

Sample Articles of Collaboration

This attachment contains a sample set of rules for governing a consortium under An AR&D project.

**ARTICLES OF COLLABORATION
FOR
(INSERT NAME)
CONSORTIUM**

REV. "1"

These Articles of Collaboration (hereinafter "Articles") are entered into among the following parties:

(INSERT COMPANY NAMES)

hereinafter collectively identified as "Parties" and individually identified as a "Party", to establish the (INSERT NAME) Consortium (hereinafter "Consortium").

WHEREAS the Parties have complementary research interests and wish to apply their talents and experiences to (INSERT PURPOSE); and

WHEREAS the principal purpose of this Consortium is neither to supply property or services for the direct benefit or use of the U.S. Government, nor to transfer a thing of value to State or local governments or other recipient to carry out a public purpose of support or stimulation authorized by U.S. laws, and thus it is not feasible or appropriate for the Parties and the Agency (defined below) to enter into a procurement contract, or grant agreement with any U. S. Government Agency; and

WHEREAS the Parties anticipate receiving partial and incremental funding from a U. S. Government agency to perform the Statement of Work; and

WHEREAS each Party reserves their right to review and accept the terms of any HHS Agreement prior to any active participation in any Consortium project described herein; and

WHEREAS the Parties wish to enter into a joint research and development venture as such term is defined in the National Cooperative Research Act of 1984 through a cooperative agreement pursuant to 31 U.S.C. §6305;

Hereinafter the following definitions apply:

- (INSERT COMPANY NAME) once having executed these Articles, is the Lead Party (hereinafter "Lead Party").
- Each of the PARTIES, once having executed these Articles, is a "Party."
- (INSERT COMPANY NAME), once having executed these Articles shall act as, or arrange for, the Financial Service Provider to the Consortium. (See Para. 7a)
- The U.S. Governmental Agency identified as providing funding to the Consortium as a whole is the HHS's Biomedical Advanced Research Project Agency (hereinafter "HHS") during the period such funding is available or being used.
- Intellectual Property means any inventions, creations, processes, mask works, works of authorship, software or other developments or improvements thereto, whether patentable, copyrightable or not. "Intellectual Property Rights" means any Rights in Intellectual Property including patents, copyrights, trade secrets and confidential information.

NOW THEREFORE, the Parties agree as follows:

1. (a) The Parties hereby establish advanced research and development Consortium to engage in a collaborative research effort of limited duration to gain further knowledge and understanding of the technologies described or identified in the HHS Agreement, for the purposes and within the Statement of Work set forth therein.(Appendix A)

(b) Subject to the availability of HHS funding, the Parties individually agree to expend "reasonable efforts," OR will provide value by accomplishing research milestones within the terms of the HHS Agreement to achieve the goals assigned to them as defined therein. By execution of these Articles, each Party authorizes the Management Committee or its designees, as its agent to enter into a single "other transaction" with HHS pursuant to 10 U.S.C. §2371 and Pandemic and All-Hazards Preparedness Act (PAHPA) Pub. L. 109-417, Sections 319L (c) (4) (B) and 319L (c) (4) (D) that shall hereinafter be referred to as "the HHS Agreement," and under which HHS shall fund the Consortium in accordance with the Schedule of Payments and Payable Milestones. During the performance of the Statement of Work, if the Management Committee reasonably determines that any Party has used its "reasonable efforts" to perform the tasks assigned to that Party in the Statement of Work for any given goal, the Management Committee will instruct the Financial Service Provider to disburse to that Party, the funds associated with that goal, such funds as have been provided by HHS. The Management Committee shall not unreasonably withhold funding

from any Party after the submission of properly prepared invoices, provided that funding has been provided by HHS to the Financial Services Provider.

(c) These Articles shall not preclude any Party from developing at its own expense derivative complimentary technology derived from its Consortium Intellectual Property but outside of the Statement of Work (hereinafter "Proprietary Technology") provided that the Proprietary Information and other rights of other Parties hereunder are not violated. The developing Party under this subparagraph reserves all Intellectual Property Rights in such Proprietary Technology so developed.

