

SCIENTIFIC COOPERATION

**Agreement Between the
UNITED STATES OF AMERICA
and GERMANY**

Signed at Berlin March 16, 2009

with

Annex



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

GERMANY

Scientific Cooperation

*Agreement signed at Berlin March 16, 2009;
Entered into force March 16, 2009.
With annex.*

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

ON

COOPERATION IN SCIENCE AND TECHNOLOGY

CONCERNING

HOMELAND/CIVIL SECURITY

MATTERS

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
(hereinafter referred to as "the Parties"),

HAVING a mutual interest in research and development relating to homeland/civil security matters, in particular giving attention to the development of innovative solutions to increase people's security without limiting their freedom;

DESIRING to increase the exchanges of information and personnel in areas pertinent to the identification of homeland/civil security threats and countermeasures and the development of technical standards, operational procedures, and supporting methodologies that govern the use of relevant innovative solutions;

STRESSING that physical and cyber-based critical infrastructure/key resources and other homeland/civil security capabilities, both governmental and private, are essential to the operation and security of the Parties' respective economies, societies, and governments;

NOTING that the Parties' economies are increasingly interdependent, and that infrastructure protection and homeland/civil security are of paramount concern to the Parties' respective governments;

BEING AWARE of research, development, testing, evaluation, development of technical standards and operations in both countries in chemical, biological, radiological, nuclear and explosive countermeasures, and in other areas that could enhance homeland/civil security;

RECOGNIZING a common desire to

- improve the understanding of threats;
- expand the homeland/civil security technology capabilities of each Party;
- minimize unnecessary duplication of work;
- obtain more efficient and cost-effective results; and

- adapt more flexibly to the dynamic threat environment
through cooperative activity that is mutually beneficial and that relates to the application of state-of-the-art and emerging security technologies and science-based knowledge, making best use of the Parties' respective science, research, development, and testing and evaluation capacities;

AFFIRMING a common interest in enhancing the longstanding collaborative efforts of the Parties' respective agencies, private sector and governmental organizations, and academic institutions in generating scientific and technological solutions to counter threats, reduce vulnerabilities, and respond to and recover from incidents and emergencies in those areas having the potential for causing significant security, economic, and/or social impacts;

DESIRING to set forth a vehicle for the conduct of cooperative scientific and technological research including social and behavioral sciences and humanities, development, testing and evaluation in the field of homeland/civil security,

HAVE AGREED as follows:

Article 1 Definitions

For purposes of this Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany on Cooperation in Science and Technology for Homeland/Civil Security Matters (hereinafter referred to as "the Agreement"), the Parties have adopted the following definitions:

- | | |
|--------------------------------------|---|
| 1. Business Confidential Information | Has the meaning given to it in Section IV of the Annex to this Agreement. |
| 2. Classified Information | Official information or preliminary or predecisional data, |

as applicable, that requires protection for national security, law enforcement, domestic security, or other reasons and is so designated by the application of the appropriate security classification markings in accordance with the applicable laws, regulations, policies, or directives of either Party. It may be in oral, visual, magnetic, electronic, or documentary form, or in the form of Equipment and Material or technology.

3. Contract

A legally enforceable agreement creating or transferring rights and obligations for the provision of technology, goods or services.

4. Controlled Unclassified Information

Information or preliminary or predecisional data, as applicable, that is not deemed to be Classified Information, but to which access or distribution limitations have been applied in accordance with applicable laws, regulations, policies, or directives of either Party. Whether the information is provided or generated under this Agreement, it will be marked to identify its sensitive character. This definition includes, but is not limited to, information marked "Sensitive Homeland Security Information," "Sensitive Security Information," "For Official Use Only," "Law Enforcement Sensitive Information," "Protected Critical Infrastructure Information," "Restricted," "Sensitive But Unclassified (SBU)", and may include Business Confidential Information.

5. Cooperative Activity

Any activity described in Article 7 of this Agreement on which the Parties agree to cooperate with or without the involvement of Participants to achieve the objectives of this Agreement.

