

Procurement Guidance - (4/2014)

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

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T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

A Agreements, Cooperative Agreements, Gifts and Bequests

1 Agreements Revised 7/2012

a. *Applicability.* This section applies to interagency agreements, intra-agency agreements, other transactions, cooperative agreements, and international agreements for services, supplies (including construction) and real property to the extent authorized by law. This section **does not** apply to Airport Improvement Program grants and cooperative research and development agreements, which are governed by other directives, as follows:

(1) Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989.

(2) Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program."

b. *Types of Agreements.*

(1) *General.*

(a) As discussed above, FAA has broad general authority to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA.

(b) Agreements may be made on such terms and conditions as the Administrator may consider appropriate

(i) With or without reimbursement; *and*

(ii) With another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, foreign governments, and private entities.

(c) Agreements are classified into six general categories as follows:

(i) Interagency Agreements;

(ii) Intra-agency Agreements;

(iii) Other Transactions;

- (iv) Cooperative Agreements;
- (v) International Agreements; and
- (vi) Reimbursable Agreements and Other Transaction Reimbursable Agreements.

(2) *Interagency Agreements.* An interagency agreement is a written agreement between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where FAA agrees to receive from, or exchange supplies or services with, the other agency, and FAA funds are obligated. The requesting agency is the agency that needs the services, supplies or facilities; the servicing agency provides the services, supplies or facilities to the requesting agency. Interagency agreements under which FAA purchases services, supplies, or facilities through another Federal agency's contract is an interagency procurement, and AMS Guidance T3.8.1.A.4 "Interagency Procurement" must also be followed when placing this type of agreement.

(a) *OMB Circular A-76.* Where FAA requires the servicing agency to perform a commercial activity, the CO should conduct a cost comparison under OMB Circular A-76.

(b) *Joint Activities with Department of Defense (DOD).*

(i) DOD has the same exemptions from acquisition laws as are waived by the Administrator in the AMS when:

(A) The FAA and DOD are engaged in joint actions;

(B) DOD's contribution to the total cost of the activity is significant (more than ten (10) percent; and

(C) The purpose of the acquisition is to improve or replenish the national air traffic system. Joint actions include situations where both agencies share the same mission need and engage in joint activities to plan and implement the solution.

(ii) Where these three criteria are met, either FAA or DOD may conduct the acquisition using the policies of the AMS.

(3) *Intra-agency Agreements.* An Intra-agency agreement is a written agreement between FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an Intra-agency agreement to provide services or supplies to, or receive services or supplies from or through OST or another DOT operating administration.

All Intra-agency agreements with OST and with the John A. Volpe Transportation

Systems Center (Volpe Center) must use DOT Form 2300.1a. For Volpe Center Intra-agency agreements, the statement of work must be attached to the completed Form 2300.1a. Volpe Center Intra-agency agreements are otherwise processed in PRISM in accordance with detailed business process instructions (FAA only).

(4) *Other Transactions.*

(a) An Other Transaction (OT) is typically an agreement between FAA and a non-Federal entity (either foreign or domestic) where FAA's purpose is to obtain a direct benefit that advances the agency's mission while also providing assistance to the general public. In some cases, including multi-party transactions, an OT provides the flexibility to develop partnering relationships with industry in meeting agency objectives. For example, FAA may enter into an OT agreement with another party to jointly develop a system, which FAA may eventually purchase through a procurement contract, but the system might also be purchased by airport authorities and foreign air traffic organizations. Another instance might be the construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.

(b) In addition to joint funding agreements, in-kind contributions are allowed. The FAA is specifically authorized to use or accept the services, equipment, personnel, and facilities of non-Federal entities and to cooperate with them in the use of FAA's services, equipment, personnel, and facilities.

(c) OT agreements should be carefully drafted to avoid the inadvertent creation of a joint venture, which is separate legal entity formed to accomplish a discreet purpose. As a general rule, all parties to a joint venture agreement have joint and several liabilities for all claims arising under the agreement. In addition to other legal consequences, such agreements violate the Anti-deficiency Act and are prohibited.

(5) *Section 106 Cooperative Agreements Distinguished.* FAA also has broad authority under 49 U.S.C 106 to enter into cooperative agreements with any Federal and non-Federal entity on such terms and conditions as the Administrator may deem appropriate. These agreements are used to provide assistance to a recipient and are more fully covered in Section 2. below.

(6) *International Agreements.*

(a) Agreements with foreign governments, or quasi-governmental entities are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA's interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e).

(b) When a foreign government is a party to the transaction, the agreement is a

government-to-government agreement governed by international law. The FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

(c) In negotiating agreements with foreign private civil aviation authorities and other quasi-governmental entities, FAA consults with DOS on foreign policy issues that might arise under such agreements.

(d) The program office lead or CO should coordinate with the Office of International Aviation (API), which has organizational responsibility for coordinating the agreement with the DOS and the responsible U.S. embassy, and for transmitting the agreement to the foreign entity for signature.

(e) Department of State clearance is not required for agreements with private contractors; however, the program office lead may consult with API in appropriate circumstances.

(f) *Approval of Administrator.* The FAA Administrator or designee must approve equipment purchases by a foreign government or quasi-governmental entity under any FAA prime contract.

(7) *Reimbursable Agreements and Other Transaction Reimbursable Agreements.* Agreements under which FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity is a reimbursable agreement, and AMS Guidance T3.8.1A.5 must be followed in addition to FAA Order 2500.35D "Reimbursable Agreements Covering Goods and Services Provided by FAA" dated August 30, 2007. See also the FAA Financial Manual and Reimbursable Agreement Standard Operating Procedure (SOP) "Creating, Executing, and Implementing Reimbursable Agreements" (FAA only) for reimbursable agreements and approved templates.

c. *Requirements.*

(1) All agreements must be in writing and should contain a clear statement of requirements, applicable terms and conditions, the legal authority for the agreement, termination and dispute resolution provisions, and where appropriate, a fund citation and payment provision.

(2) There is no requirement for competition or public announcement.

(3) *Justification.* Each agreement should be supported by a written statement describing the technical, program, or business reasons justifying the agreement. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the written rationale. Agreements valued at \$10 million or more are also subject to Chief Financial

Officer (CFO) approval as required by AMS Guidance T3.2.1.4, and the justification must be included in the business case submitted as part of the CFO review package.

(4) Agreements with private entities and public authorities, other than Federal agencies, may take the form of a memorandum of understanding or memorandum of agreement. A memorandum of understanding is not legally binding on the Government, while a memorandum of agreement creates a legally binding commitment.

(5) *Content.* All agreements must be in writing and at a minimum contain:

- (a) A clear statement of requirements;
- (b) The term of the agreement;
- (c) Procedure for modifications;
- (d) The legal authority for the agreement;
- (e) Termination and dispute resolution provisions;
- (f) A fund citation and payment provision, if appropriate, or description of in-kind contribution of both parties; and
- (g) Other terms and conditions, as appropriate, addressing such matters as intellectual property and indemnification provisions, and restoration and disposition of Government property.

