GUIDELINES FOR PREPARING 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 precedence.

* References throughout the guidelines to sections of the ITAR are denoted with either the symbol §, or with the nomenclature "22 CFR."

We welcome the use of this document in training programs but request 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//
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Director, Licensing
Office of Defense Trade Controls

As of: March 16, 2016

Table of Contents

SECTION 1.0 Contacting DTCL 6
SECTION 2.0 Agreements Overview 8
2.1 What is an Agreement? 8
2.2 Technical Assistance Agreement (TAA) § 120.22 10
2.3 Manufacturing License Agreement (MLA) § 120.21 10
2.4 Warehouse and Distribution Agreement (WDA) § 120.23 10
2.5 Elements of TAA, MLA, and WDA Packages 10
2.6 Agreement Processing Timelines 12
2.7 Agreement and Amendment Approvals 13
2.8 Common DSP-5 and Other Submission Errors 13
SECTION 3.0 General Guidance for Agreements 17
3.1 Duration of Agreements (Expiration Dates) 17
3.2 Sublicensing 18
3.3 Establishing Value for Agreements 22
3.4 Part 130 Statements 26
3.5 Retransfer to Foreign Dual National/Third-Country National Employees 27
3.6 Reserved 37
3.7 Country Specific Exemptions for Foreign Dual Nationals/Third-Country Nationals 37
3.8 Foreign Persons Employed in the U.S. or Abroad by a U.S. Person 39
3.9 Contract Employees 39
3.10 U.S. Persons Employed Abroad 42
3.11 U.S. government Entities 42
3.12 End-Users 42
3.13 Additional Transfer Territories 43
3.14 Use of Collective Language 44
3.15 Utilization of Law Firms and Consultants 45
3.16 Agreements Submitted in Support of U.S. Operations 45
3.17 Brokering 46
3.18 Translation Services 47
SECTION 4.0 Certification Letter (§ 126.13) 48
4.1 Elements of a Certification Letter (§ 126.13) 48
4.2 Additional Guidance for Attached Certification Letter 49
SECTION 5.0 New Technical Assistance or Manufacturing License Agreements 50

5.1 Transmittal Letter 50
5.2 Proposed Agreement 56
SECTION 6.0 Amendments to TAA or MLA 63
6.1 Transmittal Letter 63
6.2 Proposed Amendment 69
6.3 Minor Amendments or Changes Not Requiring DTCL Approval 71
SECTION 7.0 New Warehouse and Distribution Agreements 73
7.1 Transmittal Letter 73
7.2 Proposed Agreement 76
SECTION 8.0 Amendments to WDAs 81
8.1 Transmittal Letter 81
8.2 Proposed Amendment 85
8.3 Minor Amendments or Changes Not Requiring DTCL Approval 86
SECTION 9.0 Re-Baseline of Agreements 88
9.1 Why Re-Baseline? 88
9.2 General Re-Baseline Guidance 88
9.3 Request Package 89
9.4 Proposed Agreement 91
SECTION 10.0 Special Considerations for Arbitration-Related TAAs 93
10.1 General Guidance 93
10.2 Parties to Arbitration-Related Agreements 94
10.3 Signature Requirements (Incremental and Non-Incremental) 95
10.4 Restrictions 95
10.5 Structure of Agreement Supplemental Material 96
SECTION 11.0 Special Consideration for Space-Related Insurance TAAs 97
11.1 General Guidance 97
11.2 Parties to Insurance-Related Agreements 98
11.3 Signature Requirements (Incremental and Non-Incremental) 98
11.4 Restrictions 99
11.5 Structure of Agreement Supplemental Material 99
SECTION 12.0 Amendments as a Result of U.S. Person Acquisition, Merger or Registration Code Consolidation - Deleted 100
SECTION 13.0 Proviso Reconsiderations 101
13.1 General Guidance for Proviso Reconsiderations 101
13.2 Elements of a Proviso Reconsideration Request 101

SECTION 14.0 Agreements Requiring Congressional Notification 103
14.1 Congressional Notification Thresholds 103
14.2 Submission of Agreements and WDA IFO Licenses Requiring Congressional Notification 104
14.3 Congressional Notification Process 108
SECTION 15.0 Exporting Hardware in Furtherance of Agreements 110
15.1 Hardware via Separate Licenses in Furtherance of an Agreement 110
15.2 Repair and Replacement Hardware 113
15.3 Defense Articles Shipped Via § 123.16(b)(1) Exemption 114
15.4 Defense Articles Shipped Via Other Hardware Exemptions 117
15.5 Decrementing Hardware Value Authorized in Agreements 117
SECTION 16.0 Actions After Approval 119
16.1 Execution of the Agreement 119
16.2 Initial Technical Data Export 121
16.3 Decision not to Conclude an Agreement or Amendment 121
16.4 Termination of an Agreement 122
16.5 Annual Sales Reports for MLAs and WDAs 122
16.6 Request for Revised Approval Letter 123
SECTION 17.0 Submitting and Packaging Agreements 124
17.1 Package Submissions 124
17.2 Attachment of Supporting Material 126
SECTION 18.0 DTSA Technology Security Review 127
18.1 Technical Reviewers 127
18.2 Technical Information 127
18.3 Gas Turbine Engine Technology Questions 129
18.4 Low Observable/Counter-Low Observable or Controlled Program Information 130
18.5 Software Documentation 131
SECTION 19.0 Documenting Space Launch Service Providers 132
19.1 Identifying Space Launch Service Providers in Submissions 132
SECTION 20.0 Export Control Reform 134
20.1 General Guidance 134
20.2 Transmittal Letters 138
20.3 Agreements and Amendments 138
20.4 Licenses in Furtherance of Agreements 139
20.5 Warehouse and Distribution Agreements 140

Appendix A – Sample Documents 142
Tab 1 – Sample Certification Letter (§ 126.13) 143
Tab 2 – TAA/MLA Transmittal Letter 144
Tab 3 – TAA/MLA 149
Tab 4 – WDA Transmittal Letter 155
Tab 5 – WDA 158
Tab 6 – TAA/MLA Amendment/Re-baseline Transmittal Letter 162
Tab 7 – TAA/MLA Amendment/Re-baseline 169
Tab 8 – WDA Amendment/Re-baseline Transmittal Letter 176
Tab 9 – WDA Amendment/Re-baseline 180
Tab 10 – Request for Proviso Reconsideration 184
Tab 11 – Sublicensee Non-Disclosure Agreement (NDA) 185
Tab 12 – Dual National/Third-Country National Non-Disclosure Agreement (NDA) 188
Tab 13 – WDA Non-Disclosure Agreement (NDA) 189
Tab 14 – In Furtherance of Letter of Explanation 191
Appendix B – Reserved 195
Appendix C – Merger and Acquisition Flow Chart – Deleted 196
Appendix D – DSP-5 " Vehicle" Completion Guide 197
Tab 1 – DSP-5 "Vehicle" (New Agreement) 198
Tab 2 – DSP-5 "Vehicle" (Re-Baseline Agreements or Amendments) 202
Tab 3 – DSP-5 "Vehicle" (Proviso Reconsiderations) 207
Tab 4 – Sample DSP-5 "Vehicle" 211
Appendix E – Acronyms 222
Appendix F – References 223

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

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

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

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 – 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

To view the status of all requests, go to http://elisa.dtsa.mil/Elisa_Results.aspx and type in the 9-digit DSP-5 vehicle number.

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 mechanism for the agreement submission and adjudication process. This electronic mechanism utilized for submitting, reviewing, and approving agreement proposals is the DTrade 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 as the "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 proposed agreement/amendment as attached subject to the limitations, provisos and requirements stated below as well as the requirements contained in the International Traffic in Arms Regulations. The agreement/amendment may not enter into force until these requirements have been satisfied. No U.S. signatories may export or temporarily import defense articles, technical data or defense services against this agreement/amendment until all parties have executed the agreement/amendment."

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 to a foreign person, an authorization to manufacture defense articles abroad, or to 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

[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 DTrade 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.

(technical data or hardware) may be addressed in the scope of an agreement as well, but the provision of a defense service, transfer of manufacturing know-how or production rights, or establishment of a distribution point abroad is what distinguishes an "Agreement" from other forms of authorizations issued by DTCL.

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

In **exceptional cases**, DTCL will consider the provision of limited defense services under DSP-5 license in accordance with § 124.1(a). In order to qualify for this provision, the activities must be limited in scope and duration. A submission for a limited defense services license must be submitted as a DSP-5 and include a signed letter requesting limited defense services via license and providing justification for the request. In addition, applicants must note the § 124.1(a) request for limited defense services in block 20 of the DSP-5 vehicle. DTCL will ultimately decide if the situation is appropriate for limited defense services.

Examples of Limited Defense Services Which May be Considered Under a DSP-5 License Pursuant to § 124.1(a)

- Short-term training
- Limited duration/low technology integration or installation work
- Limited duration/low technology repair
- Activities supporting a U.S. government contract (including subcontractor flow down) when the U.S. party does not have any contractual relationship with the foreign party
- Space-Related Insurance Activities, unless SME technical data will be transferred (see Section 11.1 of these Guidelines)

Table 2.2

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, provided 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 is required for the manufacturing of a defense article abroad when manufacturing know-how is provided to the foreign party for the manufacturing activity (i.e., the U.S. party requests and teaches the foreign party how to manufacture the item), or when production rights are given by the U.S. party to the foreign party (i.e. when the foreign party requests to manufacture a USML item intellectually owned by the U.S. party). An MLA is also required for the assembly or repair of hardware abroad (i.e. no actual manufacturing) if the foreign party requires manufacturing know-how in order to complete the assembly or repair. 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. Note that even if manufacturing know-how is not transferred, an MLA is still generally required for authorization to manufacture defense articles abroad when involving a defense service or the export of technical data. Alternatively, if no defense services are being performed and all the conditions of § 124.13 are met, an offshore procurement license may be appropriate.

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.

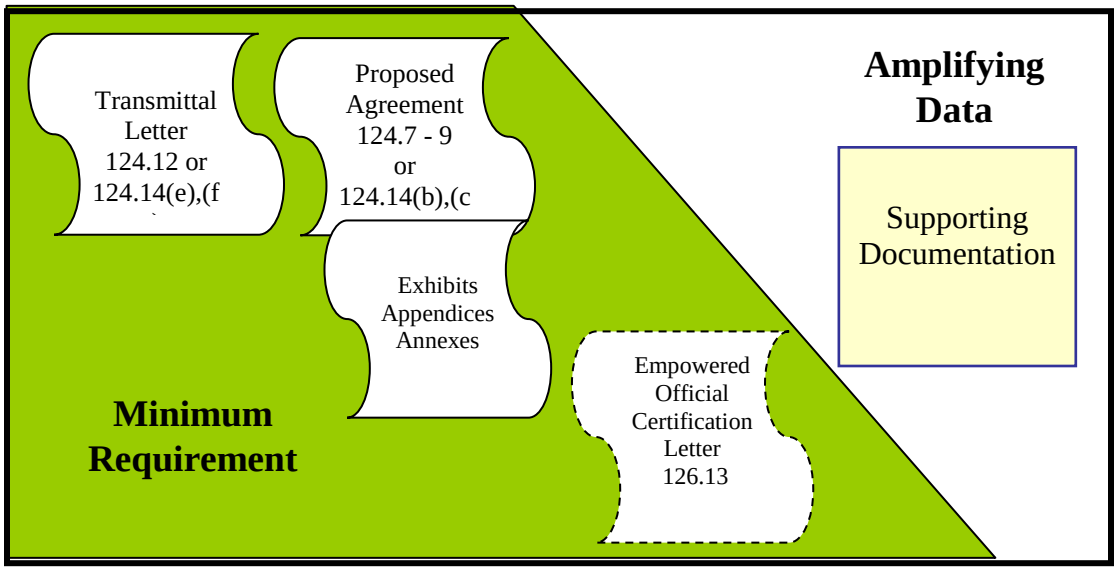

Figure 2.1

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 when items "a" or "c" in Block 22 are applicable. If the applicant can't certify to items "a" or "c," then a separate § 126.13 certification letter must be attached to the DSP-5 vehicle (See Section 4.0 and Tab 1 to Appendix A).

b. Transmittal Letter per § 124.12 or § 124.14(e) and (f). (See Sections 5.1 and 6.1 for TAAs, MLAs and Amendments; see Sections 7.1 and 8.1 for WDAs and Amendments; see Appendix A, Tab 2, 4, 6, and 8 for example TAA/MLA and WDA Transmittal Letters.)

c. Proposed Agreement/Amendment (see Sections 5.2 and 6.2 for TAAs, MLAs and Amendments; see Sections 7.2 and 8.2 for WDAs and Amendments; Appendix A, Tabs 3, 5, 7, and 9 for examples) 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 (if applicable) or § 124.14(c) and § 124.14(d) (if applicable) clauses 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 (e.g., Statement of Work, Description of Technical Data, Hardware for Export, Sublicensees, 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 an agreement 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.** However, do not embed file documents into the main document.

e. Supporting Documentation (e.g., Positive Part 130 Statements, Congressional Notification documentation, Software Source Code requests, information relevant to technology export issues, precedent cases, product brochures). 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 the review process. This type of information should be minimized to include only information absolutely critical to the support of the request.

2.6 Agreement Processing Timelines

a. NSPD-56 directs the Department of State 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) Sections 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 certain transactions, if the license meets the requirements identified for the sale of major defense equipment, involves the manufacture abroad of significant military equipment, or when the license 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).

(6) U.S. government export policy has not been determined.

b. All new agreements require interagency coordination as do approximately half of all amendments. The processing time for any agreement or amendment requiring coordination and staffing averages between 40 and 55 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 Authorization for Exports/Temp Imports in Furtherance of the Agreement
(3) Manufacturing License Agreement (MLA) Sales Territories
(4) § 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.)

2.8 Common DSP-5 and Other Submission Errors

As stated at the beginning of this section, the DSP-5 is a "vehicle" for submitting agreements to DDTC. Because of the unique requirements of agreements, some of the applicant entry fields of the DSP-5 form have been tailored by these guidelines for the application of agreements. The following items address commonly seen submission errors in the DSP-5 vehicle or other parts of the submission. See Appendix D for specific guidance on entries for each DSP-5 Block.

a. The first three characters of the Transaction Number must be "AG-" for the DTrade 2 system to recognize the submission as an agreement. The applicant can use any alpha-numeric label after the "AG-".

b. The Block 12 value must be correct. For new agreements and re-baselines (See Section 9), the value must reflect the total agreement value in the (a)(6) table of the transmittal letter. For

amendments, the value must reflect the change in value added for that given amendment. If the value is $1 or less (e.g., no change or the amendment subtracts value), enter $1 in Block 12.

c. Foreign ultimate end users must be identified in Block 14. End users who are not foreign licensees to the agreement must be listed in Block 14 of the DSP-5 vehicle with the foreign licensees.

d. Sublicensees must be entered in Block 16. If there are no sublicensees, then Block 16 should state "No Sublicensees".

e. Multiple business locations:

(1) Foreign licensees and sublicensees with multiple business locations for the same legal entity in the same country may provide a single Block 14 or 16 entry for the primary location in that single country if the phrase "(and all locations in [identify the country])" is added to the address field of the licensee/sublicensee. If the applicant chooses to enter multiple business locations in Block 14 or Block 16 for the same legal entity in the same country, they must be input as separate entries. If the same legal entity has business locations in different countries, at least one entry must be provided for each applicable country code in Block 14 or Block 16. In the agreement, one location is all that is required for foreign governmental entities. For private companies, the primary business location where activity will occur under the agreement must be identified in the body of the agreement. If the private company has other business locations in the same country that will be involved, the agreement must contain the phrase "(and all locations in [identify the country])." If the same legal entity has business locations in different countries, at least one address per legal entity per country must be identified in the agreement. Reference Section 15.1.b(4) for guidance on multiple locations for In Furtherance Of (IFO) licenses.

(2) Similarly, U.S. companies with multiple business locations for the same legal entity in the United States may provide a single Block 21 entry for the primary location if the phrase "(and all locations in the United States)" is added to the address field (as well as to the agreement and the transmittal letter).

Note 1: Agreements submitted before October 9, 2013 may use the provisions of the "all locations" phrase without including such phrase in the agreement until the next amendment is submitted. The next amendment (major or minor) must include the "all locations" phrase in order to use its provisions. See Section 6.3.b.

Note 2: If adding the phrase "(and all locations in [identify the country])" results in insufficient space within the address field, the applicant may enter the primary address in one block 14/16/21 entry and the phrase "(and all locations in [identify the country])" in a separate block 14/16/21 entry.

f. All dual nationals/third-country nationals requested pursuant to § 124.8(5) must be listed in Block 18 (See Sections 3.5 and 3.5.2 of these Guidelines).

g. Company names entered in the DSP-5 vehicle (e.g., Blocks 14, 16, and 21) must be the legal names of the companies without using abbreviations or any additional clarifying language (See the May 3, 2010 DDTC web notice entitled "Guidelines Regarding Company Names on License Documents"). This means no "subsidiary of" statements, partial address or location clarifiers, or go-by names in the name field unless it is part of the legal name of the company.

h. The company names in the DSP-5 vehicle need to match the company names used in the agreement/amendment.

i. Block 20 must provide a summary of the proposed agreement/amendment. The summary for an amendment should include the total scope of the agreement and not just what the amendment adds.

j. All U.S. signatories (including the applicant and/or U.S. subsidiaries as applicable) to the agreement must be individually listed in Block 21, in the preamble of the agreement, and in section (a)(2) of the transmittal letter. Subsidiaries are separate legal entities and are considered separate signatories. However, the U.S. parent company may sign for its U.S. subsidiaries as long as the agreement states the parent/subsidiary relationship.

k. The Part 130 statement must be correct and must be answered based on the agreement as a whole (not just any given amendment). If the value of the agreement as a whole is over $500,000 **and** the defense articles/defense services are for the use of armed forces of a foreign country/international organization, then the second or third box of this field must be checked—the second box if no payments (or agreements of payments) have been made, the third box if payments (or agreements of payments) have been made. If the only end user is the U.S., Part 130 is not applicable, and the first box must be checked.

l. Section 17.1 identifies the Upload Menu Option selection instructions for the various documents applicants will upload to the DSP-5 vehicle. The correct Upload Menu Options should be used. For example, with the initial submission, the transmittal letter will be uploaded as "Supplementary Explanation of Transaction; and the new agreement/amendment will be uploaded as "Contract."

m. Non-U.S. laws and regulations must not be referenced in the agreement. Agreements are U.S. export authorizations and are not subject to the laws or regulation of any other country, nor shall an agreement be used to enforce the laws or regulations or any other country. Recommend using the business contract or other documents between the parties if other country's laws/regulations must be referenced for a transaction.

n. When signing documents such as a § 126.13 certification letter or a transmittal letter, digital signatures are acceptable. Signing with text characters does not constitute a digital signature. An unsigned letter may unnecessarily delay the processing of a submission.

o. Freight forwarders should **not** be identified in agreement submissions. Freight forwarders should only be identified in IFO licenses.

p. For the § 124.9(a)(6) clause required in MLAs, the foreign signatory(ies), not the U.S. party, should be listed at the beginning of the verbatim statement.

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 DTrade 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 will also be assigned upon receipt. This number serves as the actual agreement number (e.g., TA-9876-13) 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.

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

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. The expiration date of the agreement approved by DTCL cannot exceed ten years in duration from the current year when approved. 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. In order to avoid an overwhelming number of proposed amendments for duration extensions at the end of the year, DTCL uses an Expiration Date Matrix, distributing expiration dates throughout the calendar year:

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. Applicants with company names beginning with 'The' should use the first letter of the second word of their name when making the expiration month determination identified above.

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. Each amendment can request an extension out to ten years from the year the amendment is submitted. A re-baseline or amendment request to extend the duration of an agreement must be submitted at least 60 days in advance of its expiration. Note: if the applicant is concerned about potential expiration of the currently approved agreement when submitting a re-baseline, the applicant may request an extension of the currently approved agreement in the transmittal letter.

e. 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 actual expiration date approved for the agreement is specified in Proviso #1 of all authorizations.

f. Termination dates for Agreements that involve items transitioning from USML to the Commerce Control List as part of the Export Control Reform process and the subject of a *Federal Register* notice may differ from the expiration date given in the approval proviso – see Section 20 for additional guidance.

3.2 Sublicensing

a. For the purposes of the ITAR, Sublicensing and Sub-Contracting are defined as follows:

(1) Sublicensing 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. There are no direct transfers of defense articles, technical data, or defense services between the U.S. parties to the agreement and the sublicensees.

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 sublicensee.

(2) Subcontracting 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 subcontractors 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 subcontractor and does not need to be identified in the agreement.

b. Requirements for All Foreign Sublicensing Requests

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

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

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

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

(3) When sublicensing is requested, the sublicensee statement in the agreement should look like:

"Sublicensing rights are granted to the foreign licensees (or list the specific foreign licensee). Sublicensees are identified in Attachment ___. Sublicensees 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 DDTC 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 and § 124.9), will be maintained on file by (the applicant) for five years from the expiration of the agreement."

(4) Prior to transfer of defense articles and/or technical data to approved sublicensees, the sublicensees must sign a Non-Disclosure Agreement (NDA), which references the agreement number and includes § 124.8 and, as applicable, the § 124.9 and contract employee 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 sublicensing authorization. (See Appendix A, Tab 11: Sample Sublicensee NDA.)

(5) Foreign licensees are not required to sign the sublicensee NDA. This allows a foreign sublicensee to interact with multiple foreign licensees under the scope an agreement without having to sign an NDA with each foreign signatory. Prior to any transfers, the foreign licensee must ensure that the sublicensee has signed an NDA for the respective agreement. The foreign licensee must also ensure that the sublicensee properly understands their sublicensee role and what is authorized with respect to the agreement.

c. Additional Foreign Sublicensing Guidance

(1) Any request submitted to DTCL to re-baseline an existing paper agreement pursuant to § 124.1(c) must include complete sublicensee 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 sublicensees is not authorized. If such transfer is required, the identified sublicensee must be added as a foreign licensee (i.e., signatory) to the agreement.

(3) Foreign sublicensees are authorized to transfer defense articles, to include technical data, and defense services among themselves as long as they are authorized to receive the defense articles and defense services based on Section 3.2.b(1) of these Guidelines.

d. US Sublicensing Guidance

(1) DTCL has removed restrictions pertaining to the identification of U.S. Persons as potential sublicensees to a foreign party.

(2) If sublicensing to a U.S. Person by a foreign licensee is identified in an agreement request to DTCL, the identification and subsequent approval of U.S. sublicensees does not serve as an export (§ 120.17) or temporary import (§ 120.18) authorization for the U.S. Person (U.S. sublicensee). Any resulting exports or temporary imports by the U.S. sublicensee must be

conducted as part of a separate authorization (TAA, MLA, or DSP license) initiated by the U.S. Person (U.S. sublicensee).

(3) In order to request U.S. Persons as sublicensees, the applicant must clearly state as part of § 124.7(4) that **"This agreement authorizes sublicensing to U.S. Persons. Exports or temporary imports by the U.S. sublicensee must be conducted as part of a separate authorization initiated by the U.S. Person."** The applicant is not required to specifically identify potential U.S. sublicensees in the agreement request.

e. Expedited Execution: Adding Sublicensees Without Requiring Signatures from All Parties

(1) In order to streamline the execution process for an amendment when the sole change to an agreement is the addition of sublicensees from a previously approved territory or name/address changes for existing sublicensees, DDTC will allow the applicant's signature to constitute execution of such an amendment in limited circumstances. This process is referred to as "expedited execution." The following restrictions and procedures apply:

(A) Expedited execution is only allowable on an amendment whose sole purpose is to add sublicensees from a previously approved territory or to change the name and/or address of existing sublicensees. Amendments that contemplate other changes, including, *inter alia*, the addition of sublicensees from new territories or the addition of the clause in 3.2.e.(2) below, require execution by all parties.

