
AL-99-06[DATED 8/27/99]
ATTACHMENT

MODEL PROJECT AGREEMENT

FOR

PARTNER PROJECTS BETWEEN THE

INTERNATIONAL SCIENCE AND TECHNOLOGY CENTER,

INSTITUTIONS IN THE RUSSIAN FEDERATION

AND

OTHER INTERESTED STATES OF THE CIS

AND

PARTNER/DOE NATIONAL LABORATORIES

PROJECT AGREEMENT
between
THE INTERNATIONAL SCIENCE AND TECHNOLOGY CENTER,
(NAME OF RECIPIENT),
and
(NAME OF PARTNER)

The International Science and Technology Center (hereinafter referred to as "Center"), _____ (**name of Institute in the Russian Federation or other interested State of the Commonwealth of Independent States or CIS**) (hereinafter referred to as "Recipient") and _____ (**name of Partner**) (hereinafter referred to as "Partner"), represented for the purpose of the signature of this Project Agreement (hereinafter referred to as "the Agreement") by their authorized representatives (with Center, Recipient and Partner, hereinafter referred to collectively as "the Signatory Parties").

TAKING INTO ACCOUNT THE FOLLOWING CONSIDERATIONS:

WHEREAS, the United States of America, Japan, the Russian Federation and, acting as one Party, the European Atomic Energy Community and the European Community (with these two organizations hereinafter referred to as "the European Community") signed the "Agreement Establishing An International Science and Technology Center" on November 27, 1992 (hereinafter referred to as "the ISTC Agreement") and the "Protocol on Provisional Application of the Agreement Establishing An International Science and Technology Center" on December 27, 1993 (hereinafter referred to as "the ISTC Protocol");

WHEREAS, the Republic of Georgia, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakstan, the Kyrgyz Republic, Norway and the Republic of Korea have acceded, and additional States may accede, to the ISTC Agreement and to the ISTC Protocol to participate in the activities of the Center;

WHEREAS, Center is a legal entity and has been registered by the Ministry of Foreign Affairs of the Russian Federation as an international organization with its headquarters in Moscow;

WHEREAS, Recipient is a legal entity within the Russian Federation (or other CIS State);

WHEREAS, Partner, established under the laws of _____ and having its principal office in _____, _____, is a legal entity that has been approved by the Center's Governing Board to participate in Center activities;

WHEREAS, the Governing Board of the Center has approved a project which Partner has agreed to fund through Center pursuant to the terms and conditions set forth in the Agreement; and

WHEREAS, as set forth in the ISTC Agreement, funds received by a legal entity in connection with Center's projects shall be excluded in determining the profits of that organization for the purpose of tax liability and funds received by persons in connection with Center's projects shall not be included in these persons' taxable incomes.

HAVE AGREED AS FOLLOWS:

Article 1 - Scope of the Agreement

1.1 Recipient shall comply with the terms and conditions of this Agreement and all laws applicable to this Agreement, including but not limited to the laws of **(CIS country(s) on whose territory(s) the Agreement will take place)** applicable to the Agreement, and in particular shall comply with all applicable laws and regulations related to safety.

1.2 Recipient shall notify Center's representative and Partner's representative named in Article 16.1 herein, without delay, of any event or circumstance which may materially affect the Agreement.

1.3 The Annexes to this Agreement are an integral part of the Agreement; provided, however, that in event of a conflict between any Annex and the Agreement, the Agreement shall govern. The Annexes are as follows:

Annex I	Work Plan
Annex II	Format for Progress Reports
Annex III	Intellectual Property Provisions
Annex IV	Special Terms and Conditions

Article 2 - Duration of the Agreement

The duration of the Agreement shall be from the date of entry into force of the Agreement (hereinafter referred to as "the Operative Commencement Date") until completion of the Agreement. Subject to the applicable requirements in Article 9 "Dissemination of Information and Prohibition on Transfer of Sensitive Information,"

Article 10, “Ownership and Exploitation of Results from the Agreement,” Article 11 “Audit and Monitoring of the Agreement” and Annex III herein, the Agreement shall be deemed to have been completed upon approval by Partner of all deliverables required by the Agreement and final payment to Recipient or termination of the Agreement pursuant to Article 15 herein, whichever is earlier.

Article 3 - Sub-Agreements with Participating Institutions

- 3.1 The Work Plan set forth in Annex I may reflect the participation of other CIS Institutes (hereinafter referred to as “Participating Institutions”).
- 3.2 Recipient shall conclude Sub-Agreements with any Participating Institution which cover all aspects of the involvement of the Participating Institute in the Agreement, including a clearly defined scope of work and the financial requirements of the Participating Institution. All applicable rights and obligations of Center, Recipient, and Partner in the Agreement, including but not limited to provisions in the Agreement that Recipient is obligated to include in any lower-tier arrangement, shall be included in any Sub-Agreement.
- 3.3 Recipient shall be responsible for work performed by any Participating Institution under the Agreement, including but not limited to coordinating work among any Participating Institutions.
- 3.4 After commencement of work under the Agreement, Recipient shall not issue additional Sub-Agreements without the prior written approval of Partner and Center. When requesting such approval, Recipient shall furnish Partner and Center with the name of the proposed Participating Institution, a description of the work proposed to be performed by the proposed Participating Institution, and such other information as Partner and Center shall require.

Article 4 - Subcontracting

- 4.1 Recipient may enter into subcontracts (lower-tier arrangements) subject to the written approval of Center and Partner. When requesting such approval, Recipient shall furnish Center and Partner with the name of the proposed subcontractor, a description of the work to be performed, and such other information as Partner and Center shall require. Approval shall not normally be given for subcontracting in any State that is not a Party to the ISTC Agreement unless Center and Partner jointly determine in writing that such subcontracting is essential for the Agreement.

- 4.2 Recipient shall impose on a subcontractor the same obligations as apply to itself with respect to any rights of Center or Partner under the Agreement, as well as provisions in the Agreement that Recipient is obligated to include in any lower-tier arrangement.

Article 5 - Key Personnel

- 5.1 Recipient shall furnish a list of key personnel who shall be listed as Category 1 personnel in Annex I hereto to Partner and Center for approval (including Category 1 key personnel of any Participating Institution), and Recipient agrees to assign such employees or persons to the performance of the work under this Agreement and shall not reassign, replace or remove any of them without the written consent of Partner and Center.
- 5.2 In the event of a disagreement between Partner and Center over the suitability of a key employee, Partner and Center shall use their best efforts to reach agreement on the matter. However, in the event agreement cannot be reached, Partner's position shall govern.

Article 6 - Partner's Financial Support

- 6.1 Based on the Work Plan set forth in Annex I, this shall be a fixed-rate agreement with a ceiling price of \$_____ U.S. dollars ("Project Price"). The Project Price shall not include any element of profit for Recipient or Center, or taxes of any kind, including profit tax, value added tax, personal income tax, local taxes or any other tariffs, dues, custom duties, import taxes, fees, or any other similar taxes or charges.
- 6.2 After the Operative Commencement Date, Partner shall transfer to Center the full amount of the Project Price for disbursement as set forth in this Agreement ("Project Price Funds"). Project Price Funds shall remain the sole property of Partner until they are disbursed and shall be fully accounted for by Center. Project Price Funds that are not disbursed under the Agreement shall remain the sole property of Partner, and Center shall direct such undisbursed funds in the manner directed by Partner. Any interest earned on Project Price Funds

shall be the sole property of Partner, and Center shall direct disbursement of such interest in the manner directed by Partner.