(6) *Requirements for Agreements with Federal organizations.* All FAA agreements (including interagency and intra-agency agreements (except as noted below)) with Federal departments, agencies, or entities must include:

- (a) The common agreement number and the funding source;
- (b) The Treasury Account Symbol (TAS), or appropriation code, for both parties;
- (c) The Business Event Type Code (BETC) for both parties;
- (d) The effective date and duration of the agreement, to include the expiration of the funding source;
- (e) The amount and method of payment;
- (f) The Business Partner Network (BPN) number for both parties (which is equivalent to the Data Universal Numbering System (DUNS) Number for civilian agencies and the Department of Defense Activity Addressing Code (DoDAAC))

for Defense agencies);

(g) The method and frequency of performance (revenue and expenses) reporting;

(h) If applicable, provisions for advance payments and method of liquidating such advance;

(i) The parties' right to modify, cancel, or terminate the agreement;

(j) A dispute resolution provision specifying that disputes must be resolved pursuant to the procedures and standards of the Business Rules for Intergovernmental Transactions described in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII;

(k) A cancellation provision specifying that if a buyer, or requesting agency, cancels the order, the seller, or providing agency, is authorized to collect costs incurred before cancellation of the order plus any termination costs; and

(l) Point of contact information for CO, Contracting Officer's Representative (COR), and accounting office.

All FAA Intra-agency agreements with the OST and with the Volpe Center must use DOT Form 2300.1a in accordance with (b)(3) above.

d. *Authority.*

(1) *General Authority.* 49 U.S.C. 106(l) (6) and/or 106(m) should be cited as general authority for all agreements, except where DOD exception applies, or where the agreement is with a foreign government to provide technical assistance. In Sections 49 U.S.C. 106(l) (6) and 106(m), Congress provided FAA with specific authority to "enter into and perform such contracts, leases, cooperative agreements or other transactions as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate."

Section 106(m) also clarifies that FAA may use or accept the services, equipment, personnel, and facilities of another Federal agency, as well as a private or public entity and may do so with or without reimbursement. That section also provides specific authority to the head of another Federal agency to make the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. Additionally, the head of another Federal agency is authorized, notwithstanding any other provision of law, to transfer to, or receive from the FAA non-administrative supplies or equipment without reimbursement.

(2) *Joint Activities with DOD.* For joint activities between DOD and FAA described in subparagraph b.(2)(b) above, the legal authority in 49 U.S.C. 40121(c)(2) may also be

used.

(3) *Technical Assistance Agreements with Foreign Governments.* For technical assistance agreements with foreign governments described in Section b.(6) above, the legal authority is 49 U.S.C. 40113(e).

(4) *Parallel Authorities.* The Federal Aviation Act contains other specific program authorities applicable to certain types of agreements, which may be cited as parallel authority where appropriate. Legal counsel should be consulted for additional guidance in selecting any of the listed authorities. (See Appendix Attachment 1, *Parallel Authorities.*)

e. *Format.*

(1) *Other Transaction - Memorandum of Agreement (MOA).* Where the FAA intends to create a legally binding commitment with a non-Federal entity through an “Other Transaction,” a Memorandum of Agreement should be executed by the parties. Appendix D of this section contains a sample format.

(2) *Other Transaction - Memorandum of Understanding (MOU).* A Memorandum of Understanding is an agreement to agree and is not legally binding on either party. MOUs are appropriate where the parties seek only to memorialize policies and procedures of mutual concern, or describe other relationships *that are not intended to create legally binding obligations.*

(3) *Interagency Agreement, Intra-agency Agreement, and Cooperative Agreement.* Appendix D of this section contains sample formats for these types of agreements (except for Intra-agency agreements with OST and with the Volpe Center that must use DOT Form 2300.1a as specified above in lieu of using the sample format for Intra-agency agreements).

(4) *Reimbursable Agreements (where FAA is the servicing agency)* AMS Guidance T3.8.1A.5 must be followed in addition to FAA Order 2500.35D "Reimbursable Agreements Covering Goods and Services Provided by FAA" dated August 30, 2007. See also the FAA Financial Manual and Reimbursable Agreement SOP for reimbursable agreements and approved templates (FAA only).

f. *Funding.*

(1) *General.* Funds must be obligated to an agreement within the period of their availability consistent with the purposes of the appropriation. Additionally, when FAA funds are obligated under an agreement with a servicing agency, the obligation maintains the same impact and restrictions when it is transferred to the servicing agency. For example, funds from the FAA's Operations, RE&D and F&E accounts may be used only for the purposes of the appropriation and do not lose their character once transferred to the servicing agency. Likewise, when FAA is the servicing agency, an obligation against an appropriation of a requesting agency maintains the same impact and restrictions as the

appropriation of origin.

(2) *Economy Act*. Where the Economy Act is cited, funds must be obligated by the servicing agency **prior to expiration**, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated by the servicing agency must be returned to the requesting agency prior to their expiration date.

(3) *Military Interdepartmental Purchase Request (MIPR)*. The DOD uses MIPRs as the primary document to order goods or services from the FAA. The MIPR includes a description of the work or services DOD is requesting from the FAA, the unit price, the total price, and a fund cite. The FAA CO or other FAA official designated by their Directorate may accept the MIPR on behalf of the FAA. The person authorized to accept the MIPR should ensure the MIPR contains a clear statement of requirements before accepting the MIPR on behalf of the FAA. The DOD may use MIPR (DD Form 448) and Acceptance of MIPR (DD 448-2) to order goods from FAA. The Acceptance of MIPR Form specifies whether the identified work will be provided through reimbursement (Economy Act) or by the direct citation of funds (based on other authority) or a combination of both. Where FAA agrees to an MIPR based on reimbursement pursuant to the Economy Act, then the rules in subparagraph f.(2) above apply. If FAA accepts the funds on a direct cite basis, DOD will not record the funds as obligated until FAA provides DOD with a contract or other obligating document that cites the funds.

(4) *Other Situations*. Where the Economy Act is not cited as authority for FAA, funds are obligated at the time FAA signs the agreement and places funds on the agreement.

(5) *Disposition of Funds Received*. Funds received under an Agreement shall be credited to the appropriation from which the expenses were incurred, unless otherwise required by one of the specific program authorities cited in Paragraph D, Appendix Attachment 1, *Parallel Authorities*, or current and prior appropriation acts.

g. Approval and Execution.

(1) *Review and Approval*. The Administrator has delegated authority to award contracts, cooperative agreements and other transactions to the FAA Acquisition Executive (FAE); provided that the Administrator is given an opportunity to review any grant or cooperative agreement (other than those awarded under the preexisting authority contained in 49 U.S.C. 44912, 44505, and 47101, et seq.), or other transaction with a total cumulative value equal to, or greater than \$10 million, or which is of significant congressional interest.

The FAE subsequently redelegate this authority to the Chief of Contracting Office (COCO) for headquarters, service areas, and centers. The COCO may redelegate the authority to other qualified individuals, such as regional administrators, center

directors, and purchase card program manager. Except for the purchase card program manager, the individuals receiving delegated authority from the COCO may not redelegate their authority.

The following factors, which are not all inclusive, typically indicate that the Administrator's review is required:

- (a) The total cumulative value equals or exceeds \$10 million; or
- (b) The total cumulative value is less than \$10 million, but the following conditions are present:
 - (i) The transaction is the subject of one or more congressional inquiries; or
 - (ii) The transaction is described in a statute, committee report, or agency budget; and
 - (iii) Either the schedule, performance, or estimated cost baseline will be significantly breached by 20% or more.

