GUIDELINES FOR PREPARING ELECTRONIC AGREEMENTS

Technical Assistance Agreements
Manufacturing License Agreements
And
Warehouse and Distribution Agreements

These Guidelines were prepared by the U.S. State Department Bureau of Political Military Affairs, Directorate of Defense Trade Controls, Office of Defense Trade Controls Licensing (DTCL). They are intended to serve as an aid in applying the International Traffic in Arms Regulations (*ITAR); to provide clarity to Defense Trade Policy as it pertains to Agreements; and to establish a standard basis for submissions of agreements and related correspondence. Should changes to the regulations take place, the regulatory changes take precedent.

* All references throughout the guidelines to sections of the ITAR are denoted with §.

We welcome the use of this document in training programs but request that there be no charge for the material. In instances where material is extracted, reference should be made to this publication as the source.

If you have specific questions on any matter related to this guidance, contact the Office of Defense Trade Controls Licensing for further assistance. Comments or suggestions regarding this publication should be directed to this office, ATTN: Guidelines for Agreements.

The latest version of these guidelines can be found at the DDTC Web site http://www.pmddtc.state.gov/licensing/agreement.html.

//Original Signed//
Kevin Maloney
Director,
Office of Defense Trade Controls Licensing

As of: April 1, 2010

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SECTION 1.0 Contacting DTCL

General Information
Office Hours: 8:15 AM - 5:00 PM
Receptionist: (202) 663-2980
General Fax: (202) 261-8199

Response Team – Contact the Response Team for all general inquiries
Telephone: (202) 663-1282
Fax: (202) 261-8199
E-mail: DDTCResponseTeam@state.gov

D-Trade - For assistance on D-Trade matters, please call the Help Desk at (202) 663-2838, or e-mail the Help Desk at dtradehelpdesk@state.gov

Postal Mailing Address
PM/DDTC, SA-1, 12th Floor
Directorate of Defense Trade Controls
Bureau of Political Military Affairs
U.S. Department of State
Washington, D.C. 20522-0112

Express Mail and Courier Delivery Services
U.S. Department of State
PM/DDTC, SA-1, 12th Floor
2401 E Street, NW
Washington, D.C. 20037

For additional details on In-person License Delivery and Pick-up procedures, go to
http://www.pmddtc.state.gov/licensing/inperson_license_procedures.html

Agreement/Licensing Officer Telephone Numbers and E-mail – Go to
http://www.pmddtc.state.gov/about/key_personnel.html

Please Note: Although telephone numbers for key personnel are supplied, please call the Response Team first when trying to reach us on any matter. The Response Team is prepared to respond to the full range of defense trade inquiries. If your inquiry requires the attention of others within DDTC, the Response Team will direct your inquiry to the appropriate individual.

Case Status Tracking

DTCL Case Tracking Access – Electronic case tracking services are available. Applicants can access their agreement case status through the DTAS-Online Portal (https://dtas-online.pmddtc.state.gov/) using the MARY System and the 9-digit DSP-5 number obtained for the case.

DTSA Case Tracking – To view the status of Requests staffed to DoD, go to http://elisa.osd.mil/Elisa_Results.aspx and type in the 9-digit DSP-5 vehicle number.

To download the most recent schema D-Trade 2 applications, go to our Production External Web site at https://dt2.pmddtc.state.gov/dtrade/ CertificateLogin

SECTION 2.0 Agreements Overview

Per National Security Presidential Directive 56 (NSPD-56), "Defense Trade Reform," dated 22 January 2008, on 30 June 2009 the Directorate of Defense Trade Controls (DDTC) made available an electronic system for the agreement submission and adjudication process. This electronic system utilized for submitting, reviewing, and approving agreement proposals is the D-Trade 2 production application. Specifically, this process utilizes the DSP-5 license application as the primary instrument or "vehicle" for transmitting agreements and their respective amendments from one phase of the adjudication process to the next.[1] However, due to the unique requirements associated with agreements, coupled with the current structure of the DSP-5 form, the guidelines governing the completion of the DSP-5 form have been modified when used for this express purpose.

Unlike the standard use of the DSP-5 license application, when used for submitting agreement proposals, the DSP-5 serves only as vehicle to transmit the actual agreement proposal to DTCL from the applicant, between staffing points as part of the adjudication process, and for providing the DDTC position to the applicant. **The license form itself is not an authorization.** To emphasize this critical distinction, the following provisos will be applied to all agreements/amendments adjudicated through the electronic process:

> "The issuance of the subject DSP-5 does not grant any export rights or privileges, and its related DSP-5 case number may not be cited as an authorization or used as the basis for an exemption.
>
> The Department of State approves the attached agreement/amendment proposal subject to the following limitations, provisos and requirements. This agreement/amendment may not enter into force until it is signed and the stated requirements have been satisfied."

2.1 What is an Agreement?

As described in §124.1, an agreement approved by DTCL is required for a U.S. person to provide a defense service or manufacturing know-how to a foreign person, or establish a distribution point abroad for defense articles of U.S. origin for subsequent distribution to foreign persons. The export or temporary import of defense articles (technical data or hardware) may be covered in the scope of an agreement as well, but the provision of a defense service, transfer of manufacturing know-how, or establishment of a distribution point abroad is what distinguishes an "Agreement" from other forms of authorizations issued by DTCL.

[1] Note: For the purposes of clarification, the term "DSP-5 vehicle" will be used when referring to the electronic form used to transmit the Agreement via the D Trade-2 system. Conversely, any reference to "DSP-5" alone shall refer to the means by which an applicant may apply for a license for a permanent export, per §123.

Activities Frequently Requiring Agreements
• Supporting Direct Commercial Sales to Foreign Parties • Providing Overseas Maintenance or Training Support • Technical Studies, Evaluations, Demonstrations or Consultations with Foreign Parties • Release of Manufacturing Data or Rights • Efforts to Import Technology from Abroad • Supporting a Foreign Military Sales Case (Beyond scope of LOA) • Supporting U.S. Government-Sponsored Foreign Contracts

Table 2.1

2.2 Technical Assistance Agreement (TAA) §120.22

An agreement for the performance of a defense service(s) and/or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included, but providing production rights or manufacturing know-how are not conveyed. Should such rights be transferred, a Manufacturing License Agreement would be required.

2.3 Manufacturing License Agreement (MLA) §120.21

a. An agreement whereby a U.S. person grants a foreign person an authorization to manufacture defense articles and involves or contemplates:

(1) The export of technical data or defense articles or the performance of a defense service; or

(2) The use by the foreign person of technical data or defense articles previously exported by the U.S. person.

b. An MLA involves the licensing of a manufactured defense article abroad, which require the U.S. party to provide manufacturing know-how to the foreign party (i.e., teaches the foreign party how to manufacture the item). An MLA can also involve just the assembly or repair of hardware abroad and no actual manufacturing if the foreign party requires manufacturing know-how in order to complete the assembly. Manufacturing know-how is defined in §125.4(c)(6) as information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article.

2.4 Warehouse and Distribution Agreement (WDA) §120.23

A WDA is an agreement to establish a warehouse or distribution point abroad for defense articles to be exported from the United States for subsequent distribution to entities in an approved sales territory.

2.5 Elements of TAA, MLA, and WDA Packages

The following documents must be included with each submission. Unless otherwise noted, these items should be incorporated as individual attachments to the DSP-5 vehicle.

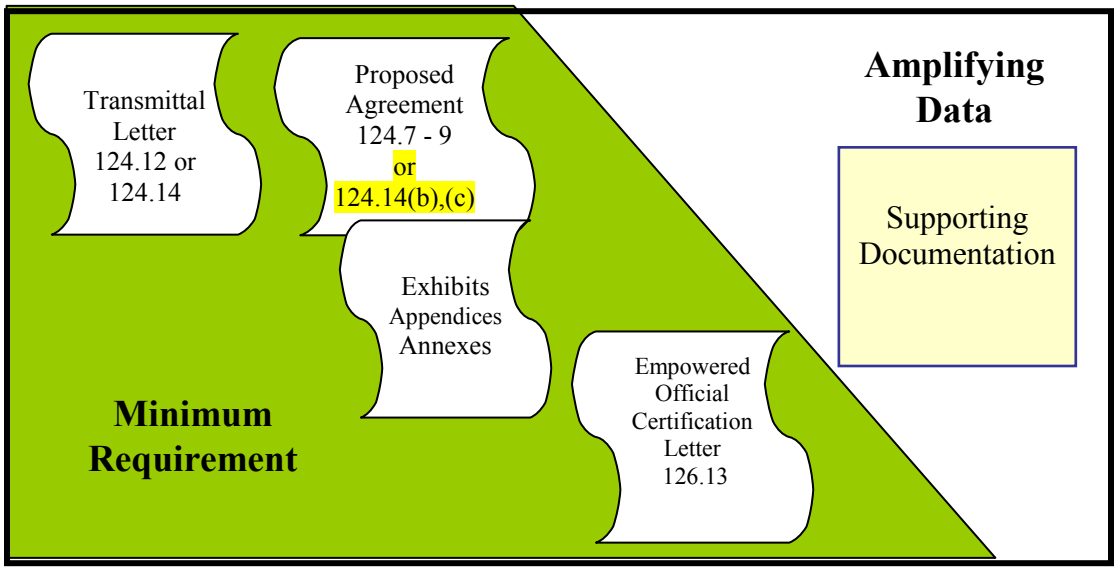


Figure 2.1

a. §126.13 Certification Letter. Since Block 22 of the DSP-5 vehicle satisfies the §126.13 requirement, a separate certification letter is not required for electronically-submitted agreements unless an empowered official has not "certified" the submission via the DSP-5 vehicle (i.e., Marked item "a" or "c" in Block 22). If the DSP-5 vehicle is not certified, then a separate certification letter (See Section 4.0 and Tab 1 to Appendix A) must be attached.

b. Transmittal Letter per §124.12 or §124.14. (See Sections 5.1 and 6.1 for TAAs, MLAs and Amendments; See Section 7.1 and 8.1 for WDAs and Amendments; See Appendix A, Tab 2 and 4 for Samples)

c. Proposed agreement (see Section 5.2 and 6.2 for TAAs, MLAs and Amendments; Section 7.2 and 8.2 for WDAs and Amendments; Appendix A, Tab 3 and 5 for Samples) to include:

(1) Required §124.7 or §124.14(b) information contained within the main body of the agreement.

(2) Required §124.8 and §124.9 or §124.14(c) clauses (if applicable) contained within the main body of the agreement.

(3) Signature block for each party at end of main body of the agreement.

d. Exhibits, Appendices or Annexes to the actual agreement to be executed (i.e., Statement of Work, Description of Technical Data, Hardware for Export, Sub-licensees, or other items referenced in the proposed agreement). Be sure to cross-reference—that is, reference the attachments in the body of the agreement and properly reference the agreement in the attachments. Applicants should note these items, if present are considered an integral part of the actual agreement document and not the transmittal letter. When uploading to the DSP-5 vehicle for electronic submissions, these exhibits should be integrated with the proposed agreement and attached as a single document when possible.

e. Supporting Documentation (i.e., Positive Part 130 Statements, Congressional Notification documentation, Software Source Code requests, information relevant to technology export issues, precedent cases). This is generally material not directly referenced in the agreement and is not part of the actual agreement to be executed, but may help support an approval decision. This type of information should be minimized to include only that information absolutely critical to the support of the request.

2.6 Agreement Processing Timelines

a. In NSPD-56, the Department of State was directed to complete the review and adjudication of license requests within 60 days of receipt, except in cases where national security exceptions apply. The Directorate of Defense Trade Controls has implemented procedures to ensure this 60-day requirement is met, except where the following national security exceptions are applicable:

(1) When Congressional Notification is required: The Arms Export Control Act (AECA) Section 36(c) and (d), and the International Traffic in Arms Regulations, §123.15 and §124.11, require a certification be provided to Congress prior to granting any license or other approval for transactions, if it meets the requirements identified for the sale of major defense equipment, manufacture abroad of significant military equipment, or exceeds value thresholds for commercial sale under contract of defense articles (to include technical data) and services. (See Section 14.1 for Notification Thresholds)

(2) Required Government Assurances have not been received. These would include, for example, Missile Technology Control Regime (MTCR) assurances or Cluster Munitions assurances.

(3) End-use Checks have not been completed. (Commonly referred to as “Blue Lantern" checks.) End-use checks are a key to the U.S. Government's prevention of illegal defense exports

and technology transfers, and range from simple contact with end-users to verifying the bona fides of a transaction to conducting a physical inspection of an export.

(4) Department of Defense has notified the Directorate of Defense Trade Controls that an overriding national security exception exists.

(5) Requires a Waiver of Restrictions. (i.e., a sanctions waiver.)

b. All new agreements require interagency coordination as do approximately 50% of all amendments. The processing time for any agreement or amendment requiring coordination and staffing averages between 30 and 45 days. Amendments not requiring interagency coordination are normally completed within 10 days.

2.7 Agreement and Amendment Approvals

a. In lieu of a separate authorization letter, DDTC approval of electronic agreements is accomplished via the DSP-5 vehicle, specifically in the proviso section of the license form.

b. As a general principle, while provisos will be limited to Directive Provisos where specific action is required on behalf of the applicant, standard provisos and requirements will continue to address the following:

(1) Agreement Expiration Date
(2) Hardware Authorizations for Shipment in Furtherance of the Agreement
(3) Manufacturing License Agreement (MLA) Sales Territories
(4) ITAR 124.4 (b)(1)-(4) submission requirements for MLAs
(5) Congressional Notifications and Re-Notifications status
(6) DSP-83 submission requirements

c. The expiration date of 48 months shown on the DSP-5 vehicle is not the expiration date of the agreement/amendment. The correct expiration date will be identified in the first proviso of the DSP-5 vehicle.

d. The absence of informative and acknowledgement statements regarding other requirements contained within the Arms Export Control Act and the International Traffic in Arms Regulations in no way relieves the applicant from meeting those obligations. (See Section 16 for additional information on actions required after approval)

SECTION 3.0 General Guidance for Agreements

For tracking purposes, agreements will be issued two independent sets of identification numbers.

A nine-digit number with the "05" prefix will be generated automatically by D-Trade 2. This is the number of record for the proposed agreement or amendment and is the number referenced throughout the adjudication process. If the applicant has a query in reference to a submitted proposal, they must reference this number.

A second number, six-digits in length, which mimics the current format for paper licenses (e.g., 1807-09), will also be assigned upon receipt. This number serves as the actual agreement number and provides a common reference for all activities that occur under the approved agreement throughout its duration. This number will be included with the nine-digit number upon final action.

3.1 Duration of Agreements (Expiration Dates)

a. All agreement requests submitted to DTCL must include a statement identifying the duration of the proposed agreement as part of the letter of transmittal and the proposed agreement itself. Any agreement approved by DTCL cannot exceed ten years in duration. The applicant must identify the duration by providing a proposed expiration date (day, month, year) for the agreement. A simple statement such as "the duration of this agreement is not to exceed ten years" is not sufficient.

b. Past practices where all agreements were assigned an expiration date of December 31, 20xx are no longer supported by DTCL. In order to reduce the overwhelming number of proposed amendments for duration extensions at the end of the year, DTCL has implemented an Expiration Date Matrix, distributing expiration dates throughout the calendar year. (See Table 3.1 - Expiration Date Matrix)

Month of Expiration	Registered Company Name
January	D, X, Y and Z
February	S and C
March	A and M
April	G and V
May	H and T
June	B and Q
July	N and F
August	L and W
September	U and P
October	R and I
November	O and E
December	J, K and all Numbers

Table 3.1 – Expiration Date Matrix

Referencing Table 3.1, the month of expiration for agreements is determined by the first letter of the applicant's name on their official registration. The last day of the target month will be assigned as the expiration date. For example, a registered company by the name of Jones' Defense Systems Inc. will be assigned an expiration date of December 31, 20xx. Star Space Systems, LLC, a subsidiary of Armageddon Aerospace Corporation, (the registered company) will be assigned an expiration date of March 31, 20xx.

c. Agreement expiration dates identify the last day activities may take place under that agreement. Applicants can terminate an agreement at any time prior to the expiration date as required.

d. An applicant can submit a proposed amendment requesting to extend the duration of an agreement. However, the duration of an agreement, regardless of how often it has been amended, cannot exceed ten years in duration. Such requests must be submitted 60 days in advance of expiration of the existing agreement and will be considered on a case-by-case basis.

e. On electronic approvals, the DSP-5 vehicle will automatically default to an expiration date of 48 months. This does not reflect the actual expiration of the agreement itself. (The DSP-5 vehicle is simply used as the means for transmitting the agreement throughout the approval process.) The expiration date approved for the agreement is specified in Proviso #1 of all authorizations.

3.2 Sub-Licensing

a. What is Sub-Licensing and Sub-Contracting

(1) Sub-Licensing by a foreign signatory involves the retransfer of USML controlled defense articles and/or technical data by the foreign signatory to a third party that is not a signatory to the agreement, but whose participation based on the scope of the agreement and work-share requirements is essential to fulfilling the objectives of the agreement.

Example: To meet its contractual requirements, a foreign licensee requires testing assistance from an additional foreign company (Tester Ltd.). Tester Ltd. requires specific USML technical data from the foreign licensee to conduct the test but requires no interaction with the U.S. Applicant. Tester Ltd. is considered a sub-licensee.

(2) Sub-Contracting by a foreign signatory also involves third party participation based on the scope of the agreement and work-share requirements but does not involve the retransfer of USML controlled defense articles and/or technical data to the third party. DTCL places no restrictions on subcontracting and the applicant is not required to address sub-contractors in the agreement.

Example: To meet its contractual requirements, a foreign licensee requires off-the shelf parts from an additional foreign company (Mo' Parts Inc.). Mo' Parts Inc. does not require any

USML defense articles and/or technical data or defense services to fill the foreign licensee's requirements. Mo' Parts Inc. is considered a sub-contractor.

b. Requirements for all Sub-Licensing Requests

(1) As required by the ITAR, each export authorization request must identify all parties involved in the export. Since sub-licensing does involve the retransfer of USML controlled defense articles and/or technical data, all sub-licensees must be identified in the proposed agreement, as well as Block 16 of the DSP-5 vehicle. If sub-licensees are not identified in Block 16 of the DSP-5 vehicle, sub-licensees WILL NOT be authorized. All requests for the authorization of sub-licensing must include the following:

- Name of the sub-licensee
- Country of sub-licensee
- Full address of sub-licensee
- Role of the sub-licensee
- Defense articles and technical data to be transferred to the sub-licensee

(2) If sub-licensing is not required, the applicant must specifically state as part of the proposed agreement that "Sub-licensing is not authorized." Additionally, the applicant must complete Block 16 of the DSP-5 vehicle as follows:

- NAME – No Sub-licensees
- ADDRESS – None or N/A
- CITY – None or N/A
- COUNTRY – Enter the primary country of the transaction

(3) Prior to transfer of defense articles and/or technical data to approved sub-licensees, the sub-licensees must sign a Non-Disclosure Agreement (NDA), which references the agreement number and includes §124.8 and, as applicable, §124.9 clauses. The applicant must maintain the NDA for a period of five years beyond the expiration or termination of the agreement as amended and have NDAs available for inspection by the U.S. Government. The applicant must specifically reflect this requirement to execute and retain NDAs as part of any application requesting sub-licensing authorization. (See Appendix A, Tab 11: Sample NDA)

c. Additional Sub-Licensing Guidance

(1) Prior to 2005, sub-licensing activities may have been approved without requiring the specific disclosure of sub-licensing information as described in Section 3.2,b.(1) of these guidelines. Although DTCL has not mandated that all previously approved agreements be amended to include this information, any request submitted to DTCL to amend an existing agreement pursuant to §124.1(c) must include complete sub-licensee information as described in Section 3.2,b.(1) of these guidelines if not previously provided.

(2) Direct transfer of defense articles, to include technical data or services between the applicant (or any U.S. signatories to an agreement) and approved sub-licensees is not authorized.

If such transfer is required, the identified sub-licensee must be added as a foreign licensee (i.e., signatory) to the agreement.

(3) DTCL has removed restrictions pertaining to the identification of U.S. Persons as potential Sub-licensees to a foreign party. Sub-licensing to a U.S. Person by a foreign licensee may be identified in an agreement request to DTCL; however, the identification and subsequent approval of U.S. Sub-licensees does not serve as an export (§120.17) or temporary import (§120.18) authorization for the U.S. Person (U.S. Sub-Licensee). Any resulting exports or temporary imports by the U.S. Sub-licensee must be conducted as part of a separate authorization (TAA, MLA, or DSP license) initiated by the U.S. Person (U.S. Sub-licensee). The applicant is not required to specifically identify potential U.S. sub-licensees in the agreement request. However, in order to ensure compliance with §123.9, the applicant must clearly state as part of §124.7(4) that **"This agreement authorizes sub-licensing to U.S. Persons".**

3.3 Establishing Value for Agreements

a. Pursuant to §124.12(a)(6), the applicant must provide a statement of the actual or estimated value of the agreement, including the estimated value of all defense articles to include technical data to be exported in furtherance of the agreement or amendments thereto. The value of an agreement is not always equal to a contract or payment value that the applicant may receive. Even if the applicant is providing their service without charge to the foreign party, there is a cost to the applicant that must be conveyed in the agreement.

b. The value of an agreement must be broken out into key elements and then added as a total. This total value is that value assigned against the agreement by DTCL as a means to assess the level of effort being exerted in the agreement. This may not directly reflect a straight contract price. The key elements of the valuation are:

(1) Defense Service – usually defined as the manpower costs incurred by the U.S. company in the agreement.

(2) Technical Data – the value assigned to the technical data being transferred to the foreign parties.

NOTE: The value of Defense Services and Technical Data may be combined in the §124.12(a)(6) valuation matrix as a single value.

(3) Hardware

(A) Exported Hardware – the value of all USML hardware being exported by the applicant, to include both permanent and temporary exports in furtherance of the agreement. Additionally, for MLAs, further specify:

- Value of Hardware exported for incorporation into the manufactured end-item. (This value will not be included in the overall value)

- Value of Hardware exported not incorporated into the manufactured end-item.

(B) Temporarily Imported Hardware – the value of all USML hardware being temporarily imported by the applicant in furtherance of the agreement. (Although not specified in §124.12(a)(6), this value must be provided if the applicant intends to apply for DSP-61s or DSP-85s in furtherance of the agreement)

(4) Manufactured Hardware (MLA only) – Projected production or sale value of defense articles being manufactured abroad.

(5) Total Value of the Agreement – This is the sum of items (1) through (4) above.

c. The applicant must address each of the key elements, even though there may be no fee pertaining to, or a $0 value attributed to a particular element. The value of each of these elements can be an estimate, but must extend over the duration of the agreement and not beyond. (See Appendix A, Tab 2: Sample TAA/MLA Transmittal Letter)

d. Repair and Replacement Value. Applicants are no longer required to provide an estimated repair and replacement value to obtain separate licenses for repair and replacement activities. All hardware authorizations approved by DTCL will include provisions to allow the applicant to apply for separate licenses for repair and replacement.

e. Amendment Value. The process for establishing value for agreements is also applicable to establishing the value of amendments. Some amendments are administrative in nature and have, by definition, no value (i.e., novations). However, amendments adding items, expanding the scope, expanding the sales territory or extending the duration of an agreement almost certainly will change the value of the basic agreement, and thus an estimated value of the amendment must be submitted. (See Appendix A, Tab 6: Sample TAA/MLA Amendment Transmittal Letter)

f. The following is an example of a DTCL agreement proviso that recognizes the export of hardware in furtherance of an agreement.

> "Export or temporary import of hardware in furtherance of this agreement by separate license is authorized. If used, separate license, submitted in accordance with section 15.1 of the Guidelines for Preparing Electronic Agreements, must reference this agreement and must not exceed $_____. This proviso does not limit the use of separate authorizations for repair and replacement purposes."

g. The value entered in Block 12 of the DSP-5 vehicle for electronic submissions of proposed agreements should equal the total value of the agreement. For amendments to existing agreements, the value in Block 12 should only reflect the value of the amendment itself. If the amendment does not increase the value of the agreement, enter $1. (A value must be applied to submit)

3.4 Part 130 Statements

a. If the proposed value of an agreement submitted to DTCL involves the export of defense articles *and/or technical data* or defense services valued in an amount of $500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to §130.9.

(1) The Part 130 statement is made as part of Block 22, "Applicant's Statement," in the DSP-5 vehicle. Based on this electronic certification, a separate Part 130 certification is no longer required as part of the transmittal letter when submitting electronically.

(2) For the purpose of Part 130 Statements, "Armed Forces" means the Army, Navy, Marine, Air Force, or Coast Guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

b. §130.9 requires that each applicant inform DTCL as to whether the applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more.

c. If yes, the applicant must provide to the DTCL the information specified in §130.10 as a separate attachment to DSP-5 vehicle, signed by an empowered official. The furnishing of such information or an explanation satisfactory to the Managing Director of the Directorate of Defense Trade Controls as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval. The applicant should also consider whether or not brokering is taking place. (See §129 for more information on brokering)

3.5 Retransfer to Dual/Third Country Foreign National Employees

Third Country National: An individual holding nationality from a country or countries other than the country of the foreign signatory to the agreement.

Dual National: Holds nationality from the country of a foreign signatory and one or more additional foreign countries.

a. Under longstanding regulatory practice, the Department of State takes into account the nationalities of all foreign persons who will have access to ITAR controlled defense articles and/or technical data and defense services. U.S. exporters are required to determine the nationality(ies) of all individuals that might have access to defense articles or defense services and to disclose that information in their requests for export authorizations. Pursuant to 72 FR 71785 and §124.16, when determining nationality, the Department of State considers country of origin or birth in addition to citizenship.

b. Pursuant to §120.17, an export is defined as, among other things, "Disclosing… or transferring technical data to a foreign person, whether in the United States or abroad" or "Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad." Hence, the export of technical data or defense service to a foreign national, whether located inside or outside the United States, is equivalent to an export to that foreign country. Although equivalent to such an export, approval of a dual/third country national employee only authorizes transfer to the employee. It does not authorize export to the country from which the employee derives.

c. Any agreement request submitted to DTCL must specifically list the countries of all dual and third country foreign nationals that may require access to USML controlled and/or technical data or services (this includes foreign licensees and sub-licensees). This information must be covered in the §124.7(4) statement, as well as Blocks 18 and 20 (as applicable) of the DSP-5 vehicle. Prior to transfer of defense articles to approved dual/third country nationals, the dual/third country national must sign a Non-Disclosure Agreement (NDA), which must reference the agreement number (See Appendix A, Tab 11: Sample NDA). The applicant must maintain the NDA for a period of five years beyond the expiration of the agreement as amended and have NDAs available for inspection by the U.S. Government. The applicant must specifically reflect this requirement to execute and retain NDAs as part of any request requesting dual/third country national employee authorization. (See Section 3.6 and 3.7 for exceptions to this policy)

Note: Re-transfers to third country/dual national employees previously approved by DTCL are authorized to continue when Ministry of Defense (MOD) forces/elements are deployed on operations and/or training outside a previously approved country. However, re-transfer to third country/dual national employees of the country in which the forces/elements are deployed is not authorized without prior approval by the Department of State.

3.6 Retransfer to Dual/Third Country Foreign National Employees - §124.16

a. On December 19, 2007, an amendment to the ITAR was published that revised licensing procedures with regard to third country/dual nationals for technical assistance/manufacturing license agreements. In particular, §124.16 was added to no longer require the specific identification of, or the execution of NDAs for release **of unclassified** technical data, defense services, and access to and/or technical data for dual/third country employees of the foreign signatory or approved sub-licensees to an agreement that are exclusively from NATO, European

Union (EU), Australia, New Zealand, Japan, and Switzerland. This action has been taken to further facilitate defense trade after taking into account foreign policy, national security, and regulatory considerations, which have been the subject of discussions with the Defense Trade Advisory Group (DTAG).

b. The provisions of §124.16 for dual/third country employee(s) are applicable only if each of the following criteria is met:

(1) The dual/third country employee(s) does not hold nationality from any other country outside those countries prescribed under §124.16.

(2) The foreign signatory or approved sub-licensee is located inside those countries prescribed under §124.16.

(3) Any retransfer between the foreign signatory or approved sub-licensees and dual/third country national employees of the foreign signatory or approved sub-licensees must take place completely within the physical territories of those countries prescribed under §124.16.