6. Critical Infrastructure/Key Resources Governmental and/or private activities or sectors that are identified by each Party in its laws, executive orders, directives or policies as “Critical Infrastructure” or “Key Resources”.
7. Equipment and Material Any document, product or substance on or in which information may be recorded or embodied. Material shall encompass everything regardless of its physical character or makeup including documents, writing, hardware, equipment, machinery, apparatus, devices, models, photographs, recordings, reproductions, notes, sketches, plans, prototypes, designs, configurations, maps and letters, as well as all other products, substances or material from which information can be derived.
8. Intellectual Property Has the meaning given in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967, as amended on September 28, 1979, and may include other subject matter as agreed upon by the Parties.
9. Non-Disclosure Agreement A legal agreement between a Party and one or more Participants that creates an obligation of the Participant not to disclose certain information and to restrict use of such information.
10. Participant Any person or entity, including but not limited to a private sector organization, academic institution, or laboratory (or subsidiary thereof) engaged in a Cooperative Activity, including those under Contract to a Party.

11. Project	A specific form of Cooperative Activity described in Article 7.
12. Project Arrangement	A Contract between the persons or entities engaged in the implementation of a Project, setting out the terms and conditions of the Project to be carried out.
13. Project Background Information	Any information furnished to a Project regardless of form or type, including that of a scientific, technical, business, or financial nature, and including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, software, source code, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations; whether in magnetic or electronic media, computer memory, or any other form and whether or not subject to intellectual property protections.
14. Project Foreground Information	Any information created in a Project, regardless of form or type, including that of a scientific, technical, business, or financial nature, and including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, software, source code, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations; whether in magnetic or electronic media, computer memory, or any other form and whether or not subject to intellectual property protections.
15. Technology Management Plan	A specific component of the Project Arrangement specifying how Project Background and Foreground

Information will be handled. It will describe among other things, the rights of the Parties and their Contractors and Participants concerning Intellectual Property created under this Agreement, including how any royalties shall be shared, where such Intellectual Property shall be protected, and who shall be responsible for obtaining that protection and granting licenses.

16. Third Party

Any entity or person who is neither a Party to this Agreement nor a Participant in the specific Cooperative Activity in question.

Article 2

Objective

The objective of this Agreement is to establish a framework to encourage, develop and facilitate bilateral Cooperative Activity in homeland/civil security-related science and technology that contributes to innovation and to the homeland/civil security capabilities of both Parties in:

- a) the understanding, prevention and detection of homeland/civil security threats, and the response to those threats;
- b) the forensics and classification applied to security threats;
- c) the protection of Critical Infrastructure/Key Resources; and
- d) crisis response and consequence management and mitigation for high-consequence events.

Particular attention is given to the development of solutions to increase people's security without limiting their freedom.

Article 3
Means of Achieving Objectives

The Parties shall seek to achieve the objectives set out in Article 2 by means which may include, but are not limited to:

- a) facilitating a systematic exchange of technologies, personnel, and information, both public and controlled;
- b) promoting coordinated and joint research and development Projects;
- c) collaborating to develop technologies and prototype systems that assist in countering present and anticipated terrorist actions in their respective territories, and other homeland/civil threats such as natural disasters and major accidents;
- d) integrating or adapting the homeland/civil security technologies of each Party to save development costs;
- e) conducting evaluation and testing of prototype homeland/civil security technologies;
- f) developing an approach to identify common priorities, including areas of research for Cooperative Activity;
- g) ensuring consistent measures of effectiveness by development and implementation of appropriate standards and test protocols and methodologies;
- h) involving a wide range of public and private sector research and development organizations including industry in Cooperative Activity pursuant to this Agreement;

- i) providing reciprocal opportunities to engage in Cooperative Activity, with shared responsibilities and contributions, which are commensurate with the Parties' or the Participants' respective resources;
- j) providing comparable access to government-sponsored or government-funded programs and facilities for visiting researchers and experts, and comparable access to and exchange of information and Equipment and Material;
- k) facilitating prompt exchange of information and Equipment and Material, which may affect Cooperative Activity, and facilitating the dissemination of both public and controlled information and Equipment and Material, consistent with applicable laws, regulations, policies and directives; and
- l) utilizing and applying Project Foreground Information derived from Cooperative Activity to benefit both Parties and the Participants. The right to ownership and exploitation of Project Foreground Information are to be governed by the Articles of this Agreement and established in the Technology Management Plan of the applicable Project Arrangement, taking into account, among other things, the Parties' or Participants' respective contributions to the Project.