2. (a) Subject to the terms and conditions stated herein, the **Consortium will be managed and governed by a "Management Committee,"** which is empowered to determine all policy, business, financial, legal, and technical issues of the Consortium and to represent the Consortium and the Parties in reporting progress, in negotiating, and in transacting business with HHS. Specifically and without limitation, the Management Committee is empowered to redirect the research, redefine the tasks and goals of the Parties, and to proportionally equitably adjust to all Parties the amount of funding provided by HHS.

(b) The **"Voting Representative" from each Party, shall be the voting representatives** which will comprise the Management Committee. The Management Committee will meet in regular meetings at alternating locations or as is mutually acceptable to the Management Committee Parties. As specified in the HHS Agreement, all Parties and HHS may attend these meetings. The voting rights of the parties shall be as defined in Appendix B.

Each voting representative may, with prior permission of the Management Committee, be accompanied by other employees of the Party, including, without limitation, financial, business, and legal personnel. Third parties, including other Government agencies, may attend other committee meetings at the invitation of the Management Committee. The Management Committee reserves the right to designate the representatives that may attend non-(CONSORTIUM) related committee meetings.

Each Party shall have the right to specify an Alternate Voting Representative, in writing, if it's designated Voting Representative is otherwise busy, and to change its designated Voting Representative from time to time with written notice.

(c) The host representative to the Management Committee will act as chairman of the committee meetings, and will deliver notification to all Parties and HHS regarding meetings of the Management Committee. Any Voting Representative may call a special meeting of the Management Committee. **A Voting**

Representative from at least 75% of the Parties must be present in person or by telephone, to constitute a quorum of any meeting.

(d) Subject to the consent of the Management Committee, (INSERT COMPANY NAME) will appoint a Financial Service Provider to the Consortium, who will attend the committee meetings and will provide a single point of contact to the financial officers of the Parties, HHS or their designees.

(e) The Party hosting the Management Committee meetings will appoint an individual who will assure that minutes of the meetings are recorded and distributed to all Parties, within 15 days after each meeting.

(f) In the event that the Management Committee is unable to resolve any intra-consortium dispute, the dispute will be elevated to the Vice President and General Manager of, (INSERT COMPANY NAME) for resolution with the appropriate executive management of the other Parties of the Consortium. Unless (INSERT COMPANY NAME) is one of the parties involved in the dispute, the role of the (INSERT COMPANY NAME) Vice President and General Manager shall be limited to that of facilitating the dispute resolution process.

3. **A two-thirds majority agreement** of the entire Management Committee is required to make the following decisions for the Consortium:

- (a) Revise the Articles of Collaboration;
- (b) Accept modifications to or terminate any Funding Agreement with HHS;
- (c) Delegate authority of Management Committee to the Financial Service Provider and Chairman of the Management Committee;
- (d) Change or eliminate any HHS funding allocated to any Party as technically and/or financially justified, but a Party experiencing any reduction in HHS funding may pro rata reduce its internally funded participation in the Consortium;
- (e) Approve annual program plan for funding and adjusting funding to all Parties.

(f) Admit new Parties in accordance with Article 4.

(g) Define or redefine, allocate or reallocate the tasks within the scope of the Statement of Work or the HHS Agreement.

(h) Appointment of a negotiating team and delegation of the authority to one or more Parties to negotiate and execute on behalf of the Consortium, a single "Other Transaction" with HHS as set forth in Article 1 (b) herein which is acceptable to the Consortium.

HHS approval will be obtained as required in accordance with the HHS Agreement for any of the items listed above.