(4) Only **unclassified** technical data, defense services, and access to defense articles for the dual/third country employees will occur.

c. As a result of the addition of §124.16, a new section of the transmittal letter has also been added at §124.12(a)(10) to specifically address retransfer under §124.16. The applicant must ensure the following clause is included in all transmittal letters submitted to the Department of State:

> "(a)(10) This agreement (does/does not) request retransfer of defense articles (to include technical data) and defense services pursuant to §124.16."

d. Specific language must also be added as a section in the proposed agreement to be executed with the foreign party to identify the authorization. The applicant must include the following statements (as applicable) as part of the information required by §124.7(4): (It is possible to use both statements (1) and (2) depending on location of the foreign licensees/sub-licensees)

(1) If requesting dual/third country national employees who qualify for §124.16, the following clause must be added:

> "Pursuant to §124.16, this agreement authorizes access to unclassified defense articles and/or retransfer of technical data/defense services to individuals who are dual/third country national employees of the foreign licensees (and its' approved sub-licensees – if applicable). The exclusive nationalities authorized are limited to NATO, European Union, Australia, Japan, New Zealand, and Switzerland. All access and/or retransfers must take place completely within the physical territories of these countries or the United States."

(2) If requesting dual/third country national employees who do not qualify for §124.16, the following clause must be added:

> "Pursuant to §124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to individuals who are dual/third country national employees of the foreign licensees (and its' approved sub-licensees – if applicable). The exclusive nationalities authorized are (*list all foreign nationalities of the employees who are not eligible for application of §124.16.*) Prior to any access or retransfer, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement."

NOTE: If requesting dual/third country national employees for access to classified defense articles and/or retransfer of technical data/defense services who otherwise qualify for access pursuant to §124.16, the applicant must specifically identify those exclusive nationalities under the §124.8(5) clause, and NDAs must be executed for these employees.

e. If you currently have an approved TAA or MLA which does not include authorization for third country/dual national employees OR you desire to expand the current authorization to take advantage of this change, you MUST submit a proposed amendment under the requirements of §124.1(c) to DTCL. Such amendments will be subject to formal review and may not enter into force until approved by the Directorate of Defense Trade Controls.

f. If dual/third country nationals are requested pursuant to §124.8(5) on an electronic agreement/amendment submission, the countries of the dual/third country nationals requested must be entered into Block 18 of the DSP-5 vehicle. For submissions requesting dual/third country nationals pursuant to §124.16, a statement indicating this request should be included in Block 20 of the DSP-5 vehicle. There is not a requirement to list §124.16 approved countries in Block 18 on such requests. For dual/third country nationals pursuant to §124.8(5), the applicant must complete Block 18 of the DSP-5 vehicle as follows:

- NAME – Third Country National
- ADDRESS – TCN
- CITY – TCN
- COUNTRY – Enter country of the Dual/Third Country National
- ROLE - TCN

3.7 Country Specific Exemptions for Dual/Third Country Foreign Nationals

a. Canada. The State Department has concluded an arrangement with the Canadian Department of National Defense (DND), Canadian Communications Security Establishment (CSE), the Canadian Space Agency (CSA), and The National Research Council Canada (NRC) with respect to access to ITAR controlled items by Canadian citizens who are dual nationals. These agencies have agreed to restrict access to ITAR controlled items to its employees who are issued a minimum SECRET-level security clearance by the Canadian Government. They further intend to ensure SECRET-level security clearances are not granted to personnel with ties to known terrorist groups or who maintain significant ties to foreign countries, including those countries to which exports and sales of ITAR controlled defense articles and services are prohibited.

(1) The State Department has revised its export authorizations, mitigating the requirement for specific identification of nationals of a third country (to include dual nationals) and execution of Non Disclosure Agreements for those employees of the four agencies requiring access to ITAR controlled defense articles and services if they possess a minimum SECRET-level security clearance.

(2) This applies only to the CSE, CSA, NRC and DND and is not extended to private companies in Canada.

(3) If requesting dual/third country national employees who qualify for the Canadian Exemption, the following clause should be added:

> "Employees of (Select all applicable - the Canadian Department of National Defense (DND); Canadian Communications Security Establishment (CSE); the Canadian Space Agency (CSA); The National Research Council Canada (NRC)) who are nationals of a third country (including dual nationals) are authorized. The requirement to identify the nationalities of and have nationals of a third country (to include dual nationals) sign Non-Disclosure Agreements does not apply to personnel who hold a security clearance of Secret and above, which includes Canadian Forces members, civilian employees, embedded contractors, and employees of other government departments working within the (Select all applicable - CDND, CSE, CSA or CNRC)."

b. Australia. The State Department has concluded an arrangement with the Australian Department of Defence (ADOD), with respect to access to ITAR controlled items by dual nationals. These agencies have agreed, when an agreement includes the Australian Department of Defense as a foreign licensee, or when the Australian Department of Defense is identified as an end-user, to mitigate the requirement for specific identification of nationals of a third country (to include dual nationals) and execution of Non Disclosure Agreements for those employees who hold an ADOD security clearance and who do not hold nationality of a country proscribed by §126.1. Employees who hold nationality of a country proscribed by §126.1 are not authorized. If requesting dual/third country national employees who qualify for the Australian Department of Defence Exemption, the following clause must be added:

> "Employees of the foreign licensees/sub-licensees who are nationals of a third country (including dual nationals) who hold an Australian Department of Defence (ADOD) security clearance and who do not hold nationality of a country proscribed by §126.1 are authorized and exempted from the requirement to sign Non-Disclosure Agreements (NDAs). Employees who hold nationality of a country proscribed by §126.1 are not authorized."

c. The Netherlands. The State Department has concluded an arrangement with the Netherlands Ministry of Defense (NMOD) with respect to access to ITAR controlled items by nationals of a third country (to include dual nationals). Hence, the State Department has revised its export authorizations mitigating the requirement for specific identification of nationals of a third country (to include dual nationals) and execution of Non Disclosure Agreements for those individuals who hold a security clearance of Secret and above, and are Netherlands force members, civilian employees, embedded contractors and employees of other government departments working within The NMOD. If requesting dual/third country national employees who qualify for The NMOD, the following clause must be added:

> "Employees of the Netherlands Ministry of Defense (NMOD) who are nationals of a third country (including dual nationals) are authorized. The requirement to identify the nationalities of and have nationals of a third country (including dual nationals) sign Non-Disclosure Agreements (NDAs) does not apply to personnel who hold security clearances of Secret and above, which includes Netherlands Forces members, civilian employees, embedded contractors and employees of other government departments working within The NMOD."

3.8 Foreign Persons Employed in the U.S. or Abroad by a U.S Person

a. DDTC has a long-standing policy to authorize the employment of a foreign person by a U.S. person on a DSP-5 as an exception to the requirement for a technical assistance agreement (TAA) in accordance with §124.1(a). In the past, DDTC required a TAA in addition to the DSP-5 to authorize the U.S. person to transfer certain levels of technical data and defense services. However, DDTC has now determined this "double" licensing to be unnecessary. Hence, all foreign person employees must be licensed on a DSP-5 (or DSP-85) only. Foreign person employees will no longer be authorized to serve as individual signatories to an agreement.

b. In order to clearly articulate the nationality of all employees participating in an agreement, all new agreement requests submitted to DTCL must include a statement under §124.7(4) - *Transfer Territory*, identifying the nationality of foreign person employees of all U.S. signatories participating in the agreement. For existing agreements, if the foreign person employees are not already identified, this statement should be included in the next amendment submitted to DTCL for approval.

c. For existing agreements where a foreign person employee is currently a signatory to the agreement, approved authorizations are still valid. However, where a foreign person employee is authorized only under a TAA, applicants must submit DSP-5 requests for foreign person employment of these individuals. Likewise, where a foreign person employee licensed under a DSP-5 has additional authorization as a signatory to an agreement, the applicant must review these DSP-5s and replace them as required to ensure the scope of the agreement is covered under the scope of the DSP-5. Once these DSP-5s are replaced, agreements with foreign person employees as signatories should be amended to remove these individuals or terminated as necessary. (See Licensing of Foreign Persons Employed by a U.S. Person – UPDATED available at http://www.pmddtc.state.gov/licensing/guidelines_instructions.html)

d. Foreign person employees do not need to be identified in the DSP-5 vehicle associated with the agreement.

3.9 Contract Employees

Contract employees are frequently hired through staffing agencies or other contract employee providers by both U.S. and foreign companies.

a. U.S. Company Contract Employees

(1) When a U.S. company (agreement applicant) hires contract employees through U.S. staffing agencies or other U.S. contract employee providers, there is no requirement for the U.S. staffing agency or other contract employee provider to be identified as signatories to the agreement, so long as:

- The employing party (agreement applicant) assumes full responsibility for the contract employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

- This applies regardless to whether these contract employees will have access to defense articles to include technical data, or will be involved with the provision of defense services to a foreign person under an approved agreement.

(2) When a U.S. company (agreement applicant) hires contract employees through a foreign staffing agency or contract employee provider, and contract employees will have access to defense articles to include technical data, and defense services, the foreign staffing agency or contract employee provider must be a signatory to the agreement.

(3) When a U.S. company (agreement applicant) hires a contract employee through a U.S. staffing agency or contract employee provider and the contract employee is a foreign person, either the U.S. staffing agency/ contract employee provider or the agreement applicant must obtain a Foreign Person Employment DSP-5 for that individual.

- If the US staffing agency or contract employee provider is not in the business of providing defense services independently of the contract entered into as related to the specific agreement, then the U.S. company (agreement applicant) is responsible for obtaining the DSP-5 license for Foreign Person Employment.

- If the US staffing agency or contract employee provider is registered with DDTC and is in the business of providing defense services beyond the specific agreement, then the staffing agency or contract employee provider is responsible for obtaining the DSP-5 license for Foreign Person Employment and must ensure the U.S. company (agreement applicant) is identified in Block 15 of the DSP-5.

4. See Licensing of Foreign Persons Employed by a U.S. Person – UPDATED available at http://www.pmddtc.state.gov/licensing/guidelines_instructions.html. The Foreign Person Employee cannot be a signatory to the agreement.

b. Foreign Company Contract Employees

(1) When a foreign company (foreign licensee/foreign sub-licensee) hires contract employees through foreign staffing agencies or other contract employee providers, there is no requirement for the foreign staffing agency or other contract employee provider to be identified as signatories to the agreement, so long as:

- The transfer of defense articles to include technical data and the provision of defense services are limited only to the specific contract employees and NOT to the staffing agency or contract employee provider itself. Transfer/retransfer of defense articles to include technical data to the parent staffing agency or contract employee provider, either directly from the parties to the agreement, or indirectly from the contract employees, IS NOT authorized.

- The foreign staffing agency or contract employee provider is not in the business of providing defense services independently of the contract entered into as related to the specific agreement.

- The employing party (foreign licensee/foreign sub-licensee) assumes full responsibility for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

(2) When a foreign company (foreign licensee/foreign sub-licensee) hires a contract employee through a staffing agency or contract employee provider, and the contract employee is a dual or third country national, the applicant must obtain authorization from the Department of State prior to any transfer to the dual or third country national employee.

c. Any agreement request submitted to DTCL must recognize the existence of contract employees if they are employed by any signatory or sub-licensee to the agreement. When contract employees do exist, the following clause must be added:

> "Contract employees to any party to the agreement hired through a staffing agency or other contract employee provider shall be treated as employees of the

> party, and that party is legally responsible for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services. Transfers to the parent company by any contract employees are not authorized. The party is further responsible for certifying that each employee is individually aware of their responsibility with regard to the proper handling of ITAR controlled defense articles, technical data, and defense services."

c. Additionally, the above clause must be added to any NDA executed by sub-licensees when the sub-licensee hires contract employees.

3.10 Use of Collective Language

a. Defining territories for the transfer of defense articles or the provision of defense services based on a collective organization (e.g., NATO, EU, AU) is not authorized. Any proposed agreement submitted to DTCL must specifically list the countries of the collective organization since membership in such collective organizations is subject to change. Once all countries are identified, the applicant may use the collective term rather than re-addressing each of the collective members.

b. The use of the collective terms NATO and EU are only authorized when addressing dual/third country foreign national employees pursuant to §124.16.

3.11 Utilization of Law Firms and Consultants

A number of applicant's rely on law firms and consultant firms to assist in the development and submission of proposed agreements to DTCL. This is an acceptable practice that is often encouraged for companies new to the defense trade business. When an applicant chooses to utilize a law firm or consultant firm to assist them, both the applicant and the firm must adhere to the following:

a. Written correspondence on behalf of the applicant (registered party) to include transmittal letters, certification letters, and proposed agreements must be submitted on applicant or registered party letterhead.

b. All written correspondence must be signed by an empowered official of the registered party (certification letter, transmittal letter) or a direct employee of the registered party (transmittal letter only). Law firms and consulting firms are not authorized to sign on behalf of the applicant or registered party.

c. As part of the transmittal letter submitted to DTCL, the applicant must specifically state that the law firm or consultant firm is authorized to conduct business on behalf of the applicant.

3.12 Agreements Submitted in Support of OIF/OEF

a. It is the policy of the Department of State to expedite all requests for exports directly supporting our coalition efforts in Operation Iraqi Freedom (OIF) in Iraq and Operation Enduring Freedom (OEF) in Afghanistan. To ensure these priority operations are fully supported, the Department of State has updated its procedures to ensure only requests directly related to OIF/OEF operations are afforded this expedited review. Henceforth, proposed agreements that may undergo OIF/OEF expedited review are limited to those that provide:

(1) Defense articles and defense services to forces or organizations deployed in Afghanistan and Iraq.

(2) Defense articles and defense services to forces or organizations within 90 days of a scheduled deployment.

b. Based on the above criteria and the nature of an agreement itself, many activities previously considered to be in support of OIF/OEF will no longer be processed for OIF/OEF expedited review. Agreement requests requesting OIF/OEF expedited handling not meeting these criteria may be returned without action.

c. Requests meeting the OIF/OEF criteria stated above must be noted as such in Block 10 of the DSP-5 vehicle, as well as on the attached cover page of the Transmittal Letter. These cases will automatically be expeditiously routed to the appropriate division/agreements officer.

d. Supporting Documentation: The following must be included in OIF/OEF requests:

(1) As part of the transmittal letter, provide a clear explanation of the transaction, along with justification to support expedited processing as OIF/OEF based on the above criteria.

(2) A complete copy of the contract or purchase order applicable to the proposed export.

(3) For agreements in support of U.S. Government contracts, a letter from the appropriate service or agency identifying the specific export to be an urgent requirement in support of OIF or OEF.

(4) For exports to coalition partners, a letter from the partner government confirming the transaction and that it is in support of OIF or OEF.

(5) A copy of product specifications/descriptive literature that clearly details the commodities requested for export.

SECTION 4.0 Certification Letter (§ 126.13)

As directed in §126.13, all requests for licenses, all requests for agreements or amendments thereto under part 124 of the ITAR, all requests for written authorizations (to include proviso reconsiderations) must include a letter signed by a responsible official empowered by the applicant addressed to the Directorate of Defense Trade Controls. This requirement is satisfied by the statement included in Block 22 of the DSP-5 vehicle. A separate attached letter is unnecessary unless an empowered official has not "certified" the submission via the DSP-5 vehicle (i.e., marked item "a" or "c" in Block 22). If the DSP-5 vehicle is not certified, then a separate certification letter (See Section 4.0 and Tab 1 to Appendix A) must be attached.

4.1 Elements of a Certification Letter (§126.13)

Certifications will address the following items:

(1) Whether the applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27.

(2) Whether the applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government;

(3) Whether to the best of the applicant's knowledge, any party to the export as defined in §126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government; and

(4) Whether the natural person signing the application, notification or other request for approval (including the statement required by this subsection) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States.

NOTE: In Paragraph (4) above, the applicant is required to identify one of the three options—not list all three.

4.2 Additional Guidance for Attached Certification Letter

a. When required, certification letters may be submitted as a separate attachment or as part of the transmittal letter of the agreement or amendment to agreement.

b. "Signing for" the empowered official on certification letters is not authorized. It must be signed by the empowered official identified in the signature block.

c. Certification letters must be on Applicant Letterhead. When consultant firms or law firms are hired by applicants to draft requests, do not submit certification letters on consultant firm or law firm letterhead.

d. Certification letters must include a specific identifier that relates the certification letter to the submitted request. The applicant can use a common internal tracking number reference or include the Commodity Line of the request as a reference in the header of the certification letter.

e. For a sample format of a Certification Letter, See Appendix A, Tab 1.

SECTION 5.0 New Technical Assistance or Manufacturing License Agreements

5.1 Transmittal Letter

The Transmittal Letter serves as an explanatory letter as prescribed under §124.12 providing an executive summary of the proposed agreement. The letter provides specific export and technical information as required by §124.12 and these guidelines, and is for U.S. Government use only. Submissions that fail to address §124.12 requirements or the requirements specified in these guidelines will result in processing delays and may result in requests being returned without action. (See Sample in Appendix A, Tab 2)

a. Header and Preamble Information

(1) The header on the first page of the transmittal letter provides DTCL with critical information that ensures requests are properly received, distributed, processed, and returned to the applicant. Elements of the header must include:

- The date of the letter

- DDTC Applicant Code

- USML categories related to the request

- Applicant mailing address (This address will be used on completed requests, and unless otherwise specified, where the completed request will be sent)

- If a request meets the requirements for expedited processing for OIF or OEF (See Section 3.6) or §126.15, the applicant must clearly label the request as such.

(2) Transmittal Letters submitted to DTCL should be addressed to:

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

(3) The subject line for transmittal letters to new agreements should read as "Proposed Technical Assistance Agreement for (commodity and end-user) or Proposed Manufacturing License Agreement for the manufacture of (commodity)." There is no longer a requirement to list all U.S. signatories and foreign licensees in the subject line.

(4) References: List previous relevant agreements, licenses, general correspondence submissions, and FMS cases if applicable.

(5) Preamble: The preamble to the transmittal letter provides the reviewing officer with a concise description of what the package includes and the purpose (to include commodity) of the request.

(6) Background: Provide a brief executive summary of the proposed agreement. This section should be no longer than one page, preferably in bullet format, and include:

- A general scope of effort to include defense articles and defense services provided

- Description of the roles each party and state who the end-users are

- A short review of the commodity or program as necessary

- Information on the type of technology or data that will be transferred. Attachments can be included that contain more detailed information, but a short description is still required

- Any known precedent of export that may pertain to this agreement

b. Required Information per §124.12 (a)

(1) §124.12 (a)(1): Provide your DDTC registration number. (Note: Registration does not confer any export rights or privileges. It is a precondition to the issuance of an export authorization. Registration requirements are covered in §122.1)

(2) §124.12 (a)(2): Provide a statement identifying the licensees and the scope of the agreement. This section must include:

- The name and specific addresses (P.O Box is not sufficient) of foreign licensee(s)

- The name and specific addresses of U.S. signatories

- A brief description of the commodity or program, and tasks to be performed, to include the end-use

- Date of Expiration (Compliant with Section 3.1 of these guidelines)

(3) §124.12 (a)(3): A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government (If none, the applicant must so state). Include any relationship to any Foreign Military Sales (FMS) cases, and identify the cognizant U.S. military service.

(4) §124.12 (a)(4): A statement giving the military security classification of the equipment or technical data to be transferred. The applicant must provide the highest U.S.

military security classification or any foreign classification. Security classifications consist of "Unclassified", "Confidential", "Secret", or "Top Secret".

(5) §124.12 (a)(5): A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office. If so, the patents must be listed herein.

(6) §124.12 (a)(6): Applicant must provide a statement indicating the actual or estimated value of the agreement, broken out as described in Section 3.3 of these guidelines and provided in the format identified in Table 5.1.

Technical Data and Defense Services	$600,000
Hardware Permanent Export by DSP-5 or DSP-85 Temporary Export by DSP-73 or DSP-85 Temporary Import by DSP-61 or DSP-85 Total Licensed Hardware	 $500,000 $200,000 $100,000 $800,000
Hardware Manufactured Abroad (MLA only)	N/A
AGREEMENT TOTAL VALUE	$1,400,000

Table 5.1 Agreement Valuation

- If the value of the agreement is $500,000 or more, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to part 130 of this subchapter. This statement will be made in Block 22 of the DSP-5 vehicle. For additional guidance on Part 130 statements, see Section 3.4 of these guidelines.

- If the agreement requires Congressional Notification, an additional statement indicating whether an offset agreement is proposed to be entered into in connection with the agreement and a description of any such offset agreement must be included. For Congressional Notification requirements, see Section 14.0 of these guidelines.

(7) §124.12 (a)(7): Applicant must provide a statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(8) §124.12 (a)(8): The agreement must describe any classified information involved (U.S. or foreign) and identify, from DoD form DD 254, the address and telephone number of the U.S. Government office that classified the information and the classification source (i.e., document) for U.S. classified information. If no classified information is involved, so state, but do not omit.

(9) §124.12 (a)(9): For agreements that may require the export of classified information, or import of Foreign Classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall

be identified. The facility security clearance codes of the U.S. parties shall also be provided. If no classified information is involved, so state, but do not omit.

(10) §124.12 (a) (10): The applicant must state whether retransfer pursuant to §124.16 is requested. "This agreement (does/does not) request retransfer of defense articles and defense services pursuant to §124.16."

- Immediately following the §124.12(a)(10) clause, the applicant should provide a statement whether Dual/Third Country Nationals pursuant to §124.8 (5) are requested.

NOTE: The §124.8 (5) statement is not a replacement for the **§**124.12(a)(10) clause.

- If Dual/Third Country Nationals are requested, list the article, section, or paragraph, and page number of the agreement where a description of dual/third country nationals is located.

c. Required Information per §124.12 (b). The following statements must be included verbatim as written in §124.12(b).

(1) If the agreement is approved by the Department of State, such approval will not be construed by the applicant as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will the applicant construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.

(2) The applicant will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

(3) The applicant will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to the expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days.

(4) If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., § 124.8 and §124.9).

- Immediately following the §124.12(b)(4) clause, the applicant should provide a statement whether sub-licensing rights are granted to the foreign licensee(s) under the agreement.

NOTE: This is not a replacement for the **§**124.12(b)(4) verbatim clause. Do not omit **§**124.12(b)(4).

- If sub-licensing rights are granted, list the article, section, or paragraph, and page number of the agreement where a description of the arrangements is located. See Section 3.2 of these guidelines for information on sub-licensing.

d. Additional Information Requested. To facilitate U.S. Government consideration of this request, letters of transmittal should address the following:

(1) Hardware Exports and Imports: Make one of the following statements regarding hardware:

- "No defense articles will be shipped in furtherance of this agreement. Only technical data and/or other defense services will be provided."

- "Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5, DSP-73, DSP-61, DSP-85)."

(2) U.S. Munitions List Categories (USML):

- Identify all USML categories the agreement relates to.

- Specify whether technical data and hardware are/are not designated as Significant Military Equipment (SME).

- If the agreement involves the transfer of classified technical data or technical data for the manufacture of SME abroad, state whether a Non-transfer and Use Certificate (Form DSP-83), is/is not attached in accordance with §124.10. If the agreement involves the transfer of SME or classified defense articles, state that a DSP-83 will be submitted as part of the DSP-5 or DSP-85 license request.

(3) Congressional Notification Requirements:

- Insert a statement as to whether or not the proposed agreement requires Congressional Notification. (See Section 14.1 for Congressional Notification thresholds)

- If such notification is required, the applicant should reference the location of the attached Executive Summary for Congressional Notification, the signed contract between the applicant and the foreign licensee, and reference or provide a description of any direct or indirect offsets associated with the agreement.

(4) Provide point of contact information to include phone number and e-mail address.

(5) If utilizing a law firm or consulting firm, the applicant must provide a statement that the firm is authorized to do business on the applicant's behalf, and define what activities they are authorized to conduct (i.e., submit information, serve as a point of contact, pick-up completed requests) and provide firm point of contact information.

(6) The transmittal letter should be signed, preferably by an empowered official; however, it is not the practice of DTCL to return requests without action when the transmittal letter is unsigned unless the Certification Letter per §126.13 (see Section 4.0) is included as part of the transmittal letter. Additionally, transmittal letters must be signed by an empowered official when allowing law firms or consulting firms to conduct business on behalf of the applicant. Transmittal letters may be signed using digital signatures.

5.2 Proposed Agreement

The agreement is the official part of the submission package that will be signed by the applicant, all U.S. signatories, and all foreign parties, and serves as the medium for detailing the scope of the effort and the roles and responsibilities of each participant with regards to the control of USML defense articles and associated technical data and information. It is the only part of the submission package that the foreign party(ies) must see, since it requires their approval and signature. (See Sample at Appendix A, Tab 3)

a. General Guidance

(1) It is recommended that the agreement be reviewed by the foreign party prior to submitting to DTCL so that the parties can work out problems with the language or details on the transaction.

(2) In the official approval from DTCL, the applicant may be directed to make changes to the agreement via provisos. These changes must be made prior to signing by the parties.

(3) Do not embed an ITAR agreement into a business contract. These types of agreements are not suitable for the purpose described in these guidelines.

(4) The applicant must state each clause in §124.8 verbatim from the ITAR and is not allowed to alter them in any way. Modifications to these clauses will result in disapproval of the request. For MLAs, the applicant must also include required clauses per §124.9.

b. Preamble Information and Introductory Information

(1) The preamble to the proposed agreement must clearly identify all parties to the agreement and include specific addresses for each party.

(2) Whereas clauses should be used to describe the program itself and identify the roles and responsibilities of each party to the agreement.

(3) Provide a concise summary of the program or agreement to include a general scope of the effort.

(4) Include the following statements at the conclusion of the introduction:

- It is understood that this Technical Assistance (or Manufacturing Licensing) Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.

- The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

c. §124.7 Requirements. The requirements identified under §124.7 must be addressed in all proposed technical assistance and manufacturing license agreements.

(1) §124.7(1). The applicant must describe the defense article (hardware) to be manufactured and all defense articles (hardware) to be exported or temporarily imported in furtherance of the agreement. Defense articles (hardware) designated as SME must be described either by military nomenclature, contract number, National Stock Number, name plate data, or other specific information.

- The applicant may address defense articles (hardware) in a separate attachment to the request but must reference the attachment under §124.7(1).

- The applicant must clearly differentiate between defense articles to be manufactured, and defense articles to be exported or temporarily imported in furtherance of the agreement.

- If no hardware is being manufactured or exported, then so state.

- Values of the defense articles do not need to be stated in the agreement.

Note: Only defense articles described in the agreement or on an addendum sheet and referenced herein will be eligible for export or temporary import by separate license. (i.e., DSP-5, DSP-73, DSP-61, DSP-85.)

(2) §124.7 (2). The applicant must describe the assistance and technical data, to include any design and manufacturing know-how involved. The applicant may address the assistance and technical data in a separate attachment to the request but must reference the attachment under §124.7(2).

(3) §124.7 (3). The applicant must specify the duration of the agreement. The duration must be the specific expiration date. (See Section 3.1)

(4) §124.7 (4). The applicant must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed. More specifically, the applicant must address:

- Countries of all Foreign Signatories

- End-Use and End-Users (Ensure end-user is identified in Block 14 of the DSP-5 vehicle if not a foreign licensee)

- Proposed Sales Territories (Ensure each sales territory is identified in Block 18 of the DSP-5 vehicle)

- Proposed Marketing Territories (Ensure each marketing territory is identified in Block 18 of the DSP-5 vehicle)

- Sub-licensing and Retransfer. If Sub-licensing and Retransfer is not requested, the applicant must specifically state that sub-licensing/retransfer is not authorized. (See Section 3.2)

- Dual Nationals and Third Country Nationals. If Dual and Third Country Nationals are not requested, the applicant is no longer required to state such in this section (the required §124.8(5) clause is sufficient for identifying no dual/third country nationals). (See Section 3.5 through 3.7)

- Foreign Persons Employed by the U.S. applicant or any U.S. signatories that will participate in the program (Identified by country of the foreign person employed only. Identification by name is not required.)

d. §124.8 Requirements. The following statements must be included verbatim as written in the ITAR.

(1) §124.8 (1). This agreement shall not enter into force, and shall not be amended or extended without the prior written approval of the Department of State of the U.S. Government.