Article 4

Executive Agents

Each of the Parties shall designate an official with the responsibility for the political and administrative oversight of the implementation of this Agreement. They shall act as the "U.S. Executive Agent" and the "German Executive Agent", respectively.

Article 5
Management

1. The Executive Agents shall appoint one or more Agreement Directors who shall be responsible for the day-to-day management of this Agreement and its Cooperative Activity in all or in specific areas of cooperation. In addition, the Agreement Directors shall be responsible for:
 - a) promoting Cooperative Activity under this Agreement;
 - b) exercising oversight for activities carried out under this Agreement;
 - c) serving as a repository for any and all documentation which is generated pursuant to this Agreement including Project Arrangements and any annexes thereto;
 - d) monitoring the overall use and effectiveness of this Agreement;
 - e) recommending amendments to this Agreement to the Parties;
 - f) resolving issues arising under this Agreement;
 - g) authorizing involvement by Participants in Cooperative Activity pursuant to this Agreement;
 - h) establishing and maintaining security guidelines, including but not limited to procedures related to exchange, storage, and transmission of information, both public and controlled, and equivalent security markings to be applied to exchanged information in accordance with Article 12;
 - i) ensuring that any requirements to exchange Classified Information and Controlled Unclassified Information in connection with any Project are fully identified in advance and specifically agreed to prior to the conclusion of any Project Arrangement; and

- j) developing and maintaining an outline of Cooperative Activity. This outline will be known as the work plan and will regularly document the Cooperative Activity to be carried out under this Agreement.
2. The Agreement Directors shall review the implementation of the Agreement at such time as they consider appropriate. The Agreement Directors shall be responsible for coordinating with any other coordination bodies that may be established by the Parties.

Article 6

Areas of Cooperative Activity

The Parties shall facilitate Cooperative Activity in broad areas of science and technology related to homeland/civil security. Areas of Cooperative Activity include, but are not limited to:

- a) research and development of innovative technologies, solutions, and systems to meet user requirements or capability gaps of the Parties and the Participants;
- b) development and implementation of threat and vulnerability assessments, interdependency analyses, and methodologies related to potential threats to homeland/civil security scenarios;
- c) assessment of prior operational experiences and evaluation for the purposes of articulating operational deficiencies into definable technical requirements and appropriate standards and supporting methodologies;
- d) use and optimization of existing technologies for defense against terrorism and other homeland/civil security threats;
- e) testing and evaluation of specific prototype systems for homeland/civil security applications in both laboratory environments and real or simulated operational

settings. This includes technologies associated with enhanced detection and monitoring of potential terrorist activities and those associated with recovery and reconstitution of damaged or compromised systems;

- f) preparation of detailed final test reports to allow either Party or their Participants to evaluate follow-on efforts individually or to allow the transition of successful prototypes into operational deployments;
- g) system protection (including protection of automated infrastructure control systems) and information assurance (including protecting the integrity of data and information in control systems);
- h) access to the education and training programs of the Parties;
- i) the exchange of scientific and technical personnel and of Equipment and Material in science and technology areas;
- j) development and exchange of information, best practices, standards, and guidelines; and
- k) commercialization and other exploitation of Project Foreground Information and any resulting Equipment and Material developed through Cooperative Activity to achieve the effective transition of technology from the research and development environment to the operational environment.

Article 7

Cooperative Activity

1. Prior to undertaking a Project or another Cooperative Activity of comparable importance under this Agreement, the Parties shall agree in writing upon the nature, scope, and duration of the Cooperative Activity.