(2) *Execution of the Agreement.* The CO, or other employee who has been delegated such authority, executes the agreement on behalf of the FAA, provided that the estimated dollar value of the agreement does not exceed that individual's delegated authority.

h. *Legal Review.* All agreements require legal review prior to execution. Ideally, legal counsel should be involved at the early stages of the award process to assist with selection of the appropriate legal instrument, drafting appropriate terms and conditions, and other legal issues. AGC-7 in consultation with AGC-500 is responsible for providing legal review of all international government to government agreements and agreements with international quasi-governmental entities. In the Europe, Africa and Middle East (EAME) Region, AEU-7 provides legal review for agreements with foreign governments and quasi-governmental entities. AGC-500 and regional counsel are responsible for providing legal review on all other agreements and will consult with AGC-7 on any agreements that may have foreign policy implications.

i. *Chief Financial Officer Approval.* Agreements valued at \$10 Million or more must be approved by the Chief Financial Officer (CFO) as required by AMS Guidance T3.2.1.4. The package submitted for CFO approval must include a justification as described in paragraph (c)(3) above as part of the business case. The justification must include a market analysis and supporting documentation for all alternatives considered.

j. *Disputes.* Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any

disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see e.g. 49 U.S.C. 46110).

2 Section 106 Cooperative Agreements Revised 4/2013

a. Applicability.

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

b. Authority.

(1) *General.* In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform ... cooperative agreements... as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(l)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants.* Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

c. Definitions.

(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant*. A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. *Appropriations*.

(1) *General Principles*.

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Circulars*. Several OMB Circulars impose restrictions on projects funded with Federal funds. In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow the guidance of these circulars to the extent such standards are consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

(a) *Office of Management and Budget Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education,*

Hospitals, and Other Non-Profit Organizations."

(i) OMB Circular A-110 establishes pre-award and post-award standards for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The circular does not apply to such awards or agreements where a statute specifically prescribes policies or specific standards that are inconsistent with the circular.

(ii) The circular defines an award as "financial assistance that provides support or stimulation to accomplish a public purpose." Awards include grants and other agreements in the form of money or property in lieu of money by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services in lieu of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to be entered into and administered under procurement laws and regulations.

(b) *OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.* (Note that sub-awards made by State and local governments to organizations covered by OMB Circular A-110 are covered by Circular A-110).

(c) *Allowable Costs.* The following OMB Circulars describe basic cost principles applicable to the organization incurring the cost. (a) *OMB Circular A-87, Cost Principles for State Local and Indian Tribal Governments,* (b) *OMB Circular A-122, Cost Principles for Non-profit Organizations,* excluding educational institutions and other organizations specified in the circular, and (c) *OMB Circular A-21, Cost Principles for Educational Institutions.*

(d) *Treatment of Commercial Organizations.* The FAA may extend the coverage of OMB Circular A-110 to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations.

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions: (Examples of these provisions and other clauses are included in Appendix F. OMB Circulars A-110 and A-102 also provide additional guidance for cooperative agreements funded by appropriated funds.)

- (1) A clear statement of purpose,
- (2) The legal authority for the agreement,
- (3) A description of the intended beneficiary,

- (4) A description of the level of FAA involvement,
- (5) The term of the agreement,
- (6) Authority and procedure for modifications,
- (7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,
- (8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,
- (9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,
- (10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,
- (11) FAA's right to audit for a stated period of time,
- (12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.)
- (13) Small business opportunities,
- (14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),
- (15) Dispute resolution,
- (16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)
- (17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

- (1) Technical merit and program value,
- (2) Cost/contribution of the parties,
- (3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

- (1) The purpose of the cooperative agreement,
- (2) The expected benefit to the recipient and the general public,
- (3) FAA's substantial involvement in performance of the activity, and
- (4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive (ACQ-1), who is authorized to redelegate this authority, as appropriate.

3 Gifts and Bequests Revised 7/2006

Under 49 U.S.C. 326, the Administrator has the authority to accept any conditional or unconditional gift or donation of money or property, real or personal, or of services for the FAA. Property accepted under this authority and proceeds from the sale of that property must be used, as nearly as possible, under the terms of the gift. FAA Order 2700.20A implements the Administrator's gift authority and must be consulted in determining whether a transaction should be processed as a gift. Typically, a gift is characterized by the following criteria: (1) a unilateral transfer to the Government, with or without conditions; (2) the FAA is not obligated to provide anything in return; and (3) there is no continuing relationship with the donor. For example, an airport offers to purchase and provide the FAA with a system such as a MALSR, provided that the FAA places it at that airport, and the FAA is not required to provide anything in return, but is required to maintain the equipment. In that situation, the airport is making a gift and the organizational unit must process the transaction using the process of FAA Order 2700.20A. If the airport also requires FAA to service its MALSR's in return, a procurement contract should be used as the FAA would be procuring a system by providing services as consideration. If the airport retains title to the MALSR, but the FAA would be responsible for its maintenance, the agreement should be an "other transaction."

4 Interagency Procurement Revised 10/2010

a. Applicability. This section applies to interagency procurement of services, supplies and real property. An interagency procurement is a type of interagency transaction in which one Federal agency (requesting agency) uses the contract vehicles and/or contracting services of another Federal agency (servicing agency) or agencies in order to obtain supplies, services, or real property. This section does not apply to orders placed under the General Service Administration's Federal Supply Schedules contracts, which are covered by AMS Policy 3.8.3 and AMS Guidance T3.8.3 "Federal Supply Schedules."

b. Requirements.

(1) Procurement Laws and Directives. Where FAA procures services, supplies or real property through another Federal agency contract or uses its contracting services, FAA is subject to the procurement laws applicable to that agency. In a similar vein, unless authorized by statute or regulation, other Federal agencies may not conduct acquisitions using the FAA's exemptions from acquisition laws. Joint activities with DOD as defined in AMS Guidance T3.8.1.A.1(b)(2) may be conducted using FAA AMS policy and procedures.

(2) Best Interest Determination. Each interagency procurement in which FAA is the requesting agency must be supported by a written best interest determination. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the determination. If the procurement is valued at \$10 million or more and requires CFO review and approval under AMS Guidance T3.2.1.4, the best interest determination must be done as part of the business case included in the CFO review package. The best interest determination must address the following elements:

(a) Suitability. Explain how use of the servicing agency's contract vehicle likely to result in a quality outcome that meets FAA's requirements and schedule, taking into account planning considerations described in AMS Policy 3.2.1 "Procurement Planning." For procurements valued at \$10 million or more, the determination must include information on the market analysis conducted.

(b) Value. Explain how use of another Federal agency's contract vehicle the most efficient and cost-effective means of procuring the services, supplies, or real property, as opposed to using a current FAA contract vehicle or placing a new contract directly with a vendor. Any servicing agency fees should be taken into account in assessing value.