- 6.3 Payments to Recipient for work under the Agreement shall be made by Center to Recipient from Project Price Funds upon Center's receipt of written approval by Partner of Progress Reports prepared by Recipient. Progress Reports shall cover each three-month period following the Operative Commencement Date, and shall be submitted to Center and Partner within one month after the end of each reporting period. The format for Progress Reports is set forth in Annex II herein. In particular, grant payments shall be made by Center directly to the Individual Participants identified in Annex I based on the payment levels set forth in Annex I and hours worked by each Individual Participant as certified by Recipient's Project Manager. Such grant payments shall constitute compensation to the Individual Participants for their work under the Agreement.
- 6.4 Additional reports required by the Work Plan such as technical reports may be appended to Progress Reports if so required by Annex I. The format for such reports shall be set forth in Annex II or as otherwise agreed upon by the Signatory Parties.
- 6.5 Unless otherwise agreed by the Signatory Parties, all payments under this Agreement, including but not limited to payments from Partner to Center and from Center to Recipients, shall be in U.S. dollars.
- 6.6 In addition to the Progress Reports and any other reports required under the Agreement, Recipient shall submit a draft final report to Center and Partner within two months of completion or termination of the Agreement. Partner, in consultation with Center, shall submit to Center and Recipient its evaluation and comments on the draft final report within two months after receipt of the latter. The definitive final report will then be submitted by Recipient to Center and Partner within one month after receipt of Partner's evaluation. If Partner does not submit an evaluation within two months, the draft final report shall be considered the definitive final report.
- 6.7 All Progress Reports and any other reports shall be submitted by Recipient to Center in the Russian and English languages, and to Partner in the English language. One copy of each report shall be printed, and a second copy shall be sent via electronic transmission e-mail or on diskette.

Article 7 - Inspection and Acceptance of Deliverables

Goods or services to be delivered by Recipient to Partner shall be exactly as specified in this Agreement, free from all defects in Recipient's workmanship and materials. If, prior to final acceptance by Partner, any goods or services are found to be defective or not as specified, Partner, in its sole discretion, may reject them, require Recipient to correct them without charge, or require delivery of such goods or services at a reduction in price which is equitable under the circumstances. If Recipient is unable or refuses to correct such items within a time deemed reasonable to Partner, Partner may terminate the Agreement, in whole or in part, for default as provided in Article 15 herein. Recipient shall bear all risks as to rejected goods and services and, in addition to any cost for which Recipient may become liable to Partner under other provisions of this Agreement, shall reimburse Partner for all transportation costs, other related costs incurred, or payments to Recipient in accordance with the terms of this Agreement for unaccepted goods and services. Notwithstanding final acceptance and payment, Recipient shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by the Annexes to this Agreement are in addition to, and do not limit, Partner's rights provided in this clause.

Article 8 - Transfer of Title to Goods Purchased by Partner

Title to any goods purchased by Partner under this Agreement shall pass directly from Recipient to Partner at the f.o.b. point shown, subject to Partner's right of rejection upon inspection.

Article 9 - Dissemination of Information and Prohibition on Transfer of Sensitive Information

9.1 In accordance with Article X.B.[x] of the ISTC Statute, no Signatory Party may transfer sensitive information that is prohibited under relevant international rules and practices for the nonproliferation of weapons and other sensitive technologies.

9.2 Protected Information

9.2.1 It is the responsibility of Recipient, in consultation with Partner, to indicate clearly what parts of reports or other materials produced by Recipient pursuant to this Agreement contain invention information, limited rights data or restricted computer software (the latter two defined in Annex III hereto) and specify any limitations on circulation. For each report or other materials produced by Recipient, an unrestricted version shall also be provided. All

reports and other material produced by Recipient containing invention information, limited rights data or restricted computer software shall be handled by Center according to established internal procedures.

- 9.2.2 The final report submitted by Recipient shall include a statement that all inventions made during the performance of work under the Agreement have been reported to Center and to Partner, or if no inventions were made, a statement to that effect. Recipient also may include a suitable disclaimer in any report against possible claims by third parties.
- 9.2.3 Recipient and Center shall not disclose to any other entity any part of any report or other materials prepared pursuant to this Agreement without Partner's prior written approval.
- 9.2.4 Upon request by Partner, reports will be prepared in a form suitable for publication and satisfactory to Partner.

- 9.3 Partner and Center shall not be liable to Recipient for claims arising from (i) publication or transmission of any report in accordance with this Article 9 or Annex III hereto unless it is shown that Partner or Center have not taken reasonable steps to protect material clearly indicated as invention information, limited rights data or restricted computer software; or (ii) the application of the contents of any report by a third party.

Article 10 - Ownership and Exploitation of Results from the Agreement

- 10.1 The ownership and exploitation of results arising from the Agreement shall be allocated between Recipient and Partner in accordance with Annex III hereto. Recipient and Partner shall take appropriate action to exploit or commercialize the results and to make available the results to third parties in accordance with the framework specified in Annex III. Cooperation agreements with foreign institutions complementing, but not conflicting with, this framework may be entered into by Recipient and Partner.
- 10.2 Prior to completion of the Agreement, Recipient shall submit to Center a Technology Implementation Plan developed in consultation with Partner. For projects with a duration of eighteen months or longer, this Plan will be

submitted six (6) months prior to the anticipated completion date for the Agreement. For projects with a duration of less than eighteen months, the Plan will be submitted three months prior to the anticipated completion date.

- 10.3 Exploitation of results shall be limited to applications for peaceful purposes. In this regard, Recipient and Partner shall ensure that any results which could result in concerns over proliferation of weapons technology and transfer of sensitive technologies will be protected in accordance with relevant laws of the United States, Russian Federation (or other CIS country) and international agreements and conventions to which the United States and Russian Federation (or other CIS country) are parties.

Article 11 - Audit and Monitoring of the Agreement

- 11.1 Center may audit and monitor Recipient's activities in accordance with the terms and conditions of this Agreement.

- 11.2 Access by Center to carry out on-site monitoring of all activities under the Agreement shall be granted by Recipient, and information and assistance shall be given for the verification and evaluation of Recipient's activities. Center shall be granted access to facilities or portions of facilities where work under the Agreement is being carried out, and to equipment, documentation, information, data systems, materials, supplies, personnel, and services which concern the Agreement for monitoring the progress of the Agreement. Recipient also shall provide technical and cost information concerning the management of and progress under the Agreement, and participate and assist in meetings to review or evaluate the Agreement during the lifetime of the Agreement.
- 11.3 Recipient shall be given not less than 20 calendar days advance notice of any intended on-site audit or monitoring of activities under the Agreement.
- 11.4 Auditing and monitoring at facilities utilized for the Agreement that are located in closed cities shall be carried out according to the procedures adopted at the sixth Governing Board Meeting of the Center.

