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Scientific/Research and Development

**COOPERATIVE RESEARCH AND
DEVELOPMENT AGREEMENTS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction establishes policies and procedures for executing Cooperative Research and Development Agreements (CRADAs) and licenses or assignments of intellectual property developed under CRADAs between the Air Force and the public and private sector, including industry and academia. The instruction implements Air Force Policy Directive (AFPD) 61-3, *Domestic Technology Transfer*; United States Code Title 15 Commerce and Trade Chapter 63 Technology Innovation Section 3701 (*15 USC 3701 et seq.*); Executive Order 12591, *Facilitating Access to Science and Technology*, 10 April 1987; Department of Defense (DoD) Directive 5535.3, *DoD Domestic Technology Transfer Program*, May 21, 1999; and DoD Instruction 5535.8, *DoD Technology Transfer (T2) Program*, May 14, 1999. Maintain and dispose of records created as a result of the processes prescribed in this publication in accordance with AFMAN 37-139, *Records Disposition Schedule*.

SUMMARY OF REVISIONS

This instruction updates, clarifies, and streamlines previous guidelines for CRADAs. It broadens applicability to all laboratories and/or technical activities, includes updates from changes in the public law, and uses the Air Force Technology Transfer Handbook as the source of operational guidelines. It also incorporates AFI 61-303, *Licensing Inventions Made Under Cooperative Research And Development Agreements*.

1. CRADA Signature Process:

1.1. Signature Authority of CRADAs. Commanders and directors of Air Force laboratories and/or technical activities may negotiate and enter into CRADAs on behalf of the Air Force with various organizations in the public and private sector subject to the review process outlined in section 2. (Ref: AFI 61-301, 2.1)

1.2. Collaborating Parties. The parties with which the Air Force may enter into CRADAs are:

- 1.2.1. Other Federal agencies in conjunction with other non-federal parties
- 1.2.2. Units of state or local government
- 1.2.3. Industrial organizations (for example, consortia, corporations, partnerships, limited partnerships, industrial development organizations)
- 1.2.4. Public and private foundations
- 1.2.5. Nonprofit organizations (including universities)
- 1.2.6. Other persons (including licensees of inventions owned by the Air Force)

1.3. Signature Discretion. In considering whether to enter into a CRADA, the Signature Authority shall take into account the present or planned work of the laboratory and/or technical activity.

1.4. Criteria for Selecting CRADA Partners. In considering whether to enter into a CRADA, the Signature Authority gives:

- 1.4.1. Special consideration to small business firms and consortia involving small business firms.
- 1.4.2. Preference to business units located in the United States which agree that those products embodying inventions made under CRADAs will be substantially manufactured in the United States.
- 1.4.3. In the case of parties subject to the control of a foreign company or government, consideration to whether such a foreign government permits US agencies, organizations, or other persons to enter into CRADAs and licensing agreements.
- 1.4.4. Consideration to export control regulations, policies governing militarily critical technology, or any other restrictions on international technology transfer control set forth in Department of Defense (DoD) and Air Force directives and instructions.

1.5. Legal Counsel. Before entering into a CRADA, license agreement under a CRADA, or assignment of patent rights under a CRADA, commanders or directors must get legal counsel review of each such agreement for its legal sufficiency. The Major Command legal office or servicing legal office using local command procedures shall give such review.

2. CRADA Review Process:

2.1. Review Authority for CRADAs. The Air Force Technology Executive Officer (TEO), Commander, Air Force Research Laboratory, has been delegated the CRADA reviewing authority for all Air Force activities. The TEO has the authority to redelegate this authority in accordance with AFI 61-301, paragraph [1.2](#).

2.2. The reviewing official has authority to approve, disapprove, or require modification of any CRADA within 30 days, beginning on the date the reviewing official receives the CRADA in his or her office.

2.3. When the reviewing official disapproves or requires modification of an agreement, he or she sends a written explanation to the Signature Authority within the 30-day period of paragraph [2.2](#).

2.4. CRADAs not reviewed, modified, or disapproved within 30 days of their receipt in the reviewing official's office become effective.

2.5. CRADAs shall be negotiated consistent with the Air Force model CRADA and guidelines found in the Air Force Technology Transfer Handbook. In any case when the negotiation of a CRADA involves a substantive modification to a provision in the model CRADA (i.e., a change to CRADA language required by the guidelines to be used verbatim), SAF/GCQ shall be consulted.