(B) The applicant must submit an electronic amendment containing all of the normally required elements (i.e., DSP-5 vehicle, transmittal letter, amendment to the agreement). The transmittal letter should state that the only change is the addition of sublicensees from a previously approved territory or name/address changes for existing sublicensees, and thus the applicant is seeking expedited execution.

(C) If the amendment is approved, DDTC will issue the case with a modified preamble and a proviso directing the applicant to upload certification that all signatories have been notified of the amended agreement.

(D) Subsequent amendment requests submitted to DDTC must include all sublicensees and correct names and addresses in the DSP-5 vehicle and the text of the amendment.

(2) In order to inform all foreign parties of the expedited execution process, the following clause is required in all agreements/amendments that wish to use the expedited execution process:

"Amendments solely to add sublicensees or to change the names or addresses of existing sublicensees may be approved and take effect without requiring signatures of all parties. The following restrictions apply to such amendments:

a. New sublicensees and addresses must be from previously approved territories;

b. All new sublicensees and sublicensee name or address changes must be approved by DDTC;

c. After DDTC approval, the agreement holder must sign the amendment, which constitutes execution for the purposes of such an amendment;
d. Before transfers may be made to the new sublicensees:
(1) The agreement holder must notify all other signatories of the change by providing them with a copy of the approved, signed amendment; and
(2) Sublicensees are required to execute a Non-Disclosure Agreement (NDA)."

This clause should be located in the sublicensing paragraph of Section 124.7(4) of the agreement.

(3) There is no "grandfathering" of the expedited execution process: the above clause must be included in the executed agreement before its provisions can be used. However, if an agreement does not contain the required clause, it may be added via the minor amendment process (see Section 6.3 of these guidelines). The required clause may also be included in any new agreement/amendment submissions.

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. The key elements of the valuation are (refer to Table 3.2 for an example value table):

Line Number	Item	Value
1	**Technical Data and Defense Services**	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$21,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	$20,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$48,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000
8	**Hardware Manufactured Abroad** (Line 3 plus work done by foreign licensees as result of the MLA, **MLA only**)	$25,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$74,000,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$47,000,000

Table 3.2 Agreement Valuation TAA & MLA

(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. Refer to Line 1 of Table 3.2.

(3) Hardware

(A) Permanently Exported Hardware – the value of all USML hardware being exported by the applicant via separate DSP-5 or DSP-85 license in furtherance of the agreement. MLAs further break this value down into two amounts:

(i) Value of permanently exported USML hardware not incorporated in the item the foreign licensee(s) is(are) manufacturing. This value usually includes tooling and test equipment needed during the manufacturing process, but will not be sold to the ultimate end user of the manufactured items. This value is included in the total value of the agreement and in the Congressional Notification value.

(ii) Value of permanently exported USML hardware incorporated in the manufactured end-item. This usually includes kits or components the foreign licensee(s) will turn into the ultimate end-items through the licensed manufacturing process. This value is included in the total value of the agreement. However, it is not included in the Congressional Notification value because it is embedded in the value of the manufactured end-items (Line number 8 in Table 3.2).

(B) Temporarily Exported Hardware – the value of all USML hardware being temporarily exported by the applicant in furtherance of the agreement via DSP-73 or DSP-85 license(s).

(C) Temporarily Imported Hardware – the value of all USML hardware being temporarily imported by the applicant in furtherance of the agreement via DSP-61 or DSP-85 license(s). (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.)

(D) Total Licensed Hardware – the value of all USML hardware exported or temporarily imported in furtherance of the agreement (Line 6 in Table 3.2).

(E) Hardware Value for Congressional Notification – the ITAR § 123.15 requires notification to Congress for items sold to the foreign licensee(s). Therefore, only permanently exported defense hardware is included in the value of hardware reported to Congress. This value is equal to the value in Table 3.2, line 2, but is repeated in line 7 to reiterate the value as hardware value for Congressional Notification. The value of the hardware incorporated into the end-items for an MLA is not included as described in paragraph (ii) above.

(4) Hardware Manufactured Abroad (MLA only) – the projected production or sale value of defense articles being manufactured abroad under the license. This includes the value of any kits or components exported in furtherance of the agreement and incorporated into the hardware manufactured abroad, and also includes the increase in value caused by the work the foreign licensee(s) accomplish in the manufacturing process. The value of hardware manufactured abroad is included in the Congressional Notification value. The sum of all annual sales reports should not exceed this value.

(5) Total Value of the Agreement – the sum of the values for defense services, technical data, all hardware and the value of the hardware manufactured abroad. (Refer to Table 3.2, line 9, which is the sum of lines 1, 6 and 8.)

(6) A Congressional Notification Value line must also be included for agreements requiring congressional notification. This line is optional for all other agreements. This Congressional Notification Value includes the value of technical data and defense services as well as permanently exported hardware and the value of the items manufactured abroad for an MLA. As described in paragraph (3)(E) above, it does not include the value of hardware exported for incorporation into the manufactured end-item nor any temporarily imported or exported defense hardware. (Refer to Table 3.2, line 10 which is the sum of lines 1, 7 and 8.)

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. If the defense articles being exported are Major Defense Equipment (MDE), refer to Table 14.3 of these Guidelines for details on reporting the value. If exporting defense articles pursuant to § 123.16(b)(1), refer to Section 15.3 of these Guidelines for details on reporting the value. If exporting defense articles pursuant to another exemption such as the Canadian exemption, refer to Section 15.4 of these Guidelines for details on reporting the value.

e. 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.

f. 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 (e.g., novations). However, amendments adding hardware, expanding the scope, expanding the sales territory or extending the duration of an agreement will likely change the value of the basic agreement, and thus an estimated value of the amendment must be submitted. (Refer to table 3.3 for an example amendment Value table.)

Line Number	Item	Currently Approved under TA xxxx-xx	Proposed Amendment	New Total
1	Technical Data and Defense Services	$1,000,000	4,500,000	$5,500,000
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$21,000,000	$1,000,000	$22,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	$20,000,000	$4,000,000	$24,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000	$0	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000	$0	$4,000,000
6	Total Licensed Hardware (Sum of lines 2, 3,4&5)	$48,000,000	$5,000,000	$53,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000	$1,000,000	$22,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA, **MLA only**)	$25,000,000	$5,000,000	$30,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$74,000,000**	**$14,500,000**	**$88,500,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$47,000,000	$10,500,000	$57,500,000

Table 3.3 Agreement Valuation Amendment to TAA & MLA

g. 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."

h. The value entered in Block 12 of the DSP-5 vehicle for electronic submissions of proposed agreements and re-baselines should equal the total value of the agreement. The value in block 12 for an amendment should only include the value increase for that amendment (Table 3.3, Line 9, Proposed Amendment Column). If the amendment does not increase the value of the agreement (or subtracts value), enter $1 in Block 12. DTrade needs a positive value in Block 12 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. Note: in order for Part 130 to apply, **both** of the criteria above must be met. For example, if the end user is solely the U.S. government, Part 130 would not apply regardless of value.

> (1) The Part 130 statement is made as part of Block 22, "Applicant's Statement," in the DSP-5 vehicle.
>
> (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 (not state/local 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 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 Section 3.17 of these Guidelines and § 129 for more information on brokering).

d. For each amendment, the Part 130 statement must be made in the context of the agreement as a whole and not just the amendment.

e. The Part 130 statement for an amendment or re-baseline must differentiate between values previously provided in the base agreement/subsequent amendments and the new amendment/re-baseline so as to not double count the values. Previously reported payments need only include aggregate amounts. Dates of transactions, recipients, and payers for previously reported payments are not required. For further information, see the DDTC web notice of December 13, 2013 titled "Guidelines for Furnishing Information Specified in § 130.10."

f. Part 130 is applicable to an IFO license in the context of the license itself; i.e., the term "applicant" in § 130.2 only applies if the IFO license is for $500,000 or more and is for the armed forces of a foreign country or international organization. However, if the Part 130 statement is positive for the IFO license, the statement provided must report the information required in § 130.10 in the context of the entire agreement, in order to differentiate between values previously provided and new values. If the Part 130 statement has changed since the last submission, the applicant must submit a new report and must differentiate between values previously provided and new values, so as to avoid double counting. If the Part 130 statement is identical to the previous submission, no additional statement is necessary, but the IFO letter of explanation must clarify this fact in accordance with Appendix A, Tab 14.

3.5 Retransfer to Foreign Dual National/Third-Country National Employees

Dual National (DN) – An individual who holds nationality from the country of their employer who is a foreign licensee (or sublicensee) to the agreement, and also holds nationality from one or more additional countries

Third Country National (TCN) – An individual who holds nationality from a country other than the country of their employer who is a foreign licensee (or sublicensee) to the agreement

a. 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 national or third-country national employee only authorizes transfer to the employee. It does not authorize export to the country from which the employee derives.

b. 76 FR 28174, which became effective August 15, 2011, provides an option for foreign parties identified in an agreement to vet their own dual national and third-country national (DN/TCN)

employees concerning the risk of diversion of USML defense articles/technology. With this FRN there are now three options for the vetting of DN/TCNs. A summary of these options are as follows:

Option 1 (Foreign Vetting): The foreign parties vet their own DN/TCNs pursuant to § 126.18. When foreign licensees/sublicensees make the determination of their employee pursuant to § 126.18, country of origin is not the determining factor—rather, substantive contact with risk of diversion is the determining factor. This option is only applicable to unclassified transactions (i.e., no U.S. classified transactions).

Option 2 (DDTC Vetting): The applicant identifies the countries of the foreign parties' DN/TCNs pursuant to § 124.8(5) and § 124.16 in the agreement. This method places the ultimate responsibility of vetting DN/TCNs with DTCL. When DDTC is requested to make the determination, DDTC does consider the country of origin or birth in addition to citizenship. A request pursuant to § 124.8(5) under Option 2 can cover classified as well as unclassified transactions.

Option 3 (Foreign GC): The foreign party requests approval of specific DN/TCN individual directly with DTCP via General Correspondence letter. This method places the ultimate responsibility of vetting a specific DN/TCN with DTCP and is to be used as a last resort when the foreign party cannot make their own determination on the risk of diversion while using Option 1. This option is not tied to a specific transaction but provides authority for involvement of the specific individual in any future authorization.

NOTE: Re-transfers to approved DN/TCN employees are authorized to continue when forces/elements of the armed forces of a foreign country or the armed forces of an international organization 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.

c. The § 124.8(5) verbatim clause has changed as a result of 76 FR 28174:

"(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 foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained."

d. After August 15, 2011, all approved agreements/amendments must include the new § 124.8(5) verbatim clause in its entirety. If the old verbatim clause is used, a proviso will be added to change it to the new clause prior to execution.

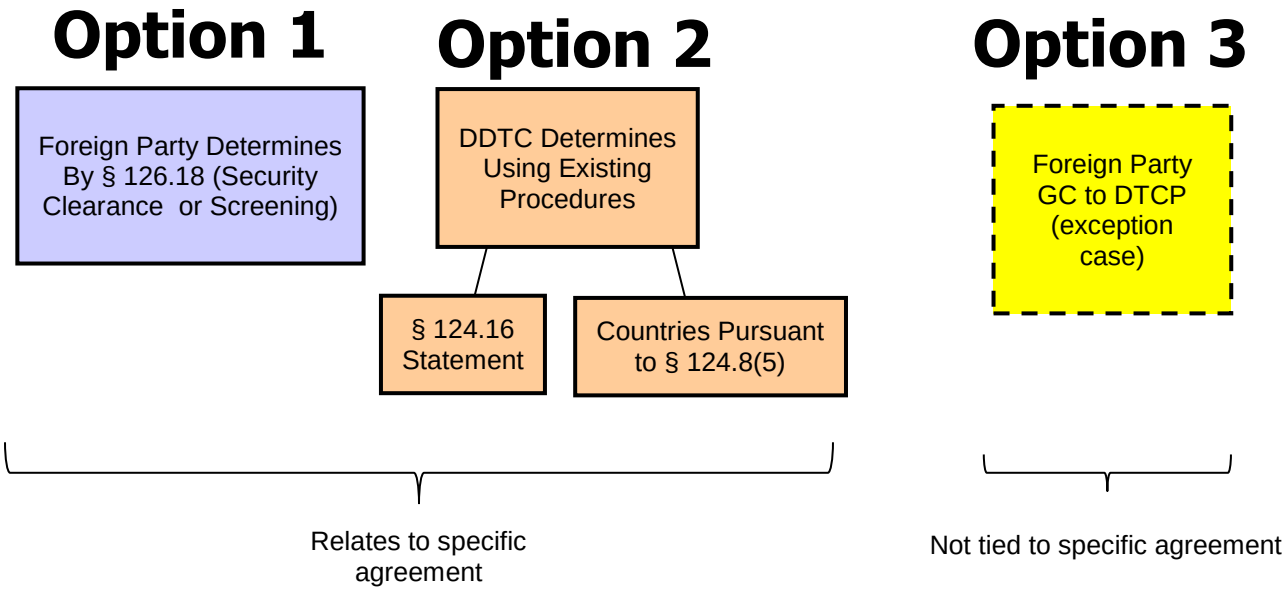

Figure 3.1 Dual National/Third-Country National Options

e. As Figure 3.1 illustrates, a single foreign party may choose to exercise multiple options under a single agreement. **It is the responsibility of the U.S. applicant to coordinate which DN/TCN options will be applicable for their given agreement and include the appropriate language in the agreement.**

3.5.1 Option 1 – Foreign Vetting

With the posting of the March 12, 2013 DDTC web notice entitled "Procedures for Utilizing the ITAR § 126.18 Exemption," DDTC considers all § 124.8(5) verbatim statements in currently approved TAAs and MLAs to be updated. All agreement holders and foreign parties utilizing the § 126.18 exemption must maintain a copy of that web notice in their records. The requirement to specifically request use of the § 126.18 exemption in § 124.7(4) is no longer required. However, § 124.16 is no longer an option under Option 1: § 124.16 must be requested in § 124.7(4) since § 124.16 is not an exemption. If an agreement does not contain the § 124.16 verbatim statement, the provisions of § 124.16 may not be used.

a. Under Option 1, the foreign parties will be vetting their DN/TCNs pursuant to § 126.18.

b. If the foreign party(ies) will exclusively use Option 1, the "Pursuant to 22 CFR 124.8(5)" statement discussed in Option 2 is no longer required. However, if a foreign party chooses to also use Option 2 below, the statement would remain if § 124.8(5) is requested.

c. A DN/TCN vetted pursuant to § 126.18(c)(2) must execute a Non-Disclosure Agreement (NDA). The DN/TCN NDA language is different than the NDA for sublicensees and a sample of this NDA is attached to these guidelines (See Appendix A, Tab 12). The foreign employer

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.

d. Option 1 is only applicable to unclassified transactions.

e. **Amending Currently Approved Agreements for Option 1.** For currently approved agreements, the applicant does not need to amend the agreement for foreign parties to use the § 126.18 exemption.

(1) Previously approved DN/TCNs whose employers choose to re-vet an individual pursuant to § 126.18(c)(2) must execute a new NDA with the new language (See Appendix A, Tab 12 for NDA example).

(2) Currently approved agreements that received proviso(s) restricting/removing DN/TCNs from the agreement must be submitted for proviso reconsideration in order to implement Option 1. The applicant can submit the amendment to update the agreement to the new language in conjunction with the proviso reconsideration. Previous paper agreements that require a proviso reconsideration must be re-baselined at the same time and submitted electronically.

3.5.2 Option 2 – DDTC Vetting

Option 2 is a continuation of the DN/TCNs approval method used prior to FRN 7428. Foreign licensees and sublicensees may choose (in coordination with the U.S. applicant) to continue to identify the countries of their DN/TCNs pursuant to § 124.8(5) or identify the use of § 124.16 to the U.S. applicant for inclusion in the section of the agreement addressing DN/TCNs (pursuant to § 124.7(4)). 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.

a. **§ 124.8(5) for Non-§ 126.1 Countries.** The required agreement statement for DN/TCN requests pursuant to § 124.8(5) for countries other than § 126.1 countries is as follows:

> "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 the approved sublicensees – 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."

(1) Countries of DN/TCNs requested pursuant to § 124.8(5) must be identified in Block 18 of the DSP-5 vehicle.

Block 18. Name and address of foreign intermediate consignee
Name: < Enter DN/TCN >
Address: < Enter DN/TCN >
City: < Enter DN/TCN >
Country: < Enter the country code for the DN/TCN >
Role: < Enter DN/TCN >

(2) All requested countries (to include NATO countries, European Union countries, Australia, Japan, New Zealand, and Switzerland) requested pursuant to § 124.8(5) must be listed in Block 18 of the DSP-5 vehicle.

(3) Ensure all nationalities are documented with separate lines in Block 18 of the DSP-5.

(4) Prior to transfer of defense articles/technical data to approved DN/TCNs, the individual DN/TCN must sign a NDA which must reference the agreement number. The DN/TCN NDA language is different than the NDA for sublicensees and a sample of this NDA is attached to these guidelines (see Appendix A, Tab 12). 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 identify this requirement to execute and retain NDAs as part of any request for DN/TCNs pursuant to § 124.8(5).

(5) DN/TCNs previously approved by DDTC are not required to re-execute an NDA with the new language if the DN/TCN request remains pursuant to § 124.8(5).

b. **§ 124.16.** The provisions of § 124.16 do not require the specific identification of DN/TCN nationalities, or the execution of NDAs for release **of unclassified** technical data, defense services, and access to and/or technical data for DN/TCN employees of the foreign signatory or approved sublicensees to an agreement that are exclusively from NATO, European Union (EU), Australia, New Zealand, Japan, and Switzerland.

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

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

(B) The foreign signatory or approved sublicensee is located inside those countries prescribed under § 124.16.

(C) Any retransfer between the foreign signatory or approved sublicensees and dual/third country national employee(s) of the foreign signatory or approved sublicensees must take

place completely within the physical territories of those countries prescribed under § 124.16.

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

(2) When § 124.16 was added, a new section of the transmittal letter was also added at § 124.12(a)(10) to specifically address retransfer under § 124.16. FRN 7428 did not remove the requirement of § 124.12(a)(10). Therefore, applicants must continue to identify the applicability of § 124.16 in the following statement:

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

(3) The required agreement statement for § 124.16 DN/TCN requests has changed as a result of FRN 7428. This FRN adds a reference to "bona fide regular employees directly employed by the foreign signatory or approved sublicensee." In addition, the phrase "located in the § 124.16 territory" was added to clarify that the foreign licensee and/or sublicensee must also be from a § 124.16 country. Therefore, when requesting § 124.16, the following language must be used:

> "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 signatories (and the approved sublicensees – if applicable) located in the § 124.16 territory, and bona fide regular employees directly employed by the foreign signatory or approved sublicensee. The exclusive nationalities/territory authorized is 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."

(4) For currently approved agreements, applicants are not required to amend their agreements to correct the § 124.16 statement unless amending the agreement for other reasons.

(5) There is no longer a requirement to identify the § 124.16 request in Block 20 of the DSP-5 vehicle.

(6) There is no longer a requirement for the additional § 124.16 statement pursuant to paragraph 2 of the "Guidelines for Preparing Electronics Agreements, Addition/Clarification" posted on December 13, 2010. This statement had applicants clearly identify the foreign parties that § 124.16 was applicable to. Applicants may continue to use this statement if desired, but it is no longer a requirement.

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.

c. **Classified Transfers.** Any dual/third country nationals requiring access to classified defense articles and/or technical data must be requested by country pursuant to § 124.8(5) of Option 2 (including the applicable Block 18 entries identified above). The following paragraph shows the change to the required statement for non-§ 126.1 DN/TCN when U.S. classified transfers are requested:

> "Pursuant to § 124.8(5), this agreement authorizes access to **classified** (and 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 the approved sublicensees – if applicable). The exclusive nationalities authorized are *(list all foreign dual/third-country nationalities of the employees).* 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."

d. **Addressing § 126.1 Countries via Option 2.** When requesting DN/TCNs from § 126.1 countries via Option 2, it is important to specifically identify in the agreement and DSP-5 vehicle whether the individual is a dual national or a third country national. As a reminder DDTC does consider the country of origin or birth in addition to citizenship when making a determination under Option 2.

(1) **§ 126.1(a) TCNs.** In general, TCNs from § 126.1(a) countries will be disapproved by DDTC under Option 2. TCNs from § 126.1(a) countries must be identified by name and applicable country pursuant to § 124.8(5) in the agreement as follows.

> "Pursuant to § 124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to *(list full legal name of individual)*, an employee of *(list company of employment)*, who is a **third country national** of (*list § 126.1(a) countries).* 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."

In addition, the following support documentation must be included with the submission for TCNs from § 126.1(a) countries: full legal name of individual, nationality, date and place of birth, significant ties to § 126.1(a) country, copy of passport, resume, and detailed job description. The applicant should also include any other pertinent information that would enable DDTC to address the significant ties issue, e.g., whether the individual has renounced citizenship, the nature of any travel to such countries or contact with agents, brokers, and nationals of such countries.

(2) **§ 126.1(a) DNs.** DNs from § 126.1(a) countries requested via Option 2 will be considered by DDTC for approval when the primary nationality of the DN is a non-§ 126.1 country. DNs from § 126.1(a) countries must be identified by name and applicable country pursuant to § 124.8(5) in the agreement as follows. This statement is in addition to any other DN/TCN request to include other § 124.8(5) requests. For classified access requests, this

paragraph should be tailored to include "classified (and unclassified)" prior to defense articles.

> "Pursuant to § 124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to *(list full legal name of individual)*, an employee of *(list company of employment)*, who is a **dual national** of (*list nationality other than § 126.1 country)* and *(list § 126.1(a) country)*. 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."

In addition, the following support documentation must be included with the submission for DNs from § 126.1(a) countries: full legal name of individual, nationality, date and place of birth, significant ties to § 126.1(a) country, copy of passport, resume, and detailed job description. The applicant should also include any other pertinent information that would enable DDTC to address the significant ties issue, e.g., whether the individual has renounced citizenship, the nature of any travel to such countries or contact with agents, brokers, and nationals of such countries.

(3) § **126.1 non-(a) TCNs.** TCNs from § 126.1 countries not identified in § 126.1(a) (hereinafter referred to as "§ 126.1 non-(a)" countries) may be identified for consideration by DDTC. Since 126.1 non-(a) TCNs can be adjudicated by DDTC based on the nationality of the TCN, a name or supporting documentation is not required for § 126.1 non-(a) TCNs. **The applicant should either include the following § 124.8(5) statement (in addition to any other DN/TCN statements addressed in the section of the agreement addressing DN/TCNs), or include the country in the § 124.8(5) request language identified in Section 3.5.2(a) of these Guidelines.** For classified access requests, the paragraph should be tailored to include "classified (and unclassified)" prior to defense articles.

> "Pursuant to § 124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to individuals who are **third country national** employees of the foreign licensees (and the approved sublicensees – if applicable). The exclusive nationalities authorized are (*list § 126.1 non-(a) countries)*. 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."

(4) § **126.1 non-(a) DNs.** DNs from § 126.1 countries not identified in § 126.1(a) ("§ 126.1 non-(a)" countries) may be identified for consideration by DDTC. The applicant may choose whether or not to specifically identify those individual DNs by name. However, if the DN is not specifically identified by name and the requisite additional documentation is not included, DDTC will assess the individual as though the individual has strong ties with, or is a TCN from, the § 126.1 non-(a) country.

(A) If the DN is specifically identified by name, the following § 124.8(5) statement must be included. This is in addition to any other DN/TCN statements addressed in the section of the agreement addressing DN/TCNs. For classified access requests, the paragraph should be tailored to include "classified (and unclassified)" prior to "defense articles."

> "Pursuant to § 124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to *(list full legal name of individual)*, an employee of *(list company of employment)*, who is a **dual national** of (*list nationality other than § 126.1 country)* and *(list § 126.1 non-(a) country)*. 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."