- 11.5 Recipient has the right to protect those portions of facilities that are not related to the Agreement.
- 11.6 After completion or termination of the Agreement, Recipient may utilize for other work the facilities or portions of facilities previously used for the Agreement. However, all documentation and records, including those associated with equipment, data systems, materials, supplies, and services utilized for the Agreement, must be maintained and available for review by Center for up to three years following the Agreement's completion or termination.
- 11.7 Center shall have the right to select Courts of Auditors or other organizations or individuals to carry out audits of the Agreement, and they shall be entitled to the same rights, should they choose to exercise them, as Center in respect of access to, and verification of, any document under the Agreement for the purpose of any audit.
- 11.8 Partner shall have access to the facilities utilized for the Agreement and to participate in meetings with Recipient to evaluate the progress under the Agreement. In addition, upon Partner's request, Center shall provide Partner with information obtained from its auditing and monitoring of activities under to the Agreement.
- 11.9 If the Project Price of this Agreement exceeds One Hundred Thousand U.S. dollars (\$100,000.00), the Comptroller General of the United States, or a duly authorized representative, shall until three years after final payment under this Agreement or for any shorter period specified in Subpart 4.7 of the U.S. Federal Acquisition Regulation or for any longer period required by U.S. law or other clauses of this Agreement, have access to and the right to examine any of Center's and Recipient's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement. If the Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement. In addition, records relating to any dispute under Article 13, "Disputes" of this Agreement shall be made available until such dispute is finally resolved. Recipient and Center agree to include the terms of

this clause in subcontracts and subagreements that exceed One Hundred Thousand U.S. dollars (\$100,000.00).

Article 12 - Provision of Property and Services

- 12.1 Property required for performance of this Agreement is listed in Annex I hereto (“Project Agreement Property”). Title to Project Agreement Property being provided directly by Partner shall pass to and vest in Center as provided in Annex I. Title to Project Agreement Property procured by Center utilizing Project Price Funds shall pass to and vest in Center as provided for in Annex I. The value of Project Agreement Property shall be part of the Project Price.
- 12.2 Partner shall not be liable to Center or Recipient for damages by reason of any delay in delivery of property to be directly provided by Partner, except that in case of such delay, upon Center’s written request, an equitable adjustment may be made in the time for performance, or Project Price, or both, pursuant to Annex IV, paragraph one, “Changes-Fixed-Price,” of this Agreement. The right to an equitable adjustment shall be Center’s and Recipient’s sole remedy for any such delay.
- 12.3 After Center acquires title to Project Agreement Property, Center shall loan such property to Recipient. Project Agreement Property may be used by Recipient only in performance of work under the Agreement. Further, Center shall require Recipient to use such property only in areas which are open for monitoring and auditing in accordance with Article 11 “Audit and Monitoring of the Agreement” herein.
- 12.4 Upon completion or termination of the Agreement, Recipient may use Project Agreement Property for other projects upon receipt of written authorization from Center.
- 12.5 Partner shall provide services as set forth in Annex I. The value of such services shall be part of the Project Price.

Article 13 - Disputes

- 13.1 Disputes arising out of or in connection with this Agreement between Partner and Recipient, or Partner and Center, including termination, such as (i) a claim by Recipient for any payments deemed due, (ii) an interpretation of a provision of the Agreement; or (iii) a request for relief or approval by Recipient related to the Agreement, shall first be subject to the following procedure:

- 13.1.1 Recipient or Center shall submit any claim, demand, or request in writing to Partner. With regard to a submission by Recipient, Partner, in consultation with Center, shall deliver a written decision to Recipient within ten (10) days of receipt of Recipient's submission. With regard to a submission by Center, Partner shall deliver a written decision to Center within ten (10) days of receipt of Center's submission.
- 13.1.2 Recipient or Center may request review of Partner's decision by the Governing Board of the Center through Center's Executive Director within two (2) weeks of receipt of Partner's decision. Partner shall carefully consider any views expressed by the Governing Board on its decision and may, in its sole discretion, amend its original decision.
- 13.2 Any dispute between Partner and Recipient, or Partner and Center, arising out of or in connection with this Agreement that cannot be resolved under the procedure set forth in Article 13.1 shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with the said Rules; provided, however, that in no event shall the ICC award a monetary settlement to Center or Recipient greater than One Hundred Thousand U.S. dollars (\$100,000.00). The costs of the arbitration shall be borne by the parties equally. The applicable substantive law will be United States Federal law. The arbitration proceedings shall be conducted in Brussels, Belgium, and the arbitrator appointed to hear and decide disputes under this provision shall be a citizen of that country. The language of the arbitration shall be English.
- 13.3 Center and Recipient shall use their best efforts to resolve any dispute between them.
- 13.4 Recipient shall proceed diligently with the performance of the Agreement pending the final settlement of any dispute between Partner and Recipient, Partner and Center, or Recipient and Center.

Article 14 - Liability

- 14.1 Partner shall not be liable to Center or Recipient, including but not limited to Individual Participants and Participating Institutions, for any loss, damage, third-party lawsuits, or injury of any nature arising from, or in connection with, the performance of the work under the Agreement. Recipient shall include this

provision in all sub-agreements and subcontracts, and Center shall include this provision in all subcontracts and letters of agreement with Individual Participants.

- 14.2 Center shall not be liable for nonperformance by Partner or Recipient under the Agreement.
- 14.3 Partner shall not be liable for nonperformance by Center or Recipient under this Agreement.
- 14.4 Recipient shall not be liable for nonperformance by Center or Partner under this Agreement.

Article 15 - Termination of the Agreement

- 15.1 Any Signatory Party may terminate this Agreement in whole or in part by providing notice stating the extent of termination and the effective date thereof; provided, however, that such effective date may be no earlier than thirty (30) calendar days from the date of the termination notice.
 - 15.1.1 If Partner terminates the Agreement, promptly, but not later than one year from the effective date of the termination (unless Partner grants additional time), Recipient and Center shall submit termination claims in the form prescribed by Partner.
 - 15.1.2 Upon termination by any Signatory Party, subject to Article 7 “Inspection and Acceptance of Deliverables” herein, Recipient shall deliver to Partner, as directed by Partner, any completed deliverables and partially completed deliverables that Recipient has specifically produced or acquired. Partner shall pay Recipient the unit or pro rata price for the delivered and accepted portion of performance prior to termination in addition to costs resulting from the termination which could not be avoided by Recipient; provided, however, that the total thereof shall not exceed the Project Price. Recipient shall not be paid for any work performed or costs incurred which reasonably could have been avoided after receipt of a termination notice. In addition, Recipient shall deliver, utilize or dispose of Project Agreement Property as directed by Center.

