
- iv. Under Air Force Instruction 61-301, an inventor whose whereabouts cannot be established within one year from mailing of the first correspondence concerning a royalty payment for any given year to his or her last known address shall be presumed to be unknown and any payments as set forth above and any excess royalties not disbursed will be disbursed to and retained by the laboratory and/or technical activity responsible for the licensed (or assigned) invention, until the inventor can be found or until the end of the second fiscal year succeeding the fiscal year in which they are received, at which time such royalties will be paid to the Treasury of the United States.²⁰
- v. Opinions by the U.S. Office of Government Ethics²¹ and the Department of Justice²² state that payments do not cause an employee-inventor to have a personal financial interest in violation of 18 U.S.C. §208, nor do the payments constitute a contribution to or a supplementation of salary in violation of 18 U.S.C. §209.
- vi. Air Force Instruction 61-301 implementing DOD Instruction 5535.8 establishes the following share for inventors

with regard to patent royalties or other income received by the Air Force:

The inventor or each co-inventor shall be paid each year the first \$2,000 plus equal shares of at least 20 percent of the remainder of the royalties or other payments. In the absence of extrinsic evidence that the co-inventors made unequal contributions to the invention, subject to review and approval by SAF/GCQ, it shall be presumed that the co-inventors made equal contributions to the invention and are entitled to equal shares of the 20 percent remainder of the royalties or other payments. If the royalties or other payments received in any given year are less than or equal to \$2,000, or in the case of co-inventors, less than or equal to \$2,000 times the number of inventors, the entire amount is paid to the inventor, or in the case of co-inventors, the entire amount is divided equally among the co-inventors.²³

vii. An inventor (or co-inventors) who has assigned his or her rights to the United States is entitled to receive the aforesaid prescribed share of royalties or other payments received by the Air Force from licensing or assigning an invention.²⁴

B. Use of the remainder of patent royalties by laboratories

Limitations on use

15 U.S.C. §3710c(a)(1)(B) limits the use by laboratories of the balance of royalties or other income received from the licensing or assignment of inventions, after payments to the inventor as provided above, to the following:

- i. to reward scientific, engineering and technical employees of the laboratory where the invention occurred, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications.²⁵
- ii. to further scientific exchange among the Government-operated laboratories of the agency.
- iii. for education and training of employees consistent with the R&D mission and objectives of the agency or laboratory, and for other activities that increase the potential for transfer of the technology of the laboratories of the agency.

- iv. for payment of expenses incidental to the administration and licensing of intellectual property by the agency or the laboratory with respect to inventions made at the laboratory, including fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services.
- v. for scientific research and development consistent with the research and development missions and objectives of the laboratory.

Limitations on amount and time

15 U.S.C. §3710c contains the following limitations as to amount and time with respect to royalties or other payments received by a Federal agency from the licensing or assignment of an invention:

- i. The agency or laboratory shall retain the royalties and other payments received from an invention until the agency or laboratory makes payments to the inventor(s) and to laboratory employees who are not an inventor but who substantially increase the technical value of such invention.²⁶
- ii. A majority share of the balance of the royalties or other income must go to the laboratory where the invention occurred (i.e., was made).²⁷ The policy of the Air Force is to transfer the entire balance of the royalties or other income to the laboratory where the invention was made.²⁸
- iii. All royalties or other payments retained by the agency or laboratory after payments have been made pursuant to 15 U.S.C. §3710c(a)(1)(A) and (B) that is unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which they are received shall be paid to the Treasury of the United States.²⁹
- iv. After payments to inventors, a Federal agency may retain the balance of patent royalties or other income received in any fiscal year up to an amount equal to 5% of its Government-operated laboratory's budget for that year. Seventy five percent (75%) of the excess over that amount shall be paid to the Treasury of the United States and twenty-five percent (25%) may be used or obligated under

the preceding section . Any funds not so used or obligated shall be paid to the Treasury.³⁰

VI. STATUTORY AWARDS PROGRAM

Under 15 U.S.C. §3710b, agencies are directed to implement a cash awards program using the appropriate statutory authority as follows:

The head of each Federal agency that is making expenditures at a rate of more than \$50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for ---

- (1) inventions, innovations, computer software, or other outstanding scientific or technological contributions of value to the United States due to commercial applications or due to contributions to missions of the Federal agency or the Federal Government, or
- (2) exemplary activities that promote the domestic transfer of science and technology developed within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

The appropriate statutory authority referred to above for cash awards is found in Title 5, United States Code, Chapters 45, and Title 10, United States Code, Chapter 57. Under this authority an agency may pay from the fund or appropriation available to the activity primarily benefiting, up to \$10,000 to a civilian employee, and up to \$25,000 to a member of the armed forces³¹ who by his or her suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations; or performs a special act or service in the public interest in connection with or related to his or her official employment.

Awards over \$10,000 and up to \$25,000 may be made to a civilian employee under Section 4502 of Title 5, United States Code, with the approval of the Office of Personnel Management. The President also has authority to pay a cash award to an employee in addition to any agency award. Honorary recognition by an agency or the President is also authorized by the existing statutory authority and by executive order³².

Air Force Instruction 38-401³³ implements the above statutes. Chapter 4 of the instruction currently authorizes an award of \$100 to each Air Force employee-inventor upon the filing of a patent application, and a further award of \$300 (prorated if there are

co-inventors) upon the issuance of a patent or statutory invention registration, or on issuance of a notice of allowability in an application under a secrecy order.

Air Force Instruction 38-401, Chapter 2 authorizes awards for scientific achievements that meet one of the following standards:

- i. An act, deed, or accomplishment that establishes a scientific or technological basis for later technical improvements of military or other national significance.
- ii. A scientific or technological accomplishment of such quality and effectiveness that it materially advances the research and development achievements of an activity, group, project, or service to the public.
- iii. A significant scientific or technological achievement that contributes materially to the welfare of the U.S. Armed Services.
- iv. An article accepted for publication in a scientific publication, Abstract of New Technology, or a technical paper presented to a professional society that substantially contributes to scientific knowledge.

A scientific achievement award may be granted in addition to an award for an invention under Air Force Instruction 38-401.

Air Force Instruction 65-601, Volume 1 and Air Force Instruction 38-401 provide that cash awards based on statutory authority must be funded out of the laboratory's operation and maintenance type (O&M) appropriation. The Defense Accounting and Finance Service has advised the Air Force that funds received by an agency pursuant to 15 U.S.C. §3710a may only be used for the purposes stated in that section, and that there is no authority to use collections authorized under 15 U.S.C. §3710a for the purposes of any other section in Title 15.³² Such funds are reimbursements which must be credited to appropriations based upon the type of work done. For example, a reimbursable RDT&E effort must be funded in the RDT&E appropriation as a reimbursement. However, to the extent that charges or fees collected under a CRADA are properly credited as reimbursements to the O&M type appropriation, those charges or fees should become available to fund a cash award made by the laboratory out of its O&M type appropriation.

ENDNOTES

1. Pub. L 99-502, 100 Stat. 1785 (1986), as amended.
2. Air Force R&D laboratories do not have O&M 3400 appropriations but use 3600 program elements to pay for operational costs.
3. See 15 U.S.C. §3710a(b)(3) and §3710a(d)(1).
4. 15 U.S.C. §3710a(b)(1), as amended (Public Law 104-113, March 1996), now requires that a Federal laboratory grant the collaborating party under a CRADA an option for an exclusive license in a pre-negotiated field of use in any invention made in whole or in part by a laboratory employee. The laboratory may not be able to grant such an exclusive license if the invention is jointly made by the laboratory employee and a contractor employee because the rights afforded the contractor under the contract grant the contractor the first right of ownership in any intellectual property invented during performance of the contract. 35 U.S.C. §§200-212, Ch. 18, (1991) and Exec. Order No. 12591, 52 Fed. Reg. 13414 (April 10, 1987) as amended Exec. Order No. 12618, 52 Fed. Reg. 48661 (December 22, 1987), permit the contractor to retain title to any subject invention conceived or first actually reduced to practice in the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Case 98-019, currently under consideration by the DAR Council, would amend the Federal Acquisition Regulation (FAR), Part 27, to require the contractor to grant to the Government or other third party license rights, as specified by the Government, in any subject invention based on a Government determination made pursuant to 35 U.S.C. §202(a)(i)-(iv). This determination is limited to meeting a collaborating party's requests up to an option for an exclusive license of sufficient scope in such subject invention to the Government or CRADA collaborating party(ies) for a pre-negotiated field of use for reasonable compensation when appropriate or, if there is more than one CRADA collaborating party, that the CRADA collaborating parties have the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party. The determination is further limited to subject invention(s) that are sole subject invention(s) that arise as a result of work performed at a Government facility or joint subject invention(s) that arise with a Government employee as one of the joint inventors.
5. Note, *supra*, note 2.
6. DFAS-DE/PG Message 242357Z, May 91, Subject: Royalty and Cooperative Research and Development Agreement (CRADA) income. New instructions instituted by DFAS-HQ require the elimination of balances in F3875 Budget Clearing Account (Suspense) and X6875 Deposit Fund (Suspense) after 90 days.

7. Memorandum for Deputy Director for General Accounting, Defense Finance and Accounting Service dated April 19, 1994, Subject: Establishing Charges or Fees Under Cooperative Research and Development Agreements (CRADAs).
8. Id.
9. Air Force Instruction 65-601, Vol. 1, October 21, 1994, Budget Guidance and Procedures.
10. DOD Regulation 7000.14-R, Vol. 11A, Chap. 4, January, 1995 with changes through October, 1999, User Charges, superseding DOD Instruction 7230.7, dated January 29, 1985, now canceled.
11. Supra, note 7.
12. Id.
13. Id.
14. Under the reorganization of patent functions within the Air Force effective 1 October 1994, patent royalties are now sent to the Office of the General Counsel (SAF/GCQ).
15. Revised draft Air Force Instructions 61-301 entitled "The Domestic Technology Transfer Process and the Offices of Research and Technology Application", v11, 20 August 1999, paragraph 5.1. This instruction will supersede AFI 61-301, dated July 25, 1994.
16. See House Committee on Science and Technology Report 99-415, December 5, 1985, at pages 8-9.
17. 15 U.S.C. §3710c(a)(3).
18. Id.
19. Id.
20. Revised draft Air Force Instruction 61-301, paragraph 5.3. See note 15, supra.
21. Letter from Frank Q. Nebeker, Director, U.S. Office of Government Ethics to Marilyn G. Wagner, Assistant General Counsel for Administration, Department of Commerce, dated September 27, 1988.

22. Memorandum for Stephen D. Potts, Director, Office of Government Ethics, from Walter Dellinger, Acting Assistant Attorney General, U.S. Department of Justice, dated September 13, 1993.
23. Air Force Instruction 61-301, paragraph 5.2. DOD Instruction 5535.8, dated May 14, 1999, entitled "Department of Defense Technology Transfer (T2) Program". See note 15, supra.
24. A draft Opinion of the Comptroller General Number B-235063 (undated), in response to a request from the National Aeronautics and Space Administration (NASA) for guidance concerning the manner in which royalties from the licensing of patents should be distributed to NASA inventors concluded that a non-federal inventor must individually own rights in the invention and assign those rights directly to the Government in order to qualify for royalty sharing under 15 U.S.C. §3710c. Thus in a situation where the Government receives rights in an invention through assignment from the employer of a non-federal inventor, and not directly from the inventor, neither the inventor nor the employer is entitled to share under 15 U.S.C. §3710c. The opinion was contested by the Department of the Navy and was never issued. The guidance in DOD Instruction 5535.8 and Air Force Instruction 61-301, see note 23, supra, supports payment to all inventors from whose invention the Air Force has received royalties or other payments.
25. 15 U.S.C. §3710c(a)(1)(A)(ii). The legislative history of P.L. 99-502 (U.S. Code Cong. & Adm. News, p. 3455) contains the following guidance on distribution of royalty income for awards:
[15 U.S.C. §3710c(a)(1)(B)] "includes cash award provisions in addition to royalty sharing so that agencies do not neglect productive employees (and laboratories) who either do not work in commercially productive areas or who contribute to, but do not have their names on, patents. The Committee intends that a substantial percentage of royalties go to the laboratories that produce the inventions. The Committee intends that "a substantial percentage" means more than half and perhaps all of the royalties. Nevertheless, section [(B)] allows an agency to distribute royalties to non-commercially productive laboratories as well as those that produce inventions that are transferred to the private sector. The report of the Packard panel emphasized the need for laboratory managers to have discretionary funds to invest in innovative activities in the laboratory. This need exists for these laboratories as well as for those doing commercially applicable work."
26. 15 U.S.C. §3710c(a)(1)(A)(iii).
27. 15 U.S.C. §3710c(a)(B).
28. Revised draft Air Force Instruction 61-301, paragraph 5.5. See note 15, supra.
29. 15 U.S.C. §3710c(a)(1)(C).

30. 15 U.S.C. §3710c(a)(2).

31. The total amount of the award, or awards, made to member of the armed forces under 10 U.S.C. §1124 for a disclosure, suggestion, invention, or scientific achievement may not exceed \$25,000, regardless of the number of persons who may be entitled to share therein.

32. Honorary awards include the President's Award for Distinguished Federal Civilian Service under Executive Order No. 10717, and the Presidential Medal of Freedom under Executive Order No. 9586.

33. Air Force Instruction 38-401, February 7, 1994, The Air Force Suggestion Program.

34. *Supra*, note 7.

EXPORT-CONTROLLED DATA RESTRICTIONS

(a) For the purpose of this clause,

(1) Foreign person is any person who is not a citizen or national of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;

(2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation or person;

(3) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person; and

(b) The Contractor shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(c) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.

(d) Equipment and technical data generated or delivered under this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). The Contractor shall notify the Contracting Officer and obtain written approval of the Contracting Officer prior to assigning or granting access to any work, equipment, or technical data generated or delivered under this contract to foreign persons or their representatives. The notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

(End of clause)

APPENDIX B
RELEASE OF LIABILITY AGREEMENT

In consideration of being allowed to use the facilities of the United States Air Force, I hereby accept full responsibility for any risks related to my own use of such facilities and for my own safety. I hereby release forever the Government of the United States (U.S. Government), its agencies and personnel, from every liability whatsoever to me arising out of the use of such facilities, including liabilities for personal injury or death and property damage or loss, except to the extent that the death, injury, loss or damage results from the gross negligence or willful misconduct of U.S. Government personnel. For the purposes of this Agreement, "U.S. Government personnel" includes military personnel and civilian employees of the United States, including non-appropriated fund employees acting within the scope of their employment, and the heirs, successors, executors, administrators and assigns of such personnel and employees.

I make this release for myself and on behalf of my heirs, successors, executors, administrators and assigns.

Date

Signature of Collaborator Employee

III. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

[Insert name of Air Force Activity]

AND

[Insert name of Collaborator]

ARTICLE 1. PREAMBLE

- 1.1 This Cooperative Research and Development Agreement (*Agreement*) for performing the work described in the Work Plan attached hereto as Appendix A is entered into pursuant to 15 U.S.C. § 3710a (as amended) and Air Force Policy Directive 61-3 and Air Force Instruction 61-302 by and between [Insert name of collaborator], (hereinafter referred to as "*Collaborator*"), located at [Insert address of collaborator], and the United States of America as represented by the Department of the Air Force, [Insert name of Air Force Activity], (hereinafter referred to as the "*Air Force Activity*"), located at [Insert name of Air Force Base] Air Force Base, [Insert state where located]. The terms and conditions of this *Agreement* are set forth as follows.

ARTICLE 2. DEFINITIONS

- 2.1 As used in this *Agreement*, the following terms shall have the following meanings and such meanings shall be applicable to both the singular and plural forms of the terms. All other terms of this *Agreement* shall be ascribed their plain, commonly accepted definitions.
- 2.2 "*Created*" in relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. § 101.
- 2.3 "*Effective Date*" means the earlier of: (a) the date of the last signature of the duly authorized representatives of the parties and the *Reviewing Official*; or (b) thirty (30) days after the receipt of a signed copy of this *Agreement* by the *Reviewing Official* without that official taking any action thereon.
- 2.4 "*Government*" means the Government of the United States of America.
- 2.5 "*Special Purpose License*" means a license to the *Government* conveying a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to practice and have practiced an *Invention* for or on behalf of the *Government* for

research or other government purposes and conveying a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to use, duplicate, prepare derivative works, distribute or disclose copyrighted works or *Proprietary Information* in whole or in part and in any manner, and to have or permit others to do so, for research or other government purposes. Research or other government purposes include competitive procurement, but do not include the right to have or permit others to practice an *Invention* or use, duplicate, prepare derivative works, distribute or disclose copyrighted works or *Proprietary Information* for commercial purposes.

- 2.6 "*Invention*" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq*).
- 2.7 "*Made*" in relation to any *Invention* means the conception or first actual reduction to practice of such *Invention*.
- 2.8 "*Proprietary Information*" means information which embodies trade secrets or which is confidential technical, business or financial information provided that such information:
- i) is not generally known, or is not available from other sources without obligations concerning its confidentiality;
 - ii) has not been made available by the owners to others without obligation concerning its confidentiality;
 - iii) is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or
 - iv) can be withheld from disclosure under 15 U.S.C. § 3710a(c)(7)(A) & (B) and the Freedom of Information Act, 5 U.S.C. § 552 *et seq*; and
 - v) is identified as such by labels or markings designating the information as proprietary.
- 2.9 "*Reviewing Official*" means the authorized representative of the Department of the Air Force who is identified on the signature page of this *Agreement*.
- 2.10 "*Under*" as used in the phrase "*Under this Agreement*" means within the scope of work to be performed as described in the Work Plan.

ARTICLE 3. WORK PLAN

- 3.1 Appendix A sets forth the nature and scope of the work to be performed *Under this Agreement*, including any equipment, maintenance and other support, and any associated reporting requirements.

- 3.2 The *Collaborator* may inspect *Government* property identified in Appendix A prior to use. Such property may be repaired or modified at the *Collaborator's* expense only after obtaining the written approval of the *Air Force Activity*. Any repair or modification of the property shall not affect the title of the *Government*. Unless *Air Force Activity* hereafter otherwise agrees, the *Collaborator* shall, at no expense to the *Air Force Activity*, return all *Government* property after termination or expiration of this *Agreement* in the condition in which it was received, normal wear and tear excepted.
- 3.3 The parties agree to confer and consult with each other prior to publication or other public disclosure of the results of work *Under this Agreement* to ensure that no *Proprietary Information* or military critical technology or other controlled information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each party will offer the other party ample opportunity to review such proposed publication or disclosure, to submit objections, and to file applications for patents in a timely manner.

ARTICLE 4. FINANCIAL OBLIGATIONS

- 4.1 The *Collaborator* will pay the *Air Force Activity* the amount of \$ _____ within thirty (30) days after the *Effective Date* hereof. Subsequent payments will be paid as follows: _____.
- 4.2 Except as provided for in paragraph 4.4, payments by the *Collaborator* to the *Air Force Activity* under this Article shall be made payable to **[Insert appropriate Air Force Activity FAS]** and mailed to the following address:
[Insert appropriate *Air Force Activity* accounting office FAS, Air Force Base, State, ZIP.]

Payments shall reference this *Agreement* by USAF CRADA Number and by the names of the parties and shall state the purpose of the payments. A copy of the payment documents shall also be sent by ordinary mail to the address shown for formal notices in Article 12.

- 4.3 Royalty or other income from patents shall be payable in accordance with any separate patent license hereafter entered into by the parties pursuant to Article 5.

ARTICLE 5. PATENTS

- 5.1 **Disclosure of Inventions.** Each party shall report to the other party, in writing, each *Invention Made Under this Agreement*, promptly after the existence of each such *Invention*, in the exercise of reasonable diligence, becomes known.

- 5.2 **Rights in Inventions.** Each party shall separately own any *Invention Made* solely by its respective employees *Under this Agreement*. *Inventions Made* jointly by the *Air Force Activity* and the *Collaborator* employees shall be jointly owned by both parties. The *Collaborator* shall have an option to choose an exclusive license for a pre-negotiated field of use at a reasonable royalty rate, subject to the conditions set forth in 15 U.S.C. § 3710a(b)(1)(A), (B) & (C), in any *Invention Made* in whole or in part by *Air Force Activity* employees *Under this Agreement*. The *Collaborator* shall exercise the option to obtain a license by giving written notice thereof to the *Air Force Activity* within three (3) months after disclosure of the *Invention* under paragraph 5.1. The royalty rate, field of use and other terms and conditions of the license shall be set forth in a separate license agreement and shall be negotiated promptly after notice is given. The *Collaborator* hereby grants to the *Government*, in advance, a *Special Purpose License* in any *Invention Made* by the *Collaborator* employees *Under this Agreement*.
- 5.3 **Filing Patent Applications.** The *Collaborator* shall have the first option to file a patent application on any *Invention Made Under this Agreement*, which option shall be exercised by giving notice in writing to the *Air Force Activity* within three (3) months after disclosure of the *Invention* under paragraph 5.1, and by filing a patent application in the U.S. Patent and Trademark Office within six (6) months after written notice is given. If the *Collaborator* elects not to file or not to continue prosecution of a patent application on any such *Invention* in any country or countries, the *Collaborator* shall notify the *Air Force Activity* thereof at least three (3) months prior to the expiration of any applicable filing or response deadline, priority period or statutory bar date. In any country in which the *Collaborator* does not file, or does not continue prosecution of, or make any required payment on, an application or patent on any such *Invention*, the *Air Force Activity* may file, or continue prosecution of, or make any required payment on, an application or patent, and the *Collaborator* agrees, upon request by the *Air Force Activity*, to assign to the *Government* all right, title and interest of the *Collaborator* in any such application or patent and to cooperate with the *Air Force Activity* in executing all necessary documents and obtaining cooperation of its employees in executing such documents related to such application or patent.
- The party filing an application shall provide a copy thereof to the other party.
- Note:** Any patent application filed on any *Invention Made Under this Agreement* shall include in the patent specification thereof the statement: "This invention was made in the performance of a Cooperative Research and Development Agreement with the Department of the Air Force. The Government of the United States has certain rights to use the invention."
- 5.4 **Patent Expenses.** Unless otherwise agreed, the party filing an application shall pay all patent application preparation and filing expenses and issuance, post issuance and patent maintenance fees associated with that application.