Unless otherwise specified by these Articles, **a simple majority vote will be required for all other issues to be passed by the Management Committee.**

4. The Management Committee may consent to admit a new member to the Consortium. Such new member shall become a Party upon its execution of these Articles. The Management Committee will consider admitting new Parties on a non-discriminatory basis, but only if the new Party's technical contributions can be justified and only on relatively comparable financial terms as the existing Parties, recognizing the risk of their contributions to date. The **factors taken into consideration will include** without limitation whether the new Party will bring to the Consortium technology otherwise unavailable on the time scale of the program or will allow the technology of the Consortium to be applied to new markets, whether the entry of the new Party will not substantially adversely affect the Intellectual Property Rights of the then existing Parties, whether the added effort would not substantially change the ongoing Consortium program, and whether the new Party could participate without diminishing HHS funding provided to the original Parties. Notwithstanding the above, the Management Committee may consider any factor in addition to those above, and its decision on admitting new Parties is discretionary and final.

5. (a) Any Party may terminate its participation from the Consortium at will, after it has provided written notice, termination budget and revised statement of work to the Management Committee thirty (30) days in advance of the effective date of the termination. The termination shall include the terminating Party's recommended replacement, if applicable. During the 30-day period, the terminating Party shall orderly wind down its effort. Subject to the availability of HHS funding, the Management Committee shall not unreasonably withhold funding to the terminating party related to the orderly winding down efforts.

(b) The **terminating Party shall make a "reasonable effort" to transfer its portion of Consortium work to other Parties or a prospective new Party of the Consortium.** The resigning party must have used reasonable efforts to achieve the goals for which HHS funding was provided, or refund the unexpended funding to the Consortium. The terminating Party must provide a license to its Consortium Intellectual Property to the Party or Parties ("the Replacing Party") designated by the Management Committee to replace the terminating Party solely for the purpose of performing the terminating Party's tasks under these Articles or under the Funding Agreement as of the date of the termination notice ("terminating Party's tasks"). This license to the Replacing Party shall be royalty-free, non-

exclusive, perpetual, sub-licensable only for the purpose of allowing the Replacing Party to subcontract the fulfillment of the Terminating Party's Tasks, except that the Replacing Party may transfer its rights under this license if it terminates its participation in the Consortium. This should be accomplished within the 30 day wind down period, if possible.

(c) The **Management Committee may terminate the participation of a Party** if that Party has committed a material breach of this Agreement. The Management Committee may give a Party written notice of a material breach and affording the opportunity to cure such breach, only if at least seventy-five (75%) percent of the Management Committee members vote ("Notice Vote") that the Party has committed a material breach of this Agreement. Such termination shall be effective only if the Management Committee members vote unanimously that the Party has not substantially cured the breach within 30 days after such notice, and the meeting occurs between 31 and 45 days after the notice. The Party subject to the termination shall have the opportunity at both meetings to demonstrate that it has not breached the Agreement. For the purposes of calculating the percentages in this Paragraph, the Party subject to the termination shall not be included.

(d) Any exiting Party shall receive the pro rata portion of any funding due for any full or partial completion of milestones under HHS Agreement as of the effective date of the termination.

6. (a) Except as provided in 6.(b), **each Party shall retain title to Intellectual Property developed in the course of the Consortium including but not limited to inventions, technical data rights and other data developed solely by its employees as a result of the performance of the Statement of Work of HHS Agreement.** Inventions or technical data jointly developed by employees of more than one Party are jointly owned by the respective inventing Parties.

(b) Consortium Intellectual Property is that Intellectual Property developed by and in the course of identified tasks assigned to and performed by any Party whether performed under HHS funding or funding provided by a Party as agreed to as in-kind contribution in the Funding Agreement and/or in these Articles. The identified tasks shall be those tasks (i) agreed to by the Party in the Statement of Work of the HHS Agreements, (ii) agreed to by the Party with other Parties of the Consortium, or (iii) assigned to the Party by the Management Committee.

However, **Consortium Intellectual Property does not include** (1) background Intellectual Property: (2) Pre-existing or concurrently developed Intellectual Property independently funded outside of the Consortium (including,

but not limited to, Proprietary Technology); or (3) continuation (improvement or subsequent) Intellectual Property of the respective Parties.