2. Cooperative Activity under this Agreement may include, but is not limited to the following:

- a) coordinated and/or joint research and development Projects;
- b) task forces to examine emergent homeland/civil security challenges;
- c) studies and scientific or technical demonstrations;
- d) organization of field exercises, scientific seminars, conferences, symposia, and workshops;
- e) training of scientists and technical experts;
- f) visits and exchanges of scientists, engineers, or other appropriate personnel;
- g) exchanges or sharing of Equipment and Material;
- h) exchange of information on practices, laws, regulations, standards, methods, and programs relevant to cooperation under this Agreement;
- i) joint use of laboratory facilities and Equipment and Material, for conducting scientific and technological activities including research, development, testing and evaluation; and
- j) joint support of the commercialization and exploitation of Equipment and Material and Project Foreground Information developed through Cooperative Activity.

3. The Parties may select or facilitate whatever available mechanisms appropriate to accomplish such Cooperative Activity. Such mechanisms include but are not limited to grants, Project Arrangements, or other Contracts (with or without teaming agreements) with public or private entities, governmental organizations of the federal, state or local level, businesses (including small businesses and socially

and economically disadvantaged small businesses), government-funded research and development centers and organizations, and universities.

4. Nothing in paragraph 1 or 2 shall preclude the Parties from facilitating other forms of Cooperative Activity that they may agree upon. Nor shall Cooperative Activity pursuant to this Agreement be interpreted in such a manner as to interfere with any other arrangements between agencies, institutions, and private companies of the Parties.
5. Subject to applicable laws the Parties shall ensure that the terms of this Agreement be incorporated into the contractual instruments of all Cooperative Activity and supporting Contracts, regardless of form. The Contracts shall foresee, that in the case of any inconsistency between the terms of the Contract and the terms of this Agreement, the terms of this Agreement shall prevail. The Parties recognize that their respective applicable laws and regulations apply to activities undertaken in respect of Project Arrangements and their supporting Contracts made under this Agreement.
6. This Agreement including the Annex does not constitute a derogation from the Parties' applicable law. In the case of any contradiction between this Agreement and the nationally applicable law of either Party, the applicable law shall prevail. That Party's Executive Agent shall provide timely notice to the other Party's Executive Agent in such case.
7. The Parties shall ensure that Projects and other Cooperative Activity of comparable importance are supported by Contracts wherever possible. Project Arrangements and associated Technology Management Plans will normally be concluded by the Participants at the commencement of each Project.

Article 8
Participants

1. Subject to the provisions of this Article, a Party normally involves Participants to carry out Cooperative Activity. The involvement of any Participant in the implementation of any Project or other Cooperative Activity of comparable importance shall require the other Party's prior review and written approval.
2. Before involving a Participant in a Project, a Party must enter into a Contract, which includes a Non-Disclosure Agreement, with that Participant unless an equivalent legal obligation already exists.
3. The Party involving a Participant shall ensure that the Participant agrees to report to that Party's Agreement Director.
4. The Parties' Agreement Directors shall jointly determine the frequency and scope of the reporting requirement referred to in paragraph 3 of this Article.
5. In the event that a question arises with respect to a Participant and/or its activities under this Agreement, the Agreement Directors shall consult to consider the Participant's role in Cooperative Activity. If either Party objects to a Participant's continued participation and requests its termination, the Party that involved that Participant shall give the request due consideration, including as to the consequences of terminating the Participant's participation.
6. Nothing in this Agreement or any Project Arrangement precludes a Party who has involved a Participant from suspending that Participant's activities or replacing the Participant in one or more Projects.