ARTICLE 6. COPYRIGHTS

- 6.1 The *Collaborator* shall own the copyright in all works *Created* in whole or in part by the *Collaborator Under this Agreement*, which are copyrightable under Title 17, United States Code. The *Collaborator* shall mark any such works with a copyright notice showing the *Collaborator* as an owner and shall have the option to register the copyright at the *Collaborator's* expense.
- 6.2 The *Collaborator* hereby grants in advance to the *Government* a *Special Purpose License* in all copyrighted works *Created Under this Agreement*. The *Collaborator* will prominently mark each such copyrighted work subject to the *Special Purpose License* with the words: "This work was created in the performance of a Cooperative Research and Development Agreement with the Department of the Air Force. The Government of the United States has certain rights to use this work."
- 6.3 The *Collaborator* shall furnish to the *Air Force Activity*, at no cost to the *Air Force Activity*, three (3) copies of each work *Created* in whole or in part by the *Collaborator Under this Agreement*.

ARTICLE 7. PROPRIETARY INFORMATION

- 7.1 Neither party to this *Agreement* shall deliver to the other party any *Proprietary Information* not developed *Under this Agreement*, except with the written consent of the receiving party. Unless otherwise expressly provided in a separate document, such *Proprietary Information* shall not be disclosed by the receiving party except under a written agreement of confidentiality to employees and contractors of the receiving party who have a need for the information in connection with their duties *Under this Agreement*. The *Government* shall not be liable for release of unmarked information.
- 7.2 *Proprietary Information* developed *Under this Agreement* shall be owned by the developing party, and any jointly developed *Proprietary Information* shall be jointly owned. *Government* shall have a *Special Purpose License* to use, duplicate and disclose, in confidence, and to authorize others to use, duplicate and disclose, in confidence, for government purposes, any such *Proprietary Information* developed *Under this Agreement* solely by the *Collaborator*. The *Collaborator* may use, duplicate and disclose, in confidence, and authorize others on its behalf to use, duplicate and disclose, in confidence, any such *Proprietary Information* developed *Under this Agreement* solely by the *Air Force Activity*. *Proprietary Information* developed *Under this Agreement* shall be exempt from the Freedom of Information Act, 5 U.S.C. § 552 et seq., as provided at 15 U.S.C. § 3710a(c)(7)(A) & (B). The exemption for *Proprietary Information* developed jointly by the parties or solely by the *Air Force Activity* shall expire not later than five years from the date of development of such *Proprietary Information*.

ARTICLE 8. TERM, MODIFICATION, EXTENSION TERMINATION AND DISPUTES

- 8.1 **Term and Extension.** The term of this *Agreement* is for a period of () months, commencing on the *Effective Date* of this *Agreement*. This *Agreement* shall expire at the end of this term unless both parties hereto agree in writing to extend it further. Expiration of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to expiration.
- 8.2 **Modification.** Any modifications shall be by mutual written agreement signed by the parties' representatives authorized to execute this *Agreement* and attached hereto. A copy of any modifications will be forwarded to the *Reviewing Official* for information purposes.
- 8.3 **Termination.** Either party may terminate this *Agreement* for any reason upon delivery of written notice to the other party at least one (1) month prior to such termination. Termination of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to the date of termination of this *Agreement*. In the event of termination by either party, each party shall be responsible for its own costs incurred through the date of termination, as well as its own costs incurred after the date of termination and which are related to the termination. If the *Air Force Activity* terminates this *Agreement*, it shall not be liable to the *Collaborator* or its contractors or subcontractors for any costs resulting from or related to the termination, including, but not limited to, consequential damages or any other costs.
- 8.4 **Disputes.** All disputes arising out of, or related to, this *Agreement* shall be resolved in accordance with this Article.
- 8.4.1 The parties shall attempt to resolve disputes between themselves. Resolution attempts must be documented and kept on file by the local technology transfer focal point for the *Air Force Activity*. Either party may refer in writing any dispute which is not disposed of by agreement of the parties to the *Reviewing Official* for decision.
- 8.4.2 *Reviewing Official.* The *Reviewing Official* shall within sixty (60) days of the receipt of the dispute, notify the parties of the decision. This decision shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, either party submits to the *Reviewing Official*, a written appeal addressed to the Office of the Assistant Secretary of the Air Force (Acquisition), Deputy Assistant Secretary (Science, Technology, and Engineering).

- 8.4.3 Office of the Assistant Secretary of the Air Force (Acquisition), Deputy Assistant Secretary (Science, Technology, and Engineering). The decision of the Assistant Secretary of the Air Force (Acquisition), Deputy Assistant Secretary (Science, Technology, and Engineering), or his duly authorized representative, on the appeal shall be final and conclusive.
- 8.5 Continuation of Work. Pending the resolution of any such dispute, work under this *Agreement* will continue as elsewhere provided herein.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.1 The *Air Force Activity* hereby represents and warrants to the *Collaborator* as follows:

- 9.1.1 **Mission.** The performance of the activities specified by this *Agreement* are consistent with the mission of the *Air Force Activity*.
- 9.1.2 **Authority.** All prior reviews and approvals required by regulations or law have been obtained by the *Air Force Activity* prior to the execution of the *Agreement*. The *Air Force Activity* official executing this *Agreement* has the requisite authority to do so.
- 9.1.3 **Statutory Compliance.** The *Air Force Activity*, prior to entering into this *Agreement*, has (1) given special consideration to entering into cooperative research and development agreements with small business firms and consortia involving small business firms; (2) given preference to business units located in the United States which agree that products embodying an *Invention Made Under* this *Agreement* or produced through the use of such *Invention* will be manufactured substantially in the United States; and (3) taken into consideration, in the event this *Agreement* is made with an industrial organization or other person subject to the control of a foreign company or government, whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements with such foreign country.

9.2 The *Collaborator* hereby represents and warrants to the *Air Force Activity* as follows:

- 9.2.1 **Corporate Organization.** The *Collaborator*, as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of [insert state], and (if applicable) is a wholly owned subsidiary of [insert parent corp name], a [insert state] corporation.

9.2.2 **Statement of Ownership.** The *Collaborator* (is) (is not) a foreign owned or a subsidiary of a foreign-owned entity. The *Collaborator* has the right to assignment of all *Inventions Made* and copyrightable works *Created* by its employees *Under this Agreement*.

9.2.3 **Authority.** The *Collaborator* official executing this *Agreement* has the requisite authority to enter into this *Agreement* and the *Collaborator* is authorized to perform according to the terms thereof.

ARTICLE 10. LIABILITY

10.1 **Property.** All property is to be furnished "as is." Except as otherwise provided in this *Agreement* or the attached Work Plan, no party to this *Agreement* shall be liable to any other party for any property of that other party consumed, damaged or destroyed in the performance of this *Agreement*, unless it is due to the gross negligence or willful misconduct of the party or an employee or agent of the party.

10.2 **Collaborator Employees.** The *Collaborator* agrees to indemnify and hold harmless and defend the *Government*, its employees and agents, against any liability or loss for any claim made by an employee or agent of the *Collaborator*, or persons claiming through them, for death, injury, loss or damage to their person or property arising in connection with this *Agreement*, except to the extent that such death, injury, loss or damage arises solely from the negligence of the *Air Force Activity* or its employees.

10.3 **NO WARRANTY. EXCEPT AS SPECIFICALLY STATED IN ARTICLE 9, OR IN A LATER AGREEMENT, THE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITIONS OF THE RESEARCH OR ANY INVENTION OR OTHER INTELLECTUAL PROPERTY, 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 OTHER INTELLECTUAL PROPERTY, OR PRODUCT. THE PARTIES FURTHER MAKE NO WARRANTY THAT THE USE OF ANY INVENTION OR OTHER INTELLECTUAL PROPERTY OR PRODUCT CONTRIBUTED, MADE OR DEVELOPED UNDER THIS AGREEMENT WILL NOT INFRINGE ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT. IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.**

10.4 **Other Liability.** The *Government* shall not be liable to any party to this *Agreement*, whether directly or by way of contribution or indemnity, for any claim

made by any person or other entity for personal injury or death or for property damage or loss, arising in any way from this *Agreement*, including, but not limited to, the later use, sale or other disposition of research and technical developments, whether by resulting products or otherwise, whether made or developed *Under this Agreement* or contributed by either party pursuant to this *Agreement*, except as provided under the Federal Tort Claims Act (28 U.S.C. § 2671 *et seq*) or other Federal law where sovereign immunity has been waived.

ARTICLE 11. GENERAL TERMS AND PROVISIONS

- 11.1 **Disposal of Toxic or Other Waste.** The *Collaborator* shall be responsible for removal and disposal from *Air Force Activity* premises of toxic or other material provided or generated by *Collaborator* in the course of performing this *Agreement*, except that, for purposes of this *Agreement*, removal and disposal of hazardous materials and wastes in amounts and of types typically produced during operation of the *Air Force Activity* facilities described in the Work Plan will be the responsibility of the *Air Force Activity*. Removal and disposal of hazardous materials and wastes over and above amounts and different from types typically produced during operation of the *Air Force Activity* facilities described in the Work Plan will be the responsibility of *Collaborator*. *Collaborator* shall obtain at its own expense all necessary permits and licenses as required by local, state, and Federal law and regulation and shall conduct such removal and disposal in a lawful and environmentally responsible manner.
- 11.2 **Force Majeure.** Neither party shall be in breach of this *Agreement* for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform shall promptly notify the other party and shall in good faith maintain such part performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.
- 11.3 **Relationship of the Parties.** The parties to this *Agreement* and their employees are independent contractors and are not agents of each other, joint venturers, partners or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter, and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.
- 11.4 **Publicity/Use of Name Endorsement.** Any public announcement of this *Agreement* shall be coordinated between the *Collaborator*, the *Air Force Activity* and the public affairs office supporting the *Air Force Activity*. By entering into this *Agreement*, the *Air Force Activity* or the *Government* does not directly or indirectly endorse any product or service provided, or to be provided, by *Collaborator*, its

successors, assignees, or licensees. The *Collaborator* shall not in any way imply that this *Agreement* is an endorsement of any such product or service.

- 11.5 **No Benefits.** No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this *Agreement*, nor to any benefit that may arise therefrom; but this provision shall not be construed to extend to this *Agreement* if made with a corporation for its general benefit.
- 11.6 **Governing Law.** The construction, validity, performance and effect of this *Agreement* for all purposes shall be governed by the laws applicable to the *Government*.
- 11.7 **Waiver of Rights.** Any waiver shall be in writing and provided to all other parties. Failure 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 rights of any party hereto.
- 11.8 **Severability.** The illegality or invalidity of any provision of this *Agreement* shall not impair, affect or invalidate the other provisions of this *Agreement*.
- 11.9 **Assignment.** Neither this *Agreement* nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by any party without the prior written consent of all other parties.
- 11.10 **Controlled Information.** The parties understand that information and materials provided pursuant to or resulting from this *Agreement* may be export controlled, classified, or unclassified sensitive and protected by law, executive order or regulation. Nothing in this *Agreement* shall be construed to permit any disclosure in violation of those restrictions.

ARTICLE 12. NOTICES

12.1. Notices specified in this *Agreement* shall be deemed made if given and addressed as set forth below.

A. Send formal notices under this *Agreement* by prepaid certified U.S. Mail to:

Air Force Activity: Attn: (ORTA)

Address

Collaborator: Attn:

Address

B. Send correspondence on technical matters by prepaid ordinary U.S. Mail to:

Air Force Activity:
Address

Attn:

Collaborator: Attn:
Address

IN WITNESS WHEREOF, the Parties have executed this *Agreement* in duplicate through their duly authorized representatives as follows:

COLLABORATOR

AIR FORCE ACTIVITY

(Name of Collaborator)

(Name of Air Force Activity)

(Name of Official--Printed or Typed)

(Name of Official--Printed or Typed)

(Signature of Official)

(Signature of Official)

(Title of Official)

(Title of Official)

(Address of Official)

(Address of Official)

(Date Signed)

(Date Signed)

REVIEWED AND APPROVED BY AIR FORCE REVIEWING OFFICIAL:

(Name of Air Force Reviewing Official--Printed or Typed)

(Title--Printed or Typed)

(Signature)

(Date)

IV. EDUCATION PARTNERSHIP AGREEMENT

EDUCATION PARTNERSHIP (<Number>)
BETWEEN
THE DEPARTMENT OF THE AIR FORCE,
REPRESENTED BY THE AIR FORCE RESEARCH LABORATORY
TECHNICAL DIRECTORATE
AND
EDUCATIONAL INSTITUTION

I. Preamble

The United States of America as represented by the Department of the Air Force, Air Force Research Laboratory, <TECHNICAL> Directorate (AFRL/??), <ADDRESS OF DIRECTORATE>, and <EDUCATIONAL INSTITUTION>, <ADDRESS OF INSTITUTION>, (hereinafter referred to as “the Parties”) hereby enter into this Education Partnership Agreement (hereinafter referred to as the “Agreement”) pursuant to Title 10 United States Code Section 2194. The terms and conditions of this Agreement are set forth as follows.

II. Introduction

The Parties enter this Agreement in recognition of the importance of education to the future and economic well-being of the nation, as well as the importance of AFRL to the business, industrial and educational institutions in the United States.

As a defense laboratory, AFRL has a responsibility to encourage the study of science, mathematics, and engineering at all levels of education by entering into education partnership agreements with educational institutions in the United States.

<EDUCATIONAL INSTITUTION> is <PROVIDE BRIEF DESCRIPTION OF THE PARTICIPATING INSTITUTION.>

<EDUCATIONAL INSTITUTION> <is/is not> a Historically Black College/University <or/nor> Minority Institution.

<EDUCATIONAL INSTITUTION> <is/is not> an educational institution serving women, members of minority groups, and other groups of individuals who traditionally are involved in the engineering and science professions in disproportionately low numbers.

III. Objective

<STATE THE OBJECTIVE OF THE AGREEMENT. BE SPECIFIC. OBJECTIVE NEEDS TO RELATE TO ONE OR MORE OF THE ACTIVITIES ALLOWED IN THE AUTHORITY.>

<EXAMPLE: The objective of this agreement is to <EDUCATIONAL INSTITUTION> intends to undertake the following tasks: Access to AFRL/??'s ... (i.e., hardware, personnel, facilities, etc.)... will provide a unique opportunity for students to work on which would not otherwise be available in an educational environment.>

IV. Authority

Pursuant to the Education Partnership Act, Title 10 United States Code 2194, for the purpose of encouraging and enhancing science, mathematics, and engineering education at all levels of education AFRL/?? is authorized to:

- a. Loan defense laboratory equipment to <EDUCATIONAL INSTITUTION>.
- b. Transfer to <EDUCATIONAL INSTITUTION> defense laboratory equipment determined by the director to be surplus.
- c. Make laboratory personnel available to teach science courses or to assist in the development of science courses and materials for <EDUCATIONAL INSTITUTION>.
- d. Involve faculty and students in defense laboratory research projects.
- e. Cooperate with <EDUCATIONAL INSTITUTION> in developing a program under which students may be given academic credit for work on defense laboratory research projects.
- f. Provide academic and career advice and assistance to <EDUCATIONAL INSTITUTION> students.

V. Patents and Copyrights

Due to the nature of work performed, it is not expected that any patentable or copyrightable material will be developed under this agreement. In the event patentable material is developed under this Agreement, each Party shall separately own any invention made solely by its respective employees under this Agreement. Inventions made jointly by the Parties will be jointly owned by the Parties. Licensing of intellectual property, if any, will be set out in separate agreements. In the event copyrightable material is developed under this Agreement, <EDUCATIONAL INSTITUTION> shall own the copyright in all works created in whole or in part by <EDUCATIONAL INSTITUTION> and grants in advance to the United States Government a license conveying the right to use, duplicate or disclose such works in any manner, and to have or permit others to do so, for government purposes only.

VI. Specific Obligations

a. The <EDUCATIONAL INSTITUTION> shall:

(1) Be responsible for all <EDUCATIONAL INSTITUTION> faculty, student, and other employee salaries or other compensations and benefits as necessary under this Agreement.

(2)...(n) <DOCUMENT SPECIFIC OBLIGATIONS OF THE INSTITUTION. INCLUDE STUDENT PARTICIPATION WHERE APPROPRIATE. INCLUDE RESPONSIBILITIES RELATED TO TECHNICAL EFFORT, LOGISTICS, SAFETY, AND SECURITY.>

<EXAMPLE: (2) Provide laboratory space and involve students in the use of wind tunnel technology.>

<EXAMPLE: (3) Be responsible for round-trip transportation of government loaned equipment between the AFRL/DE and the <EDUCATIONAL INSTITUTION>.>

<EXAMPLE: (4) Allow for scheduled visits and tours to showcase the program to other community colleges, accrediting agencies' representatives, and other interested parties.>

<EXAMPLE: (5) Promote and host tours of the wind tunnel equipment to secondary and primary students with the intent to encourage their pursuit of mathematics, science, and engineering studies.>

<EXAMPLE: (6) Provide to AFRL/IF, where appropriate and made available through normal operating policies and practices of the University, to fulfill the partnership definition as specified above, equipment and adequate facilities including access to computing resources, libraries, and visitor user space.>

<EXAMPLE: (7) Work with AFRL/IF to coordinate activities in the areas of network communications and network resource management.>

<EXAMPLE: (8) Ensure that <EDUCATIONAL INSTITUTION> faculty, students, and other participating employees abide by all Air Force and AFRL rules for security, safety, and general conduct.>

<EXAMPLE: (9) Provide academic credit toward requirements of an appropriate degree program for students working on AFRL/?? research projects.>

b. AFRL/?? shall:

(1) Be responsible for all AFRL/?? employee salaries or other compensations and benefits as necessary under this Agreement.

(2)...(n) <DOCUMENT SPECIFIC OBLIGATIONS OF AFRL/?? DO NOT PROMISE THINGS THAT WE CANNOT DELIVER NOR THINGS THAT ARE OUTSIDE THE AUTHORITY.>

<EXAMPLE: (2) Loan the Turbulent Boundary Layer Generator to <EDUCATIONAL INSTITUTION>.>

<EXAMPLE: (3) Encourage its scientists and engineers to provide academic and career advice to <EDUCATIONAL INSTITUTION> students through the AFRL/DE mentoring program.>

<EXAMPLE: (4) Promote and host tours of the wind tunnel equipment to secondary and primary students with the intent to encourage their pursuit of mathematics, science, and engineering studies.>

<EXAMPLE: (5) Provide access to equipment, facilities, and laboratories to personnel with expertise in these areas to conduct research and development projects. These research projects can be independent or joint research efforts with personnel from other universities and/or AFRL/?? personnel.>

<EXAMPLE: (6) Work with the university members of the Information Institute to support the development of educational courses at both the graduate and undergraduate level. These activities can include AFRL/IF personnel providing research seminars or guest lectures; AFRL/IF personnel working with university members to develop new courses, student/class projects, and research projects; and AFRL/IF personnel participating on advisory and thesis committees and serving as mentors.>

c. Subject to Article IX (Liabilities) and Article XII (Risk of Loss) below, neither Party shall be obligated to compensate the other Party for costs incurred by the other Party in carrying out activities defined by this partnership.

d. Each of the Parties shall direct its own activities pursuant to this partnership. No Party shall have authority to direct the other's activities.

e. Any public announcement of this partnership shall be coordinated among the Parties to include the AFRL/?? public affairs office. The <EDUCATIONAL INSTITUTION> shall not use the name of AFRL/?? or Government on any product or service that is directly or indirectly related either to this partnership or any assignment that implements this partnership agreement without prior written approval of AFRL/?. Similarly, AFRL/?? shall not use the name of the <EDUCATIONAL INSTITUTION> on any product or service that is directly or indirectly related to this partnership without prior written approval of the <EDUCATIONAL INSTITUTION>. By entering into this partnership, neither Party directly or indirectly endorses any product or service provided, or to be provided, by the other Party. Neither Party shall in any way imply that this partnership is an endorsement of any such product or service.

f. Generally, only United States citizens are eligible to be participating faculty or students under this Agreement. Exceptions will be determined by AFRL/?? on a case-by-case basis.

g. <EDUCATIONAL INSTITUTION> faculty and students participating under this Agreement will not be required to obtain security clearances. Research project completion will not require access to classified materials. However, work on certain projects may require <EDUCATIONAL INSTITUTION> faculty and student access to proprietary information in the possession of AFRL/?? or information for which export is restricted by the Arms Control Act (Title 22 United States Code Section 2571 et seq.) or the Export Administration Act (Title 50 United States Code Section 2401 et seq.) or the International Traffic in Arms Regulation (22 C.F.R. 120-25) is militarily-critical technology, or otherwise protected from disclosure by statute, executive order, or regulation. In such cases, to obtain access to this information, faculty members and students must comply with the requirements for disclosure contained in the statutes, executive orders, or regulations, including signing nondisclosure agreements before a disclosure of such information may be made by AFRL/??.

h. The Parties' obligation under this Agreement are contingent upon and subject to availability of funds.