(c) All Parties grant to each other a nontransferable, royalty free, non-exclusive, sub licensable license to use their Consortium Intellectual Property, provided that such licenses and use shall be restricted solely to the performance of tasks under these Articles or under the Statement of Work of the HHS Agreement. In addition, a party shall transfer its rights under this license if it terminates its participation in this Consortium. Such transfer shall be solely for the purpose of allowing the other Parties of the Consortium to fulfill their tasks under these articles or the HHS agreement. Such licenses shall survive the resignation of any granting Party from the Consortium.

(d) All Parties agree to negotiate with other Parties to **grant royalty bearing licenses with reasonable terms and conditions** to Consortium Intellectual Property which they own for the purpose of developing and providing (**insert technology**).

(e) The Consortium favors, subject to HHS requirements, an **open-publication policy to promote the commercial acceptance of the technology** for (INSERT PURPOSE), but simultaneously desires to protect the Proprietary Information of the Parties developed both within and without the Consortium because successful commercialization of aspects of the technology by some of the Parties may depend on the proprietary nature of the information. **Each Party will individually decide whether to publish its own technical data or maintain it as proprietary.** However, as a result of its participation in this Consortium, proprietary information or hardware of one Party will necessarily be disclosed to or used by another Party. A Proprietary Information Exchange Agreement is incorporated herein and is found at Appendix "C", and will govern proprietary information exchanged among the Parties. The exchange of proprietary information between the Consortium and HHS will be governed by a similar Proprietary Information Exchange Agreement to be executed by HHS as a part of the HHS Agreement.

(f) Notwithstanding the Proprietary Information Exchange Agreement, when one Party's work depends upon the Proprietary Information of another Party, the technical data may be published to the extent that such data (i) is required for a description of the one Party's work, (ii) does not disclose proprietary information, and (iii) relates primarily to system performance and characteristics. However, publication of the proprietary information may be delayed by its owner for a time period enabling filing of patent applications, or a period of no more than twelve (12) months, whichever is lesser. In the event that the Party's work depends on proprietary information developed by another Party in tasks outside the Consortium, the proprietary information may be published only with the express written consent of the owner.

(g) **Each Party will select its inventions for which it applies for patents.** The Party is further responsible for prosecuting those applications and maintaining the resulting patents, both in the U.S. and in foreign countries. Any Party jointly owning an invention may file a patent application for it, and the co-owning Parties will in good faith cooperate in the filing and prosecution.

(h) Any patent application filed claiming Consortium Intellectual Property shall include the provision required by the HHS Agreement stating the interest of the U.S. Government.

The inventing Party will report a patent application claiming any Consortium Intellectual Property to the Management Committee within one month of the filing and upon request; provide a copy of the application including a short abstract but without claims, to the Management Committee. The Management Committee will timely report the invention including the short abstract to all applicable Parties and to HHS, as required by HHS. All Parties agree to cooperate with each other and the Management Committee in resolving questions related to Intellectual Property, the abstracts and potential ownership rights. Any such patent information shall be covered by the Proprietary Information Exchange Agreement and shall not be disclosed by HHS to non-governmental personnel until the respective patents have issued.

(i) HHS Agreement may provide for the government to obtain certain rights in the Consortium Intellectual Property. Each Party agrees to such government rights in its Consortium Intellectual Property subject to the exclusions of §6(b). The Intellectual Property Rights provided to the Consortium by the HHS Agreement shall be provided in turn to the Parties according to the terms of these Articles. The Parties will cooperate with the Management Committee in performing any reporting, election, and rights predetermination to HHS regarding Intellectual Property as required and to provide the required information to the Management Committee.