(c) Expertise. Explain how the procurement team, including both contracting and program personnel, have the appropriate time, training, and expertise to effectively place and administer the contract work. The procurement team would consist of FAA personnel for a direct procurement - those in which FAA places an order directly with the contractor on another Federal agency's contract. The procurement team would consist of servicing agency personnel, possibly working in conjunction with FAA personnel, for an assisted procurement - those in which the servicing agency provides contracting support (such as conducting a task order competition) in addition to agreeing to allow FAA to use its contract(s).

(3) Templates. When FAA is the requesting agency in an assisted procurement, T3.8.1.D.2, Attachment 2, Sample Interagency Agreement, must be used. The CO must ensure the roles and responsibilities of the respective parties are described clearly in the agreement, including specifics on tasks such as performance monitoring, inspection and acceptance, approval of invoice payments, and restoration and disposition of property. For direct procurements, no interagency agreement document is required, but COs and program office personnel must use any templates required by the servicing agency in placing the order.

(4) Unsolicited Proposals. An interagency procurement may be used for acceptance of an unsolicited proposal, in addition to use of a single source contract action as described in AMS Guidance T3.2.2.6.A.5. Unsolicited proposals must be considered and processed in accordance with AMS Policy 3.2.2.6 and AMS Guidance T3.2.2.6 “Unsolicited Proposals,” but if an interagency procurement is used instead of a single source action, the interagency procurement best interest determination would replace the single source justification required under T3.2.2.6.A.5(b)(2).

(5) Review and Approval. Review and approval requirements for interagency procurements are the same as those for other FAA procurements.

(6) Administration. The CO administering an agreement for an assisted interagency procurement must ensure that the terms and conditions agreed to by the parties are reviewed at least annually for agreements that exceed one year. The FAA review should involve the CO, program office, and other technical and legal experts as necessary. The review should consist of a reexamination of the agreement, as supported by the best interest determination, in order to assess whether the agreement is meeting the needs of FAA. If the agreement is not meeting FAA’s needs, the review team should discuss these issues with the other party and amend or terminate the agreement as appropriate and allowed by the terms of the agreement. The annual assessment must be signed by the FAA CO and the reviewing official of the other party and documented in the agreement file.

(7) Documentation. COs entering into an agreement for an assisted interagency procurement must use the Interagency Agreement File Checklist in the FAST Procurement Forms when documenting the agreement file.

c. Authority.

(1) 49 U.S.C. 106(l) (6) should be cited as general authority for all assisted interagency procurement agreements.

(2) Where the FAA seeks to obtain supplies or services through another agency’s prime contract and to make advance payments, the Economy Act, 31 U.S.C 1535 should be cited as additional authority for FAA. In most cases, the Economy Act also provides authority for the other Federal agency.

5 Reimbursable Agreements and Other Transaction Reimbursable Agreements

Revised 7/2012

a. *Applicability.* This section applies to reimbursable agreements for services, supplies and facilities where FAA is the servicing agency and another Federal agency or non-Federal entity is the requesting agency or the sponsor. There is no obligation of FAA funds associated with reimbursable agreements. This process does not apply to Small Scale Reimbursable Agreements (SSRAs), which are defined as reimbursable agreements with a total estimated value of less than \$30,000.

b. *Requirements.*

(1) When FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity, FAA is essentially a contractor and subject to the terms and conditions of the requesting agency. When possible, FAA should use FAA-approved templates. If not possible, FAA should ensure that the other (sponsor) Federal agency's or the non-Federal entity agreement addresses the content required by T3.8.1A1.c(5). In addition to the requirements of AMS for reimbursable agreement, each CO must be familiar with and adhere to the requirements of FAA Order 2500.35D, the FAA's Financial Manual, and the FAA Reimbursable Agreement SOP referenced in T3.8.1A1.b(7).

(2) *Business Case Determination.* Each reimbursable agreement in which FAA is the servicing agency must be supported by a written business case determination that it is in the best interest of the agency to provide the service, supply or facility. The business case must also identify the benefits derived by FAA. This determination must be signed by the director of the program office, or their designated representative, and address the policy contained in Section 9 of FAA Order 2500.35D. The CO must ensure that one has been completed but determination as to whether or not the rational basis is appropriate and sufficient and whether to proceed with the reimbursable agreement lies with ABU. The CO will contact ABU with any concerns, and ABU will address them as needed with the program office.

c. *Reimbursable Agreement Process.*

(1) The program office will input a zero dollar purchase request (PR) into the PRISM system to initiate a CO's involvement. See No Cost Requisitions and Awards (FAA only).

(2) The CO coordinates with the program official based on their PR and business case to evaluate the requirement that is needed by the requesting agency and the reimbursable agreement template chosen by the agreement coordinator.

(a) If using a modifiable agreement template, the CO will work with the agreement coordinator to determine any unique terms and conditions.

(b) If the project sponsor/requesting agency requires that FAA use their reimbursable agreement template, then the CO will ensure compliance with T3.8.1A1.c(5) and that the FAA as the servicing agency has the ability to comply with the requesting agency's requirements.

(3) If there are any assets to be acquired as part of the reimbursable agreement that must be capitalized, the program office/agreement coordinator is responsible for identifying these assets in Section 4 of the reimbursable agreement. If Section 4 identifies assets, the CO must ensure that a copy of the agreement is provided to the Regional Capitalization Team and comply with FAA standardized asset capitalization procedures.

(a) Actual asset value may not be cited in the reimbursable agreement at time of execution; however, document must at least identify the asset.

(b) Software is an asset that must be capitalized.

(4) The program office is responsible for all aspects of pricing their services, supplies or facilities to ensure full reimbursement. Any negotiations between the requesting agency and the servicing agency will be conducted by program officials, and not the CO. The CO will need to check the Reimbursable Datasheet specifically Section 3, and ensure that the agreement amount and overhead percentage amount match the pricing on the reimbursable agreement. If the data sheet states that the overhead has been waived, the CO should access the reimbursable tool to validate that a properly executed "Reimbursable Agreement Waiver Request Form" has been uploaded. Since there is no obligation of dollars by the FAA, the role of the CO is to document the agreement made between the requesting and servicing agencies.

(5) As the servicing agency, the CO will sign the reimbursable agreement first and then forward to the requesting agency for final signature. The CO must have specific reimbursable agreement warrant authority for the total estimated potential value of the reimbursable agreement to sign the agreement even though the CO is not obligating dollars. Upon receipt of a fully executed reimbursable agreement from the requesting agency the CO will "award" the document in PRISM and annotate in the "notes" section the corresponding reimbursable agreement number assigned by the reimbursable tool and distribute the document to all applicable parties.

(6) *Reimbursable Agreement Administration.*

(a) *Invoicing and Payment.* The Accounting Office prepares the invoice and sends to the requesting agency for payment according to the terms and conditions in the reimbursable agreement. If the requesting agency's payment is more than 30 days past due, the program official notifies the CO and the CO contacts the requesting agency for payment. If no payment is received in the next 30 days, the issue is raised to successive levels of management within the contracting office for resolution.

(b) *Funding Log*. The CO is responsible for maintaining, as part of the contract file, a funding log to track all funds received from sponsor, either lump sum or incremental funding distribution. Acceptance of these funds will be executed by the CO. *The Program office is also responsible for tracking the funds.*

(c) *Performance*. The program office is responsible for monitoring performance. If the FAA is unable to fulfill the terms of the reimbursable agreement, the program office must notify the CO to initiate discussions with the requesting agency and possible termination of the agreement.