VII. Value of Contributions

a. <EDUCATIONAL INSTITUTION> estimates the value of its contributions to this agreement to be:

(1) Personnel (Teachers, Staff, Students, Support Personnel)	\$XXXXXX.XX
(2) Facilities	
\$XXXXXX.XX	
(3) Supplies and equipment	
\$XXXXXX.XX	
(4) Other	<u>\$XXXXXX.XX</u>

TOTAL
\$XXXXXX.XX

b. AFRL/?? estimates the value of its contributions to this agreement to be:

(5) Labor (Scientists, Engineers, Support Personnel)	\$XXXXXX.XX
(6) Facilities	
\$XXXXXX.XX	
(7) Supplies and equipment	
\$XXXXXX.XX	
(8) Other	<u>\$XXXXXX.XX</u>

TOTAL
\$XXXXXX.XX

VIII. Benefits

a. The benefits to the <EDUCATIONAL INSTITUTION>, its students and the State of <NAME THE STATE THE EDUCATIONAL INSTITUTION IS LOCATED IN> include:

(1)...(n) <THESE STATEMENTS NEED TO COME FROM THE EDUCATIONAL INSTITUTION. WHAT PERCEIVED VALUE/BENEFIT TO THEM, THEIR STUDENTS, AND/OR THEIR STATE DOES THIS AGREEMENT PROVIDE? THE PERCEIVED BENEFITS CAN BE BOTH SHORT-TERM AND LONG-TERM.>

<EXAMPLE: (1) A formal vehicle for information exchange with AFRL/DE, the Air Force focal point for directorate energy technology.>

<EXAMPLE: (2) Access to state-of-the-art C4I technologies for research and study, and access to computing equipment and databases dedicated to technology transfer that would not otherwise be available.>

<EXAMPLE: (3) Insight into Air Force and Department of Defense future information system technology and computational needs.>

<EXAMPLE: (4) A forum for participants to exchange ideas and information that may lead to teaming arrangements or other formal agreements for pursuing competitive research projects and grants.>

<EXAMPLE: (5) Opportunities for further collaboration between the <EDUCATIONAL INSTITUTION> and AFRL/IF on various technology transfer projects that will strengthen overall United States competitiveness as well as improve economic development through the application of AFRL/IF technologies to commercial industrial problems.>

<EXAMPLE: (6) Improved educational relevance to academic programs as a result of closer interaction with AFRL/IF personnel and research projects based upon practical, “real world” problems and needs.>

b. The benefits to AFRL/?? and the Air Force include:

(1) Promoting the education of future scientists and engineers.

(2) Good will.

(3)...(n) <SPECIFY HOW THE DIRECTORATE, LABORATORY, AND/OR THE AIR FORCE WILL BENEFIT FROM THIS AGREEMENT, PARTICULARLY AS IT PERTAINS TO THE MISSION OF THE LABORATORY AND ITS CUSTOMERS.>

<EXAMPLE: (3) Enhancing AFRL/IF scientists, engineers and managers as a result of conducting research in conjunction with academic and practicing professionals who work in Information Science & Technology.>

<EXAMPLE: (4) Access, where made available through normal operating policies and practices of the University, to some of the world's most powerful supercomputers, related resources, and other facilities unique to the university members of the Information Institute.>

IX. Partnership Administration

The administration of this Agreement and the coordination of specific activities which comprise this program will be the joint responsibility of the designated program managers from AFRL/?? and the <EDUCATIONAL INSTITUTION>.

<TECHNICAL POINT OF CONTACT>, AFRL/????, will serve as the partnership Program Manager on behalf of AFRL/?. She will work with the program manager for <EDUCATIONAL INSTITUTION> to identify, select, and prioritize the activities in which the Parties engage pursuant to this Agreement and will ensure that program activities meet the statutory and regulatory requirements of the Federal Government and the Department of the Air Force.

<EDUCATIONAL INSTITUTION POC, POSITION> will serve as the partnership program manager on behalf of the <EDUCATIONAL INSTITUTION>. He will work with the program manager for AFRL/? to identify, select, and prioritize activities in which the Parties engage pursuant to this Agreement, and will ensure that program activities meet the statutory and regulatory requirements of the <EDUCATIONAL INSTITUTION>.

Loan (or donation) of all equipment from AFRL/?? to <EDUCATIONAL INSTITUTION> shall be documented on an Equipment Loan (or Donation) Form and appended to this Agreement.

X. Liabilities

As between the Parties, each Party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees, agents, instructors, or students.

XI. Force Majeure

Neither Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party, which causes such Party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civic disturbance or disobedience, strikes, labor disputes, or failure, threat of failure, or sabotage, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the Party unable to perform shall promptly notify the other Party. It shall further use 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.

XII. Deliverables

<Required deliverables are to be negotiated between the two partners and documented here. Note, all donation equipment shall require a report documenting that such equipment has been used to enhance student learning experiences and/or aspirations.>

XIII. Risk of Loss

The <EDUCATIONAL INSTITUTION> shall return all government-owned equipment loaned under this Agreement to AFRL/?? in good working order, normal wear and tear excepted, at the end of the time period(s) for loan or <XX> days prior to end of this agreement, whichever ever comes first. While in the care or possession of the <EDUCATIONAL INSTITUTION>, the equipment shall be covered by the <EDUCATIONAL INSTITUTION> insurance program. Any modifications or repairs to the government-owned equipment that the <EDUCATIONAL INSTITUTION> may find necessary to make shall be performed only after receiving written approval of the AFRL/?. Any such repair or modification shall be at the expense of the

<EDUCATIONAL INSTITUTION> and shall not affect the title of AFRL/?? to said hardware and software.

XIV. Period of Agreement

The term of this Agreement is for a period of <XX> months, commencing on the date of the last signature affixed below. Any Party may terminate this Agreement earlier upon delivery of written notice at least <thirty (30) days or sixty (60) days or XXXXX (XX) days> in advance. Termination of this Agreement by any Party for any reason shall not affect the rights and obligation of the Parties accrued prior to the effective date of termination of this Agreement. If any Party requests modification of this Agreement, including extension of this Agreement, the Parties shall, upon reasonable notice of the proposed modification by the Party desiring the change, confer in good faith to determine the feasibility of such modification. Modifications shall not be effective until a written amendment is signed by duly authorized representatives of the Parties. If AFRL/?? terminates this Agreement, it shall not be liable for any costs resulting from or related to the termination, including but not limited to, consequential damages or any other costs experienced by third parties including participating school, or their students.

XV. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate.

<EDUCATIONAL INSTITUTION>

AFRL/??

By: _____
(Signature)

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

V. COMMERCIAL TEST AGREEMENT

USAF CTA NUMBER ___ - ___ - ___ - ___

USAF COMMERCIAL TESTING AGREEMENT
BETWEEN
AIR FORCE RESEARCH LABORATORY
AND
XXX COMPANY

Article 1. Preamble

1.1 The UNITED STATES OF AMERICA, represented by the DEPARTMENT OF THE AIR FORCE, AIR FORCE RESEARCH LABORATORY, (hereinafter referred to as AFRL), located at XXX Air Force Base, [State], and XXX Company (hereinafter referred to as *Customer*), located at, _____ enter into this COMMERCIAL TESTING AGREEMENT (“Agreement”). The statutory authority for this Agreement is 10 U.S.C. 2539b(a)(3).

Article 2. Definitions

2.1 As used in this *Agreement*, the following terms shall have the following meanings and such meanings shall be applicable to both the singular and plural forms of the terms:

2.2 “*Proprietary Information*” means information embodying trade secrets or is confidential technical, business, or financial information provided:

(a) the information is not generally known, or is not available from other sources without obligation

concerning its confidentiality;

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

(c) it is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; and

(d) the information is identified as proprietary or confidential by labels or markings designating the information as such.

2.3 “*Created*” in relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. 101.

2.4 “*Drawing*” means a diagram, plan or list detailing the fabrication and assembly of structural elements, or the installation of materials and equipment. A drawing details the characteristics, or outlines the parts or operation of a product or item.

2.5 “*Equipment or materials*” means personal property, including machinery, devices and apparatus, and components of such items.

2.6 “*Independent research and development (IR&D) programs*” means a research and development effort that is not sponsored by, or required in performance of a government contract, or grant for: (1) basic research, (2) applied research, (3) development, or (4) systems and other concept formulation studies. IR&D programs also do not include technical efforts expended in developing and preparing technical data specifically to support submitting a bid or proposal.

2.7 “*Laboratory*” means a facility or group of facilities owned, leased or otherwise under the jurisdiction and control of the Department of Defense, a substantial purpose of which is the performance of research, development, engineering, test and evaluation, or otherwise developing or maintaining technology.

2.8 “*Manufacturing or other information*” means any blueprints, drawings, plans, instructions, documentation or other technical information that can be used or adopted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any equipment or material.

2.9 “*Person or entity*” means an individual, partnership, corporation, association, state, local, or tribal government, or an agency or instrumentality of the United States.

2.10 “*Sample*” means a unit or units of a product drawn from a lot or batch that is representative of the product and is constructed in conformance with the requirements and complies with specifications of the product.

2.11 “*Effective Date*” means the date of last signature of the authorized representatives of the parties.

2.12 “*Test Agency Representative*” means the authorized AFRL representative identified at Article 13.2.

Article 3. Work Statement

3.1 Appendix A sets forth the nature and scope of the work to be performed under this Agreement, including any facilities, testing machines and equipment, supplies, services, maintenance, and other support, and any associated reporting requirements. It also describes the test request procedures for the Customer and the contents of each request.

Article 4. Statement of Capability

4.1 Appendix B sets forth AFRL's technical capability, specific technical approach, the detailed costs, and any special conditions to the manner in which the testing services will be delivered to the Customer.

Article 5. Cost Reimbursement

5.1 The Customer shall reimburse AFRL for all costs incurred in rendering the services set forth at Appendix A. Costs shall include, when applicable, the costs of modifying and restoring any test facility to its original configuration. Fees for services are based on reimbursement of all actual costs (i.e. all direct and applicable indirect costs) involved. Fees will not exceed the amount necessary to recoup the actual costs.

5.2 The not-to-exceed (NTE) total cost of these services is to be determined by the *Test Agency Representative* and the Customer prior to the beginning of each approved test.

5.3 The detailed cost analysis shall be included in Appendix B and shall be provided to the Customer prior to the beginning of each approved test. **The cost analysis shall contain estimates for Government Labor, Contract Services (contract labor, materials, travel, subcontracting, material handling fee), Product Service Fees, Management Reserve, Project Overhead, and General and Administrative Fees. Labor rates, burden rates and fees are contained in Appendix C.**

5.4 Payment of the not-to-exceed estimated amount shall be made in ADVANCE of any testing. Surplus funds, (i.e. in excess of costs incurred), remaining after the conclusion of each test shall be refunded to the Customer within 30 days thereof.

5.5 The Customer shall make all payments by cashier's check, certified check, bank money order or postal money order and payable to DAO-DE WPAFB. Payment shall be mailed to the following address:

[Address]

5.6 Payments shall reference this Agreement by USAF CTA Number and by the names of the parties and shall state the purpose of the payments. The Customer shall also send, by ordinary mail, a copy of the payment documents to the *Test Agency Representative*

Article 6. Confidentiality

6.1 The results of tests performed under this Agreement are confidential pursuant to 10 U.S.C. 2539b(b), and may not be disclosed outside the United States Government without the consent of the Customer.

6.2 Any *Proprietary Information* received by AFRL under this Agreement may not be disclosed outside the United States Government without the consent of the Customer. In the event a government support contractor will need access to such information in order to perform work under this Agreement, then AFRL will require the government support contractor to execute a nondisclosure agreement.

6.3 Prior to publication or before any other public disclosure of the results of the testing, each party will offer the other party a reasonable opportunity to review the proposed materials for release and to submit objections prior to any public disclosure. The objections shall be submitted to the parties identified at Article 13.2. If the objections cannot be resolved then the procedures of Article 8 shall apply.

Article 7. Term, Modification, Extension, and Termination

7.1 Term and Extension. The term of this Agreement shall commence on the *Effective Date* of this Agreement and shall expire on _____, unless extended by written agreement of the authorized representatives of the parties, or otherwise terminated in accordance with this article. This Agreement shall be reviewed every two years by both parties. The expiration of this Agreement shall not affect the rights and obligations of the parties accrued prior to expiration.

7.2 Modification. Any modifications shall be by written agreement of the authorized representatives of the parties and shall be incorporated into this Agreement.

7.3 Termination. Either party may terminate this Agreement for any reason upon delivery of written notice to the other party at least thirty (30) days prior to such termination. Termination of this Agreement shall not affect the rights and obligations of the parties accrued prior to the date of termination of this Agreement. In the event of termination by the Customer, the Customer shall be responsible for all costs incurred by AFRL through the date of termination and all related costs incurred after the termination. If AFRL terminates this Agreement, it shall not be liable to the Customer or its contractors or subcontractors for any costs resulting from or related to the termination, including, but not limited to, incidental or consequential damages.

7.4 Test Interruption. AFRL mission requirements shall take precedence over the Customer's requirements under this Agreement. The *Test Agency Representative*, or a higher authority may interrupt or delay the Customer's tests, as described in Appendix A, whenever the interruption or delay is in the best interests of AFRL. The *Test Agency Representative* will notify the Customer, in writing, of the interruption or delay. AFRL will not be liable to the Customer, or any third party, for any costs or consequences resulting from the interruption or delay.

Article 8. Disputes

8.1 Disputes. The parties shall resolve all disputes arising out of, or related to this Agreement in accordance with this Article.

8.2 The Customer and *Test Agency Representative* shall attempt to resolve disputes between themselves. The parties shall refer any dispute, not resolved by agreement, to the AFRL Commander within 30 days after failure to resolve a dispute.

8.3 The AFRL Commander shall within sixty (60) days of the receipt of the dispute, notify the parties of the final and binding decision.

8.4 AFRL may elect not to continue testing until the dispute is resolved.

Article 9. Representations and Warranties

9.1 The Customer hereby represents and warrants to AFRL:

9.1.2 Corporate Organization. The Customer, as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of _____.

9.1.3 Statement of Ownership. The Customer is not foreign owned or a subsidiary of a foreign-owned entity.

9.1.4 Authority. The Customer official executing this Agreement has the authority to enter into this Agreement.

Article 10. Liability

10.1 Liability. AFRL will not be liable for any claim made by any person or entity for personal injury or death, or for property damage, destruction, or loss, arising from or under this Agreement and shall not be liable for personal injury, or property damage, destruction, or loss arising from the later use, sale, or other disposition of research and technical developments, whether by resulting products or otherwise, tested under this Agreement, except as provided under the Federal Tort Claims Act (28 U.S.C.2671 et seq.) or other Federal law waiving sovereign immunity.

10.2 Indemnification. The Customer agrees to indemnify, hold harmless, and defend AFRL, its employees and agents, against any liability or loss for any claim made by an employee or agent of the Customer, or any person claiming through them, for death, injury, loss or damage to their person or property arising in connection with this Agreement, except as provided under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.) or other Federal law waiving sovereign immunity.

10.3 General Disclaimer. AFRL MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITION OF ANY RESEARCH TEST(S), INTELLECTUAL PROPERTY, TEST RESULTS, OR ANY RESULTING PRODUCT OR PROCESS, OR THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE ARTICLE(S) TESTED.

Article 11. Mishap Investigation(s)

11.1 AFRL may conduct a safety investigation pursuant to AFI 91-204 into any mishaps resulting in loss, damage or destruction of a test article or test facility. The Customer agrees to provide technical support to assess the cause. The safety report shall not be released to the Customer.

11.2 AFRL may conduct an accident investigation pursuant to AFI 51-503. The Customer agrees to provide technical support to assess the cause. The accident report may be released to the Customer.

Article 12. General Terms and Provisions

12.1 Disposal of Toxic or Other Waste. The Customer shall be responsible for the proper removal and disposal from AFRL's property of any and all toxic, hazardous, or solid wastes, or material provided or generated in the course of performing this Agreement. The Customer shall obtain at its own expense all necessary permits and licenses as required by local, state, and federal law and regulation.

12.2 Force Majeure. Neither party shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. Should a force majeure event occur, the party unable to perform shall promptly notify the other party and shall in good faith resume performance as soon as is reasonably possible.

12.3 Relationship of the Parties. The parties to this Agreement and their employees are independent contractors and are not agents of each other, joint venturers, or partners to any business organization. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter, and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.

12.4 Inspection. The Customer may inspect the AFRL testing facility identified in Appendix A prior to any testing conducted under this Agreement. AFRL will maintain and calibrate the testing facility.

12.5 Publicity/Use of Name Endorsement. The Customer, AFRL, and the appropriate public affairs office shall coordinate any announcement of this Agreement. The Customer shall not use any name or logo attached to the United States Government, the Department of the Air Force, HQ AFMC, or AFRL on any product, service, patent license or assignment related directly or indirectly to this Agreement without the prior written approval of AFRL. By entering into this Agreement, the United States Government, the Department of the Air Force, HQ AFMC and AFRL do not directly or indirectly endorse any product or service provided, or to be provided, by the Customer. The Customer shall not in any way imply that this Agreement is an endorsement of any such product or service.

12.6 Governing Law. The construction, validity, performance and effect of this Agreement for all purposes shall be governed by Federal law.

12.7 Waiver of Rights. Any waiver shall be in writing and provided to the other party. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of either party.

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

12.9 Assignment. No party shall assign or transfer any rights or obligations derived from this Agreement without the prior written consent of the other party.

12.10 Controlled Information. The parties understand that information and materials provided pursuant to or resulting from this Agreement may be export controlled, classified, or unclassified sensitive and protected by law, executive order or regulation. This Agreement does not permit any disclosure in violation of those restrictions.

Article 13. Notices

13.1 Send modification and termination notices under this Agreement by prepaid certified U.S. Mail to:

_____	_____
_____	_____
_____	_____
_____	_____

13.2 Send correspondence on technical matters by prepaid ordinary U.S. Mail and address them as follows:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Signatures

IN WITNESS WHEREOF, the Parties execute this Agreement, in duplicate, by their authorized representatives as follows:

XXX
Title:
Date:

AFRL/CC
Date:

VI. PARTNERSHIP INTERMEDIARY MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING
Between
DEPARTMENT OF THE AIR FORCE
And
[STATE ENTITY]

Total amount of this Agreement:
Authority: 15 U.S.C. 3715
Award Date: _____

This agreement is entered into between the Department of the Air Force and STATE ENTITY pursuant to United States Law.

For [STATE ENTITY]

For The Department Of The Air Force

Signature Date

Signature Date

Name

Name

Title

Title

Contracting Officer Signature

Contracting Officer Name

Part 1. Administrative Information

Article 1. Background & Definitions

1. Background: [Example][State Entity] is a technology transfer and commercialization center which has already developed a successful track record for linking regional businesses and industries with the technology and know-how available from NASA. With this Memorandum of Understanding with the U.S. Air Force, [State Entity] has the opportunity to develop relationships with small businesses and tap into the technology of the Department of the Air Force.

The U.S. Department of Defense recognizes that a strong and diversified industrial sector is vital for maintaining a strong national defense and for responding rapidly to defense mission requirements. [State Entity]'s efforts will serve to expand that portion of the nation's industrial base which supports DoD's Dual Use objectives, and provide for an appropriate "model" for transfer and commercialization of DoD technologies which can be replicated.

2. Authority: This Memorandum of Understanding (MOU) is entered into pursuant to the authority of 15 U.S.C. 3715, *Use of Partnership Intermediaries*. This authority permits directors of Federal Laboratories, such as those found in the Department of the Air Force, to enter into memoranda of understanding with state entities to perform services that increase the likelihood of success in the conduct of cooperative or joint activities with small business firms.

3. Definitions:

a. The terms "agreement," "MOU," or "MOU agreement" as used herein shall be used interchangeably and shall mean the "Memorandum of Understanding" between the parties hereto.

b. The term "Partnership Intermediary (PI)," "recipient," or "contractor" as used herein, or incorporated in OMB circulars, shall be used interchangeably and shall mean STATE ENTITY (STATE ENTITY).

c. The term "Government" refers to the United States Government, including the Department of the Air Force.

d. A labor hour is hereby defined as an hour of direct labor capable of exact quantitative measurement performed by PI personnel engaged in creating and/or regulating the technical activities of this MOU.

e. "Proprietary Information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed

under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, or computer software, and may appear in cost and pricing data or involved technology information.

Article 2. Administrative Requirements

This MOU will be administered in accordance with, and the PI shall comply with the requirements of, the following, which are incorporated herein by reference. In the event of a conflict between this MOU and the directives listed below, such directives shall take precedence.

OMB Circular A-133, *Audits of Institutions of Higher Education and Other Nonprofit Institutions*, as revised;

OMB Circular A-110, *Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations*, as revised; and

OMB Circular A-21, *Cost Principles for Educational Institutions*, as revised.

Article 3. Administrative Responsibilities

MOU Contracting Officer:

MOU Administration Office:

STATE ENTITY Program Manager:

Payment Office:

Remittance Office:

Article 4. Period of Performance & Technical Requirements

The period of performance for this MOU is ___ months commencing on the MOU award date shown on the face of this MOU.

Pursuant to the authority of 15 U.S.C. 3715, *Use of Partnership Intermediaries*, STATE ENTITY shall perform coordinated efforts to accomplish the technical objectives and requirements contained in Attachment 1, Statement of Work. STATE ENTITY, in particular, will provide services that will increase the likelihood of success in the conduct of cooperative or joint activities with small business firms. STATE ENTITY will manage the technical requirements in accordance with the management plan contained in attachment 4. Specific STATE ENTITY responsibilities include the following:

i. STATE ENTITY will serve as the single point of entry for all state assistance programs at no direct cost to the Air Force.

ii. STATE ENTITY will coordinate national and regional interactions relative to the PI services it renders.

iii. STATE ENTITY will provide the program and fiscal management for this MOU.

iv. STATE ENTITY will take all reasonable efforts necessary to accomplish the technical objectives set out in the attachment no. 1.

The Government shall not exercise any supervision or control over STATE ENTITY employees performing services under this MOU.

Any work required which requires further definition during the course of this MOU that is not specifically addressed in Attachment 1 shall be approved by the Air Force contracting officer prior to execution of the work. This approval is to assure that the proposed work is within the scope of this MOU.

PART II. FINANCIAL MATTERS

Article 5. Allotted Funding

The Government's financial obligations under this MOU shall be limited to paying the Federal Costs of this MOU as permitted by 15 U.S.C. 3715, *Use of Partnership Intermediaries*, and is subject to the availability of appropriated funds as identified in Article 6. Incremental Funding.