(2) §124.8 (2). This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

(3) §124.8 (3). The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

(4) §124.8 (4). No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.

(5) §124.8 (5). The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured

from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

(6) §124.8 (6). All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

e. §124.9(a) Requirements (for MLAs only). The following statements must be included verbatim as written in the ITAR for all MLAs.

(1) §124.9(a)(1). No export, sale, transfer or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.

(2) §124.9(a)(2). It is agreed that sales by licensee or its sub-licensees under contract made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-fee license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

(3) §124.9(a)(3). If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

(4) §124.9(a)(4). If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a)(2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data.

Note: Be sure you properly reference the paragraph numbering system used in the agreement and not just repeat the ITAR numbering

(5) §124.9(a)(5). The parties to this agreement agree that an annual report of sales or other transfer pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State.

Note: This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b).

(6) §124.9(a)(6). (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the licensed articles are sold or otherwise transferred:

> These commodities are authorized for export by the U.S. Government only to *(state the country of ultimate destination or approved sales territory. Do not use collective terminology).* They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

Note: This clause is written for the foreign licensee. Fill in the parenthetical with the country of ultimate destination or the sales territory. This may be the United States.

f. §124.9(b) Requirements (for MLAs for the production of SME). The following statements must be included verbatim from the ITAR for all MLAs for the production of SME.

(1) §124.9(b)(1). A completed Non-transfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place.

(2) §124.9(b)(2). The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory.

g. Signature Page. All proposed agreements submitted to DTCL must include a signature page with all U.S. Parties and all Foreign Licensees addressed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year of the last signature of this agreement *(or)* upon approval of the Department of State *(if a signed agreement was submitted and no modifications were directed by proviso).*

_____ _____

(signature block for U.S. person) (signature block for foreign person)

_____	_____
(signature block for foreign person)	(signature block for foreign person)

Table 5.2 – Sample Signature Page

SECTION 6.0 Amendments to TAA or MLA

Once an agreement is approved by DTCL, any changes to the agreement must be made via an amendment. §124.1 identifies two different types of amendments that can be submitted to existing agreements.

§124.1(c) Amendments - Changes to the scope of approved agreements, including modifications, upgrades, or extensions…. These amendments may not enter into force until approved by the Directorate of Defense Trade Controls.

Note: Due to limitations with D-Trade 2, the license reference number for the related amendments will not be numbered sequentially (i.e., 1810-05, 1810-05A, 1810-05B, etc.) but shall vary. For example, Amendment A for TAA 050312345 could result in a case number of 050313897, while Amendment B could result in a case number of 050320040, and so on.

§124.1(d) Minor Amendments - Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. Once a minor amendment is signed by the respective parties, applicants must upload an electronic copy to the latest approved amendment or to the basic agreement (if no amendment) within 30 days after the minor amendment is concluded. (See Section 17.4)

6.1 Transmittal Letter

The Transmittal Letter for an amendment is similar to that for new agreements (Section 5.1) in that it serves as an explanatory letter as prescribed under §124.12. An amendment transmittal letter is actually a replication of the agreement transmittal letter except it specifically identifies what changes are being requested. The applicant identifies changes in the transmittal letter by annotating "NO CHANGE" or "CHANGE" after each required §124.12 statement. It is also recommended that all changes be bolded for ease of review. (See Sample in Appendix A: Tab 6)

a. Header and Preamble Information

(1) The header on the first page of the amendment transmittal letter provides DTCL with critical information that ensures requests are properly received, distributed, processed, and returned to the applicant. There is no difference in the information required on the header of an agreement and amendment transmittal letter.

(2) Transmittal Letters for amendments should be addressed to:

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

(3) The subject line for transmittal letters for amendments to agreements must state "Proposed Amendment No. xx to Technical Assistance Agreement xxxx-xx for (commodity line)" or "Proposed Amendment No. xx to Manufacturing License Agreement xxxx-xx for the manufacture of (commodity)."

(4) References: Cite original DTCL case number, plus any additional as required.

(5) Preamble: The preamble to the transmittal letter provides the reviewing officer with concise description of what the package includes, the purpose (to include commodity) of the request as it currently exists, and the specific modifications requested as part of the amendment request.

(6) Background: Provide a brief executive summary of the purpose of the proposed amendment to include:

- The Objective of the Amendment. Provide a full list of the changes being requested in this submission. Any changes not requested in this list but included in the submission may not be reviewed or approved. The list should be provided in bullet format and include a short explanation of why each change is being made. Examples of modifications include but are not limited to:

- Expand scope to include:
  - Addition of new hardware
  - Expansion of Statement of Work
  - Transfer of additional technical data
  - Expansion of sales or marketing territory (new countries)
  - Addition of new programs
- Extend term of agreement from (current date) to (proposed date)
- Add U.S. or foreign parties
- Change name of U.S. or foreign signatory from (company) to (company)
- Increase value of agreement
- Moderate increase of approved hardware for export

- Original Purpose of the Agreement. Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, what is the scope of the effort, and an explanation of the commodity or program.

- Relationship to the Original Agreement. Briefly summarize modifications made in each previously approved amendment. Additionally, note status and date submitted for any pending amendments. Explain how the modifications in the current request relate to what was originally approved. Describe any new technology (technical data) that will be transferred with this amendment. State whether any precedence of exports has been approved that may relate or pertain to this amended request. Attachments can be referenced with more detailed information, but a short description is still required here.

b. Required Information per §124.12 (a)

(1) All §124.12 (a) information must be restated as written in the approved agreement unless a change is being requested to that specific article as part of the proposed amendment. When no change to the specific §124.12 (a) article is proposed, add "NO CHANGE" to the end of the statement. If a change to the article is proposed, add "CHANGE" to the end of the statement and bold the portion of the article that is changed.

(2) For §124.12 (a)(6) For all amendments, the total value change and new totals for each row on the table must be provided. (See Table 6.1) If there is no value, identify $0 in the amendment value column blank. The applicant must also ensure the Part 130 Statement is restated.

	Currently Approved	Proposed Amendment	New Total
Technical Data and Defense Services	$600,000	$100,000	$700,000
Hardware			
Permanent Export by DSP-5 or DSP-85	$500,000	$200,000	$700,000
Temporary Export by DSP-73 or DSP-85	$200,000	$0	$200,000
Temporary Import by DSP-61 or DSP-85	$100,000	$0	$100,000
Total Hardware	$800,000	$200,000	$1,000,000
Hardware Manufactured Abroad (MLA only)	$1,500,000	$1,000,000	$2,500,000
TOTALS	$2,900,000	$1,300,000	$4,200,000

Table 6.1 The (a)(6) Valuation Table for Amendments

c. Required Information per §124.12 (b). The following statements must be included verbatim as written in §124.12(b).

(1) If the agreement is approved by the Department of State, such approval will not be construed by the applicant as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will the applicant construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.

(2) The applicant will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

(3) The applicant will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date the agreement is concluded and will inform the Department of its termination not less than 30 days prior to the expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days.

(4) If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., §124.8 and 124.9).

d. Prior Approval Summary. To facilitate U.S. Government consideration of this request, letters of transmittal for amendments should address the following:

(1) Sub-licensing. Make one of the following statements regarding Sub-licensing:

- "Sub-licensing was not previously authorized under this agreement."

- "Sub-licensing was previously authorized under this agreement as described in (Article or Section x.x)."

(2) Hardware. Make one of the following statements regarding Hardware:

- "No defense articles were previously authorized."

- "Defense articles for export in furtherance of this agreement were previously authorized and are described in (Article or Section x.x of the agreement)."

(3) Dual/Third Country Nationals. Make one of the following statements regarding Dual/Third Country Nationals:

- "Dual/Third Country Nationals were not previously authorized under this agreement."

- "Dual/Third Country Nationals were previously authorized under this agreement as described in (Article or Section x.x of the agreement)."

(4) Congressional Notification (only if agreement was previously notified). This agreement was previously notified under DTC # xx-xx pursuant to Article 36(c) and/or Article 36(d) on (month/day/year) for $xxx.xxx.xxxx. (If this information was not provided in a proviso from DTCL, provide the agreement/amendment number and calendar year of Notification)

- Insert a statement as to whether or not the proposed amendment will result in Congressional Notification (see Section 14.1 for Congressional Notification thresholds).

- If such Notification is required, the applicant should reference the location of an Executive Summary for Congressional Notification, a signed contract between the applicant and the foreign licensee, and a description of any direct or indirect offsets associated with the agreement.

e. Additional Information Requested. To facilitate U.S. Government consideration of this request, letters of transmittal for amendments should address the following:

(1) U.S. Munitions List Categories (USML):

- Identify all USML categories the agreement relates to.

- Specify whether technical data and hardware are/are not designated as Significant Military Equipment (SME).

- If the agreement involves the transfer of classified technical data or technical data for the manufacture of SME abroad, state whether a Non-transfer and Use Certificate (Form DSP-83), is/is not attached in accordance with §124.10. If the agreement involves the transfer of SME or classified defense articles, state that a DSP-83 will be submitted as part of the DSP-5or DSP-85 license request.

(2) Sales Report Summary. For all amendments to an MLA, provide a table reporting sales by year and with total sales to date. This table does not replace the need to submit annual sales reports in accordance with §124.9(a)(5). (For Sales Report Summaries of Re-baselined agreements, see Section 9.3.a.(3) of these Guidelines.)

Year	Dollar Value
2001	
2002	
2003	
Total	

(3) Provide point of contact information to include phone number and e-mail address.

(4) The transmittal letter should be signed, preferably by an empowered official.

6.2 Proposed Amendment

Like the agreement, the amendment is the official part of the submission package which is signed by all participating parties and serves as the medium for detailing the change to the effort. It is the only part of the submission package the foreign party(ies) must see, since it requires their approval and signature. (See Sample in Appendix A: Tab 7)

a. General Guidance

(1) It is recommended that the amendment be reviewed by the foreign party prior to submitting to DTCL so the parties can work out problems with the language or details on the transaction.

(2) In the official approval from DTCL, the applicant may be directed to make changes to the agreement via provisos. These changes must be made prior to signing by the parties.

(3) For amendments involving ONLY an increase of value of the agreement that does not result in Congressional Notification, a Letter of Transmittal per §124.12 and a Certification Letter per §126.13 (if not satisfied by Block 22 of the DSP-5 vehicle) are required. Since these changes do not impact the agreement itself, there is no requirement to submit any document for execution by all parties.

(4) DDTC will only accept amendments that have been "conformed" or consolidated. In other words, all major amendments MUST be submitted as entire agreements with proposed changes identified by bolded text (not "track changes"). Applications that simply describe which sections or articles to the agreement are being modified shall be Returned Without Action.

b. Preamble Information and Introductory Information

(1) The preamble to the proposed amendment must clearly identify all parties to the agreement and include specific addresses for each party.

(2) Whereas clauses should be used to describe the changes to the program itself and identify the roles of any new parties to the agreement.

(3) Provide a concise summary of the proposed changes to the agreement.

c. §124.7 Requirements. Proposed changes to §124.7 information must be integrated into (or removed from) the previously approved agreement when submitted. If a separate attachment or exhibit referenced in the base agreement is being modified, the applicant must submit a copy of the modified attachment or exhibit.

d. §124.8 and 124.9 Requirements. The applicant must restate the verbatim clauses of §124.8 and 124.9. If modifications are made to §124.9(a)(5) or §124.9(a)(6), the applicant must specifically state as such.

e. Signature Page. All proposed amendments that result in any modification to the agreement itself (not the transmittal letter) submitted to DTCL must include a signature page with all U.S. Parties and all Foreign Licensees addressed.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to Agreement No. xxxx-xx to be executed effective as of the day and year of the last signature of this amendment *(or)* upon approval of the Department of State *(if a signed amendment was submitted and no modifications are directed by proviso).*	
_____	_____
(signature block for U.S. person)	(signature block for foreign person)
_____	_____
(signature block for foreign person)	(signature block for foreign person)

Table 6.2 – Sample Signature Page

6.3 Minor Amendments or Changes Not Requiring DTCL Approval

a. In accordance with §124.1(d), the applicant can make "Minor Amendments" that do not require DTCL approval. These changes are limited to that which only alters delivery or performance schedules, or are minor administrative amendments which do not affect in any manner the duration or scope. In these cases, the applicant must submit a copy of these changes within 30 days of conclusion. If the changes are made prior to concluding (signing) the original agreement, then a separate submission is not required and the applicant can highlight or explain the changes in the cover letter provided with the copy of the concluded agreement.

b. The following changes can be made without DTCL approval as long as they in no way affect the scope of the agreement:

- Correct typos or minor mistakes in original submission.
- Correct address of a signatory (in the same country)
- Correct the official name of the foreign signatory (only minor name change)
- Makes minor language changes needed before parties will sign
- Removes a signatory from the agreement (**see Section 16.1.d.** of these guidelines)

For foreign licensee name changes, if an ownership change or other transfer has taken place, an amendment must be submitted in accordance §124.1(c) and receive approval by DDTC. For additional information on minor name changes of a foreign signatory, see **GCs for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change** available at http://www.pmddtc.state.gov/licensing/guidelines_instructions.html.

SECTION 7.0 New Warehouse and Distribution Agreements

7.1 Transmittal Letter

The Transmittal Letter serves as an explanatory letter as prescribed under §124.14 providing an executive summary of the proposed agreement. The letter provides specific export and technical information as required by §124.14 and these guidelines, and is for U.S. Government use only. Submissions that fail to address §124.14 requirements or the requirements specified in these guidelines will result in processing delays and may result in requests being returned without action. (See Sample in Appendix A, Tab 4)

a. Header and Preamble Information

(1) The header on the first page of the transmittal letter provides DTCL with critical information that ensures requests are properly received, distributed, processed, and returned to the applicant. Elements of the header must include:

- The date of the letter

- DDTC Applicant Code

- USML categories related to the request

- Applicant mailing address (This address will be used on completed requests, and unless otherwise specified, where the completed request will be sent)

- If a request meets the requirements for expedited processing in accordance with §126.15, the applicant must clearly label the request as such

(2) Transmittal Letters submitted to DTCL should be addressed to:

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

(3) The subject line for transmittal letters to new agreements should read as "Proposed Warehouse and Distribution Agreement for the supply and distribution of (commodity)." There is no longer a requirement to list all U.S. signatories and foreign licensees in the subject line

(4) References: List previous relevant agreements, licenses, general correspondence letters and FMS cases if applicable.

(5) Preamble: The preamble to the transmittal letter provides the reviewing officer with concise description of what the package includes, the U.S. and foreign parties involved, and the purpose (to include commodity) of the request.

(6) Background: Provide a brief executive summary of the proposed agreement. This section should be no longer than one page, preferably in bullet format, and include:

- A general scope of the effort to include defense articles and defense services provided.

- Description of the roles of each party and state who the end-users are.

- A short review of the commodity or program as necessary.

- Any known precedent of export that may pertain to this agreement.

b. Required Information per §124.12 (e)

(1) §124.14 (e)(1): Provide your registration number in format M####. (Note: Registration does not confer any export rights or privileges. It is a precondition to the issuance of an export authorization. Registration requirements are covered in §122.1)

(2) §124.14 (e)(2): Provide a statement identifying the foreign party to the agreement. This section must include:

- The name and specific addresses (P.O Box is not sufficient) of foreign licensee(s). (Must be included in Block 14 of the DSP-5 vehicle for electronic submissions)

- A brief description of the commodity or program, and tasks to be performed, to include end-use.

- Date of Expiration.

(3) §124.14 (e)(3): A statement identifying the defense articles to be distributed under the agreement.

(4) §124.14 (e)(4): A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other application to the U.S. Government. If none, the applicant must so state.

(5) §124.14 (e)(5): A statement that no classified defense articles or classified technical data are involved.

(6) §124.14 (e)(6): A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office. If so, the patents must be listed herein.

c. Required Information per §124.14(f). The following statements must be included verbatim as written in §124.14(f).

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to the expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

d. Additional Information Requested. To facilitate U.S. Government consideration of this request, letters of transmittal should address the following:

(1) Hardware Exports: Make the following statement regarding hardware:

- "Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5)."

(2) U.S. Munitions List Categories (USML):

- Identify all USML categories the agreement relates to.

- Specify whether defense articles are/are not designated as Significant Military Equipment (SME). (Generally, it is not the policy of DTCL to approve SME under a WDA unless exceptional circumstances exist.)

- If the agreement involves the transfer of SME defense articles, state that a DSP-83 will be submitted as part of the DSP-5 license request.

(3) Provide point of contact information to include phone number and e-mail address.

(4) If utilizing a law firm or consulting firm, the applicant must provide a statement that the firm is authorized to do business on the applicant's behalf, and define what activities they are

authorized to conduct (i.e., submit information, serve as a point of contact, pick-up completed requests) and provide firm point of contact information.

(5) The transmittal letter should be signed, preferably by an empowered official; however, it is not the practice of DTCL to return requests without action when the transmittal letter is unsigned unless the Certification Letter per §126.13 (see Section 4.0) is included as part of the transmittal letter. Additionally, transmittal letters must be signed by an empowered official when allowing law firms or consulting firms to conduct business on behalf of the applicant.

7.2 Proposed Agreement

The agreement is the official part of the submission package that is signed by all participating parties and serves as the medium for detailing the scope of the effort and the roles and responsibilities of each participant with regards to the control of the applicable USML defense articles. It is the only part of the submission package the foreign party must see since it requires their approval and signature. (See Sample in Appendix A, Tab 5)

a. General Guidance

(1) It is recommended that the agreement be reviewed by the foreign party prior to submitting to DTCL so that the parties can work out problems with the language or details on the transaction.

(2) In the official approval from DTCL, the applicant may be directed to make changes to the agreement via provisos. These changes must be made prior to signing by the parties.

(3) Do not embed an ITAR agreement into a business contract. These types of agreements are not suitable for the purpose described in these guidelines.

(4) The applicant must state each clause in §124.14(c) (and §124.14(d) for SME) verbatim from the ITAR and is not allowed to alter them in any way. Modifications to these clauses will result in disapproval of the request.

b. Preamble Information and Introductory Information

(1) The preamble to the proposed agreement must clearly identify all parties to the agreement and include specific addresses for each party.

(2) Whereas clauses should be used to describe the program itself and identify the roles of each party to the agreement.

(3) Provide a concise summary of the program or agreement to include a general scope of the effort.

(4) Include the following statements at the conclusion of the introduction:

- It is understood that this Warehouse and Distribution Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.

- The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

c. §124.14(b) Requirements. The requirements identified under §124.14(b) must be addressed in all proposed Warehouse and Distribution Agreements.

(1) §124.14(b)(1). The applicant must describe the defense articles (hardware) to be exported, including test and support equipment. Defense articles (hardware) should be described by military nomenclature, contract number, Federal Stock Number, name plate data, or other specific information.

- Only defense articles listed in the agreement will be eligible for export. The applicant may address defense articles (hardware) in a separate attachment to the request but must reference the attachment under §124.14(b)(1).

- The applicant must state the defense articles will be exported via separate license (e.g., DSP-5).

- The applicant must clearly differentiate between defense articles to be exported for replacement spare parts for equipment already in the inventory of the country of ultimate destination, and defense articles to upgrade or enhance the performance or capabilities of articles in the country of ultimate destination.

(2) §124.14(b)(2). The applicant must provide a detailed statement of the terms and conditions under which the defense articles will be exported and distributed.

(3) §124.14(b)(3). The applicant must specify the duration of the agreement. The duration must be the specific expiration date.

(4) §124.14(b)(4). The applicant must specifically identify the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory. Any deviation from this requirement must be fully explained and justified.

- Distribution territories must be identified under Block 18 of the DSP-5 vehicle. Private entities seeking to procure defense articles pursuant to a contract must be identified under Block 16 of the DSP-5 vehicle.

- The applicant may address the specific list of countries in a separate attachment to the proposed agreement but must reference the attachment under §124.14(b)(4).

d. §124.14(c) Requirements. The following statements must be included verbatim as written in the ITAR.

(1) §124.14(c)(1). "This agreement shall not enter into force, and may not be amended or extended without the prior written approval of the Department of State of the U.S. Government."

(2) §124.14(c)(2). "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(3) §124.14(c)(3). "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) §124.14(c)(4). "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(5) §124.14(c)(5). "No export, sale, transfer or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State."

(6) §124.14(c)(6). "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(7) §124.14(c)(7). (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

> "These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an

intermediate process into other end-items, without the prior written approval of the U.S. Department of State."

(8) §124.14(c)(8). "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

(9) §124.14(c)(9). Additional clause: Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all Warehouse and Distribution Agreements: "Sales or other transfers of the licensed article shall be limited to the governments of the countries in the distribution territory and private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

e. §124.14(d) Requirements (for distribution of SME). The following statements must be included verbatim as written in the ITAR for all WDAs for the distribution of SME.

(1) §124.14(d)(1). "A completed Non-transfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place."

(2) §124.14(d)(2). "The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory."

f. Signature Page. All proposed agreements submitted to DTCL must include a signature page with all U.S. Parties and all Foreign Licensees addressed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year of the last signature of this agreement *(or)* upon approval of the Department of State *(if a signed agreement was submitted and no modifications are directed by proviso).*	
_____	_____
(signature block for U.S. person)	(signature block for foreign person)
_____	_____
(signature block for foreign person)	(signature block for foreign person)

Table 7.1 – Sample Signature Page

SECTION 8.0 Amendments to WDAs

Once an agreement is approved by DTCL, any changes to the agreement must be made via an amendment. §124.1 identifies two different types of amendments that can be submitted to existing agreements.

§124.1(c) Amendments - Changes to the scope of approved agreements, including modifications, upgrades, or extensions. These amendments may not enter into force until approved by the Directorate of Defense Trade Controls.

§124.1(d) Minor Amendments - Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. Applicants must upload an electronic copy of each minor amendment, signed by all parties, to the latest approved amendment or to the basic agreement (if no amendment) within 30 days after the minor amendment is concluded. (See Section 17.4)

8.1 Transmittal Letter

The Transmittal Letter for an amendment is similar to that for new agreements (Section 7.0) in that it serves as an explanatory letter as prescribed under §124.14. An amendment transmittal letter is actually a replication of the agreement transmittal letter except it specifically identifies what changes are being requested. The applicant identifies changes in the transmittal letter by annotating "NO CHANGE" or "CHANGE" after each required §124.14 statement. It is also recommended that all changes be bolded for ease of review. (See Sample in Appendix A, Tab 8)

a. Header and Preamble Information

(1) The header on the first page of the amendment transmittal letter provides DTCL with critical information that ensures requests are properly received, distributed, processed, and returned to the applicant. There is no difference in the information required on the header of an agreement and amendment transmittal letter.

(2) Transmittal Letters for amendments should be addressed to:

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

(3) The subject line for transmittal letters for amendments to agreements must state "Proposed Amendment No. xx to Warehouse and Distribution Agreement xxxx-xx for (commodity.)"

(4) References: Cite original DTCL case number, plus any additional as required.

(5) Preamble: The preamble to the transmittal letter provides the reviewing officer with concise description of what the package includes, the purpose (to include commodity) of the request as it currently exists, and the specific modifications requested as part of the amendment request.

(6) Background: Provide a brief executive summary of the purpose of the proposed amendment to include:

- The Objective of the Amendment. Provide a full list of the changes being requested in this request. The list should be provided in bullet format and include a short explanation of why each change is being made. Examples of modifications include but are not limited to:

- Expand scope to include:
  - Addition of new hardware.
  - Expansion of distribution territory (new countries).
- Extend term of agreement from (current date) to (proposed date).
- Change name of U.S. or foreign signatory from (company) to (company).

- Original Purpose of the Agreement. Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, the scope of the effort, and an explanation of the commodity or program.

- Relationship to the Original Agreement. Briefly summarize modifications made in each previously approved amendment. Additionally, note status and date submitted for any pending amendments, as well. Explain how the modifications in the current request relate to what was originally approved. State whether any precedence of exports has been approved that may relate or pertain to this amended request. Attachments can be referenced with more detailed information, but a short description is still required here.

b. Required Information per §124.14(e). All §124.14(e) information must be restated as written in the approved agreement unless a change is being requested to that specific article as part of the proposed amendment. When no change to the specific §124.4(e) article is proposed, add "NO CHANGE" to the end of the statement. If a change to the article is proposed, add "CHANGE" to the end of the statement and bold the portion of the article that is changed.

c. Required Information per §124.14(f). The following statements must be included verbatim as written in §124.14(f).

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's

approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to the expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

d. Prior Approval Summary. To facilitate U.S. Government consideration of this request, letters of transmittal for amendments should address the following:

(1) Hardware. Identify the previously authorized hardware:

- "Defense articles for export in furtherance of this agreement were previously authorized and are described in (Article or Section x.x)"

e. Additional Information Required. To facilitate U.S. Government consideration of this request, letters of transmittal for amendments should address the following:

(1) U.S. Munitions List Categories (USML):

- Identify all USML categories the agreement relates to.

- Specify whether defense articles are/are not designated as Significant Military Equipment (SME).

- If the agreement involves the transfer of SME defense articles, state that a DSP-83 will be submitted as part of the DSP-5 license request.

(2) Sales Report Summary. For all amendments to a WDA, provide a table reporting sales by year and with total sales to date. This table does not replace the need to submit annual sales reports in accordance to §124.14(c)(6).

Year	Dollar Value
2001	
2002	
2003	
Total	

(3) Export License History. For all amendments to a WDA, provide a table identifying all export licenses received in furtherance of the agreement and the total value authorized under each license.

License Number	Dollar Value
0500000001	
0500000010	
0500000020	
Total	

(4) Provide point of contact information to include phone number and e-mail address.

(5) The transmittal letter should be signed, preferably by an empowered official.

8.2 Proposed Amendment

Like the agreement, the amendment is the official part of the submission package which is signed by all participating parties and serves as the medium for detailing the change to the effort. It is the only part of the submission package the foreign party(ies) must see, since it requires their approval and signature. (See Sample in Appendix A, Tab 9)

a. General Guidance

(1) It is recommended that the agreement be reviewed by the foreign party prior to submitting to DTCL so the parties can work out problems with the language or details on the transaction.

(2) In the official approval from DTCL, the applicant may be directed to make changes to the agreement via provisos. These changes must be made prior to signing by the parties.

(3) DDTC will only accept amendments that have been "conformed" or consolidated. In other words, all major amendments MUST be submitted as entire agreements whose proposed changes are identified by bolded text (not "track changes"). Applications that simply describe which sections or articles to the agreement are being modified shall be Returned Without Action.

b. Preamble Information and Introductory Information

(1) The preamble to the proposed amendment must clearly identify all parties to the agreement and include specific addresses for each party.

(2) Whereas clauses should be used to describe the changes to the program itself and identify the roles of any new parties to the agreement.

(3) Provide a concise summary of the proposed changes to the agreement.

c. §124.14(b) Requirements. Proposed changes to §124.14(b) information must be integrated into (or removed from) the previously approved agreement when submitted. If a separate attachment or exhibit referenced in the base agreement is being modified, the applicant must submit a copy of the modified attachment or exhibit.

d. §124.14(c) and 124.14(d) Requirements. The applicant must restate the verbatim clauses of §124.14(c) and 124.14(d). If modifications are made to §124.14(c)(6) or §124.14(c)(7), the applicant must specifically state as such.

e. Signature Page. All proposed amendments that result in any modification to the agreement itself (not the transmittal letter) submitted to DTCL must include a signature page with all U.S. Parties and all Foreign Licensees addressed.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to Agreement No. xxxx-xx to be executed effective as of the day and year of the last signature of this amendment *(or)* upon approval of the Department of State *(if a signed amendment was submitted and no modifications are directed by proviso).*	
_____	_____
(signature block for U.S. person)	(signature block for foreign person)
_____	_____
(signature block for foreign person)	(signature block for foreign person)

Table 8.1 – Sample Signature Page

8.3 Minor Amendments or Changes Not Requiring DTCL Approval

a. In accordance with §124.1(d), the applicant can make "Minor Amendments" that do not require DTCL approval. These changes are limited to that which only alters delivery or performance schedules, or are minor administrative amendments which do not affect in any manner the duration or scope. In these cases, the applicant must submit a copy of these changes within 30 days of conclusion. If the changes are made prior to concluding (signing) the original agreement, then a separate submission is not required and the applicant can highlight or explain the changes in the cover letter provided with the copy of the concluded agreement.

b. The following changes can be made without DTCL approval as long as they in no way affect the scope of the agreement:

- Correct typos or minor mistakes in original submission.
- Correct address of a signatory (in the same country)
- Correct the official name of the foreign signatory (only minor name change)
- Makes minor language changes needed before parties will sign
- Removes a signatory from the agreement (**see Section 16.1.d.** of these guidelines)

For foreign licensee name changes, if an ownership change or other transfer has taken place, an amendment must be submitted in accordance §124.1(c) and receive approval by DDTC. For additional information on minor name changes of a foreign signatory, see **GCs for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change** available at http://www.pmddtc.state.gov/licensing/guidelines_instructions.html.