Applicants submitting requests for § 126.1 non-(a) DNs specifically identified by name must include: full legal name of individual, nationality, date and place of birth, significant ties to § 126.1 non-(a) country, copy of passport, resume, and detailed job description. The applicant should also include any other pertinent information that would enable DDTC to address the significant ties issue, e.g., whether the individual has renounced citizenship, the nature of any travel to such countries or contact with agents, brokers, and nationals of such countries.

(B) If the applicant opts not to supply the DN's name and other information listed above, the following § 124.8(5) statement must be included. This is in addition to any other DN/TCN statements addressed in the section of the agreement addressing DN/TCNs. For classified access requests, the paragraph should be tailored to include "classified (and unclassified)" prior to "defense articles."

> "Pursuant to § 124.8(5), this agreement authorizes access to defense articles and/or retransfer of technical data/defense services to employees of the foreign licensees (and the approved sublicensees – if applicable) who are **dual nationals** of (*list nationality other than § 126.1 country)* and *(list § 126.1 non-(a) country)*. 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."

(5) All § 126.1(a) DN/TCNs must be added by name in block 18 of the DSP vehicle. § 126.1 non-(a) DNs should be included in block 18 if the applicant intends to provide information that demonstrates the limitations of the ties with the § 126.1 non-(a) country. The Address and Role fields of block 18 should identify whether the person is a DN or TCN; the City field should reflect all applicable nationalities; and the Country field of Block 18 must reflect the applicable § 126.1 DN/TCN country (i.e., not the country of the employer):

Block 18. Name and address of foreign intermediate consignee
Name: < Enter Full Name of Individual >
Address: < Enter DN (Dual National) or TCN (Third Country National) as applicable >

City: < Enter the applicable countries > (e.g., if person is a national of Australia born in China, enter "China and Australia" in this field)
Country: < Enter the country code for the § 126.1 country >
Role: < Enter DN (Dual National) or TCN (Third Country National) as applicable >

§ 126.1 non-(a) TCNs may be added without including a name:

Block 18. Name and address of foreign intermediate consignee
Name: < Enter TCN >
Address: < Enter TCN >
City: < Enter TCN >
Country: < Enter the country code for the § 126.1 non-(a) TCN >
Role: < Enter DN/TCN >

NOTE: Option 2 may be used for vetting DN/TCNs from § 126.1 countries that cannot be fully vetted by the foreign parties and if approved provides access for the specific individual(s) for the applicable agreement only. Option 3 below also provides a mechanism for final determination on specific § 126.1 individuals when the foreign party chooses to exercise § 126.18 and a determination on risk of diversion cannot be made.

3.5.3 Option 3 – Foreign Party General Correspondence (GC) for Specific Individual

Option 3 is exclusively for the instance where a foreign party has made an effort to screen a specific DN/TCN pursuant to § 126.18(c)(2) and determined the individual has substantive contact with § 126.1 countries but is unable to make the determination on the risk of diversion.

a. When submitting this request, the GC must include the full legal name of the individual, nationality, date and place of birth, copy of passport, resume, a detailed job description and justification for transfer to the specific individual, as well as a summary of the substantive contact the individual has with the § 126.1 country(ies) and why a determination could not be made by the foreign party.

b. This GC letter will be addressed to the Director, Office of Defense Trade Controls Policy (DTCP) at the address provided below and clearly identify in the subject line that the request is for DDTP Determination of DN/TCN Pursuant to § 126.18(c)(2).

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

c. Approval of a specific DN/TCN using Option 3 will be authority for involvement of the specific individual in any future authorization, i.e., it will not be limited to a specific agreement. If the foreign party determines at a later time that there is a clear risk of diversion, the foreign party must notify DTCP immediately of the updated circumstances so that the approval can be revoked.

NOTE: In accordance with § 126.18(c)(2), DN/TCNs with substantive contacts with persons from countries listed in § 126.1(a) **must be** identified to DDTC for a final determination. This may be accomplished via Option 2 or Option 3 above. In such submissions, the applicant must certify they have applied the substantive contacts criteria from § 126.18(c)(2) and provide the relevant support documentation identified above.

3.6 Reserved

3.7 Country Specific Exemptions for Foreign Dual Nationals/Third-Country Nationals

The country specific clauses for Australia, Canada, and The Netherlands are predicated on the issuance of a security clearance by the respective government. Even though § 126.18(c)(1) is similar due to its authorization based on DN/TCNs possessing a security clearance, the country specific clauses provide broader DN/TCN coverage such as coverage of embedded contractors and coverage of classified transfers. When implementing DN/TCN Option 1 from Section 3.5 above, the Governments of these countries prefer the country specific clauses still be included to provide this additional coverage. If retaining and/or utilizing DN/TCN Option 2 these clauses are also still relevant and shall be used when applicable.

a. **Canada.** The State Department has concluded an arrangement with the Canadian Department of National Defence (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 nationals of a third country (to include 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) In order to request dual/third country national employees who qualify for the Canadian Exemption, the following clause must be added:

> "Employees of (Select all applicable - the Canadian Department of National Defence (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 Defence as a foreign licensee, or when the Australian Department of Defence 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. In order to request 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/sublicensees 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. In order to request 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 (FPEs) must be licensed on a DSP-5 (or DSP-85) only. FPEs should not be included as individual signatories to an agreement.

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

> "The U.S. applicant (or U.S. Signatories) currently employs Foreign Person(s) of the following countries who will participate in this program: *(list countries here).*"

c. For existing agreements where an FPE is currently a signatory to the agreement, approved authorizations are still valid. However, where an FPE is authorized only under a TAA, applicants must submit DSP-5 requests for foreign person employment of these individuals. Likewise, where an FPE 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 FPEs as signatories should be amended to remove these individuals or terminated as necessary. (See "Licensing of Foreign Persons," available at: http://www.pmddtc.state.gov/licensing/documents/WebNotice_LicensingForeign2.pdf.)

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

e. It is important to note that the DN/TCN options identified in Section 3.5 of these Guidelines are only applicable to foreign party DN/TCNs and are not applicable to FPEs of U.S. companies. A DSP-5 for foreign person employment is still required for each FPE and the country of the FPE must still be identified in the agreement regardless of DN/TCN option(s) used.

3.9 Contract Employees

Contract employees, such as Information Technology support personnel, are frequently hired through staffing agencies or other contract employee providers by both U.S. and foreign companies. This section of the guidelines only applies to "non-regular contract employees"; it does not apply to contract employees who meet the definition of "regular employee" found in § 120.39. All "regular employees" of companies authorized to receive defense articles and defense services are covered under that company's authorization, which must also include DN/TCN authorization if the "regular employees" are DNs or TCNs. If contract employees are

"regular employees," then their staffing agency or contract employee provider does not need to be identified in the agreement.

a. U.S. Company Non-Regular Contract Employees

(1) When a U.S. company (agreement applicant) hires U.S. or foreign non-regular 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:

(A) 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.

(B) 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 foreign non-regular contract employees through a foreign staffing agency or contract employee provider, and those 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. Since the foreign company is a signatory and thus responsible for its own employees' ITAR compliance, those employees will not be considered contract employees for the purposes of the agreement, and are not covered under the contract employee clause in section 3.9.c. below.

(3) When a U.S. company (agreement signatory) hires a foreign contract employee through a U.S. staffing agency or U.S. contract employee provider, either the U.S. staffing agency/contract employee provider or the agreement signatory must obtain a Foreign Person Employment DSP-5 for that individual (see Section 3.8).

(A) If the U.S. 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 signatory) is responsible for obtaining the DSP-5 license for Foreign Person Employment.

(B) If the U.S. 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 signatory) is identified in Block 15 of the DSP-5.

(4) When a U.S. company hires U.S. non-regular contract employees through foreign staffing agencies or contract employee providers, there is no requirement for the foreign

staffing agency or other contract employee provider to be identified as signatories or sublicensees to the agreement, so long as:

(A) The transfer of defense articles, to include technical data, is 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, or provision of defense services 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.

(B) 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.

(C) The employing party (U.S. company) assumes full responsibility for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

b. Foreign Company Non-Regular Contract Employees

(1) When a foreign company (foreign licensee/foreign sublicensee) hires non-regular 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 or sublicensees to the agreement, so long as:

(A) 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.

(B) 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.

(C) The employing party (foreign licensee/foreign sublicensee) 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 sublicensee) 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. Sections 124.16 and 126.18 are not applicable to non-regular contract employees, since the ITAR mandates that both vetting methods are available only when DN/TCNs are "bona fide regular

employees." Contract employees who are also "regular employees" per § 120.39 may use the provisions of §§ 124.16 and 126.18.

c. Any agreement request submitted to DTCL must recognize the existence of non-regular contract employees if they are employed by any signatory or sublicensee to the agreement. When non-regular 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."

d. Additionally, the above clause must be added to any NDA executed by sublicensees when the sublicensee hires non-regular contract employees.

3.10 U.S. Persons Employed Abroad

Any requirements and procedures for U.S. persons employed abroad who provide defense services will be disseminated via final rules in the *Federal Register*.

3.11 U.S. Government Entities

a. U.S. governmental entities are not normally a signatory to the agreement. The only exception is where transfers of manufacturing know-how will take place only between an office of the U.S. government and a foreign company, without any involvement of a U.S. company. In this situation, the office of the U.S. government may submit an MLA.

b. Offices of the U.S. government should normally use ITAR exemptions or their own export authority from other regulations to conduct transfers relating to an agreement. If an office of the U.S. government is unable to use either of those options to conduct necessary transfers, the U.S. government office may submit a technical data license (DSP-5) or submit an Advisory Opinion through the General Correspondence process in order to authorize the necessary transfers. The office of the U.S. government should not be added as a signatory to an agreement.

3.12 End-Users

a. For the purposes of an agreement, an end-user is defined as a party who will ultimately benefit from the transaction, such as the ultimate recipient/user of exported or re-exported defense articles.

b. End-users may be U.S. or foreign parties. For marketing agreements, the end-users comprise the marketing territory. For MLAs, the end-users comprise the sales territory. For WDAs, the end-users comprise the distribution territory. For a repair territory (defined as when work is required to maintain previously exported defense articles), the end-users comprise the entities who own the defense articles. In all cases, the end-users must specifically be defined by listing the private or governmental entities in Block 14 of the DSP-5.

c. End-users may access/receive the defense articles. This includes limited technical data related to the defense articles, e.g., basic operation data, maintenance data, and test results (e.g., acceptance test results). Unless the end users has another role in the transaction (e.g., the end user is a foreign signatory or foreign sublicensee), the end-user must not receive defense services, or technical data not related to operations, maintenance, or performance of the defense articles. Exceptions to this restriction will be considered on a case-by-case basis.

d. If a foreign end-user requires defense services and will directly interact with the U.S. parties, the end-user must also be a foreign signatory. In some circumstances, a foreign end-user may also be a foreign sublicensee if technical assistance will be involved but they do not require direct interaction with a U.S. party (see Section 3.2 of these Guidelines).

e. If an end-user is part of the U.S. government, the end-user would not be required to be a signatory to the agreement. Reference Section 3.11 of these Guidelines for when an office of the U.S. government needs to transfer of technical data or defense services.

3.13 Additional Transfer Territories

a. If transfers need to occur outside the territories of the foreign signatories or sublicensees, the additional country(ies) where transfers will occur must be defined in the agreement. Examples of this are technical discussions taking place in a country outside the territory of the signatories, or the foreign licensees supporting armed forces while on deployment.

b. The armed forces of a country or the armed forces of an international organization may take defense articles and related technical data on operations or deployment outside a previously approved country without requesting additional authorization from DDTC. However, foreign or U.S. companies must not conduct transfers of defense articles, related technical data, or defense services to those armed forces in the country of operations or deployment unless that transfer territory was specifically approved by DDTC. Prior approval can be gained by requesting the additional transfer territory in the agreement. To request additional territories for support of operations or deployment of foreign armed forces supporting U.S. or UN missions, in lieu of listing all countries in the DSP-5 vehicle and the agreement, the following statement may be made in section 124.7(4) of the agreement:

> "Foreign or U.S. signatories to this agreement may conduct transfers of defense articles, related technical data, or defense services to support the armed forces of [identify the country] while those armed forces are on operations or deployment outside the countries

listed elsewhere in this agreement, provided the operations or deployment are in support of a U.S. or UN mission. Transfers to countries proscribed by 22 CFR 126.1 or countries that are the subject of a U.S. or UN arms embargo are not authorized."

To use this clause, the foreign armed forces in question must be a signatory to the agreement. Requests to modify this clause for particular agreements will be considered on a case-by-case basis.

c. Re-transfers to approved DN/TCN employees are authorized to continue when the armed forces of a country or the armed forces of an international organization are on operations or deployment outside a previously approved country. Reference the Note in Section 3.5.b of these Guidelines.

d. When required for an agreement, the Additional Transfer Territory is defined in Block 14 of the DSP-5. The transfer territory statement in § 124.7(4) of the agreement should have a separate sentence clarifying the additional countries of transfer and the reason they are required.

Block 14. Additional Transfer Territory information
Name: < Enter Additional Transfer Territory >
Address: < Enter n/a >
City: < Enter n/a >
Country: < Enter the country code >

3.14 Use of Collective Language

a. Using collective terms based on a collective organization (e.g., NATO, EU, AU, ESA) without defining territories for the transfer of defense articles or the provision of defense services 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. In the body of the agreement, is recommended that the collective term be defined in one of the "Whereas" clauses.

b. When including a collective organization as a foreign licensee, end user, or sublicensee in Block 14 or Block 16, one entry must be included for each applicable country code for the collective organization. Full address information (street/city information) only needs to be listed for the address in the primary country of the organization.

c. The authorized exception for the use of the collective terms NATO and EU without defining those terms is when addressing dual/third country foreign national employees pursuant to § 124.16.

3.15 Utilization of Law Firms and Consultants

A number of applicants rely on law firms and consultant firms to assist in the development and submission of proposed agreements to DTCL. This is an acceptable practice 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 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 interact with the U.S. government on behalf of the applicant.

3.16 Agreements Submitted in Support of U.S. Operations (USOP)

a. It is the policy of the Department of State to expedite all requests for exports when made in direct support of U.S. Operations (USOP), either independent or in coalition with our allies.

b. To ensure priority operations are fully supported, the Department of State has updated its procedures to ensure only requests directly related to USOP are afforded this expedited review. Henceforth, proposed agreements in support of USOP that may undergo expedited review are limited to those that provide:

(1) Defense articles and defense services to deployed forces or organizations; or

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

c. Agreement submissions requesting expedited handling not meeting these criteria may be returned without action.

d. Requests meeting the criteria stated above must be clearly marked to prevent delayed processing. The Transaction ID should begin with the letters "USOP-". All requests must note USOP in the first line of the purpose block (Block 20 of the DSP-5 vehicle), and the attached cover page of the Transmittal Letter should clearly identify the agreement is in support of a U.S.

operation. These cases will automatically be expeditiously routed to the appropriate division/agreements officer.

e. Supporting Documentation: The following must be included in USOP requests:

(1) As part of the transmittal letter, provide a clear explanation of the transaction, along with justification to support expedited processing as USOP 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 USOP.

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

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

3.17 Brokering

This section is intended to give general guidance for brokering in relation to agreements. Reference § 129 for more detailed information on brokering.

a. When the activities taking place under an agreement include brokering, the agreement must clarify that brokering will occur. The "Whereas" clause for the party conducting brokering must state that the activity constitutes brokering. DDTC understands that in some cases, signatories may perceive a potential problem based on other nations' definitions of the word "brokering." In these situations, DDTC recommends that the ITAR definition of brokering be included in the body of the agreement. In the transmittal letter, applicants must identify the party(ies) that will conduct brokering (using the word "brokering") under the BACKGROUND section.

b. In most cases, an agreement does not provide the full authorization for brokering activities. Parties must ensure broker registration and any required approval of brokering activities is obtained prior to brokering activities occurring. Reference § 129.

c. Prior Approval. Approval for brokering activities must be requested by the broker conducting the activities, so the only entity that may gain Prior Approval of brokering activities through an agreement is the U.S. applicant (and its owned/controlled U.S. and foreign subsidiaries/ affiliates covered under the DDTC registration) to that agreement. If the U.S. applicant is not the broker, Prior Approval cannot be obtained through the agreement. When requesting Prior Approval through an agreement, the submission must specifically request Prior Approval and specifically detail the defense articles and related technical data and provide all other required data in accordance with § 129.

3.18 Translation Services

a. When a U.S. person is providing technical data/defense services to a foreign person, they may need a translator/interpreter to facilitate the communication. If a translator/interpreter is merely facilitating communication between a U.S. person and a foreign person, then DDTC does not consider the translator/interpreter to be providing a defense service.

b. If any defense articles, including technical data, are disclosed to the translator/interpreter, and that translator/interpreter is a foreign person, then such a disclosure constitutes an export in accordance with 22 CFR 120.17. The medium is not important: such a disclosure can be spoken as well as written.

c. Translators/interpreters may be eligible for consideration as contract employees if they meet the conditions of Section 3.9.

SECTION 4.0 Certification Letter (§ 126.13)

As directed in § 126.13, all requests for licenses, all requests for agreements or amendments thereto under § 124, 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 only necessary when an empowered official has not "certified" the submission via the DSP-5 vehicle (i.e., when item "a" or "c" in Block 22 is not marked).

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, secretary, partner, member, 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 or has been otherwise charged (e.g., by criminal information in lieu of 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, secretary, partner, member, 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 temporarily import or export defense articles or defense services 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, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services 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 subchapter) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20), 66 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9.

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

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. Digital signatures are acceptable.

d. 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.

e. 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.

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

SECTION 5.0 New Technical Assistance or Manufacturing License Agreements

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

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

- Applicant mailing address

- If a request meets the requirements for expedited processing for USOP (see Section 3.16 of these Guidelines) or § 126.15, the applicant must clearly label the request as such.

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

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)."

(4) References: List previous relevant agreements (to include DSP-5 vehicle numbers), 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). Note: One location is all that is required for foreign governmental entities. For private companies, the primary business location where activity will occur under the agreement must be identified. If the private company has other business locations in the same country that will be involved, the transmittal letter must either list all of those locations, or must contain the phrase "(and all locations in [identify the country])." If the same legal entity has business locations in different countries, at least one address per legal entity per country must be identified in the transmittal letter. Reference Section 2.8.e.

- The name and specific addresses of U.S. signatories (to include the applicant/U.S. subsidiary as applicable). (Note: The primary business location where activity will occur under the agreement must be identified. If the U.S. signatory has other business locations in the United States that will be involved, the transmittal letter must either list all of those locations, or must contain the phrase "(and all locations in the United States)." Reference Section 2.8.e.

- 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 relevant 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 and any foreign classification. If the agreement involves foreign classified, identify whether or not the U.S. parties will generate or modify the foreign classified information. 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 Tables 5.1 and 5.2. Refer to Table 14.3 for an example valuation table for MDE, refer to Table 15.4 for an example valuation table for usage of § 123.16(b)(1), and refer to Table 15.5 for usage of other exemptions such as the Canadian exemption. Agreement values must not include the value of paragraph (x) commodities, software, or technical data (see Section 20). The hardware value of the agreement must only include USML hardware, and the technical data value must only include USML technical data. The hardware manufactured abroad value for an MLA must only include the value of USML hardware manufactured abroad.

Line Number	Item	Value
1	**Technical Data and Defense Services**	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$21,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	N/A
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$28,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000
8	**Hardware Manufactured Abroad** (**MLA only**)	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$29,000,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$22,000,000

Table 5.1 Agreement Valuation for TAA

Line Number	Item	Value
1	**Technical Data and Defense Services**	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$21,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	$20,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$48,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000
8	**Hardware Manufactured Abroad** (Line 3 plus work done by foreign licensees as result of the MLA)	$25,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$74,000,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$47,000,000

Table 5.2 Agreement Valuation for MLA

- 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."

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 sublicense, it will be amended to require that all sublicensing 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).[2]

[2] DDTC notes that although the introduction to this subsection states that the information must be included "verbatim as written in § 124.12(b)," § 124.12(b) of the regulations incorrectly identifies the relevant sections of the ITAR as "22 CFR 124.9 and 124.10," instead of §§ 124.8 and 124.9. DDTC intends to correct this error in a future

- Immediately following the § 124.12(b)(4) clause, the applicant should provide a statement whether sublicensing 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 the **§** 124.12(b)(4) clause; it is required whether sublicensing rights are granted or not.

- If sublicensing 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 sublicensing.

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 (hardware) will be shipped in furtherance of this agreement. Only technical data and/or other defense services will be provided."

- "Defense articles (hardware) 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 and subcategories that relate to the agreement. **If the agreement proposes to export only technical data and defense services, specify the USML hardware categories and subcategories that are related to the technical data and defense services covered under the agreement.**

- 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.

- If U.S. classified applies to the agreement, state that a copy of the executed agreement will be submitted to DSS. Reference Section 16.1.a(4) of these Guidelines.

Federal Register notice. Until that time, applicants should reference the correct sections as described in these Guidelines.

- If the agreement is related to USML Category XIX, the applicant must answer the Gas Turbine Engine Technology Questions. See Section 18.3 of these Guidelines.

(3) LO/CLO and CPI Statement. To preclude misinterpretation of release authorizations related to Low Observable/Counter-Low Observable (LO/CLO) technology and/or Controlled Program Information (CPI), DoD requires all State Department license requests address whether the contemplated exports include or do not include technologies addressed by DoD Instruction S-5230.28 or CPI. If the answer is no, the following statement must be made:

"The export contemplated herein does NOT involve the discussion, offer, or release of systems, techniques, technologies, or capabilities described in DoDI-S-5230.28 nor the discussion, offer, or release of Critical Program Information."

If the answer is yes, see Section 18.4 of these guidelines for the appropriated statements to make.

(4) Congressional Notification Requirements:

- Insert a statement as to whether or not the proposed agreement requires Congressional Notification. (See Section 14.1 of these Guidelines 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.

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

(6) If utilizing a law firm or consulting firm, the applicant must provide a statement that the firm is authorized to interact with the U.S. government on the applicant's behalf, and define what activities they are authorized to conduct (i.e., submit information, serve as a point of contact) and provide firm point of contact information.

(7) The transmittal letter must be signed, preferably by an empowered official. Additionally, transmittal letters must be signed by an empowered official when allowing law firms or consulting firms to interact with the U.S. government 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 of these Guidelines.)

a. General Guidance

(1) It is recommended that the agreement be reviewed by the foreign party(ies) and other U.S. Signatories to the agreement 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. Therefore, the parties should execute the agreement after DDTC approval has been received.

(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. Note: One location is all that is required for governmental entities. For private companies, the primary business location where activity will occur under the agreement must be identified in the body of the agreement. If the private company has other business locations in the same country that will be involved, the agreement must either list all of those locations, or must contain the phrase "(and all locations in [identify the country])." If the same legal entity has business locations in different countries, at least one address per legal entity per country must be identified in the agreement. Reference Section 2.8.e.

(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, including paragraph (x) items, if applicable. 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.

- The applicant must also delineate, at least in general terms, between hardware subject to the USML and hardware subject to the CCL if the applicant wishes to submit IFO licenses that include paragraph (x).

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

> "No defense articles (hardware) will be manufactured, exported or temporarily imported in furtherance of this agreement. Only technical data and/or other defense services will be provided."

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

NOTE: Only defense articles (hardware) 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). The use of § 123.16(b)(1) must be specifically identified in order for it to be utilized.

(2) § 124.7(2). The applicant must describe the assistance and technical data, to include any design and manufacturing know-how involved, and any manufacturing rights to be given. 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). The applicant need not delineate between technical data subject to the USML and technology subject to the CCL, as long as the agreement makes clear that CCL technology will be transferred and that it will be used in or with the USML technical data.