- 15.1.3 Upon termination by Partner, Center shall be paid an amount agreed upon between Partner and Center and other costs resulting from the termination which could not be avoided by Center. Partner shall have no payment obligations to Center in the event Recipient terminates the Agreement.
- 15.1.4 Any payment by Partner pursuant to this Article 15.1 shall constitute full and final compensation for performance of the Agreement.
- 15.2 Partner may, by written notice of default to Recipient, terminate this Agreement, in whole or in part, at any time, if Recipient refuses or fails to comply with part or all of the requirements of the Agreement, including but not limited to a violation(s) of the national laws of the State(s) where Recipient is a legal entity or actions which obviously are contrary to the stated objectives of the Center. Partner's remedies and rights shall not be exclusive and are in addition to any other rights and remedies of Partner provided by law or under this Agreement. Prior to terminating Recipient for default, Partner, in consultation with Center, shall provide a written notice to Recipient stating Partner's intent to terminate Recipient for default and the basis for such action. If Recipient fails to address Partner's concerns within ten (10) days of receipt of such notice, Partner shall have the right to immediately terminate the Agreement in whole or in part. Upon notice of termination for default, Partner may demand that Recipient return payments under the Agreement and Center may demand that any Project Agreement Property be returned to Center. Recipient shall deliver to Partner, as directed by Partner, any completed deliverables and partially completed deliverables that Recipient has specifically produced or acquired and Recipient shall be paid the unit or prorata price for the delivered and accepted portion of performance.
- 15.3 If Partner determines that Center is not performing in accordance with this Agreement, Partner shall provide a written notice to Center stating Partner's basis for such a determination. If Center fails to address Partner's concerns within ten (10) days of receipt of such notice, Partner may terminate the Agreement. Upon notice of termination for default, the Agreement shall be considered ended and, upon Partner's request, Center shall return any payments under the Agreement, transfer title of Project Agreement Property to Partner and return such property as directed by Partner at Center's expense.

- 15.4 When *force majeure* situations occur for reasons beyond the control and without the fault or negligence of a Signatory Party which make performance under the Agreement impossible, including but not limited to, Acts of God, war, strikes, weather, riots or demonstrations, or criminal or terrorist acts, acts of a Government in either its sovereign or contractual capacity, fires, floods, epidemics or quarantine restrictions, Partner may suspend the Agreement. If performance under the Agreement cannot be resumed within a reasonable period of time, the Agreement shall be terminated as if Partner terminated the Agreement pursuant to Article 15.1 herein. No Signatory Party shall be liable to any other Signatory Party for damages incurred by another Signatory Party due to a *force majeure* event.
- 15.5 If Recipient's performance under the Agreement is delayed due to a failure by Partner or Center to perform services or deliver property in accordance with the terms of the Agreement, and the delay is not caused or contributed to by Recipient, time for performance and the Project Price may be subject to change under Paragraph 1 (Changes) of Annex IV herein. The right to an equitable adjustment shall be Recipient's sole remedy for any such delay.
- 15.6 In the event of termination of this Agreement, Recipient and Center shall continue to comply with applicable requirements set forth in Article 9 "Dissemination of Information and Prohibition on Transfer of Sensitive Information," Article 10, "Ownership and Exploitation of Results from the Agreement," Article 11 "Audit and Monitoring of the Agreement" and Annex III herein.

Article 16 - Correspondence

- 16.1 Any written notice, request or consent required under the Agreement is deemed to have been given or made when delivered in person to an authorized representative of a Signatory Party or when sent by mail, telex, telegram, electronic mail or facsimile (receipt acknowledgment required) to such Signatory Party at the following address:

For Center:
International Science and Technology Center
Ulitsa Luganskaya 9,
Moscow 115541, Russia
Facsimile 7/095-321-4744

For Recipient:

Facsimile: _____

For Partner:

Facsimile: _____

16.2 Notice will be deemed to be effective as follows:

16.2.1 In the case of personal delivery or mail, on delivery;

16.2.2 In the case of telexes, telegrams, electronic mail or facsimiles, within one (1) working day following confirmed transmission. A signed original will be provided by mail in all cases.

16.3 Each Signatory Party may change its address for notice hereunder by giving the other Party notice of such change pursuant this Article.

Article 17 - Amendments, Variations, or Additions

17.1 The provisions of this Agreement and its Annexes may be amended or supplemented only by means of a written agreement signed by authorized representatives of the Signatory Parties.

17.2 No request, notice, authorization, direction or order received by Recipient and issued pursuant to this Agreement, by reference or otherwise, shall be binding upon Partner, Center or Recipient, or serve as a basis for change in the Project Price or any other provision of this Agreement, unless issued or confirmed in writing by the Partner's representative named herein. Recipient shall immediately notify, in writing, Partner and the Center whenever a change request has been received from someone other than Partner's representative which would affect any terms and conditions of this Agreement.

17.3 Notwithstanding Articles 17.1 and 17.2 herein, Center and Recipient may make changes to Annex I such as changes to personnel other than Key Personnel as defined in Article 5 herein, working days, rates of compensation through grants, and carry over of funds from one quarter to another.

Article 18 - Inconsistencies Due to Translation Into Another Language

The Agreement shall be prepared in Moscow in the English and Russian languages. In the event of inconsistencies between the English and Russian texts, the English text shall take precedence.

Article 19 - Assignment

Neither this Agreement nor any interest therein nor claim thereunder shall be assigned or transferred by Recipient except as expressly authorized in writing by Partner. Partner may assign the whole or any part of this Agreement to the U.S. Government or its designee.

Article 20 - Entry into Force of the Agreement

The Agreement shall enter into force on _____ (the date of signature of the last signature of the Signatory Parties, if not signed on the same day).

For the Center
(Name and Title)
(date)

For the Recipient
(Name and Title)
(date)

For the Partner
(Name and Title)
(date)

ANNEX I -- WORK PLAN AND RELATED ITEMS

A. Guidelines for Preparing the Work Plan

1. Introduction

This document is intended to assist Recipient and each Participating Institution in preparing the Work Plan which will form an integral part (Annex I) of the Agreement. The Work Plan needs to provide a detailed statement of the research and development work to be carried out, the schedule of work, and the division of responsibility and work among Recipient and any Participating Institution. It will be used frequently by representatives of Center and Partner to assess technical progress. Recipient and Participating Institutions therefore are advised to prepare the Work Plan carefully, writing it in clear and precise terms.

2. Style and Length

Style and Content:

The document should be written in the third person, e.g.:
"The research will be performed" not "We will do the research".

Length:

Due to the wide variation in the structure and complexity of projects, it is inappropriate to specify rigid page limits. However, as an indication of appropriate length, the lengths of the various sections usually should correspond to those in the proposal, except where more or less detail has been agreed upon during negotiation of the Agreement.

Use of Tables, Charts, Diagrams:

Where appropriate, tables, block-diagrams, and flow-charts should be used to clarify logical sequences in the program and interactions between tasks. Diagrams and tabular presentations should be fully annotated with titles and legends.

3. Project Management

The following project management details should be specified:

- the project management organization, including the Project Manager's lines of authority, the responsibilities of other key managers, and the responsibilities of each Participating Institution.
- expected milestones, including the dates of intermediate and final project results, and particularly the dates of all deliverables
- a reporting and review schedule that will ensure that the Project Managers adequately monitor project progress and results
- realistic manpower allocations to specific tasks
- a budget schedule that conforms to the work activities.

There should be a clear indication of project scheduling. The timing and duration of tasks should be illustrated either on a flow chart or a simple bar chart. The timing of milestones and technical reviews should be indicated on the chart.

4. Center Provided Property

Property to be provided by Center that is needed for accomplishment of the work should be indicated in the Work Plan and itemized in Table 2.

5. Role of Partner

Property and services to be provided by Partner to accomplish the Work Plan should be indicated.

B. Recommended Structure for a Work Plan

The Work Plan should be structured to include the following principal sections and headings.

1. Title of the Project

2.1 Project Manager

2.2 Name of Recipient/ Address

2.3 Name(s) of Participating Institutions/ Address

3. Introduction and Overview

Very briefly, provide a general overview of the purpose and importance of the proposed Project that includes:

- objective of the Project, including the problem being addressed and how the Project contributes to its solution;
- importance of the Project in providing peaceful alternative opportunities to weapons scientists and engineers; and
- related activities currently underway or planned by Recipient.