(d) *Modifications*. For reimbursable agreements the FAA as a servicing agency is acting in the capacity of a contractor. If a modification is required to the reimbursable agreement the requesting agency will initiate the modification. However, if the requesting agency asks the CO of the servicing agency to write the modification the CO will sign it, and forward to the requesting agency for CO signature. In no event will the FAA CO obligate or deobligate requesting agency funds.

(e) *Incremental Funding, Overruns, and Other Funding Notifications*. The program office is responsible for tracking all expenditures and requesting additional funds as required. As expenditures near 75% of available sponsor funding, the program office will notify the sponsor agency to ensure timely receipt of funding to prevent overruns.

(f) *Termination*. The servicing agency CO will be notified in the event any contract terms have been breached which may result in termination.

(g) *Closeout*. No charges may be incurred after the period of performance has expired. When performance is complete the CO will receive notice by email through the reimbursable tool. Included in the tool will be a closeout form that has already been validated by all responsible parties in the process. The CO will contact the requesting agency/sponsor by email to see if they have received all services, supplies or facilities as stated in the reimbursable agreement. When the CO receives an email response, then they can concur in the reimbursable tool. AMZ will send out an email notice through the reimbursable tool when the reimbursable agreement has been closed out. At this point the CO will go into PRISM and close the corresponding PRISM document.

(h) There is no file records retention requirement with reimbursable agreements as the reimbursable tool is the system of record and must contain all official documents.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

D Appendix

1 Attachment 1 - Parallel Authorities

49 U.S.C. 40108 - authorizes the FAA to establish training schools for FAA officers and employees. Authorizes attendance of officers and employees of other Federal entities, governments of foreign countries, and individuals from the aeronautics industry. Authorizes the Administrator to "*require payment or transfer of amounts or other consideration to offset the additional cost*" of any of "*those officers, employees, or individuals.*" **Amounts received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.**

49 U.S.C. 40113(e) - authorizes the Administrator to provide safety-related training and operational services to foreign aviation authorities with or without reimbursement. **Funds received shall be credited to the appropriation from which the expenses were incurred.**

49 U.S.C. 44502 (a)(2) - authorizes the Administrator to make an agreement with an airport owner or sponsor (includes a private owner of a public use airport) so that the owner or sponsor will provide site preparation work associated with acquiring, establishing, or improving an air navigation facility and be paid or reimbursed from the appropriated amounts (under section 48101(a)).

49 U.S.C. 44502(d) - authorizes the FAA to provide, by regulation, assistance, and sale of fuel, oil, equipment and supplies to an aircraft in an emergency. **The cost of the assistance may be credited to the appropriation from which the cost was paid.**

49 U.S.C. 47301 - 47305 - provides authority to acquire, establish and construct airport property and airway property (except meteorological facilities) in foreign territory, authority to transfer property, train foreign citizens, accept payment from a government of a foreign country or international organization for facilities or services provided the government or organization, and **authority to credit funds so received to current appropriations.**

49 U.S.C. 44903(c) - provides authority to the Administrator to authorize an airport operator to use on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel.

49 U.S.C. 44505(d) - authorizes cooperative agreements on a cost-shared basis for research, engineering and development with Federal and non-Federal entities.

49 U.S.C. 44912 - authorizes grants and cooperative agreements for research technologies to counter terrorist acts against civil aviation.

49 U.S.C. 44913 - authorizes grants under the Explosive Detection K-9 Team Training Program.

49 U.S.C. 44935(c)(2) - authorizes reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs.

49 U.S.C. 47104 - authorizes project grants for airport development from the Airport and Airway Trust Fund.

49 U.S.C. 47151 - authorizes the Administrator to give an interest in surplus airport property to a State, political subdivision of a State, or tax supported organization. Such surplus property may be used by the U.S. Government without charge if the President declares a national emergency.

2 Attachment 2 - Sample Interagency Agreement Revised 10/2007

INTERAGENCY AGREEMENT

BETWEEN

THE FEDERAL AVIATION ADMINISTRATION (FAA)

and

[CO insert name of other agency]

[CO insert agreement number]

ARTICLE I. PARTIES

[CO also insert for both parties: Business Partner Network (BPN) number; Treasury Account Symbol (TAS) or appropriation code; and Business Event Type Code (BETC)]

ARTICLE 2. SCOPE

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and *[CO insert name of the other agency]* is to *[CO insert description of the work to be performed.]*

b. Specific goals and objectives to be accomplished. *[CO describe the goals and objectives to be accomplished.]*

c. Roles and responsibilities. [*CO describe roles and responsibilities of the parties.*]

ARTICLE 3. EFFECTIVE DATE and TERM

This Agreement is effective on the date of the last signature and shall continue in effect until [*CO insert completion date of the interagency agreement*], or until earlier terminated by the parties, as provided herein.

ARTICLE 4. DELIVERY/PERFORMANCE

Work shall be accomplished according to the following schedule:

[*CO insert work schedule to be followed in performing the work.*]

ARTICLE 5. REPORTING REQUIREMENTS

[*CO describe method and frequency of reporting requirements, e.g. performance (revenue and expenses) reporting, Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.*]

ARTICLE 6. RELEASE OF TECHNICAL DATA

No information, oral or written, concerning the results or conclusions made pursuant to this Agreement shall be published or released to the public without the prior written approval of the FAA Contracting Officer.

ARTICLE 7. LEGAL AUTHORITY

This Agreement is entered into under the authority of the Federal Aviation Act of 1958, 49 U.S.C. 106(1) and 106(m), and 31 U.S.C. 1535.

[*Note 1. If this is a joint activity with Department of Defense (see T.3.8.1.b.2, Joint Activities with DOD), also cite 49 U.S.C. 40121(c) 2.*]

ARTICLE 8. POINTS OF CONTACT

FAA Program Office/Technical Officer

FAA Contracting Officer

FAA Accounting Office

Federal Agency

Address

ARTICLE 9. FUNDING AND PAYMENT

a. Funds in the amount of \$[*CO insert amount*] are hereby obligated to this Interagency Agreement. Obligation is chargeable to Appropriation Code:

[*CO insert appropriation code here*] [*CO insert PR number here*]

[*CO insert information about expiration date of funding*]

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

Billing Address:

Federal Aviation Administration

c. Method of Payment

[*CO insert description of method of payment*]

d. Upon termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

[Note 2. When the Economy Act is cited as authority, funds must be obligated by the servicing agency prior to their expiration, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to

acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated must be returned prior to their expiration date.]

[Note 3. Describe any other funding limitations, e.g. limits on the use of FAA funds for a multi-year contract.]