7. (a) The Financial Service Provider will receive funds from HHS, deposit such funds in a deposit account opened in the name of the Consortium or its Parties, disburse such funds as directed by the Management Committee or as required by Attachment 3 of the HHS Agreement, and will report quarterly to the Management Committee on the finances of the Consortium. Additionally, the Financial Service Provider shall prepare all financial reports required by the HHS Agreement and submit such reports to HHS and the Management Committee, in accordance with the appropriate schedules. Each Party shall provide the required financial inputs to permit the Financial Service Provider to meet the reporting requirements. The financial reporting will not include any Party's proprietary financial or pricing

information. The tasks performed by the Financial Services Provider shall be allowable expenses to the Consortium.

(b) The HHS Agreement Statement of Work will provide for certain rights of the government to audit the financial records of the Consortium. Each Party agrees that it will reasonably cooperate with an audit of the Consortium and will allow an audit of its own applicable financial records as required by the law and upon reasonable notice. The Financial Service Provider shall be the primary facilitator for supporting these audits. All audit rights shall be limited to U.S. Government employees or the audits shall be performed by a mutually acceptable independent outside auditor.

8. THE PARTIES DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, THE IMPLIED WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO EACH OTHER, TO ANY AGENCY, AND TO THIRD PARTIES FOR ACTIONS, OMISSIONS, PRODUCTS, NON-CONFORMITIES, DEFECTS, LIABILITIES, OR INFRINGEMENT ARISING OUT OF THE ACTIVITIES OF THE CONSORTIUM. The Parties are bound to each other and to HHS entering into an agreement with the Consortium by a duty of only good faith and "reasonable efforts" research in achieving the goals of the Consortium. Joint and several liability will not attach to the Parties of the Consortium so that no Party is responsible for the actions of another Party but is responsible only for those tasks assigned to it and to which it agrees in a the HHS Agreement. THE PARTIES FURTHER DISCLAIM ANY LIABILITY FOR CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES. IN NO EVENT SHALL A PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED THE FUNDING IT HAS RECEIVED UP TO THE TIME OF INCURRING SUCH LIABILITY. Any Party may waive any right, breach or default which such Party has the right to waive, provided that such waiver shall not be effective against the waiving Party unless it is in writing, is signed by such Party, and specifically refers to these Articles. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. Nothing contained herein shall constitute a release to any Party for breach of the Proprietary Information Exchange Agreement attached hereto or infringement of intellectual property rights of the Parties.

9. No one Party has the obligation to disclose to another Party (i) information not required for the cooperative research set forth above, or (ii) any market data or plans except as such information is made publicly available.

10. (a) These Articles are not intended to be, nor shall they be construed, by implication or otherwise, as an agreement to establish a partnership (limited or otherwise), a corporation or other formal business organization or as a procurement "contract" or a "grant agreement" as described under 31 U.S.C. Sections 6303 and

6304, respectively. No Party can be bound by another Party acting as its agent except as specifically stated in Paragraph 1(b) of this Agreement. Each Party acts as an independent contractor subject only to the terms and conditions stated herein and in the HHS Agreement.

(b) No Party shall be obligated to provide any capital contribution, loan, guarantee, or other financing commitment for the benefit of the Consortium, unless required for such Party's portion of the Statement of Work and such Party agrees in writing herein or otherwise.

11. Except and to the extent as specifically set forth herein, nothing in these Articles shall be construed as conferring by implication, estoppels or otherwise any license or right under any patent, copyright, trade secret, trademark or other proprietary right of any Party.

12. Except for the disclosure of basic information regarding this Consortium, i.e., membership, purpose and a general description of the technical work, formal written approval by all Parties is required for any specific publicity or advertising relative to this Consortium Agreement. However, the Parties agree that notification of the establishment of this joint research and development venture shall be filed by XXXXX on behalf of the Parties with the U.S. Attorney General and the Federal Trade Commission in accordance with the provision of the National Cooperative Research Act of 1984 within 90 days of execution of these Articles and after adequate review by all Parties. The costs of this filing shall be borne by the Consortium.

13. (a) These Articles and the Consortium shall continue after execution of these Articles until [INSERT DATE] or terminated earlier under any provision of sub-section (b) hereof. It may be renewed at any time prior to the expiration of the term of these Articles by letter agreement signed by the authorized representatives of all the Parties who are Parties at that time.