(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 and Sublicensees

- End-Use and End-Users (Proposed Sales). Ensure foreign end-users are identified by name in the agreement and Block 14 of the DSP-5 vehicle.

- Proposed Marketing Territories. Ensure each proposed recipient (e.g., government, company) of marketing information is also listed by name in the agreement and Block 14 of the DSP-5 vehicle.

Note: Foreign end-users who are also signatories to the agreement need only be listed in Block 14 of the DSP-5 vehicle once as a foreign signatory. In addition, foreign end-users (to include sales parties) and marketing recipients should be identified in Block 14 instead of Block 18 of the DSP-5 vehicle.

Block 14. Name and address of foreign end-user who is not already included in Block 14 as a foreign signatory
Name: < Enter Full Name of party >
Address: < Enter Address for Private Entities; End User or Marketing May be Entered for Governmental Entities >
City: < Enter City for Private Entities; End User or Marketing May be Entered for Governmental Entities >
Country: < Enter the applicable country >

- Additional Transfer Territory Countries, if applicable (Reference Section 3.13 of these Guidelines)

- Territory for Space Launch Services, if applicable (Reference Section 19.0 of these Guidelines)

- Sublicensing and Retransfer. If Sublicensing and Retransfer is not requested, the applicant must specifically state that sublicensing/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 not required to state such in this section (the required § 124.8(5) clause is sufficient for identifying no dual/third country nationals). Even if no dual or third-country nationals are specifically requested, foreign parties are still authorized to use the § 126.18 exemption. (See Section 3.5 of these Guidelines).

- 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.)

- Contract Labor Statement. If contract labor will be used, the following statement must be made. (See Section 3.9 of these Guidelines.)

> "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."

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 foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where 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 contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free 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 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.

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/countries 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—the foreign licensee should be identified in the first parenthetical, not the U.S. applicant. Fill in the second parenthetical with the country/countries 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 Nontransfer 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 5.3 – 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 must be submitted for approval. The amendments may not enter into force until approved by the Directorate of Defense Trade Controls.

Note: Due to limitations with DTrade 2, the DSP-5 vehicle reference number for the related amendments will not be numbered sequentially. 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. However, the additional agreement number assigned to the base agreement (e.g., TA-9876-13) will remain the same for subsequent amendments with the next sequential amendment letter added to the base number (e.g., TA-9876-13A). DDTC uses letters to designate amendments to an agreement. This also includes amendment applications that do not require execution by the agreement parties such as increases in value or applications that are returned without action. For this reason, DDTC recommends applicants track all amendments (major and minor) with numbers instead of letters. This will allow the applicant to keep track of minor amendments to the case without confusing DDTCs amendment letter with the applicant's amendment number.

§ 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 6.3 of these Guidelines).

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

6.1 Transmittal Letter

The Transmittal Letter for an amendment is similar to that for new agreements (Section 5.1 of these Guidelines) 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 of these Guidelines.)

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:

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 (050xxxxxx) for (commodity line)" or "Proposed Amendment No. xx to Manufacturing License Agreement xxxx-xx (050xxxxxx) for the manufacture of (commodity)."

NOTE: As stated above, DDTC recommends applicants use numbers to designate their amendments to the agreement.

(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)
- Authorize sublicensing
- Add sublicensees
- Add Dual/TCNs
- Increase value of agreement
- Moderate increase of approved hardware for export
- Convert from a TAA to an MLA

- 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) When addressing scope in § 124.12(a)(2), restate the full scope of the agreement to include changes from the amendment in bold.

(3) 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). Reference Section 3.3 for a detailed explanation of values. If there is no value, identify $0 in the amendment value column. Refer to Table 14.3 for an example valuation table for MDE, refer to Table 15.4 for an example valuation table for usage of § 123.16(b)(1), and refer to Table 15.5 for usage of other exemptions such as the Canadian exemption. The applicant must also ensure the Part 130 Statement is restated, which is accomplished by Block 22 of the DSP-5 vehicle. The Part 130 Statement must be certified using the overall total value of the agreement, not the change in value from the amendment. If devaluing an agreement, the applicant should only devalue agreements based on future activity. For the purposes of agreement valuation and

decrementing hardware, all previously approved IFO licenses for permanent export should be included. For more information about agreement valuation in the context of Export Control Reform (ECR) amendments, see Section 20.1.g.

Line Number	Item	Currently Approved in TA xxxx-xx	Proposed Amendment	New Total
1	Technical Data and Defense Services	$1,000,000	4,500,000	$5,500,000
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$21,000,000	$1,000,000	$22,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	$20,000,000	$4,000,000	$24,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000	$0	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000	$0	$4,000,000
6	Total Licensed Hardware (Sum of lines 2, 3,4&5)	$48,000,000	$5,000,000	$53,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000	$1,000,000	$22,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA, **MLA only**)	$25,000,000	$5,000,000	$30,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$74,000,000**	**$14,500,000**	**$88,500,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$47,000,000	$10,500,000	$57,500,000

Table 6.1 The (a)(6) Valuation Table for Amendments to TAA/MLA

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 sublicense, it will be amended to require that all sublicensing 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) Sublicensing. Make one of the following statements regarding Sublicensing:

- "Sublicensing was not previously authorized under this agreement."

- "Sublicensing was not previously authorized under this agreement. Sublicensing rights are granted to the licensee(s) under this amendment as described in (Article or Section x.x)."

- "Sublicensing 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 (hardware) were previously authorized."

- "No defense articles (hardware) were previously authorized. Defense articles are authorized under this amendment as described in (Article or Section x.x)."

- "Defense articles (hardware) 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 not previously authorized under this agreement. Dual/Third Country Nationals are authorized under this amendment as described in (Article or Section x.x)."

- "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,xxx under TA/MA-xxxx-xx. (If this information was not

provided in a proviso from DTCL, provide the agreement/amendment number and calendar year of Notification. If the agreement was notified multiple times, provide information on all previous notifications).

- Insert a statement as to whether or not the proposed amendment will result in Congressional Notification (see Section 14.1 of these Guidelines 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 and subcategories relating to the agreement. If the agreement proposes to export only technical data and defense services, specify the USML hardware categories and subcategories that are related to the technical data and defense services covered under the agreement.

- 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.

- If U.S. classified applies to the agreement, state that a copy of the executed agreement will be submitted to DSS. Reference Section 16.1.a(4) of these Guidelines.

- If the agreement is related to USML Category XIX, the applicant must answer the Gas Turbine Engine Technology Questions. See Section 18.3 of these guidelines.

(2) LO/CLO and CPI Statement. To preclude misinterpretation of release authorizations related to Low Observable/Counter-Low Observable (LO/CLO) technology and/or Controlled Program Information (CPI), DoD requires all State Department license requests address whether the contemplated exports include or do not include technologies addressed by DoD Instruction S-5230.28 or CPI. If the answer is no, the following statement must be made:

"The export contemplated herein does NOT involve the discussion, offer, or release of systems, techniques, technologies, or capabilities described in DoDI-S-5230.28 nor the discussion, offer, or release of Critical Program Information."

If the answer is yes, see Section 18.4 of these Guidelines for the appropriated statements to make.

(3) 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).

NOTE: Sales reports must cover the entire life of an agreement. When amending an agreement which has previously re-baselined one or more times, all sales under the previous agreement number(s) must be accounted for in the Sales Report Summary. For Sales Report Summaries of Re-baselined agreements, see Section 9.3.a(3) of these Guidelines.

Year	Dollar Value
2011	
2012	
2013	
Total	

(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 interact with the U.S. government on the applicant's behalf, and define what activities they are authorized to conduct (i.e., submit information, serve as a point of contact) and provide firm point of contact information.

(6) The transmittal letter must be signed, preferably by an empowered official. Additionally, transmittal letters must be signed by an empowered official when allowing law firms or consulting firms to interact with the U.S. government on behalf of the applicant. Transmittal letters may be signed using digital signatures.

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(ies) and other U.S. Signatories to the agreement 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. Therefore, the parties should execute the agreement after DDTC approval has been received.

(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 the only required documents needed with the DSP-5 vehicle. 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 is referenced in the agreement, the applicant must submit a copy of the attachment or exhibit since it is an integral part of the agreement, identifying any modifications made to the attachment or exhibit. Each element of § 124.7 must be addressed.

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

f. In certain limited cases, amendments solely to add sublicensees may be executed without obtaining the signatures of all parties. See Section 3.2.e for requirements and procedures.

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. Any changes via minor amendment require signatures of all the parties to the agreement **after** the change is made. 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 or sublicensee (in the same country)
- For the same legal entity, add or remove additional locations/addresses in the same country
- For the same legal entity, add the phrase "and all locations in [Country X]" (in accordance with Section 2.8.e) (See Note 1)
- Correct the official name of a signatory or sublicensee (only minor name change—see Note 2)
- Correct the official name of a signatory or sublicensee after a name change notification is posted on the DDTC website (the notification must state that name changes for that party may be made to existing agreements as a minor amendment) (See Note 2)
- Make minor language changes needed before parties will sign

- Remove a signatory from the agreement (**see Section 16.1.d** of these Guidelines)
- Remove a sublicensee from the agreement
- Correct delivery schedules, if cited in the agreement (expiration date of agreement must remain unchanged, and only dates of delivery may be modified [i.e., no changes to alter scope])
- Remove ECR transitioning items or change transitioning items to paragraph (x) (See Section 20)
- Add the "Expedited Execution" sublicensee clause found in Section 3.2.e.(2)
- Add the Foreign Person Employee verbatim statement found in Section 3.8

Note 1: Agreements submitted before October 9, 2013 may use the provisions of the "all locations" phrase without including such phrase in the agreement until the next amendment is submitted. The next amendment (major or minor) must include the "all locations" phrase in order to use its provisions.

Note 2: For foreign licensee name changes, if an ownership change or other transfer has taken place, an amendment must be submitted in accordance with § 124.1(c) and receive approval by DDTC, unless a GC has been submitted and DDTC has issued a GC response authorizing the change via minor amendment. For additional information on name changes of a foreign signatory, see **General Correspondence for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change** available at:
http://www.pmddtc.state.gov/licensing/ guidelines_instructions.html.

c. Minor amendments must be "conformed" or consolidated. In other words, all minor amendments MUST be submitted as entire agreements with proposed changes identified by bolded text (not "track changes").

d. Upload minor amendments to the DSP-5 vehicle of the most recently approved agreement/amendment.

SECTION 7.0 New Warehouse and Distribution Agreements

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

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

- Applicant mailing address

- 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:

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 § 124.14(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(ies) 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.)

Note: Only one location is required for foreign governmental entities. For private companies, the primary business location where activity will occur under the agreement must be identified. If the private company has other business locations in the same country that will be involved, the transmittal letter must either list all of those locations, or must contain the phrase "(and all locations in [identify the country])." If the same legal entity has business locations in different countries, and those business locations will be participating in the agreement, at least one address per legal entity per country must be identified in the transmittal letter. Reference Section 2.8.e.

- The name and specific addresses of U.S. signatories (to include the applicant/U.S. subsidiary as applicable). (Note: The primary business location where activity will occur under the agreement must be identified. If the U.S. signatory has other business locations in the United States that will be involved, the transmittal letter must either list all of those locations, or must contain the phrase "(and all locations in [identify the country])." Reference Section 2.8.e.)

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

- Date of Expiration. See Section 3.1 of these Guidelines.

(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. (Declarative statement as classified is not approved under WDAs.)

(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 and subcategories related to the agreement.

- 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 interact with the U.S. government on the applicant's behalf, and define what activities they are authorized to conduct (i.e., submit information, serve as a point of contact) and provide firm point of contact information.

(5) The transmittal letter must be signed, preferably by an empowered official. Additionally, transmittal letters must be signed by an empowered official when allowing law firms or consulting firms to interact with the U.S. government on behalf of the applicant. Digital signatures are acceptable.

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(ies) and other U.S. Signatories to the agreement 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 beyond that required. 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.

Note: Only one location is required for governmental entities. For private companies, the primary business location where activity will occur under the agreement must be identified in the body of the agreement. If the private company has other business locations in the same country that will be involved, the agreement must either list all of those locations, or must contain the phrase "(and all locations in [identify the country])." If the same legal entity has business locations in different countries, and those business locations will be participating in the agreement, at least one address per legal entity per country must be identified in the agreement. Reference Section 2.8.e.

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

(3) Include the following NOW THEREFORE statements at the conclusion of the introduction:

- Provide a concise summary of the program or agreement to include a general scope of the effort.

- 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). If the applicant wishes to utilize the exemption at § 123.16(b)(1) it must be specifically requested in this section. Please refer to Section 15.3 of these Guidelines for further guidance.

- 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.

- The applicant must also delineate, at least in general terms, between hardware subject to the USML and hardware subject to the CCL if the applicant wishes to submit IFO licenses that include paragraph (x) (see Section 20).

(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. See Section 3.1.

(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 14 of the DSP-5 vehicle by identifying governments of countries and/or private entities seeking to procure defense articles pursuant to a contract.

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

- If the agreement requests parties who are foreign intermediaries or integrators between the foreign distributor (licensee) and the ultimate end-users, these parties should be treated as sublicensees as they are recipients of USML-controlled technical data and/or defense articles. As such they are required to be identified under Block 16 of the DSP-5 vehicle and the following language provided in the agreement:

> "This agreement authorizes the temporary transfer of USML-controlled defense articles to the entities listed in Attachment X prior to final transfer to the authorized end-users. As recipients of USML-controlled defense articles these entities must execute Non-Disclosure Agreements (NDAs) acknowledging receipt of USML-controlled defense articles. These NDAs must be maintained by the applicant for five years after conclusion of this agreement pursuant to 22 CFR 122.5."

- See Appendix A, Tab 13 for an example of the NDA for WDAs.

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."

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) 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.

Note: Due to limitations with DTrade 2, the DSP-5 vehicle reference number for the related amendments will not be numbered sequentially. For example, Amendment A for WDA 050312345 could result in a case number of 050313897, while Amendment B could result in a case number of 050320040, and so on. However, the additional agreement number assigned to the base agreement (e.g., DA-9876-13) will remain the same for subsequent amendments with the next sequential amendment letter added to the base number (e.g., DA-9876-13A). DDTC uses letters to designate amendments to an agreement. This also includes amendment applications that do not require execution by the agreement parties such as increases in value or applications that are returned without action. For this reason, DDTC recommends applicants track all amendments (major and minor) with numbers instead of letters. This will allow the applicant to keep track of minor amendments to the case without confusing DDTCs amendment letter with the applicant's amendment number.

§ 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 8.3 of these Guidelines.)

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

8.1 Transmittal Letter

The Transmittal Letter for an amendment is similar to that for new agreements (see Section 7.0 of these Guidelines) 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:

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 (050xxxxxx) for (commodity.)"

NOTE: As stated above, DDTC recommends applicants use numbers to designate their amendments to the agreement.

(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)
- Add U.S. or foreign parties
- Change name of U.S. or foreign signatory from (company) to (company)
- Add foreign intermediaries or integrators

- 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 § 124.14(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 identify the previously authorized hardware as follows: "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 and subcategories relating to the agreement.

- 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).

NOTE: Sales reports must cover the entire life of an agreement. When amending a WDA which has previously rebaselined one or more times, all sales under the previous agreement number(s) must be accounted for in the Sales Report Summary. For Sales Report Summaries of Re-baselined agreements, see Section 9.3.a(3) of these Guidelines.

Year	Dollar Value
2011	
2012	
2013	
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. If the WDA has been previously re-baselined one or more times, make sure to provide all export licenses that were received in furtherance of the previous agreement number(s).

License Number	Dollar Value
0500000001	
0500000010	
0500000020	
Total	

(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 interact with the U.S. government on the applicant's behalf, and define what activities they are authorized to conduct (i.e., submit information, serve as a point of contact) and provide firm point of contact information.

(6) The transmittal letter must be signed, preferably by an empowered official. Additionally, transmittal letters must be signed by an empowered official when allowing law firms or

consulting firms to interact with the U.S. government on behalf of the applicant. Digital signatures are acceptable.

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 amendment be reviewed by the foreign party(ies) and other U.S. Signatories to the agreement 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 amendment 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 is referenced in the agreement, the applicant must submit a copy of the attachment or exhibit since it is an integral part of the agreement, identifying any modifications made to the 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 amendment 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, intermediary, or integrator (in the same country)
- For the same legal entity, add or remove additional locations/addresses in the same country
- For the same legal entity, add the phrase "and all locations in [Country X]" (in accordance with Section 2.8.e) (See Note 1)
- Correct the official name of a signatory, intermediary, or integrator (only minor name change—see Note 2)
- Correct the official name of a signatory, intermediary, or integrator after a name change notification is posted on the DDTC website (the notification must state that name changes for that party may be made to existing agreements as a minor amendment – see Note 2)
- Makes minor language changes needed before parties will sign
- Removes a signatory from the agreement (**see Section 16.1.d** of these Guidelines)
- Removes a foreign intermediary or integrator

- Remove ECR transitioning items or change transitioning items to paragraph (x) (See Section 20)

Note 1: Agreements submitted before October 9, 2013 may use the provisions of the "all locations" phrase without including such phrase in the agreement until the next amendment is submitted. The next amendment (major or minor) must include the "all locations" phrase in order to use its provisions.

Note 2: 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 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.

c. Minor amendments must be "conformed" or consolidated. In other words, all minor amendments MUST be submitted as entire agreements with proposed changes identified by bolded text (not "track changes").

d. Upload minor amendments to the DSP-5 vehicle of the most recently approved agreement/amendment.

SECTION 9.0 Re-Baseline of Agreements

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

9.1 Why Re-Baseline?

a. An agreement re-baseline is required for any agreement currently approved in paper format that the applicant desires to amend through electronic submission.[3] All initial electronic submissions of proposed agreements must either be in the form of a new agreement or a re-baselined agreement. The applicant is not authorized to submit an electronic amendment proposal for a previously approved paper agreement.

b. Once an agreement is electronic, the agreement will no longer be re-baselined except in extreme cases when directed by DTCL or DTSA to streamline overwhelmingly significant changes in scope over the life of the agreement. **Do not** submit a re-baseline to an electronic agreement without prior coordination with DTCL. In almost all cases, applicants will continue to submit amendments against the electronic agreement until the agreement expires or is terminated. Though agreements will only be approved for a maximum duration of 10 years, applicants may still request extensions via an amendment for up to 10 years from the date of the amendment request. This change is the result of applicants submitting conformed agreements and DDTC issuing the complete list of provisos with each approval, making it unnecessary to re-baseline agreements once they are electronic.

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 previous agreement and its associated amendments must be terminated by the applicant within 30 days. (See Section 16.3 of these Guidelines.)

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, separate license, submitted in accordance with Section 15.1 of the Guidelines for Preparing Electronic Agreements, must reference this

[3] DDTC stopped accepting paper agreements in 2009.

agreement and must not exceed $_____ over the life of the agreement 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.

e. Likewise, DSP-83s that were previously executed with the agreement that is being re-baselined do not need to be re-executed unless the data entered on the form has changed as a result of the re-baseline.

9.3 Request Package

A re-baseline submission to DTCL is a new agreement, but it covers currently approved activities and proposed revisions and therefore is similar to an amendment. The request package for the re-baselining of an agreement requires all products as required with a new agreement request, but includes a complete "amendment" type 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 for re-baselines of TAAs and MLAs, or the § 124.14(e),(f) transmittal letter for re-baselines of WDAs, should be submitted in the amendment format with a few minor differences. See Section 6.1 of these Guidelines for amendments of TAAs and MLAs, and see Section 8.1 of these Guidelines for amendments of WDAs.

(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)," "Proposed Re-baseline of Manufacturing License Agreement xxxx-xx for the manufacture of (commodity)," or "Proposed Re-baseline of Warehouse and Distribution Agreement xxxx-xx for (commodity)." This will ensure the submission is assigned a new agreement number rather than an amendment number.

(2) For TAAs and MLAs, 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 9.1). **The value entered in Block 12 of the DSP-5 vehicle must be the total value of the proposed Re-Baselined agreement (i.e. the value that was previously approved plus any value that is currently being**

added). Refer to Table 14.3 for an example valuation table for MDE, refer to Table 15.4 for an example valuation table for usage of § 123.16(b)(1), refer to Table 15.5 for usage of other exemptions such as the Canadian exemption, and refer to Section 3.3 for a detailed explanation of values. If devaluing an agreement, the applicant should only devalue agreements based on future activity. For the purposes of agreement valuation and decrementing hardware, all previously approved IFO licenses should be included. For more information about agreement valuation in the context of ECR amendments, see Section 20.1.g.

Line Number	Item	Currently Approved under TA xxxx-xx	Re-baseline Addition	New Total
1	Technical Data and Defense Services	$1,000,000	4,500,000	$5,500,000
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$21,000,000	$1,000,000	$22,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	$20,000,000	$4,000,000	$24,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000	$0	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000	$0	$4,000,000
6	Total Licensed Hardware (Sum of lines 2, 3,4&5)	$48,000,000	$5,000,000	$53,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000	$1,000,000	$22,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA, **MLA only**)	$25,000,000	$5,000,000	$30,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$74,000,000**	**$14,500,000**	**$88,500,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$47,000,000	$10,500,000	$57,500,000

Table 9.1 Valuation Table for Re-baselined Agreements

(3) Sales Report Summary. For the re-baseline of MLAs or WDAs, provide a table reporting sales by year and with total sales to date under the previous agreement(s), e.g., if an agreement has been re-baselined more than once, sales figures must be provided for the entire life of the 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 or WDA, provide the total value of sales reports from the previous agreement(s) followed by annual reports by year.

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

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

(4) Export License History. For all re-baselines of a WDA, provide a table identifying all export licenses received in furtherance of the agreement and the total value authorized under each license. If the WDA has been previously re-baselined, make sure to provide all export licenses received in furtherance of the previous agreement number(s).

License Number	Dollar Value
0500000001	
0500000010	
0500000020	
Total	

9.4 Proposed Agreement

a. All re-baselines require re-execution. The re-baseline agreement should be submitted as a new agreement to be executed by all parties after DDTC has reviewed and approved it (i.e. not a copy of the previously executed agreement). The agreement must provide a consolidated scope including any new expansion requests.

(1) For TAAs and MLAs, 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 sublicensing and dual and third country nationals. (See Sections 5.2 and 6.2 of these Guidelines.)

(2) For WDAs, the agreement must incorporate all the information required by § 124.14(c),(d) as required by current guidance and policy. (See Sections 7.2 and 8.2 of these Guidelines.)

b. A WHEREAS clause should be added to reference the previous agreement number, e.g., "WHEREAS this is a re-baselined agreement of TA 1234-00 and all associated amendments."

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 (TAAs) 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 of these Guidelines) 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 categories of signatories: Major Parties and expert witnesses.

a. Major Parties, which may or may not have contracted with sublicensees, 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.)

(A) 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.

(B) 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 sublicensees 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 sublicensing, only foreign witnesses are officially considered sublicensees 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	DTrade 2 Entry
a. Major Parties		
Applicant (or U.S. Subsidiary)	Must sign	Block 21
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
Sublicensees	No signature (signs NDA)	Block 16
b. Expert Witnesses		
U.S.	Signs incrementally	Block 21
Foreign	No signature (signs NDA)	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," sublicensees, 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 sublicensees 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 10.3.a 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. Defense services (e.g., technical data and/or technical assistance interchange) between or among the foreign expert witnesses is prohibited.

b. For foreign witnesses only, the restriction barring U.S. signatories--to include the applicant—from having direct contact with sublicensees 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 (Sublicensees)
- Attachment D – U.S. Expert Witnesses
- Attachment E – Other Sublicensees
- 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 (TAAs) involving space-related insurance matters.