[Note 4. If applicable, insert provisions for advance payments and method of liquidating the advance]

ARTICLE 10. LIMITATION OF FUNDS

The FAA's liability to make payments to [*CO insert name of other agency*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

ARTICLE 11. APPROVAL OF PRIME CONTRACT/MODIFICATIONS

[Note 5. If the FAA will obtain products or services through the other Federal agency's contractor, describe the role of the FAA Contracting and Legal Offices. Typically, the FAA reviews the underlying contract and modifications, drafts the statement of work and provides other technical assistance prior to award. FAA legal reviews the underlying contract to determine if it is in compliance with FAA specific statutes and funding limitations. The following is suggested:]

Prior to executing any contract or modification to an existing contract in order to fulfill the requirements of Article [*CO insert Article Number*] of this Agreement, the [*CO insert name of other agency*] agency shall provide the FAA Contracting Officer with a copy of the contract or modification. The written concurrence of the FAA Contracting Officer shall be obtained by [*CO insert name of other agency*] prior to contract award, or execution of the modification.

ARTICLE 12. CHANGES, MODIFICATIONS

a. Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the Contracting Officer of [*CO insert name of other agency*] Agency, or their duly authorized representatives acting within the scope of their authority. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. All requests for interpretation or modification shall be made in writing.

b. The FAA Technical Officer identified in Article 8 is responsible for the technical administration of this Agreement. The FAA Technical Officer is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without the written consent of the FAA Contracting Officer.

ARTICLE 13. TERMINATION

Either party may terminate this Agreement at any time prior to its expiration date, with or

without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, plus termination costs if any, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[CO will insert here any additional termination requirements that may apply, e.g. disposition of data, return, or other disposition of property to either party.]

ARTICLE 14. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- a. The Agreement
- b. The Attachments

ARTICLE 15. PROTECTION OF INFORMATION

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

[If appropriate, the CO may include specific provisions governing the release of data developed under the Agreement.]

ARTICLE 16. DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. If the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved pursuant to the procedures and standards of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII.

AGREED:

Federal Agency

Federal Aviation Administration

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

3 Attachment 3 - Sample Intra-agency Agreement Revised 10/2007

**INTRA-AGENCY AGREEMENT
BETWEEN
NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA)
AND
DEPARTMENT OF TRANSPORTATION (OST)**

The Northwest Mountain Video Productions group (ANM Video Productions) and the Department of Transportation (OST) mutually agree to the following:

FAA RESPONSIBILITIES

The responsibilities of ANM Video Productions under this agreement include but are not limited to the following:

- a. Provide a broadcast quality video production including storyboard construction, scripting, taping, editing, and graphics/animation not to exceed 20 finished minutes. The video (1DOT Safety Video) shall be approximately 15 minutes in length and depict safety messages provided by the various modals of the Department of Transportation.
- b. Completion of video storyboard by August 15, 1998.
- c. Completion of video script by November 25, 1998.
- d. Completion of location taping with professional talent by December 9, 1998.
- e. First cut video completion by January 15, 1999.
- f. Delivery of the finished product, with a BetaCam SP master (9 master tapes total) for distribution to OST and each participating modal on or before January 31, 1999.
- g. Distribution of one VHS format duplicate to OST and each participating modal administration.

DOT RESPONSIBILITIES

The Department of Transportation (OST) will reimburse ANM Video Productions (FAA) for the total cost of the product, including master tapes and VHS copies, in the amount of \$50,000.00.

Accounting Code [*CO to insert accounting code here*]

Billing Address

NORTHWEST MOUNTAIN
VIDEO PRODUCTIONS (FAA)

DEPARTMENT OF
TRANSPORTATION (OST)

By _____

By _____

Title _____

Title _____

Date _____

Date _____

4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity *Revised 10/2007*

**MEMORANDUM OF AGREEMENT BETWEEN
FEDERAL AVIATION ADMINISTRATION (FAA)**

AND

[CO insert Name of non-Federal Party (Parties)]

ARTICLE I. PARTIES

The parties to this Agreement are the Federal Aviation Administration (FAA) and [CO insert name of Non-Federal party]

ARTICLE 2. SCOPE

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [CO insert name of Non-Federal party] is to [CO insert description of purpose of the agreement].

b. Specific goals and objectives to be accomplished:

c. Management of the project:

d. Roles and responsibilities:

Parties are bound by a duty of good faith and best effort in achieving the goals of the Agreement

e. Contributions of the Parties:

[CO describe the contributions of each party, e.g. cost-share arrangement, in-kind contributions and total estimated project cost for both parties. Describe any limitations, e.g. risk of loss for in-kind contributions, responsibility for repairs, refurbishment, and disposition.]

f. Type of Agreement:

This Agreement is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

ARTICLE 3. EFFECTIVE DATE and TERM

The effective date of this Agreement is the date on which it is signed by the FAA or [CO insert name of non-Federal party], whichever is later. This Agreement shall continue in effect until [CO insert completion date] or until earlier terminated by the parties as provided herein.

ARTICLE 4. MILESTONES

Work shall be accomplished according to the following milestones. [CO insert information in the following spaces.]

Note. This schedule should be tailored as appropriate.

<u>Milestone</u>	<u>Completion Date</u>	<u>Responsible Party</u>
Sign Agreement	_____	_____
Detailed SOW	_____	_____
Subcontract Selection(s)	_____	_____
Subcontract Approval(s)	_____	_____
Subcontract Award(s)	_____	_____
Project Completion	_____	_____

ARTICLE 5. REPORTING REQUIREMENTS

[CO describe here reporting requirements, e.g. Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.]

ARTICLE 6. INTELLECTUAL PROPERTY

a. Rights in Data

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

- (1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,
- (2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

b. Rights in Inventions

The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights – Retention by the Contractor (Short Form).

Note. This intellectual property provision is an example. Parties should carefully evaluate and include appropriate intellectual property provisions depending on the nature of the Agreement. For example, the FAA may wish to disclose technical data to the public for commercial or other purposes, which is not covered under the government purpose license described herein. Additionally, the Bayh-Dole Act, which governs rights in inventions made under funding agreements does not apply to agreements under the FAA's "other transaction" authority)

ARTICLE 7. LEGAL AUTHORITY

This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

ARTICLE 8. POINTS OF CONTACT

FAA Program Office/Technical Officer

Non-FAA Party

FAA Contracting Officer

ARTICLE 9. FUNDING AND PAYMENT

a. The FAA will contribute \$ [*CO insert amount*] as its share of the cost to perform this Agreement. The [*Co insert name of non-Federal party*] will contribute [*CO describe schedule of in-kind contributions, if any*]. Funds in the amount of \$[*CO insert amount*] are hereby committed for the term of this Agreement. Obligation is chargeable to Appropriation Code [*CO insert appropriation code*] in procurement request number[*CO insert number*].

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

Billing Address:

c. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

ARTICLE 10. LIMITATION OF FUNDS

The Government’s liability to make payments to [*CO insert name of non-Federal party*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

ARTICLE 11. APPROVAL OF SUBCONTRACTORS

The Contracting Officer shall be reasonably notified in advance of entering into any subcontract. Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain the Contracting Officer's written consent before placing any subcontract.

ARTICLE 12. AUDITS

The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy.

ARTICLE 13. CHANGES, MODIFICATIONS

Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the [*CO identify representative or designee*] of [*CO insert name of non-Federal party*]. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

ARTICLE 14. TERMINATION

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[*CO should include any additional termination requirements that may apply, e.g. return of property to either party or other method of disposition*].

ARTICLE 15. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- (a) The Agreement,
- (b) The Attachments.