A total of _____ of technology transfer funds are allotted and obligated with the award of this MOU:

PR: FY _____	Total Amount: _____
PR: FY _____	Total Amount: _____

See attachment 2 for detailed ACRN and specific accounting classification fund line data and amounts.

Article 6. Incremental Funding

The Government's current total obligation for the full performance of this MOU is _____ of technology transfer funds. Of this amount, _____ is allotted and available for payment pursuant to Article 7 below. In

no event is the Government obligated to reimburse STATE ENTITY for expenditures in excess of the total funds allotted by the Government for this MOU. Notwithstanding, it may be required and necessary to incrementally fund subsequent Government fiscal year requirements. If so, additional amounts may be allotted to this agreement from time to time by unilateral modification for the funding of this MOU.

To minimize interruption of effort due to lack of funds, STATE ENTITY shall notify the Air Force Contracting Officer in writing whenever the amount of funds expended under this MOU when added to the anticipated costs in the next 60 days will exceed %75 of the amount allotted by the Government at that time. If, after notification, additional funds are not allotted, then the parties agree this MOU will be terminated at no cost to the Government. STATE ENTITY is not obligated to continue performance under this MOU, or otherwise incur cost in excess of the amount allotted by the Government, until the Air Force Contracting Officer notifies STATE ENTITY in writing that the amount allotted by the Government has been increased and specifies an increased amount which shall then constitute the total amount allotted by the Government to this MOU. When, and to the extent the amount allotted by the Government is increased, any costs STATE ENTITY incurs before the increase that are in excess of the amount previously allotted by the Government to the MOU shall be allowable to the same extent as if incurred afterward, unless the MOU contracting officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

It is estimated that the amount obligated, as identified above, is sufficient to continue performance through _____.

Article 7. Payment

Payment for reimbursement will be made monthly based on actual costs incurred for the work performed under this MOU. An original and three (3) copies of each invoice payment voucher request shall be submitted to the Air Force program manager for certification. The Air Force program manager will review the requested invoice payment voucher amounts for acceptability against the monthly status reports and quarterly financial reports being submitted under Articles 16 and 20 below. The Air Force program manager will forward the certified original invoice payment voucher request and one (1) copy to the designated administrative contracting officer for approval and payment. The administrative contracting officer shall send the original approved invoice to the payment office for payment within thirty (30) calendar days after approval. The Air Force program manager will retain a copy of the certified invoice for the program manager's file and forward one copy to the Contracting officer for the official MOU file.

To support payment of work performed under this MOU, STATE ENTITY shall use its invoices, which meet the requirements of SF 270, with a certification that previous payment has not been received for the work invoiced and the costs are in accordance with the terms of this MOU. The actual number of labor hours by individual expended during the period for which the invoices were submitted, and other direct costs shall be

specifically identified. STATE ENTITY shall provide a listing of all individuals performing work under this MOU and the labor category the individual is charging cost against. This listing shall be submitted to the Air Force program manager, the administrative contracting officer, and the Air Force contracting officer. The administrative contracting officer shall be responsible for the verification and determination of completion of the LOE under this MOU.

The Government shall not pay to STATE ENTITY any additional fees for performing this MOU other than the costs associated with performing the work identified in attachment 1.

Article 8. Government Personnel Travel

The Air Force program manager will be responsible for arranging and providing funds for Government Personnel to travel to STATE ENTITY to assist STATE ENTITY in understanding the technologies available at any one particular DoD laboratory. The details of the total costs of this travel shall be disclosed to STATE ENTITY.

Article 9. Closeout Adjustments

MOU closeout procedures are identified in OMB circular A-110. The Government may make a unilateral downward adjustment to the Government funding amount after completion of the effort as may be required and necessary to remove any unexpended Government funds in accordance with OMB circular A-110.

PART III. PRIOR APPROVALS

Article 10. Financial Plan

The financial plan, or agreed to budget, is the financial expression of the effort to be performed under this MOU as approved during the award process. This MOU and its terms and conditions reflect the approved financial plan. In accordance with Article 11, some changes to the financial plan require prior approval.

The estimated Government costs for this MOU are based upon the estimated labor hours set forth below. The LOE, if required, will be allocated by STATE ENTITY and may vary. Personnel performing this effort must meet the personnel qualifications for the labor categories shown in attachment 3. Performance under this MOU will be planned

and accomplished by STATE ENTITY to provide a continuous balanced effort throughout the term of this MOU. No acceleration beyond xxxx (xx) full time equivalents of support will be undertaken without the written approval of the Air Force contracting officer. Accelerated effort undertaken without written approval will not be an allowed cost.

Estimated Labor Hours - _____
STATE ENTITY shall be reimbursed for the reasonable and allowable other direct costs. The estimated not-to-be-exceeded amounts shown for travel and materials, as contemplated by Article 6 are shown below.

Travel - _____
Materials - _____

STATE ENTITY shall provide a listing of the travel and material costs up to each not-to-be-exceeded amount shown above. The not-to-be-exceeded amounts include applicable burdens and taxes. Travel, lodging, meals, and incidental expenses will be reimbursed in accordance with the Government's guidelines and verified by the Air Force's local travel office through the Air Force program manager. The Air Force program manager shall approve other direct costs over \$10,000 but less than \$100,000. The Air Force contracting officer shall approve other direct costs of \$100,000 and over. STATE ENTITY shall provide a detailed estimate of other direct costs at least five days before the planned expenditure. The Air Force contracting officer may issue a modification at any time prior to the completion of performance to increase the not-to-be-exceeded amounts. The increase shall only be made to the extent that it is consistent with the requirements of this MOU and necessary to ensure successful technical performance of the federal costs associated with performing the work hereunder.

STATE ENTITY shall segregate all costs on STATE ENTITY's invoice and financial reports associated with labor, travel and material identified above.

Article 11. Revision to Financial Plans

"Prior Approvals" required by the applicable cost principles and OMB circular A-110 are waived, except to actions which:

- i. Change the scope or objective of this MOU.
- ii. Change the Program Manager for STATE ENTITY (identified as a Key Personnel). STATE ENTITY shall request prior approval from the Air Force contracting officer if STATE ENTITY's program manager cannot or will not devote substantially the same amount of time to the project as was proposed or if he/she will not be able to otherwise perform as originally proposed.
- iii. Require additional funding.

STATE ENTITY shall provide a written request to the Air Force contracting officer before expending agreement funds for the following:

- i. Expanding the scope of work effort.
- ii. New efforts related to or similar to existing efforts.

PART IV. INTELLECTUAL PROPERTY RIGHTS

Article 12. Protection of Proprietary Information

STATE ENTITY may gain access to proprietary information of other companies during the performance of this MOU. STATE ENTITY agrees to enter into agreements with any such company to (a) protect the other company's proprietary information from unauthorized use or disclosure for as long as it is considered proprietary by the other company and (b) refrain from using the information for any purpose other than that for which it was furnished. For information purposes STATE ENTITY shall furnish copies of these agreements to the Air Force contracting officer. These agreements are not intended to protect information which is furnished voluntarily without restriction or which is available to the Government or a contractor from other sources without restriction.

The above agreement shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work related to this MOU, unless excused in writing by the Air Force contracting officer.

Article 13. Data Rights and Inventions

The clause at Defense Federal Acquisition Regulations Supplement (DFARS) 252.227-7013, *Rights in Technical Data - Noncommercial items*, is incorporated herein by reference.

No other DFARS clause is applicable to this MOU unless otherwise specifically stated herein.

The clause entitled, "Standard patent rights clause," (37 C.F.R. 401.14) is incorporated herein by reference. For purposes of this clause, "contractor" shall mean STATE ENTITY.

STATE ENTITY agrees not to hold the U.S. Government responsible for any and all patent infringement cases which may arise under research projects conducted under this MOU. In addition, STATE ENTITY shall indemnify the Government against all claims and proceedings for actual or alleged direct or contributory infringement of, or inducement to infringe, any U.S. or foreign patent, trademark, or copyright arising under this MOU and STATE ENTITY shall hold the Government harmless from any resulting

liabilities and losses provided STATE ENTITY is reasonably notified of such claims and proceedings.

Article 14. Rights not Exclusive and Treatment of Government furnished information concerning inventions

The rights granted to STATE ENTITY under this MOU to market Government technologies are not exclusive. The Government may grant permission to other entities to market Government technologies at any time.

In the event the Government provides STATE ENTITY information pertaining to patentable inventions, STATE ENTITY agrees to not disclose such information to any third party unless authorized. The Air Force program manager upon providing such information shall indicate whether the Government is withholding such information from disclosure as authorized by 35 U.S.C. 205, *Confidentiality*.

PART V. TECHNICAL AND FINANCIAL REPORTING

Article 15. Annual and Final Technical Reports

STATE ENTITY shall submit annual and final technical reports in accordance with OMB circular A-110 and the following. All reports shall be marked in accordance with Article 21. STATE ENTITY shall administratively reserve sufficient funds to cover the preparation cost of the final technical report as required. Inspection and acceptance of all reports/data shall be by the Air Force program manager.

Annual technical report

An annual technical report is required for each 12 month period. The annual technical report information may be included with the final report submission for the last 12 months. The annual technical report will provide a concise and factual discussion of the significant accomplishments and progress during the year covered by the report. Each of the topics described below shall be addressed for the effort being performed.

- i. A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the STATE ENTITY program manager, or both.
- ii. Areas identified for any follow-on with potential benefits.
- iii. Reasons why established goals were not met, if appropriate.
- iv. Lessons learned from efforts.
- v. Other pertinent information.
- vi. Results of effort and impact of effort for jobs created or saved, new businesses generated, impact of commercialized technology.
- vii. List of companies worked with and the work done or accomplished.
- viii. The proposed costs for the next year.

For identified research awards through successful technology transfer with small businesses, each of the following topics shall be addressed as appropriate to the technology effort being performed:

- i. A cumulative chronological list of written publications in technical journals, including those in press as well as manuscripts in preparation and planned for later submission. Indicate likely journals, authors and titles.
- ii. A list of professional personnel associated with the research effort. List any advanced degrees awarded, including dates, recipients, type of degree and thesis title.
- iii. Interactions of (related activities)
 - a. papers presented at meetings, conferences, seminars, etc.
 - b. consultative and advisory functions to other laboratories and agencies, especially Air Force and other DoD laboratories on technology transfer to small businesses supported under this MOU. Provide factual information about the subject matter, institutions, dates, and the names of the individuals involved.
- iv. New discoveries, inventions, or patent disclosures and specific applications stemming from the technology transfer effort.

STATE ENTITY will prepare a formal presentation on the above. The presentation will be coordinated by the Air Force program manager.

Final Technical report

A Final Technical report shall be submitted at the completion of this MOU. This report will provide a comprehensive, cumulative, and substantive summary of the progress and significant accomplishments achieved during the total period of the effort covered by this MOU. Each of the topics described above shall be addressed as appropriate for the effort performed. Publications may be bound and attached as appendices.

For technology transfer agreements, when the results of the technology transfer research effort have not previously been reported in scientific or technical publications, the final technical report must provide sufficient detailed discussions of findings and accomplishments obtained in pursuit of the planned research objectives.

STATE ENTITY shall submit the annual and final technical reports as originals with two copies to the Air Force program manager within 90 days after completion of the period covered by the report. A copy of these reports will also be provided to the Air Force contracting officer.

STATE ENTITY shall be responsible for the format of the annual and final technical reports.

Article 16. Monthly Status Reports

STATE ENTITY shall provide monthly status reports. The monthly status reports shall be in letter form and typically not longer than three pages in length. The monthly status reports will inform the Air Force program manager about any significant events, accomplishments, anticipated problems that may affect the conduct of the planned effort, and the major thrust areas for the next 30 days. The monthly status reports should summarize the progress of the effect being performed, new technology assessments, and mechanisms directed toward small businesses, anticipated changes in the commitments of personnel, equipment and the titles of manuscripts planned for publication. STATE ENTITY shall send the Air Force program manager one copy signed by the STATE ENTITY program manager with 15 days after the end of the reporting month. An additional copy will be sent to the Air Force contracting officer.

Article 17. Technical Assessment Applications

STATE ENTITY shall document technical assessment applications (TAA) in accordance with the technical requirements of attachment 1. The TAAs shall be delivered to the Air Force program manager as required.

Article 18. Market Analysis Plans/Data

Marketing analysis plans shall be used for identifying technology assessment applications and markets for new and emerging technologies. Before preparing a market assessment obtain written permission from the Air Force program manager who will then furnish detailed instructions for formatting, reproducing, and distributing the plans and reports. STATE ENTITY will send the Air Force program manager two copies of each plan and report. On its cover, a market assessment shall prominently display the following disclaimer, "The views and conclusions contained in this document are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the Air Force or the U.S. Government." A market assessment is considered proprietary in nature and is only for internal Government use.

Marketing data consists of promotional materials which will be requested by the Air Force program manager. The marketing data shall include, but is not limited to,

Article 19. Training Materials

STATE ENTITY shall develop training materials in accordance with the technical requirements of attachment 1. One complete set of the training materials shall be delivered to the Air Force program manager. Updates to the training materials shall be delivered to the Air Force program manager as required.

Article 20. Reporting Financial Information

STATE ENTITY shall submit a Financial Status Report (SF 269) on a cash basis within 30 calendar days following the end of each quarter, and with 90 calendar days following the completion of this MOU. STATE ENTITY will submit the original and one copy to the administrative contracting officer, one copy to the Air Force program manager and one copy to the Air Force contracting officer.

PART VI. DISTRIBUTING PROJECTS RESULTS

Article 21. Distributing Projects Results

Publications

STATE ENTITY is encouraged to publish results of the project in appropriate journals. One copy of each article planned for publication will be submitted to the Air Force program manager and the Air Force's Public Affairs office for review and approval prior to submission for publication. Six copies of all publications resulting from the project shall be forwarded to the Air Force program manager as they become available.

Acknowledgement of Sponsorship

STATE ENTITY is responsible for assuring that an acknowledgement of Government support will appear in any publication of any material based on or developed under this project by using the following terms:

“Effort sponsored by the Air Force under MOU _____. The U.S. Government is authorized to reproduce and distribute copies for Governmental purposes notwithstanding any copyright or other restrictive legends.

Disclaimer

STATE ENTITY is responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the Air Force or the U.S. Government.”

Photographs

STATE ENTITY may photograph the progress or results of the project, including technology transfer success stories. Copies of such photographs, suitable for reproduction, should be made available to the Air Force program manager as part of the project/technology transfer documentation. These photographs may be used later for other Government publications.

Marking and Distributions requirements

STATE ENTITY will mark all data delivered with the following statement, “Distribution Statement A. Approved for public release. Distribution is unlimited.”

PART VII. MISCELLANEOUS PERFORMANCE ISSUES

Article 22. Limitation of Liability

The STATE ENTITY agrees to indemnify and hold harmless and defend the Government, its employees and agents, against any liability or loss for any claim made by an employee or agent of the STATE ENTITY, or persons claiming through them, for death, injury, loss or damage to their person or property arising in connection with this MOU or arising from the use of any Government property by the STATE ENTITY, except to the extent that such death, injury, loss or damage arises solely from the negligence of the Government or its employees.

EXCEPT AS SPECIFICALLY STATED HEREIN, THE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITIONS OF THE RESEARCH OR ANY INVENTION OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, MADE, OR DEVELOPED BY THE GOVERNMENT, OR THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY INVENTION OR PRODUCT. THE PARTIES FURTHER MAKE NO WARRANTY THAT THE USE OF ANY INVENTION OR OTHER INTELLECTUAL PROPERTY OR PRODUCT CONTRIBUTED, MADE OR DEVELOPED BY THE GOVERNMENT WILL NOT INFRINGE ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.

The Government shall not be liable to any other party to this MOU, whether directly or by way of contribution or indemnity, for any claim made by any person or other entity for personal injury or death, or for property damage or loss, arising in any way from this

MOU, including, but not limited to, the later use, sale or other disposition of research and technical developments, whether by resulting products or otherwise, whether made or developed by the Government, or whether contributed by either party pursuant to this MOU, except as provided under the Federal Tort Claims Act (28 U.S.C. §§ 2671 et seq.) or other Federal law where sovereign immunity has been waived.

Article 23. Using Technical Information Resources

To the extent practical, STATE ENTITY will use the technical information resources of the Defense Technical Information Center (DTIC) and other Government or private facilities to investigate recent and on-going research and avoid needless duplication of scientific and engineering effort.

The technical requirements require access to export-controlled technical data (see 10 USC 140(c)), in order to be considered responsible under this MOU, STATE ENTITY must be currently certified and registered by the Defense Logistics Service Center to receive export-controlled technical data.

Article 24. Environmental Liability

STATE ENTITY is solely responsible for achieving compliance with all environmental laws, including the preparation and submission of all licenses and permit applications required under Federal, state, or local laws or regulations. STATE ENTITY shall not name the United States, the United States Air Force, or any other Government instrumentality or employee as owner, operator, or in any other capacity on any license or permit application required under environmental laws unless written consent is first obtained from the United States or other Government instrumentality or employee to be named. STATE ENTITY shall not accept issuance of any permit or license which purports to impose upon the United States, the Air Force or any Government instrumentality or employee any obligation or license except upon prior written consent. STATE ENTITY agrees to hold harmless, indemnify and defend the United States, the Air Force, its employees and instrumentalities from and against any and all liability, cost, claims, fines, penalties, and suits of any kind for injury or death of any persons and for loss or damage to any property occurring in connection with, or in any way incident to the release of any contaminant, or any noncompliance with any Federal, state, or local laws or regulations. This responsibility to hold harmless, indemnify, and defend the U.S. Government shall exist even if the release or noncompliance is discovered after the date this MOU terminates.

Under the Resource Conservation and Recovery Act (RCRA), codified at 42 USC 6962, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental

Protection Agency (EPA) (40 CFR 247-254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

Article 25. Program Manager

STATE ENTITY's program manager for this MOU shall be _____ . If during performance of this MOU, STATE ENTITY must utilize another program manager other than _____, STATE ENTITY shall notify the Air Force contracting officer in writing prior to such substitution.

Article 26. Foreign Nationals

For purposes of this article, foreign nationals are all persons not citizens of, not nationals of, nor immigrant aliens to, the United States of America. Nothing in this article is intended to waive any requirements imposed by any other U.S. Government agency with respect to employment of foreign nationals or export control.

STATE ENTITY acknowledges that the technical data generated under this MOU may be subject to export control, including disclosure to foreign nationals, whether such data is provided orally or in written form. STATE ENTITY agrees to obtain written approval from the Air Force contracting officer before assigning any foreign national to perform work under this MOU or before granting foreign nationals access to data related to this MOU, whether such data is provided by the Government or generated under this MOU.

Article 27. Insurance

The following minimum kinds and amounts of insurance are applicable in performance of work under this MOU:

A. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

Each accident	\$100,000
Disease Limit	\$100,000
Disease per Employee	\$100,000

B. GENERAL LIABILITY INSURANCE

General Aggregate	\$1,000,000
Products	\$1,000,000
Personal & Adv. Injury	\$700,000

C. AUTOMOBILE LIABILITY INSURANCE

Combined Single Limit	\$1,000,000
Bodily Injury (per person)	\$700,000
Bodily Injury (per accident)	\$1,000,000
Property Damage	\$100,000

Article 28. Personnel Qualifications

The personnel categories and minimum qualifications identified in attachment 3 are considered to be essential to the work being performed hereunder. Any personnel substitution proposed by STATE ENTITY that does not meet the minimum qualifications requires prior written approval of the Air Force contracting officer.

Article 29. DoD Recruiting on Campus

As a condition for receipt of funds available to the Department of Defense under this award, STATE ENTITY agrees that it is not institution that has a policy of denying, and that it is not an institution that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes (A) entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If STATE ENTITY is determined, using the procedures established by the Secretary of Defense to implement section 558 of Public Law 103-337 (1994), to be such an institution during the period of performance of this MOU, and therefore to be in breach of this article, the Government will cease all payments of DoD funds under this MOU and all other DoD grants and cooperative agreements, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.

Article 30. Property Liability

All property furnished by the Government is furnished "as is," "where is." No party to this MOU shall be liable to any other party for any property of that other party consumed, damaged, or destroyed in the performance of this MOU, unless it is due to the gross negligence or willful misconduct of the party or an employee or agent of the party.

Article 31. Title to Nonexpendable Personal Property

Except as provide below, title to nonexpendable personal property acquired with Government MOU funds shall vest in STATE ENTITY upon acquisition. For those items of nonexendable personal property having a unit acquisition cost of \$1,000 or more that will be acquired with Government MOU funds, the Government reserves the right to transfer the title to the Federal Government, to STATE ENTITY or to a thrid party so named by the Government.

PART VIII. SUSPENSION AND TERMINATION

Article 32. Suspension and Termination Procedures

This MOU may be terminated by either of the parties hereto upon written notice delivered to the other party 60 days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

Notwithstanding the above, for security and safety reasons or in the case of a serious breach that could lead to irreparable damage, the Air Force contracting officer may order immediate suspension of work, in whole or in part.

PART IX. CERTIFICATIONS

Article 33. Certifications

By signing this MOU and/or by accepting funds under this MOU, STATE ENTITY certifies that it is in compliance with the requirements of the applicable certifications which have been received for this MOU and are hereby incorporated by reference (Attachment 5). These certifications include:

- Certification at Appedix C, 32 CFR Part 25 regarding Drug-Free Workplace
- Certification at Appendix A, 32 CFR Part 25 regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.
- Certification at Appendix A, 32 CFR Part 28 regarding Lobbying.
- Assurance at 32 CFR Part 56.9(b) regarding Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense.

Assurance at 32 CFR 195.6 regarding nondiscrimination in Federally Assisted Programs of the Department of Defense - Effectuation of Title IV of the Civil Rights Act of 1964.

STATE ENTITY shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

By signing this MOU, STATE ENTITY agrees to comply with all applicable Federal, state and local laws and regulations, including taxes.

PART X. LIST OF ATTACHMENTS

Article 34. Attachments

The following attachments are hereby included with this MOU.