11.1 General Guidance

a. Since the scope of defense services provided for Space-Related Insurance activities is generally limited, DDTC will permit most Space-Related Insurance activities to occur under a Technical Data DSP-5 License for limited defense services. If applicants prefer, they may still request authorization under a TAA. An example of activities that should occur under a TAA instead of a Technical Data License is Space-Related Insurance activities that include the transfer of SME technical data.

b. 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.

c. 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 of these Guideilnes, 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.

d. 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 categories 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	DTrade 2 Entry
a. Major Parties		
Applicant (or U.S. Subsidiary)	Must sign	Block 21
U.S. Signatories	Must sign	Block 21
Foreign Licensees	Must sign	Block 14
Sublicensees	No signature (signs NDA)	Block 16
b. Insurance Providers (U.S. or foreign)		
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 sublicensees) 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 sublicensees. 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 party(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 11.3.a 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 restriction applies to Insurance-related agreements:

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 at http://www.pmddtc.state.gov/licensing/documents/gl_GCsMandA.pdf.

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 related to 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 the scope previously identified in the proposed agreement/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.

e. Proviso reconsiderations against paper agreements require that the agreement be concurrently re-baselined to convert it to an electronic agreement.

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. Block 20 should also restate what was previously in the purpose block, i.e. a concise narrative

describing the overall purpose of the agreement. The remainder of the DSP-5 vehicle 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 relevant proviso(s).

(4) A general correspondence type letter requesting the proviso reconsideration. This letter must:

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

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

(C) 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.

(5) A § 124.12 transmittal letter (or § 124.14(e),(f) transmittal letter for WDAs) is not required unless the proviso reconsideration is being submitted as part of an amendment or re-baseline.

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 (22 U.S.C. § 2776) of the Arms Export Control Act handled by DDTC: the 36(c) Notification for value and the 36(d) Notification for the manufacture of significant military equipment (SME) abroad.

14.1 Congressional Notification Thresholds

a. 36(c) Value-based Notification (§ 123.15). The Arms Export Control Act requires a certification be provided to Congress prior to the granting of any license or other approval for certain transactions involving exports of any defense articles and defense services and for exports of major defense equipment (MDE) 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 +5 (Japan, Australia, New Zealand, the Republic of Korea, or Israel) 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 +5 (Japan, Australia, New Zealand, the Republic of Korea, or Israel) 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 U.S. Munitions List in an amount of $1,000,000 or more.

NOTE: Although notification thresholds are higher for sales to NATO members, Australia, Japan, New Zealand, the Republic of Korea, and Israel, 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).

NOTE: For the most updated list of MDE, see Appendix 1, (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) to DSCA 5105.38-M, "Security Assistance Management Manual (SAMM)," available online at http://www.samm.dsca.mil/appendix/appendix-1

b. 36(d) Notification for the Manufacture of SME (§ 124.11). 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 transaction.

(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
- An increase in value from a prior 36(c) Notification that is equal to or larger than the respective Congressional Notification threshold (e.g., a non-NATO+5 program is originally notified for $1B. Even though an amendment for $50M is less than a 10% increase, it would require re-notification since the amendment value ($50M) exceeds the applicable Congressional Notification threshold)
- A significant expansion of scope (i.e., additional program phases, any upgrade to the capabilities authorized in the previously notified agreement, or addition of a new country involved in terms of the countries of the foreign licensees or foreign end-users)
- Increase in authorized sales territory of a MLA

(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
- A significant expansion of scope (i.e., additional program phases, any upgrade to the capabilities authorized in the previously notified agreement, or addition of a new country involved in terms of the countries of the foreign licensees or foreign end-users)

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 and WDA IFO Licenses 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 Transmittal Letter as well as provide additional documents as part of their request.

a. Transmittal Letter for TAAs and MLAs.

(1) Under § 124.12(a)(6), if the agreement or amendment requires Notification to Congress, an additional statement indicating whether an offset agreement (direct or indirect) is proposed to be entered into in connection with the agreement is required. If an offset agreement is proposed, the description of the offset arrangement should be included as part of the Executive Summary, not part of the Transmittal Letter.

(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 # yy-xxxx pursuant to Article 36(c) (and/or Article 36(d)) on (month/day/year) for $xxx,xxx,xxx under TA/MA-xxxx-xx." (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 for TAAs and MLAs (see Section 3.3 for a detailed explanation of values).

(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 14.1.

Line Number	Item	Value
1	**Technical Data and Defense Services**	**$1,000,000**
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	**$51,000,000**
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	N/A
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$58,000,000
7	Hardware Value for Congressional Notification (line 2)	$51,000,000
8	**Hardware Manufactured Abroad** (**MLA only**)	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	$59,000,000
10	Congressional Notification Value (Sum of lines 1,7&8)	**$52,000,000**

Table 14.1 Congressional Notification Agreement Valuation for TAA

(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 (which includes the value of exported hardware incorporated into end item). See Table 14.2.

Line Number	Item	Value
1	**Technical Data and Defense Services**	**$1,000,000**
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$21,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	$20,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$48,000,000
7	Hardware Value for Congressional Notification (line 2)	**$21,000,000**
8	**Hardware Manufactured Abroad** (Line 3 plus work done by foreign licensees as result of the MLA)	**$30,000,000**
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	$79,000,000
10	Congressional Notification Value (Sum of lines 1,7&8)	**$52,000,000**

Table 14.2 Congressional Notification Agreement Valuation for MLA

(3) Agreements with MDE. The Congressional Notification *threshold* for an agreement involving the export of MDE is determined by the value of the MDE Hardware (permanent export) alone. However, as with other agreements, the Congressional Notification *value* includes technical data, defense services, and all permanent hardware exports (and for MLAs, the hardware manufactured abroad minus the permanently exported hardware incorporated into the manufactured item). For agreements proposing the export of MDE, it is critical for the applicant to break out the value of MDE from the value of the other 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 14.3 for an example of a TAA with MDE).

Line Number	Item	Value
1	**Technical Data and Defense Services**	**$1,000,000**
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 **(MDE)**	**$16,000,000**
3	Permanent Export by DSP-5 or DSP-85 **(non-MDE)**	$22,000,000
4	Temporary Export by DSP-73 or DSP-85	$1,000,000
5	Temporary Import by DSP-61 or DSP-85	$500,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$39,500,000
7	Hardware Value for Congressional Notification (lines 2 and 3)	$38,000,000
8	**Hardware Manufactured Abroad** (**MLA only**)	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	$40,500,000
10	Congressional Notification Value (Sum of lines 1,7,&8)	**$39,000,000**

Table 14.3 Congressional Notification Value for TAA with MDE

c. Congressional Notification related to Warehouse and Distribution Agreements (WDAs). Since WDAs do not have value assigned to the overall agreement, the verification of whether the Congressional Notification threshold is met and any required notification are accomplished via the IFO license submissions. This ensures compliance with Congressional Notification requirements. Congressional Notification for IFO licenses for WDAs is based on the value of each individual license, not the sum of all DSP-5 IFO licenses over the entire life of the WDA.

d. **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 usually relate to future contracts or projects the U.S. applicant plans to conduct with the foreign company or country (e.g., 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. Initial Staffing. 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 offices/agencies as required by commodity or territory. A Congressional Notification number (different from agreement case number) is assigned. While the proposed agreement is undergoing review, the request is provided to the Professional Staff Members of the Senate Foreign Relations Committee (SFRC) and House Foreign Affairs Committee (HFAC) for concurrent review.

b. Interagency Staffing. Once all staffing positions are received, the case 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 Interagency 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 SFRC and HFAC.

d. Once the pre-clearance certification process by the Professional Staff Members completes, 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 +5. 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 +5.

(2) The Executive Branch, after complying with the terms of applicable U.S. law, is free to proceed with an arms sale 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 to 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 unless the export is for repair and replacement.

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 manufacturer of the defense article being exported.

Note: If submissions concern commodities that are affected by Export Control Reform, please refer to Section 20 of these guidelines for additional information.

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) (§ 124.14(b)(1) of the WDA) and by value in § 124.12(a)(6) (TAA and MLA only) of the Transmittal Letter. The more details provided in the agreement on the hardware, the quicker the review process for the license.

(A) If either the § 124.7(1)/§ 124.14(b)(1) description or the § 124.12(a)(6) valuation is missing, then a proviso will be given to the applicant in the TAA/MLA stating no hardware is authorized for export via a separate license until the agreement is amended.

(B) 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 TAA/MLA 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."[4]

DDTC will provide a proviso in the WDA approval similar to:

> "Export of hardware in furtherance of this agreement by separate license is authorized. If used, separate license and purchase documentation must be submitted in accordance with Section 15.1 of the Guidelines for Preparing Electronic Agreements and must reference this agreement."

(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 to 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. Subsequent recipients of hardware listed in the foreign consignee and foreign end-user blocks must be approved parties to the agreement.

(4) For Customs purposes, the license must identify the specific foreign address where the defense articles will initially be received, or multiple potential foreign addresses if that is unknown when the license is submitted. IFO licenses may list different address(es) other than the address listed in the body of the agreement if the legal entity is the same, the country is the same, and the agreement uses the phrase "(and all locations in [identify the country])."

(A) Once the defense articles are received by the first foreign party, the agreement is the authorization that allows for transfers of the defense articles between multiple locations, including to other licensees or sublicensees to the agreement, or to multiple locations of the same legal entity (licensee or sublicensee). Thus, all addresses which may receive defense articles for private entities who are signatories or sublicensees must be listed in the agreement, or else the agreement must include the primary business location where activity will occur along with the phrase "(and all locations in [identify the country])." Reference Sections 2.8, 6.3, and 8.3 of these Guidelines.

[4] The figure referenced in this proviso corresponds to line 6, "Total Licensed Hardware," in the agreement valuation tables (Tables 5.1 and 5.2).

(B) For the permanent export of SME, all foreign licensees, sublicensees, and end-users who are anticipated to receive SME under an IFO license must be listed on the license. This ensures compliance with DSP-83 signature requirements.

(C) If an additional party will receive the SME after it had been permanently exported, the IFO license would not need to be modified, but a signed DSP-83 is required. If the additional party is not already a foreign licensee, sublicensee, or end-user of the agreement, the agreement would need to be amended to include the party prior to the transfer. A DSP-83 signed by the additional party must be uploaded to the respective IFO license and the agreement prior to the transfer.

(D) For governmental entities who are signatories or sublicensees, only one address is required in the body of the agreement. IFO licenses may list different address(es) than the address listed in the body of the agreement.

(E) Since the agreement provides authorization to transfer defense articles to other locations approved under the agreement, the IFO license does not need to be modified when the defense articles will be shipped, after initial receipt in a foreign recipient approved on the license, to other parties/locations approved under the agreement.

(5) 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.

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

(A) 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.

Note: When exporting items "subject to the EAR" (see § 120.42 and § 123.1(b)) on a Department of State license or other approval, the U.S. exporter must provide to the end-user and consignees in the purchase documentation or other support documentation submitted with the Department of State license or other approval request the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List "(x)" paragraph. This includes the appropriate ECCN or EAR99 designation. Identifying the ECCN or EAR99 designation on the license itself is not required.

(B) 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. **DSP-83s are required to accompany a DSP-5 license request for SME.**

(C) 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 14 to Appendix 1 for a Sample Letter of Explanation.

(D) For a WDA IFO license which exceeds the Congressional Notification threshold, a Letter of Intent and Executive Summary are required to support the Congressional Notification process. Reference Section 14.2 of these Guidelines.

(7) For IFO licenses affected by ECR, the following procedures and restrictions apply:

(A) For agreements containing paragraph (x) hardware, IFO licenses may include paragraph (x), if desired. If the agreement has not yet been amended but is still valid and contains commodities that are subject to the CCL, IFO licenses may also include paragraph (x) commodities, if desired.

(B) IFO licenses containing exclusively paragraph (x) commodities are not permissible.

(C) IFO license values must include the value of paragraph (x) items, if the IFO license includes such items. However, the value of paragraph (x) items will not be counted against the value of the agreement.

(D) See Section 20.4 for further information.

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 a defense article previously authorized for export the applicant can:

(1) Utilize § 123.4(a)(1) exemption for the repair and replacement; or

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

NOTE: The § 123.4(a)(1) exemption cannot be used for classified or non-U.S. origin defense articles. Items manufactured abroad pursuant to U.S. government approval are considered U.S.-origin.

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, Block 23 of the DSP-61, or Block 21 of the DSP-85 and clearly state the request is for "repair and replacement" purposes.

(2) The letter of explanation referenced in section 15.1.b.(5) 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). The use of § 123.16(b)(1) must be specifically requested in § 124.7(1) or § 124.14(b)(1) of the proposed agreement. 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) Per § 123.16(a), the § 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 § 123.16(b)(1) Hardware

(4) In addition to the Addendum for § 123.16(b)(1) required above, the agreement submission must include the following:

- The § 124.12(a)(6) Table must specify the value of transfers using this exemption. Note: if the Congressional Notification threshold for the agreement is exceeded, § 123.16(b)(1) **cannot** be used.

Line Number	Item	Value
1	**Technical Data and Defense Services**	**$1,000,000**
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$2,000,000
2a	Permanent Export by § 123.16(b)(1) (Tooling/Support Equipment)	$4,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	$8,000,000
3a	Permanent Export by § 123.16(b)(1) (Kits and Components incorporated into manufactured items) (**MLA only**)	$5,000,000
4	Temporary Export by DSP-73 or DSP-85	$1,000,000
5	Temporary Import by DSP-61 or DSP-85	$3,000,000
6	**Total Licensed Hardware (Sum of lines 2, 3,4&5)**	$14,000,000
7	Hardware Value for Congressional Notification (line 2,2a)	**$6,000,000**
8	**Hardware Manufactured Abroad** (Line 3,3a plus work done by foreign licensees as result of the MLA)	**$20,000,000**
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	$44,000,000
10	Congressional Notification Value (Sum of lines 1,7&8)	**$27,000,000**

Table 15.4 Valuation for Usage of § 123.16(b)(1)

- § 124.7(1) of the agreement must cite the hardware that will be transferred under § 123.16(b)(1). All of the information required in the Addendum sheet for § 123.16(b)(1) is not required to be in the body of the agreement. It is recommended the applicant copy the list of hardware (without hardware value information) from the Addendum to be an integral Attachment to the agreement.

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/WDA (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 Defense Articles Shipped Via Other Hardware Exemptions

a. If exporting by another exemption (e.g., the Canadian exemption), the only exemption value that must be documented in the § 124.12(a)(6) table is permanent exports. This documentation ensures proper reporting to Congress, since total exports, whether by license or exemption, count toward congressional notification values. Permanent exports via exemption for kits and components incorporated into manufactured items for an MLA do not need to be documented in the table since those exports do not affect the congressional notification value.

Line Number	Item	Value
1	Technical Data and Defense Services	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$11,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (MLA only)	$10,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	Total Licensed Hardware (Sum of lines 2, 3, 4 & 5)	$28,000,000
7	**Hardware Value for Congressional Notification (line 2 plus line 10)**	**$23,000,000**
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA)	$20,000,000
9	AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)	$49,000,000
10	**Permanent Export by Canadian Exemption (Tooling/Support Equipment)**	**$12,000,000**
11	Congressional Notification Value (Sum of lines 1,7, and 8)	$44,000,000

Table 15.5 Valuation for Usage of an Exemption

NOTE: If the Congressional Notification threshold for an agreement is exceeded, the Canadian exemption ***cannot*** *be used for any exports or temporary imports under the agreement until Congressional Notification is complete and the agreement has been approved and executed. Reference Supplement No. 1 to § 126.*

15.5 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) Temporary exports or imports for repair and replacement are not decremented from the hardware value authorized for the agreement.

(4) 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 14.)

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. File names for these documents should comply with the naming instructions identified in Section 17.0 of these Guidelines. Documentation still required in paper form is identified below.

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 to be entered into force until such time as all parties to the agreement or amendment have signed it, unless expedited execution is applicable (see Section 3.2.e). 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 and 11 of these Guidelines). If such authorization is granted, the applicant must execute within the specific circumstances outlined in the provisos issued by DTCL. Special signature considerations are also authorized for limited sublicensee changes (see Section 3.2.e).

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 6.3 and 8.3 for addressing minor changes prior to execution.) If the agreement involves the transfer of U.S. classified defense articles, to include technical data, the applicant must include a statement in the cover letter confirming that the executed agreement has been sent to the Defense Security Service (DSS). See Section 16.1.a.(4).

(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.

(4) When transfers of U.S. classified defense articles, to include technical data, apply to an agreement, the applicant must submit a copy of the agreement to DSS in order to fulfill the requirements of § 124.1(b). Once the agreement/amendment has been executed, the applicant must submit a copy of it to their regional DSS office within 30 days of execution.

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 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 or After 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 to the non-signing party. If the agreement was fully executed, all remaining parties must re-sign after removing references to the non-signing party.

(2) The cover letter of the executed copy submitted to DTCL must identify the removal of the signatory(ies) and provide a reason for removal. This 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 Initial Technical Data Export

Pursuant to § 123.22(b)(3)(ii), prior to the initial export of any technical data or defense services authorized in an agreement, the applicant must electronically inform DDTC that exports have begun.

a. A letter must be uploaded to the approved DSP-5 vehicle of the base agreement or the first amendment under which the transfer of technical data or defense services occurred.

b. Subsequent amendments do not require another letter documenting initial transfer of technical data or defense services, even if an amendment increases the scope of the technical data and/or defense services that may be transferred. Similarly, re-baselines do not require another initial transfer letter, provided the letter has already been submitted for the relevant prior agreement.

16.3 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 an agreement or amendment. 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.

16.4 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. For the termination of a paper agreement, the notification letter must be submitted to DDTC via a hardcopy letter to the attention of the Director, Office of Defense Trade Control Licensing. For an electronically-issued agreement, the letter should uploaded to the approved DSP-5 vehicle 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.

c. When terminating a Warehouse and Distribution Agreement, the applicant must submit a final activity summary with the termination letter.

16.5 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. Sales reports must be based on the transfer of hardware: if an order was placed but the hardware has not yet been transferred, that hardware will not be reported until the year when that hardware is transferred. For MLAs, reported sales must indicate the total value of the manufactured end items, to include any hardware that was exported and incorporated into the manufactured end items. Reference Section 3.3.b.(4) and Table 3.2.

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

b. For a new MLA or WDA, an Annual Sales Report is not required until the agreement has been executed since sales/transfers could not occur until the agreement had been executed. The first Annual Sales Report would be required for the year in which the agreement was executed.

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

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

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

f. It is suggested that each year's annual sales report be added to the annual sales report document from the previous year and submitted in a single .pdf file (i.e. a running list of annual sales reports in chronological order in a single .pdf file for each annual submission).

g. 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

16.6 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 concurs, DDTC will revise the authorization. In such instances, a corrected DSP-5 will be generated and made available for download by the applicant.

SECTION 17.0 Submitting and Packaging Agreements

This section provides specific instructions for the agreement/amendment documents you will upload using the DTrade 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/§ 124.14, 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/§ 124.14 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. 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 information (when necessary)

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

(1) Transmittal letter
(2) Proposed amendment as a conformed agreement (with attached exhibits/ appendices/annexes submitted in the same ".pdf" file as applicable), unless the amendment does not require re-execution per Section 17.1.b.
(3) § 126.13 letter (if not satisfied by Block 22 of the DSP-5 vehicle)

(4) Positive Part 130 information (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 or not all documentation has been uploaded. 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.

h. All uploaded documents should be ".pdf" files, and when possible, should be created with searchable text.

i. 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")

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."

k. To assist DDTC in its adjudication of agreement/amendment 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

l. 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 the initial submission, cases will be assigned 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

Table 17.2 – Attachment of Supporting Material Menu Options

SECTION 18.0 DTSA Technology Security 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 responsibility in these reviews is to conduct a technology security review that supports a DoD national security recommendation to the Department of State. 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, and Coast Guard – 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 or acronyms unless spelled out

- Ensure transmittal letter information matches information the body of the agreement.
- As appropriate, review previous license provisos and incorporate into the language.
- Cite previous cases – more than one case is fine.
- Verify and list current Government Points of Contact.
- If DoD is not involved, identify which DoD service would be interested.
- Recognize possible compliance issues before and after licensing.
- List Internet web sites to assist in the technical review.

Classified involved in agreement, i.e. § 124.12(a)(4)

- Recognize that not all countries are handled equally.
- Government and Industry end-users will be reviewed with a different perspective.
- Be realistic with quantities and explain how you will maintain control of commodities and data.

b. Common Shortfalls of Submissions

- Applicant failed to provide any technical data or descriptive literature to adequately conduct a national security or technology security 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/or 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 (and paragraph (x) does not apply – See Section 20). The Department of Commerce would have jurisdiction over the export.

c. Support Material

- The actual data to be transferred does not always need to be submitted, but a representative 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 attach 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.

18.3 Gas Turbine Engine Technology Questions

a. In order to ensure a consistent level of detail in license applications and to preclude misinterpretation regarding USML licenses involving gas turbine engine technologies, DoD requires all Agreement requests for gas turbine engines to specifically include responses to following questions:

(1) Will defense services or technical data related to gas turbine engine design methodology, including any data used to establish the physical characteristics of an engine, assembly, subassembly or part be exported? If yes, explain in detail.

(2) Will defense services, hardware or technical data related to the Hot Section of the engine (i.e. combustion chambers/liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmentor concepts; or cooled nozzle concepts) be exported? If yes, explain in detail.

(3) Will defense services or technical data related to gas turbine engine electronics controls (e.g., Full Authority Digital Engine Controls (FADECs), Digital Electronic Engine Controls (DEECs)) be exported? If yes, explain in detail.

(4) Will engine deck models be exported? If yes, explain in detail.

(5) Will defense services or technical data related to engine survivability, vulnerability, EMI/EMV/EME, Low Observable technology, signature characteristics, performance limitations or deficiencies be exported? If yes, explain in detail.

b. This does not obviate the need for a detailed narrative description of the contemplated exports in accordance with ITAR licensing requirements. Applicants must specifically address these questions within the body of their license submittal. License applications received by DoD which lack responses to these questions will be returned without action.

Note: Applicants are cautioned not to alter the wording of the above within the narrative or apply other company definitions such as “advanced technology.”

18.4 Low Observable/Counter-Low Observable or Controlled Program Information

Export of technical data, hardware, and/or defense services related to Low Observable and/or Counter-Low Observable (LO/CLO) technologies as defined in DoD Instruction S-5230.28 and/or containing Critical Program Information (CPI) as defined in DoD Instruction 5200.39 requires in depth DoD review. In keeping with the direction of National Security Policy Directive (NSPD) 56, the following procedures have been implemented. In order to obtain a consistent level of detail in license applications and to preclude misinterpretation of release authorizations related to LO/CLO technology and CPI, DoD requires all State Department license requests include either the following statement in the cover letter that the contemplated exports do not include technologies addressed by DoD Instruction S-5230.28 or CPI,

"The export contemplated herein does NOT involve the discussion, offer, or release of systems, techniques, technologies, or capabilities described in DoDI-S-5230.28 nor the discussion, offer, or release of Critical Program Information."

or the following statement and answers to the included set of questions:

"The export contemplated herein does involve the discussion, offer or release of systems, techniques, technologies or capabilities described in DoDI-S-5230.28 or the discussion, offer, or release of Critical Program Information.

1. When was the sponsoring service notified of this specific license request?

2. Did the sponsoring service recommend a LO/CLO or AT Executive Agent review? If not, attach a copy of the response.

3. Has this specific license request been briefed to the LO/CLO Tri-Service Committee (TSC), LO/CLO EXCOM or AT Executive Agent? If so, provide date(s). Also, provide contact info for a knowledgeable DoD POC.

4. Has the LO/CLO TSC, LO/CLO EXCOM or AT Executive Agent provided formal feedback regarding the contemplated export? If so, provide date(s). Also, provide contact info for a knowledgeable DoD POC."

Note 1: These procedures do not obviate the need for a detailed narrative description of the contemplated exports in accordance with ITAR licensing requirements. Applicants must specifically address these questions within the body of their license submittal.