SECTION 9.0 Re-Baseline of Agreements

An agreement re-baseline is required for any agreement currently approved in paper format that the applicant desires to amend through electronic submission. All initial electronic submissions of proposed agreements must either be in the form of a new agreement or a re-baselined agreement

9.1 Why Re-Baseline?

a. The re-baseline of an agreement can be initiated by either a DDTC agreements officer or the applicant. If an agreements officer determines an agreement requires re-baselining, the applicant will be notified via a proviso in an approval letter for an amendment. However, industry is encouraged to review their currently approved agreements and proactively request an agreement re-baseline.

b. DDTC has revised its criteria for initiating the re-baseline of existing agreements to ensure objective standards and provide predictability to the applicant.

(1) Duration of the Agreement – The duration of an agreement will no longer be authorized to exceed 10 years, regardless of the number of amendments to the agreement. Amendments to extend the duration of an existing agreement beyond 10 years will not be authorized. There is no requirement for the applicant to re-baseline currently approved agreements with expiration dates that exceed this 10 year limit, and DTCL will not reduce the currently approved duration unless the agreement has been amended 10 or more times. The following is an example of a DTCL proviso for requests to extend the duration of an agreement beyond 10 years:

> "This agreement is not eligible for further extension. If the parties desire to continue the currently approved activities, the applicant must consolidate agreement AG XXXX-XX and its associated amendments into a single, uniform document and submit as a re-baselined agreement by XXX XX, 201X. During this transition, there will be no impact to the continuity of the activities covered by this agreement.

(2) Number of Amendments – Each agreement will now be limited to a total of 10 amendments. For the purpose of re-baselining agreements, amendments include all requests submitted and approved (or approved with provisos) pursuant to §124.1(c). Proviso reconsiderations (to which DTC assigns an agreement number), proposals returned without action, denied proposals and those amendments submitted pursuant to §124.1(d) will not count towards the total number of amendments authorized. Any request to modify an existing agreement that already exceeds this 10 amendment maximum must be submitted as a re-baselined agreement. The following is an example of a DTCL proviso that will be issued as part of any tenth amendment approval letter:

> "This agreement is not eligible for further amendment. If the parties desire to modify the currently approved activities, the applicant must consolidate agreement AG XXXX-XX and its associated amendments into a single, uniform document and submit as a re-baselined agreement by XXX XX, 201X. During this transition, there will be no impact to the continuity of the activities covered by this agreement.

(3) Electronic Agreement Submissions – The applicant is not authorized to submit an electronic amendment proposal for a previously approved paper agreement.

(4) An agreements officer still retains the right to direct re-baselining of an agreement before meeting the above criteria when it is assessed that the agreement must be brought into compliance with current guidance and policies in order to remain valid.

9.2 General Re-Baseline Guidance

a. The agreement re-baseline submission will be assigned a new case number but the currently approved agreement will remain valid during the review of the re-baseline submission. This is to allow for the continuity of currently approved activities. Once the re-baseline is adjudicated and executed, per §124.6, the "old" agreement and its associated amendments must be terminated by the applicant within 30 days. (See Section 16.3)

b. Prior export and import authorizations (DSP Licenses) initiated under the original agreement will remain valid. There is no requirement to terminate or change existing licenses or re-submit license requests. The following is an example of a DTCL re-baselined agreement proviso that recognizes the export of hardware in furtherance of an agreement.

> "Export or temporary import of hardware in furtherance of this agreement by separate license is authorized. If used, the separate license, submitted in accordance with Section 15.1 of the Guidelines for Preparing Electronic Agreements, must reference the agreement and must not exceed $_____ to include prior authorizations issued under AG xxxx-xx which remain valid until their expiration. This proviso does not limit the use of separate authorizations for repair and replacement purposes"

c. Re-baselined agreements previously notified to Congress pursuant to Section 36(c) or 36(d) of the Arms Export Control Act (AECA) will be re-notified only if the re-baseline exceeds the Congressional Re-Notification thresholds as identified in Section 14.1 c. of these Guidelines.

d. Non-Disclosure Agreements (NDAs) that were established with the agreement that is being re-baselined do not need to be redone to change the agreement number on the NDA. The existing NDAs may continue to be used even though the old agreement number will be on it.

9.3 Request Package

A re-baseline submission to DTCL is essentially a hybrid amendment as it covers currently approved activities and proposed revisions. However, the request package for the re-baselining of an agreement requires all products as required with a new agreement request to include a complete "amendment" transmittal letter, a §126.13 certification statement, and a complete proposed agreement to include necessary exhibits. Simply stated, the package must be able to stand alone as an agreement.

a. Transmittal Letter. The §124.12 transmittal letter should be submitted in the amendment format (See Section 6.1) with a few minor differences.

(1) The subject line for transmittal letters for the re-baseline of agreements must state "Proposed Re-baseline of Technical Assistance Agreement xxxx-xx for (commodity line)" or "Proposed Re-baseline of Manufacturing License Agreement xxxx-xx for the manufacture of (commodity)." This will ensure the submission is assigned a new agreement number rather than an amendment number.

(2) The §124.12(a)(6) valuation table should feature three columns as requested with amendments. The first column should be titled "Currently Approved Under AG/TA/MA XXXX-XX", the second column should be titled "Re-baseline Addition", and the third column should be titled "New Total". (See Table 9.2)

	Currently Approved under AG/TA/MA xxxx-xx	Re-baseline Addition	New Total
Technical Data and Defense Services	$600,000	100,000	$700,000
Hardware			
Permanent Export by DSP-5 or DSP-85	$500,000	$200,000	$700,000
Temporary Export by DSP-73 or DSP-85	$200,000	$0	$200,000
Temporary Import by DSP-61 or DSP-85	$100,000	$0	$100,000
Total Hardware	$800,000	$200,000	$1,000,000
Hardware Manufactured Abroad (MLA only)	$1,500,000	$1,000,000	$2,500,000
TOTALS	$2,900,000	$1,300,000	$4,200,000

Table 9.2 (a)(6) Valuation Table for Re-baselined Agreements

(3) Sales Report Summary. For the re-baseline of MLAs, provide a table reporting sales by year and with total sales to date under the previous agreement. It is acceptable to provide a

sales total through the end of the previous year if work activities or accounting methods prohibit the totaling of sales to date. When this is the case, add a statement similar to the following:

Total sales under MA 1234-00 were $654,321 through CY2009. Activities under MA 1234-00 will continue as part of the same effort under the new re-baselined agreement. Therefore, any sales for CY2010 and beyond will be reported as part of the new re-baselined agreement.

For subsequent amendments to a re-baselined MLA, provide the total value of sales reports from the previous agreement followed by annual reports by year.

Year	Dollar Value
2001	$xxx,xxx,xx
2002	
2003	
Total for AG xxxx-xx	
Re-Baseline Agreement	

Year	Dollar Value
AG xxxx-xx	$xxx,xxx,xx
2010	
2011	
Total	
Amendment to Re-baselined Agreement	

9.4 Proposed Agreement

The re-baseline agreement should be submitted as a "new" agreement to be executed by all parties. The agreement must provide a consolidated scope including any new expansion requests. The agreement must incorporate all the information required by §124.7, 124.8 and 124.9 as required by current guidance and policy. This includes information on sub-licensing and dual and third country nationals. (See Section 5.2).

SECTION 10.0 Special Considerations for Arbitration-Related TAAs

The purpose of this section is to discuss the special considerations and allowances made for technical assistance agreements (TAA) involving arbitration matters.

10.1 General Guidance

a. Arbitration-related TAAs permit applicants to provide and discuss technical data and provide defense services to or with foreign parties as required to conduct the Pre-Hearing, Hearing, and Post-Hearing Phases of an Arbitration proceeding. The proceeding may be in response to legal claims or anomalous events related to a failed launch, aircraft malfunction, satellite anomaly, or other event involving a USML component.

b. The format of the Arbitration-related agreement/amendment submission is virtually identical to the layout of the standard agreement/amendment (see Sections 5.0 and 6.0, respectively). However, with respect to obtaining signatures, given the fluid nature of the proceedings, DTCL grants a special provision known as "incremental signature"--also known as a "rolling signature." This exception to §124.4(a) permits the applicant to execute transfers to foreign parties as they sign, rather than wait until all parties have concluded the agreement. As a result, exports may take place between the U.S. person(s) and a foreign party as soon as that foreign person signs the agreement. Furthermore, any approved foreign party identified on an original agreement or subsequently approved amendment may sign at any time without further DTCL approval.

c. The following is an example of a DTCL agreement proviso that permits certain parties within an Arbitration agreement to sign incrementally:

> "Export or temporary import of hardware, software, technical data or defense services against this agreement may only take place between signatories at such time as the agreement/amendment has been signed in accordance with the criteria established in Section 10.3 of the Guidelines for Preparing Electronic Agreements. In accordance with §124.4(a), submit an electronic copy of the signed agreement/amendment, revised as may be required herein, to this office within 30 days from the date it is signed. As additional signatures are secured, an electronic copy of the signature page is required within 30 days of signature."

Note: Under this exception, certain Major parties (see Section 10.2) must still sign the agreement prior to commencement of arbitration-related activities, but parties authorized to sign incrementally need only sign prior to receiving defense services or technical data, or prior to participating in related activities, such as "taking the stand."

10.2 Parties to Arbitration-Related Agreements

Arbitration participants are divided into two separate "classes" of signatories: Major Parties and expert witnesses.

a. Major Parties, which may or may not have contracted with sub-licensees, include the following entities:

(1) The applicant

(2) U.S. signatories and foreign licensees who cannot be classified as an "expert witnesses" (e.g., litigants, claimants, counsels, private court/panel, etc.)

- While required to be referenced in the agreement, international or government courts need not be incorporated as signatories. However, private courts must be listed as Major Parties and are required to sign the agreement as well as each and every applicable amendment thereafter.

- For private courts, members need not be identified by name; however, nationalities must be noted—non-disclosure agreement rules apply, as well as §124.16 exemptions as discussed in Sections 3.5 through 3.7 of these Guidelines, where applicable.

(3) U.S. and foreign consultants and law firms

- U.S. and foreign consultants and law firms, while considered Major Parties, do not qualify as sub-licensees but are authorized to sign incrementally as well (see Table 10.1 below). This exception is not applicable to all other persons composing the Major Party category.

b. Expert witnesses, who comprise technical and factual experts, may be of U.S. or foreign origin.

(1) While the relationship between the applicant and witnesses is akin to sub-licensing, only foreign witnesses are officially considered sub-licensees and therefore are not required to sign the agreement or its subsequent amendments.

(2) U.S. witnesses, on the other hand must sign; however, the incremental signature rule as discussed in Section 10.1 applies to these persons.

(3) U.S. witnesses and legal representatives who are not in the business of manufacturing or exporting defense articles or furnishing defense services need not be registered in accordance with §122.1.

Category	Signature Status	D-Trade 2 Entry
a. Major Parties		
Applicant	Must sign	
U.S. Signatories	Must sign	Block 21
Foreign Licensees	Must sign	Block 14
U.S. Consultants/Law Firms	Signs incrementally	Block 21
Foreign Consultants/Law Firms	Signs incrementally	Block 16
Sub-licensees	No signature	Block 16
b. Expert Witnesses		
U.S.	Signs incrementally	Block 21
Foreign	No signature	Block 16

Table 10.1 Signature Rules by Party

10.3 Signature Requirements (Incremental and Non-Incremental)

a. For base agreements, the applicant, and all U.S. and foreign parties (other than those deemed "expert witnesses," sub-licensees, or consultants/law firms) must sign to formally "conclude" the document. Once these signatures are obtained, exports may be transferred between and among those parties who have signed the agreement as well as any authorized sub-licensees or foreign expert witnesses. All other potential signatories (i.e. consultants/law firms and U.S. expert witnesses) may sign incrementally without further DTCL approval. However, these signatures must be received prior to the "new part(ies)" receiving any technical data or defense services identified in the agreement. Note: upon obtaining each new signature of a previously authorized party, the applicant must provide DTCL an electronic copy of the signature page plus a cover letter identifying all of the current signatories within 30 days. The applicant must file this electronic copy as an upload to the respective agreement.

b. For amendments to Arbitration-related agreements, the following apply:

(1) As a general rule, only amendments which change the scope of the effort or modify (i.e., add or delete) Major Parties must be signed by all currently-signed parties. Former parties, whose participation in the effort has been terminated, are not affected. Note: The rules for obtaining incremental signatures, as identified in Section 10.3a above, apply.

(2) Amendments that only add or change the name or address of a foreign person or a U.S. expert witness need only be signed by all Major Parties (excluding consultants and law firms) and that subject foreign person.

10.4 Restrictions

The following restrictions apply to Arbitration-related agreements:

a. Expert witnesses, consultants, and law firms must represent countries other than those prohibited in §126.1.

b. Defense services (e.g., technical data and /or technical assistance interchange) between or among the foreign expert witnesses is prohibited.

c. For foreign witnesses only, the restriction barring U.S. signatories--to include the applicant—from having direct contact with sub-licensees does not apply. DTCL approvals for arbitration matters iterate this exception through the issuance of a special proviso.

10.5 Structure of Agreement Supplemental Material

a. Given the significant distinctions among the various parties of an arbitration effort, as well as the varying applicability of rules to persons within these categories, supplemental documents for arbitration-related TAA's should be arranged as follows:

- Attachment A – Technical Data /Defense Services
- Attachment B – List of Consultants and Law Firms
- Attachment C – Foreign Expert Witnesses (Sub-licensees)
- Attachment D – U.S. Expert Witnesses
- Attachment E – Other Sub-licensees
- Attachment F, etc. – Miscellaneous items

b. Descriptions of Parties listed in these attachments must include the following:

- Name
- Country
- Full address
- Role specifics, if warranted

SECTION 11.0 Special Consideration for Space-Related Insurance TAAs

The purpose of this section is to discuss the special considerations and allowances made for technical assistance agreements (TAA) involving arbitration matters.

11.1 General Guidance

a. The Technical Assistance Agreement for the provision of technical data/defense services for the purposes of securing satellite or launch insurance permits applicants to conduct meetings with customers regarding insurance concerns on previous and/or potential anomalies that have occurred or could significantly impact product lines. This type of agreement allows applicants to transfer technical data, provide direct answers to technical questions, and discuss with insurers what they can expect regarding system performance during the life of a satellite or during the operation of a launch vehicle.

b. While the format of space-related insurance case submissions is relatively unchanged from those of the standard agreement and amendment requests (see Sections 5.0 and 6.0, respectively), DTCL grants special provisions for these efforts provided they meet certain conditions. These provisions incorporate an "incremental signature" exception—also known as a "rolling signature"--which permits the applicant to execute transfers to insurance parties as they sign, rather than wait until all parties have concluded the agreement.

c. The following is an example of a DTCL agreement proviso that permits certain parties within an Insurance agreement to sign incrementally:

> "Export or temporary import of hardware, software, technical data or defense services against this agreement may only take place between signatories at such time as the agreement/amendment has been signed in accordance with the criteria established in Section 11.3 of the Guidelines for Preparing Electronic Agreements. In accordance with §124.4(a), submit an electronic copy of the signed agreement/amendment, revised as may be required herein, to this office within 30 days from the date it is signed. As additional signatures are secured, an electronic copy of the signature page is required within 30 days of signature."

Note: Under this exception, all Major parties (see Section 11.2) must still sign the agreement prior to commencement of insurance-related activities, but parties authorized to sign incrementally need only sign prior to receiving defense services or technical data.

11.2 Parties to Insurance-Related Agreements

Similar to arbitration-related agreements, insurance-related TAAs comprise two separate "classes" of signatories: Major Parties and insurance providers.

a. Major Parties comprise the applicant and any U.S. signatories or foreign licensees who do not qualify as insurance providers. Examples of Major Parties include launch providers, manufacturers and their subcontractors, and purchasers and their subcontractors.

b. Conversely, the insurance provider category, which typically comprises the balance of the parties represented in a given insurance-related agreement, is limited to underwriters, insurance brokers, and their consultants.

Category	Signature Status	D-Trade 2 Entry
a. Major Parties		
Applicant	Must sign	
U.S. Signatories	Must sign	Block 21
Foreign Licensees	Must sign	Block 14
Sublicensees	No signature	Block 16
b. Insurance Providers		
Underwriters	Signs incrementally	Block 16/Block 21
Insurance Brokers	Signs incrementally	Block 16/Block 21
Consultants	Signs incrementally	Block 16/Block 21

Table 11.1 Signature Rules by Party

11.3 Signature Requirements (Incremental and Non-Incremental)

a. For base agreements, the applicant, and all U.S. and foreign parties (other than those deemed insurance providers and sub-licensees) must sign to formally "conclude" the document. Once these signatures are obtained, exports may be transferred between and among those parties who have signed the agreement as well as any authorized sub-licensees. All other potential signatories (i.e. underwriters, brokers, and consultants) may sign incrementally without further DTCL approval. However, these signatures must be received prior to the "new part(ies)" receiving any technical data or defense services identified in the agreement. Note: upon obtaining each new signature of a previously authorized party, the applicant must provide DTCL an electronic copy of the signature page plus a cover letter identifying all of the current signatories within 30 days. The applicant must file this electronic copy as an attachment to the respective agreement. A follow-on paper copy is unnecessary.

b. For amendments to Insurance-related agreements, the following apply:

(1) As a general rule, only amendments which change the scope of the effort or modify (i.e., add or delete) Major Parties must be signed by all currently-signed parties. Former parties, whose participation in the effort has been terminated, are not affected. Note: The rules for obtaining incremental signatures, as identified in Section 11.3a above, apply.

(2) Amendments that only add or change the name or address of a foreign person need only be signed by all Major Parties and that subject foreign person.

11.4 Restrictions

The following restrictions apply to Arbitration-related agreements:

a. Insurance parties must represent countries other than those prohibited in §126.1.

b. Defense services (e.g., technical data and /or technical assistance interchange) between or among the insurance parties (except as specifically authorized in the agreement) is prohibited.

11.5 Structure of Agreement Supplemental Material

a. Given the significant distinctions among the various parties of a space-related insurance TAA, the supplemental documents for these agreements should be arranged as follows:

- Attachment A – Technical Data /Defense Services
- Attachment B – Statement of Work
- Attachment C – Insurance Providers

where parties listed in Attachment C should be numbered and include the following data:

- Name
- Country
- Full address
- Role specifics, if warranted

SECTION 12.0 Amendments as a Result of U.S. Person Acquisition, Merger or Registration Code Consolidation - Deleted

For information on this topic, please see current guidance on the DTC website

SECTION 13.0 Proviso Reconsiderations

If the applicant feels one or more provisos imposed by DTCL in an approval to an agreement is too restrictive, the applicant may submit a "Proviso Reconsideration" to ask the U.S. Government for relief or rewording of the proviso(s). This process, which will be accomplished via the DSP-5 vehicle for previously approved electronic agreements, can also serve for "Clarification of a Proviso" if the applicant is unclear on the restrictions of a particular proviso and wants more insight or to ask a specific question on the proviso. If the proviso appears to contain an administrative typo or omission, contact the approving LO or division chief prior to submittal of a proviso consideration. (See Sample Proviso Reconsideration in Appendix A, Tab 10)

13.1 General Guidance for Proviso Reconsiderations

a. Proviso reconsiderations are used to request reconsideration by the Department of State based on information previously provided in the proposed agreement or subsequent amendment request. It does not afford the applicant an opportunity to introduce new, or modify previously submitted information as a means to justify the revision of the issued proviso. New or modified information must be submitted as a proposed amendment to the agreement.

b. When a request for Proviso Reconsideration for previously approved electronic agreements is submitted, DTCL will record the submission as a major amendment to the affected agreement to maintain accountability of that case. As a result, the request MUST be submitted electronically via the DSP-5 vehicle.

c. If the applicant desires to make other modifications to the approved agreement in addition to the proviso reconsideration, this is permissible.

d. There is no limit to the number of provisos the applicant may inquire about in a single submittal.

13.2 Elements of a Proviso Reconsideration Request

a. When submitting a request, the applicant must provide the following:

(1) A request for reconsideration of the proviso via the DSP-5 vehicle. Block 20 of the form should identify "Proviso Reconsideration" as the purpose of the submission. The remainder of the DSP-5 should include all information required as if submitting an amendment to the electronic agreement.

(2) A Certification Letter per §126.13 signed by an Empowered Official (if not accomplished via Block 22 of the DSP-5 vehicle).

(3) A copy of the DTCL approved license with the contested proviso(s).

b. Regardless of the method used to request reconsideration of a proviso, the applicant must:

(1) Provide the original wording of the proviso(s) as issued in the DTCL approval.

(2) Provide a recommendation on how the proviso should be revised or recommendation to delete the proviso.

(3) State the problem with the original proviso (i.e., it is "too restrictive," "in error," or "not applicable") and provide justification to the Government to support the change or deletion of the proviso.

SECTION 14.0 Agreements Requiring Congressional Notification

Congressional Notification for technical assistance and manufacturing license agreements are directed in §123.15 and 124.11. There are two types of Congressional Notifications mandated by Section 36 of the Arms Export Control Act handled by DDTC: 36(c) Notification for value and 36(d) Notification for the manufacture of SME abroad.

14.1 Congressional Notification Thresholds.

a. 36(c) Value-based Notification. The Arms Export Control Act requires a certification be provided to the Congress prior to the granting of any license or other approval for transactions involving exports of any defense articles and defense services and for exports of major defense equipment (MDE), as defined in §120.8, exceeding specific values. Listed below are the specific circumstances dictating Congressional Notification for value pursuant to 36(c):

(1) Commercially licensed exports to non-NATO+4 (Japan, Australia, New Zealand, or the Republic of Korea) member countries involving the export of:

- Major Defense Equipment valued at $14 million or more, or;
- Defense articles or services valued at $50 million or more

(2) Commercially licensed exports to NATO +4 (Japan, Australia, New Zealand, or the Republic of Korea) member countries involving the export of:

- Major Defense Equipment valued at $25 million or more, or;
- Defense articles or services valued at $100 million or more

(3) Commercially licensed exports of firearms controlled under Category I of the United States Munitions List in an amount of $1,000,000 or more.

Note: *Although prior notice thresholds are higher for sales to NATO members, Australia, Japan, New Zealand, and the Republic of Korea, any proposed exports to these countries that also include exports to a country outside of this group will be notified at the lower value threshold (i.e., $14 million/$50 million).*

b. 36(d) Notification for the Manufacture of SME. Any technical assistance agreement or manufacturing license agreement that involves the manufacture abroad of SME shall be notified regardless of value.

c. Re-Notification Thresholds for Previously Notified Agreements. Any "substantial" alterations to a previously notified agreement will likely result in the requirement to re-notify Congress of the sale.

(1) For agreements previously notified pursuant to 36(c) of the AECA, the following amendments will require Re-Notification:

- An Increase in value by 10% or more of a prior 36(c) Notification
- Any Upgrade to the capabilities authorized in the previously notified agreement
- A significant expansion of scope (i.e., additional program phases, increase in authorized sales territory)

(2) For agreements previously notified pursuant to 36(d) of the AECA, the following amendments will require Re-Notification:

- Increase in authorized sales territory of a prior 36(d) Notification
- Increase in value of the 36(d) Notification when such value exceeds 36(c) thresholds
- Any Upgrade to the capabilities authorized in the previously notified agreement
- A significant expansion of scope (i.e., additional program phases)

Note: *Export licenses submitted in furtherance of an agreement or amendment that have been Congressionally Notified do not require Congressional Notification since the hardware value is included as part of the agreement itself.*

14.2 Submission of Agreements Requiring Congressional Notification

It is incumbent upon the applicant to identify those requests submitted that require Congressional Notification in accordance with §123.15 and/or 124.11. For all agreements requiring Congressional Notification the applicant must include specific information as part of the Letter of Transmittal as well as provide additional products as part of their request.

a. Transmittal Letter.

(1) Under §124.12(a)(6), If the agreement or amendment requires Notification to Congress, an additional statement indicating whether an offset agreement is proposed to be entered into in connection with the agreement is required. If an offset agreement is proposed, a separate attachment must be included defining the offset arrangement.

(2) Following §124.12(b) clauses, the applicant must disclose whether or not Congressional Notification is required. If yes, the applicant should reference the location of an Executive Summary for Congressional Notification, a signed contract between the applicant and the foreign licensee, and a description of any direct or indirect offsets.

(3) For proposed amendments to an agreement previously notified, the applicant must provide the following statement. "This agreement was previously notified under DTC # xxxx-xx pursuant to Article 36(c) and/or Article 36(d) on (month/day/year) for $xxx.xxx.xxx." (If this information was not provided in a proviso from DTCL, provide the agreement /amendment number and calendar year of the Notification)

b. Calculating Congressional Notification Value. Determining the value of an agreement relative to the Congressional Notification thresholds varies for TAAs and MLAs for the export of MDE.

(1) Technical Assistance Agreement (No MDE). The value of a TAA relative to Congressional Notification is determined by the sum of the values for Defense Services, Technical Data, and Permanently Exported Hardware. See Table 14.2(b)(1).

Technical Data and Defense Services	$1,000,000
Hardware	
Permanent Export by DSP-5 or DSP-85	$98,000,000
Temporary Export by DSP-73 or DSP-85	$1,000,000
Temporary Import by DSP-61 or DSP-85	$500,000
Total Hardware	$99,500,000
Total Hardware for Notification	$98,000,000
Total Value of the Agreement	$100,500,000
Congressional Notification Value	$99,000,000

Table 14.2(b)(1) TAA Notification Value

(2) Manufacturing License Agreement. The value of an MLA relative to Congressional Notification is determined by the sum of the values for Defense Services, Technical Data, Permanently Exported Hardware that is not incorporated into the manufactured item, and the value of the Hardware Manufactured Abroad. See Table 14.2(b)(2).

Technical Data and Defense Services	$1,000,000
Hardware	
Permanent Export for Tooling or Support Equipment	$1,500,000
Permanent Export for Kits to be Turned into Sale Item	$25,000,000
Temporary Export by DSP-73 or DSP-85	$200,000
Temporary Import by DSP-61 or DSP-85	$100,000
Total Hardware	$26,800,000
Total Hardware for Notification	$1,500,000
Hardware Manufactured Abroad (MLA only)	$30,000,000
Total Value of the Agreement	$57,800,000
Congressional Notification Value	$32,500,000

Table 14.2(b)(2) MLA Notification Value

(3) Technical Assistance Agreements (MDE). The value of a TAA involving the export of MDE relative to Congressional Notification is determined by the value of the MDE Hardware (Permanent export) alone. For agreements proposing the export of MDE, it is critical for the applicant to break out the value of MDE from the remainder of hardware. Value Re-Notifications for MDE exports are based upon increases in value by 10% or more of MDE, or when the overall value of the agreement exceeds the $50 million or $100 million threshold (see

Table 14.2(b)(3)). For the most updated list of MDE, see Appendix 1, (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) to DoD 5105.38-M, "Security Assistance Management Manual (SAMM)," dated 10/03/2003, available online at http://www.dsca.osd.mil/samm/.

Technical Data and Defense Services	$1,000,000
Hardware	
Permanent Export (MDE) by DSP-5 or DSP-85	$16,000,000
Permanent Export (Non-MDE) by DSP-5 or DSP-85	$22,000,000
Temporary Export DSP-73 or DSP-85	$1,000,000
Temporary Import by DSP-61 or DSP-85	$500,000
Total Hardware	$39,500,000
Total Value of the Agreement	$40,500,000
Congressional Notification Value	$16,000,000

Table 14.2(b)(3) TAA -MDE Notification Value

c. **All agreements submitted to DTCL that exceed one of the Congressional Notification thresholds identified must be accompanied by a signed business contract, program executive summary, and statement of offsets.** When exceptional circumstances prevent the inclusion of these documents with the request, the applicant must describe why the documents are not included and when they will be provided. DTCL may accept and conduct initial staffing of requests exceeding Notification thresholds that do not include these documents; however, **if these documents are not received at the time the initial staffing is complete, the request will be returned without action.** DTCL cannot proceed beyond initial staffing without these documents.