4. Expected Results

Indicate scientific, economic, industrial, commercial, and other benefits, products, and tangible results that the Project should achieve. To the extent possible, state these expected benefits in quantitative terms. Clearly indicate any portions of them that contain invention or business confidential information.

5. Scope of Activities

Relate the overall Work Plan to the technical approach and methodology described in Section 6 and the technical schedule described in Section 7. Use flowcharts, graphs, and diagrams to synthesize information and demonstrate the interdependence of tasks and subtasks and parallel activities. If subcontracting is necessary, describe the scope of activities of the subcontract.

6. Technical Approach and Methodology

Describe the technical approach and methodology that will be employed at each stage of the Project to achieve the Project objectives. Indicate the role of Partner.

7. Technical Schedule

List the anticipated dates of the completion of important Project activities and deliverables for each three-month period, such as reports to Center and/or Partner, publications, seminars, workshops, presentations, and so forth. Also, show the estimated level of effort of technical personnel (those with university level education or equivalent experience) in terms of workdays during each three-month phase of the Project.

Activity or Event	Period of Project Activity (1st Quarter, etc.)	Amount of effort in workdays
a-1 a-2 ... a-n report		

8. Individual Participants

There should be four types of Individual Participants:

- (1) former weapons specialists who plan to spend 10 percent or more of their time on the Project during the lifetime of the Project or 50 percent or more of their time on the Project during any three-month reporting period (hereinafter referred to as "10/50" personnel);
- (2) other 10/50 professional personnel with university degrees or comparable experience,
- (3) 10/50 support personnel, and
- (4) other Project personnel who are not 10/50 personnel.

List the names in each of the first three categories of personnel, describe their previous weapons areas of expertise as accurately as possible (for the first category only), areas of Project expertise, scientific or other ranks, days devoted to the Project, and the daily rate in dollars based on 220 work days per year (i.e., divide the annual salary by 220).

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Name	Date of Birth	Previous Area of Weapons Expertise	Area of Project Expertise	Scientific or other Rank	Work-Days on the Proj.	Daily Rate

Recipient will keep records of time worked by personnel who are not 10/50 personnel, but is not required to itemize the personnel in the Work Plan. The records will include the names of persons (or types and numbers of specialists for tasks that are group tasks such as machine shop support), their skill levels, their time commitments, and the daily rates that are requested. The budget for the Work Plan will include overall cost estimates on a quarterly basis for these personnel commitments.

9. Project Location and Equipment

Describe in detail where Project activities will be carried out and the type and location of major equipment and facilities to be used in the Project. Describe any required modifications to buildings or equipment.

10. Deliverables

Expand the descriptions of the deliverables identified in Section 7 above if appropriate.

11. Financial Information

The Project Price should be stated in Table 1, which provides a schedule of quarterly financial payments the duration of the Project. Table 1 also will set forth grant payments to Individual Participants.

Table 2 will present a list of equipment (exceeding a per-item cost of \$250) required for the Project which is to be purchased by the Institute/Recipient or provided in-kind by the Partner. Table 3 will also itemize in-kind materials and services to be provided by the Center. Individual trips for international travel need not be itemized.

TABLE 1

Estimated Aggregate Expenditures by Participating Institution /Recipient

<u>Category</u>	<u>1st & 2nd Quarter</u>	<u>Year-1</u>	<u>Year-2</u>	<u>Year-3</u>	<u>Total</u>
1. GRANT PAYMENTS FOR COMPENSATION					
Category I					
Category II					
Category III					
Category IV					
Grant Total					
2. EQUIPMENT					
Modifications					
Capital Equip.					
Non-Cap Equip.					
Maint.&Repr.					
Leased Equip.					
Usage Fees					
Subtotal (1)*					
Subtotal (2)**					
Equipment Total					
3. MATERIALS					
Raw Materials					
Lab.Supplies					
Safety Devices					
Other					
Subtotal (1)*					
Subtotal (2)**					
Materials Total					
4. BANK FEES					
Subtotal (1)*					
Subtotal (2)**					
Bank Fees Total					

TABLE 1

Estimated Aggregate Expenditures by Participating Institution /Recipient

<u>Category</u>	<u>1st & 2nd Quarter</u>	<u>Year-1</u>	<u>Year-2</u>	<u>Year-3</u>	<u>Total</u>
5. OTHER DIRECT					
Computer Sup.					
Account. Sup					
Reports/Publish					
Communications					
Security					
Admin.Supplies					
Other					
Subtotal (1)*					
Subtotal (2)**					
Other Direct Total					
6. TRAVEL & PER DIEM					
Internal ***					
Outside CIS					
Travel Total					
7. OVERHEAD	-	-	-		
GRAND TOTAL					

Remarks:

* Subtotal of Equipment or Materials purchased by Participating Institution/Recipient

** Subtotal of Center Provided Equip. , etc.

*** Including local and inside-CIS Travels.

TABLE 1-2

Estimated Expenditures by Each Participating Institution

Name of Participating Institution:

<u>Category</u>	<u>1st & 2nd Quarter</u>	<u>Year-1</u>	<u>Year-2</u>	<u>Year-3</u>	<u>Total</u>
1. GRANT PAYMENT FOR COMPENSATION					
Category I					
Category II					
Category III					
Category IV					
Grant Total					
2. EQUIPMENT					
Modifications					
Capital Equip.					
Non-Cap Equip.					
Maint.& Repr.					
Leased Equip.					
Usage Fees					
Subtotal (1)*					
Subtotal (2)**					
Equipment Total					
3. MATERIALS					
Raw Materials					
Lab. Supplies					
Safety Devices					
Other					
Subtotal (1)*					
Subtotal (2)**					
Materials Total					
4. BANK FEES					
Subtotal (1)*					
Subtotal (2)**					
Bank Fees Total					

5. **OTHER DIRECT**
Computer Sup.
Account. Sup
Reports/Publish
Communications
Security
Administrative Supplies
Others.
Subtotal (1)*
Subtotal (2)**
Other Direct Total

6. **TRAVEL & PER DIEM**
Internal ***
Outside IS

Travel Total

GRAND TOTAL

Remarks:

* Subtotal of Equipment or Materials purchased by Participating Institution/Recipient

** Subtotal of Center Provided Equip., etc.

*** Including local and inside-CIS Travels.

TABLE 2

Equipment Requirements

| Equipment to be Provided by Partner through Center

Type of Equipment	Anticipated Use	Estimated Cost	Required Delivery Date
1.			
2.			
3.			

Equipment To Be Purchased by Center Using Project Funds

Type of Equipment	Anticipated Use	Estimated Cost	Required Delivery Date
1.			
2.			
3.			

Equipment to be Provided by Recipient

Type of Equipment	Anticipated Use
1.	
2.	
3.	

TABLE 3

Materials and Services To Be Provided by Center

Materials	Anticipated Use	Estimated Cost	Date Needed
-----------	-----------------	----------------	-------------

- 1.
- 2.
- 3.
- .
- .
- .

Services	Anticipated Use	Estimated Cost	Date Needed
----------	-----------------	----------------	-------------

- 1.
- 2.
- 3.
- .
- .
- .