Note 2: Applicants are cautioned to answer the questions as written and only provide "yes" or "no" answers, POC, and date so that the answers remain UNCLASSIFIED.

18.5 Software Documentation

Any export of U.S software source code, operating algorithms, signal processing algorithms, and/or program maintenance documentation must be compliant with DoD Guidelines for International Transfers of Software Documentation (including source code), dated 8 April 1997. The request MUST include a full description and explanation of all relevant software modules; identifying those proposed for release, as well as, those that will NOT be released. E-mail requests for the guidelines or questions to: dodsoftwareguidelines@dtsa.mil.

SECTION 19.0 Documenting Space Launch Service Providers

19.1 Identifying Space Launch Service Providers in Submissions

a. When USML will be launched into space, DDTC needs to know the known or potential launch service providers in order to vet if launch of the USML on a certain launch vehicle would be allowed.

b. If the agreement is for procurement of space-related USML under which all USML will return to the U.S. under the scope of the agreement, the agreement does not need to specify launch service providers. If the launch of the USML which returned to the U.S. will take place by a foreign launch service provider, a separate authorization would be needed to cover the transfers.

c. When USML will not return to the U.S. under the agreement, but will be potentially launched by a foreign launch service provider, the known or potential launch service provider must be documented.

(1) Identify known or potential foreign launch service providers in Block 18 of the DSP-5.

Block 18. Foreign Launch Service Provider
Name: < Enter Full Name of Launch Authority (Service Provider) >
Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used >
City: < Enter City of the Launch Site >
Country: < Enter the Country Code for the Country where Launch would take place >
Role: < Enter “Launch Service Provider” >

(2) Identify known or potential U.S. launch service providers in Block 21 of the DSP-5.

Block 21. U.S. Launch Service Provider
Name: < Enter Full Name of Launch Authority (Service Provider) >
Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used and Enter “(Launch Service Provider)” >
City: < Enter City of the Launch Site >
State: < Enter State of the Launch Site >
ZIP Code: < Enter ZIP Code of Launch Site >
Country: < Enter United States>

(3) In the agreement, identify the known or potential launch service providers, their respective space launch vehicle(s), and the potential countries of launch in the Whereas clauses. For the transfer territory statement, add an extra sentence that states: "Known or potential territories for launch services are (list countries)."

d. If additional launch service providers are identified after the agreement is approved, the agreement must be amended to gain approval for known or potential launch by a different launch

service provider. The amendment must be approved and executed before the USML is launched into space.

e. If launch service providers are not identified when the agreement was submitted, , the agreement must be amended to gain approval for launch. The amendment must be approved and executed before the USML is launched into space.

SECTION 20.0 Export Control Reform

20.1 General Guidance

a. The procedures in this section are intended to help the applicant implement the requirements of the various *Federal Register* notices pertaining to Export Control Reform (ECR).

b. For the purposes of this section: "transitioning" refers to items transitioning from the USML to the Commerce Control List (CCL); "items" refers to hardware, software, technical data, and defense services controlled in the USML categories; and "USML hardware" refers to all defense articles in § 121.1 except for technical data and paragraph (x) (see Section 20.1.c., immediately below) commodities, software, and technical data.

c. In addition to moving many USML commodities to the CCL and changing USML subcategories, ECR also adds paragraph (x). Paragraph (x) is found in all revised USML categories and allows, in certain circumstances, exporters to obtain an authorization from DDTC for the export of commodities, software, and technical data controlled on the CCL. With some restrictions, agreements and IFO licenses may use paragraph (x) on or after the effective date of the relevant final rules that revise the USML.

d. Paragraph (x) hardware may only be used in agreements that involve the export of USML hardware. Agreements that do not involve the export of USML hardware may not include authorization for paragraph (x) hardware. However, paragraph (x) software or technical data subject to the EAR may be included in the agreement and exported under § 125.4(b)(2) if the paragraph (x) software or technical data subject to the EAR will be used in or with the technical data subject to the ITAR and described in the agreement, and if the paragraph (x) software or technical data subject to the EAR will be used under the terms of a TAA or MLA.

e. Expiration dates listed on DDTC authorizations may not necessarily be accurate if the authorizations contain transitioning items. See Table 20.2 and the relevant *Federal Register* notices to determine if a license or agreement will become invalid prior to the expiration date listed on the DDTC authorization.

f. Amendments to agreements to remove transitioning items or to revise the agreement to change the transitioning items to paragraph (x) may be submitted as minor amendments if the only changes are the removal of transitioning items, the movement of commodities from the USML to the CCL, the movement of items within the USML, or the implementation of changes listed in Section 6.3. If submitting an ECR-driven minor amendment, no transmittal letter is necessary, but the executed minor amendment must be uploaded to the DSP-5 vehicle of the most recently approved agreement/amendment. If anything is being added in conjunction with the ECR amendment—e.g., an increase in scope, value, parties, or territories—a major amendment is required. If the ECR amendment results in scope clarifications or changes to the parties' roles and responsibilities, a major amendment is required.

g. Agreement values must not include the value of paragraph (x) commodities, software, or technical data. The hardware value of the agreement must only include USML hardware, and the technical data value must only include USML technical data. The hardware manufactured abroad value for an MLA must only include the value of USML hardware manufactured abroad. If a major amendment or rebaseline is submitted to reflect ECR changes, the transmittal letter must accurately reflect USML values. In some cases, ECR changes may result in a devaluation of the agreement. However, applicants are not required to devalue agreements, nor are they required to submit a major amendment merely because the agreement has potentially lost value as a result of ECR. If devaluing, the applicant should only devalue agreements based on future activity. For the purposes of agreement valuation and decrementing hardware, previously approved IFO licenses for permanent export are considered USML even if some items have subsequently transitioned to the CCL. For example:

(1) A legacy agreement includes authorization for permanent hardware exports, of which some quantity has already been authorized via IFO licenses. After the ECR transition, none of the hardware remains on the USML. If the applicant executes a minor amendment incorporating ECR changes, all of the hardware must be removed from Section 124.7(1), but the IFO licenses remain valid (see Table 20.2 below). If the applicant submits a major amendment incorporating ECR changes, all of the hardware must be removed from Section 124.7(1) while the (a)(6) table in the transmittal letter must show the hardware value reduced to the amount of the previously approved IFO licenses. Section (a)(6) of the transmittal letter should explain that the hardware value represents previously approved IFO licenses, not new hardware exports (see the example following the asterisk in Table 20.1). The IFO licenses remain valid until expiration (see Table 20.2 below), and the amendment will be issued with a proviso that states, "export or temporary import of hardware in furtherance of this agreement is not authorized, although prior authorizations issued under AG-XXXX-XX and its associated amendments remain valid until their expiration."

(2) A legacy agreement includes authorization for permanent hardware exports, of which some quantity has already been authorized via IFO licenses. After the ECR transition, some of the hardware remains on the USML while some hardware moves to the CCL. If the applicant executes a minor amendment incorporating ECR changes, the CCL hardware must be removed from Section 124.7(1) or converted to paragraph (x). The IFO licenses, however, remain valid until expiration (see Table 20.2 below). Similarly, if the applicant submits a major amendment incorporating ECR changes, the CCL hardware must be removed from Section 124.7(1) or converted to paragraph (x), but changes to the (a)(6) table in the transmittal letter are at the discretion of the applicant. Since some hardware remains USML, the hardware value in the (a)(6) table can be reduced, increased, or left unchanged. Regardless of the changes to the (a)(6) table, the IFO licenses remain valid until expiration (see Table 20.2 below).

(3) A legacy agreement includes authorization for permanent hardware exports, of which no quantity has been authorized via IFO licenses. After the ECR transition, none of the hardware remains on the USML. If the applicant executes a minor amendment incorporating ECR changes, all of the hardware must be removed from Section 124.7(1). If the applicant submits a major amendment incorporating ECR changes, all of the hardware must be

removed from Section 124.7(1) while the (a)(6) table in the transmittal letter must show the hardware value reduced to zero.

Line Number	Item	Currently Approved under TA xxxx-xx	Proposed Amendment	New Total
1	Technical Data and Defense Services	$3,000,000	$-2,000,000	$1,000,000
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$5,000,000	-$4,000,000	$1,000,000*
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	N/A	N/A	N/A
4	Temporary Export by DSP-73 or DSP-85	$1,000,000	$-1,000,000	$0
5	Temporary Import by DSP-61 or DSP-85	$0	$0	$0
6	Total Licensed Hardware (Sum of lines 2, 3,4&5)	$6,000,000	$-5,000,000	$1,000,000*
7	Hardware Value for Congressional Notification (line 2)	$5,000,000	$-4,000,000	$1,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA, **MLA only**)	N/A	N/A	N/A
9	AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)	$9,000,000	$-7,000,000	$2,000,000
10	Congressional Notification Value (Sum of lines 1,7&8)	$8,000,000	$-6,000,000	$2,000,000

* This amendment removes all hardware from Section 124.7(1) of the agreement. The hardware value in lines 2 and 6 represents the value of previously approved IFO license 050123456.

Table 20.1 Agreement Valuation: ECR Amendment in Which All Hardware Has Been Removed from the Agreement, Yet an IFO License Has Been Previously Approved

h. Table 20.2 below provides general guidance for submitting agreements, amendments, and IFO licenses affected by ECR.

	Prior to Effective Date of Relevant Final Rule	On Effective Date of Relevant Final Rule	> 3 Years After Effective Date of Relevant Final Rule
New Agreements and Major Amendments	Can be submitted normally. Expiration dates may not be accurate if agreement contains transitioning items.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.
Existing Agreements Containing No Transitioning Items	No change.	No change. An amendment is not required solely to correct USML categories or subcategories. USML categories or subcategories must be corrected whenever the applicant submits the next major amendment.	Agreement is valid until its expiration date. USML categories/subcategories must be corrected whenever the applicant submits the next major amendment.
Existing Agreements Containing Transitioning and Non-Transitioning Items	No change.	Valid until whichever comes first: expiration; full execution of an amendment incorporating ECR; or three years after effective date of relevant final rule.	Agreement is no longer valid unless it has been amended.
Existing Agreements Containing Solely Transitioning Items	No change.	Valid for three years, unless agreement expires before that time.	Agreement is no longer valid (see Note 2).
New IFO Licenses	Can be submitted normally. Expiration dates remain as indicated on the licenses.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.	Must comply with the revised USML and CCL. Submissions not in compliance with the new categories will be returned without action.
Existing IFO Licenses	No change.	Valid until expired.	Valid until expired.

Table 20.2 Submissions During ECR Transition

Note 1: If an agreement contains multiple USML categories, the "relevant final rule" refers to the last rule impacting any of the agreement's USML categories.

Note 2: If an existing agreement contains "solely transitioning items," this table assumes that defense services as defined in § 120.9 are no longer being performed, and therefore no agreement is necessary for the export of defense services. (The agreement is still valid for three years after the effective date of the relevant final rule.) However, if defense services are still required even though all the agreement's technical data and hardware has transitioned to the CCL, the previous row of the table applies, and the agreement is considered to contain both transitioning and non-transitioning items. To clarify, for agreements where all technical data and hardware are transitioning to the CCL, but an agreement is still required for the performance of a defense service, that agreement will remain valid for no more than three years unless an amendment has been executed.

Note 3: The transition period was initially a two-year transition period under 78 FR 22740 and 78 FR 61750, but was changed to three years in a DDTC web notice published on October 9, 2015: http://www.pmddtc.state.gov/documents/IndustryNotice_ECRTransitionPlan.pdf.

20.2 Transmittal Letters

a. After the effective date of the relevant final rule revising a USML category, transmittal letters for agreements and amendments must identify the updated USML subcategories, including paragraph (x), if applicable and if desired. It is the applicant's option whether or not to include paragraph (x) in an agreement/amendment, but the applicant must include paragraph (x) in the agreement/amendment if a Department of State license, other approval, or exemption will be used to transfer paragraph (x) items. Including Export Control Classification Numbers (ECCNs) for CCL items is not required, but may speed up processing times.

b. The (a)(6) table must not include the value of paragraph (x) hardware. The hardware value for the agreement will only include USML hardware in accordance with Table 3.2.

c. In many cases, the transition of USML commodities to the CCL may result in a reduction in value for an agreement. A reduction in value based on ECR does not require a major amendment, if the conditions of Section 20.1.f are met. However, when submitting a major amendment that happens to have a reduction in value, the applicant should indicate the value changes in three-column format, in accordance with Table 6.1. Block 12 of the DSP-5 vehicle cannot accept negative numbers, so the applicant should enter $1 in block 12.

d. If an agreement has been congressionally notified and subsequently loses value as a result of ECR, the agreement will be re-notified when the congressional notification value reaches 110% or more of the previous notification value. Other reasons for re-notification listed in Section 14.1.c still apply.

20.3 Agreements and Amendments

a. Section 124.7(1) of the agreement/amendment must include a description of all hardware to be exported in furtherance of the agreement, including paragraph (x) hardware, if applicable. Section 124.7(1) must delineate, at least in general terms, between hardware subject to the USML and hardware subject to the CCL if the applicant wishes to submit IFO licenses that

include paragraph (x). Specific designation of USML and CCL categories are not required in the agreement. Section 124.7(2) of the agreement/amendment may require modification based on the proposed changes to definitions of defense services and technical data, as well as the underlying determination of what constitutes a defense article in accordance with § 121.1 and § 120.41. However, Section 124.7(2) need not delineate between technical data subject to the USML and technology subject to the CCL, as long as the agreement makes clear that CCL technology will be transferred and that it will be used in or with the USML technical data.

b. For existing agreements containing transitioning and non-transitioning items, the applicant must execute an amendment to incorporate the ECR changes within three years of the effective date of the relevant final rule, or else the agreement becomes invalid. This may be a minor amendment if the change meets the conditions of Section 20.1.f.

c. Existing agreements containing no transitioning items do not require amendment, even if the relevant USML categories and/or subcategories change. As long as the agreement contains no transitioning items, the agreement is valid until its expiration date.

d. Applicants may submit minor amendments and proviso reconsiderations without making any ECR changes. Submitting a minor amendment or proviso reconsideration does not change the time frame for agreement validity based on Table 20.2. Whether or not the applicant has submitted a non-ECR minor amendment or proviso reconsideration, the applicant must still submit an amendment to capture ECR changes, if required according to Table 20.2.

e. Major amendments, including value-increase only amendments, received after the effective date of the final rule must reflect ECR changes.

20.4 Licenses in Furtherance of Agreements

a. The existing agreement/amendment does not need to be amended to allow IFO licenses using the new USML subcategories, as long as the agreement is still valid according to Table 20.2. Here are two examples:

(1) Suppose an existing agreement contains transitioning and non-transitioning items in Categories VIII(b), VIII(h), and VIII(i). Row three of Table 20.2 applies. The applicant wishes to export Categories VIII(b) and VIII(h) IFO the agreement, and these items happen to be transitioning to categories XIX(a)(1), VIII(h)(1), and VIII(x). After the effective date of the relevant final rule (in this case, October 15, 2013), the applicant could submit a license IFO this agreement to export Categories VIII(h)(1), VIII(x), and XIX(a)(1) even though the agreement still references hardware Categories VIII(b) and VIII(h). In accordance with Table 20.2, however, this option would cease on October 16, 2016 if no amendment to the agreement were executed.

(2) Suppose an existing agreement contains no transitioning items and involves Categories VIII(b) and VIII(i). Row two of Table 20.2 applies. The applicant wishes to export Category VIII(b) IFO the agreement, and these items are transitioning to Category XIX(a)(1).

After the effective date of the relevant final rule (in this case, October 15, 2013), the applicant could submit a license IFO this agreement to export Category XIX(a)(1) even though the agreement still references hardware Category VIII(b). The agreement remains valid until expiration.

b. For agreements containing paragraph (x) hardware, IFO licenses may include paragraph (x), if desired. If the agreement has not yet been amended but is still valid and contains commodities that are subject to the CCL, IFO licenses may also include paragraph (x) commodities, if desired. The restrictions of Section 20.1.d and § 123.1(b) still apply.

c. IFO licenses containing exclusively paragraph (x) commodities are not permissible. In accordance with § 123.1(b), licenses may only include paragraph (x) if the license also includes a proposed export of defense articles authorized by the agreement and the (x) commodities, software, or technical data are for end-use in or with the defense articles proposed for export.

d. If the applicant submits a license IFO an agreement in which the categories or subcategories do not match, the applicant must, in the letter of explanation submitted with the IFO license, clarify which previously authorized hardware has changed categories or subcategories. Including ECCNs for CCL items is not required in the letter of explanation, but may speed up processing times.

e. IFO license values must include the value of paragraph (x) items, for AES and Customs purposes. However, only the value of the USML hardware on the IFO licenses will be decremented against the licensed hardware value for the agreement. The IFO letter of explanation must not include paragraph (x) values: the previously approved value statement, remaining value statement, and summary table of previous authorizations must only include USML hardware values. DDTC understands that this will result in a discrepancy between previous authorization values listed in the IFO letter of explanation and the values submitted via DTrade.

f. All other requirements of Section 15 of these guidelines, to include purchase order, letter of intent, contract, or request for goods, continue to apply to IFO licenses containing paragraph (x).

g. Re-export or re-transfer of paragraph (x) items to locations not currently approved in the agreement may be accomplished in two ways. The applicant may submit an amendment to expand the scope of the agreement, or the applicant may seek Commerce authorization for the re-export/re-transfer. Be advised that Commerce re-export/re-transfer authorization only applies to the paragraph (x) items; any expansion of territory for USML defense services, technical data, or hardware must be approved by State via the amendment process.

20.5 Warehouse and Distribution Agreements

Warehouse and Distribution Agreements may be submitted and amended using the updated USML categories, but the use of paragraph (x) is still restricted by section 20.1.d and § 123.1(b). WDAs must specify the defense articles being proposed for export, along with the appropriate

USML paragraphs. If paragraph (x) is desired, WDAs must also clearly indicate which defense articles the (x) commodities are being used "in or with."

Appendix A – Sample Documents

<u>Tab 1</u> – Sample Certification Letter (§ 126.13)

(if not satisfied by Block 22 of the DSP-5 vehicle)

(Date)

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 Director:

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, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is:

a. the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in § 120.27; 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 of this subchapter, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. Government; and

3. The natural person signing the application or other request for approval is a responsible official who has been empowered by the applicant and **(INSERT ONLY ONE)** is a citizen or national of the United States, OR has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20), 66 Stat. 163), OR is an official of a foreign government entity in the United States, OR is a foreign person making a request pursuant to § 123.9.

Sincerely,

Name of Official
Title

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

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

May 7, 20xx

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: TA 1234-00; TA-6543-09 (050xxxxxx)

Dear Director:

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 to include the end users, review of defense articles and services to be transferred, and any known precedent of export pertaining to the agreement.

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

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

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, 2015.

(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, and identify whether or not the U.S. parties will generate or modify the foreign classified information).*

(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: (Refer to Table 5.2 for an example valuation table for an MLA, refer to Table 14.3 for an example valuation table for MDE, refer to Table 15.4 for an example valuation table for usage of § 123.16(b)(1), refer to Table 15.5 for usage of other exemptions such as the Canadian exemption, and refer to Section 3.3 for a detailed explanation of values.)

Line Number	Item	Value
1	**Technical Data and Defense Services**	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$21,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	N/A
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2,3,4&5)**	$28,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000
8	**Hardware Manufactured Abroad** (**MLA only**)	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$29,000,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$22,000,000

This agreement does / does not require Congressional Notification pursuant to § 123.15 and/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.

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 sublicense, it will be amended to require that all sublicensing 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).

Sublicensing rights ARE granted to the licensee(s) under this agreement as specified in Article I.4(b) of the proposed agreement. < or > Sublicensing 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.). < or > No defense articles (hardware) will be shipped in furtherance of this agreement. Only technical data and/or other defense services will be provided.

This agreement relates to the following U.S. Munitions List category(ies): XI(c) and XI(d) (list applicable USML categories and subcategories from § 121). These category(ies) are not or are designated as Significant Military Equipment (SME). For multiple categories, state those which are designated SME. If hardware will be exported, then identify whether it/they is/are SME. **If the agreement proposes to export only technical data and defense services, specify the USML hardware categories and subcategories that are related to the technical data and defense services covered under the agreement.**

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.

If the agreement involves the transfer of U.S. classified defense articles, to include technical data, state that a copy of the executed agreement will be submitted to DSS. See Section 16.1.a(4) of these Guidelines.

If the agreement is related to USML Category XIX, the applicant must answer the Gas Turbine Engine Technology Questions. See Section 18.3 of these guidelines.

The export contemplated herein does (does NOT) involve the discussion, offer, or release of systems, techniques, technologies, or capabilities described in DoDI-S-5230.28 or (nor) the discussion, offer, or release of Critical Program Information.

NOTE: The above statement is used when there is no release of LO/CLO or CPI. If the answer is yes to the release of LO/CLO or CPI, see Section 18.4 of these guidelines for the appropriated statements to make.

This agreement does / does not require Congressional Notification. Note, 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. The executive summary and signed contract must be uploaded to the DSP-5 vehicle. DTCL cannot proceed beyond initial staffing without these documents.

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 interact with the U.S. government on the applicant's behalf, state as such.

Sincerely,

Signature block

<u>Tab 3</u> – 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 (hardware) to be manufactured and all defense articles to be exported (and/or temporarily imported) 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. An attachment may be used to list hardware, but must reference such attachments under this article. If no hardware is being manufactured or exported or temporarily imported, then state so:

"No defense articles (hardware) will be manufactured, exported or temporarily imported in furtherance of this agreement. Only technical data (and/or) other defense services will be provided."

NOTE: Only defense articles (hardware) 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, and any manufacturing rights to be given. 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 March 31, 2015 (choose appropriate month per Section 3.1 of these guidelines).

(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 and sublicensees) for end-use by (list all ultimate end-users to include U.S. end users).

- For MLAs, end-users include all proposed sales parties.
- If marketing is requested, specifically identify each proposed recipient of marketing information by name (e.g., government, company).
- Identify additional Transfer Territory Countries, if applicable (Reference Section 3.13 of these Guidelines)
- Identify territory for Space Launch Services, if applicable (Reference Section 19.0 of these Guidelines)

b. "Sublicensing rights are granted to the foreign licensees (or list the specific foreign licensee). Sublicensees are identified in Attachment ___.

Sublicensees 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 DDTC 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 and § 124.9), will be maintained on file by (the applicant) for five years from the expiration of the agreement."

NOTES: If Foreign Sublicensing and Retransfer is not requested, the applicant must specifically state that sublicensing/retransfer is not authorized instead of the statements above.

If U.S. sublicensing is requested, the applicant must include the statement below (otherwise, it should be omitted).

This agreement authorizes sublicensing to U.S. Persons. Exports or temporary imports by the U.S. sublicensee must be conducted as part of a separate authorization initiated by the U.S. Person sublicensee.

NOTE: If expedited execution is requested, the applicant must include the statement below (otherwise, it should be omitted).

Amendments solely to add sublicensees or to change the names or addresses of existing sublicensees may be approved and take effect without requiring signatures of all parties. The following restrictions apply to such amendments:

a. New sublicensees and addresses must be from previously approved territories;

b. All new sublicensees and sublicensee name or address changes must be approved by DDTC;

c. After DDTC approval, the agreement holder must sign the amendment, which constitutes execution for the purposes of such an amendment;

d. Before transfers may be made to the new sublicensees:

(1) The agreement holder must notify all other signatories of the change by providing them with a copy of the approved, signed amendment; and

(2) Sublicensees are required to execute a Non-Disclosure Agreement (NDA).