(1) Signed Business Contract. This contract is between the applicant and the Foreign Licensee, and it must be signed by both parties when received at DTCL. For MLAs, the applicant may submit a Letter of Intent signed by the parties in lieu of a signed business contract if the MLA itself will serve as the business contract.

(2) Executive Summary. The executive summary must be a clear, concise summary of the proposed agreement addressing the parties to the agreement and their roles, the scope of the agreement, and a brief description of Defense Articles and Services provided. When developing this summary, the applicant should develop the document understanding that this document may accompany the Notification to Congress in order to provide clarity to the Notification package. This summary should be approximately one to two pages in length.

(3) Offsets. Offsets are arrangements that ensure the award of a contract. Direct offsets are directly related to the activity in the proposed agreement (i.e., foreign country industrial participation). Indirect offsets are usually related to future contracts or projects the U.S. applicant plans to conduct with the foreign company or country (i.e., monetary assistance in building a hospital or future sales to that company or country). Any submission of an agreement or amendment that will require Congressional Notification must include positive or negative Offset Statement immediately following 124.12 (a)(6) of the Transmittal Letter. If offsets are

included, the applicant must provide a complete summary of the offset agreement to include the percentage of direct and indirect offsets, what these offsets involve, and where they are found in the contract. This should be provided as part of the Executive Summary.

14.3 Congressional Notification Process

What follows is a step-by-step explanation of the process for notifying agreements that meet the threshold for 36(c) or 36(d).

a. Tier I. Upon receipt of a proposed agreement requiring Congressional Notification, it will be initially staffed to the Department of Defense, applicable country desks, Office of Regional Security and Arms Transfer (RSAT), and other agencies as required by commodity or territory.

b. Tier II. Once all staffing positions are received, a Congressional Notification number (different from agreement case number) is assigned and the request is staffed for review by the State Department's internal offices for legislative, legal, and public affairs, plus federal budgetary and national security offices.

c. Upon completion of Tier II staffing, DTCL submits the request to the Legislative Affairs Liaison in the State Department for Pre-Clearance Certification by the Professional Staff Members of the Senate Foreign Relations Committee (SFRC) and House Foreign Affairs Committee (HFAC).

d. Once pre-clearance certification is provided by the Professional Staff Members, the request is sent forward through Legislative Affairs Liaison in the State Department for formal Notification.

(1) Approval may not be granted until at least 15 calendar days have elapsed after FORMAL receipt by the Congress of the required Notification for commercially licensed exports to NATO +4. Approval may not be granted until at least 30 calendar days have elapsed after FORMAL receipt by the Congress of the required Notification for Commercially licensed exports to non NATO +4.

(2) The Executive Branch, after complying with the terms of applicable U.S. law, is free to proceed with an arms sales request unless Congress passes a joint resolution prohibiting or modifying the proposed export. A Congressional recess or adjournment does not stop the statutory review period. Once Congress receives a statutory Notification and 15 or 30 calendar-days have elapsed without Congress having blocked the sale, the Executive Branch is free to proceed with the proposed transaction.

(3) In accordance with the AECA Sec 36(c)(2), the required 15 and 30-days waiting period can be waived "if the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, …he shall set forth in the certification a detailed justification for his determination, including a description of

the emergency circumstances which necessitate the immediate issuance of the export license and a discussion of the national security interests involved."

SECTION 15.0 Exporting Hardware in Furtherance of Agreements

Hardware exported in furtherance of an agreement – The export by the agreement holder or another U.S. signatory of the agreement of defense articles identified within the scope of the agreement. This type of export must be included in the scope of the agreement and the value of the export will be counted against the value of hardware exports authorized under the agreement.

Hardware exported in support of an agreement – The export by any U.S. party of defense articles which indirectly relates to the agreement. The "in support" statement acts, in part, to frame the purpose/end-use of the articles being exported so the license adjudicators better understand the overall effort. This type of export does not need to be reflected in the scope of the agreement and the value of the export will not be counted against the value of hardware exports authorized under the agreement. In most circumstances, an "in support" license should not list the agreement holder or other U.S. signatories of the agreement as the source or manufacture of the defense article being exported.

15.1 Hardware via Separate Licenses in Furtherance of an Agreement

a. Pre-Requisites to a Hardware License in Furtherance of an Agreement

(1) When shipment of hardware "in furtherance" of an agreement via separate license (DSP-5, DSP-61, DSP-73, DSP-85) is anticipated, the hardware must be identified (described) in the proposed agreement under §124.7(1) and by value in §124.12(a)(6) of the Transmittal Letter. The more details provided in the agreement on the hardware, the quicker the review process for the license.

- If either the §124.7(1) description or the §124.12(a)(6) valuation is missing, then a proviso will be given to the applicant stating no hardware is authorized for export via a separate license until the agreement is amended.

- If hardware is properly described and valued, then based on the information provided in the agreement/amendment request, DDTC will provide a proviso in the approval similar to:

> "Export or temporary import of hardware in furtherance of this agreement by separate license is authorized. If used, separate license, submitted in accordance with section 15.1 of the Guidelines for Preparing Electronic Agreements, must reference this agreement and must not exceed $_____. This proviso does not limit the use of separate authorizations for repair and replacement purposes."

(2) The agreement/amendment authorizing the subject hardware MUST be approved by DTCL prior to submission of the hardware license request. The request can be submitted prior to

the agreement being fully executed. License requests prematurely submitted are subject to return without action.

b. Requirements for Licenses "In Furtherance" of Agreement Submissions

(1) The license request MUST be submitted by the agreement holder or another U.S. signatory of the identified agreement. Non-U.S. signatories such as trading companies CANNOT submit an "in furtherance of" license request.

(2) The end-user identified on the license request MUST be a foreign licensee (signatory) or end-user on the subject agreement.

(3) The first foreign consignee (not including foreign intermediate consignees) to receive the subject hardware MUST be a foreign licensee (signatory) or end-user on the subject agreement.

(4) The purpose block of the license request MUST include the words "In Furtherance of TA/MA/DA/AG 050XXXXXX (TA/MA/DA XXXX-XX)" on the very first line.

(5) The license request must be submitted with the following support documentation:

- Purchase Order, Letter of Intent, Contract, or Request for Goods from the foreign party to the agreement applicant or U.S. Signatory to the agreement who is requesting the license. This documentation MUST identify the relevant agreement. The dollar value of defense articles does not need to be provided.

- DSP-83 for significant military equipment (SME). The DSP-83 submitted with a DSP-5 license request must specifically identify the defense articles and/or technical data per the instructions for Block 5. **As of June 1, 2009, specific DSP-83s are required to accompany a DSP-5 license request.**

- Letter of Explanation from the Holder of the Agreement, signed by an empowered official. The information in this letter is requested pursuant to §122.5. See Tab 12 to Appendix 1 for a Sample Letter of Explanation.

Note: *In cases where the hardware is adequately described in the text of the agreement and where hardware value remains to support the proposed export, the license request will normally not require any additional staffing.*

15.2 Repair and Replacement Hardware.

a. When an applicant is required to either repair or replace an unclassified item previously authorized for export the applicant can:

(1) Utilize §123.4(a)(1) exemption for the Repair and Replacement.

(2) Apply for a separate license for repair and replacement purposes.

Note: The §123.4(a)(1) exemption cannot be used for classified defense articles, and shipments that transit to or from Canada (must use the §126.5(a) exemption).

b. Acquiring a separate license for Repair and Replacement.

(1) The applicant must reference the relevant agreement under which the hardware was originally exported in Block 23 of the DSP-73 or Block 21 of the DSP-85 and clearly state the request is for "repair and replacement" purposes.

(2) The letter of explanation reference in section 15.1.b.(4) is not required for "repair and replacement" license requests.

(3) The value of repair and replacement licenses will not be counted against the value of approved hardware authorized under the agreement.

15.3 Defense Articles Shipped Via §123.16(b)(1) Exemption

a. Requirements for use of the §123.16(b)(1) exemption

(1) §123.16(b)(1) provides an "exemption" for the permanent export of unclassified hardware without an export license (i.e., DSP-5). This exemption applies only when the exact numbers of items to be exported are identified and valued, all hardware will be shipped as a one-time shipment, and the hardware meets the requirements below:

- The defense article to be exported must be in furtherance of the agreement and be identified by item, quantity unit value and overall value in an addendum to the agreement.

- Any provisos or limitations placed on the authorized agreement must be adhered to.

- The total value of hardware must not exceed the value authorized in the agreement.

(2) §123.16(b)(1) exemption cannot be used if:

- Export is to a proscribed destination listed under §126.1

- Export is related to an agreement requiring Congressional Notification

- Hardware consists of Missile Technology Control Regime (MTCR) articles

- Hardware consists of Significant Military Equipment (SME)

- Hardware consists of classified articles

- Hardware is for use by persons who are ineligible as described in §120.1(c).

(3) Identifying Hardware for export under the §123.16(b)(1) exemption. The applicant must provide a separate addendum to the proposed agreement consisting of the following information for all §123.16(b)(1) exemption requests:

- DDTC Registration Code:

- Applicant Name and Address:

- Foreign End-User Name and Address:

- Foreign Consignee Name and Address:

- Foreign Intermediate Consignee Name and Address:

- A complete list of items to be shipped pursuant to §123.16(b)(1) in the format provided in Table 15.3.

Manufacturer	Commodity	Quantity	USML Category	Item Value	Total Value
				Total Value	$

Table 15.3 §126.13(b)(1) Hardware

b. AES Filing. If all the conditions for this exemption are met, and DTCL approves the exception request to utilize §123.16(b)(1), the exporter must file with AES certifying that the export is exempt from the licensing requirements of the ITAR by including the statement "§123.16(b)(1) and TAA/MLA (identify agreement number) applicable." A copy of each such AES record must be mailed immediately by the exporter to DTCL. The following retransfer statement required by §123.9(b) must be included as an integral part of the bill of lading and the invoice:

> "These commodities are authorized by the U.S. Government for export only to (county of ultimate destination) for use by (end-user). They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of

in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

15.4 Decrementing Hardware Value Authorized in Agreements.

The value of hardware exported in furtherance of an agreement cannot exceed the value authorized by proviso in the DTCL approval.

a. For Permanent Hardware Exports via DSP-5s, DSP-85s, or §123.16(b)(1) (when authorized) the hardware value authorized under the agreement is permanently decremented with each export. If additional hardware value is required, the applicant must submit a proposed amendment to the agreement to increase the value of hardware authorized for export.

b. For temporary exports via DSP-73 or DSP-85, or temporary imports via DSP-61 or DSP-85, the hardware value authorized under the agreement is decremented with each export only as long as the license authorizing the temporary export or import is active.

(1) The intent of the approved value for temporary exports and imports in furtherance of an agreement is to maintain visibility of and to identify the maximum value of hardware temporarily exported or imported.

(2) The value for temporary exports and imports indicates the maximum value authorized for export on a temporary basis at any given time. Hence, if an agreement authorizes the temporary export of hardware valued at $100,000, the applicant may request DSP-73s for up to $100,000. Once those DSP-73s are closed (re-import complete), the applicant can apply for an additional DSP-73 valued up to $100,000. However, at no time can active DSP-73 licenses exceed $100,000.

(3) It is the responsibility of the applicant to notify DTCL of any previously authorized licenses when applying for a license for temporary export or import of hardware. The applicant must certify the status of temporary exports and imports to include value remaining when requesting additional temporary export or import licenses. (See Appendix A: Tab 12)

SECTION 16.0 Actions After Approval

Post-approval documentation for electronic agreements (e.g., executed agreements, sales reports, and unexecuted/termination notifications) should be uploaded to the associated electronic DSP-5 vehicle. **These documents should not be submitted to DDTC in paper copy.** File names for these documents should comply with the naming instructions identified in Section 17.0 of these guidelines.

16.1 Execution of the Agreement

In accordance with §124.4(a), the applicant must submit one copy of the signed agreement or amendment to DTCL no later than 30 days after it enters into force. An agreement or amendment is not considered entered into force until such time as all parties to the agreement or amendment have signed. If a signed copy of a proposed agreement or amendment is submitted to DTCL for review, then it is only considered entered into force as of the date of approval by DTCL. If provisos are issued as part of an approval directing modifications to the agreement/amendment prior to execution, then the agreement/amendment must be re-signed by all parties prior to entering into force. Special considerations may be authorized for incremental signing of agreements and amendments for Arbitration and Satellite insurance cases (See Sections 10.0 and 11.0). If such authorization is granted, the applicant must execute within the specific circumstances outlined in the provisos issued by DTCL.

a. Submitting Executed Agreements/Amendments. Once an agreement or amendment is executed by all parties, the applicant must upload an electronic copy of the signed agreement/amendment to the respective approved license.

(1) The executed copy must include a cover letter that identifies the applicant registration code, the agreement or amendment number as identified in the DTCL approval, and clearly state the package includes an executed copy of the agreement or amendment. (See section 17.4 for addressing minor changes prior to execution)

(2) When submitting executed copies of MLAs, the applicant must attach one electronic copy to the respective approved license, as well as provide a single paper copy of the cover letter to DDTC. The cover letter must include the following data required under §124.4(b)(1)-(4):

- §124.4(b)(1) The identity of the foreign countries, international organization, or foreign firms involved;

- §124.4(b)(2) A description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced:

- §124.4(b)(3) A description of any restrictions on third-party transfers of the foreign-manufactured articles; and

- §124.4(b)(4) If any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

(3) A copy of the DTCL approved license is not required.

b. Submitting Signed DSP-83s

(1) When a requirement is placed upon the applicant to execute DSP-83s for the transfer of classified technical data or technical data for the manufacture of SME abroad, the applicant must upload a copy of the original signed DSP-83s along with the executed copy of the agreement or amendment to the respective approved license.

(2) If the agreement involves the transfer of SME or classified defense articles, a DSP-83 must be submitted along with the DSP-5 or DSP-85 license request for shipment of hardware in furtherance of the agreement.

(3) The original DSP-83 must be maintained by the applicant.

c. Annual Status Updates. If an agreement is not executed within one year of approval by DTCL, the applicant must submit a written report to DTCL summarizing the status of the agreement. This electronic report should be uploaded to the respective approved license for the agreement or amendment. This report is required on an annual basis based on the date of the issuance of the DTCL approval until such time as the requirements of §124.4 or §124.5 have been satisfied.

d. Removing Signatories Prior to Executing an Agreement/Amendment. If a party to an agreement or amendment elects not to sign, then the applicant can remove the party without having to submit an amendment for approval. To do so:

(1) The applicant must completely remove references to the non-signing party from the agreement before having the agreement signed by the other parties. This eliminates any chance the signing parties would transfer data to a party they thought was still involved in the agreement. If some signatures have already been obtained, these parties must re-sign after removing references.

(2) The cover letter of the executed copy submitted to DTCL must provide Notification of the removal of the signatory(ies) and provide a reason for removal. This Notification should be bolded so that it stands out.

(3) Parties removed from an amendment must be completely removed from the entire agreement. A party cannot participate as a signatory to only a portion of the agreement.

(4) Crossing out the parties not signing and having that document signed by the remaining parties is not acceptable.

16.2 Decision not to Conclude an Agreement or Amendment

Pursuant to §124.5, the applicant must inform DTCL via a formal notification letter if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision and should be attached electronically to the respective approved license for the agreement or amendment.

a. The notification letter must include the applicant registration code and the agreement or amendment number as identified in the DTCL approval.

b. When a decision is made not to conclude an amendment to an agreement, the notification letter must specify the amendment will not be concluded and clearly state the rest of the agreement is still active.

16.3 Termination of an Agreement

Pursuant to §124.6, the applicant must inform DTCL via a formal notification letter of the impending termination of the agreement not less than 30 days prior to the expiration date of the agreement. The letter should be attached electronically to the approved license of the base agreement.

a. The notification letter must include the applicant registration code and the agreement number as identified in the DTCL approved license.

b. When terminating a Manufacturing License Agreement, the applicant must submit a final sales report summary with the termination letter.

16.4 Annual Sales Reports for MLAs and WDAs

In accordance with §124.9(a)(5) and §124.14(c)(6), the applicant must submit an annual report of sales or other transfers pursuant to the agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient to DTCL. This report of sales is for the sale of manufactured or distributed hardware alone. It should not include the value of hardware exported in furtherance of the agreement itself since this hardware is already incorporated into the sales item and is covered under sales item cost.

a. An electronic copy of the Annual Sales Report should be uploaded to the respective approved license for the base agreement.

b. For an MLA or WDA that was not active in a particular year, a report of “No Sales” is required.

c. Although not required, it is preferred that Annual Sales Reports come to DTCL from the applicant and not directly from the foreign manufacturer.

d. Annual Sales Reports may cover either calendar or fiscal years.

e. See Table 16.4 – Annual Sales Report for a sample format.

DTCL Case_____		CY/FY_____	
Item	Recipient	Quantity	U.S. $ Value
TOTAL			

Table 16.4 – Annual Sales Report

16.5 Request for Revised Approval Letter

When the applicant identifies a potential error in a previously-issued authorization, it is incumbent upon the applicant to forward a Request for Review to DDTC. This request should be forwarded directly to the Response Team, who will contact the appropriate Agreements Officer. If the officer determines an error has been committed, DDTC may elect to formally revise the authorization. In such instances, a Revised Letter will be issued by the officer to the applicant once the letter has been signed.

SECTION 17.0 Submitting and Packaging Agreements

This section provides specific instructions for the agreement/amendment documents you will upload using the D-Trade 2 System. The DSP-5 "Vehicle" Completion Guide in Appendix D provides the step by step instructions for filling out the DSP-5 form for agreements, amendments and re-baselines.

17.1 Package Submissions

a. Each individual package submission for new agreements and amendments to agreements must include a Letter of Transmittal per §124.12, a Certification Letter per §126.13 (if not satisfied by Block 22 of the DSP-5 vehicle) and the proposed agreement or amendment itself.

b. For amendments involving ONLY a change to the applicant registration code or ONLY an increase of value of the agreement that does not result in Congressional Notification, a Letter of Transmittal per §124.12 and a Certification Letter per §126.13 (if not satisfied by Block 22 of the DSP-5 vehicle) are required. Since these changes do not impact the agreement itself, there is no requirement to submit any document for execution by all parties.

c. An individual package submission for a Proviso Reconsideration request must include the Letter of Request, a Certification Letter per §126.13 (if not satisfied by Block 22 of the DSP-5 vehicle), and a copy of the DTCL approved license containing the subject proviso.

Note: Applicants may upload up to 35MB total of file attachments in the initial submission of electronic agreements or amendments. **Uploading files greater than 35MB will seriously delay the review of your submission.**

d. When initially submitting new agreements, applicants must upload as a minimum the following documents:

(1) Transmittal letter
(2) Proposed agreement (with attached exhibits/appendices/annexes submitted in the same ".pdf" file)
(3) §126.13 letter (if not satisfied by Block 22 of the DSP-5 vehicle)
(4) Positive part 130 (when necessary)

e. When initially submitting major amendments, applicants must upload as a minimum the following docuements:

(1) Transmittal letter
(2) Proposed amendment (with attached exhibits/appendices/annexes submitted in the same ".pdf" file)[2]
(3) §126.13 letter (if not satisfied by Block 22 of the DSP-5 vehicle)

[2] Unless directed otherwise in these Guidelines

(4) Positive part 130 (when necessary)

f. If the 35MB attachment threshold is not reached with the initial documents identified above, then additional documents can be included with the initial submission up to the 35MB threshold. Otherwise, applicants have 48 hours to submit the additional uploaded documents. Applicants are encouraged to upload the additional documents immediately after receipt of the nine-digit DSP-5 vehicle number upon completion of the initial upload.

g. To facilitate DDTC's review of the attached documentation, applicants will identify in a second commodity line of the DSP-5 vehicle whether all documentation has been uploaded or not. These additional steps are outlined in steps 23-28 of the DSP-5 Vehicle Completion Guides found in Appendix D, Tabs 1, 2 and 3. If an applicant does not enter a second commodity line identifying whether the upload of documents is complete, the Agreements Officer will delay staffing of the case for 48 hours.

g. Attachments should be formatted as ".pdf" files, and when possible, should be created with searchable text.

h. To facilitate the technical review of the submission, the name of the ".pdf" file being uploaded should be as descriptive as possible. For example:

(1) Transmittal letters should be named "Transmittal Letter.pdf"
(2) Agreements with attachments should be named "Agreement with Attachments.pdf"
(3) If *separate* supporting documents or attachments are uploaded, the file name of these documents should clearly identify what the document is (e.g., "F-4 Forward Fuselage Drwg No 12345.pdf", not simply labeled as "technical data.pdf")

i. If Microsoft Word documents must be uploaded, the documents must be saved in the Word 97-2003 Document format with the ".doc" extension. Some government agencies have not upgraded to Microsoft Office 2007 and are unable to open documents with the ".docx" extension.

j. When USML categories I, II or III are entered in Block 11, and if prompted to upload an Import Certificate, the applicant must upload a letter stating "no certification is required."

h. To assist DDTC in its adjudication of agreement submissions, applicants should use Table 17.1 to identify the proper Upload Menu Option when uploading each file.

Document	Upload Menu Option
Transmittal Letter	Supplementary Explanation of Transaction
New Agreement/Amendment	Contract
§126.13 Certification Letter	Certification Letter
Positive Part 130	Part 130 Report
Last approved Agreement/Amendment	Precedent (identical/similar) Cases

Table 17.1 – Attachment Upload Menu Options

Failure to comply with these guidelines may limit DDTC's ability to process an agreement in a timely manner.

17.2 Attachment of Supporting Material

Following initial submission, cases will be tagged with their "05" nine-digit identification numbers. At this point in the review process, applicants are permitted to submit any additional supporting material via the Web Portal. When uploading these types of documents, the following identifiers will be available for applicant use:

Menu Options
Transmittal Letter
Agreement
Amendment
Supporting Material
Executed Agreement/Amendment
Annual Sales Report
Notice of Termination
Notice of Not Yet Executed
Notice of Initial Export

SECTION 18.0 DTSA Technical Review

18.1 Technical Reviewers

The technical review of all submitted agreements and licenses is provided to DTCL by the Defense Technology Security Administration (DTSA). DTSA's primary concern in these reviews is national security and the safeguard of U.S. technology. The following is a list of the agencies and departments to whom DTSA can include in their technical review of a case:

a. DTSA Technical Directorate

b. U.S. Military Services:

- U.S. Air Force – International Affairs Division (SAF/IA)
- U.S. Army – Deputy Assistant Secretary of the Army, Defense Exports & Cooperation (DASA (DE&C))
- U.S. Navy & U.S. Marine Corps – Navy International Programs Office (Navy-IPO)

c. National Security Agency (NSA)

d. Joint Chiefs of Staff (JCS/J5)

e. Defense Security & Cooperation Agency (DSCA)

f. Under Secretary for Policy

g. Under Secretary for Acquisition, Technology and Logistics

h. Missile Technology Export Committee (MTEC)

i. Other DOD Agencies (DIA, DISA, DLA, NIMA, NRO, etc.)

18.2 Technical Information

a. Helpful Hints in Preparing Technical Information

- Explain in simple and concise English.
- Focus on the basic elements of a license: country, commodity, end-user and end-use.
- Explain what you are doing.
- Explain case history if pertinent and provide backup material.
- Explain what you are not doing (may be more important).
- Avoid jargon and do not rely on program names.
- Review previous license provisos and incorporate into the language.

- Cite previous cases – more than one case is fine.
- List current Government Points of Contact.
- Verify information provided.
- If DoD is not involved, then what service would be interested

(§124.12(a)(4)).

- Note: Not all countries are handled equally.
- Explain how you will maintain control of the data.
- Note: Government and Industry end-users will be treated differently.
- Be realistic with quantities and state how you will maintain control of commodities.
- Recognize possible compliance issues before and after licensing.
- List Internet web sites to assist in the technical review.

b. Common Shortfalls of Submissions

- Applicant failed to provide any technical data or descriptive literature to adequately conduct a national security or technical assessment of the transaction.
- An exception to National Disclosure Policy is required for the export of that commodity to the requested country. The U.S. (cognizant military service) could consider sponsoring an exception if a formal request was received from the foreign government.
- The request requests export of "spare parts," but the attachment sheet lists major components, end-items, SME and MTCR Annex items.
- The transaction supports an MLA or TAA, but no agreement case number was referenced on the request.
- The license request fails to identify any specific technical data, technology or defense services that would be exported under the proposed agreement.
- The agreement or license request identified technical data that is too open-ended or ill defined.
- The license request is in response to a Request for Proposal that has not been released by the foreign party.
- Technical data is inappropriately qualified or insufficiently described with the words: "to include, but not be limited to…" or "the scope and extent of the data shall be determined by the applicant and the end-user."
- The transaction is related to a pending Voluntary Disclosure.
- Pursuant to a Commodity Jurisdiction (CJ) determination, this commodity is not on the U.S. Munitions List. Consult the Department of Commerce.

c. Support Material

- The actual data to be transferred does not always need to be submitted, but a list of the data or short description is generally required. This is case dependent.
- Tech Orders or Manuals for most commodities should be listed, not provided. A copy of the front page should be provided.
- Short summaries, white papers or marketing sheets on commodity or data to be transferred are helpful and preferred.

- When referencing and attaching a lengthy Statement of Work or contract to satisfy §124.7(2), then also state where the technical data and defense services can be located in the attachment.

- Do not send copies of DTCL approved licenses or prior agreements unless they directly support the current request.

- Copies of other signed agreements or DTCL approvals can sometimes provide precedence; however, U.S. Government policy often changes and each request is reviewed independently. The best way to make this point is to list related agreements that have been approved in the transmittal letter. If a copy of another agreement helps make the case, then submit it, but do not include any irrelevant amendments to that agreement.

Appendix A – Sample Documents

Tab 1 to Appendix A
Sample Certification Letter (§126.13)
(if not satisfied by Block 22 of the DSP-5 vehicle)

(Date)

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, DC 20522-0112

CASE Number or Subject of the Request

Dear Mr. Maloney:

I, the undersigned, am a U.S. person as defined in §120.15 and I am a responsible official empowered by the applicant to certify the following in compliance with §126.13:

1. Neither the applicant, its chief executive officer, president, vice presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) nor any member of its board of directors is:

a. the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976); or

b. ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government;

2. To the best of the applicant's knowledge, no party to the export as defined in §126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government, and

3. The natural person signing the request for the license or other request for approval is a responsible official who has been empowered by the applicant and **(INSERT ONLY ONE)** is a citizen of the United States, OR has been lawfully admitted to the United States for permanent residence and maintains such a residence under the Immigration and Nationality Act (8 U.S.C. 1101(a) 20, 60 Stat. 163), OR is an official of a foreign government entity in the United States.

Sincerely,

Name of Official
Title

<u>Tab 2</u> - TAA/MLA Transmittal Letter

May 7, 20xx
Applicant Code: M-0000
USML Categories: XI c and XI d

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, Va. 98765

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Proposed Technical Assistance Agreement (or Manufacturing License Agreement) for the support (or manufacture) of the How to Write Agreements Processor

References: AG 050XXXXXX; DSP-5 050XXXXXX

Dear Mr. Maloney

Submitted herewith is a submission package which includes this letter, a certification letter and the proposed Technical Assistance Agreement for the transfer of certain technical information, hardware (if applicable) and services necessary for the integration, troubleshooting, and maintenance of the How to Write Agreements Processor.

BACKGROUND

Provide a brief description on the purpose of the agreement and how it will be executed by the parties to include scope, role of parties, review of defense articles and services to be transferred.

REQUIRED INFORMATION

In accordance with §124.12, the following information is provided:

(a)(1) The DDTC applicant code is M-0000.