- Attachment 1, Statement of Work
- Attachment 2, ACRN Long Line Accounting Classification Data
- Attachment 3, Personnel Qualifications
- Attachment 4, Management Plan
- Attachment 5, Certifications

ARTICLES

- ARTICLE 1 Scope of the Agreement
- ARTICLE 2 Term
- ARTICLE 3 Management of the Project
- ARTICLE 4 Agreement Administration
- ARTICLE 5 Obligation and Payment
- ARTICLE 6 Disputes
- ARTICLE 7 Patent Rights
- ARTICLE 8 Data Rights
- ARTICLE 9 Foreign Access to Technology
- ARTICLE 10 Civil Rights Act
- ARTICLE 11 Execution
- ARTICLE 12 Insurance
- ARTICLE 13 GFP
- ARTICLE 14 Warranty
- ARTICLE 15 Order Of Precedence

ATTACHMENTS

- ATTACHMENT 1 Statement of Work
- ATTACHMENT 2 Report Requirements
- ATTACHMENT 3 Schedule of Payments and Payable Milestones
- ATTACHMENT 4 Funding Schedule

ARTICLE 1: SCOPE OF THE AGREEMENT

A. Scope

1. Company ABC (ABC) shall perform a research and development program (Program) including test and qualification for design of a prototype described as follows:
(INSERT NAME OF EFFORT).

The prototype project shall be carried out in accordance with the Statement of Work incorporated in this Agreement as Attachment 1. ABC shall submit or otherwise provide all documentation required by Attachment 2, Report Requirements.

2. ABC shall be paid for each Payable Milestone accomplished in accordance with the Schedule of Payments and Payable Milestones set forth in Attachment 3 and the procedures of Article 5. Both the Schedule of Payments and the

Funding Schedule set forth in Attachments 3 and 4 respectively may be revised or updated in accordance with Article 3.

3. If cost shared: The Government and ABC (Parties) estimate that the Statement of Work of this Agreement can only be accomplished with an ABC aggregate resource contribution of \$ (INSERT DOLLAR AMOUNT) from the effective date of this Agreement through (INSERT NUMBER OF MONTHS) () months thereafter. ABC intends and, by entering into this Agreement, undertakes to cause these funds to be provided. ABC contributions will be provided as detailed in the Funding Schedule set forth in Attachment 4 (if applicable). If either the Government or ABC is unable to provide its respective total contribution, the other Party may reduce its project funding by a proportional amount.

B. Goals / Objectives

1. The goal of this Agreement is (INSERT GOAL(S) OF AGREEMENT).
2. The Government will have continuous involvement with ABC. The Government may also obtain access to research results and certain rights in data and patents pursuant to Articles 7 and 8. The Air Force and ABC are bound to each other by a duty of good faith and best research effort in achieving the goals of the Program.
3. This Agreement is an other transaction pursuant to 10 U.S.C. 2371 and section 845 (Public Law 103-160) and section 804 (Public Law 106-201). The Parties agree that the principal purpose of this Agreement is for the Government to support and stimulate ABC to provide its best efforts in the development of a prototype. The Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) apply only as specifically referenced herein. This Agreement is not a procurement contract or grant agreement for purposes of FAR Subpart 31.205-18.

ARTICLE 2: TERM

A. The Term of this Agreement

The Program commences upon the date of the last signature hereon and continues for (INSERT NUMBER OF MONTHS) () months. If all funds are expended prior to the (INSERT NUMBER OF MONTHS) ()-month duration, the Parties have no obligation to continue performance. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

B. Termination Provisions

Subject to a reasonable determination that the program will not produce beneficial results commensurate with the expenditure of resources, either Party may terminate this Agreement by written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. In the event of a termination of the Agreement, it is agreed that disposition of Data developed under this Agreement, shall be in accordance with the provisions set forth in Article 8, Data Rights. The Government and ABC will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article 6, Disputes. The Government has no obligation to reimburse ABC beyond the last completed and paid milestone if ABC decides to terminate.

C. Extending the Term

The Parties may extend by mutual written agreement the term of this Agreement if funding availability and performance reasonably warrant. Any extension shall be formalized through modification of the Agreement by the Agreements Officer and the ABC Administrator.

ARTICLE 3: MANAGEMENT OF THE PROJECT

(NOTE: THIS ARTICLE MAY BE SUBSTANTIALLY REVISED DEPENDING ON THE FACTS OF EACH AGREEMENT.)

A. Management and Program Structure

ABC shall be responsible for the overall technical and program management, technical planning and execution of the program. The Government shall provide recommendations to program developments and technical collaboration and be responsible for the review and verification of the Payable Milestones.

B. Program Management Planning Process

Program planning will consist of an Annual Program Plan with inputs and review from ABC and the Air Force, containing the detailed schedule of research and development activities and payable milestones. The Annual Program Plan will consolidate quarterly adjustments in the research and development schedule, including revisions/modification to payable milestones.

1. Initial Program Plan: ABC will follow the initial program plan that is contained in the Statement of Work (Attachment 1), and the Schedule of Payments and Payable Milestones (Attachment 3).
2. Overall Program Plan Annual Review

(a) ABC, with the Air Force review, will prepare an overall Annual Program Plan in the first quarter of each Agreement year. (For this purpose, each consecutive twelve (12) month period from (and including) the month of execution of this Agreement during which this Agreement shall remain in effect shall be considered an Agreement Year.) The Annual Program Plan will be presented and reviewed at an annual site review which will be attended by ABC Management, the military services customer, senior service management as appropriate, and other service program managers and personnel as appropriate. ABC, with the military service customer participation and review, will prepare a final Annual Program Plan.

(b) The Annual Program Plan provides a detailed schedule of research and development activities, commits ABC to use its best efforts to meet specific performance objectives, includes forecasted expenditures and describes the Payable Milestones. The Annual Program Plan will consolidate all prior adjustments in the research schedule, including revisions/modifications to payable milestones. Recommendations for changes, revisions or modifications to the Agreement which result from the Annual Review shall be made in accordance with the provisions of Article 3, Section C.

C. Modifications

1. As a result of quarterly meetings, annual reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the Statement of Work and/or the Payable Milestones, would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted by ABC to the Air Force with a copy to the government Agreements Officer. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. If all parties agree to the changes, a bilateral modification will be executed. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestones Schedule (Attachment 3) is formally revised by the government Agreements Officer and made part of this Agreement.

2. The Air Force shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement Statement of Work, Schedule of Payments or Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.

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

ARTICLE 4. AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made under this agreement may be made only by the government Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

AIR FORCE: (INSERT NAME) (Agreements Officer) (INSERT TELEPHONE NUMBER)

ABC: (INSERT NAME) (ABC Administrator) (INSERT TELEPHONE NUMBER)

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

AIR FORCE: (INSERT NAME) (Program Manager) (INSERT TELEPHONE NUMBER)

ABC: (INSERT NAME) (INSERT TITLE) (INSERT TELEPHONE NUMBER)

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

ARTICLE 5: OBLIGATION AND PAYMENT

A. Obligation

1. The Government's liability to make payments to ABC is limited to only those funds obligated under the Agreement or by modification to the Agreement. The Government may obligate funds to the Agreement incrementally.
2. If modification becomes necessary in performance of this Agreement, pursuant to Article 3, paragraph B, the government Agreements Officer and ABC Administrator shall execute a revised Schedule of Payable Milestones consistent with the then current Program Plan.

B. Payments

1. ABC has and agrees to maintain an established accounting system which complies with Generally Accepted Accounting Principles and the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. An acceptable

accounting system is one in which all cash receipts and disbursements are controlled and documented properly.

2. ABC shall document the accomplishments of each Payable Milestone by submitting or otherwise providing the Payable Milestones Report required by Attachment 2, Part D. ABC shall submit an original and one (1) copies of all invoices to the Agreements Officer for payment approval. After written verification of the accomplishment of the Payable Milestone by the Air Force, and approval by the Agreements Officer, the invoices will be forwarded to the payment office within fifteen (15) calendar days of receipt of the invoices at (INSERT MILITARY SERVICE). Payment approval for the final Payable Milestone will be made after reconciliation (INSERT APPROPRIATE DFAS OFFICE) within thirty (30) calendar days of (INSERT MILITARY SERVICE) transmittal. Subject to change only through written Agreement modification, payment shall be made to the address of the ABC Administrator set forth below.

3. Address of Payee: (INSERT NAME AND ADDRESS OF PAYEE)

4. Limitation of Funds: In no case shall the Governments financial liability exceed the amount obligated under this Agreement.

5. Financial Records and Reports: ABC shall maintain adequate records to account for all funding received under this Agreement and shall maintain adequate records to account for ABC funding provided for under this Agreement. Upon completion or termination of this Agreement, whichever occurs earlier, the ABC Administrator shall furnish to the Agreements Officer a copy of the Final Report required by Attachment 2, Part E. ABCs relevant financial records are subject to examination or audit on behalf of (INSERT MILITARY SERVICE) by the Government for a period not to exceed three (3) years after payment of the final invoice. The Agreements Officer or designee shall have direct access to sufficient records and information of ABC, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

ARTICLE 6: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute between (INSERT MILITARY SERVICE) and ABC concerning questions of fact or law arising from or in connection with

this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the official designated in paragraph 4, in the interests of justice waives this requirement.

3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the government Agreements Officer or Company Administrator, as the case may be) in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the (INSERT MILITARY SERVICE LEVEL OF AUTHORITY FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) and senior executive (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) appointed by ABC. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The (INSERT MILITARY SERVICE LEVEL OF AUTHORITY FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) and senior executive (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY), shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.

4. In the absence of a joint decision, upon written request to the (INSERT MILITARY SERVICE), made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The (INSERT MILITARY SERVICE) may elect to conduct this review personally or through a designee or jointly with a senior executive (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) appointed by ABC. Following the review, the (INSERT MILITARY SERVICE) or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of (INSERT

MILITARY SERVICE) funding disbursed as of the time the dispute arises. In no event shall (INSERT MILITARY SERVICE) be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 7: PATENT RIGHTS

(NOTE: IN THE EVENT MARCH-IN RIGHTS ARE THE ONLY RIGHTS REASONABLY WARRANTED, THIS ARTICLE SHALL BE REPLACED WITH A CONCISELY WRITTEN ARTICLE DEFINING AND DESCRIBING MARCH-IN RIGHTS AND ANY OTHER APPROPRIATE TERMS .)

A. Definitions

1. Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. Practical application means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
4. Subject invention means any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

Unless ABC shall have notified (INSERT MILITARY SERVICE) (in accordance with subparagraph C.2 below) that ABC does not intend to retain title, ABC shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article and 35 U.S.C. 202. With respect to any subject invention in which ABC retains title, (INSERT MILITARY SERVICE) shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. ABC shall disclose each subject invention to (INSERT MILITARY SERVICE) within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to (INSERT MILITARY

SERVICE) shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. ABC shall also submit to (INSERT MILITARY SERVICE) an annual listing of subject inventions.

2. If ABC determines that it does not intend to retain title to any such invention, ABC shall notify (INSERT MILITARY SERVICE), in writing, within eight (8) months of disclosure to (INSERT MILITARY SERVICE). However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by (INSERT MILITARY SERVICE) to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. ABC shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. ABC may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure election, and filing under Article 7, paragraph C, may, at the discretion of (INSERT MILITARY SERVICE), and after considering the position of ABC, be granted.

D. Conditions When the Government May Obtain Title

Upon (INSERT MILITARY SERVICE) written request, ABC shall convey title to any subject invention to (INSERT MILITARY SERVICE) under any of the following conditions:

1. If ABC fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that (INSERT MILITARY SERVICE) may only request title within sixty (60) calendar days after learning of the failure of ABC to disclose or elect within the specified times.

2. In those countries in which ABC fails to file patent applications within the times specified in paragraph C of this Article; provided, that if ABC has filed a

patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by (INSERT MILITARY SERVICE), ABC shall continue to retain title in that country; or

3. In any country in which ABC decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

E. Minimum Rights to ABC and Protection of ABCs Right to File

1. ABC shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if ABC fails to disclose the invention within the times specified in paragraph C of this Article. The ABC license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which ABC is a party and includes the right to grant licenses of the same scope to the extent that ABC was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of (INSERT MILITARY SERVICE), except when transferred to the successor of that part of the business to which the invention pertains. (INSERT MILITARY SERVICE) approval for license transfer shall not be unreasonably withheld.

2. The ABC domestic license may be revoked or modified by (INSERT MILITARY SERVICE) to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which ABC has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of (INSERT MILITARY SERVICE) to the extent ABC, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, (INSERT MILITARY SERVICE) shall furnish ABC a written notice of its intention to revoke or modify the license, and ABC shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Governments Interest

1. ABC agrees to execute or to have executed and promptly deliver to (INSERT MILITARY SERVICE) all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which ABC elects to retain title, and (ii) convey title to (INSERT MILITARY SERVICE) when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. ABC agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by ABC each subject invention made under this Agreement in order that ABC can comply with the disclosure provisions of paragraph C of this Article. ABC shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.

3. ABC shall notify (INSERT MILITARY SERVICE) of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. ABC shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with Government support under Agreement No. F*****-9*-4-**** awarded by (INSERT MILITARY SERVICE). The Government has certain rights in the invention.

G. Lower Tier Agreements

ABC shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

H. Reporting on Utilization of Subject Inventions

ABC agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by ABC or licensees or assignees of the inventor. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by ABC, and such other data and information as the agency may reasonably specify. ABC also agrees to provide additional reports as may be requested by (INSERT MILITARY SERVICE) in connection with any march-in proceedings undertaken by (INSERT MILITARY SERVICE) in accordance with paragraph J of this Article. Consistent with 35 U.S.C. 202(c)(5), (INSERT MILITARY SERVICE) agrees it shall not disclose such information to persons outside the Government without permission of ABC.

I. Preference for American Industry

Notwithstanding any other provision of this clause, ABC agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying

the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by (INSERT MILITARY SERVICE) upon a showing by ABC that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-in Rights

ABC agrees that, with respect to any subject invention in which it has retained title, (INSERT MILITARY SERVICE) has the right to require ABC, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if ABC, assignee, or exclusive licensee refuses such a request, (INSERT MILITARY SERVICE) has the right to grant such a license itself if (INSERT MILITARY SERVICE) determines that:

1. Such action is necessary because ABC or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by ABC, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by ABC, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (I) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

ARTICLE 8: DATA RIGHTS

(NOTE: This article may be substantially revised depending on the facts of each agreement, i.e., Limited rights or march-in rights are warranted.

It is the governments philosophy to allow for innovation in processing, handling and ownership of right regarding technical data and computer software developed under this agreement if it can be proven to be more economically prudent. Offerors should request changes to the clause below in their proposal.

A. Definitions

1. Government Purpose Rights, as used in this article, means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for

Government purposes only, and to have or permit others to do so for Government purposes only.

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

3. Data, as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under Article 7.

B. Allocation of Principal Rights

1. This Agreement shall be performed with mixed Government and ABC funding. The Parties agree that in consideration for Government funding, ABC intends to reduce to practical application items, components and processes developed under this Agreement.

2. ABC agrees to retain and maintain in good condition until (INSERT NUMBER OF YEAR) () years after completion or termination of this Agreement, all Data necessary to achieve practical application. In the event of exercise of the Governments March-in Rights as set forth under Article 7 or subparagraph B.3 of this article, ABC agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in paragraph A above, to this delivered Data.

3. ABC agrees that, with respect to Data necessary to achieve practical application, (INSERT MILITARY SERVICE) has the right to require ABC to deliver all such Data to (INSERT MILITARY SERVICE) in accordance with its reasonable directions if (INSERT MILITARY SERVICE) determines that:

(a) Such action is necessary because ABC or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the technology developed during the performance of this Agreement;

(b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by ABC, assignee, or their licensees; or

(c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by ABC, assignee, or licensees.

4. With respect to Data delivered pursuant to Attachment 2 (and listed below), the Government shall receive Government Purpose Rights, as defined in

paragraph A above. With respect to all Data delivered, in the event of the Governments exercise of its right under subparagraph B.2 of this article, the Government shall receive Unlimited Rights.

C. Marking of Data

Pursuant to paragraph B above, any Data delivered under this Agreement shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement

F*****-9*-4-**** between the Government and ABC.

D. Lower Tier Agreements

ABC shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE 9: FOREIGN ACCESS TO TECHNOLOGY (NOTE: It is the governments intention to resrtict this technology from flowing overseas without approval to ensure the economic and security issues have been resolved prior to any release. If the offerors desire proposed changes to this article they should explain rationale completely.)

This Article shall remain in effect during the term of the Agreement and for (INSERT NUMBER OF YEARS) () years thereafter.

A. Definition

1. Foreign Firm or Institution means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.
2. Know-How means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.
3. Technology means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this Agreement.

B. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

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

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

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

2. ABC shall provide timely notice to (INSERT MILITARY SERVICE) of any proposed transfers from ABC of Technology developed under this Agreement to Foreign Firms or Institutions. If (INSERT MILITARY SERVICE) determines that the transfer may have adverse consequences to the national security interests of the United States, ABC, its vendors, and (INSERT MILITARY SERVICE) shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to ABC.

3. In any event, ABC shall provide written notice to the (INSERT MILITARY SERVICE) Program Manager and Agreements Officer of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state

specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of ABCs written notification, the government Agreements Officer shall advise ABC whether it consents to the proposed transfer. In cases where (INSERT MILITARY SERVICE) does not concur or sixty (60) calendar days after receipt and (INSERT MILITARY SERVICE) provides no decision, ABC may utilize the procedures under Article 6, Disputes. No transfer shall take place until a decision is rendered.

4. In the event the transfer of Technology to Foreign Firms or Institutions which is NOT approved by (INSERT MILITARY SERVICE), ABC shall (a) refund to (INSERT MILITARY SERVICE) funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of his Agreement. Upon request of the Government, ABC shall provide written confirmation of such licenses.

D. Lower Tier Agreements

ABC shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE 10: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs. ABC has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act.

ARTICLE 11: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of ABC and the government Agreements Officer. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

ARTICLE 12: INSURANCE

The contractor shall propose the appropriate type of insurance.

ARTICLE 13: GOVERNMENT FURNISHED PROPERTY

The following Government property, information, equipment, facilities and services shall be provided upon the written approval of the cognizant agreement officer:

(Offerors will list all desired GFE, GFP, GFI, GFF, and GFS.)

(a) The Government will use best efforts to deliver to ABC, at the time and locations stated in this contract, the Government-furnished property stated in this agreement, the Government-furnished property described in the Schedule or specifications.

(b) Title to Government-furnished property will remain with the Government. The Agreement will use the Government-furnished property only in connection with this Agreement. ABC will maintain adequate property control records in accordance with sound industrial practice and will make such records available.

(c) Upon delivery of Government-furnished property to ABC, ABC assumes the risk and responsibility for its loss or damage, except --

- (1) For reasonable wear and tear;
- (2) To the extent property is consumed in performing this agreement; or
- (3) As otherwise provided for by the provisions of this agreement.

(d) Upon completing this agreement, ABC will follow the instructions of the Agreements Officer regarding the disposition of all Government-furnished property not consumed in performing this agreement or previously delivery to the Government. ABC will prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Agreements Officer. The net proceeds of any such disposal will be credited to the agreement price or will be paid to the Government as directed by the Agreements Officer.

ARTICLE 14: WARRANTIES

Parties should negotiate appropriate warranties, if applicable.

ARTICLE 15: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and language set forth in the Statement of Work, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, (2) Attachments to the Agreement.

REPORT REQUIREMENTS

A. QUARTERLY REPORT

On or before ninety (90) calendar days after the effective date of the Agreement and quarterly thereafter throughout the term of the Agreement, the company shall submit or otherwise provide a quarterly report. Two (2) copies shall be submitted or otherwise provided to the (INSERT MILITARY SERVICE) Program Manager, one (1) copy shall be submitted or otherwise provided to the government Agreements Officer and one (1) copy shall be submitted or otherwise provided to (INSERT MILITARY SERVICE PM). The report will have two (2) major sections.

1. Technical Status Report. The technical status report will detail technical progress to date and report on all problems, technical issues or major developments during the reporting period. The technical status report will include a report on the status of company activities during the reporting period.
2. Business Status Report. The business status report shall provide summarized details of the resource status of this Agreement, (including the status of the contributions by the Company, if applicable). This report will include a quarterly accounting of current expenditures as outlined in the Annual Program Plan. Any major deviations shall be explained along with discussions of the adjustment actions proposed. The report will also include an accounting of interest earned on Government funds, IF ANY. The Company is reminded that interest is not expected to accrue under this Agreement. In the event that interest does accrue on Government funds, the Company is required to provide an explanation for the interest accrued in the business report. Depending on the circumstances, the Payable Milestones may require adjustment. In any event, the Government reserves the right to require interest amounts earned in excess of \$250 per year to be remitted at periodic intervals to be agreed upon by both Parties. All such interest rebates shall be made payable to the United States Treasury.

B. ANNUAL PROGRAM PLAN DOCUMENT

The company shall submit or otherwise provide to the (INSERT MILITARY SERVICE) Program Manager one (1) copy of a report which describes the Annual Program Plan as described in Article 3, Section D. This document shall be submitted not later than thirty (30) calendar days following the Annual Site Review as described in Article 3, Section D.

C. SPECIAL TECHNICAL REPORTS

As agreed to by the Company and the (INSERT MILITARY SERVICE) Program Manager, the company shall submit or otherwise provide to the (INSERT MILITARY SERVICE) Program Manager one (1) copy of special reports on significant events such as significant target accomplishments by the Company, significant tests, experiments, or symposia.

D. PAYABLE MILESTONES REPORTS

The company shall submit or otherwise provide to the (INSERT MILITARY SERVICE) Program Manager, documentation describing the extent of accomplishment of Payable Milestones. This information shall be as required by Article 5, paragraph B and shall be sufficient for the (INSERT MILITARY SERVICE) Program Manager to reasonably verify the accomplishment of the milestone of the event in accordance with the Statement of Work. To the extent possible, Payable Milestones should be discretely measurable one such as "hardware fabrication concept" or "software testing complete."