Supplement 1 to the Work Plan

Estimated Aggregate Personnel Efforts and Grant Payments per Period

period	Category -1		Category -2		Category -3	
	days	grant(\$)	days	grant(\$)	days	grants\$
Q-1						
Q-2						
Q-3						
Q-4						
YR-1						
Q-5						
Q-6						
Q-7						
Q-8						
YR-2						
Q-9						
Q-10						
Q-11						
Q12						
YR-3						
TTL						

Supplement 1-2 to the Work Plan

Estimated Personnel Efforts and Grant Payments per Period per Participating Institution

Name of Participating Institution:

period	Category -1		Category -2		Category -3	
	days	grant(\$)	days	grant(\$)	days	grants(\$)
Q-1						
Q-2						
Q-3						
Q-4						
YR-1						
Q-5						
Q-6						
Q-7						
Q-8						
YR-2						
Q-9						
Q-10						
Q-11						
Q12						
YR-3						
TTL						

Supplement 2 to the Work Plan

Deliverables

The following technical schedule activities/events are considered the deliverables under the Agreement, with the anticipated completion dates:

Event/Activity

Expected Completion Date

- 1.
- 2.
- 3.

ANNEX II - FORMATS FOR PROGRESS REPORTS

Quarterly Reports shall specify the progress, any actual or proposed deviations and modifications to the Work Plan in Annex I, and the results obtained. The reports shall contain sufficient information to enable assessment of the progress and cooperation within the Project, and shall contain an invoice for payment.

Each Quarterly Report should be between three and five pages (single spaced).

The details of other reports shall be agreed upon at an appropriate time by Recipient and Partner. A suggested format for quarterly reports is as follows:

- I. Summary of Technical Progress (By task in the Work Plan)
- II. Milestones Completed
- III. Summary of Personnel Commitments
- IV. Major Equipment Acquired
- V. Description of Significant Travel
- VI. Current Technical Status (on schedule, behind schedule, ahead of schedule)
- VI. Delays, Problems, Suggestions

ANNEX III - INTELLECTUAL PROPERTY

I. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.

Recipient shall report to the U.S. Government through Partner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which Recipient has knowledge and shall furnish to the U.S. Government, at the expense of the U.S. Government, when requested by the U.S. Government or Partner, all evidence and information in possession of Recipient pertaining to such claim or any resulting suit.

II. PATENT RIGHTS.

(a) Definitions

- (1) "Subject Invention" means any invention or discovery of Recipient conceived or first actually reduced to practice in the performance of work under this Agreement.
- (2) "Patent Counsel" means the U.S. Department of Energy (DOE) Patent Counsel assisting the Partner.

(b) Invention disclosures and reports

- (1) Recipient shall furnish Center, Partner and Patent Counsel:
 - (i) A written report containing full and complete technical information concerning each Subject Invention of Recipient within two months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to Recipient. The report shall identify the Agreement and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose,

operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention.

- (ii) Upon request, but not more than annually, interim reports on a DOE approved form listing Subject Inventions of Recipient for that period and certifying that all Recipient Subject Inventions have been disclosed or that there were no such inventions; and
- (iii) A final report on a DOE-approved form within 3 months after completion of the Agreement work listing all Recipient Subject Inventions and certifying that all Recipient Subject Inventions have been disclosed or that there were no such inventions.

- (2) Recipient agrees that the U.S. Government and Partner may duplicate and disclose Recipient Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the Agreement.

(c) Rights to Subject Inventions

- (1) Pursuant to U.S. DOE's Class Waiver W(C) 95-008 of the Government's Patent Rights in Inventions Made by Employees of Institutes and Other Entities of the Newly Independent States of the Former Soviet Union in the Course of or under Agreements Entered into with Management and Operating Contractors of the Department of Energy, Recipient has the right to elect title to Subject Inventions of Recipient in the Newly Independent States. Partner has the right to elect title to Subject Inventions of Recipient in the United States, and will notify DOE and Center of any such elections.
- (2) The election of title to a Subject Invention by Partner shall be in accordance with the terms of its Prime Contract with DOE. Partner will notify Center of any such elections at the time it notifies DOE.
- (3) The election of title to a Subject Invention of Recipient in the Newly Independent States shall be within two years of disclosure pursuant to paragraph (b)(1), but no later than that of Partner for the same Subject Invention in the United States. Recipient will notify Center, Partner and DOE of any such elections.

- (4) Unless otherwise agreed by the Parties with notification to Center and DOE, Recipient has the right to elect title to Subject Inventions in third countries (excluding the United States).
- (5) Recipient and Partner acknowledge that DOE may obtain title to each Subject Invention for which a patent application or applications are not elected or filed by Recipient and/or Partner and for which any issued patents are not maintained by Recipient and/or Partner. To the extent that DOE acquires title to a Subject Invention, Recipient and Partner agree to take such actions and execute all appropriate documents (at no expense to Recipient) to enable DOE to file, prosecute and maintain patent applications thereon.
- (6) Recipient and Partner acknowledge that the U.S. Government retains a non-exclusive, nontransferable, irrevocable, paid-up license to practice or to have practiced by or on behalf of the U. S. Government every Subject Invention throughout the world.
- (7) For each Subject Invention that Partner elects title thereto pursuant to paragraphs (1) through (2) above, Partner agrees to cause a patent application to be filed and prosecuted in the U.S. Patent Office on said Subject Invention. Partner agrees to timely notify Recipient of any intent of Partner not to elect, file, prosecute, or maintain any Subject Invention of Recipient and any patent application or patent thereon and in such event shall afford Recipient the opportunity to acquire title thereto from either DOE or Partner and effect patenting or maintenance thereof at Recipient's expense. Partner agrees to take such actions and execute all appropriate documents to effect such transfer.
- (8) Recipient certifies that it has not and will not enter into an agreement with a third party that conflicts with this Agreement. To the extent that any subsequent agreement between Recipient and a third party conflicts with the allocation of rights in Subject Inventions under this Agreement, Recipient agrees that the terms of this Agreement will supersede the terms of such agreement.
- (9) Partner agrees to provide Recipient copies of patents issued on Subject Inventions.

(d) Publication

In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the Agreement is not prematurely published so as to adversely affect patent interests of Partner or DOE, Recipient agrees to submit to Partner for patent review a copy of each paper 60 days prior to its intended publication date. Recipient may publish such information after a 60-day period following such submission or prior thereto if specifically approved by Partner, unless Recipient is informed in writing within the 60-day period, that in order to protect patentable subject matter, publication must further be delayed. In this event, publication shall be delayed up to 100 days beyond the 60-day period or such longer period as mutually agreed to.

(e) Royalty Sharing

To the extent that Partner licenses any Subject Invention to a third party which results in income therefrom, Recipient and Partner agree to share the net income therefrom fifty (50%) to Recipient and fifty percent (50%) to Partner. Net income is gross income less any expenses and costs associated with the licensing of a Subject Invention including, but not limited to, the cost of preparing, prosecuting and maintaining patents covering said Subject Inventions. Partner agrees to provide to Recipient annual reports setting forth the licensing activity for Subject Inventions by Partner during the reporting period. Partner agrees that any agreement to license a Subject Invention will be subject to the royalty sharing agreement between Partner and Recipient.