(a)(2) The parties to this agreement are as follows:

The foreign licensee(s)

XXX Technologies
Full Address (no P.O. Box)
Country
AAAA Systems Incorporated

Full Address (no P.O. Box)
Country

U.S. Signatories

U.S. Agreement Writers Guild
Full Address (no P.O. Box)

The scope of this agreement entails (Applicant) performing defense services (or manufacturing know-how if an MLA) or disclosing technical data or providing defense articles (applicant should provide a one-line description) to the licensee for the (briefly identify task to be performed) of (commodity or program) for end-use by (identify end-use and end-user, if applicable).

This agreement is valid until March 31, 20xx.

(a)(3) Identify relevant U.S. Government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. Government (to include any relationship to any Foreign Military Sales (FMS) case), and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government. If none, so state and identify cognizant U.S. military service.

(a)(4) The highest U.S. military security classification of the equipment or technical data to be transferred under the terms of this agreement is (Unclassified, Confidential, Secret or Top Secret). *(If foreign classified equipment or technical data is to be transferred, state as such).*

(a)(5) State whether any patent requests which disclose any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office are on file concerning this agreement. If so, the patents must be listed herein.

(a)(6) The estimated value of this agreement is as follows:

Technical Data and Defense Services	$600,000
Hardware	
Permanent Export by DSP-5 or DSP-85	$500,000
Temporary Export by DSP-73 or DSP-85	$200,000
Temporary Import by DSP-61 or DSP-85	$100,000
Total Licensed Hardware	$800,000
Hardware Manufactured Abroad (MLA only)	$N/A
AGREEMENT TOTAL VALUE	$1,400,000

This agreement does not require Congressional Notification pursuant to §123.15 or §124.11. (If yes, an additional statement indicating whether an offset agreement is proposed to be entered

into in connection with the agreement and a description of any such offset agreement must be included)

(a)(7) Applicant must provide a statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(a)(8) The agreement must describe any classified information involved (U.S. or foreign) and identify, from DoD form DD 254, the address and telephone number of the U.S. Government office that classified the information and the classification source (i.e., document). If no classified information is involved, so state, but do not omit.

(a)(9) For agreements that may require the export of classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided. If no classified information is involved, so state, but do not omit.

(a)(10) This agreement does (or does not) request retransfer of defense articles and defense services pursuant to §124.16."

Pursuant to §124.8(5), this agreement does (or does not) request access for dual/third country national employees as addressed in Article I(4) of the proposed agreement.

REQUIRED STATEMENTS

(b)(1) If the agreement is approved by the Department of State, such approval will not be construed by the applicant as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will the applicant construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.

(b)(2) The applicant will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

(b)(3) The applicant will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to the expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days.

(b)(4) If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., §124.8 and 124.9).

Sub-licensing rights ARE granted to the licensee(s) under this agreement as specified in Article I.4(b) of the proposed agreement. or Sub-licensing rights ARE NOT granted to the licensee(s) under this agreement as specified in Article I.4(b) of the proposed agreement.

To facilitate U.S. Government consideration of this request, the following information is provided:

Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5. DSP-73, etc.).

This agreement relates to the following U.S. Munitions List category(ies): XIc and XId (list applicable USML category and article from §121). These category(ies) are not or are designated as Significant Military Equipment (SME). For multiple categories, state which are designated SME. If hardware will be exported, then identify whether it/they is/are SME.

If the agreement involves the transfer of classified technical data or technical data for the manufacture of SME abroad, state whether a Non-transfer and Use Certificate (Form DSP-83), is/is not attached in accordance with §124.10. If the agreement involves the transfer of SME or classified defense articles, state that a DSP-83 will be submitted as part of the DSP-5 or DSP-85 license request.

This agreement does not require Congressional Notification. If yes, make a statement acknowledging that the agreement will be notified and reference an executive summary a signed contract between the applicant and the foreign licensee, and a description of any direct or indirect offsets associated with the agreement.

If you require additional information, please contact (list license point of contact) at telephone number (area code and number), e-mail name@company.com.

If a law firm or consulting firm is authorized to do business on the applicant's behalf, state as such.

Sincerely,
Signature block

Tab 3 - TAA/MLA

This agreement is entered into between (company name), an entity incorporated in the State of (state) with offices at (company address) and (foreign company name(s)) whose office(s) is/are situated at (foreign company address(es)) and is effective upon the date of signature of the last party to sign the agreement. (If the agreement has a large number of parties involved, then list in bullet format for ease of review.)

WHEREAS, (applicant name) (Describe the program for which you are providing technical assistance (or manufacturing for) and the type of assistance you will provide.)

WHEREAS, (foreign or other U.S. company name)(describe the company's role in the TAA or MLA – have a separate paragraph for each foreign company)

NOW THEREFORE, the parties desire to enter into the Technical Assistance (or Manufacturing Licensing) Agreement as follows:

1. This Technical Assistance (or Manufacturing Licensing) Agreement is intended to (Provide concise summary of program to be done under the agreement. This summary can be drawn from the Statement of Work. The Statement of Work can be a separate document attached to the TAA or MLA and incorporated by reference within the agreement.)

2. It is understood that this Technical Assistance (or Manufacturing Licensing) Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.

3. The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

I. §124.7

(1) Describe the defense article to be manufactured and all defense articles to be exported in furtherance or support of this agreement. Describe defense articles by military nomenclature, contract number, Federal Stock Number, name plate data, or other specific information. If no hardware is being manufactured or exported, then state so but do not leave blank. An attachment may be used to list hardware, but must reference such attachments under this article.

Note: Only defense articles listed in the agreement or on an addendum sheet and referenced here will be eligible for export in furtherance of the agreement.

(2) Describe the assistance and technical data, to include any design and manufacturing know-how involved. The applicant may address the assistance and technical data in a separate attachment to the request but must reference the attachment under this article.

(3) This agreement is valid through (month, day, year).

(4) Territory.

a. The transfer of technical data, defense articles, and defense services is authorized between the United States and (list countries of foreign licensees) for end-use by the government of (list end-users).

- For MLAs, specifically identify each country of the proposed sales territory
- If marketing is requested, specifically identify each country of the proposed marketing territories

b. Sub-licensing rights are granted to the foreign licensees (or list the specific foreign licensee). Sub-licensees are identified in Attachment ___.

Sub-licensees are required to execute a Non-Disclosure Agreement (NDA) prior to provision of, or access to the defense articles, technical data or defense services. The executed NDA, referencing the DTC Case number and incorporating all the provisions of the Agreement that refer to the United States Government and the Department of State (i.e., §124.8) will be maintained on file by the applicant for five years from the expiration of the agreement.

- If Sub-licensing and Retransfer is not requested, the applicant must specifically state that sub-licensing/retransfer is not authorized.

c. Dual/Third Country National Employees are not authorized (or) are authorized as follows:

(1) Pursuant to §124.8(5), this agreement authorizes (does not authorize) access to defense articles and/or retransfer of technical data/defense services to individuals who are dual/third country national employees of the foreign licensees (and its approved sub-licensees – if applicable). The exclusive nationalities authorized are *(list all foreign nationalities of the employees who are not eligible for application of §124.16).* Prior to any access or retransfer, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement.

(2) Pursuant to §124.16, this agreement authorizes (does not authorize) access to unclassified defense articles and/or retransfer of technical data/defense services to individuals who are dual/third country national employees of the foreign licensees (and its approved sub-licensees – if applicable). The exclusive nationalities authorized are limited to NATO, European Union, Australia, Japan, New Zealand, and Switzerland. All access and/or retransfers must take place completely within the physical territories of these countries or the United States.

NOTE: If requesting dual/third country national employees for access to classified defense articles and/or retransfer of technical data/defense services who otherwise qualify for access pursuant to §124.16, the applicant must specifically identify those exclusive nationalities under the §124.8(5) clause, and NDAs must be executed for these employees.

d. The U.S. applicant (or U.S. Signatories) currently employs dual/third country nationals of the following counties who will participate in this program:

e. Contract employees to any party to the agreement hired through a staffing agency or other contract employee provider shall be treated as employees of the party, and that party is legally responsible for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services. Transfers to the parent company by any contract employees are not authorized. The party is further responsible for certifying that each employee is individually aware of their responsibility with regard to the proper handling of ITAR controlled defense articles, technical data, and defense services.

II. §124.8

The following statements must be included verbatim as written in the ITAR.

(1) This agreement shall not enter into force, and shall not be amended or extended without the prior written approval of the Department of State of the U.S. Government.

(2) This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

(3) The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

(4) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

(6) All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

III. §124.9(a) All Manufacturing Licensing Agreements must include the clauses verbatim as required by §124.9(a).

(1) No export, sale, transfer or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.

(2) It is agreed that sales by licensee or its sub-licensees under contract made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-fee license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

(3) If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

(4) If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a)(2) and (3) of this section (be sure you properly reference the paragraph numbering system used in the agreement and not just repeat the ITAR numbering), no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) The parties to this agreement agree that an annual report of sales or other transfer pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (state the country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

§124.9(b). Additionally, MLA's for the production of SME must include the clauses verbatim required by

(1) A completed Non-transfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place. Note: No substitute may be made for a DSP-83 (e.g., end user's certificate or a DSP-83 like document modified by the foreign party).

(2) The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year of the last signature of this agreement *(or)* upon approval of the Department of State *(if a signed agreement was submitted and no modifications are directed by proviso).*

_____	_____
(signature block for U.S. person)	(signature block for foreign person)

Tab 4 - WDA Transmittal Letter

May 7, 20xx
Applicant Code: M-0000
USML Categories: XI c and XI d

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, Va. 98765

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Proposed Warehouse and Distribution Agreement for Aircraft Spare Parts and Components

References: AG 050XXXXXX; DSP-5 050XXXXXX

Dear Mr. Maloney

Submitted herewith is a submission package which includes this letter, a certification letter and the proposed Warehouse and Distribution Agreement for the warehouse and distribution of aircraft spare parts and components to the authorized distribution territory.

BACKGROUND

Provide a brief description on the purpose of the agreement and how it will be executed by the parties to include scope, role of parties, review of defense articles and services to be transferred.

REQUIRED INFORMATION

In accordance with §124.14, the following information is provided:

(e)(1) The DDTC applicant code is M-0000.

(e)(2) The party to this agreement is as follows:

The foreign licensee

XXX Technologies
Full Address (no P.O. Box)
Country

This agreement is valid until March 31, 20XX.

(e)(3) The defense articles to be distributed under the agreement are (applicant should provide a summary of the defense articles. An attachment may be used to list the defense articles but it must be referenced in this section.).

(e)(4) Identify relevant U.S. Government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. Government (to include any relationship to any Foreign Military Sales (FMS) case), and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government. If none, so state and identify cognizant U.S. military service.

(e)(5) No classified defense articles or classified technical data is involved in this agreement.

(e)(6) State whether any patent applications which disclose any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office are on file concerning this agreement. If so, the patents must be listed herein.

REQUIRED STATEMENTS

(f)(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(f)(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(f)(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to the expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

To facilitate U.S. Government consideration of this request, the following information is provided:

Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5).

This agreement relates to the following U.S. Munitions List category(ies): XIc and XId (list applicable USML category and article from §121). These category(ies) are not or are designated as Significant Military Equipment (SME). For multiple categories, state which are designated SME. If hardware will be exported, then identify whether it/they is/are SME.

If the agreement involves the transfer of SME or classified defense articles, state that a DSP-83 will be submitted as part of the DSP-5 license request.

If you require additional information, please contact (list license point of contact) at telephone number (area code and number), e-mail name@company.com.

Sincerely,

Signature block

Tab 5 – WDA

This agreement is entered into between (company name), an entity incorporated in the State of (state) with offices at (company address) and (foreign company name) whose office is situated at (foreign company address) and is effective upon the date of signature of the last party to sign the agreement.

WHEREAS, (applicant name) (Describe the need for the WDA.)

WHEREAS, (foreign company name) (Describe the company's role in the WDA.)

NOW THEREFORE, the parties desire to enter into this Warehouse and Distribution Agreement as follows:

1. This Warehouse and Distribution Agreement is intended to (Provide concise summary of the distribution arrangement to be approved under the agreement. This summary should include a reference to an attachment identifying all defense articles sought for distribution.)

2. It is understood that this Warehouse and Distribution Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.

3. The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

I. §124.14(b)

(1) Describe the defense articles involved including test and support equipment covered by the USML and to be exported in furtherance or support of this agreement. Describe defense articles by military nomenclature, contract number, Federal Stock Number, name plate data, or any control numbers under which the defense articles were developed or procured by the U.S. Government. An attachment may be used to list hardware, but the agreement must reference such attachments under this article.

Note: Only defense articles listed in the agreement or on an addendum sheet and referenced here will be eligible for export in furtherance of the agreement.

(2) Describe in detail the statement of the terms and conditions under which the defense articles will be exported and distributed.

(3) This agreement is valid through (month, day, year).

(4) Specifically identify the country(ies) that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant o a contract with a government within the distribution territory. An attachment may be used to identify the distribution territory but the agreement must reference such attachments under this article.

II. §124.14(c). The following statements must be included verbatim as written in the ITAR for all WDAs.

(1) "This agreement shall not enter into force, and may not be amended or extended without the prior written approval of the Department of State of the U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(7) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

"These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

(9) Additional clause. Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: "Sales or other transfers of the licensed article shall be limited to the governments of the countries in the distribution territory and private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

III. §124.14(d). The following statements must be included verbatim as written in the ITAR for all WDAs for the distribution of SME.

(1) "A completed Nontransfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place."

(2) "The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory."

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year of the last signature of this agreement *(or)* upon approval of the Department of State *(if a signed agreement was submitted and no modifications are directed by proviso).*

_____ _____

(signature block for U.S. person) (signature block for foreign person)

Tab 6 - TAA/MLA Amendment Transmittal Letter

May 7, 20xx
Applicant Code: M-0000
USML Categories: XI c and XI d

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, Va. 98765

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Proposed Amendment No. X to **TA (MA) 050XXXXXX (TA/MA XXXX-XX)** for the support of the How to Write Agreements Processor

Reference: DTCL Case (original case number) (list any precedent cases that are directly relative to the amendment)

Dear Mr. Maloney:

Submitted herewith is a submission package for proposed Amendment No. 1 (or amendment number) to the Technical Assistance (or Manufacturing Licensing) Agreement, for the support of the How to Write Agreements Processor. Armageddon Aerospace Corporation and the foreign party(ies) now desire to modify the agreement to (brief explanation for the amendment – i.e., scope change, extension, add parties, etc.).

OBJECTIVE OF AMENDMENT

Provide a full list of the changes being requested in this request. Provide in bullet format. Make a short explanation of why each change is being made (purpose). Examples of modifications include but are not limited to:

Expand scope to include:
Addition of new hardware.
Expansion of Statement of Work.
Transfer of additional technical data.
Expansion of sales or marketing territory (new countries)
Addition of new programs.
Extend term of agreement from (current date) to (proposed date).
Add U.S. or foreign parties.
Change name of U.S. or foreign signatory from (company) to (company).
Increase value of agreement.
Moderate increase of approved hardware for export

ORIGINAL PURPOSE OF AGREEMENT

Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, what is the scope of the effort, and an explanation of the commodity or program. The level of detail required here depends upon the nature of the amendment request (i.e., scope changes will require more details than administrative changes). Bullet format is preferred.

RELATIONSHIP TO ORIGINAL APPROVAL

- Bullet format is preferred
- Briefly summarize modifications imposed by each previously approved amendment.
- Note status and date submitted for any pending amendments
- Explain how modifications in the current request relate to/differ from those authorizations previously approved.
- If pertinent, describe any new technology (technical data) that will be transferred with this amendment.
- If no new technology will be transferred, then so state.
- State whether any precedence of exports has been approved that may relate or pertain to this amended request.
- Attachments can be referenced with more detailed information, but a short description is still required here.

REQUIRED INFORMATION

In accordance with §124.12, the following information is provided: Indicate if there has been a change to any of the original information in the letter of transmittal by including the applicable statements in the format below with the indicated "CHANGE" or "NO CHANGE."

(a)(1) DDTC Applicant Code is M-XXXXX. NO CHANGE.

(a)(2) The parties to this agreement are as follows: NO CHANGE.

The foreign licensee(s)

XXX Technologies
Full Address (no P.O. Box)
Country

AAAA Systems Incorporated
Full Address (no P.O. Box)
Country

U.S. Signatories

U.S. Agreement Writers Guild
Full Address (no P.O. Box)

The purpose of this amendment is (provide a general description, e.g., change scope, etc.). CHANGE.

The agreement is valid through (must provide an actual calendar date). NO CHANGE.

(a)(3) Applicant must identify relevant U.S. Government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. Government. NO CHANGE.

(a)(4) The highest U.S. military security classification of the equipment or technical data to be transferred under the terms of this agreement is (Unclassified, Confidential, Secret or Top Secret). NO CHANGE.

(a)(5) State whether any patent requests which disclose any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office are on file concerning this agreement. If so, the patents must be listed herein. NO CHANGE.

(a)(6) For all amendments, the total value change and new totals for each row on the table must be provided. The applicant can describe pertinent details to the value breakout deemed necessary to explain the case, however, the table will generally cover the pertinent details required. It is the option of the applicant to provide a column of each past amendment (which is a better approach) or just the "Currently Approved" column. CHANGE.

Example:

	Currently Approved	Proposed Amendment	New Total
Technical Data and Defense Services	$600,000	100,000	$700,000
Hardware			
Permanent Export by DSP-5 or DSP-85	$500,000	$200,000	$700,000
Temporary Export by DSP-73 or DSP-85	$200,000	$0	$200,000
Temporary Import by DSP-61 or DSP-85	$100,000	$0	$100,000
Total Hardware	$800,000	$200,000	$1,000,000
Hardware Manufactured Abroad (MLA only)	$1,500,000	$1,000,000	$2,500,000
TOTALS	$2,900,000	$1,300,000	$4,200,000

(a)(7) Applicant must provide a statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(a)(8) The agreement must describe any classified information involved and identify, from DoD form DD 254, the address and telephone number of the U.S. Government office that classified the information and/or the classification source (i.e., document). If no classified information is involved, state so, but do not leave blank. NO CHANGE.

(a)(9) For agreements that may require the export of classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided. NO CHANGE.

(a)(10) This agreement does (or does not) request retransfer of defense articles and defense services pursuant to §124.16." NO CHANGE.

REQUIRED STATEMENTS

These statements need to be verbatim and relate to the proposed amended agreement.

(b)(1) If the agreement is approved by the Department of State, such approval will not be construed by the applicant as passing on the legality of the Amendment from the standpoint of antitrust laws or other applicable statutes, nor will (applicant) construe the Department's approval as constituting either approval or disapproval of the business terms or conditions between the parties to this agreement.

(b)(2) The applicant will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

(b)(3) The applicant will furnish to the Department of State one copy of the signed agreement within 30 days from the date the agreement is concluded and will inform the Department of State of its termination not less than 30 days prior to the expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days.

(b)(4) If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., §124.8 and §124.9).

Prior Approval Summary:

Sub-licensing. Make one of the following statements regarding Sub-licensing:

- "Sub-licensing was not previously authorized under this agreement."

- "Sub-licensing was previously authorized under this agreement as described in (Article or Section x.x)"

Hardware. Make one of the following statements regarding Hardware:

- "No defense articles were previously authorized"

- "Defense articles for export in furtherance of this agreement were previously authorized and are described in (Article or Section x.x)"

Dual/Third Country Nationals. Make one of the following statements regarding Dual/Third Country Nationals:

- "Dual/Third Country Nationals were not previously authorized under this agreement."
- "Dual/Third Country Nationals were previously authorized under this agreement as described in (Article or Section x.x)"

Congressional Notification (only if agreement was previously notified). This agreement was previously notified under DTC # xx-xx pursuant to Article 36(c) and/or Article 36(d) on (month/day/year) for $xxx.xxx.xxxx. (If this information was not provided in a proviso from DTCL, provide the agreement /amendment number and calendar year of Notification)

- Insert a statement as to whether or not the proposed amendment will result in Congressional Notification (see Section 13.0 for Congressional Notification thresholds).

- If such Notification is required, the applicant should reference the location of an Executive Summary for Congressional Notification, a signed contract between the applicant and the foreign licensee, and a description of any direct or indirect offsets associated with the agreement.

This agreement relates to the following U.S. Munitions List category(ies): (list applicable USML category and article from §121). These category(ies) are/are not designated as Significant Military Equipment (SME).

If the agreement involves the transfer of classified technical data or technical data for the manufacture of SME abroad, state whether a Non-transfer and Use Certificate (Form DSP-83), is/is not attached in accordance with §124.10. If the agreement involves the transfer of SME or classified defense articles, state that a DSP-83 will be submitted as part of the DSP-5 or DSP-85 license request.

SALES REPORT SUMMARY

For an MLA amendment, provide a table reporting sales by year and with total sales to date. This table does not replace the need to submit annual sales reports in accordance to §124.9(a)(5).

Year	Dollar Value
2001	
2002	
2003	
Total	

If you require additional information, please contact (list point of contact) at telephone number (area code and number) and email (email address).

Sincerely,

Signature block

<u>Tab 7</u> - TAA/MLA Amendment

Amendment No. X to TA (MA) 050XXXXXX (TA/MA XXXX-XX)

This amendment is entered into between (company name), an entity incorporated in the State of (state) with offices at (company address) and (foreign company name(s)) whose office(s) is/are situated at (foreign company address(es)) and is effective upon the date of signature of the last party to sign the agreement. (If the amendment has a large number of parties involved, then list in bullet format for ease of review.)

WHEREAS, (applicant name) obtained authorization for this Technical Assistance Agreement on xx/xx/2008 to (Describe the program for which you are providing technical assistance (or manufacturing for) and the type of assistance you will provide.)

WHEREAS, (foreign or other U.S. company name)(describe the company's role in the TAA or MLA – have a separate paragraph for each foreign company)

WHEREAS, the parties now desire to modify the subject agreement

NOW THEREFORE, the parties agree as follows:

- Add the following foreign party to the agreement:

Provide full name and address of the additional party and description of the party's role in the agreement.

- Revise Article 1.1 of the Agreement or Replace Article 1.1 of the agreement (when the entire Article has been changed)

Note: Provide revised article **addressing modifications in bold**. If the entire article is being replaced, provide new article. If a separate document (i.e., list of Hardware for export or temporary import) is also being revised or replaced, be sure to state as such and provide a copy of the revised document.

- Revise Article 1.3 of the Agreement to extend the Duration to October 31, 20xx.

- Modify Article 1.4 (d) to address nationals of a third country pursuant to ITAR 124.16

NOW THEREFORE, the parties desire to enter into this Agreement as follows:

1. This Technical Assistance (or Manufacturing Licensing) Agreement is intended to (Provide concise summary of program to be done under the agreement. This summary can be drawn from the Statement of Work. The Statement of Work can be a separate document attached to the TAA or MLA and incorporated by reference within the agreement.)

2. It is understood that this Technical Assistance (or Manufacturing Licensing) Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.

3. The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

I. §124.7

(1) Describe the defense article to be manufactured and all defense articles to be exported in furtherance or support of this agreement. Describe defense articles by military nomenclature, contract number, Federal Stock Number, name plate data, or other specific information. If no hardware is being manufactured or exported, then state so but do not leave blank. An attachment may be used to list hardware, but must reference such attachments under this article.

(2) Describe the assistance and technical data, to include any design and manufacturing know-how involved. The applicant may address the assistance and technical data in a separate attachment to the request but must reference the attachment under this article.

(3) This agreement is valid through (month, day, year).

(4) Territory.

a. The transfer of technical data, defense articles, and defense services is authorized between the United States and (list countries of foreign licensees) for end-use by the government of (list end-users).

- For MLAs, specifically identify each country of the proposed sales territory
- If marketing is requested, specifically identify each country of the proposed marketing territories

b. Sub-licensing rights are granted to the foreign licensees (or list the specific foreign licensee). Sub-licensees are identified in Attachment ___.

Sub-licensees are required to execute a Non-Disclosure Agreement (NDA) prior to provision of, or access to the defense articles, technical data or defense services. The executed NDA, referencing the DTC Case number and incorporating all the provisions of the Agreement that refer to the United States Government and the Department of State (i.e., §124.8) will be maintained on file by the applicant for five years from the expiration of the agreement.

- If Sub-licensing and Retransfer is not requested, the applicant must specifically state that sub-licensing/retransfer is not authorized.

c. Dual/Third Country National Employees are not authorized (or) are authorized as follows:

(1) Pursuant to §124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to individuals who are dual/third country national employees of the foreign licensees (and its approved sub-licensees – if applicable). The exclusive nationalities authorized are *(list all foreign nationalities of the employees who are not eligible for application of §124.16).* Prior to any access or retransfer, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement.

(2) Pursuant to §124.16, this agreement authorizes access to unclassified defense articles and/or retransfer of technical data/defense services to individuals who are dual/third country national employees of the foreign licensees (and its approved sub-licensees – if applicable). The exclusive nationalities authorized are limited to NATO, European Union, Australia, Japan, New Zealand, and Switzerland. All access and/or retransfers must take place completely within the physical territories of these countries or the United States.

NOTE: If requesting dual/third country national employees for access to classified defense articles and/or retransfer of technical data/defense services who otherwise qualify for access pursuant to §124.16, the applicant must specifically identify those exclusive nationalities under the §124.8(5) clause, and NDAs must be executed for these employees.

d. The U.S. applicant (or U.S. Signatories) currently employs dual/third country nationals of the following counties who will participate in this program:

II. §124.8

The following statements must be included verbatim as written in the ITAR.

(1) This agreement shall not enter into force, and shall not be amended or extended without the prior written approval of the Department of State of the U.S. Government.

(2) This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

(3) The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

(4) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

(6) All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

III. §124.9(a) All Manufacturing Licensing Agreements must include the clauses verbatim as required by §124.9(a).

(1) No export, sale, transfer or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.

(2) It is agreed that sales by licensee or its sub-licensees under contract made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-fee license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

(3) If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

(4) If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a)(2) and (3) of this section (be sure you properly reference the paragraph numbering system used in the agreement and not just repeat the ITAR numbering), no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) The parties to this agreement agree that an annual report of sales or other transfer pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (state the country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

§124.9(b). Additionally, MLA's for the production of SME must include the clauses verbatim required by

(1) A completed Non-transfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place. Note: No substitute may be made for a DSP-83 (e.g., end user's certificate or a DSP-83 like document modified by the foreign party).

(2) The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year of the last signature of this agreement *(or)* upon approval of the Department of State *(if a signed agreement was submitted and no modifications are directed by proviso).*

Except as modified above, in every other respect, the subject Agreement shall continue in force and effect unchanged.

_____ _____

(signature block for U.S. person) (signature block for foreign person)

Tab 8 - WDA Amendment Transmittal Letter

May 7, 20xx
Applicant Code: M-0000
USML Categories: XI c and XI d

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, Va. 98765

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Proposed Amendment No. X to **DA 050XXXXXX (DA XXXX-XX)** for the for the Warehouse and Distribution of Aircraft Spare Parts and Components

Reference: DTCL Case (original case number) (list any precedent cases that are directly relative to the amendment)

Dear Mr. Maloney:

Submitted herewith is a submission package for proposed Amendment No. 1 (or amendment number) to the Warehouse and Distribution Agreement for the warehouse and distribution of aircraft spare parts and components. Armageddon Aerospace Corporation and the foreign party(ies) now desire to modify the agreement to (brief explanation for the amendment – i.e., scope change, extension, add parties, etc.).

OBJECTIVE OF AMENDMENT

Provide a full list of the changes being requested in this proposal. Provide in bullet format. Make a short explanation of why each change is being made (purpose). Examples of modifications include but are not limited to:

Expand scope to include:
Addition of new hardware.
Expansion of Statement of Work.
Transfer of additional technical data.
Expansion of sales or marketing territory (new countries)
Addition of new programs.
Extend term of agreement from (current date) to (proposed date).
Add U.S. or foreign parties.
Change name of U.S. or foreign signatory from (company) to (company).
Moderate increase of approved hardware for export

ORIGINAL PURPOSE OF AGREEMENT

Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, what is the scope of the effort, and an explanation of the commodity or program. The level of detail required here depends upon the nature of the amendment request (note: scope changes will require more details than administrative changes). Bullet format is preferred.