Article 9

Finance

1. Subject to the availability of funds and to the provisions of this Article, each Party shall bear as a rule its own costs of discharging its responsibilities under this Agreement and for associated Projects.
2. Except as provided in paragraph 1 of this Article, this Agreement creates no standing financial commitments.
3. The Parties or, where appropriate, the Participants may agree to share costs for Cooperative Activity. Detailed descriptions of the financial provisions for Cooperative Activity, including the total cost of the activity and each Party's or Participant's cost share, shall be agreed in accordance with paragraph 4 of this Article.
4. The Project Arrangement shall specify in advance the equitable share of the total costs, including, where appropriate, overhead costs and administrative costs, a cost ceiling, and the apportionment of potential liability to be borne by each Party or Participant in the Project. In determining the equitable share of total costs, the Parties or Participants may take into account:
 - a) funds provided for work under this Agreement ("financial contributions");
 - b) material, personnel, use of Equipment and Material and facilities provided for the performance of work under this Agreement ("non-financial contributions") to directly support Project efforts. Prior work can constitute a non-financial contribution; and
 - c) the ownership of Project Background Information utilized in the Project.
5. The following costs shall be borne entirely by the Party or Participant incurring the costs and are not included in the cost target, cost ceiling, or overall costs:

- a) costs associated with any unique national requirements and/or
 - b) any costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.
6. A Party or Participant shall promptly notify the other Party or Participant if available funds are not adequate to undertake activities arising as a result of this Agreement. If a Party or Participant notifies the other that it is terminating or reducing its funding for a Project, both Parties or the Participants shall immediately consult with a view toward continuation on a changed or reduced basis. If this is not acceptable to both Parties or the Participants, the respective rights and responsibilities of the Parties and Participants under Articles 12, 13, and 14 shall continue notwithstanding the termination or expiration of the Project.
7. Each Party shall be responsible for any audit of its activities in support of Cooperative Activity, including the activities of any of its Participants. Each Party's audits shall be in accordance with its own national practices. Where funds are transferred from one Party to the other Party, the receiving Party shall be responsible for the internal audit regarding administration of the sending Party's funds in accordance with national practices. Audit reports of such funds shall be promptly made available by the receiving Party to the other.

Article 10

Export Control

1. The transfer of technical data for the purpose of discharging the Parties' obligations with regard to interface, integration, and safety shall normally be made without restriction, except as required by applicable laws and regulations relating to export control or the control of classified data. If design, manufacturing, and processing data, and associated software, which is business confidential but not export controlled, is necessary for interface, integration, or safety purposes, the transfer shall be made and the data and associated software shall be appropriately marked.

All information, Equipment and Material subject to export controls shall not be transferred pursuant to this Agreement unless such transfers are compliant with the originating Party's export control laws, policies, and regulations.

Article 11

Classified Information

1. Classified Information exchanged between the Parties shall be handled and protected in accordance with the General Security Agreement between the Government of the Federal Republic of Germany and the Government of the United States of America of December 23, 1960 and the subsequent operating procedures for its implementation as of 1980, including any subsequent amendments. The Parties shall each designate a Security Authority as the government single point of contact and authority responsible for the development of policies and procedures governing security of Classified Information covered by this Agreement.
2. Classified Information provided or generated under this Agreement shall be protected in accordance with the Parties' applicable security laws and regulations and by respecting access or distribution limitations applied by the originator.
3. Detailed procedures on the handling and transfer of classified Project Background and Project Foreground information may be agreed in Project Arrangements.

Article 12

Controlled Unclassified Information

1. Any information or Equipment and Material exchanged or generated under this Agreement, which has not been classified in the interest of security, but requires dissemination control and protection against unauthorized disclosure in the interest of the originator or which is subject to access limitations, restrictions on use, further release or export control, shall be handled, protected, and prevented from

unauthorized disclosure in accordance with the Parties' applicable laws and regulations in order to provide an mutually acceptable level of protection.

2. Unclassified information provided under this Agreement and requiring control and protection by the receiving Party shall
 - a) be appropriately marked in order to highlight its sensitivity,
 - b) not be used for purposes other than as described in this Agreement,
 - c) not be further released to Third Parties without the prior consent of the other Party or the originator.
3. The Parties shall, in accordance with their applicable laws and regulations, take all necessary measures at their disposal to prevent unclassified information from unauthorized disclosure.