3. Delegation of CRADA Authority:

3.1. The TEO may redelegate the reviewing official authority to commanders and directors of laboratories and/or technical activities for CRADAs executed by their activities or their subordinate activities. This reviewing official authority may not be further delegated.

3.2. The holder of such delegated CRADA review authority shall designate the CRADA Signature Authority to his or her next lower management level. In no case shall the same person act as signature and review authority on a CRADA.

4. Functions and Endeavors Allowed Under a CRADA:

4.1. Resources. CRADAs should be constructed to ensure Air Force receipt of adequate consideration for the technology being transferred to the outside partner. Air Force organizations may accept, retain, and use resources from, and provide resources to, CRADA partners. These resources may be in the following categories:

From the Air Force:

- Personnel
- Personal Property (Equipment, including maintenance support for the equipment or personal property)
- Facilities
- Services
- Intellectual Property

From the CRADA Partner:

- Personnel
- Personal Property (Equipment)
- Facilities
- Services
- Intellectual Property
- Funds

4.1.1. Authority to accept, retain, and use funds derived from CRADAs. The expressed authority in 15 U.S.C. § 3710a(b)(1) to “accept, retain, and use” funds from a collaborating party under a CRADA, in combination with the spending authority granted in 15 U.S.C. § 3714, provides an exception to the general prohibition on augmenting appropriations by permitting Air Force activities to retain funds received under a CRADA without violating the Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b).

4.1.2. Receipt of CRADA income. CRADA income, other than royalty or other income from licensing or assignment of inventions, is to be deposited under the servicing Defense Accounting Office/Financial Services Office (DAO/FSO) ADSN, into suspense account 57F3875.CDA*. The receiving DAO/FSOs will establish local suspense accounts 57F3875.ROY* and 57F3875.CDA* in their databases as fund type "K" records. Replace the asterisk in the fourth position of the limits with the fiscal year in which the money was received by the Air Force.

4.1.3. Uses of CRADA income. The funds derived from CRADAs, other than royalty or other income from licensing or assignment of inventions, may be used or obligated by appropriate documentation showing the withdrawal of the amount and commitment or obligation to the designated appropriation for the activity's usage. This may be research, development, testing, and evaluation (RDT&E), operation and maintenance (O&M), one of the procurement accounts, or Air Force Working Capital Fund. CRADA revenue is available for obligation only until the end of the fiscal year in which the appropriation to which it is deposited expires for new obligations.

4.1.4. Hiring personnel for CRADAs. Air Force activities may use the funds received from a CRADA partner to hire personnel to carry out the CRADA. Such personnel shall not be subject to full-time equivalent restrictions of the Air Force.

4.1.5. Government property may be provided to a CRADA partner on an exclusive, but temporary basis, in accordance with 15 U.S.C. § 3710a(b)(1). Air Force activities must comply with all demilitarization regulations prior to providing property to a CRADA partner on an exclusive basis. Government property provided under a CRADA is not subject to a separate lease agreement. Model terms and conditions for providing such property are found in the Model CRADA. These terms generally will not apply to consumable property.

4.2. Determination of Intellectual Property Rights. For the purposes of negotiating pre-existing rights and/or administrative purposes, Air Force activities may need to determine rights in intellectual property. Any such determinations should be made with the advice of appropriate legal counsel. Any invention made under a CRADA, whether made solely by the CRADA partner or solely by an Air Force employee, or jointly, shall be disclosed to the servicing patent counsel or, if none is known, to AFMC LO/JAZ.

4.3. License Grants. The CRADA may contain a grant or an agreement in advance to grant to a CRADA partner patent licenses or assignments, or options thereto, for any invention made in whole or in part by a Federal employee under the CRADA for reasonable compensation when appropriate. The CRADA may also grant a license, subject to section 209 of title 35, United States Code, to an invention which is federally owned, for which a patent application was filed before the signing of the agreement, and directly within the scope of the work under the CRADA.

4.3.1. When licenses for inventions made under a CRADA are granted or contemplated, the CRADA shall provide that the CRADA partner has the option to choose an exclusive license for a pre-negotiated field of use for any invention made under the CRADA. If there is more than one CRADA partner, then the CRADA partners shall be offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party.

4.3.2. In consideration for the Air Force's contribution under the CRADA, the Air Force, on behalf of the U.S. Government, shall retain a nonexclusive, nontransferable, irrevocable, paid-up license to practice an invention, made by a Federal employee under the CRADA, or to have the invention practiced throughout the world by or on behalf of the Government, and other rights that

the commander or director may deem appropriate or otherwise are required by law. In the exercise of such a license, the Air Force shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of 5 U.S.C. § 552(b)(4), or which would be considered as such if it had been obtained from a non-federal party.