ARTICLE 16. CONSTRUCTION OF THE AGREEMENT

This Agreement is an "other transaction" issued under 49 U.S.C 106 (1) and (m) is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.

ARTICLE 17. DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by [*CO describe internal dispute resolution process, e.g. management of either party, or an oversight committee*]. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

ARTICLE 18. WARRANTIES

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

ARTICLE 19. INSURANCE

[*CO insert name of non-Federal party*] shall arrange by insurance or otherwise for the full protection of [*CO insert name of non-Federal party*] from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by [*CO insert name of non-Federal party*], its employees, or contractors, or any third party acting on its behalf. [*CO insert name of non-Federal party*] agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement.

ARTICLE 20. LIMITATION OF LIABILITY

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of [*CO insert amount*] funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 21. LOWER TIER AGREEMENTS

[*CO insert name of non-Federal party*] shall include Articles [*CO insert article numbers*] suitably modified in all lower tier Agreements, regardless of tier).

ARTICLE 22. CIVIL RIGHTS ACT

[*CO insert name of non-Federal party*] shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.

ARTICLE 23. OFFICIALS NOT TO BENEFIT

AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are attached hereto and incorporated by reference into this Agreement.

ARTICLE 24. PROTECTION OF INFORMATION

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

AGREED:

<u>TBD</u>	<u>Federal Aviation Administration</u>
BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU)

Revised 10/2007

**MEMORANDUM OF UNDERSTANDING THE
FEDERAL AVIATION ADMINISTRATION**

AND

XYZ

1. Parties

The parties to this Memorandum of Understanding ("MOU") are the Federal Aviation Administration ("FAA") and XYZ.

2. Objectives

The objectives of this MOU are as follows:

(a) _____

(b) _____

3. Responsibilities of the Parties

(a) FAA

(b) XYZ

4. Funding

No funds are obligated under this MOU. Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.

5. Warranties

Neither the FAA nor [*Insert name of other party*] makes any express or implied warranty as to any matter arising under this MOU.

6. Protection of Confidential/Privileged Information

Each party shall take appropriate measures to protect proprietary, privileged or otherwise confidential information obtained as a result of its activities under this MOU.

7. Construction

The parties understand and agree that this Memorandum of Understanding does not confer any legal rights, duties or obligations on either party and is not subject to dispute in any forum. Neither party is authorized or empowered to act on behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU.

8. Effective Date/Term/Termination

This MOU shall be effective on the date of the last signature of the parties and shall remain in force until terminated by mutual agreement or unilaterally by either party upon 30 days notice to the other party.

9. Authority

The authority for this MOU is 49 U.S.C. 106 (f)(2)(A) and 106(l) and (m).

XYZ

Federal Aviation Administration

By _____

By _____

Title _____

Title _____

Date _____

Date _____

6 Attachment 6 - Sample Section 106 Cooperative Agreement Revised 4/2013

**COOPERATIVE AGREEMENT
DTFAOI-98-C-00000
Between
ABC AIRLINES, INC.
and the
FEDERAL AVIATION ADMINISTRATION**

Cooperative Agreement Letter

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I - 98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

\$XXXXXXXX

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

For ABC Airlines, Inc. For the FAA

Name Name

Date of Signature Date of Signature

COOPERATIVE AGREEMENT

DTFAOI-98-C-00000

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1. GENERAL PROVISIONS

A. Parties to the Agreement

The parties to this Cooperative Agreement (hereinafter the "Agreement") are as follows:

- 1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*
- 2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

B. Effective Date and Milestones

The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:

Milestone Completion Date Responsibility

Sign Cooperative Agreement 4/98 FAA, Lead Carrier

Convene Initial CAMCOM N/A Lead Carrier

Submit CAPS Development Plan 1/98 Lead Carrier

Submit Initial Monthly Progress Rpt Lead Carrier*

Submit Initial Budget Rpt Lead Carrier*

Approve CAPS Development Plan 4/98 FAA

Commence All CAPS Installations 3/98 Lead Carrier

Complete All CAPS Installations Lead Carrier

Conduct Alpha Testing 1/98 Lead Carrier

Conduct Beta Testing 3/98 Lead Carrier

Commence Full Operations 7-98 Lead Carrier

** Monthly reports thereafter*

C. Authority

This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to

enter into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.

II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT

A. Background

During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening

(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.

B. Objectives

The objectives of this Agreement are to achieve:

- (1) Successful implementation of the basic CAPS program, as defined herein.*
- (2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

C. Scope

Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.

CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.

D. Coordination with Related Programs

The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.

III. CONTRIBUTIONS OF THE PARTIES

The contributions of the parties to this Agreement are as follows:

A. FAA Contributions

1. Cash Contributions

The FAA will provide cash contribution to the Lead Carrier as shown below.

2. In-kind Contributions

The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:

3. Other Contributions

In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.

B. Lead Carrier Contributions

Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.

C. Limitation of Funds

Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed \$xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.

D. Reimbursement of Costs

The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to

cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:

- Fifty-percent (50%) of total amount \$xxxxxx.*
- Fifty-percent (50%) of total amount \$xxxxxx.*

These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.

Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.

E. Selection of Alternatives

The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.

IV. TECHNICAL DIRECTION

The parties agree on the following organization and roles for management of this Agreement.

A. Management Structure

The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.

Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA.

B. FAA Role

The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.

V. REQUIRED SUBMISSIONS TO THE FAA

A. CAPS Functional Specification

Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.

B. CAPS Operational Readiness Plan

Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.

C. CAPS Quality Assurance Plan

Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.

D. CAPS Project Plan

Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.

E. CAPS Monthly Project Report

- *Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*
- *Accomplishments for the past month against the project plan,*
- *Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the*

- period,
- Any updates to the CAPS Project Plans,
- Progress expected to be made in the upcoming month against the current Project Plan.

F. Alpha Test Plan and Report

The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real-time operational aspects of the on-line computer reservation system. The test performed shall exercise all

aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.

G. Beta Test Plan and Report

The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.

Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.

H. Verification of System/Software

Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to

witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.

I. Budget Report

The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.

Summary of Deliverables and Schedule:

CAPS Functional Specification 30 days after execution of Cooperative Agreement

CAPS Operational Readiness Plan 60 days after execution of Cooperative Agreement

CAPS Quality Assurance Plan 60 days after execution of Cooperative Agreement

CAPS Project Plan 30 days after execution of Cooperative Agreement

CAPS Monthly Project Report 5 days after end of month

Alpha Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Beta Test Plan and Report 30 days prior to test. Report: 10 days after completion of test.

Verification of System/Software As requested

Budget Report 5 days after end of month

** "Days" as shown are calendar days.*

VI. INTELLECTUAL PROPERTY RIGHTS

The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.

A. Ownership Rights in Developed Technology

All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, "know-how", or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.

B. U.S. Government Rights in Developed Technology

The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non-exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.

C. Marking of Intellectual Property

Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.

D. Survival

The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.

E. Laws Governing Patents, Copyrights and Other Data Rights

All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.

F. Recoupment

The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.

VII. DISPUTE RESOLUTION

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.

VIII. TERM AND TERMINATION

The performance period of this Agreement is governed by the following stipulations.

A. Term

This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.

B. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.

C. Return of Funds

In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.

D. Termination Settlement

In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.