Article 13

Intellectual Property Management and Use of Information

1. General: Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out Projects. The nature and amount of Project Background Information to be acquired and disclosed shall be consistent with this Agreement and the terms of the Technology Management Plans contained in the individual Project Arrangements, whereby the Parties intend to make available sufficient Project Background Information and/or rights to use such information to enable the development of technologies, prototype equipment, and other activities included in a Project. The rights of holders of Intellectual Property may not be affected.
2. Exploitation: Issues related to the management of Project Background Information and Project Foreground Information, including the allocation of any benefits (including royalties) derived from the creation and exploitation of Intellectual

Property in Project Foreground Information in respect to Projects under this Agreement shall be governed by the Articles of this Agreement, including the provisions of the Annex, and the applicable Project Arrangement.

3. Project Background Information furnished by the Parties:

a) Disclosure: Unless provided otherwise, each Party shall disclose to the other Project Background Information in its possession or control related to each Project, provided that:

(i) the Project Background Information is necessary to or useful in the implementation of a proposed or existing Project established pursuant to this Agreement. The Party in possession or control of the information shall determine whether it is "necessary to" or "useful in" establishing new Projects or implementing existing ones;

(ii) the Project Background Information shall be made available without affecting the rights of holders of Intellectual Property or Business Confidential Information; and

(iii) disclosure is consistent with national disclosure policies, laws, and regulations applicable to the furnishing Party.

b) Use: Unless provided otherwise, Project Background Information furnished by the Parties disclosed by one Party to the other may be used without charge by the other Party for Project purposes only; and the furnishing Party shall retain all its rights with respect to such Project Background Information furnished by the Parties. Where the use of Project Background Information furnished by the Parties is necessary to enable the use of Project Foreground Information, such Project Background Information furnished by the Parties may be used by the receiving Party for homeland/civil security purposes, upon written agreement of the Parties and in accordance with applicable laws.

4. Participant-Furnished Project Background Information:

a) Disclosure: Unless provided otherwise, Project Background Information furnished by a Participant involved by one Party shall be made available to the other Party and/or Participant provided the following conditions are met:

- (i) the Project Background Information is necessary to or useful to the Project. The Party and/or Participant in possession or having control of the information shall determine whether it is "necessary to" or "useful in" a Project;
- (ii) the Project Background Information can be made available without affecting the rights of holders of Business Confidential Information or Intellectual Property; and
- (iii) disclosure is consistent with national disclosure policies, laws, and regulations applicable to the furnishing Participant.

b) Use: Project Background Information furnished by Participants may be subject to restrictions by holders of Intellectual Property. In the event that it is not subject to restrictions preventing its use, it may only be used for Project purposes. If a Party wants to use Participant-Furnished Project Background Information for purposes other than Project purposes, (which other purposes shall include, without limitation, sales and licenses to Third Parties), then the requesting Party and/or Participant must obtain any required permissions from the owner or owners of the rights to that information.

5. Project Foreground Information:

Project Foreground Information may be protected and commercialized where appropriate, in which case benefits derived from the utilization and application of such information shall be distributed as determined in the Technology Management Plan of the applicable Project Arrangement taking into account the relative contributions of the Parties and/or Participants to the Project, the cost of

commercialization, and the degree of commitment of the Parties and/or Participants to obtaining legal protection of Intellectual Property.

Wherever appropriate, the Parties will negotiate with the Participants to obtain rights to use and disclose Project Foreground Information.

Each of the Parties and/or Participants may own its Intellectual Property in Project Foreground Information in its own jurisdiction and in the jurisdiction of the other Party and/or Participant and may derive benefits from its exploitation and commercialization in those jurisdictions, with a mechanism for their establishment in the Technology Management Plan of the applicable Project Arrangement.