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 the approved sublicensees – 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 signatories (and the approved sub-licensees – if applicable) located in the § 124.16 territory, and bona fide regular employees directly employed by the foreign signatory or approved sub-licensee. The exclusive nationalities/territory authorized is 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 or § 126.18, the applicant must specifically identify those exclusive nationalities under the § 124.8(5) clause (pursuant to Option 2), and NDAs must be executed for these employees.

d. The U.S. applicant (or U.S. Signatories) currently employs Foreign Person(s) of the following countries who will participate in this program: *(list countries here)*

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

NOTE: 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 foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where 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)

NOTE: 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-free 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, 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: Paragraph (4) above must properly reference the paragraph numbering system used in the agreement and not just repeat the ITAR numbering.

(5) 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."

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) (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."

NOTE: This clause is written for the foreign licensee—the foreign licensee should be identified in the first parenthetical, not the U.S. applicant. Fill in the second parenthetical with the country/countries of ultimate destination or the sales territory. This may be the United States.

§ 124.9(b)

NOTE: MLA's for the production of SME must include the following required clauses verbatim.

(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) 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)

<u>Tab 4</u> – WDA Transmittal Letter

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

May 7, 20XX

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 1234-00; DSP-5 050XXXXXX

Dear Director:

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 to include the end users, review of defense articles and services to be transferred, and any known precedent of export pertaining to the agreement.

REQUIRED INFORMATION

In accordance with § 124.14, the following information is provided:

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

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

The foreign licensee(s)

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

U.S. Signatories

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

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

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, 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 Armageddon as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will Armageddon 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) Armageddon will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

(f)(3) Armageddon 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, Armageddon 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): XI(c) (list applicable USML category and subcategory from § 121). These category(ies) are not or are designated as Significant Military Equipment (SME). Identify if the hardware is SME. For multiple categories, state which are designated SME.

If the agreement involves the transfer of SME, 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.

If a law firm or consulting firm is authorized to interact with the U.S. government on the applicant's behalf, state as such.

Sincerely,

Signature block

Tab 5 – WDA

This agreement is entered into between Armageddon Aerospace Corporation, an entity incorporated in the State of (state) with offices at 1234 South Rd., Anywhere, VA 98765, and XXX Technologies 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, Armageddon Aerospace Corporation (Describe the need for the WDA.)

WHEREAS, XXX Technologies (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 March 31, 20xx (choose appropriate month per Section 3.1 of these guidelines).

(4) The distribution of defense articles is authorized to (list countries of distribution territory). The specific governments of such countries or private entities seeking to procure defense articles pursuant to a contract with the government within the distribution territory are (list all governmental and private entities).

NOTE: Attachment(s) may be used to identify the countries of the distribution territory and the specific governmental and private entities comprising the distribution territory, but the agreement must reference such attachments under this article.

If there are foreign intermediaries included in the requested transaction, they must be identified by name in this section and are required to execute Non-Disclosure Agreements (NDAs). The following language must be included in the agreement:

> "This agreement authorizes the temporary transfer of USML-controlled defense articles to the entities listed in Attachment X prior to final transfer to the authorized end-users. As recipients of USML-controlled defense articles these entities must execute Non-Disclosure Agreements (NDAs) acknowledging receipt of USML-controlled defense articles. These NDAs must be maintained by the applicant for five years after conclusion of this agreement pursuant to 22 CFR 122.5."

II. § 124.14(c).

NOTE: 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.

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) of this subchapter.

(7) XXX Technologies 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) 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.

NOTE: If 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 above § 124.14(c)(9) clause must be removed.

III. § 124.14(d)

NOTE: 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).*

_____	_____
Armageddon Aerospace Corporation	XXX Technologies

<u>Tab 6</u> – TAA/MLA Amendment/Re-baseline Transmittal Letter

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

November 20, 20xx

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 (or Re-baseline) to **TA (MA) xxxx-xx (050xxxxxx)** 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 Director:

Submitted herewith is a submission package for proposed Amendment No. 1 (or Re-baseline) 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/RE-BASELINE

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)
Authorize sublicensing
Add sublicensees
Add Dual/TCNs

Increase value of agreement
Moderate increase of approved hardware for export
Covert from a TAA to an MLA

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:

NOTE: 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." Make changes in Bold.

(a)(1) DDTC Applicant Code is M-0000. **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

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

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

The purpose of this amendment is (restate the original scope and provide changes of scope in bold). **CHANGE**.

This agreement is valid until **March 31, 2021**. **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 (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.**

(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, and identify whether or not the U.S. parties will generate or modify the foreign classified information).* **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 or just the "Currently Approved" column. **CHANGE.**

Example (NOTE: this example is for a TAA – refer to Table 3.2 for an example valuation table for MLA amendment, refer to Table 14.3 for an example valuation table for MDE, refer to Table 15.4 for an example valuation table for usage of § 123.16(b)(1), refer to Table 15.5 for usage of other exemptions such as the Canadian exemption, and refer to Section 3.3 for a detailed explanation of values):

Line Number	Item	Currently Approved under TA xxxx-xx	Proposed Amendment (or Re-baseline)	New Total
1	Technical Data and Defense Services	$1,000,000	4,500,000	$5,500,000
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$21,000,000	$31,000,000	$52,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	N/A	N/A	N/A
4	Temporary Export by DSP-73 or DSP-85	$3,000,000	$0	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000	$0	$4,000,000
6	Total Licensed Hardware (Sum of lines 2, 3,4&5)	$28,000,000	$31,000,000	$59,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000	$31,000,000	$52,000,000
8	Hardware Manufactured Abroad (**MLA only**)	N/A	N/A	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	**$29,000,000**	**$35,500,000**	**$64,500,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$22,000,000	$35,500,000	$57,500,000

(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. **NO CHANGE.**

(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 any 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 amendment 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 sublicense, it will be amended to require that all sublicensing 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:

Sublicensing. Make one of the following statements regarding Sublicensing:

- "Sublicensing was not previously authorized under this agreement."

- "Sublicensing was not previously authorized under this agreement. Sublicensing rights are granted to the licensee(s) under this amendment as described in (Article or Section x.x)."

- "Sublicensing 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 (hardware) were previously authorized."

- "No defense articles (hardware) were previously authorized. Defense articles are authorized under this amendment as described in (Article or Section x.x)."

- "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 not previously authorized under this agreement. Dual/Third Country Nationals are authorized under this amendment as described in (Article or Section x.x)."

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

This agreement relates to the following U.S. Munitions List category(ies): (list applicable USML categories and subcategories from § 121). These category(ies) are/are not designated as Significant Military Equipment (SME). **If the agreement proposes to export only technical data and defense services, specify the USML hardware categories and subcategories that are related to the technical data and defense services covered under the agreement.**

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.

If the agreement involves the transfer of U.S. classified, state that a copy of the executed agreement will be submitted to DSS. See Section 16.1.a(4) of these Guidelines.

If the agreement is related to USML Category XIX, the applicant must answer the Gas Turbine Engine Technology Questions. See Section 18.3 of these guidelines.

The export contemplated herein does (does NOT) involve the discussion, offer, or release of systems, techniques, technologies, or capabilities described in DoDI-S-5230.28 or (nor) the discussion, offer, or release of Critical Program Information.

NOTE: The above statement is used when there is no release of LO/CLO or CPI. If the answer is yes to the release of LO/CLO or CPI, see Section 18.4 of these guidelines for the appropriated statements to make.

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,xxx under TA/MA-xxxx-xx. (If this information was not provided in a proviso from DTCL, provide the agreement/amendment number and calendar year of Notification. If the agreement was notified multiple times, provide information on all previous notifications).

- 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. The executive summary and signed contract must be uploaded to the DSP-5 vehicle. DTCL cannot proceed beyond initial staffing without these documents.

SALES REPORT SUMMARY

For an MLA amendment or re-baseline, provide a table reporting sales by year and with total sales to date. If the agreement has been re-baselined previously, ensure that sales figures are provided for the entire life of the agreement. This table does not replace the need to submit annual sales reports in accordance to § 124.9(a)(5).

Year	Dollar Value
2011	
2012	
2013	
Total	

If you require additional information, please contact (list point of contact) at telephone number (area code and number) and email (email address).

If a law firm or consulting firm is authorized to interact with the U.S. government on the applicant's behalf, state as such.

Sincerely,

Signature block

<u>Tab 7</u> – TAA/MLA Amendment/Re-baseline

Amendment No. X to (or Re-baseline of) TA (MA) xxxx-xx (050xxxxxx)

This amendment (or re-baseline) 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 or re-baseline has a large number of parties involved, then list in bullet format for ease of review. If parties are being added or removed in the amendment, it is recommended that the list of parties and the Whereas clauses reflect the updated list of parties after all additions or deletions, and the Now Therefore clause specifies the changes that were made.)

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 this is a re-baselined agreement of TA 1234-00 and all associated amendments.

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 March 31, 2021.

- 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:

Guidelines for Preparing Agreements (Revision 4.3)

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 (hardware) 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. If no hardware is being manufactured or exported or temporarily imported, then state so:

"No defense articles (hardware) will be manufactured, exported or temporarily imported in furtherance of this agreement. Only technical data (and/or) other defense services will be provided."

NOTE: Only defense articles (hardware) 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, and any manufacturing rights to be given. 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 March 31, 2021.

(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 and sublicensees) for end-use by (list all ultimate end-users to include U.S. end users).

- For MLAs, end-users include all proposed sales parties.
- If marketing is requested, specifically identify each proposed recipient of marketing information by name (e.g., government, company).
- Identify additional Transfer Territory Countries, if applicable (Reference Section 3.13 of these Guidelines)
- Identify territory for Space Launch Services, if applicable (Reference Section 19.0 of these Guidelines)

b. "Sublicensing rights are granted to the foreign licensees (or list the specific foreign licensee). Sublicensees are identified in Attachment ___.

Sublicensees 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 DDTC 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 and § 124.9), will be maintained on file by (the applicant) for five years from the expiration of the agreement."

NOTES: If Foreign Sublicensing and Retransfer is not requested, the applicant must specifically state that sublicensing/retransfer is not authorized instead of the statements above.

If U.S. sublicensing is requested, the applicant must include the statement below (otherwise, it should be omitted).

This agreement authorizes sublicensing to U.S. Persons. Exports or temporary imports by the U.S. sublicensee must be conducted as part of a separate authorization initiated by the U.S. Person.

NOTE: If expedited execution is requested, the applicant must include the statement below (otherwise, it should be omitted).

Amendments solely to add sublicensees or to change sublicensee names and addresses may be approved and take effect without requiring signatures of all parties. The following restrictions apply to such amendments:

a. New sublicensees may only be added from previously approved territories;
b. All new sublicensees and sublicensee name/address changes must be approved by DDTC;
c. After DDTC approval, the agreement holder must sign the amendment, which constitutes execution for the purposes of such an amendment;
d. Before transfers may be made to the new sublicensees:
   (1) The agreement holder must notify all other signatories of the change by providing them with a copy of the approved, signed amendment; and
   (2) Sublicensees are required to execute a Non-Disclosure Agreement (NDA).

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 the approved sublicensees – 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 signatories (and the approved sub-licensees – if applicable) located in the § 124.16 territory, and bona fide regular employees directly employed by the foreign signatory or approved sub-licensee. The exclusive nationalities/territory authorized is 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 or § 126.18, the applicant must specifically identify those exclusive nationalities under the § 124.8(5) clause (pursuant to Option 2), and NDAs must be executed for these employees.

d. The U.S. applicant (or U.S. Signatories) currently employs Foreign Person(s) of the following countries who will participate in this program: *(list countries here)*

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

NOTE: 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 foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where 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)

NOTE: 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 sublicensees 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-free 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 sublicensees 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 sublicensees 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: Paragraph (4) above must properly reference the paragraph numbering system used in the agreement and not just repeat the ITAR numbering.

(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) (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."

NOTE: This clause is written for the foreign licensee—the foreign licensee should be identified in the first parenthetical, not the U.S. applicant. Fill in the second parenthetical with the country/countries of ultimate destination or the sales territory. This may be the United States.

§ 124.9(b)

NOTE: MLAs for the production of SME must include the following required clauses verbatim.

(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) 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 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).*

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)

<u>Tab 8</u> – WDA Amendment/Re-baseline Transmittal Letter

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

May 7, 20XX

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 (or Re-baseline) to **DA xxxx-xx (050xxxxxx)** 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 Director:

Submitted herewith is a submission package for proposed Amendment No. 1 (or amendment number or re-baseline) 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/RE-BASELINE

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 distribution territory (new countries)

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)
Add foreign intermediaries or intergrators

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 U.S. Signatory

Armageddon Aerospace Corporation
1234 South Rd.
Anywhere, VA 98765

The purpose of this amendment (or re-baseline) 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, 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 Armageddon as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will Armageddon 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) Armageddon will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

(f)(3) Armageddon 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, Armageddon will so inform the Department within 60 days.

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

This agreement relates to the following U.S. Munitions List category(ies): XI(c) (list applicable USML category and subcategory from § 121). These category(ies) are not / are designated as Significant Military Equipment (SME). Identify if the hardware is SME. For multiple categories, state which are designated SME.

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

SALES REPORT SUMMARY

For a WDA amendment or re-baseline, provide a table reporting sales by year and with total sales to date. If the WDA has been re-baselined previously, ensure that sales figures are provided for the entire life of the agreement. This table does not replace the need to submit annual sales reports in accordance to § 124.14(c)(6).

Year	Dollar Value
2011	
2012	
2013	
Total	

For a WDA amendment or re-baseline, provide a table identifying all export licenses received in furtherance of the agreement over the entire life 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).

If a law firm or consulting firm is authorized to interact with the U.S. government on the applicant's behalf, state as such.

Sincerely,

Signature block

<u>Tab 9</u> – WDA Amendment/Re-baseline

Amendment No. X to DA xxxx-xx (050xxxxxx)

This amendment (or re-baseline) is entered into between Armageddon Aerospace Corporation, an entity incorporated in the State of (state) with offices at 1234 South Rd., Anywhere, VA 98765, and XXX Technologies 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 or re-baseline has a large number of parties involved, then list in bullet format for ease of review. If parties are being added or removed in the amendment, it is recommended that the list of parties and the Whereas clauses reflect the updated list of parties after all additions or deletions, and the Now Therefore clause specifies the changes that were made).

WHEREAS, Armageddon Aerospace Corporation obtained authorization for this Warehouse and Distribution Agreement on xx/xx/20xx for the warehouse and distribution of aircraft spare parts and components.

WHEREAS, XXX Technologies (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 March 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 March 31, 20XX**.

(4) The distribution of defense articles is authorized to (list countries of distribution territory). The specific governments of such countries or private entities seeking to procure defense articles pursuant to a contract with the government within the distribution territory are (list all governmental and private entities).

NOTE: Attachment(s) may be used to identify the countries of the distribution territory and the specific governmental and private entities comprising the distribution territory, but the agreement must reference such attachments under this article.

If there are foreign intermediaries included in the requested transaction, they must be identified by name in this section and are required to execute Non-Disclosure Agreements (NDAs). The following language must be included in the agreement:

> "This agreement authorizes the temporary transfer of USML-controlled defense articles to the entities listed in Attachment X prior to final transfer to the authorized end-users. As recipients of USML-controlled defense articles these entities must execute Non-Disclosure Agreements (NDAs) acknowledging receipt of USML-controlled defense articles. These

NDAs must be maintained by the applicant for five years after conclusion of this agreement pursuant to 22 CFR 122.5."

II. § 124.14(c)

NOTE: 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.

(7) XXX Technologies 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) 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.

NOTE: If 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 above § 124.14(c)(9) clause must be removed.

III. § 124.14(d)

NOTE: 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 *(or)* upon approval of the Department of State *(if a signed amendment was submitted and no modifications are directed by proviso).*

Armageddon Aerospace Corporation	XXX Technologies

<u>Tab 10</u> – Request for Proviso Reconsideration

(Date)

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) xxxx-xx (050xxxxxx) approved license dated (month/day/year) related to (commodity in DTC license)

Reference: DTCL Case (original case number; any precedent cases directly related)

Dear Director:

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 – Sublicensee Non-Disclosure Agreement (NDA)

NON-DISCLOSURE AGREEMENT[5]
For DTCL Case _____

(Sublicensee company name) acknowledges and understands that any technical data related to defense articles on the U.S. Munitions List, to which (Sublicensee company name) has access or which is disclosed to (Sublicensee company name) under this license by (licensee company name/names) is subject to export control under the International Traffic in Arms Regulations (Title 22, Code of Federal Regulations, parts 120-130). (Sublicensee company name) hereby certifies 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 Defense Trade Controls Licensing, U.S. Department of State.

§ 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 foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where 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.

[5] 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. Similarly, NDAs containing slightly different verbiage (i.e. those NDAs signed prior to the release of Revision 4.2 of these guidelines) do not need to be re-executed.

For Sublicensees on MLAs, add the following:

§ 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 sublicensees 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-free 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 sublicensees 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 sublicensees 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 Sublicensees 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 Sublicensees 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 Authorized Representative of Sublicensee Company

_____

Date

<u>Tab 12</u> – Dual National/Third-Country National Non-Disclosure Agreement (NDA)

NON-DISCLOSURE AGREEMENT[6]
For DTCL Case _____ (or § 126.18)

I, _____, acknowledge and understand that any technical data related to defense articles on the U.S. Munitions List and proprietary data that I will have access to or which is disclosed to me by (employer's name) are subject to control under United States law (the International Traffic in Arms Regulations (the "ITAR").

I hereby certify that such controlled technical data will not be further disclosed, exported, or transferred in any manner not authorized under the ITAR, except with the prior written approval of the U.S. Department of State and [employer's name]. I certify that I will report promptly to [employer's name] and its security and export control officers any inquiry or request to provide controlled technical or proprietary data to any third person without authority.

I further certify that I have never acted for, represented, or provided ITAR controlled information to and do not currently act for, represent, or provide ITAR controlled information to any country or person acting on its behalf that is subject to Section 126.1(a) of the ITAR, including but not limited to Iran, Syria, North Korea, Sudan, China, Burma, Cuba, or Libya, or any entity that is owned or controlled by such country. Furthermore, I certify that I understand and will comply with the notification requirements of Section 126.1(e) of the ITAR or any other U.S. law.

I make this certification voluntarily and understand and agree that it may be provided to the government of [employer's location] and the United States which have an interest in ensuring that controlled defense articles and technical data are not provided or transferred to persons without authority.

_____
Signature & Printed Name & Address

_____
Date

[6] 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. DN/TCNs previously approved by DDTC for a given agreement are not required to re-execute an NDA with this new language if the DN/TCN request remains pursuant to § 124.8(5). Previously approved DN/TCNs whose employers choose to re-vet an individual pursuant to § 126.18(c)(2) must re-execute an NDA with this language. Case numbers are not required for NDAs pursuant to § 126.18(c)(2) since the NDA may be used for a DN/TCN's work under multiple agreements. Case numbers are required for NDAs pursuant to § 124.8(5). If the DN/TCN is working under multiple agreements, a single NDA may be used for the DN/TCN, but the NDA must list all applicable agreement numbers.

Tab 13 – WDA Non-Disclosure Agreement (NDA)

NON-DISCLOSURE AGREEMENT[7]
For DTCL Case _____

(Integrator/intermediary name) acknowledges and understands that any technical data related to defense articles on the U.S. Munitions List, to which (Integrator/intermediary name) has access or which is disclosed to (Integrator/intermediary name) under this license by (licensee company name/names) is subject to export control under the International Traffic in Arms Regulations (Title 22, Code of Federal Regulations, parts 120-130). (Integrator/intermediary name) hereby certifies 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 Defense Trade Controls Licensing, U.S. Department of State.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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:

[7] 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. Similarly, NDAs containing slightly different verbiage (i.e. those NDAs signed prior to the release of Revision 4.2 of these guidelines) do not need to be re-executed.

> "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."

§ 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.

§ 124.14(c)(9). 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."

NOTE: If 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 above § 124.14(c)(9) clause must be removed.

For WDAs involving the Distribution of SME, add the following:

§ 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.

§ 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.

For Integrators/Intermediaries 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 Integrator/Intermediary

_____

Date

<u>Tab 14</u> – In Furtherance of Letter of Explanation

Month DD, YYYY

In reply refer to:
Company Tracking Code (if applicable)

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/MA/DA 050XXXXXX (TA/MA/DA XXXX-XX)

References: List any applicable references

Dear Director:

(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 (AG/TA/MA): 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."

Hardware Proviso (DA): The most recent hardware proviso is Proviso # (insert proviso #) from DA 050XXXXXX (insert amendment letter, if any) and it stated:

"Export of hardware in furtherance of this agreement by separate license is authorized. If used, separate license and purchase documentation must be submitted in accordance with Section 15.1 of the Guidelines for Preparing Electronic Agreements and must reference this agreement."

3. Hardware Identification: The hardware that is the subject of this license request can be found in (insert location) of the agreement/amendment 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, 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:

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. (N/A for DA) $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 sales was reported as $xxx,xxx,xxx. (insert value)

e. (DA Only) As of the last sales report, dated (insert date), the total of all sales was reported as $xxx,xxx,xxx. (insert value)

f. (DA Only) Congressional Notification information.

- If the activities under the WDA were previously notified, provide the following information: "This agreement was previously notified under DTC # xx-xx pursuant to Article 36(c) on (month/day/year) for $xxx,xxx,xxx under DSP-5 050xxxxxx." (If this information was not provided in a proviso from DTCL, provide the DSP-5 number and calendar year of Notification. If the agreement was notified multiple times, provide information on all previous notifications).

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

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. signatory 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: (Copies of previously approved IFO licenses are no longer required to be attached to new IFO submissions. However, if the applicant chooses to attach previously approved licenses, attach a single PDF file with all DTC approvals.)

b. Agreement/Amendments: (when exporting IFO an electronically approved and executed agreement, upload a single PDF file with the text of the most recently approved and executed agreement or amendment, including attachments/exhibits/annexes. When exporting IFO a paper agreement, upload a single PDF file with the text of the base agreement and all amendments, including attachments/exhibits/annexes.)

c. Summary Matrix of Prior Export Authorizations: (This matrix must be included as part of the letter. If no previous IFO export authorizations were approved, that must be stated.)

d. (DA Only) If Congressional Notification is required, the applicant should reference the location of an Executive Summary for Congressional Notification, a signed Letter of Intent between the applicant and the foreign licensee, and a description of any direct or indirect offsets associated with the transaction. The executive summary and signed Letter of Intent must be uploaded to the DSP-5 vehicle. DTCL cannot proceed beyond initial staffing without these documents.

(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 applicable)
The applicant or its vendors **have** paid, or offered, or agreed to pay, political contributions, fees or commissions in amounts as specified in § 130.9(a). Information required under § 130.10 is attached.

< or >

The applicant or its vendors **have** paid, or offered, or agreed to pay, political contributions, fees or commissions in amounts as specified in § 130.9(a). The Part 130 Statement is identical to the previous report submitted as part of case number 050XXXXXX.

If additional information is required, please contact (insert company POC, phone number, and email).

If a law firm or consulting firm is authorized to interact with the U.S. government on the applicant's behalf, state as such.

Sincerely,

Signed by an Empowered Official

Appendix B – Reserved

Appendix C – Merger and Acquisition Flow Chart – Deleted

For information on this topic, please see current guidance on the DTC website at http://www.pmddtc.state.gov/licensing/documents/gl_GCsMandA.pdf.

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 "DTrade"
3	n/a	Click on "DTrade 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-" or "USOP-" followed by the applicant's internal code (e.g., AG-13ABC001) ***No Spaces***
5	n/a	Attach documents per Section 17.1 of these Guidelines (35 MB limit)
6	n/a	Open up DSP-5
7	2	Type your registration code
8	3	Select country(ies) of ultimate destination (must equal Block 14)
9	4	Type "Not Required"
10	5	Fill in applicant's information (and subsidiary if applicable)
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 subcategories proposed for export or temporary import, 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 – a hardware subcategory must not be selected). 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.[8] For WDAs, enter $1 since no value is associated with a WDA.
23	n/a	**Click on Add to open up the "Additional Commodities" page.** This will

[8] This data DOES NOT eliminate the requirement for the applicant to provide itemized values via the (a)(6) table in the transmittal letter.