IX. LIABILITY AND INDEMNIFICATION

Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA

will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.

Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.

X. SPECIAL PROVISIONS

A. FAA Agreements Officer

The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.

B. Notices

Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:

If to Lead Carrier If to the FAA:

Project Manager Agreements Officer

Lead Carrier, ABC Airlines Federal Aviation Administration

Carrier Address 800 Independence Avenue, S.W

_____ Washington, D.C. 20591

Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.

C. Audit

The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.

Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions

arising from performance or costs/expenses incurred under this Agreement.

Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.

D. Warranty

The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.

These warranty provisions shall survive termination or expiration of this Agreement.

E. Force Majeure

Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.

F. Security

The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.

Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.

G. Changes In Ownership

Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.

H. Lobbying Certification

Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating compliance with 31 USC 1352 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier

Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.

I. Severability

In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.

J. Construction of Agreement

This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.

K. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

L. Amendments

This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.

M. Relationship Of Parties

The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.

N. Limitation of Assignment

Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.

O. Contracting By Lead Carrier

Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.

P. Third Party Participation

Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.

7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements

SECTION 106 COOPERATIVE AGREEMENTS

1.0 Patents and Inventions

1.1 Policy

a. The disposition of rights to inventions made by small business firms and non-profit organizations, including universities and other institutions of higher education, under FAA-assisted programs is governed by Chapter 18 of Title 35 of the United States Code, commonly called the Bayh-Dole Act, 35 U.S.C. §200, et seq. In accordance with the Presidential Memorandum entitled Government Patent Policy issued on February 18, 1983 and Executive Order 12591, FAA may apply the policies of that Act to all participants in cooperative agreements. The Department of Commerce (DOC) is the lead agency for implementing the Bayh-Dole Act and has published guidance to Federal agencies at Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.

b. FAA's standard Patent Rights clause is identical to that prescribed in 37 CFR §401.14(a) except that:

1. FAA has tailored the clause to apply to funding agreements (which term includes both grants and cooperative agreements),

and to identify FAA as the interested Government agency;

2. pursuant to DOC guidance appearing in Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.5(d), FAA has added to paragraph b. of the clause a stipulation that FAA reserves the right to direct a recipient to transfer to a foreign government or research performer such rights to any subject invention as are required to comply with any international treaty or agreement identified when the grant is made as being applicable to the assisted research;

3. as permitted by 37 CFR §401.5(f), FAA has added two subparagraphs to the end of paragraph f. 7 of the clause to require recipients, or their representatives to send to FAA confirmations of the Government licenses for and copies of any U.S. patents on subject inventions; and

4. the word "recipient" is substituted for "contractor", and "cooperative agreement" is substituted for "contract."

c. FAA patent policy with respect to procurement contracts is found in the Acquisition Management System, AMS. For patent policy relating to research grants, see Chapter 8, section 5 (as amended) of FAA Order 9550.7A, Research Grants Program.

1.1.2 Standard Patent Rights Clause

Where appropriate, the Standard Patent Rights Clause found at 37 CFR §401.14, appropriately modified as explained below, should be used in every cooperative agreement awarded by the FAA unless a special patent clause has been negotiated that would better serve the interests of the FAA and the Government as a whole. The concurrence of legal counsel is required for the use of any special patent clauses that deviate from that set out at 37 CFR §401.14.

a. In cooperative agreements covered by a treaty or agreement that provide that an international organization or foreign government, research institute or inventor will own or share patent rights, FAA will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.

b. If a recipient elects not to retain rights to an invention, FAA will allow the inventor to retain the principal patent rights unless the recipient, or the inventor's employer if other than the recipient, shows that it would be harmed by that action.

c. FAA will normally allow any patent rights not wanted by the recipient, or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is

known to be interested in the relevant technology, FAA may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

1.2 Copyright

1.2.1 Rights to Copyrightable Material

The FAA shall apply the following principles governing the treatment of copyrightable material produced under FAA cooperative agreements.

a. FAA normally will acquire only such rights to copyrightable material as are needed to achieve its purposes or to comply with the requirements of any applicable government-wide policy or international agreement.

b. To preserve incentives for private dissemination and development, FAA normally will not restrict or take any part of income earned from copyrightable material except as necessary to comply with the requirements of any applicable government-wide policy or international agreement.

c. In exceptional circumstances, FAA may restrict or eliminate a recipient's control of FAA-supported copyrightable material (including computer software and associated documentation) and of income earned from it, if FAA determines that this would best serve the purposes of a particular program.

1.2.2 Standard Copyrightable Material Clause

The following copyrightable material clause should be used in every cooperative agreement awarded or entered into by FAA that relates to scientific or engineering research unless a special copyrightable material clause has been negotiated. The concurrence of legal counsel is required for the use of any special copyrightable material clauses that deviate from that set out below.

CLAUSE-COPYRIGHTABLE MATERIAL

a. "Subject writing" means any material that:

1. is or may be copyrightable under Title 17 of the United States Code; and

2. is produced by the recipient, or its employees in the performance of work under this grant, cooperative agreement or other transaction.

Subject writings include, but are not limited to, such items as reports, books, journal articles, sound recordings, videotapes, video discs, computer software and related documentation.

b. Copyright Ownership, Government License. Except as otherwise specified in the grant,

cooperative agreement, or other transaction, or by this paragraph, the recipient may own or permit others to own copyright in all subject writings. The recipient agrees that if it or anyone else does own the copyright in a subject writing, the Federal government will have a non-exclusive, nontransferable, irrevocable, paid-up license to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted works to the public.

c. Effect of International Agreements. If the cooperative agreement, or other transaction indicates it is subject to an identified international agreement or treaty, FAA can direct the recipient to convey to any foreign participant or otherwise dispose of such rights to subject writings as are required to comply with that agreement or treaty.

d. Recipient Action to Protect Government Interests. The recipient agrees to acquire, through written agreement or an employee relationship, the ability to comply with the requirements of the preceding paragraphs and, in particular, to acquire the ability to convey rights in a subject writing to a foreign participant if directed by FAA under the previous paragraph. The recipient further agrees that any transfer of copyright or any other rights to a subject writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this article.

1.3 Special Patent and Copyright Situations

1.3.1 Special Grant Provisions

At the request of the prospective recipient, or on recommendation from FAA staff, the FAA Official authorized to award or administer the cooperative agreement, with the concurrence of the cognizant Program Manager and legal counsel, may negotiate special patent or copyright provisions when that Official determines that exceptional circumstances require restriction or elimination of the right of a prospective recipient to control principal rights to subject inventions or writings in order to better achieve the objectives of the program, the mission of the FAA, or (in the case of inventions) Chapter 18 of Title 35 of the United States Code. Every special copyright or patent provision will allow the recipient, after an invention has been made or copyrightable material created, to request that it be allowed to retain principal rights to that invention or material, unless doing so would be inconsistent with an obligation imposed on FAA by statute, international agreement or pact with other participants in or supporters of the research.

2.1 Cooperative Agreements Not Primarily for Experimental, Developmental, or Research Work

Cooperative agreements not primarily intended to support experimental, developmental, or research work should include appropriate patent or copyrightable material provisions when necessary to protect the interests of the FAA and the Government as a whole.