E. FINAL REPORT (NOTE: The Final Report is the last Payable Milestone for the completed Agreement.)

1. The company shall submit or otherwise provide a Final Report making full disclosure of all major developments by the Company upon completion of the Agreement or within sixty (60) calendar days of termination of this Agreement. With the approval of the (INSERT MILITARY SERVICE) Program Manager, reprints of published articles may be attached to the Final Report. Two (2) copies shall be submitted or otherwise provided to the (INSERT MILITARY SERVICE) Program Manager and one (1) copy shall be submitted or otherwise provided to (INSERT MILITARY SERVICE)/(INSERT PROGRAM OFFICE. One (1) copy shall be submitted to the Defense Technical Information Center, Attn: DTIC-O, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-6218.
2. The Final Report shall be marked with a distribution statement to denote the extent of its availability for distribution, release, and disclosure without additional approvals or authorizations. The Final Report shall be marked on the front page in a conspicuous place with the following marking:

DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government agencies only to protect information not owned by the U.S. Government and protected by a contractor's limited rights statement, or received with the understanding that it not be routinely transmitted outside the U.S. Government. Other requests for this document shall be referred to (INSERT MILITARY SERVICE)/Technical Information Officer.

SCHEDULE OF PAYMENTS AND PAYABLE MILESTONES

Task	Month	Military Service Payable Milestones	Company/Consortium Payment
1			

FUNDING SCHEDULE

A. PROJECTED PROGRAM FUNDING COMMITMENTS

	Service Funding	Company/Consortium Contribution (If Applicable)
FY 9*	\$	\$
FY 9*	\$	\$
FY 9*	\$	\$
TOTALS	\$	\$

TABLE OF CONTENTS FOR AN OT FOR PROTOTYPE FILE

- Side 1** - Tab 1 - Funding Document
Tab 2 - Acquisition Strategy Document
Tab 3 - Solicitation/BAA
Tab 4 - Source Selection Plan
Tab 5 - Delegation to Enter into OT Agreement
Tab 6 - D&F and Other Approvals
Tab 7 - Proposal - Original and Revised
Tab 8 - Negotiations/Discussions Documents
Tab 9 - In-Kind Contribution Document, if applicable
Tab 10 - Reps and Certs
Tab 11 - Agreement Analysis
Tab 12 - Miscellaneous
Tab 13 - Legal Review
Tab 14 - HQ AFMC/PKT Review
Tab 15 - Congressional Notice IAW 10 USC 2371(h) (to be sent to HQ AFMC/PKT fifteen days after award)
- Side 2** - Tab 1 - Agreement
- Side 3** - Administration Information - Reports, Payment/Invoices, Correspondence, Closeout, etc.

(This is a suggested listing. More Tabs may be added as necessary - Prepared as of 7 Jul 97.)

VIII. NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT

Made as of the _____ day of _____, 199____, by and between _____ (the "Recipient") with offices at _____, and the Department of the Air Force ("USAF").

Whereas, USAF has developed _____

_____ ("Technology") and _____ wishes to evaluate the same; and

Whereas, the parties recognize that in order to accomplish these purposes, it may be necessary or appropriate for one party to disclose to the other, information or technology which is considered by the disclosing party to constitute its confidential or proprietary information which include but are not limited to USAF's Technology;

Now, therefore, in consideration of the premises and to induce the disclosure of confidential information, the parties agree as follows:

1. The receiving party shall maintain for a period of ten (10) years from the effective date of this Agreement the confidentiality of information disclosed to it or otherwise learned by it during or as a result of research, hereinafter "Confidential Information", provided such information is in writing or other tangible form and clearly marked as proprietary when disclosed, or is so designated in writing within thirty (30) days of such disclosure. The receiving party shall use the same level of care to prevent the use or disclosure of The Confidential Information as it exercises in protecting its own information of similar nature.
2. Confidential Information shall be used by the receiving party solely for the purposes of facilitating and conducting the evaluation. The receiving party shall not perform, nor have performed, any tests or measurements on Confidential Information disclosed in the form of technology samples for the purpose of determining such samples' method(s) of manufacturing.
3. Confidential Information disclosed by one party to the other shall remain the property of the disclosing party, and shall be returned upon written request. The receiving party may, however, retain one copy of the Confidential Information in its legal files, except in the specific instance of technology samples which shall be returned to the disclosing party upon request.
4. The disclosure of Confidential Information by one party to the other shall not constitute a grant by the disclosing party to the receiving party of any species of right, title, interest,

or property in or to Confidential Information. No license or other right under any U.S. or foreign patent, copyright, or know-how is granted or implied by this Agreement.

5. The receiving party shall use reasonable efforts to disclose Confidential Information received by it only to those of its employees who must be so informed to enable that party to accomplish the purposes stated herein and who have been provided a copy of this fully executed Agreement and are bound by that party's obligations of confidentiality hereunder.

6. The receiving party's obligations of confidentiality hereunder shall not apply to the following:

- a. information which is now or hereafter becomes a part of the public domain;
- b. information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records;
- c. information given to the receiving party by a third party having a right to disclose the same; or
- d. information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.

7. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives.

8. Neither party shall have the right to assign or otherwise transfer any right or interest herein to any other person, firm, corporation or association without the prior written consent of the other party.

9. This Agreement shall be governed by and construed in accordance with the laws applicable to the Federal Government of the United States of America.

10. The above constitutes the full and complete Agreement in this matter by and between the parties hereto.

Department of the Air Force

By _____

By _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____

AGREED AND ACCEPTED:

By: _____

Name: (Insert printed name here)

Date: _____

**BY ORDER OF THE COMMANDER
AIR FORCE MATERIEL COMMAND**

**AIR FORCE MATERIEL COMMAND
PAMPHLET 64-101**

9 NOVEMBER 2000

Contracting

UNSOLICITED PROPOSAL GUIDE



NOTICE: This publication is available digitally on the HQ AFMC WWW site at: <https://www.afmc-mil.wpafb.af.mil/pdl/>.

OPR: HQ AFMC/PKPA (Ms Elaine K. Smith)

Certified by: HQ AFMC/PKP
(Col Avery P. Sledge)

Supersedes AFMCP64-101, 30 Jun 97

Pages: 24
Distribution: F

This pamphlet provides information for the preparation and submission of unsolicited proposals (UP). This publication is designed to aid in the preparation and submission of UPs pursuant to *Federal Acquisition Regulation* (FAR) (Subpart 15.6), and AFMCFARS 5315.6. This pamphlet applies to any organization or person wishing to submit an UP. It does not apply to the Air National Guard or Air Force Reserve units and members.

The use of a name of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Air Force.

SUMMARY OF REVISIONS

Reflects FAR changes (FAR Subpart 15.5 changed to 15.6); updates UP Process Flowchart (attachment 1) and the current Air Force Materiel Command (AFMC) UP focal points, addresses, and mission statements (attachment 2). Please note the revised UP focal point for ASC. ASC and AFRL are now separate agencies, therefore, ASC and AFRL each have a separate UP focal point.

1. Need for UPs.

1.1. AFMC is responsible for the rapid advancement of technology and its adaptation to operational systems. AFMC is organized to provide the most up-to-date and effective management of all Air Force scientific and technical resources.

1.2. AFMC takes an idea from research through development to production and then provides logistics support for fully-operational systems to Air Force operating commands. These systems include, but are not limited to, the bomber and missile systems of the Air Combat Command, the cargo aircraft of the Air Mobility Command, and command and communications systems within the Air Force and throughout the Department of Defense (DoD).

1.3. To create, acquire, and deliver these systems at an acceptable cost in the face of pressing schedules and in a rapidly changing technical environment, takes time, technology, facilities, and professional people. AFMC meshes these resources into a worldwide organization of personnel whose responsibilities span the entire acquisition process.

1.4. UPs are a valuable means for government agencies to obtain innovative or unique methods or approaches to accomplish their mission from sources outside the government. AFMC has found that UPs provide an important tool for accomplishing functions not always served by solicited proposals. AFMC welcomes UPs and appreciates the contribution they make toward ensuring the continuing superiority of the Air Force through technological leadership.

2. Definitions.

2.1. Advertising Material. Refer to FAR Part 15.601—Definitions.

2.2. Commercial Item Offer. Refer to FAR Part 15.601—Definitions.

2.3. Contribution. Refer to FAR Part 15.601—Definitions.

2.4. Technical Correspondence. Written requests for information regarding government interest in research areas, preproposal explorations, technical inquiries, research descriptions, and other written technical inquiries.

2.5. Unsolicited Proposals. Refer to FAR Part 15.601—Definitions.

2.6. Unsolicited Research Proposals (URP). A URP is a UP which attempts to:

2.6.1. Determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and attempts to advance the state of the art.

2.6.2. Increase scientific knowledge, (i.e., it is directed toward a fuller knowledge or understanding of the subject under study rather than any practical application of that knowledge). The UP and URP evaluation processes do not differ, but there are substantial differences in publishing, justifying, and awarding a UP versus a URP. Favorably evaluated URPs automatically qualify under FAR 6.302-1(a)(i) for other than full and open competition. FAR 15.607(b)(2) makes it clear that nonresearch UPs will not automatically qualify for other than full and open competition and may have to be returned, unless they can be determined to meet other provisions under FAR Subpart 6.3. See attachment 1 for further details.

3. Who May Submit UPs. AFMC encourages any organization or person outside the Air Force to submit UPs.

4. Advance Consultations. AFMC encourages any potential offeror to contact field technical personnel before preparing a detailed UP or submitting proprietary data. Such contacts can answer questions as to the general need for the proposed effort. These contacts should not be construed as any form of negotiation in contemplation of any contractual arrangement for the Air Force by either party. Attachment 2 lists the AFMC organizations, their telephone numbers, and mailing addresses, and a functional statement for each organization. Attachment 1 flowcharts the UP process with FAR (Subpart 15.6) requirements.

5. Proprietary Information.

5.1. A UP received by the Air Force is considered an Air Force record and is subject to the provisions of the Freedom of Information Act (FOIA) for disclosure to the public. It will generally be exempted from disclosure if it concerns or relates to trade secrets, processes, operations, style of work, or apparatus, and contains information that concerns or relates to the identity, confidential statistical data, amount or source of income, profits, losses, or expenditures of a person, firm, partnership, corporation, or association. Government personnel are prohibited from disclosing the submitter's properly marked proprietary information to unauthorized personnel. In fact, they may be subject to criminal penalties for improper disclosures. If the information is not properly marked as proprietary, but it is clear that the submitter either mistakenly omitted or otherwise expects the government to protect it from disclosure, the best practice is to contact the submitter and ask if they consider the information proprietary and desire to have it properly marked. If, at the submitter's request, the proposal is returned or otherwise disposed of, it will no longer be considered an Air Force record under the FOIA.

5.2. UPs may include data that the offeror does not want disclosed for any purpose other than evaluation. If the offeror wishes to restrict the proposal, the title page must be marked with the following legend:

USE AND DISCLOSURE OF DATA

“This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of-or in connection with-the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government’s right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [insert numbers or other identification of sheets].”

5.3. The offeror shall mark each sheet of data that needs to be restricted with the following legend:

“Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”

6. When and How to Submit Proposals.

6.1. UPs may be submitted at any time. Submit proposals to the cognizant UP focal point listed in attachment 2.

6.2. The ABCs of successful proposals are accuracy, brevity, and clarity. Specifically, each proposal should include the following (FAR 15.605):

6.2.1. Name and address of the organization submitting the proposal.

6.2.2. Type of organization (large business, nonprofit, educational institution, small business, small disadvantaged business, women-owned business).

- 6.2.3. Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes.
 - 6.2.4. Identity of proprietary data to be used only for evaluation purposes.
 - 6.2.5. Names of other federal, state, and local agencies receiving the proposal or funding proposed effort.
 - 6.2.6. Date of submission and signature of a person authorized to represent the company submitting.
 - 6.2.7. Concise title and abstract of proposed work and the statement indicating that the submission is a UP.
 - 6.2.8. An outline and discussion for the purpose of the effort or activity, the approach and extent of effort to be used, the nature of the expected results, and how the work will help to support the Agency's mission.
 - 6.2.9. Name and biographical information of involved key personnel and alternates.
 - 6.2.10. Type of support needed from the Agency (e.g., facilities, equipment, materials, or personnel resources).
 - 6.2.11. Brief description of the offeror's facilities, particularly those that would be used in the proposed effort.
 - 6.2.12. Brief outline of previous work by the offeror and experience in the field.
 - 6.2.13. Proposed price or total estimated cost of the effort in sufficient detail to be used for evaluation purposes.
 - 6.2.14. Proposed duration of effort and period of time for which the proposal is valid.
 - 6.2.15. Type of contract preferred.
 - 6.2.16. If applicable, required statements about organizational conflicts of interest, security clearances, and environmental impacts.
 - 6.2.17. The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.
- 6.3. Include completed AFMC Form 190, **Policy Agreement for Evaluation of Unsolicited Proposals**. AFMC Form 190 is available on the World Wide Web at the following site: <http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/PK/pkp/pkpa/unsolpub.htm>

7. AFMC Form 190 Policy Agreement for Evaluation of UPs. This agreement must be signed by an officer of the company or the person submitting the voluntary proposal prior to evaluation. No request for special exception or change in the policy agreement will be granted. The cognizant AFMC field activity UP focal point receiving the policy agreement will countersign and provide copies to the offeror and HQ AFMC/PKP. This agreement is to be executed only once (in duplicate) at the time of initial proposal submission. All subsequent proposal submissions will be covered by the executed policy agreement.

8. Evaluating Proposals.

8.1. AFMC organizations are responsible for acknowledging receipt of UPs within 10 workdays. If a final evaluation cannot be completed within 30 workdays, the offeror will be notified and given an estimated completion date either in the acknowledgment letter or by follow-up correspondence. UPs will be evaluated by appropriate personnel working in technical areas of effort similar to the UP.

8.2. The technical evaluator will:

8.2.1. Coordinate all correspondence with the appropriate government contracting officer prior to signature.

8.2.2. Provide a copy of the acceptance or rejection letter to the UP focal point.

8.3. The UP focal point will:

8.3.1. Provide the evaluation results to the offeror.

8.3.2. If the proposal offers an outstanding major advancement applicable to the Air Force mission but cannot be accepted for reasons such as insufficient funding, forward the proposal to the appropriate headquarters staff directorate for review.

8.3.3. Ensure disposition of all UPs are maintained on AFMC Form 189, **Record of Unsolicited Proposal**, in the UP focal points office.

8.4. A UP must meet FAR 15.603(c) validity requirements:

8.4.1. Be innovative and unique.

8.4.2. Independently originated.

8.4.3. Prepared without government supervision.

8.4.4. Benefit agency mission.

8.4.5. Not be an advance proposal for a known requirement that can be competed. If so, the proposal will be returned to the offeror (attachment 1).

8.5. It is mandatory that the UP be evaluated according to FAR 15.606-2(a) as offering:

8.5.1. Unique and innovative methods, approaches, or concepts.

8.5.2. Scientific, technical, socioeconomic merits.

8.5.3. A contribution to the agency's mission.

8.5.4. Capabilities, experience, facilities, techniques to achieve government established objectives.

8.5.5. Qualifications, capabilities, and experience of principal investigator, team leader, or key personnel to achieve UP objective.

8.5.6. The realism of the proposed cost.

8.6. UPs will be returned according to FAR 15.607(a) when its substance:

8.6.1. Is available to the government without restriction from another source.

8.6.2. Closely resembles a pending competitive acquisition requirement.

8.6.3. Does not demonstrate an innovative and unique method, approach or concept. However, a favorable comprehensive evaluation of a UP does not, in itself, justify awarding a contract without providing for full and open competition (attachment 1).

8.6.4. Does not relate to the activity's mission.

8.7. Except to create government-controlled records, the government will not reproduce, copy, photograph, reduce to drawings, or change the contents of any UP. If a proposal is accepted, the government will retain/dispose of copies in accordance with FAR 4.8. If a proposal is not accepted, the government will dispose of all copies in accordance with the offeror's instructions (See para 5 "Proprietary Information"). In the absence of such instructions, the government will retain the proposal for one year after evaluation and then will destroy all copies of the proposal.

9. Authority to Contract:

9.1. Only contracting officers have authority to negotiate and contractually bind the government.

9.2. Requests by the evaluators for further information or resubmission after rework shall be at the expense of the offeror and shall create no obligation to the government.

9.3. If a UP is accepted, a contract may be negotiated between the offeror and the appropriate AFMC activity.

9.4. If a proposal is not accepted, the government is not obligated in any way to reimburse the offeror for any cost it may have incurred in submitting the UP.

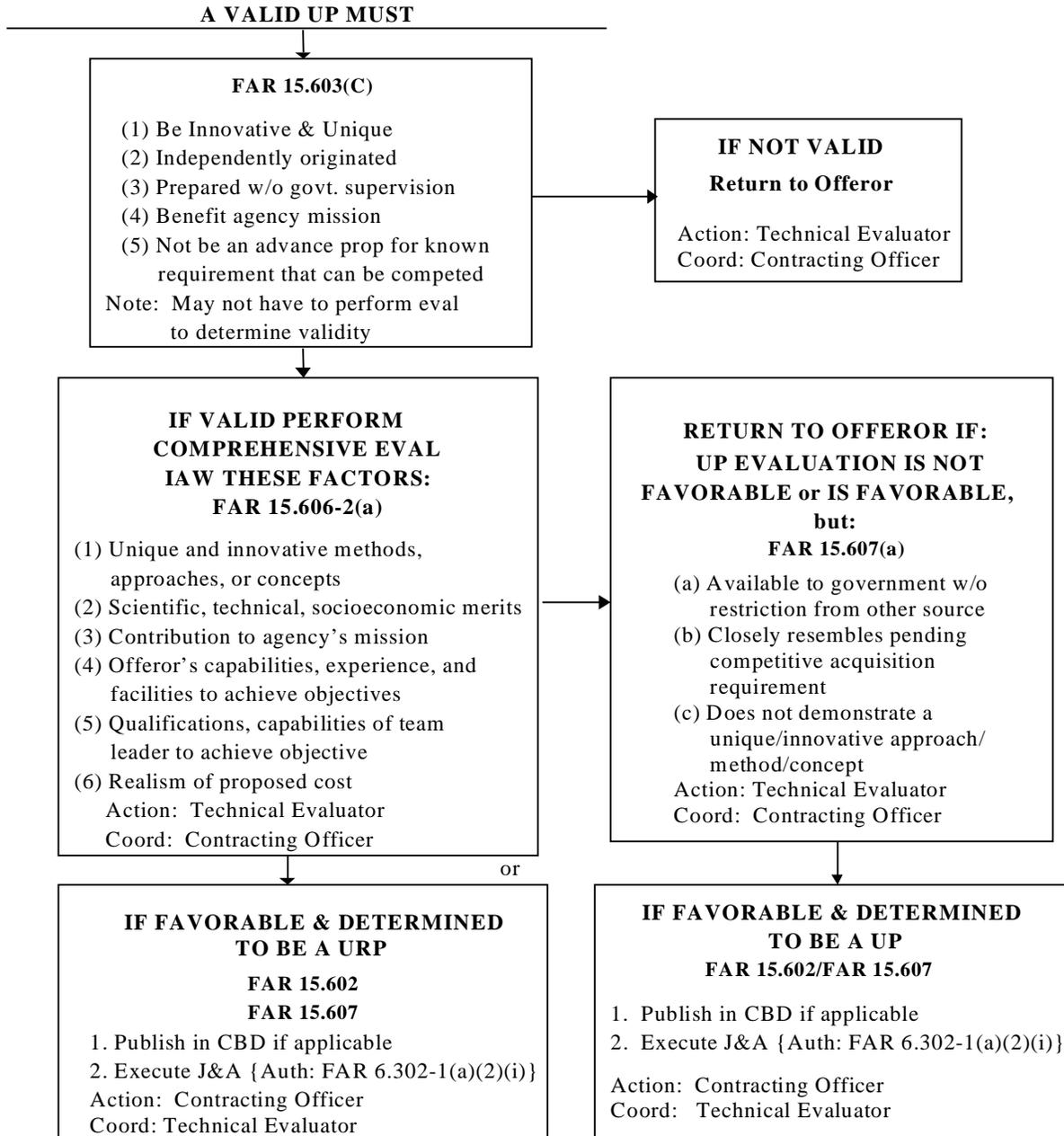
10. Where to Submit Proposals. To expedite evaluation, send proposals directly to the AFMC organization (UP focal point - attachment 2) that has mission responsibility for the subject matter of the proposal (attachment 2). Offerors are also encouraged to send their UP to only one AFMC organization to avoid processing delays.

