SCIENTIFIC COOPERATION

Agreement between the
UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Canberra February 28, 2006

with

Annexes

NOTE BY THE DEPARTMENT OF STATE

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

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

AUSTRALIA

Scientific Cooperation

Agreement signed at Canberra February 28, 2006;
Entered into force February 17, 2007.
With annexes.

AGREEMENT RELATING TO SCIENTIFIC AND TECHNICAL COOPERATION

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF AUSTRALIA

AGREEMENT RELATING TO SCIENTIFIC AND TECHNICAL COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA

The Government of the United States of America and the Government of Australia, hereinafter referred to as the "Parties";

RECALLING the purposes of the Agreement Relating to Scientific and Technical Cooperation, done at Canberra on 16 October 1968, as extended and amended;

ACKNOWLEDGING that the Parties derive great benefits from their long and highly successful scientific and technological relationship;

DESIRING to set forth a framework for the conduct of the overall science and technology relationship between the Parties and to strengthen that relationship for peaceful purposes;

RECOGNIZING the importance of advancing common scientific and technical knowledge for the future prosperity and well-being of humanity; and

CONSIDERING the desirability, in areas of common interest, of promoting the closest collaboration between scientific agencies and institutions of both countries for the purpose of utilizing the results of research and development toward the economic and social benefits and industrial development of both countries;

HAVE AGREED AS FOLLOWS:

ARTICLE I
Definitions

For the purposes of this Agreement:

1. "Cooperative activity" means any activity carried on or supported by the Parties pursuant to this Agreement;

2. "Information" means scientific or technical data, results or methods of research and development stemming from joint research, and any other data relating to cooperative activities.

3. "Intellectual Property" shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967, and may include other subject matter as agreed by the Parties.

4. "Joint research" means research that is implemented with financial support from one or both Parties and that involves collaboration by participants from both Parties.

5. "Participant" means any individual or entity, including the employees of an individual or entity, engaged in a cooperative activity under this Agreement.

6. "Designee" means any individual or entity, including the employees of an individual or entity, authorized by a Party to enter into a cooperative activity under this Agreement.

ARTICLE II
Principles

1. This Agreement establishes the framework for the overall science and technology relationship between the Parties.

2. Subject to the applicable policies, laws and regulations of both countries, the Parties shall conduct their science and technology relationship on the basis of the following principles:

   A. shared responsibilities, and mutual and equitable contributions and benefits, arising in the course of collaboration;

   B. comparable access to government-sponsored or government-supported programs and facilities, and comparable access to and exchange of information in the field of scientific and technological research and development:

C. adequate and effective protection and equitable distribution of any intellectual property created in, or as a direct result of, collaboration, and adequate and effective protection of intellectual property furnished in the course of collaboration;

D. shared costs of collaboration, taking into account respective risks, benefits, and management shares; and

E. cooperation in the promotion of research and development results with the purpose of maximizing economic and social benefits and the industrial development of both countries.

3. The Parties shall, in accordance with the applicable policies, laws and regulations of both countries, strengthen their overall science and technology relationship through endeavors which may include:

A. continuing their commitment to open research and development and international cooperation;

B. continuing their policies and programs of promoting the application of results of research and development towards achieving economic and social benefits and the further industrial development of both countries;

C. further encouraging and facilitating the development of institutional research and development links;

D. further encouraging and facilitating the development of mutually beneficial research and development projects including collaboration on large-scale projects and major research and development initiatives;

E. further providing comparable opportunities for scientists, engineers and other appropriate personnel from the other country to engage in research and study in their respective facilities and government-sponsored or government-supported research programs in basic and applied research areas; and

F. other activities as may be mutually agreed.

ARTICLE III
Coordination of Cooperative Activities

1. Each Party shall designate an Executive Agent responsible for the coordination and facilitation of cooperative activities under this Agreement.

2. The Executive Agents of the Parties shall discuss and review, on a regular basis, the implementation of this Agreement, matters of importance in the field of science and technology, and policy issues related to the overall science and technology relationship between the Parties.

ARTICLE IV
Scope

1. Under this Agreement, the Parties shall support cooperative activities for peaceful purposes in such areas of science and technology as may be mutually determined.

2. The principal objects of this cooperation are to provide opportunities to exchange ideas, information, skills and techniques and to collaborate on problems and projects of mutual interest. The Parties shall encourage the timely application of research results for the economic, social and industrial benefits of both countries.

3. Implementing arrangements for cooperative activities under this Agreement may be negotiated and concluded between the Parties or their designees to establish the specific terms of cooperation. An implementing arrangement may specify the area of cooperation, the agencies involved, the procedures to be followed, including financial arrangements, and other appropriate matters. These arrangements shall take into account applicable laws and regulations of the Party in whose jurisdiction the particular cooperative activities are to be undertaken. Further, the terms of this Agreement shall apply to the implementing arrangements unless the Parties or their designees agree otherwise.

4. All areas of science and technology may be supported under this Agreement. Cooperative activities under this Agreement may include:

   A. joint research projects;

   B. joint task forces;

   C. joint studies;

   D. joint organization of scientific seminars, conferences, symposia, and workshops;

   E. training of scientists and technical experts;

   F. visits and exchanges of individual scientists, engineers and other appropriate personnel;

   G. exchanges of information on activities, policies, practices, laws and regulations concerning research and development; and

   H. other forms of cooperative activities as may be agreed.

5. Cooperative activities under this Agreement shall not be initiated without the prior mutual consent of the Parties, to be communicated through the Executive Agents designated pursuant to Article III.