Article 14

Publication of Research Results

1. The Parties agree that the provisions of paragraph A of Section III of the Annex to this Agreement shall apply to the publication of any research results created under this Agreement.
2. Publication Review: The Parties agree that publication of the results may be one of the goals of this Agreement to stimulate further research in the public or private sector. In order to protect the rights of the Parties, including to avoid prejudice to the holders of Intellectual Property and Business Confidential Information, each Party shall transmit to the other for its review any material containing such results and intended for publication, or other disclosure, at least sixty (60) working days before such material is submitted to any editor, publisher, referee or meeting organizer, or is otherwise disclosed. In the absence of an objection by the other Party within that sixty-day period the publication or other disclosure may proceed. If either Party raises an objection to the public release of publications arising from this Agreement, public release will not occur unless and until there is agreement between the Parties as to the conditions for public release. It is the responsibility of each Party to coordinate with its Participants to determine whether all potential

Intellectual Property or Business Confidential Information interests have been properly considered.

3. Affiliation: The involvement ,and/or financial support of the Parties for Cooperative Activity shall not be used in any public statement of a promotional nature or used for commercial purposes without the express written permission of both Parties. Such permission shall not be unreasonably withheld.
4. Publicity and Acknowledgements: All publications relating to the results of the Projects established pursuant to this Agreement shall include, as applicable, a notice indicating that the underlying Project received financial support from the Government of the United States of America and/or the Government of the Federal Republic of Germany. Two copies of such publications shall be sent to the Agreement Directors by the individual or entity that authored the publications.

Article 15

Entry of Personnel and Equipment and Material

1. With respect to Cooperative Activity under this Agreement, each Party, in accordance with its applicable laws and regulations including export control laws, and as appropriate, shall facilitate:
 - a) prompt and efficient entry into and exit from its territory of appropriate Equipment and Material, to especially include instrumentation, test equipment and Project Background and Foreground Information;
 - b) prompt and efficient entry into and exit from its territory, and domestic travel and work of, persons participating on behalf of the Parties or Participants in the implementation of this Agreement;
 - c) prompt and efficient access, as appropriate, to relevant geographical areas, information, Equipment and Material and institutions, for persons participating

on behalf of the Parties, or Participants, in the implementation of this Agreement; and

d) mutual logistic support.

2. Insofar as applicable laws and regulations permit, each Party shall use their best efforts to ensure that directly applicable duties, taxes, and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with Projects carried out under this Agreement.

Article 16 Research Safety

1. The Parties and Participants shall establish and implement policies and practices to ensure and provide for the safety of their employees, the public, and the environment during the conduct of Projects subject to applicable laws and regulations. If any Cooperative Activity involves the use of dangerous or hazardous materials, the Parties and Participants shall establish and implement an appropriate safety plan.
2. Without prejudice to any existing arrangements under the Parties' applicable laws, the Parties and Participants shall take appropriate steps to protect the welfare of any persons participating involved in Projects. Such steps may include the provision of medical treatment and, where appropriate, financial relief.

Article 17 Privacy

All Cooperative Activity conducted pursuant to this Agreement will respect applicable privacy protection standards. The transmission of personal data will be governed by the applicable law of the transmitting Party.

Article 18
Third Party Sales and Transfers

Neither Party shall:

- a) sell, transfer title to, disclose, or transfer possession of Project Foreground Information, or equipment incorporating Project Foreground Information, to a Third Party without the prior written consent of the other Party; or
- b) permit any such sale, disclosure, or transfer by others, including by the owner of the item, without the prior written consent of the other Party. Such sales and transfers shall be consistent with Article 13.

Article 19
Dispute Resolution

- 1. Except for disputes concerning Intellectual Property and those procedures set forth in Article 14, all questions or disputes between the Parties that cannot be resolved by the Agreement Directors arising under or relating to this Agreement shall be submitted to the Executive Agents. Such questions and disputes shall be resolved only by consultation between the Parties.
- 2. Disputes between the Parties concerning Intellectual Property shall be resolved as provided for in the Annex.

Article 20
Status of the Annex


The Annex forms an integral part of this Agreement and, unless expressly stated otherwise, a reference to this Agreement includes a reference to the Annex.