11. Where to Obtain Copies of this Pamphlet . Interested parties may obtain copies of this pamphlet and AFMC Form 190 by contacting the cognizant AFMC Publication Distribution Office at the installations listed in attachment 2. The pamphlet is also available on the World Wide Web at <http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/PK/pkp/pkpa/unsolpub.htm>

12. Prescribed Forms: AFMC Form 189 and AFMC Form 190.

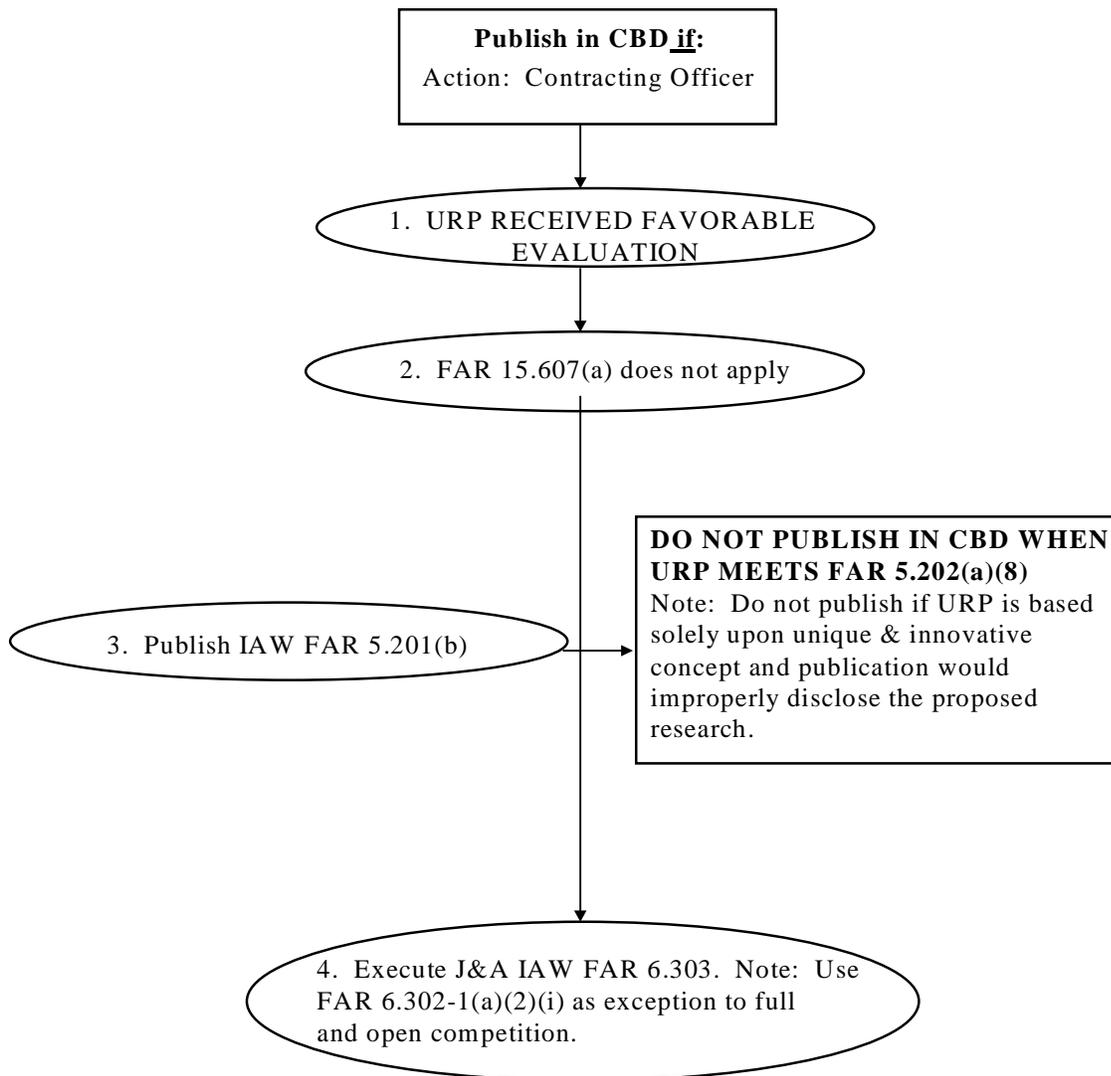
STANLEY A. SIEG, Brigadier General, USAF
Director of Contracting

UP PROCESS FLOWCHART



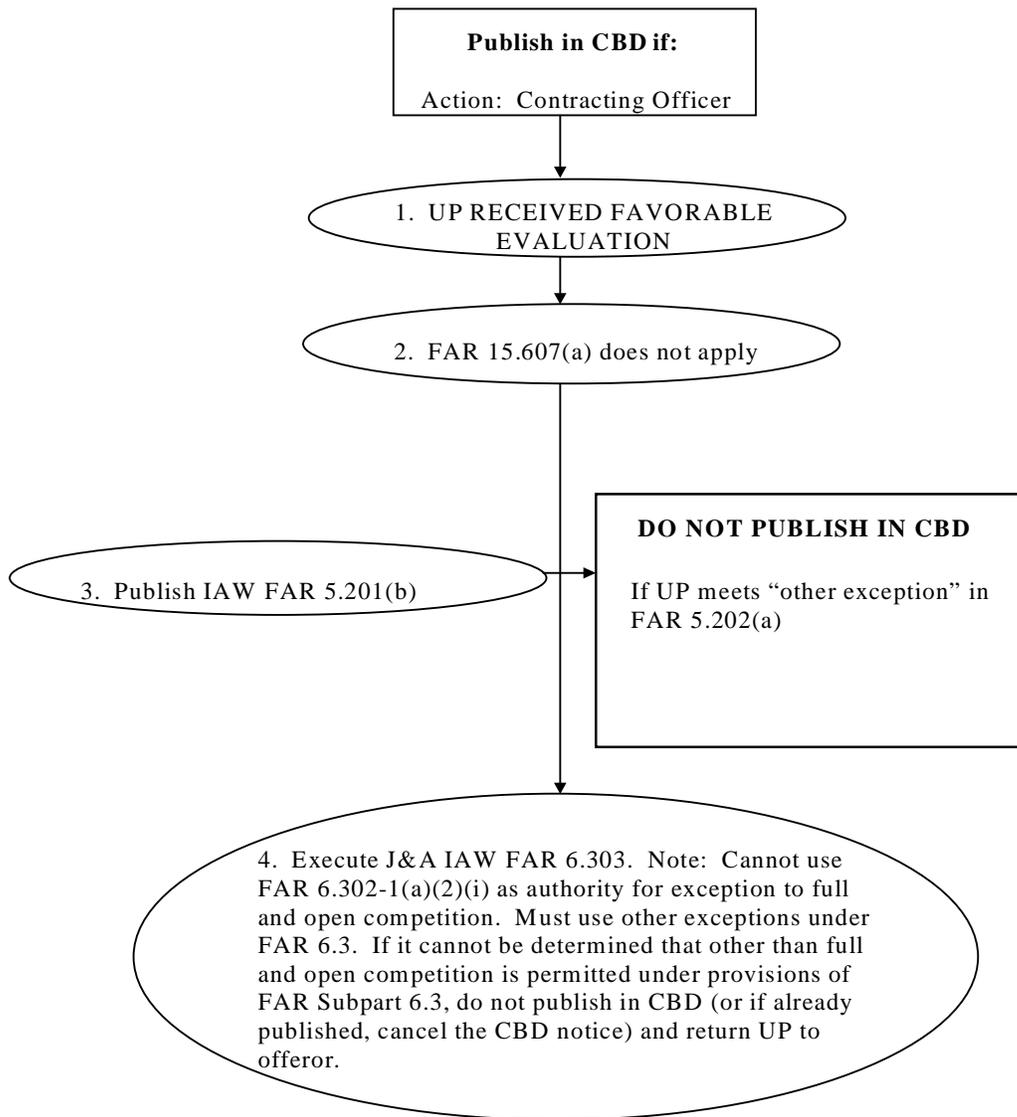
UP PROCESS FLOWCHART (CONTINUED)

UNSOLICITED RESEARCH PROPOSAL FAVORABLE
FAR 15.607(b)(4)



UP PROCESS FLOWCHART (CONTINUED)

UNSOLICITED PROPOSAL FAVORABLE
FAR 15.607 (b) (4)



FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS

1. AERONAUTICAL SYSTEMS CENTER (ASC)

Telephone: (937) 255-3164

**ASC (UP Focal Point)
ASC/XPI
1970 Monahan Way, B11A R101
Wright-Patterson AFB OH 45433-7532**

ASC, the host unit at Wright-Patterson, is responsible for the research, development, test, evaluation, acquisition, and sustainment of aeronautical systems and related equipment for the Air Force. The Center's flagship programs are the F-22, the air superiority fighter of the future; the C-17, the next generation, all-weather, direct-delivery airlifter; and the B-2 bomber, a manned bomber for penetrating enemy air defense through low-observable or stealth technology. The Center has many very active programs across the spectrum of USAF fighters, bombers, reconnaissance, airlift and training systems. Other major programs include the F-16 Fighting Falcon; Unmanned Air Vehicles, such as the Predator and the Global Hawk; and upgrades to the F-15 Eagle, the C-5, and the C-130. The center also participates in managing the Joint Strike Fighter (JSF), a joint Air Force, Navy, Marine Corps, and British Royal Air Force effort to build the next generation strike aircraft incorporating new materials and stealth technologies. The Center has an outstanding air base wing, a magnificent medical center, and a unique human systems wing at Brooks AFB, Texas.

A

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

2. Air Force Research Lab (AFRL)

Telephone: (937) 904-9700

**AFRL/PK(UP Focal Point)
1864 4th Street, Suite 1
Wright-Patterson AFB OH 45433-7131**

Leading the discovery, development, and integration of affordable warfighting technologies for our aerospace forces.

TECHNOLOGY DIRECTORATES

Air Vehicles Directorate (VA) Wright-Patterson AFB OH

Telephone: (937) 255-0437

The Air Vehicles Directorate develops and transitions superior technology solutions that enable dominant military aerospace vehicles. Core technology areas include aeronautical sciences, control sciences, structures, and integration. The Directorate employs an integrated concept approach for the development of vehicle technologies to provide future capabilities in the areas of sustainment, unmanned air vehicles, and space access and future strike.

Directed Energy Directorate (DE) Kirtland AFB NM

Telephone: (505) 846-0860

Develop, integrate and transition science and technology for directed energy to include high power microwaves, lasers, adaptive optics, imaging and effects to assure the preeminence of U.S. in air and space.

Human Effectiveness Directorate (HE) Wright-Patterson AFB OH

Telephone: (937) 255-2423

The Human Effectiveness Directorate develops, integrates, and transitions science and technology products for training personnel, protecting and sustaining the crewmember, and improving human interfaces with weapon systems to assure the preeminence of U.S. Air and Space Forces.

Information Directorate (IF) Rome NY

Telephone: (315) 330-7701

The advancement and application of Information Systems Science and Technology to meet Air Force unique requirements for Information Dominance and its transition to aerospace systems to meet Air Force needs.

Materials and Manufacturing Directorate (ML) Wright-Patterson AFB OH

Telephone: (937) 255-4726

Plan and execute the USAF program for materials and manufacturing processes in the areas of basic research, exploratory development and advanced development. Provide systems support to our Air Force product centers, logistics centers and operating commands to solve system related problems and to transfer expertise in the areas of materials and manufacturing processes.

Munitions Directorate (MN) Eglin AFB FL

Telephone: (850) 882-3003

Develop, integrate, and transition science and technology for air-launched munitions for defeating ground fixed, mobile/relocatable, air, and space targets to assure the pre-eminence of U.S. Air and Space Forces.

Propulsion Directorate (PR) Wright-Patterson AFB OH

Telephone: (937) 255-5334

Propulsion concepts and technologies for airplanes and missiles, launch vehicles and spacecraft. New techniques to generate, condition, store, and distribute mechanical and electrical power. Thermal management concepts for both aircraft and satellites. Plasma physics.

Sensors Directorate (SN) Wright-Patterson AFB OH

Telephone: (937) 255-2620

Develop technologies to collect, measure, and interpret important military information worldwide – and deny the enemy the same.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS. (CONTINUED)**2. Air Force Research Lab (AFRL) (continued)****Air Force Office of Scientific Research Arlington VA****Telephone: (703) 696-5903**

Manages the entire basic research investment of the U.S. Air Force. Plans, coordinates, and executes the Air Force Research Laboratory's (AFRL) basic research program in response to technical guidance from AFRL and requirements of the Air Force. Fosters, supports, and conducts research within Air Force, university, and industry laboratories. Ensures transition of research results to support USAF needs.

Aerospace and Materials Sciences Directorate:**Telephone: (703) 696-8569**

Plans, directs, and coordinates the Air Force in-house and extramural basic research programs in the fields of structural materials, solid mechanics, structures, fluid mechanics, and propulsion to ensure maximum value in maintaining a superior technological and operational capability for the Air Force. Works with other Air Force organizations, including other AFRL elements; sponsors scientific research of greatest potential contribution to Air Force needs and scientific opportunities; supports research efforts that show the greatest potential contribution to the Air Force organizations concerning scientific advances and their exploitation in the development of aerospace systems and operations. Works closely with the scientific community to encourage participation in scientific research programs of Air Force interest. Coordinates with DoD, other government agencies and the aerospace industry to enhance relevance and technological transition.

Physics and Electronics Directorate:**Telephone: (703) 696-8569**

Plans, directs, and coordinates the Air Force in-house and extramural basic research programs in the fields of physics and militarily unique electronic sciences to ensure maximum value in maintaining a superior technological and operational capability for the Air Force. Works with other Air Force organizations, including other AFRL elements; sponsors scientific research of greatest potential contribution to Air Force needs and scientific opportunities; supports research efforts that show the greatest potential contribution to the Air Force organizations concerning scientific advances and their exploitation in the development of physics and electronic sciences. Works closely with the scientific community to encourage participation in scientific research programs of Air Force interest. Coordinates with DoD, other government agencies and the aerospace industry to enhance relevance and technological transition.

Chemistry and Life Sciences Directorate:**Telephone: (703) 696-7552**

Plans, directs, and coordinates the Air Force in-house and extramural basic research programs in the fields of chemistry, biology and human performance to ensure maximum value in maintaining a superior technological and operational capability for the Air Force. Works with other Air Force organizations, including other AFRL elements; sponsors scientific research of greatest potential contribution to Air Force needs and scientific opportunities; supports research efforts that show the greatest potential contribution to the Air Force organizations concerning scientific advances and their exploitation in the development of aerospace systems and operations. Works closely with the scientific community to encourage participation in research programs of Air Force interest. Coordinates with DoD, other government agencies and the aerospace industry to enhance relevance and technological transition.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

2. Air Force Research Lab (AFRL) (continued)

Air Force Office of Scientific Research Arlington VA (continued)

External Programs and Resources Interface`

Telephone: (703) 696-7300

Plans, directs, and coordinates in-house, basic research programs in support of AFRL's research mission. Manages AFRL programs that assign leading U.S. and foreign postdoctoral and senior scientists to key research projects within AFRL. Provides Air Force laboratory scientists and engineers with the opportunity to perform research in foreign laboratories. Responsible for programs that support fellowships leading to advanced degrees in science and engineering. Centrally coordinates and manages budget for externally-funded programs that require execution in several AFOSR technical directorates. Supports basic research at non-AFRL organizations Such as USAFA and AFIT. Manages programs for DDR&E including the requisite coordination, planning, and liaison with other Services and agencies. Facilitates participation by small business in defense research through the Small Business Innovation Research Program and the Small Business Technology Transfer Program. Plans and manages information programs and products to inform military decision-makers, university, industry, other government agencies and technology managers about Air Force basic research accomplishments. Designs AFOSR exhibits and displays. Maintains AFOSR history records.

Mathematics and Space Sciences Directorate

Telephone: (703) 696-7797

Plans, directs, and coordinates the Air Force in-house and extramural basic research programs in the fields of space and mathematical and computer sciences to ensure maximum value in maintaining a superior technological and operational capability for the Air Force. Works with other Air Force organizations, including other AFRL elements; sponsors scientific research of greatest potential contribution to Air Force needs and scientific opportunities; supports research efforts that show the greatest potential contribution to the Air Force organizations concerning scientific advances and their exploitation in the development of aerospace systems and operations. Works closely with the scientific community to encourage participation in research programs of Air Force interest. Coordinates with DoD, other government agencies and the aerospace industry to enhance relevance and technological transition.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

3. AIR FORCE FLIGHT TEST CENTER (AFFTC)

Telephone: (661) 277-4436

**AFFTC/CD (UP Focal Point)
1 South Rosamond Blvd
Edwards AFB CA 93524-1031**

The home of the AFFTC is 301,000 acres on the western edge of the Mojave Desert. Here, at Edwards AFB, California, the Air Force has tested all the aircraft in its inventory and is currently testing the B-2, F-22, and C-17.

The AFFTC supports the AFMC conducting and reporting on development test and evaluation for Air Force units, the Department of Defense, NASA, and other government agencies. The center develops, operates, and maintains the Edwards Flight Test Range and Utah Test and Training Range. It also operates the United States Air Force Test Pilot School.

At Edwards, the nation's first jet- and rocket-powered aircraft completed their first flights. It is also where men and aircraft first exceeded Mach 1 – 6 and first flew above 100,000, 200,000 and 300,000 feet.

Edwards is the site of lifting body research flights, critical to the design and development of the space shuttle. The space shuttle's approach and landing tests were conducted in 1977. The first shuttle landings from space began in April 1981. The B-2 bomber made its maiden flight at Edwards in 1989, the F-22 in 1990, and the C-17 in 1991.

- **Mission Resources** – To fulfill its mission, AFFTC resources include the test and evaluation mission simulator, the Benefield Anechoic Chamber, Ridley Mission Control, and the integration facility for avionics systems testing. Civilians, contractors, and military people work together to flight test and evaluate new aircraft and upgrades to aircraft already in inventory.

Among these tests are improvements to radar weapons delivery and navigation systems and a system to give tactical pilots the ability to strike ground targets from low altitudes at night and in adverse weather.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

4. AIR ARMAMENT CENTER (AAC)

Telephone: (850) 882-2841 (X5313)

**AAC/PKC
205 West D Avenue, Suite 433
Eglin AFB FL 32542-6864**

The AAC develops, acquires, tests and evaluates munitions, electronic combat systems, and navigation/guidance systems. Home to a dozen airfields, the center includes the Armament Product Directorate and two wings: the 46th Test Wing and the 96th Air Base Wing.

- Armament Product Directorate (APD) – From system development and production, through their life cycle and ultimate disposition, the APD is responsible for acquisition and sustainment of the world's most superior air armament products.

The APD provides direction and management for a wide range of air armaments including: air-to-air, direct attack, area attack, and air-to-surface weaponry. Specific technologies being developed include: advanced seekers, missile airframes, guidance and control components, explosives, warheads and fuzes.

- The 46th Test Wing – The 46th TW manages the center's overall test and evaluation program. It has extensive ground facilities and about 36 aircraft of various types. The wing manages all the large land test ranges throughout the 724 square-mile Eglin complex, as well as 86,500 square miles of water ranges in the adjacent Gulf of Mexico.

Major tests on or above the center's ranges involve all types of equipment, including aircraft systems and sub-systems, missiles, guns, bombs, rockets, targets and drones, high-powered radar, and airborne electronic countermeasures equipment. These systems are tested in a variety of environments and simulated combat conditions. One of the wing's unique assets is the McKinley Climatic Laboratory. The laboratory can test military hardware as large as bombers in environments ranging from minus 65 to plus 165 degrees Fahrenheit and with 100-mph winds, icing, clouds, rain, and snow.

The wing's 46th Test Group is at Holloman AFB, New Mexico. Among the group's unique facilities are a 10-mile, high speed test track; two radar target scatter measuring facilities; and the Defense Department's Central Inertial Guidance Test Facility.

- The 96th ABW and 377th ABW - These Air Base Wings provide major support services to Eglin AFB and Kirkland AFB, respectively. These services include medical, civil engineering, personnel, logistics, communications, computer, and security.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

5. AIR FORCE SECURITY ASSISTANCE CENTER (AFSAC) Telephone: (937) 257-2552

**AFSAC/CCE (UP Focal Point)
1822 Van Patton Drive
Wright-Patterson AFB OH 45433-5337**

AFSAC administers international agreements that provide defense articles and services for, and facilitates armaments cooperation with, friendly foreign forces in furtherance of U.S. national security.

- Implements and manages Air Force security assistance programs and international affairs programs assigned to Air Force Material Command.
- Integrates foreign customers' security assistance and international cooperative programs and influences Department of Defense acquisition and sustainment processes in support of international affairs responsibilities.
- Provides innovative logistics solutions, ensuring effective use of foreign customers' financial resources.
- Staffs HQ AFMC international issues.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

6. AIR FORCE METROLOGY & CALIBRATION

Telephone: (740)788-5040

**AFMETCAL
Det 1/MLK - Contracting
813 Irving-Wick Drive, Bldg 2
Heath OH 43056-6116**

The Air Force Metrology and Calibration (AFMETCAL) Detachment is the single Air Force Primary Standards Laboratory (AFPSL) for the Air Force. Their mission is to develop and sustain precision measurement capabilities ensuring accurate, reliable and safe air and space systems performance through effective management of the Air Force Metrology Program.

- Technical Direction -- The center establishes, maintains, and performs overall technical direction and management of the Air Force Metrology and Calibration Program.

It operates the Air Force Measurement Standards Laboratory. It provides technical and procedural direction for operation of a single, integrated measurement system and the design and periodic calibration and certification of measurement standards used in all precision measurement equipment laboratories.

- The AFMETCAL develops and implements policies and procedures that integrate the elements of Metrology technology, engineering, and calibration services to produce:

- Requirement Validation
- Laboratory Certification
- Metrology Consultation
- Metrology R&D
- Centralized Acquisition
- Calibration Procedures
- Calibration Services

Specialized Measurements Traceability of air and space systems performance requirements to national/international measurement standards distinguishes the AFMETCAL's execution of its core competencies.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

7. AEROSPACE MAINTENANCE AND REGENERATION CENTER (AMARC)

Telephone:(602) 750-4001

**AMARC/TIW (UP Focal Point)
4855 South Wickenburg Avenue
Davis-Monthan AFB AZ 85707-4334**

AMARC stores preserved aircraft indefinitely with a minimum of deterioration and corrosion because of the meager rainfall, low humidity, and alkaline soil in Tucson, Arizona. It presently stores more than 3,200 aircraft from the Air Force, Army, Coast Guard, Marine Corps, and Navy.

In addition, it stores production tooling for aircraft such as the B-1B, A-10, F-84, and F-111 as well as pylons, pylon load adapters, engines, and rotary launchers. AMARC stores Titan missiles at its detachment at Norton AFB, California.

But the center is more than a storage facility. Almost half the aircraft received are prepared for flight or ground shipment to support the military services, government agencies, or foreign governments.

When production of older aircraft ceases, AMARC is sometimes the sole source for parts. Priority and routine reclamation projects have become a major part of AMARC's workload.