		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 full physical address (to include postal code) of foreign licensees. List foreign end-users (to include sales and repair parties) and marketing/distribution recipients* (other than U.S.). **Note:** Foreign end-users who are also signatories to the agreement need only be listed <u>once</u> as a foreign signatory. When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name. **End-User, Marketing, and Distribution example:** Name: Enter Full Name of party (e.g., Government of Sweden) Address: Enter "End-User", "Marketing", or "Distribution" as applicable City: Once again, enter "End User", "Marketing", or "Distribution" as applicable Country: Enter the applicable country * For non-governmental foreign end-users and marketing/distribution recipients, enter full physical address. For governmental foreign end-users and marketing/distribution recipients who are also a foreign licensee, enter full physical address. A physical address is not needed for non-signatory foreign government end users. List any Additional Transfer Territories when transfers need to take place outside the territories of the foreign signatories or sublicensees. **Additional Transfer Territory example:** Name: < Enter Additional Transfer Territory > Address: < Enter n/a > City: < Enter n/a > Country: < Enter the country code >

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 foreign intermediaries. If none for a WDA, enter "No Foreign Intermediaries" in the name block, N/A in address blocks, and the primary country of transaction in the country box. When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name.
32	17	Check "Same as Block 5"
33	18	List **all** countries of Dual Nationals and Third-Country Nationals requested pursuant to § 124.8(5). If § 124.16 and/or § 126.18 are the only DN/TCNs referenced in the agreement, check None for Block 18. **For example:** Name – Enter "DN/TCN" Address – "DN/TCN" City – "DN/TCN" Country – Enter Country of DN/TCNs Role – "DN/TCN" **DN/TCNs from § 126.1(a) countries and DNs from Non-§ 126.1(a) countries must be identified by name in this Block. See Section 3.5.2.d(5) of these Guidelines for § 126.1 instructions.** If space launch services apply to the agreement, identify known or potential foreign launch service providers in Block 18 of the DSP-5. For example: Name: < Enter Full Name of Launch Authority (Service Provider) > Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used > City: < Enter City of the Launch Site > Country: < Enter the Country Code for the for the Country where Launch would take place > Role: < Enter "Launch Service Provider" > Note: Sales, Marketing or Distribution Parties must be listed by name in Block 14.
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 case

		was previously Returned Without Action, identify this as a resubmission of Case 050xxxxxx.
36	21	List all U.S. signatories (including the applicant/subsidiary as applicable). Check "Same as Block 5" only when the U.S. signatories actually are the same as Block 5. The addresses entered in this block should match the addresses used in the agreement (i.e. operating location). When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name. If space launch services apply to the agreement, identify known or potential U.S. launch service providers in Block 21 of the DSP-5. For example: Name: < Enter Full Name of Launch Authority (Service Provider) > Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used and Enter "(Launch Service Provider)" > City: < Enter City of the Launch Site > State: < Enter State of the Launch Site > ZIP Code: < Enter ZIP Code of Launch Site > Country: < Enter United States>
37	22	Check the appropriate § 126.13[9] and § 130 blocks. For Part 130 to apply, both of the criteria must be met: $500,000 or more total value of the agreement, and for the use of the armed forces of a foreign country or international organization. Part 130 is not applicable to WDAs since WDAs do not have value associated with them.
38	n/a	Forward submission to DDTC
39	n/a	Once DTrade 2 generates a nine-digit "05" identification number, attach any additional supporting material documents per Section 17.2 these Guidelines

[9] 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 "DTrade"
3	n/a	Click on "DTrade 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-" or "USOP-" followed by the applicant's internal code (e.g., AG-M32509A) ***No Spaces***
5	n/a	Attach documents per Section 17.1 of these Guidelines (35 MB limit)
6	n/a	Open up DSP-5
7	2	Type your registration code
8	3	Select country(ies) of ultimate destination (must equal Block 14)
9	4	Type "Not Required"
10	5	Fill in applicant's information (and subsidiary if applicable)
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 commodity(ies), SME status (e.g., "No SME"), highest level of classification of data/articles/services to be exported, all USML categories and subcategories proposed for export or temporary import, 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 – a hardware subcategory must not be selected). 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 submissions, only input requested value increase from the previously approved agreement/amendment; if no value increase or if value decrease, enter $1.[10] For re-baseline submissions, enter the total value of the proposed re-baselined agreement (i.e. the value that was previously approved plus any value that is currently being added). For WDA re-baselines or amendments, enter $1 since no value is associated with a WDA.
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 full physical address (to include postal code) of foreign licensees. List foreign end-users (to include sales and repair parties) and marketing/distribution recipients* (other than U.S.). **Note:** Foreign end-users who are also signatories to the agreement need only be listed <u>once</u> as a foreign signatory. When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name.

[10] This data DOES NOT eliminate the requirement for the applicant to provide itemized values via the (a)(6) table in the transmittal letter.

		End-User, Marketing, and Distribution example: Name: Enter Full Name of party (e.g., Government of Sweden) Address: Enter "End-User", "Marketing", or "Distribution" as applicable City: Once again, enter "End User", "Marketing", or "Distribution" as applicable Country: Enter the applicable country * For non-governmental foreign end-users and marketing/distribution recipients, enter full physical address. For governmental foreign end-users and marketing/distribution recipients who are also a foreign licensee, enter full physical address. A physical address is not needed for non-signatory foreign government end users. List any Additional Transfer Territories when transfers need to take place outside the territories of the foreign signatories or sublicensees. **Additional Transfer Territory example:** Name: < Enter Additional Transfer Territory > Address: < Enter n/a > City: < Enter n/a > Country: < Enter the country code >
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, provide the name and address for all foreign intermediaries. If none for a WDA, enter "No Foreign Intermediaries" in the name block, N/A in address blocks, and the primary country of transaction in the country box. When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name.
32	17	Check "Same as Block 5"
33	18	List **all** countries of Dual Nationals and Third-Country Nationals requested pursuant to § 124.8(5). If § 124.16 and/or § 126.18 are the only DN/TCNs referenced in the agreement, check None for Block 18. **For example:** Name – Enter "DN/TCN" Address – "DN/TCN" City – "DN/TCN" Country – Enter Country of DN/TCNs Role – "DN/TCN"

		DN/TCNs from § 126.1(a) countries and DNs from Non-§ 126.1(a) countries must be identified by name in this Block. See Section 3.5.2.d(5) of these Guidelines for § 126.1 instructions. If space launch services apply to the agreement, identify known or potential foreign launch service providers in Block 18 of the DSP-5. For example: Name: < Enter Full Name of Launch Authority (Service Provider) > Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used > City: < Enter City of the Launch Site > Country: < Enter the Country Code for the for the Country where Launch would take place > Role: < Enter "Launch Service Provider" > Note: Sales, Marketing or Distribution Parties must be listed by name in Block 14.
34	19	Check "Same as Block 5"
35	20	Check "Other". If case is a Re-baseline, begin this Block with, "This is a Re-baseline of AG/TA/MA/DA xxxx-xx." For Amendments, begin this Block with, "This is Amendment No. xx to TA/MA/DA xxxx-xx (050xxxxxxxx)." 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 case was previously Returned Without Action, identify this as a resubmission of Case 050xxxxxx.
36	21	List all U.S. signatories (including the applicant/subsidiary as applicable). Check "Same as Block 5" only when the U.S. signatories actually are the same as Block 5. The addresses entered in this block should match the addresses used in the agreement (i.e. operating location). When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name. If space launch services apply to the agreement, identify known or potential U.S. launch service providers in Block 21 of the DSP-5. For example: Name: < Enter Full Name of Launch Authority (Service Provider) > Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used and Enter "(Launch Service Provider)" > City: < Enter City of the Launch Site > State: < Enter State of the Launch Site > ZIP Code: < Enter ZIP Code of Launch Site >

		Country: < Enter United States>
37	22	Check the appropriate § 126.13[11] and § 130 blocks. For Part 130 to apply, both of the criteria must be met: $500,000 or more total value of the agreement, and for the use of the armed forces of a foreign country or international organization. Part 130 is not applicable to WDAs since WDAs do not have value associated with them.
38	n/a	Forward submission to DDTC
39	n/a	Once DTrade 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 "DTrade"
3	n/a	Click on "DTrade 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-" or "USOP" 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 country(ies) of ultimate destination (must equal Block 14)
9	4	Type "Not Required"
10	5	Fill in applicant's information (and subsidiary if applicable)
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), 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 subcategories proposed for export or temporary import, Total Agreement Value, and "Request for reconsideration of Proviso #X"
20	10	For "Defense Article Type," always select "Technical Data"
21	11	Fill in primary USML Category Number (based on tech data being exported – a hardware subcategory must not be selected). 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
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 full physical address (to include postal code) of foreign licensees. List foreign end-users (to include sales and repair parties) and marketing/distribution recipients* (other than U.S.). **Note:** Foreign end-users who are also signatories to the agreement need only be listed <u>once</u> as a foreign signatory. When listing the name of an entity in the Name field, list **only** the legal name. Do not include "subsidiary of" statements, partial address or location clarifiers, or go-by names in the Name field, unless those are part of the legal name. **End-User, Marketing, and Distribution example:** Name: Enter Full Name of party (e.g., Government of Sweden) Address: Enter "End-User", "Marketing", or "Distribution" as applicable City: Once again, enter "End User", "Marketing", or "Distribution" as applicable Country: Enter the applicable country * For non-governmental foreign end-users and marketing/distribution recipients, enter full physical address. For governmental foreign end-users and marketing/distribution recipients who are also a foreign licensee, enter full physical address. A physical address is not needed for non-signatory foreign government end users. List any Additional Transfer Territories when transfers need to take place outside the territories of the foreign signatories or sublicensees. **Additional Transfer Territory example:** Name: < Enter Additional Transfer Territory >

		Address: < Enter n/a > City: < Enter n/a > Country: < Enter the country code >
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, provide the name and address for all foreign intermediaries. If none for a WDA, enter "No Foreign Intermediaries" in the name block, N/A in address blocks, and the primary country of transaction in the country box.
32	17	Check "Same as Block 5"
33	18	List **all** countries of Dual Nationals and Third-Country Nationals requested pursuant to § 124.8(5). If § 124.16 and/or § 126.18 are the only DN/TCNs referenced in the agreement, check None for Block 18. **For example:** Name – Enter "DN/TCN" Address – "DN/TCN" City – "DN/TCN" Country – Enter Country of DN/TCNs Role – "DN/TCN" **DN/TCNs from § 126.1(a) countries and DNs from Non-§ 126.1(a) countries must be identified by name in this Block. See Section 3.5.2.d(5) of these Guidelines for § 126.1 instructions.** If space launch services apply to the agreement, identify known or potential foreign launch service providers in Block 18 of the DSP-5. For example: Name: < Enter Full Name of Launch Authority (Service Provider) > Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used > City: < Enter City of the Launch Site > Country: < Enter the Country Code for the for the Country where Launch would take place > Role: < Enter "Launch Service Provider" > Note: Sales, Marketing or Distribution Parties must be listed by name in Block 14.
34	19	Check "Same as Block 5"
35	20	Check "other" and enter "Request for reconsideration of Proviso # XX to TA/MA/DA-xxxx-xx (050xxxxxx)." Then restate the original scope from Block 20.
36	21	List all U.S. signatories (including the applicant/subsidiary as applicable). Check "Same as Block 5" only when the U.S. signatories actually are the same as Block 5. The addresses entered in this block should match the

		addresses used in the agreement (i.e. operating location). If space launch services apply to the agreement, identify known or potential U.S. launch service providers in Block 21 of the DSP-5. For example: Name: < Enter Full Name of Launch Authority (Service Provider) > Address: < Enter the Known or Potential Space Launch Vehicle(s) that may be used and Enter "(Launch Service Provider)" > City: < Enter City of the Launch Site > State: < Enter State of the Launch Site > ZIP Code: < Enter ZIP Code of Launch Site > Country: < Enter United States>
37	22	Check the appropriate § 126.13[12] and § 130 blocks. For Part 130 to apply, both of the criteria must be met: $500,000 or more total value of the agreement, and for the use of the armed forces of a foreign country or international organization. Part 130 is not applicable to WDAs since WDAs do not have value associated with them.
38	n/a	Forward submission to DDTC

[12] 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 UN
ARTICLES AND RELATED UNCLASSIFIED TECH

Input Transaction Number:
Your transaction number must be preceded by "AG-" to specify that this is an Agreement Submission Package

*Transaction Number: AG-TAA-DSP-5-Vehicle-1

Please note that an Asterisk (*) next to a field in the documents desig

No classified information can be included in this application. Classified informa
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 annexes.
2. Total uploaded submission package must be less than 35 MB.
3. 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 DP-5 Number, and click on "Upload Additional Documentation".

DSP-5

Guidelines for Preparing Agreements (Revision 4.3)

DSP-5, Page 1 of 10

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 08/15/2011

* 2. PM/DDTC Applicant/ Registrant Code M-0000

* 3. Country of Ultimate Destination: Austria United Kingdom

* 4. Probable Port of Exit from U.S.: Not Required

Insert list of foreign countries for Foreign Licensees, End-Users, Marketing and Distribution recipients

Must type in "Not Required"

5. Applicant's Name, Address

*Applicant is: ☐ Government ☒ Manufacturer ☐ Exporter ☐ Subsidiary

*Name Armageddon Aerospace Corporation

*Attention I.M. Overworked

*Address 1234 South Rd.

*City Anywhere

*State VA * ZIP Code 98765

*Telephone # 123-456-7890

Fill in your company's information. If submitting for subsidiary, enter subsidiary's information as well.

cy and telephone number of personnel (not PM/DDTC) familiar with the commodity.

* Name Major Minor

* Telephone # 777-777-7000 Ext.

* Agency Air Force

ame and telephone numbers of applicant contact if U.S. ernment needs additional information.

I.M. Overworked

*Telephone # 123-456-7890 Ext.

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: ☐

*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:

Check "ONLY completely new shipment" when New Agreement, or "ONLY the unshipped balance under license numbers" when an Amendment/Re-baseline

For Amendments check this box and list all previous amendments and base agreement.

For b, d and e – Mark as applicable

Line Item #	*9. Quantity	*10. Commodity	* 11. USML Category Number	$ Value
1	1 Unit Type: Lots	Technical Assistance Agreement for the integration, troubleshooting, and maintenance of the How to Write Agreements Processor. USML Categories: XI(c) and XI(d). NoSME. Unclassified. Total Value is: $29,000,000	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.	Unit Price: 29,000,000 Line Item Total: 29,000,000

Defense Article Type: Technical Data

View ☒

*13. TOTAL VALUE (Sum of All Pages) $ 29,000,001

Use Primary USML Category based on Technical Data

Always: Quantity – "1" Unit Type – "Lots"

Use info from Transmittal Letter subject line – Identify TA, MA, or DA, and the commodity; SME status; Classification; all USML Categories; and Total Value

For New Agreements or Re-Baselines use full value. For Amendments use change in value only. If no value increase, enter $1.

Click "Add" to identify document upload status in Commodity Line #2

Always Technical Data for Agreements

DSP-5, Page 2 of 10

14. Name and address of foreign end-user

* Name: XXX Technologies

*Address: Full Address (no P.O. Box)

*City: City

*Country: AU

View ☒

List all Foreign Licensees, End-Users, Marketing and Distribution recipients. Click on "Add" to include more.

15. Manufacturer of Commodity

☒ Same as Block 5

ZIP Code

Add ☐

16. Name and address of foreign consignee

☐ Same as Block 14

*Name: No Sublicensees

*Address: N/A

*City: N/A

*Country: AU

Add ☐

List all Sublicensees. Click on "Add" to include more. If no sublicensees, enter "No Sublicensees" with "N/A" in the address/city fields and the primary foreign country in the country field.

17. Source of Commodity

☐ Same as Block 5 ☐ Same as Block 15

ZIP Code

Add ☐

18. Name and address of foreign intermediate consignee

☐ None

* Name: DN/TCN

*Address: DN/TCN

*City: DN/TCN

*Country: CI

*Role: DN/TCN

View ☒

List countries of all Dual Nationals / Third-Country Nationals pursuant to § 124.8(5). DN/TCNs from § 126.1 countries must be listed by name (see Section 3.5.1 in these guidelines).

19. Name and address of Seller in United States

☒ Same as Block 5 ☐ Same as Block 15 ☐ Same as Block 17

*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)

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 case is a Re-baseline, begin this Block with, "This is a Re-baseline of AG/TA/MA/DA xxxx-xx)." For Amendments, begin this Block with, "This Amendment No. xx to TA/MA/DA xxxx-xx (050xxxxxxxx)." If case was previously

View Page 10 - Specific Purpose

21. Name and address of consignor and/or freight forwarder in United States

☐ Same as Block 5

* Name: Armageddon Aerospace Corporation

*Address: 1234 South Rd.

*City: Anywhere

*State: VA *ZIP Code: 98765

View ☒

List all U.S. Signatories to include the Applicant and/or Subsidiary as applicable.

Block 20 should concisely state the purpose of the submission (to include amendment modifications, as well as any other significant information). If case is a Re-baseline, begin this Block with, "This is a Re-baseline of AG/TA/MA/DA xxxx-xx." For Amendments, begin this Block with, "This is Amendment No. xx to TA/MA/DA xxxx-xx (050xxxxxxxx)." If case was previously RWA'd, identify case number.

DSP-5

22. Applicant's statement

I [ ]

Will be filled in automatically after digitally signed

an empowered official (ITAR 120.25) or an official of a foreign government entity in the U.S., hereby apply for a license to
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
criminal statutes enumerated in 22 CFR 120.27 since the effective date of the Arms Export Control Act,
1976); or is ineligible to contract with, or to receive a license or other approval to import defense articles
export lisence or other approval from any agency of the U.S. Government.

Select the appropriate Certification statement. By selecting a or c – this eliminates need for separate attachment letter. Selecting b, d, e, or f 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 the transa
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
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
Defense Trade Controls in order to resume standard submission of applications, not
of the ITAR. Please see the attached letter from an official that is authorized by the

Select the appropriate Part 130 statement. This statement is made on the agreement as a whole and not individual amendments.

***Compliance with 22 CFR 130 (Select one)**

☐ 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 vend
any sale for which a license or approval is requested, political contributions, fees or

☐ 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.

Additional Commodities Page # 1 of 1

Additional Commodities

DSP-5, Page 5 of 10

Line Item #	*9. Quantity	*10. Commodity	11. USML Category Number
2	1 Unit Type: Lots	All Documents 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. Enter $1 for Value.

Additional Foreign End Users

*Name	AAAA Systems Incorporated	Name	
*Address	Full Address (no P.O. Box)	Address	
*City	City	City	
*Country	UK	Country	
*Name	Government of Australia	Name	
*Address	End User	Address	
*City	End User	City	
*Country	AU	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, End Users, and Marketing/Distribution Recipients in Block 14.
Parties that are not included on the DSP-5 will be proviso'd out (the same is applicable for Sublicensees in Block 16). If the parties are not listed, DDTC cannot screen them and therefore cannot approve the parties that are missing from the form.

Additional Foreign Intermediate Consignees Page # 1 of 1

Additional Foreign Intermediate Consignees

DSP-5, Page 7 of 10

*Name	DN/TCN	Name	
*Address	DN/TCN		
*City	DN/TCN		
*Country	SF	Country	
*Role	DN/TCN	Role	
*Name	Tran V. Nguyen	Name	
*Address	Dual National		
*City	Vietnam and Australia		
*Country	VN		
*Role	Dual National		
Name		Name	
Address		Address	
City		City	
Country		Country	
Role		Role	
Name		Name	
Address		Address	
City		City	
Country		Country	
Role		Role	

Include the countries of all DN/TCNs requested pursuant to § 124.8(5) in Block 18.

DNs or TCNs from § 126.1 countries must each be listed by name in Block 18. See Section 3.5.1(b)(4) of these guidelines for specific instructions.

Additional Consignors in United States

*Name	U.S. Agreement Writers Guild	Name	
*Address	Full Address (no P.O. Box)		
*City	Anywhere		
*State	VA *ZIP Code 20112	State	ZIP Code
Name		Name	
Address		Address	
City		City	
State	ZIP Code	State	ZIP Code
Name		Name	
Address		Address	
City		City	
State	ZIP Code	State	ZIP Code
Name		Name	
Address		Address	
City		City	
State	ZIP Code	State	ZIP Code
Name		Name	
Address		Address	
City		City	
State	ZIP Code	State	ZIP Code
Name		Name	
Address		Address	
City		City	
State	ZIP Code	State	ZIP Code

All U.S. Signatories must be listed in Block 21 to include the applicant and/or subsidiary as applicable.

Description of Transaction **Continuation to Block 8** DSP-5, Page 9 of 10

A. This Application represents only the unshipped balances under license

Used for Amendments to Agreements. Include base Agreement number

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. ☒

Mark and include as necessary

050xxxxxx

730xxxxxx

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 Re-Baseline/Amendment submissions: Fill in all previous amendments and the base agreement numbers in Block C. Identify DSP-5 vehicle number (s) when applicable.

D. The commodities are being financed under case numbers

Complete as applicable.

Foreign Military Sale ☐

Foreign Military Financing ☐

Grant Aid Program ☐

Full View of Description
Item #20 of the DSP-5

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 case is a Re-baseline, begin this Block with, "This is a Re-baseline of AG/TA/MA/DA xxxx-xx)." For Amendments, begin this Block with, "This is Amendment No. xx to TA/MA/DA xxxx-xx (050xxxxxxxx)." If case was previously Returned Without Action, identify this as a resubmission of Case 050xxxxxx.

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 Controls
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 Controls Compliance
DTCL	Defense Trade Controls Licensing
DTCP	Defense Trade Controls Policy
DTSA	Defense Technology Security Administration
ECR	Export Control Reform
EO	Empowered Official
EU	European Union
FMS	Foreign Military Sales
FRN	*Federal Register* Notice
GC	General Correspondence
ITAR	International Traffic In Arms Regulations
LO	Licensing Officer
MDE	Major Defense Equipment
MLA	Manufacturing License Agreement
MTEC	Missile Technology Export Control Group
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
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
USOP	United States Operations
WDA	Warehouse and Distribution Agreement

Appendix F – References

U.S. Department of State, Directorate of Defense Trade Controls homepage. Available at: http://www.pmddtc.state.gov.

22 CFR 120-130, "International Traffic in Arms Regulations," available at: http://www.pmddtc.state.gov/regulations_laws/itar_official.html. [Note: this version of the ITAR may not contain all of the latest changes. Consult the Federal Register Notices.]

"Federal Register Notices," Directorate of Defense Trade Controls website. Available at: http://www.pmddtc.state.gov/FRN.html.

"Export Control Reform," Directorate of Defense Trade Controls website. Available at: http://www.pmddtc.state.gov/ECR/index.html.

22 U.S.C. 2778, "The Arms Export Control Act (P.L. 90-629)." Available at: http://uscode.house.gov/search/criteria.shtml.

United States Department of Defense, Defense Technology Security Administration website. Available at: http://www.dtsa.mil.

Sample Technology Control Plan. Available at: http://www.dss.mil/isp/foci/sample_tech_con_plan.html.

DSCA 5105.38-M, "Security Assistance Management Manual (SAMM)," Appendix 1, (Nonrecurring Cost Recoupment Charges for Major Defense Equipment) April 30, 2012. Available at: http://www.samm.dsca.mil/appendix/appendix-1.

DoD 5220.22-M, "National Industrial Security Program Operating Manual," 2/28/2006 paragraph 10-202(c)(1-8). Available at: http://www.dss.mil/documents/odaa/nispom2006-5220.pdf.

"Executive Order 11958--Administration of Arms Export Controls." January 18, 1977. Available at: www.archives.gov/federal-register/codification/executive-order/11958.html.

Department of Commerce, Bureau of Industry and Security website. Available at: http://www.bis.doc.gov/.