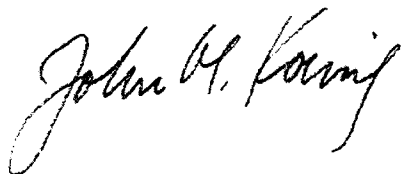
Article 21

Entry into Force, Amendment, Duration, and Termination

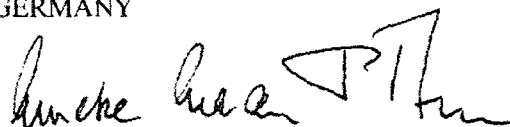
1. This Agreement shall enter into force upon signature by both Parties.
2. The Agreement may be amended in writing by the mutual consent of the Parties.
3. A Party may withdraw from this Agreement upon six (6) months advance written notification to the other Party. This Agreement may also be terminated by the mutual written agreement of the Parties.
4. Unless otherwise agreed, termination of this Agreement shall not affect the validity or duration of any Cooperative Activity previously undertaken pursuant to it.
5. The respective rights and responsibilities of the Parties and Participants under Articles 12, 13, 14, 17, 18, and the Annex shall continue notwithstanding the termination or expiry of this Agreement. In particular, all Classified Information exchanged or generated under this Agreement shall continue to be protected in the event of the termination or expiry of the Agreement.

DONE at Berlin, on this 16th day of March 2009, in duplicate in the German and English languages, both texts being equally authentic.


FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF
GERMANY



ANNEX

Intellectual Property Rights

I. General Obligation

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. Rights to such intellectual property shall be allocated as provided in this Annex.

II. Scope

- A. This Annex is applicable to all Cooperative Activity undertaken pursuant to this Agreement, except as otherwise specifically agreed.
- B. Each Party shall ensure, through contracts or other legal means with its own Participants, if necessary, that the other Party can obtain the rights to Intellectual Property allocated in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of Intellectual Property as determined by that Party's laws and practices.
- C. Except as otherwise provided in this Agreement, disputes between the Parties concerning Intellectual Property arising under this Agreement shall be resolved through discussions between the concerned Participants or, if necessary, the Parties. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.
- D. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

III. Allocation of Rights

- A. Subject to applicable copyright protection, each Party shall be entitled to be granted a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.
- B. Rights to all forms of Intellectual Property, other than those rights described in paragraph IIIA above, shall be allocated as follows:
 - (1) Visiting researchers shall receive, for any intellectual property they create, rights, awards, bonuses and royalties in accordance with the policies of the host institution.
 - (2)
 - (a) Unless otherwise agreed in writing, the Parties or the Participants shall jointly develop provisions of a Technology Management Plan regarding ownership and exploitation rights to Intellectual Property created in the course of the Project other than those covered by paragraph III (B) (1) of this Annex. The Technology Management Plan shall consider the relative contributions of the Parties and Participants to the Project, the degree of commitment in obtaining legal protection and licensing of the Intellectual Property, and such other factors as are deemed appropriate.
 - (b) If the Parties or the Participants do not agree on the interpretation of such provisions of a Technology Management Plan or if such provisions have not been established under subparagraph (a) within a reasonable time, not to exceed six months from the time a Party becomes aware of the creation of Intellectual Property created in the

course of the a Project, the Parties or their Participants shall resolve the matter in accordance with the provisions of paragraph II (C) of this Annex. Pending resolution of the matter, any Intellectual Property created by persons employed or sponsored by one Party under a Project shall be owned by that Party and Intellectual Property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties, but such Intellectual Property shall be commercially exploited only by mutual agreement.

(c) Notwithstanding paragraphs III B(2)(a) and (b) above, if either Party believes that a particular project may lead to or has led to the creation of Intellectual Property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the Intellectual Property. If an agreement cannot be reached within three months of the date of the initiation of the discussions, cooperation on the Project in question shall be terminated at the request of either Party. Creators of Intellectual Property shall nonetheless be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.

(d) Any invention made under any Cooperative Activity shall be disclosed promptly to the other Party and/or Participant together with any documentation and information necessary to establish any rights to which it may be entitled. Either Party and/or Participant may ask the other Party and/or Participant in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party and/or Participant to the other Party and/or Participant.

IV. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its Participants shall support the protection of such information in accordance with applicable laws, regulations, administrative practices, and non-disclosure agreements. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.