(f) Employee Agreements

Recipient shall obtain agreements to effectuate the provisions of this Patent Rights clause from all persons in its employ who perform any part of the work under this Agreement except non-technical personnel, such as clerical employees and manual laborers.

III. RIGHTS IN DATA - GENERAL

(a) Definitions

- (1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (3) "Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4) "Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.
- (5) "Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

- (6) "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
- (7) "Unlimited rights," as used in this clause, means the right of the U.S. Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- (8) "Limited rights," as used in this clause, means the rights of the U.S. Government and Partner in limited rights data as set forth in the Limited Rights Notice of paragraph (e)(2) of this clause.
- (9) "Restricted rights," as used in this clause, means the rights of the U.S. Government and Partner in restricted computer software, as set forth in the Restricted Rights Notice of paragraph (e)(3) of this clause.

(b) Allocations of rights

- (1) Except as provided in paragraph (c) below regarding copyright, Center, the U.S. Government and Partner shall have unlimited rights in:
 - (i) Data first produced in the performance of this Agreement;
 - (ii) Form, fit, and function data delivered under this Agreement;
 - (iii) Data delivered under this Agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this Agreement; and
 - (iv) All other data delivered under this Agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (e) below.
- (2) Recipient shall have the right to:

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by Recipient in the performance of the Agreement, except to the extent provided in paragraph (d) below or otherwise expressly set forth in this Agreement;
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (e) below; and
 - (iii) Establish claim to copyright subsisting in data first produced in the performance of this Agreement to the extent provided in paragraph (c) below.
- (c) Copyright
- (1) The U.S. Government has agreed that Recipient may assert copyright in any data first produced in the performance of this Agreement; accordingly, Recipient has the right to assert copyright in such data.
 - (2) Recipient agrees, upon written request of Partner, to assign to Partner Recipient's entire right, title and interest to copyright in the United States in its associated copyrightable work produced in the performance of this Agreement.
 - (3) Recipient acknowledges that each of Partner, the U.S. Government, Center, and each Party to the ISTC Agreement has for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of each of them, all copyrightable works produced in the performance of this Agreement.
 - (4) For all copyrighted computer software produced in the performance of this Agreement, the Party owning the copyright shall provide the source code, an expanded abstract, and the object code and the minimum support documentation needed by a competent user to understand and use the software to DOE's Energy Science and Technology Center, P.O. Box 1020, Oak Ridge, TN 37831. The U.S. Government shall have unlimited rights in said expanded abstract.

- (5) Recipient agrees to place copyright and other notices, as appropriate for the protection of copyright, in human-readable form onto all physical media, and in digitally encoded form in the header of machine readable information recorded on such media such that the notice will appear in human-readable form when the digital data are off-loaded or the data are accessed for display or printout.

 - (6) Recipient shall not, without prior written permission of DOE via the Partner, incorporate in data delivered under this Agreement any data not first produced in the performance of this Agreement and which contains a copyright notice, unless Recipient identifies such data and grants to the U.S. Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (3) above, provided, however, that if such data are computer software, the U.S. Government shall acquire a copyright license as set forth in paragraph (e)(3) below if included in this Agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this Agreement.
- (d) Release, publication, and use of data
- (1) Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by Recipient in the performance of this Agreement, except to the extent such data may be subject to the U.S. federal export control or national security laws or regulations, or unless otherwise provided below in paragraph (d)(2) or expressly set forth in this Agreement. [This paragraph (d)(1) can be deleted if there will be no work performed in the U.S. by NIS scientists and engineers.]
 - (2) Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this Agreement which contain restrictive

markings, Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by DOE (with notice to Partner).

(e) Protection of limited rights data and restricted computer software

- (1) When data are specified to be delivered under this Agreement and qualify as either limited rights data or restricted computer software, if Recipient desires to continue protection of such data, Recipient shall withhold such data and not furnish them to Partner, Center or the U.S. Government under this Agreement except as provided for in paragraphs (2) and (3) below. As a condition to this withholding, Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to Partner or the U.S. Government are to be treated as limited rights data and not restricted computer software.
- (2) Limited Rights [This paragraph can be deleted if it is determined that there is no necessity for delivery of Limited Rights Data under the Agreement.]

Partner or DOE may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, Recipient may affix the following legend to the data and Partner and the U.S. Government will thereafter treat the data in accordance with such Notice:

LIMITED RIGHTS NOTICE

These data are submitted with limited rights under Department of Energy Prime Contract No. _____ and ISTC Project Agreement No. _____. These data may be reproduced and used by Partner or the U.S. Government with the express limitation that they will not, without written permission of Recipient, be used for purposes of manufacture nor disclosed outside the Partner or the U.S. Government; except that Partner or Government may disclose these data outside Partner or the U.S. Government for use and evaluation by other contractors and/or entities participating in the Government's program of which this Agreement is a part provided that Partner or the U.S. Government makes such disclosure subject to prohibition against further use and disclosure.

(END OF NOTICE)

- (3) Restricted Rights [This paragraph can be deleted if it is determined that there is no necessity for the delivery of Restricted Computer Software under the Agreement.]

The Agreement may identify and specify the delivery of restricted computer software, or Partner or DOE may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, Recipient may affix the following legend to the computer software and Partner and the U.S. Government will thereafter treat the computer software in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (1) This computer software is submitted with restricted rights under Department of Energy Prime Contract No. _____ and ISTC Project Agreement No. _____. It may not be used, reproduced, or disclosed by Partner or the U.S. Government except as otherwise expressly stated in the Agreement.
- (2) This computer software may be:
- (a) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (b) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (c) Reproduced for safekeeping (archives) or backup purposes;

- (d) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (e) Disclosed to and reproduced for use by any U.S. Government contractors in accordance with subparagraphs (2)(a) through (d) of this Notice, provided Partner or the U.S. Government makes such disclosure or reproduction subject to these restricted rights; and
 - (f) Used or copied for use in or transferred to a replacement computer.
- (3) If this computer software is published copyrighted computer software, it is licensed to the U.S. Government without disclosure prohibitions, with the minimum rights set forth in paragraph (2) of this Notice.
- (4) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(END OF NOTICE)

(f) Royalty Sharing

To the extent that Partner licenses to a third party any copyrighted work produced in the performance of this Agreement which results in income therefrom, Recipient and Partner agree to share the net income therefrom fifty (50%) to Recipient and fifty percent (50%) to Partner. Net income is gross income less any expenses and costs associated with the licensing and protection of the copyrighted work including, but not limited to, the costs of

obtaining and maintaining the copyright. Partner agrees to provide Recipient annual reports setting forth the licensing activity for said copyrighted works by Partner during the reporting period. Partner agrees that any agreement to license a copyrighted work produced in the performance of this Agreement will be subject to the royalty sharing agreement between Partner and Recipient.

(g) Employee Agreements

Recipient shall obtain agreements to effectuate the provisions of this Rights in Data clause from all persons in its employ who perform any part of the work under this Agreement.

IV. ADDITIONAL DATA REQUIREMENTS [This clause can be deleted if all technical data requirements are known in advance of entering into the Agreement and are set forth in the statement of work.]