6. The Parties shall encourage the participation in cooperative activities of researchers and organizations from all sectors, including universities, national laboratories and the private sector.

7. The Parties may include major government-sponsored or government-supported research programs as part of cooperative activities.

8. In appropriate cases, when agreed by the Parties or their designees, scientists, experts, agencies or institutions of third countries may be encouraged to participate in particular cooperative activities.

ARTICLE V
Dissemination of Non-proprietary Information

Scientific and technological information of a non-proprietary nature arising from cooperative activities under this Agreement shall be made available, unless it is otherwise agreed under specific circumstances, to the world's scientific community through customary channels, in accordance with the laws, regulations and procedures of each Party and its participating agency for the particular activity.

ARTICLE VI
Treatment of Intellectual Property

1. The Parties shall ensure:

   A. the adequate and effective protection of any intellectual property introduced into a cooperative activity under this Agreement; and

   B. the adequate and effective protection and the allocation of intellectual property created in the course of, or as a direct result of, a cooperative activity under this Agreement.

2. The protection and allocation of intellectual property rights and the protection of business confidential information are set out in Annex I, which constitutes an integral part of this Agreement. Annex I is applicable to all cooperative activities under this Agreement, except as otherwise specifically agreed by the Parties or their designees.

3. The termination or expiration of this Agreement shall not affect rights or obligations under this Article and Annex I.

ARTICLE VII
Security Obligations

Reciprocal security obligations related to the cooperative activities under this Agreement shall be observed in accordance with the provisions of Annex II, which forms an integral part of this Agreement.

ARTICLE VIII
Funding

1. Activities under this Agreement shall be subject to the availability of funds and to the applicable policies, laws and regulations of each Party.

2. Each Party shall bear the costs of discharging its own responsibilities under particular projects or programs. In specific cases the costs shall be borne as agreed between the Parties.

ARTICLE IX
Entry of Personnel and Equipment

Each Party shall facilitate entry to and exit from its territory of personnel, material and equipment of the other Party engaged on or used in projects, initiatives and cooperative activities under this Agreement, in accordance with its laws and regulations.

ARTICLE X
Other Agreements

This Agreement is without prejudice to cooperation that may be undertaken pursuant to other Agreements between the Parties.

ARTICLE XI
Entry Into Force and Termination

1. This Agreement shall enter into force the first day following the date on which the Parties have notified each other in writing, confirming the legal requirements for entry into force of the Agreement have been fulfilled and shall remain in force for ten years. It may be amended or extended by mutual written agreement between the Parties.

2. This Agreement may be terminated at any time by either Party upon six months' written notice. The expiration

or termination of this Agreement shall not affect the validity or duration of any implementing arrangement made under it or the rights and obligations under Annex I to this Agreement.

DONE AT ~~Sydney, this twelfth day of January~~ CANBERRA, this twenty-eighth day of February two thousand and six, in duplicate, in the English language.

US
JB

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

William A. Stanton

FOR THE GOVERNMENT OF AUSTRALIA:

Julie Bishop

ANNEX I

Intellectual Property Rights

I. General Obligation

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

II. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Agreement, "intellectual property" shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967 and may include other subject matter as agreed by the Parties.

C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Except as otherwise provided in this Agreement, disputes concerning intellectual property arising under this Agreement shall be resolved through discussions between the concerned participants or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing,

the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

III. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in paragraph IIIA above, shall be allocated as follows:

(1) Visiting researchers shall receive for any intellectual property they create, rights, awards, bonuses and royalties in accordance with the policies of the host institution.

(2) (a) Unless otherwise agreed in an implementing or other arrangement, the Parties or their participants shall jointly develop a technology management plan regarding ownership and exploitation rights to intellectual property created in the course of the cooperative activities other than those covered by III (B) (1). The technology management plan shall consider the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property, and such other factors as are deemed appropriate.

(b) If the Parties or their participants do not agree on a technology management plan under subparagraph (a) within a reasonable

time, not to exceed six months from the time a Party becomes aware of the creation of intellectual property created in the course of the cooperative activities, the Parties or their participants shall resolve the matter in accordance with the provisions of paragraph II (D). Pending resolution of the matter, any intellectual property created by persons employed or sponsored by one Party under cooperative activities shall be owned by that Party and intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties, but such intellectual property shall be commercially exploited only by mutual agreement.

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

(d) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor(s) shall disclose the inventions promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless

otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

IV. Business Confidential Information

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

ANNEX II

SECURITY OBLIGATIONS

I. PROTECTION OF INFORMATION

Both Parties agree that no information or equipment requiring protection in the interests of national defense or foreign relations of either Party and classified in accordance with applicable national laws and regulations shall be provided under this Agreement. In the event that information or equipment that is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials and the Parties shall consult concerning the need for and level of appropriate protection to be accorded such information or equipment.

II. TECHNOLOGY TRANSFER

The transfer of export-controlled information and equipment between the Parties under this Agreement shall be in accordance with the relevant laws and regulations of each Party to prevent the unauthorized transfer or retransfer of such information and equipment provided or produced under this Agreement. If either Party deems necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment shall be incorporated into the contracts or implementing arrangements under this Agreement.