4.3.3. The CRADAs shall ensure that the CRADA partner may retain title to any invention made solely by its employee(s) in exchange for normally granting the Government a nonexclusive, non-transferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by, or for, the Government for research or other Government purposes

4.4. Responsibility for Licensing.

4.4.1. Commanders or directors of Air Force laboratories and/or technical activities will execute, on behalf of the Air Force, patent licenses or assignments for Government-owned inventions made under CRADAs that are in the custody of the Air Force. The commanders or directors may redelegate this authority to their subordinate activities. *NOTE:* Licenses concerning inventions made under CRADAs only are governed by this Instruction. Licenses concerning all other inventions in the custody of the Air Force are governed by AFI 51-303.

4.4.2. Patent counsel for the servicing legal office shall provide assistance to commanders or directors of Air Force activities in preparing, negotiating and reviewing such licenses or assignments of inventions made under CRADAs. For Air Force activities that do not have a designated servicing legal office patent counsel, AFMC LO/JAZ will provide the necessary assistance.

4.4.3. The Deputy General Counsel (Acquisition), SAF/GCQ, has general responsibility for the legal aspects of the Air Force's patent licensing/assignment program. A copy of all licenses or assignments of inventions made under a CRADA negotiated by an Air Force activity, and any sub-licenses, shall be provided to SAF/GCQ. Patent license agreements and assignments that deviate substantially from the Model Patent License or Assignment Agreement, as provided in the Air Force Technology Transfer Handbook, must also be reviewed and approved by SAF/GCQ.

4.4.4. SAF/GCQ will administer all patent licenses and assignments including receiving royalties or other payments, and disbursing such royalties or other payments. SAF/GCQ will maintain records of all such licenses and assignments.

4.5. Restrictions and Conditions for Patent Licenses and Assignments.

4.5.1. Patent licenses and assignments for Government-owned inventions made under CRADAs will be negotiated by the Technology Transfer Focal Point for the activity where the invention was made with the assistance of the servicing legal office patent counsel. Patent licenses and assignments shall be negotiated consistent with the Air Force model patent licenses and assignment guidelines as provided in the Air Force Technology Transfer Handbook.

4.5.2. Licenses normally will contain a royalty provision or provide for some other form of consideration flowing to the Government. Terms and conditions shall be appropriate for the protection of the interests of the Federal Government and the public and not in conflict with law or regulation.

4.6. Modification and Termination of a Patent License. Before terminating or modifying any patent license or assignment (other than by mutual agreement) for Government-owned inventions made under a CRADA, the commander or director of the Air Force laboratory and/or technical activity or delegee shall furnish the licensee and any sublicensee of record a written notice of intention to

modify or terminate the license. Further, the commander or director or delegee shall allow the licensee and any sublicensee, after such notice, to remedy any breach of the license or show cause why the license should not be modified or terminated. Any such modification or termination shall be coordinated with local patent servicing office and SAF/GCQ.

4.7. Other Intellectual Property License Agreements. Pursuant to 15 U.S.C. §3710a(a)(2), Air Force activities may negotiate license agreements for Government-owned inventions made or intellectual property developed at the Air Force activity. These agreements must comply with 35 U.S.C. § 207, *Patentability, Grant of Patents*, and AFI 51-303, *Intellectual Property -- Patents, Patent Related Matters, Trademarks, and Copyrights*.

4.8. Disclosure of License Plans and Reports. The Air Force may treat reports submitted by licensees, when they contain commercial or financial information, as privileged information, which is not subject to disclosure (35 U.S.C. § 209, 15 U.S.C. § 3710a(c)(7), and 5 U.S.C. § 552). In the exercise of any nonexclusive license right retained by the Air Force on behalf of the U.S. Government, the Air Force shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of 5 U.S.C. § 552(b)(4) or which would be considered as such if it had been obtained from a non-federal party.

4.9. Commercial Rights Permission. Air Force activities may permit Federal employees or former Federal employees of the organization to participate in efforts to commercialize inventions that they made while in the employment or service of the United States. Such an arrangement must comply with Air Force requirements and standards of conduct.

5. Scientific and Technical Information Requirements for Air Force Sponsors: Offices of Research and Technology Applications (ORTAs) shall support DoD scientific and technical information gathering efforts by collecting and maintaining information in support of the Defense Technology Transfer Information System (DTTIS). Information will be reported to DTTIS through the Air Force Technology Transfer Management Team.