- (a) In addition to the data (as defined in Clause III, Rights in Data-General) specified elsewhere in this Agreement to be delivered, Partner or DOE may, at any time during Agreement performance or within a period of three years after acceptance of all items to be delivered under this Agreement, order any data first produced or specifically used in the performance of this Agreement.
- (b) The Rights in Data-General clause included in this Agreement is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require Recipient to deliver any data the withholding of which is authorized by the Rights in Data-General clause of this Agreement, or data which are specifically identified in this Agreement as not subject to this clause.
- (c) When data are to be delivered under this clause, Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

- (d) DOE via Partner may release Recipient from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

V. BACKGROUND INTELLECTUAL PROPERTY [This clause can be deleted if it is determined that no Recipient Background Intellectual Property is to be used during the performance of the Agreement.]

"Background Intellectual Property" is intellectual property (e.g., inventions, software, copyrights, trademarks) belonging to Recipient that was in existence before this Agreement. A background invention is an invention or discovery of the Recipient that was conceived outside of this Agreement and not first actually reduced to practice (i.e., demonstrated) under this Agreement. Recipient has identified the following Background Intellectual Property that may be used in the performance of this Agreement:

ANNEX IV - SPECIAL TERMS AND CONDITIONS

1. Changes - Fixed-Price

- A. Partner, in consultation with Center, may at any time, by written order, make changes within the general scope of this Agreement in any one or more of the following:
1. Description of services to be performed.
 2. Time of performance (i.e., hours of the day, days of the week).
 3. Place of performance of the services.
 4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the U.S. Government, in accordance with the drawings, designs, or specifications.
 5. Method of shipment or packing of supplies.
 6. Place of delivery.
 7. Description and delivery date of Partner-furnished U.S. Government property.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, Partner shall make an equitable adjustment in the Project Price, the delivery schedule, or both, and shall modify the Agreement.
- C. Recipient must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if Partner decides that the facts justify it, Partner may receive and act upon a proposal submitted before final payment under the Agreement.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause of the Agreement. However, nothing in this clause Annex IV(1) shall excuse Recipient from proceeding with the Agreement as changed.

2. Stop-Work Order

- A. Partner, at any time, by written direction to Recipient, may require Recipient to stop all, or any part, of the work called for by this Agreement for a period of 90 days after direction is delivered to Recipient, and for any further period to which Partner and Recipient may agree. Partner shall provide a copy of any direction to Center. The direction shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the direction, Recipient shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the direction during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Recipient, or within any extension of that period to which the Partner and Recipient shall have agreed, Partner shall either:
1. cancel the stop-work order; or
 2. terminate the work covered by the Agreement as provided in Article 15 "Termination of the Agreement" herein.
- B. If a stop-work order issued under this clause is canceled or the period of the direction or any extension thereof expires, Recipient shall resume work. Partner shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:
1. the stop-work order results in an increase in the time required for, or in Recipient's cost properly allocable to, the performance of any part of this Agreement; and
 2. Recipient asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Partner decides the facts justify the action, Partner may receive and act upon the claim submitted at any time before final payment under this Agreement.
- C. If a stop-work order is not canceled and the work covered by the Agreement is terminated by the Partner, Partner shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

- D. If a stop-work order is not canceled and the work covered by the Agreement is terminated for default by Partner, Partner shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

3. Preference for U.S.-Flag Carriers

- A. Definitions.
 - 1. "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - 2. "United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
 - 3. "U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and U.S. Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. Center and Recipient agree, in performing work under this Agreement, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- D. In the event that Center or Recipient selects a carrier other than a U.S.-flag air carrier for international air transportation, Center or Recipient shall include a certification on vouchers involving such transportation essentially as follows:

**CERTIFICATION OF UNAVAILABILITY
OF U.S.-FLAG AIR CARRIER**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the U.S. Federal Acquisition Regulation):

[State reasons]:

- E. Center and Recipient shall include the substance of this clause, including this paragraph E, in each lower-tier sub-agreement or subcontract under this Agreement that may involve international air transportation.

4. Limitation on Payments to Influence Certain Federal Transactions

- A. U.S. law prohibits a recipient of a U.S. Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- B. The Act also requires a recipient of a U.S. Federal contract to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

- C. Center and Recipient shall each submit a certification, and disclosure if required, in a form prescribed by Partner, if the value of the Agreement exceeds One Hundred Thousand U.S. dollars (\$100,000), and each shall require the submittal of a certification, and disclosure if required, of any subcontractor or Participating Institution if the value of the subcontract or sub-agreement with the Participating Institution exceeds One Hundred Thousand U.S. dollars (\$100,000).
- D. Recipient and Center agree not to make any payment prohibited by this clause.

5. Anti-Kickback Procedures.

- A. This clause applies if the value of this Agreement exceeds One Hundred Thousand U.S. dollars (\$100,000).
- B. The Anti-Kickback Act of 1986, (41 U.S.C. 51-58)(the Act), prohibits any person or organization from:
 - 1. Providing or attempting to provide or offering to provide any kickback;
 - 2. Soliciting, accepting or attempting to accept any kickback; or
 - 3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the U.S. Government or in the contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.
- C.
 - 1. When Recipient or Center have reasonable grounds to believe that a violation described in paragraph B of this clause may have occurred, Recipient or Center shall promptly report, in writing, the possible violation to Partner.
 - 2. Recipient and Center shall cooperate fully with any U.S. federal agency investigating a possible violation. Such cooperation shall be within the framework to be established by United States and Russian governmental authorities.
 - 3. Partner may:
 - a. Offset the amount of the kickback against any monies owed by Partner under the Agreement; and/or

- b. Withhold sums owed Recipient or Center under the Agreement in the amount of the kickback.

- D. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

- E. Recipient and Center agree to incorporate the substance of this clause, including this subparagraph E., in all lower-tier arrangements under this Agreement which exceed \$100,000.

6. Restrictions on Subcontractor Sales to the U.S. Government

- A. This clause applies if the value of this Agreement exceeds \$100,000.
- B. Except as provided in paragraph C below, neither Center nor Recipient shall enter into any agreement with any actual or prospective lower-tier subcontractors, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the U.S. Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this Agreement or under any follow-on agreement.
- C. The prohibition in paragraph B above does not preclude Center or Recipient from asserting rights that are otherwise authorized by law or regulation.
- D. Center and Recipient agree to incorporate the substance of this clause, including this paragraph D, in all subcontracts and sub-agreements under this Agreement with a value exceeding One Hundred Thousand U.S. dollars (\$100,000).

7. Restrictions on Certain Foreign Purchases

- A. Unless advance written approval of Partner is obtained, neither Center nor Recipient shall acquire for use in the performance of this Agreement, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the U.S. Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba; Iran, Iraq, Libya, North Korea and Yugoslavia, including Serbia and Montenegro, and Afghanistan.

- B. Recipient and Center agree to insert the provisions of this clause, including this paragraph B., in all sub-agreements and subcontracts hereunder.

8. Extras

Except as otherwise provided in this Agreement, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by Partner.

9. Printing Requirements

(This clause may be deleted without further consultation with the Department of Energy if Partner determines that no printing services as described below will be provided by Center or Recipient).

- A. To the extent that duplicating or printing services may be required in the performance of this Agreement, Recipient shall provide or secure such services in accordance with the U.S. Government Printing and Binding Regulations, Title 44 of the U.S. Code, and Department of Energy Directives relative thereto.
- B. The term "printing" includes the following processes; composition, plate making, press work, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this Agreement involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- C. Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.