RELATIONSHIP TO ORIGINAL APPROVAL

- Bullet format is preferred
- Briefly summarize modifications imposed by each previously approved amendment.
- Note status and date submitted for any pending amendments.
- Explain how modifications in the current request relate to/differ from that originally approved.
- If pertinent, describe any new technology (technical data) that will be transferred with this amendment.
- If no new technology will be transferred, then so state.
- State whether any precedence of exports has been approved that may relate or pertain to this amended request.
- Attachments can be referenced with more detailed information, but a short description is still required here.
- In addition, provide a brief summary of prior amendments.

REQUIRED INFORMATION

In accordance with §124.14, the following information is provided: Indicate if there has been a change to any of the original information in the letter of transmittal by including the applicable statements in the format below with the indicated "CHANGE" or "NO CHANGE."

(e)(1) DDTC Applicant Code is: M-0000. NO CHANGE.

(e)(2) The parties to this agreement are as follows: NO CHANGE.

The foreign licensee(s)

XXX Technologies
Full Address (no P.O. Box)
Country

The purpose of this amendment is (provide a general description, e.g., change scope, etc.). CHANGE.

This agreement is valid until March 31, 20XX. NO CHANGE.

(e)(3) The defense articles to be distributed under the agreement are (applicant should provide a summary of the defense articles. An attachment may be used to list the defense articles but it must be referenced in this section.). CHANGE.

(e)(4) Identify relevant U.S. Government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. Government (to include any relationship to any Foreign Military Sales (FMS) case), and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government. If none, so state and identify cognizant U.S. military service. NO CHANGE.

(e)(5) No classified defense articles or classified technical data is involved in this agreement. NO CHANGE.

(e)(6) State whether any patent applications which disclose any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office are on file concerning this agreement. If so, the patents must be listed herein. NO CHANGE.

REQUIRED STATEMENTS

These statements need to be verbatim and relate to the proposed amended agreement.

(f)(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(f)(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(f)(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to the expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5).

This agreement relates to the following U.S. Munitions List category(ies): (list applicable USML category and article from §121). These category(ies) are/are not designated as Significant Military Equipment (SME).

If the agreement involves the transfer of SME or classified defense articles, state that a DSP-83 will be submitted as part of the DSP-5 license request.

SALES REPORT SUMMARY

For a WDA amendment, provide a table reporting sales by year and with total sales to date. This table does not replace the need to submit annual sales reports in accordance to §124.9(a)(5).

Year	Dollar Value
2001	
2002	
2003	
Total	

For a WDA amendment, provide a table identifying all export licenses received in furtherance of the agreement and the total value authorized under each license.

License Number	Dollar Value
0500000001	
0500000010	
0500000020	
Total	

If you require additional information, please contact (list point of contact) at telephone number (area code and number) and email (email address).

Sincerely,

Signature block

Tab 9 - WDA Amendment

Amendment No. X to DA 050XXXXXX (DA XXXX-XX)

This amendment is entered into between (company name), an entity incorporated in the State of (state) with offices at (company address) and (foreign company name(s)) whose office(s) is/are situated at (foreign company address(es)) and is effective upon the date of signature of the last party to sign the agreement. (If the amendment has a large number of parties involved, then list in bullet format for ease of review.)

WHEREAS, (applicant name) obtained authorization for this Warehouse and Distribution Agreement on xx/xx/2008 for the warehouse and distribution of aircraft spare parts and components.

WHEREAS, (foreign company name) (Describe the company's role in the WDA.)

WHEREAS, the parties now desire to modify the subject agreement

NOW THEREFORE, the parties agree as follows:

- Change the Name of the foreign party to the agreement:

Note: State the prior name of the foreign party and name party is changing to.

- Revise Article 1.1 of the Agreement to read as follows: or Replace Article 1.1 of the agreement with the following: (when the entire Article has been changed)

Note: Provide revised article **addressing modifications in bold**. If the entire article is being replaced, provide new article. If a separate document (i.e., list of Hardware for export) is also being revised or replaced, be sure to state as such and provide a copy of the revised document.

- Revise Article 1.3 of the Agreement to extend the Duration to October 31, 20xx.

NOW THEREFORE, the parties desire to enter into this Warehouse and Distribution Agreement as follows:

1. This Warehouse and Distribution Agreement is intended to (Provide concise summary of the distribution arrangement to be approved under the agreement. This summary should include a reference to an attachment identifying all defense articles sought for distribution.)

2. It is understood that this Warehouse and Distribution Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.

3. The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

I. §124.14(b)

(1) Describe the defense articles involved including test and support equipment covered by the USML and to be exported in furtherance or support of this agreement. Describe defense articles by military nomenclature, contract number, Federal Stock Number, name plate data, or any control numbers under which the defense articles were developed or procured by the U.S. Government. An attachment may be used to list hardware, but the agreement must reference such attachments under this article.

Note: Only defense articles listed in the agreement or on an addendum sheet and referenced here will be eligible for export in furtherance of the agreement.

(2) Describe in detail the statement of the terms and conditions under which the defense articles will be exported and distributed.

(3) This agreement is valid through (month, day, year).

(4) Specifically identify the country(ies) that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant o a contract with a government within the distribution territory. An attachment may be used to identify the distribution territory but the agreement must reference such attachments under this article.

II. §124.14(c). The following statements must be included verbatim as written in the ITAR for all WDAs.

(1) "This agreement shall not enter into force, and may not be amended or extended without the prior written approval of the Department of State of the U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(7) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

"These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

(9) Additional clause. Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: "Sales or other transfers of the licensed article shall be limited to the governments of the countries in the distribution territory and private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

III. §124.14(d). The following statements must be included verbatim as written in the ITAR for all WDAs for the distribution of SME.

(1) "A completed Nontransfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place."

(2) "The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory."

Except as modified above, in every other respect, the subject Agreement shall continue in force and effect unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to Agreement No. xxxx-xx to be executed effective as of the day and year of the last signature of this amendment.

_____	_____
(signature block for U.S. person)	(signature block for foreign person)

Tab 10 - Request for Proviso Reconsideration

(Date)
Applicant code:

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W.
Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Request for reconsideration of proviso(s) (proviso numbers) to TA (or MA/DA) 050xxxxxx (TA/MA/DA xxxx-xx) approved license dated (month/day/year) related to (commodity in DTC license)

Reference: DTCL Case (original case number; any precedent cases directly related)

Dear Mr. Maloney:

Submitted herewith is a submission package for proposed reconsideration of provisos (proviso numbers) to TA (or MA/DA) 050xxxxxx license dated (mm/d/yr) between (U.S. company(ies)) and (foreign party(ies) with country) related to (commodity on DTC license)

(Applicant) is asking for reconsideration of Provisos (list each proviso) from the DTCL approved license (state agreement or amendment number) dated (date). Address provisos one at a time.

Current Wording: (State the proviso verbatim from the approval)

Recommendation: (delete or revise as follows)

Justification: (provide a description of the problem with justification for change)

If you require additional information, please contact (list point of contact) at telephone number (area code and number) and email (email address).

Sincerely,

Signature block

Tab 11 - Non Disclosure Agreement (NDA)

NON-DISCLOSURE AGREEMENT[3]
For DTCL Case _____

For Dual/Third Country National Employees and Sub-licensees

I, _____, acknowledge and understand that any technical data related to defense articles on the U.S. Munitions List, to which I have access or which is disclosed to me under this license by (company name) is subject to export control under the International Traffic in Arms Regulations (Title 22, Code of Federal Regulations, parts 120-130). I hereby certify that such data will not be further disclosed, exported or transferred in any manner, to any other foreign national or any foreign country without the prior written approval of the Office of Trade Controls Licensing, U.S. Department of State.

For all Sub-licensees, add the following:

§124.8 (1). This agreement shall not enter into force, and shall not be amended or extended without the prior written approval of the Department of State of the U.S. Government.

§124.8 (2). This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

§124.8 (3). The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

§124.8 (4). No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.

§124.8 (5). The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

§124.8 (6). All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

For Sub-licensees on MLAs, add the following:

[3] When Re-Baselining an agreement, existing NDAs do not need to be re-executed to change the agreement number—the existing NDA will remain valid.

§124.9(a)(1). No export, sale, transfer or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.

§124.9(a)(2). It is agreed that sales by licensee or its sub-licensees under contract made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-fee license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

§124.9(a)(3). If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

§124.9(a)(4). If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a)(2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data.

§124.9(a)(5). The parties to this agreement agree that an annual report of sales or other transfer pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State.

§124.9(a)(6). (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (state the country of ultimate destination or approved sales territory. Do not use collective terminology). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

For Sub-licensees on MLAs involving the Manufacture of SME, add the following:

§124.9(b)(1). A completed Non-transfer and use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place.

§124.9(b)(2). The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory.

For Sub-licensees with Contract Employees, add the following:

"Contract employees to any party to the agreement hired through a staffing agency or other contract employee provider shall be treated as employees of the party, and that party is legally responsible for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services. Transfers to the parent company by any contract employees are not authorized. The party is further responsible for certifying that each employee is individually aware of their responsibility with regard to the proper handling of ITAR controlled defense articles, technical data, and defense services."

_____	_____
Signature Block of Foreign Party	Signature of Block of Participating Company
_____	_____
Date	Date

<u>Tab 12</u> - In Furtherance of Letter of Explanation

Month DD, YYYY

In reply refer to: PM/DTC Applicant Code: M-XXXXX
Company Tracking Code (if applicable)

Mr. Kevin Maloney
Director, Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Supplementary Explanation of Transaction Accompanying DSP 5/61/73/85 for Export/Import "In Furtherance" of AG/TA/MLA/DA 050XXXXXX (TA/MA/DA XXXX-XX)

References: List any applicable references

Dear Mr. Maloney,

(Insert Applicant Name) requests approval to permanently/temporarily (choose one) export/import (choose one) (general description of the hardware) to (identification of the foreign consignees) in furtherance of AG/TA/MLA/DA 050XXXXXX, as amended. To assist in your review of the license request, the following information is provided:

1. Agreement Execution History:

Base Agreement: provide date of execution or state none if not yet concluded
Amendment A: same
Continue as necessary to cover all prior amendments.

2. Hardware Proviso (N/A for DA): The most recent hardware proviso is Proviso # (insert proviso #) from AG/TA/MLA 050XXXXXX (insert amendment letter, if any) and it stated:

"Export or temporary import of hardware in furtherance of this agreement by separate license is authorized. If used, the separate license, submitted in accordance with Section 15.1 of the Guidelines for Preparing Electronic Agreements, must reference the agreement and must not exceed $_____. This proviso does not limit the use of separate authorizations for repair and replacement purposes."

3. Hardware Identification: The hardware that is the subject of this license request can be found in (the base agreement/amendment?) at (insert location) and reads as follows:

Insert text of the agreement or if lengthy make reference to it by attachment. In the PDF upload of the agreement/amendment text, it is helpful if the applicant identifies the specific hardware

that is the subject of this request with highlighting or some other identification markings within the PDF file.

4. Valuation (N/A for DA):

a. $xxx,xxx in separate licenses have been previously approved "In Furtherance" of this agreement to date. (If this is the first request, state, "This is the first request under this agreement.")

b. $xxx,xxx is available for this and future export requests.

c. A summary table of all prior authorizations with associated license numbers can be found at Attachment C. (If this is the first request, state, "This is the first request under this agreement.") (The summary table can be provided in the text of the letter if there are less than 10 prior approvals. For more than 10 prior approvals, please include in a PDF or Excel attachment to the license request).

d. (MLA Only) This manufacturing license agreement authorizes production of $xxx,xxx,xxx (insert value) in hardware. As of the last sales report, dated (insert date), the total of all production was reported as $xxx,xxx,xxx. (insert value)

5. Certifications:

a. I certify this license request is within the scope of the agreement, as amended, and its associated Limitations, Provisos, and Other Requirements.

b. I certify the end-user identified on this license request is identified as a foreign licensee (signatory) or end-user on the subject agreement, and the first foreign consignee (not including foreign intermediate consignees) to receive the subject hardware is a foreign licensee (signatory) or end-user on the subject agreement.

c. (Only if another U.S. party is applying for the license) I certify (insert U.S. Company name) is a signatory to the agreement, is authorized to submit this license request against the hardware valuation approved under this agreement, and is aware of the applicable provisos.

6. Additional Documentation: The following additional documentation is included to support this request:

a. DTC Approved License: (single PDF file with all DTC approvals)

b. Agreement/Amendments: (a single PDF file with the text of the agreement and amendments, including attachments/exhibits/annexes)

c. Summary Matrix of Prior Export Authorizations: (if not included above)

(If applicable) The U.S. Government point of contact familiar with the (scope of the effort) is (insert POC, office, phone number, and email if known).

If additional information is required, please contact (insert company POC, phone number, and email).

Sincerely,

Signed by an Empowered Official

Tab 13 - Technology Control Plan

Scope: The procedures contained in this plan apply to all elements of the _____ (insert company name and address). Disclosure of unclassified and/or classified information to foreign persons in a visitor status or in the course of their employment by _____ (insert company name) is considered an export disclosure under the International Traffic in Arms Regulations (ITAR) and requires a licensing by the Department of State.

Purpose: To delineate and inform employees and visitors of _____ (insert company name) the controls necessary to ensure that no transfer of technical information or data or a defense service (as defined in ITAR paragraphs §120.10 & §120.9) occurs unless authorized by the Directorate of Defense Trade Controls (DDTC).

Background: _____ (insert company name) _____ (explain the products and services the company provide (e.g., designs, manufactures, integrates…). Reference customers it provides products and/or services to (including foreign customers).

Foreign Persons:
No foreign person will be given access to unclassified and/or classified material on any project or program that involves the disclosure of technical data as defined in ITAR paragraph 120.10 until that individual's license authority has been approved by the Office of Defense Trade Controls Licensing (DTCL).

_____ (insert company name) employees who have supervisory responsibilities for foreign persons must receive an export control/licensing briefing that addresses relevant ITAR requirements as they pertain to classified and controlled unclassified information.

Foreign Persons

- Foreign persons employed by, assigned to (extended visit) or visiting _____ (insert name of company), shall receive a briefing that addressees the following items:

- Prior to the release of classified material or controlled unclassified information to a foreign person an export authorization issued by DTCL needs to be obtained by _____ (insert company name).

- Ensure foreign persons adhere to the _____'s (insert company name) security rules, policies and procedures and in-plant personnel regulations.

- Outline the specific information that has been authorized for release to them.

- Address the _____'s (insert name of the company) in-plant regulations for the use of facsimile, automated information systems and reproduction machines.

- Any classified information they are authorized to have access and need to forward overseas will be submitted to the _____'s (insert company name) security department for transmission through government-to-government channels.

- Information received at _____ (insert company name) for the foreign national and information that the foreign national needs to forward from _____ (insert company name) shall be prepared in English.

- Violations of security procedures and in-plant regulations committed by foreign nationals are subject to _____ (insert company name) sanctions.

Access Controls for Foreign Nationals: Address how foreign nationals will be controlled within the company's premises, for example:

a. Badges: (if necessary, address procedures, e.g., composition of the badge, identification on badge that conveys that the individual is a foreign national, privileges and so forth).

b. Escorts: (if necessary, address escort procedures. (NOTE: _____ (insert name of company) supervisors of foreign persons shall ensure that foreign nationals are escorted in accordance with U.S. Government and _____ (insert name of company) regulations.

c. Establishment of a segregated work area(s).if necessary.

Export Controlled Information: List specific elements of export controlled information, both classified and unclassified, that can be disclosed to foreign nationals and the program(s) the foreign national is supporting

Non-Disclosure Statement

All foreign persons shall sign a non-disclosure statement that acknowledges that classified and controlled unclassified information will not be further disclosed, exported or transmitted by the individual to any foreign national or foreign country unless DDTC authorizes such a disclosure and the receiving party is appropriately cleared in accordance with its government's personnel security system.

Supervisory Responsibilities: Supervisors of cleared personnel and foreign national employees and foreign national visitors shall ensure that the employees and visitors are informed of and cognizant of the following:

- Technical data or defense services that require an export authorization is not transmitted, shipped, mailed, hand-carried (or any other means of transmission) unless an export authorization has already been obtained by _____ (insert company name) and the transmission procedures follows U. S. Government regulations.

- Individuals are cognizant of all regulations concerning the handling and safeguarding of classified information and controlled unclassified information. (NOTE: Companies may also want to address company propriety and other types of unclassified information that require mandated controls.

- Individuals execute a technology control plan (TCP) briefing form acknowledging that they have received a copy of the TCP and were briefed on the contents of the plan (Attachment B).

- U.S. citizen employees are knowledgeable of the information that can be disclosed or accessed by foreign nationals.

_____ _____
_____ _____

Print name and signature of senior management official

Print name and signature of DSS official

_____
_____

Print name and signature of Facility Security Officer

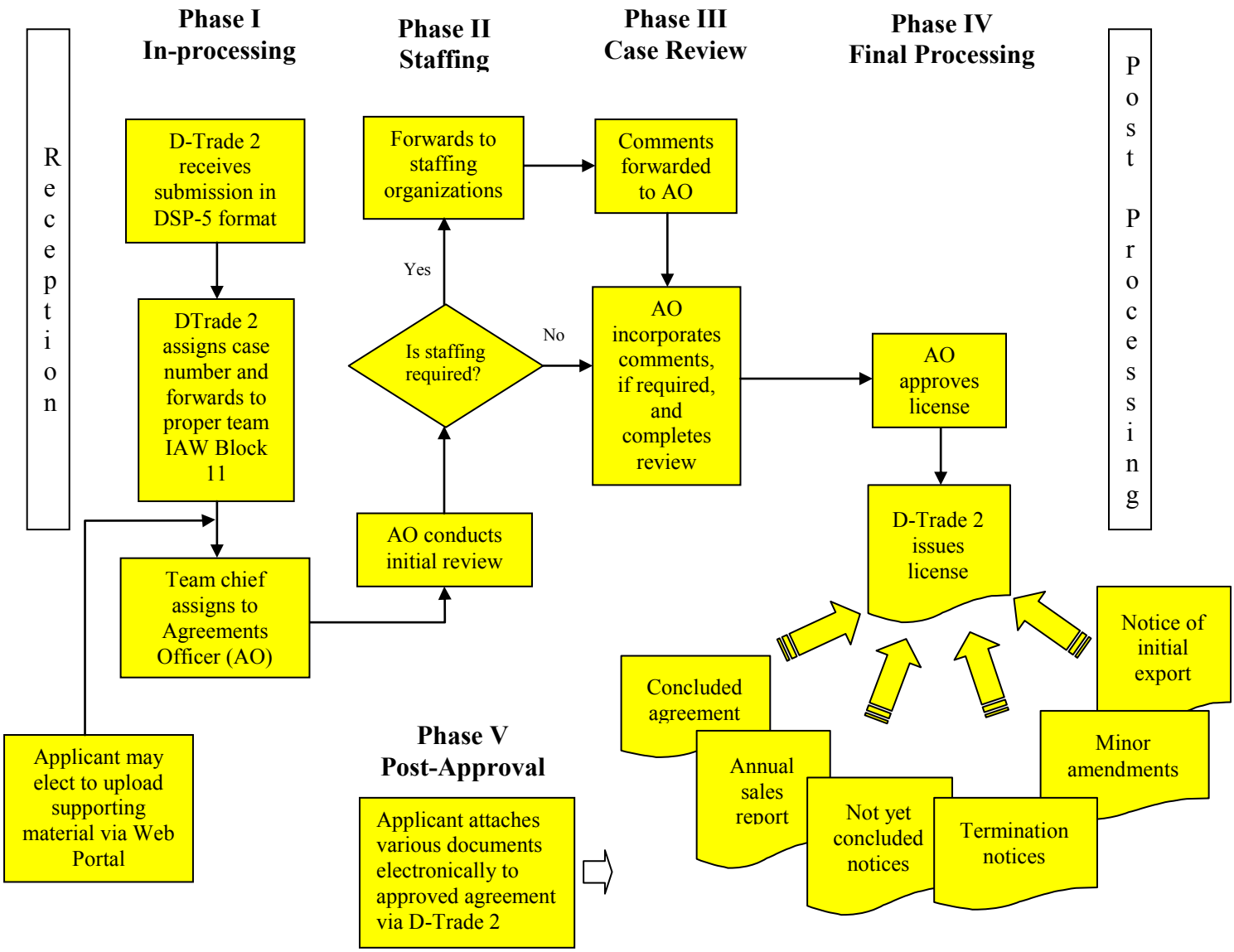
Employee Responsibilities: All _____ (insert name of company) employees who interface with foreign nationals shall receive a copy of the TCP and a briefing that addresses the following:

- Documents under their jurisdiction that contain technical data are not released to or accessed by any employee, visitor, or subcontractor who is a foreign national unless an export authorization has been obtained by _____(insert company name) in accordance with the ITAR or the Export Administration Regulations (EAR).

- If there is any question as to whether or not an export authorization is required, contact the Facility Security Officer promptly.

- Technical information or defense services cannot be forwarded or provided to a foreign national regardless of the foreign nationals location unless an export authorization has been approved by DDTC and issued to _____(insert company's name).

Appendix B – Electronic Agreements Flow Chart



Appendix C - Merger and Acquisition Flow Chart – Deleted

For information on this topic, please see current guidance on the DTC website

Appendix D - DSP-5 "Vehicle" Completion Guide

Tab 1 - DSP-5 "Vehicle" (New Agreement)

The following steps are to be used to submit an agreement to DDTC

Step No.	Block	Applicant Action
1	n/a	Access the DDTC Website at http://www.pmddtc.state.gov/
2	n/a	Click on "D-Trade"
3	n/a	Click on "D-Trade 2 Log-in" and open up a DSP-5
4	n/a	Input Transaction Number – to prevent an unnecessary delay in processing the Agreement, the Number MUST be preceded by "AG-" followed by the applicant's internal code (e.g. AG-M32509) ***No Spaces***
5	n/a	Attach documents per Section 17.1of these Guidelines (35 MB limit)
6	n/a	Open up DSP-5
7	2	Type your registration code
8	3	Select countr(ies) of ultimate destination (must equal Block 14)
9	4	Type "Not Required"
10	5	Fill in applicant's information
11	6	Type in Government Point of Contact information if applicable
12	7	Type in data on Applicant Points of Contact
13	8a	For basic agreement submissions, click "ONLY completely new shipment"
14	8b	Complete if applicable
15	8c	Leave blank for new agreements
16	8d	Click on the appropriate item and provide information as necessary and hit "return." Must be consistent with Paragraph (a)(7) in Transmittal Letter
17	8e	Click Yes or No and provide Compliance Disclosure Number if applicable
18	9	Type "1" in "Quantity" and select "Lots" for "Unit Type"
19	10	Type in agreement type (e.g. TAA, MLA, WDA), concise description of commodity(ies), SME status (e.g. "No SME"), highest level of classification of data/articles/services to be exported, all USML categories, and Total Agreement Value
20	10	For "Defense Article Type," always select "Technical Data"
21	11	Fill in primary USML Category Number (based on tech data being exported). If prompted to provide information on DSP-83, provide required explanation (e.g. "To be forwarded with concluded agreement"). If USML Category I, II or III and prompted to upload an Import Certificate, the applicant must upload a letter stating "no certification is required."
22	12	For new agreement submissions, input total value of agreement[4]
23	n/a	**Click on Add to open up the "Additional Commodities" page.** This will be used to identify whether all documentation is attached to the initial submission
24	9	In Line Item #2 type "1" in "Quantity" and select "Lots" for "Unit Type" (Same as Item 1)

[4] This data DOES NOT eliminate the requirement for the applicant to provide itemized values via the A6 Table in the transmittal letter

25	10	Type "**All Documents Uploaded**" if all documents will be uploaded with initial submission. Type "**Additional Documentation to be Uploaded**" if more documents will be added after the initial submission (i.e. files in excess of 35 MB total)
26	10	For "Defense Article Type," always select "Technical Data" (Same as Item 1)
27	11	Fill in primary USML Category Number (Same as Item 1)
28	12	Enter $**1** for Value
29	14	Provide name and address of foreign licensees and end users (other than U.S. end users)
30	15	Check "Same as Block 5"
31	16	Provide name and address for **all** foreign sublicensees. If none, enter "No Sublicensees" in the name block, N/A in address blocks, and the primary country of transaction in the country box. For WDAs, list any private entities included as part of the distribution territory.
32	17	Check "Same as Block 5"
33	18	List **all** countries of Third Country Nationals/Dual-Nationals except §124.16 related countries[5]; Sales Territories; marketing Territories; or Distribution Territories as applicable.[6] **For example:** Name – "Third Country Nationals" Address – "TCN" City – "TCN" Country – "BR" Role – "TCN" **For sales, marketing or distribution:** Name – "Sales (or marketing or distribution) Territories" Address – "Sales (or marketing or distribution) " City – "Sales (or marketing or distribution) " Country – "BR" Role – "Sales (or marketing or distribution) "
34	19	Check "Same as Block 5"
35	20	Check "Other". At a minimum, this block should include a concise narrative describing the purpose of the submission, as well as any other information DDTC would deem significant, such as pending submissions. This narrative should be derived from the Transmittal Letter "Background" entry. If requesting §124.16 third country nationals, state this here.
36	21	List all U.S. signatories. Check "Same as Block 5" if applicable
37	22	Check the appropriate §126.13[7] and §130 blocks

[5] If the applicant wishes to account for the collectives NATO or EU in the entirety, then these countries SHOULD NOT be added to Block 18 due to limitations with D-Trade 2. TCN from these collectives to include Australia, New Zealand, Japan, and Switzerland should be annotated in Block 20 instead. If §124.16 are the only TCNs being request, check None for Block 18 and identify the §124.16 request in Block 20.

[6] If names and data of individual nationals are provided, list applicable information after each category

38	n/a	Forward submission to DDTC
39	n/a	Once D-Trade 2 generates a nine-digit "05" identification number, attach any additional supporting material documents per Section 17.2 these Guidelines

[7] If items "a" or "c" are applicable, a separate §126.13 letter is not required. For all other entries, a separate §126.13 letter must be attached to the DSP-5 vehicle.

Tab 2 - DSP-5 "Vehicle" (Re-Baseline Agreements or Amendments)

Step No.	Block	Applicant Action
1	n/a	Access the DDTC Website at http://www.pmddtc.state.gov/
2	n/a	Click on "D-Trade"
3	n/a	Click on "D-Trade 2 Log-in" and open up a DSP-5
4	n/a	Input Transaction Number – to prevent an unnecessary delay in processing the Agreement, the Number MUST be preceded by "AG-" followed by the applicant's internal code (e.g. AG-M32509A) ***No Spaces***
5	n/a	Attach documents per Section 17.1of these Guidelines (35 MB limit)
6	n/a	Open up DSP-5
7	2	Type your registration code
8	3	Select countr(ies) of ultimate destination (must equal Block 14)
9	4	Type "Not Required"
10	5	Fill in applicant's information
11	6	Type in Government Point of Contact information if applicable
12	7	Type in data on Applicant Points of Contact
13	8a	For amendment/re-baseline submissions, click "ONLY the unshipped balance under the license numbers" and then click on "Enter license numbers." Fill in the last approved amendment/basic agreement in Block A and hit "return". **If the last amendment/basic agreement was submitted electronically, use the 9-digit DSP-5 number to identify the case. Otherwise, use the 6-digit DA/MA/TA number to identify previous paper cases.**
14	8b	Complete, if applicable
15	8c	For amendment/re-baseline submissions, click "This application is in reference to an agreement" and then click "Enter Agreement numbers." Fill in all previous amendment and basic agreement numbers in Block C and hit "return". **If the last amendment/basic agreement was submitted electronically, use the 9-digit DSP-5 number to identify the case. Otherwise, use the 6-digit DA/MA/TA number to identify previous paper cases.**
16	8d	Click on the appropriate item and provide information as necessary and hit "return." Must be consistent with Paragraph (a)(7) in Transmittal Letter
17	8e	Click Yes or No and provide Compliance Disclosure Number if applicable
18	9	Type "1" in "Quantity" and select "Lots" for "Unit Type"
19	10	Type in amendment type (e.g. TAA, MLA, WDA), concise description of commodit(ies), SME status (e.g. "No SME"), highest level of classification of data/articles/services to be exported, all USML categories, and Total Agreement Value
20	10	For "Defense Article Type," always select "Technical Data"
21	11	Fill in primary USML Category Number (based on tech data being

		exported). If prompted to provide information on DSP-83, provide required explanation (e.g. "To be forwarded with concluded agreement"). If USML Category I, II or III and prompted to upload an Import Certificate, the applicant must upload a letter stating "no certification is required."
22	12	For amendment/re-baseline submissions, only input requested value increase from the previously approved agreement/amendment; if no value increase, enter "1$"[8]
23	n/a	**Click on Add to open up the "Additional Commodities" page.** This will be used to identify whether all documentation is attached to the initial submission
24	9	In Line Item #2 type "1" in "Quantity" and select "Lots" for "Unit Type" (Same as Item 1)
25	10	Type "**All Documents Uploaded**" if all documents will be uploaded with initial submission. Type "**Additional Documentation to be Uploaded**" if more documents will be added after the initial submission (i.e. files in excess of 35 MB total)
26	10	For "Defense Article Type," always select "Technical Data" (Same as Item 1)
27	11	Fill in primary USML Category Number (Same as Item 1)
28	12	Enter $**1** for Value
29	14	Provide name and address of foreign licensees and end users (other than U.S. end users)
30	15	Check "Same as Block 5"
31	16	Provide name and address for **all** foreign sublicensees. If none, enter "No Sublicensees" in the name block, N/A in address blocks, and the primary country of transaction in the country box. For WDAs, list any private entities included as part of the distribution territory.
32	17	Check "Same as Block 5"
33	18	List **all** countries of Third Country Nationals/Dual-Nationals except §124.16 related countries[9]; Sales Territories; marketing Territories; or Distribution Territories as applicable.[10] **For example:** Name – "Third Country Nationals" Address – "TCN" City – "TCN" Country – "BR" Role – "TCN" **For sales, marketing or distribution:**

[8] This data DOES NOT eliminate the requirement for the applicant to provide itemized values via the A6 Table in the transmittal letter

[9] If the applicant wishes to account for the collectives NATO or EU in the entirety, then these countries SHOULD NOT be added to Block 18 due to limitations with D-Trade 2. TCNs from these collectives to include Australia, New Zealand, Japan, and Switzerland should be annotated in Block 20 instead. If §124.16 are the only TCNs being request, check None for Block 18 and identify the §124.16 request in Block 20.