DARLEEN A. DRUYUN
Principal Deputy Assistant Secretary
(Acquisition & Management)

Attachment 1**GLOSSARY OF REFERENCE AND SUPPORTING INFORMATION*****References***

United States Code Title 15 Commerce and Trade Chapter 63 Technology Innovation Section 3701 (15 USC 3701 et. seq.)

The Federal Technology Transfer Act of 1986

5 U.S.C. §552 Freedom of Information Act

31 U.S.C. § 3302 Miscellaneous Receipts

31 U.S.C. §§ 6303-6305

Executive Order 12591, *Facilitating Access to Science and Technology*

DoD Directive 5535.3, *DoD Domestic Technology Transfer Program*, May 21, 1999

DoD Instruction 5535.8, *DoD Technology Transfer (T2) Program*, May 14, 1999

AFPD 61-3, *Domestic Technology Transfer*

AFI 51-303, *Intellectual Property -- Patents, Trademarks, and Copyrights*, September 1, 1998

AFI 61-301, *The Domestic Technology Transfer Process and the Offices of Research and Technology Application*

AFMAN 37-139, *Records Disposition Schedule*, 1 Mar 1996

Abbreviations and Acronyms

AFMC LO/JAZ—Air Force Materiel Command Law Office, Directorate of Intellectual Property Law

CRADA—Cooperative Research and Development Agreement

DAO/FSO—Defense Accounting Office/Financial Services Office

DTIC—Defense Technical Information Center

DTTIS—Defense Technology Transfer Information System

SAF/AQR—Office of the Deputy Assistant Secretary for Acquisition (Science, Technology and Engineering)

SAF/GCQ—The Office of the Deputy General Counsel (Acquisition)

TEO—Technology Executive Officer

Terms

Air Force Program Management Team—The Air Force office (the Air Force Technology Transfer Program Manager and staff) responsible for implementing this policy directive and its instructions.

Air Force Technology Transfer Handbook—The compendium of guidelines, best practices, and lessons learned for the day-to-day operational execution of the technology transfer process.

Cooperative Research and Development Agreement (CRADA)—An agreement between one or more federal laboratories and/or technical activities and one or more nonfederal parties. Under a CRADA, the government laboratories and/or technical activities shall provide personnel, services, facilities, equipment, or other resources with or without reimbursement (but not funds to the nonfederal parties). CRADAs are instruments that may be used in all aspects of a product and/or system life cycle where RDT&E activities occur. The nonfederal parties shall provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research and development efforts that are consistent with the missions of the laboratory and/or technical activity. The CRADA partners shall share in the intellectual property developed under the effort. This term does not include a procurement contract or cooperative agreement as used in 31 U.S.C. §§ 6303, 6304, and 6305.

Invention—Any invention or discovery that is or may be patentable or otherwise protected under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. § 7321 et seq.).

Laboratory and/or Technical Activity—For this instruction, that phrase is, as broadly defined, in 15 U.S.C. 3710a(d)(2)(A), and shall include the following:

A facility or group of facilities owned, leased, or otherwise used by the Air Force, a substantial purpose of which is the performance of research, development, or engineering by employees of the Air Force.

Use of this broad definition is deliberate. That definition is not confined to those Air Force components that are formally titled “laboratories.” The intent of that definition is to encompass the wide range of organizations and arrangements that function as laboratories and/or technical activities in Air Force research, development, and engineering programs. It shall include laboratories and/or technical activities and reference more diverse arrangements that shall provide a virtual laboratory capability. For example, an Air Force component may have a virtual lab involving a management function accomplished in an Air Force activity, plus a dispersed set of research activities to be accomplished by a variety of organizations outside of the sponsoring and/or managing activity. Those capabilities are included in test, logistics, and product centers; depots; arsenals; program offices; and all Air Force offices providing for RDT&E. This is consistent with 15 U.S.C. 3710a(d)(2)(A) which uses such encompassing terms as “facility.” This broad definition is in accordance with new DoD practices.

While the definition cited in 15 U.S.C. 3710a(d)(2)(A) occurs in a section of the United States Code dealing with CRADAs, the use of that broad definition in DoD Directive 5535.3 and DoD Instruction 5535.8 shall not be limited to matters involving CRADAs. The broad definition applies to all citations of laboratories and/or technical activities in this instruction.

Made—In relation to any invention means the conception or first actual reduction to practice of such Invention.