AMARC has regenerated the F-102, F-100, and F-106 aircraft for use as target drones. The F4 will be the next aircraft regenerated for the drone program.

International Impact - One of AMARC's highly visible projects is its involvement in the treaties between the United States and the former Soviet Union. AMARC was selected as the elimination site for the ground-launched cruise missiles under the provisions of the Intermediate-Range Nuclear Forces Treaty. The Soviets were at AMARC eleven times to witness the elimination process. AMARC has now been designated to accomplish the much greater task of eliminating about 350 B-52 aircraft over a 7-year period to comply with the Strategic Arms Reduction Treaty.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

8. ARNOLD ENGINEERING DEVELOPMENT CENTER (AEDC)

Telephone: (931) 454-5868

**AEDC/DOT (UP Focal Point)
1099 Avenue C
Arnold AFB TN 37389-9011**

The AEDC has the most advanced and largest complex of flight simulation test facilities in the world. It has more than 50 aerodynamic and propulsion wind tunnels, rocket and turbine engine test cells, space environmental chambers, arc heaters, ballistic ranges, and other specialized units.

The center tests aircraft, missile and space systems, and subsystems at the flight conditions they will experience during a mission. It conducts a research and technology program to develop advanced testing techniques and instrumentation and to support the design of new test facilities. The center also maintains and modernizes the existing test facilities. The center frequently uses models of weapons systems in its testing, many of which are created at the center. Its customers include the Federal Aviation Administration (FAA), NASA, private industry, academic institutions, and other United States government and allied foreign agencies.

- **National Resource** Its engineers have contributed to development of many of the nation's top priority aerospace programs, such as the space shuttle, the Advanced Tactical Fighter (ATF), B-1, B-2, C17, F-15, F-16, F-18, F-117A, and the X-29. They have worked on the Navstar Global Positioning System, the Trident Missile, the Air Launched Cruise Missile, the National Aerospace Plane, the Strategic Defense Initiative, and the Advanced Medium Range Air-to-Air Missile.

Of the center's test units, 27 have capabilities unmatched anywhere in the world. They can simulate flight conditions from sea level to outer space and from subsonic velocities to well over Mach 20. Four high-vacuum space chambers simulate space conditions from 200 to 1,000 miles high. The longest test was 45 days.

The center has the only facility in the nation built specifically to test solid-propellant rocket motors at simulated flight altitude conditions. Titan, Minuteman, and Peacekeeper missiles have been tested at the center. The motors test fired in the center's altitude cells include the 300,000 pound thrust unit of the Peacekeeper's second stage. Jet engines tested in the Engine Test Facility include a 450,000-pound thrust turbofan engine used in the largest jet transports. It was tested at speeds up to 600 mph and at simulated altitudes from 10,000 to 42,000 feet. Air-breathing engines can be tested up to Mach 3.8 and at altitudes up to 100,000 feet.

- **Facility Technology** -- The center conducts an applied technology program for testing facilities. It develops long-range testing requirements, conducts facility concept studies, and conducts technology projects supporting facility planning efforts. The program focuses on many areas such as hypersonic, turbine engine testing, and space testing. The program's results translate into specifications for new or improved test instrumentation, testing procedures, or computational tools.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

9. ELECTRONIC SYSTEMS CENTER (ESC)

**Telephone: (781) 377-2901 (Primary)
(781) 377-9381 (Alternate)**

**ESC/PKXC
104 Barksdale Street
Hanscom AFB, MA 01731-1801**

ESC's Mission: "Delivery Information Dominance for Aerospace Operations"

ESC's mission is to serve as the Center of Excellence for command and control and information systems to support the warfighter in war and peace. ESC will provide full spectrum architectures, weapon systems management and technical cognizance throughout the life cycle of communications, intelligence, surveillance, reconnaissance, and information systems for the Air Force and Department of Defense components.

The Center includes offsite organizations: *Standard Systems Group* at Maxwell AFB, Alabama; *Materiel Systems Group* at Wright Patterson AFB, Ohio; and the *38th Engineering Installation Group* at Tinker AFB, Oklahoma. The mission of these organizations is described below.

**Standard Systems Group (SSG/PKX)
UP Focal Point:
Telephone: 334-416-2538
490 East Moore Drive, Suite 270
Bldg 892
Maxwell AFB-Gunter Annex, AL 36114-3000**

SSG's mission is to develop and maintain combat support information systems for the Air Force and Department of Defense components. SSG manages information technology contracts and standard information system programs commonly used at all active and reserve Air Force bases and DoD agencies worldwide.

**Materiel Systems Group (MSG/PK)
UP Focal Point:
Telephone: 937-257-4053
Bldg 262, Room C022
4375 Chidlaw Road
Wright Patterson AFB, OH 45433-5006**

MSG supports the United States Air Force goals for information dominance through acquiring, developing, maintaining, reengineering and providing technical services for information systems. MSG is committed to delivering its customer high quality services at a realistic cost.

**38th Engineering Installation Group (38 EIG/CB)
UP Focal Point:
Telephone: 405-734-7539
4064 Hilltop Road
Suite 247
Tinker AFB, OK 73145-2713**

The 38th EIG provides a variety of command and control and information systems services including infrastructure planning, engineering, program management, contracting, and specialized testing and analysis for electromagnetic compatibility and electromagnetic pulse protection. The 38th EIG is the only group in the Air Force that plans, engineers, installs, removes, and relocates communications and information systems worldwide. Through a rapid response force, the group also provides integrated communications-computer systems and services during war and peacetime for the Air Force and specified DoD agencies anytime, anywhere, under any conditions. The group also provides training and advisory services to 19 Air National Guard engineering and installations units in 16 states that directly support the group's worldwide mission.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

10. OKLAHOMA CITY AIR LOGISTICS CENTER (OC-ALC) Telephone: (405) 739-3882

**OC-ALC/PKXA (UP Focal Point)
Bldg 3001 Staff Drive, Suite 2AJ84A
Tinker AFB OK 73145-3015**

The OC-ALC provides worldwide logistics support for a variety of weapon systems, including the B-2, B-1B, B-52, E-3, E-4, multipurpose 135-series aircraft, the Short Range Attack Missile, and the Air Launched Cruise Missile. Also, the center is responsible for a large family of aircraft engines.

The center is the exclusive Air Force Technology Repair Center for hydraulic/pneudraulic transmissions, air-driven accessories, oxygen components, engine and automatic flight control instruments, and B-1B avionics.

The center manages the Maintenance Analysis and Structural Integrity Information System, including recording systems for C-5 analysis.

The center's Contractor Logistics Support Division supports the Air Force One Presidential aircraft, the E-4B Airborne Command Post, and special air mission aircraft. These systems played an important role during Desert Storm and play a vital role in transporting high-ranking government officials worldwide.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

11. OGDEN AIR LOGISTICS CENTER (OO-ALC)

Telephone: (801) 777-5472

**OO-ALC/PKXR (UP Focal Point)
Bldg 1289 (U) 6038 Aspen Ave
Hill AFB UT 84056-5805**

The Ogden Air Logistics Center provides worldwide logistics support for the entire Air Force inventory of intercontinental ballistic missiles (ICBM), as well as the F-4 and F-16 aircraft. In addition, Hill manages the Maverick air-to-ground missile, the GBU-15 and laser-guided bombs (Paveway I, II, III and Enhanced), the Emergency Rocket Communications Systems, and tanks/pylons for the entire USAF aircraft inventory. The Peacekeeper is its latest assignment.

Worldwide Manager Ogden is the logistics manager for all air munitions, solid propellants, and explosive devices used throughout the Air Force, US Navy, and Foreign Military Sales. All varieties of munitions, propellants, and explosive components (except nuclear) are tested at a range 48 miles west of the base.

The center is the Air Force Material Command (AFMC) System Support Manager to the Training Systems Product Group (TSPG) for a myriad of training systems and subsystems. The TSPG is the Air Force worldwide manager for research and development, acquisition and sustainment of training systems and support ranging from simple training devices to complex multimillion dollars flight simulation and mission rehearsal systems.

Ogden also has a large international responsibility--maintaining more than 2,500 F-4 and F-16 aircraft for 21 countries, including support of new sales as well as long-term logistics support.

Worldwide, the center manages all Air Force aircraft landing gear, including wheels, brakes, struts, tires, tubes, photonics, power conditioning, gas turbine engine, and secondary power systems.

The center provides worldwide logistics support for the A/OA-10 aircraft. It also provides worldwide support for the F-5, T-37/T-38 aircraft as well as 30 other mature and proven aircraft in support of approximately 65 allied nations and other government agencies such as the ATF, DEA, State Department, INS, Army and Navy, to name just a few.

A Transition Office was established at this center to handle the workload transition from Sacramento ALC and Kelly AFB. This office was established to negotiate, implement, and administer a public/private contract of Commodities, A-10 and KC-135 workloads from Sacramento ALC and Kelly AFB.

The center serves as the AFMC Management Office for assigned Space and Communications, Command, Control and Intelligence (C31) Programs. Programs assigned are Telecommunications, Tactical Shelters, Range Threats, Atmospheric Early Warning System, Ground Base Sensors, Weather, Ground Theater Air Control Systems, Mission Planning, Defense Support Program, Missile Warning & Space Surveillance Sensors, Air Force Satellite Control Network, Military Satellite Communications, Defense Meteorological Satellite Program, Global Positioning System, Global Broadcasting System and Cheyenne Mountain Complex.

Support Center Pacific -- The center's Support Center Pacific, Detachment 35, OO-ALC, is at Kadena Air Base, Japan. On the island of Okinawa, it provides depot-level maintenance and overhaul on critical aircraft system components and on-site aircraft structural engineering support for the entire Pacific Theater.

The detachment's mission is to perform maintenance exceeding intermediate-level capability with the flexibility to respond to emergency repair situations. It is a forward supply point for pre-positioned stock and is an alternative to shipping all needed supply support items from the United States. It can transport supplies or repaired parts to any point in the theater in just a few hours.

Its 120 members work in the two production units, a logistics unit, and a Pacific Parts Store unit.

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

<p>12. SPACE AND MISSILE SYSTEMS CENTER (SMC) Telephone: (310) 363-6871</p> <p style="text-align: center;">SMC/AXC (UP Focal Point) 180 Skynet Way, Ste 2234 Los Angeles AFB, El Segundo CA 90245-4687</p> <p>The SMC designs and acquires space systems. For satellites, it oversees the launch, completes on-orbit checkouts, and then turns them over to Air Force Space Command, NASA and other federal agencies.</p> <p>Its headquarters is at Los Angeles AFB, California. It has operating sites throughout the country. These include the operating location detachment at NASA's Johnson Spaceflight Center, Houston, Texas; the Test & Evaluation Directorate and the Airborne Laser Planning Directorate, both located at Kirtland AFB, New Mexico.</p> <p>Major Space Programs</p> <p>The center supports nine major space programs:</p> <table><tr><td>- Navstar Global Positioning System</td><td>- Titan IV Launch Vehicle</td></tr><tr><td>- Defense Satellite Communications System</td><td>- Defense Meteorological Satellite Program</td></tr><tr><td>- Milstar Satellite</td><td>- Space-Based Infrared Systems</td></tr><tr><td>- Defense Support Program</td><td>- Evolved Expendable Launch Vehicles</td></tr><tr><td></td><td>- Airborne Laser</td></tr></table> <p>SMC also works closely with the Air Force Space Command, Peterson AFB, Colorado, the prime user of military space systems.</p> <p>Satellite Operations -- The center maintains communications and data handling operations with the Air Force Satellite Control Network at Space Command's Falcon AFB, Colorado. Launch programs supported and managed by the center include rocket booster's such as Atlas II, Titan II, and Titan IV, and military missions on the space shuttle.</p> <p>It also assists the Space Command in satellite tracking, data acquisition, and command and control.</p>	- Navstar Global Positioning System	- Titan IV Launch Vehicle	- Defense Satellite Communications System	- Defense Meteorological Satellite Program	- Milstar Satellite	- Space-Based Infrared Systems	- Defense Support Program	- Evolved Expendable Launch Vehicles		- Airborne Laser
- Navstar Global Positioning System	- Titan IV Launch Vehicle									
- Defense Satellite Communications System	- Defense Meteorological Satellite Program									
- Milstar Satellite	- Space-Based Infrared Systems									
- Defense Support Program	- Evolved Expendable Launch Vehicles									
	- Airborne Laser									

FOCAL POINTS FOR AFMC UNSOLICITED PROPOSALS (CONTINUED)

13. WARNER ROBINS AIR LOGISTICS CENTER (WR-ALC) Telephone: (912) 926-5020

**WR-ALC/PKXA (UP Focal Point)
215 Byron Street
Robins AFB GA 31098-1611**

The Warner Robins Air Logistics Center has worldwide management and engineering responsibility for the repair, modification and overhaul of the F-15 Eagle, C-130 Hercules and C-141 Starlifter aircraft. In addition to these weapon systems, the ALC has worldwide management responsibility for the U-2 Dragon Lady, all Air Force helicopters, all special operations aircraft and their peculiar avionics systems. The center also provides logistic support for all the C-17 Globemaster III, Air Force missiles, vehicles, general purpose computers, and many avionics and electronic warfare systems used on most Air Force aircraft.

In January 1996 Robins became the main U.S. operating base for the E-8 Joint Surveillance Target Attack Radar System aircraft, which gained national acclaim for its performance during the Persian Gulf War. In April 1996, the Georgia Air National Guard 116th Fighter Wing was relocated to Robins as the 116th Bomb Wing as it transitioned to flying the B-1B bomber.

POLICY AGREEMENT FOR EVALUATION OF UNSOLICITED PROPOSALS

PRIOR TO THE ACCEPTANCE OF ANY ARTICLE OF EQUIPMENT, MATERIAL OR DISCLOSURE OF INFORMATION FOR EVALUATION OR TESTING BY THE AIR FORCE MATERIEL COMMAND, THE FOLLOWING POLICY MUST BE UNDERSTOOD AND AGREED TO BY THE INDIVIDUAL, FIRM, OR CORPORATION SUBMITTING SUCH ARTICLE, INVENTION, OR DISCLOSURE.

POLICY

1. The Air Force Materiel Command has a continuing interest in receiving and evaluating voluntary submissions, which contain new ideas, suggestions, and inventive concepts which are germane to the potential needs of the Air Force. However, the military service has many of its personnel and contractors working on research and development; consequently the substance of this submission may already be known to Government employees or Government contractors, may already be in the public domain, or may be available either now or later from sources other than this submission. Accordingly, it has been found desirable, in receiving voluntary submissions for evaluation, to exercise such precaution as will preclude misunderstanding by the submitter and prevent such submissions from having any restrictive or limiting effect on the Government's research and development programs.

2. It should be understood that acceptance for test or evaluation for potential usefulness to the Air Force does not imply a promise to pay, a recognition of novelty, originality, or uniqueness, or a contractual relationship such as would render the Government liable to pay for any use of information to which it would otherwise be entitled. The evaluation or testing of voluntary submissions will in no way obligate the Government to procure experimental production or other quantities of the article submitted or the item covered by the disclosure.

3. Due care will be exercised in the handling and testing of voluntary submissions. The Government will, however, assume no responsibility or liability to submitters or others for:

a. Damages to, destruction of, or loss of voluntary submissions resulting from testing activities or otherwise.

b. Damages or injuries (due to negligence or other cause) which are incurred or suffered by submitters, submitters' employees, or invitees during any test of such article or disclosure which is under the control of the submitter, his authorized agents, or employees whether or not Air Force personnel are participating in the test.

4. The manufacture, transportation, and maintenance of articles submitted to the Government for evaluation or testing will be accomplished without cost to the Government.

5. Submitters may furnish instructions to the Government concerning the disposal of voluntary submissions provided such instructions are furnished prior to completion of the tests or evaluation. Any disposal

in accordance with such instructions shall be at the expense of the submitter. In the absence of such instructions prior to the completion of the tests or evaluation, the Government will dispose of such property in accordance with established procedures.

6. The voluntary submissions will, for 3 years from the date of submission, be handled in accordance with established Government procedures for safeguarding such articles or information against unauthorized disclosure. In addition, for 3 years from the date of submission, data forming a part of or constituting the submission will not be disclosed outside the Government or be duplicated, used, or disclosed in whole or in part by the Air Force, except for record purposes or to evaluate the proposal. This restriction does not limit the Government's right to use information contained in such data if it is obtained from another source, or is in the public domain. Liability by reason of unauthorized disclosure of the submission by the Government will under no circumstances extend beyond the actual damage to the submitter caused by acts of the Government and cognizable in law.

Furthermore, the Government accepts no liability for failure to safeguard information unless the information consists of a patentable invention, copyrighted material, or data constituting a trade secret. Proposals, without restrictive markings, received from educational or nonprofit organizations may be evaluated outside the Government provided that the evaluators agree in writing not to reproduce, use, or disclose the information in whole or part, except for the purpose of evaluation, without written permission from the submitter.

7. Unsolicited articles or disclosures are submitted and received in accordance with this Policy Agreement notwithstanding any contrary or inconsistent conditions imprinted on or submitted together with such articles or disclosures, or orally expressed.

8. Information covering the results of evaluations or tests will be furnished to submitters upon request. Such information shall not be construed as an indorsement by the Government of articles or the subject matter of disclosures nor shall they be used in whole or in part for advertising purposes with industry or other Government agencies.

9. The terms of this Policy Agreement shall apply to all submitted articles and disclosures. The provisions of any contract for procurement resulting from these disclosures will supersede this understanding.

CERTIFICATION BY SUBMITTER

I certify that I have read the policy of the Air Force Materiel Command set forth above and understand and agree to the terms and conditions thereof.

I further certify that I am (check appropriate box or boxes below)

- Sole owner of all articles, disclosures and inventions submitted for evaluation or testing*
- A member of the partnership or association identified below and have full authority to bind said partnership or association*
- An authorized representative of the corporation identified below and have full authority to bind said corporation*

SUBMITTED BY (Include typed name and title, name of partnership, association, or corporation, if applicable; and address)

RECEIVED BY (Include typed name, grade, title, and AFMC organization identification)

SIGNATURE

DATE

SIGNATURE

DATE

TECHNOLOGY INVESTMENT AGREEMENT (TIA)

Description of Instruments

Technology Investment Agreements (TIAs) can be used to carry out basic, applied, or advanced research projects when it is appropriate to use assistance instruments and the research is to be performed at least in part by for-profit firms, especially as members of consortia. TIAs allow DoD Components to leverage for defense purposes financial investments made by for-profit firms in research related to commercial products and processes.

A major purpose of TIAs is to increase participation in defense research by for-profit firms that have been reluctant to perform under traditional, cost-type Government instruments. The firms' reluctance is related to concerns that complying with the Government-unique requirements of traditional instruments can be unnecessarily burdensome, intrusive, and costly and can therefore harm their competitiveness in the commercial marketplace. But TIAs make it possible to provide more flexibility than traditional instruments in areas where impediments to involving commercial firms exist and where flexibility can be provided without compromising Federal stewardship responsibilities.

TIAs evolved from types of cooperative agreements and "other transactions" developed by the Defense Advanced Research Projects Agency (DARPA) and the Military Departments between 1991 and 1996. DARPA primarily used a type of "other transaction" called a consortium agreement, while the Military Departments principally used a type of cooperative agreement; in both cases, the instruments were specifically tailored to eliminate barriers to involving commercial firms. In 1997, there was a sufficient base of experience with these instruments to judge that they were very similar and that having similar agreements with different names was confusing. The Director of Defense Research and Engineering (DDR&E) therefore issued guidance on December 2, 1997, merging the two types of agreements into a single class of assistance instruments called TIAs.

Applicable Guidance

The guidance that applies to TIAs is interim guidance under [a DDR&E policy memorandum](#). It has evolved considerably since the DDR&E first issued guidance in 1994 covering the types of cooperative agreements and "other transactions" that DARPA and the Military Departments were using before the creation of TIAs. The TIA interim guidance still is evolving; it ultimately is expected to become a formally issued Part 37 of the DoD Grant and Agreement Regulations (DoD 3210.6-R).

The best place to start in understanding the TIA guidance is the most recent update to that guidance. On February 3, 1999, the DDR&E issued [Revision 2 titled, "Guidance on Instruments for Support or Stimulation of Research."](#) This revision replaces Revision 1, on March 24, 1998. A copy of [Revision 1](#) is provided for information.

However, the guidance attached to the February 3, 1999, memorandum is only a part of what applies to TIAs. The 1999 guidance incorporates by reference some of the guidance

that the DDR&E issued in 1994, specifically those portions covering the "other transactions" and cooperative agreements developed by DARPA and the Military Departments between 1991 and 1996. The pertinent portions of the 1994 DDR&E guidance are described in [Defense Grant and Agreement Circular 94-7](#), which, while rescinding most of the 1994 guidance (which was superceded by the new DoDGARs in April 1998 for grants and most cooperative agreements), identified those portions of it that remain in effect for TIAs and certain other types of agreements. The portions of the 1994 guidance that remain in effect for TIAs are:

- [Section I.E of Attachment 1](#) to the DDR&E's February 4, 1994, memorandum, which applies to any TIA that uses the 10 U.S.C. 2371 authority. That would include any TIA that is an "other transaction" by virtue of its patent-rights provision (see Section II.F of the guidance in the March 24, 1998, DDR&E memorandum for an explanation) or that provides for recoupment of funds from the recipient, as authorized by 10 U.S.C. 2371(d).
- [Part 37 of Attachment 2 to the 1994 DDR&E memorandum](#), as referenced in the 1998 TIA guidance and [Part 34 as referenced in Part 37](#). Part 37, titled "Cooperative Agreements Under 10 U.S.C. 2371," provided the flexibility used by the Military Departments to tailor cooperative agreements and remove barriers to participation of commercial firms. Part 37 incorporated by reference some portions of Part 34, titled "Administrative Requirements for Grants and Agreements with Commercial Organizations, which provided the more traditional coverage for grants and cooperative agreements to for-profit firms.

[DGARS Home Page](#)

[Director of Research \(DoR\) Home Page](#)

[Top of this Page](#)