[10] If names and data of individual nationals are provided, list applicable information after each category

		Name – "Sales (or marketing or distribution) Territories" Address – "Sales (or marketing or distribution) " City – "Sales (or marketing or distribution) " Country – "BR" Role – "Sales (or marketing or distribution) "
34	19	Check "Same as Block 5"
35	20	Check "Other". At a minimum, this block should include a concise narrative describing the purpose of the submission, amendment/re-baseline objectives, as well as any other information DDTC would deem significant, such as pending submissions. Narrative should be derived from the Transmittal Letter "Original Purpose of the Agreement" and "Relationship to Original Approval" entries for amendment/re-baseline. If requesting §124.16 third country nationals, state this here.
36	21	List all U.S. signatories. Check "Same as Block 5" if applicable
37	22	Check the appropriate §126.13[11] and §130 blocks
38	n/a	Forward submission to DDTC
39	n/a	Once D-Trade 2 generates a nine-digit "05" identification number, attach any additional supporting material documents per Section 17.2 these Guidelines

[11] If items "a" or "c" are applicable, a separate §126.13 letter is not required. For all other entries, a separate §126.13 letter must be attached to the DSP-5 vehicle.

Tab 3 - DSP-5 "Vehicle" (Proviso Reconsiderations)

Step No.	Block	Applicant Action
1	n/a	Access the DDTC Website at http://www.pmddtc.state.gov/
2	n/a	Click on "D-Trade"
3	n/a	Click on "D-Trade 2 Log-in" and open up a DSP-5
4	n/a	Input Transaction Number – to prevent an unnecessary delay in processing the Agreement, the Number MUST be preceded by "AG-" followed by the applicant's internal code (e.g. AG-M32509B) ***No Spaces***
5	n/a	Attach documents per Section 17.1of these Guidelines (35 MB limit)
6	n/a	Open up DSP-5
7	2	Type your registration code
8	3	Select countr(ies) of ultimate destination (must equal Block 14)
9	4	Type "Not Required"
10	5	Fill in applicant's information
11	6	Type in Government Point of Contact information if applicable
12	7	Type in data on Applicant Points of Contact
13	8a	For proviso reconsiderations, click "ONLY the unshipped balance under the license numbers" and then click on "Enter license numbers." Fill in the approved amendment/basic agreement in Block A the reconsideration is related to and hit "return"—use the 9-digit DSP-5 number to identify the case.
14	8b	Complete, if applicable
15	8c	For proviso reconsiderations submissions, click "This application is in reference to an agreement" and then click "Enter Agreement numbers." Fill in the amendment or agreement number the reconsideration is related to in Block C and hit "return" "—use the 9-digit DSP-5 number to identify the case.
16	8d	Click on the appropriate item and provide information as necessary and hit "return."
17	8e	Click Yes or No and provide Compliance Disclosure Number if applicable
18	9	Type "1" in "Quantity" and select "Lots" for "Unit Type"
19	10	Type in agreement type (e.g. TAA, MLA, WDA), and Request for reconsideration of Proviso ##
20	10	For "Defense Article Type," always select "Technical Data"
21	11	Fill in primary USML Category Number (based on tech data being exported). If prompted to provide information on DSP-83, provide required explanation (e.g. "To be forwarded with concluded agreement"). If USML Category I, II or III and prompted to upload an Import Certificate, the applicant must upload a letter stating "no certification is required."

22	12	For proviso reconsiderations, input value of "1$"[12]
23	n/a	**Click on Add to open up the "Additional Commodities" page.** This will be used to identify whether all documentation is attached to the initial submission
24	9	In Line Item #2 type "1" in "Quantity" and select "Lots" for "Unit Type" (Same as Item 1)
25	10	Type "**All Documents Uploaded**" if all documents will be uploaded with initial submission. Type "**Additional Documentation to be Uploaded**" if more documents will be added after the initial submission (i.e. files in excess of 35 MB total)
26	10	For "Defense Article Type," always select "Technical Data" (Same as Item 1)
27	11	Fill in primary USML Category Number (Same as Item 1)
28	12	Enter $**1** for Value
29	14	Provide name and address of foreign licensees and end users (other than U.S. end users)
30	15	Check "Same as Block 5"
31	16	Provide name and address for **all** foreign sublicensees. If none, enter "No Sublicensees" in the name block, N/A in address blocks, and the primary country of transaction in the country box. For WDAs, list any private entities included as part of the distribution territory.
32	17	Check "Same as Block 5"
33	18	List **all** countries of Third Country Nationals/Dual-Nationals except §124.16 related countries[13]; Sales Territories; marketing Territories; or Distribution Territories as applicable.[14] **For example:** Name – "Third Country Nationals" Address – "TCN" City – "TCN" Country – "BR" Role – "TCN" **For sales, marketing or distribution:** Name – "Sales (or marketing or distribution) Territories" Address – "Sales (or marketing or distribution) " City – "Sales (or marketing or distribution) " Country – "BR" Role – "Sales (or marketing or distribution) "
34	19	Check "Same as Block 5"
35	20	Check "other" and enter "Request for reconsideration of Proviso # XX to

[12] This data DOES NOT eliminate the requirement for the applicant to provide itemized values via the A6 Table in the transmittal letter

[13] If the applicant wishes to account for the collectives NATO or EU in the entirety, then these countries SHOULD NOT be added to Block 18 due to limitations with D-Trade 2. TCN from these collectives to include Australia, New Zealand, Japan, and Switzerland should be annotated in Block 20 instead.

[14] If names and data of individual nationals are provided, list applicable information after each category

		TA/MA/DA-xxxx-xx (DSP-5 # 05xxxxxxx).
36	21	List all U.S. signatories. Check "Same as Block 5" if applicable
37	22	Check the appropriate §126.13[15] and §130 blocks
38	n/a	Forward submission to DDTC

[15] If items "a" or "c" are applicable, a separate §126.13 letter is not required. For all other entries, a separate §126.13 letter must be attached to the DSP-5 vehicle.

Tab 4 – Sample DSP-5 "Vehicle"

Electronic Form Version Number: 4.0

OMB APPROVAL NO. 1405-0003
EXPIRATION DATE: 09-30-2011
*ESTIMATED BURDEN: 1 HOUR

* PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: Department of State (A/ISS/DIR) Washington, D.C. 20520.

U.S. DEPARTMENT OF STATE

DIRECTORATE OF DEFENSE TRADE CONTROLS

APPLICATION/LICENSE FOR PERMANENT EXPORT OF UNCLA
ARTICLES AND RELATED UNCLASSIFIED TECHNIC

Input Transaction Number: Your transaction number must be preceded by "AG-" to specify that this is an Agreement Submission Package

*Transaction Number: AG-AFAS-003

Please note that an Asterisk (*) next to a field in the documents designates a

No classified information can be included in this application. Classified information must be sent separately to PM/DDTC in accordance with Defense Security Service guidelines.

Classified information is being sent under separate cover ☐

To select and open a document, highlight a form and select the "Open Document" button. The document that you selected will open.

Required Documents

Included Documents

DSP-5

Optional Documents

22 CFR § 126.13 Certification Letter
22 CFR § 127.11 Exception to Policy Letter
Basic Ordering Agreement
Contract
DSP-83
Firearms and Ammunitions Import Permit
Firearms and Ammunitions Letter of Explanation
Letter of Intent
Other Amplifying Data
Part 130 Report
PM/DDTC Sec 126.8 Prior Approval
Precedent (identical/similar) Cases
Product Brochures
Purchase Order
Supplementary Explanation of Transaction
Technical Data to Support Hardware License
Technical Drawings, Schematics, or Blue Prints

Upload documents as required:
Transmittal Letter = Supplementary Explanation of Transaction
Agreement = Contract
Cert Letter = Certification Letter
Positive Part 130 = Part 130 Report
Last Approved Agreement/Amendment = Precedent (identical/similar) Cases

Notes:
1. The Proposed Agreement file must include all related exhibits, appendices and annexes.
2. Total uploaded submission package must be less than 35 MB.
3. Only upload documents as required above. Any additional documents should be uploaded through the State Department web portal after the case has been submitted.
(Sign-in to D-Trade 2, find your case using the assigned DSP-5 Number, and click on "Upload Additional Documentation".)

DSP-5

DSP-5, Page 1 of 9

SEAL

Signature

License is hereby granted to the applicant for the described commodity to be permanently exported from the United States. This license may be revoked, suspended or amended by the Secretary of State without prior notice whenever the Secretary deems such action advisable.

DATE ISSUED

LICENSE NO.

LICENSE VALID FOR MONTHS FROM ABOVE DATE

UNITED STATES OF AMERICA DEPARTMENT OF STATE

APPLICATION/LICENSE FOR PERMANENT EXPORT OF UNCLASSIFIED DEFENSE ARTICLES AND RELATED UNCLASSIFIED TECHNICAL DATA

*1. Date Prepared: 01/20/2010

* 2. PM/DDTC Applicant/ Registrant Code: M-5555

* 3. Country of Ultimate Destination: Australia, Japan

Insert list of countries of foreign Licensees

...untry as the ultimate destination if the commodity(ies) being shipped include Hardware type.

* 4. Probable Port of Exit from U.S.: Not Required

Must type in "Not Required"

5. Applicant's Name, Address, ZIP Code, Telephone Number

*Applicant is: ☐ Government ☒ Manufacturer ☐ Exporter ☐ Subsidiary

*Name: ANYTHING FOR A SALE

*Attention: I.M. OVERWORKED

*Address: 555 Patriot Way

*City: Washington

*State: DC * ZIP Code: 20009

*Telephone #: 555.544.5555 Ext. 5688

Fill in Your Company's information

6. Name, agency and telephone number of U.S. Government personnel (not PM/DDTC) familiar with the commodity.

Name: Major Kool

Telephone #: 555.555.5555 Ext.

Agency: Air Force

Add

If Necessary

* 7. Name and telephone numbers of applicant contact if U.S. Government needs additional information.

*Name: I.M. Overworked

*Telephone #: 555.544.5555 Ext. 5688

Add

Check "only completely new shipment" when new agreement, or "only the unshipped balance under license numbers" when an amendment/rebaseline

8. Description of Transaction:

*a. This application represents: ☒ ONLY completely new shipment ☐ ONLY the unshipped balance under license numbers

b. This application has related license numbers: ☒

c. This application is in reference to an agreement: ☐

For Amendments check this box and list all previous amendments & base agreement

*d. Commodity is being financed under: ☐ Foreign Military Sale ☐ Foreign Military Financing ☐ Grant Aid Program ☒ Not Applicable

*e. This application is related to a disclosure filed with Defense Trade Controls Compliance ☒ No ☐ Yes

Enter Compliance Disclosure Number:

For b, d and e - Mark as applicable

Line Item #	*9. Quantity	*10. Commodity	* 11. USML Category Number
1	1 Unit Type: Lots	Technical Assistance Agreement for the development, integration and sale of the Search and Finder Radar. USML Categories: XI(a)(3), XI(c) and XI(d). Hardware is SME and Program is Unclassified. Total Value is $26,300,000	XI / d / Commodity Code Item is SME and DSP-83 is required ☐ Is a DSP-83 attached? If SME, and DSP-83 is not attached, state why.

Use Primary USML category based on technical data

Always: Quantity - "1" Unit Type - "Lots"

Use info from Transmittal Letter subject line - Identify MLA or TAA, the commodity, SME status, classification, all USML Categories and total value.

Click "Add" to identify document upload status in Commodity Line #2

Defense Article Type: Technical Data

*12. $ Value

Unit Price: 26,300,000 Line Item Total: 26,300,000

For new agreements use full value, or for amendments/ rebaselines use "delta" value only. if no value increase, enter $1.

View ☒

*13. TOTAL VALUE (Sum of All Pages) $ 26,300,001

Always Technical Data for Agreements

DSP-5, Page 2 of 9

14. Name and address of foreign end-user

* Name: Australian Ministry of Defence

*Address: 555 Kangaroo Way

*City: Canberra, 5R5R5R

*Country: AS

View ☒

List All Foreign Licensees and End Users to the Agreement – to include more, click on "Add"

15. Manufacturer of Commodity

☒ Same as Block 5

*Name

*Address

*City

State ZIP Code

*Country

Add ☐

16. Name and address of foreign con

☐ Same as Block 14

*Name: Japanese Integrators

*Address: 72 Sushi Way

*City: Tokyo, 7T7T

*Country: JA

Add ☐

List All Foreign Sublicensees - to include more, click on "Add". If no sublicensees, enter "No Sublicensees" in the name block, with "none" or "N/A" in the address blocks, and the primary foreign country of the transaction in the country box.

17. Source of Commodity

☒ Same as Block 5 ☐ Same as Block 15

*Name

*Address

*City

State ZIP Code

*Country

Add ☐

18. Name and address of foreign intermediate consignee

☐ None

* Name: Third Country Nationals are involved in this Agreement

*Address: TCN

*City: TCN

*Country: KS

*Role: TCN

View ☒

List all third country/dual nationals and/or sales territories here.
For specified individuals, list their name, company address and nationality. DO NOT list 124.16 nationals here, include these nationalities in Block 20.

19. Name and address of Seller in United States

☒ Same as Block 5 ☐ Same as Block 15 ☐ Same as Block 17

* Name

*Address

*City

*State *ZIP Code

Add ☐

*** 20. Specific purpose for which the material is required, including specific Program/End Item.**

Select at least one:

☐ Off-Shore ☐ Request for Prior Approval (22 CFR 126.8)

☐ Brokering (22 CFR 129) ☒ Other (Please Provide Details)

This Technical Assistance Agreement is to authorize AFAS to provide technical data, defense services and hardware for the Search and Finder Radar to the Australian MOD. T-3 in Japan will assist AFAS in the installation, testing and training of the radar system for final delivery to the Australian MOD. The radar will be installed into the ZZ aircraft, which is a Surveillance and Reconnaissance aircraft. The mission of the ZZ aircraft is to identify and track targets.

View Page 9 - Specific Purpose

21. Name and address of consignor and/or freight forwarder in United States

☒ Same as Block 5

* Name

*Address

*City

*State *ZIP Code

Add ☐

List All U.S. Signatories. If only you, check "Same as Block 5"

Block 20 should list a concise narrative describing the purpose of the submission (to include amendment modifications, as well as any other significant issues). If requesting 124.16 third country nationals, state this here. (See Full Description)

DSP-5

22. Applicant's statement

Will be filled in automatically after digitally signed

I [ ]

an empowered official (ITAR 120.25) or an official of a foreign government entity in the U.S., hereby apply for a license to complete the transaction described above; warrant the truth of all statements made herein; and acknowledge, understand and will comply with the provisions of Title 22 CFR, 120-130, and any conditions and limitations imposed.

I am authorized by the applicant to certify the following in compliance with 22 CFR 126.13:

(1) Neither applicant, its chief executive officer, president, vice presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) nor any member of its board of directors is:

(a) the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976); or

(b) ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government;

(2) To the best of the applicant's knowledge, no party to the export as defined in 22 CFR 126.7 (e) has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976); or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export lisence or other approval from any agency of the U.S. Government.

By selecting a or c - this eliminates need for separate attachment letter. Selecting b, d, e, or f, still requires separate letter.

***22 CFR 126.13 Certification (Select one)**

☒ a. I am authorized by the applicant to certify that the applicant and all the parties to t 126.13 as listed above.

☐ b. I am authorized by the applicant to certify to 22 CFR § 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR § 126.13 as listed above. A request for an exception to policy, as described in Section 127.11 of the ITAR, is attached.

☐ c. I am authorized by the applicant to certify to 22 CFR § 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR § 126.13 as listed above. However that party has met the conditions imposed by the Directorate of Defense Trade Controls in order to resume standard submission of applications, not requiring an exception to policy as described in Section 127.11 of the ITAR.

☐ d. I am not authorized by the applicant to certify the conditions of 22 CFR § 126.13. The applicant and all of the parties to the transaction can meet in full the conditions of 22 CFR § 126.13 as listed above. Please see the attached letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR § 126.13.

☐ e. I am not authorized by the applicant to certify the conditions of 22 CFR § 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR § 126.13 as listed above. A request for an exception to policy, as described in Section 127.11 of the ITAR, and a letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR § 126.13 are attached.

☐ f. I am not authorized by the applicant to certify the conditions of 22 CFR § 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR § 126.13 as listed above. However that party has met the conditions imposed by the Directorate of Defense Trade Controls in order to resume standard submission of applications, not requiring an exception to policy as described in Section 127.11 of the ITAR. Please see the attached letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR § 126.13.

***Compliance with 22 CFR 130 (Select one)**

Select as required

☐ This transaction does not meet the requirements of 22 CFR 130.2

☒ This transaction meets the requirements of 22 CFR 130.2. The applicant or its vendors **have not** paid, nor offered, nor agreed to pay, in respect of any sale for which a license or approval is requested, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9(a).

☐ The applicant or its vendors **have** paid, or offered, or agreed to pay, in respect of any salfe for which a license or approval is requested, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9(a). Information required under 22 CFR 130.10 is attached.

☐ I am not authorized by the applicant to certify the conditions of 22 CFR 130.9(a). Please see the attached letter for such certification.

*Signature

Signature

Must be digitally signed by an Empowered Official

23. License to be to: (Enter name, address and phone number)

[This block is inactive on electronic form.]

☐ Same as Block 5 ☐ Hold for Pickup

Name

Address

City

State ZIP Code

Telephone #

CONDITIONS OF ISSUANCE

1. This license is issued under the conditions cited in 22 CFR 120 - 130, including the provisos as applicable, that:

   A. It shall not be construed as implying U.S. Government approval or commitment to authorize future exports of any article (equipment or technical data) on the Munitions List, or a U.S. Government commitment with regard to any proposed manufacturing license or technical assistance agreements which may result from an authorized export.

   B. If a license is issued for technical data only, it does not authorize the export of any hardware; if a license is issued for hardware only, it does not authorize the export of any technical data, unless specifically covered by an exemption.

   The issuance of this license does not release the licensee from complying with other requirements of U.S. law and regulations.

2. The prior written approval of the Department of State must be obtained before U.S. Munitions List articles exported from the U.S. under license or other approval may be resold, diverted, transferred, transshipped, reshipped, reexported to, or used in any country, or by any end-user, other than that described on the license or other approval as the country of ultimate destination or the ultimate end-user.

RETURN OF LICENSE

This license must be returned to PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522-0112 when: (1) the total value authorized has been shipped; (2) the applicant states that there will be no further shipments; (3) the date of expiration is reached; or (4) when requested by the Directorate of Defense Trade Controls.

ENDORSEMENT

Indicate below which ITEM on the face of the license is BEING EXPORTED and maintain a CONTINUING BALANCE of the remaining value:

SHIPMENT DATE	QUANTITY	COMMODITY (Include classification)	SHIPMENT VALUE	SED NO.	INITIALS	PORT OF EXIT/ENTRY
TOTAL AUTHORIZED VALUE:						
REMAINING BALANCE:						

NOTE: Continuation of additional shipments must be authenticated by use of continuation sheets in the U.S.Customs handbook.

Description of Transaction **Continuation to Block 8** DSP-5, Page 5 of 9

A. This Application represents only the unshipped balances under license

Used for Amendments to Agreements. Include base Agreement number

Mark and Include as necessary

B. This Application has related license no(s)

NOTE: You must first select the appropriate check boxes under this section to add license no(s)

was licensed to the country in block 3 of the first page under license numbers. ☒

05XXXXXX								
73XXXXXX								

was licensed to other countries under license numbers. ☐

was returned without action under voided license numbers. ☐

was denied to the country in block 3 of the first page under voided license(s) ☐

C. This Application is in reference to agreement numbers

For rebaseline/amendment submissions: Fill in all previous amendments and the basic agreement numbers in block C

D. The commodities are being financed under case numbers

Complete as necessary

Foreign Military Sale ☐

Foreign Military Financing ☐

Grant Aid Program ☐

Additional Foreign End User Page # 1 of 1

DSP-5, Page 6 of 9

Additional Foreign End Users

*Name	Tokyo Technical Things	Name	
*Address	555 Godzilla Drive	Address	
*City	Zushi, 5T5T	City	
*Country	JA	Country	
Name		Name	
Address		Address	
City		City	
Country		Country	
Name		Name	
Address		Address	
City		City	
Country		Country	
Name		Name	
Address		Address	
City		City	
Country		Country	
Name		Name	
Address		Address	
City		City	
Country		Country	
Name		Name	
Address		Address	
City		City	
Country		Country	
Name		Name	
Address		Address	
City		City	
Country		Country	

Be certain to include all Foreign Licensees to the Agreement. If you do not include all the signatories here - anyone that is missed will be proviso'd out. The same applies to the list of Sublicensees under Block 16. If the companies are not listed, DDTC cannot screen them and therefore, they cannot approve any companies that are missing from the D-Trade Form.

Additional Foreign Intermediate Consignees Page # 1 of 1

Additional Foreign Intermediate Consignees

DSP-5, Page 7 of 9

*Name	Sales Territories	Name	
*Address	Sales	Address	
*City	Sales	City	
*Country	AS	Country	
*Role	Sales	Role	
*Name	Joseph Smith (Tokyo Technical Things Employee)	Name	
*Address	555 Godzilla Drive	Address	
*City	Zushi 5T5T Japan	City	
*Country	IS	Country	
*Role	TCN	Role	
Name		Name	
Address		Address	
City		City	
Country		Country	
Role		Role	
Name		Name	
Address		Address	
City		City	
Country		Country	
Role		Role	

If you have Sales Territories, note as such and include the country.

When or if required to list TCNs by name, include individual name, company address and nationality.

Additional Commodities Page # 1 of 1

Additional Commodities

DSP-5, Page 8 of 9

Line Item #	*9. Quantity	*10. Commodity	11. USML Category Number
2	1 Unit Type: Lots	Additional Documentation to be uploaded Defense Article Type: Technical Data	XI / d / Commodity Code Item is SME and DSP-83 is required ☐ Is a DSP-83 attached? If SME, and DSP-83 is not attached, state why. *12. $Value Unit Price: 1 Line Item Total: 1
3	9. Quantity Unit Type	10. Commodity Defense Article Type	11. USML Category Number Category / Sub / Commodity Code Item is SME and DSP-83 is required ☐ Is a DSP-83 attached? If SME, and DSP-83 is not attached, state why. 12. $ Value Unit Price Line Item Total
4	9. Quantity Unit Type	10. Commodity Defense Article Type	11. USML Category Number Category / Sub / Commodity Code Item is SME and DSP-83 is required ☐ Is a DSP-83 attached? If SME, and DSP-83 is not attached, state why. 12. $ Value Unit Price Line Item Total
			TOTAL VALUE $ 1

You are required to state whether all documents have been uploaded with the initial submission or if you will be uploading additional documents after the submission. Complete Line Item #2 as shown, identifying either "All Documents Uploaded" or "Additional Documents to be Uploaded".

Don't forget to complete Blocks 11 and 12. Value to be stated as $1.

Full View of Description
Item #20 of the DSP-5

This Technical Assistance Agreement is to authorize AFAS to provide technical data, defense services and hardware for the Search and Finder Radar to the Australian MOD. T-3 in Japan will assist AFAS in the installation, testing and training of the radar system for final delivery to the Australian MOD. The radar will be installed into the ZZ aircraft, which is a Surveillance and Reconnaissance aircraft. The mission of the ZZ aircraft is to identify and track targets.
In addition, pursuant to 124.16, this agreement authorizes access to unclassified defense articles and/or retransfer of technical data/defense services to individuals who are third country/dual national employees of the foreign licensees and sublicensees from NATO, EU, Australia, Japan, New Zealand and Switzerland.

Narrative must be derived from the Transmittal Letter using the "Background" section for Agreements and the "Original Purpose of the Agreement" and "Relationship to Original Approval" entries for Amendments/ Rebaselines.

Appendix E - Acronyms

AECA	Arms Export Control Act
AG	Agreement
ASR	Annual Sales Report
CFR	Code of Federal Regulations
CN	Congressional Notification
DDTC	Directorate of Defense Trade Control
DoD	Department of Defense
DoS	Department of State
DN	Dual National
DSCA	Defense Security Cooperation Agency
DSS	Defense Security Service
DTAG	Defense Trade Advisory Group
DTCC	Defense Trade Control Compliance
DTCL	Defense Trade Control Licensing
DTCP	Defense Trade Control Policy
DTSA	Defense Technology Security Administration
EO	Empowered Official
EU	European Union
FMS	Foreign Military Sales
GC	General Correspondence
ITAR	International Traffic In Arms Regulation
LO	Licensing Officer
MDE	Major Defense Equipment
MLA	Manufacturing License Agreement
MTEC	Missile Technology Export Committee
MTCR	Missile Technology Control Regime
NASA	National Aeronautical and Space Administration
NATO	North Atlantic Treaty Organization
NDA	Non-Disclosure Agreement
NISPOM	National Industrial Security Program Operating Manual
NSA	National Security Agency
OEF	Operation Enduring Freedom
OIF	Operation Iraqi Freedom
RWA	Return Without Action
R&R	Repair and Replacement
SME	Significant Military Equipment
TAA	Technical Assistance Agreement
TCP	Technology Control Plan
TCN	Third Country National
TTCP	Technology Transfer Control Plan
USG	United States Government
USML	United States Munitions List
WDA	Warehouse and Distribution Agreement

Appendix F - References

22 CFR 120-130, "International Traffic In Arms Regulation," with Federal Register changes; as of April 1, 2009. Available online at: http://www.pmddtc.state.gov/regulations_laws/itar_official.html

22 U.S.C. 2778, "The Arms Export Control Act (P.L. 90-629)." Available online at: http://uscode.house.gov/search/criteria.shtml

Central Florida Industrial Security Awareness Council. Boilerplate Technology Control Plan. Available online at: www.cfisac.org/Resource/tcp.doc

DoD 5105.38-M, "Security Assistance Management Manual (SAMM)," Appendix 1, (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) October 3, 2003. Available online at http://www.dsca.osd.mil/samm/

DoD 5220.22-M, "National Industrial Security Program Operating Manual", 2/28/2006 paragraph 10-202(c)(1-8). Available online at: http://www.dtic.mil/whs/directives/corres/html/522022m.htm

"Executive Order 11958--Administration of Arms Export Controls." January 18, 1977. Available at: http://www.archives.gov/federal-register/codification/executive-order/11958.html