(b) These Articles shall terminate if (i) disapproved by the Attorney General or the Federal Trade Commission; (ii) the funding of the Statement of Work is terminated by HHS; or (iii) funding is not provided by HHS by [INSERT DATE]. In the event of Termination for any reason, this agreement shall remain in full force until it is specified by the Management Committee that all business matters between the Parties have been properly settled and closed out.

(c) The obligations of confidentiality set forth in Section 6 hereof shall survive termination of these Articles.

14. The HHS Agreement will impose requirements upon the Consortium or its Parties regarding reporting, accounting, civil rights, Intellectual Property, and technology transfer information or transferring of Intellectual Property generated

with funds provided by HHS. A Party, by acceptance of such HHS funds, agrees to conform to such requirements and to reasonably cooperate with the Consortium in conforming to such requirements, subject however to the Party's right to resign as stated in 5(a) above.

15. Any notices or other communications among the Parties required or permitted hereunder shall be sufficiently given if sent by telecopy or confirmed by registered or certified mail, postage prepaid, addressed as follows:

(INSERT NAMES AND ADDRESSES)

Or such other addresses or telecopy or facsimile numbers as shall be furnished by like notice by such Party. Any such notice or communication given by mail shall be deemed to have been given three (3) business days after the date so mailed, and any such notice or communication given by telecopy shall be deemed to have been given when sent by telecopy and the appropriate answer back received.

16. Neither these Articles nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable without the prior written consent of all other Parties except to the Parties' wholly owned subsidiaries, corporate parents or such corporate parents' wholly owned subsidiaries.

17. (a) These Articles shall first become effective on the date all Participants have signed these Articles. These Articles shall be effective as to any new Parties on the date such new Party(ies) execute these Articles.

(b) These Articles may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

18. The Parties shall further execute, sign or do or procure to be executed, signed and done all such further deeds, documents and acts as may be reasonably required to enable the Parties freely and fully to pursue the goals assigned to them in the Statement of Work.

19. These Articles shall be construed under the laws of the State of (INSERT APPROPRIATE JURISDICTION).

20. These Articles constitute the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof.

21. If any provision of these Articles is deemed to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the Parties, it will be stricken and the remainder of these Articles will remain in full force and effect.

22. It is understood and agreed that the Consortium will be operated in such a manner as to minimize any taxes for which the Consortium may become liable. If this Consortium is treated as a partnership for tax purposes, Rockwell as the Financial Services Provider, shall make the election for the Consortium to expense research and development costs.

IN WITNESS WHEREOF, each of the Parties has caused these Articles to be executed by its duly authorized representatives on the respective dates entered below.

LINES FOR SIGNATURES OF PARTIES.

APPENDIX "B"

VOTING ARRANGEMENTS FOR CONSORTIUM

APPENDIX "C"
TO
ARTICLES OF COLLABORATION
FOR
(INSERT NAME) CONSORTIUM

PROPRIETARY INFORMATION EXCHANGE AGREEMENT
20 Jan 94

1. During the term of this Agreement, all parties of the (INSERT NAME) Consortium (hereinafter referred to as "parties") agree to exchange proprietary information (hereinafter referred to as "data") with Parties having a need to know, for the purpose of developing the (INSERT PURPOSE) . The effective date of this Proprietary Information Exchange Agreement shall be _____.

2. Notwithstanding that the term of this Agreement will have expired, for a period of five years from the receipt, each party agrees to keep in confidence and prevent the use (except for the purposes of this Agreement) or the disclosure to any person or persons outside the receiving party's organization, and limit the disclosure inside its organization to employees having a need-to-know, of all data received under this Agreement which is designated in writing, or marked by an appropriate stamp or legend, by the disclosing party to be of a proprietary or confidential nature. The parties shall take every reasonable effort to keep the information confidential to the extent permitted by such laws or acts. In order to be protected hereunder, data which is first disclosed orally or by demonstration must be identified as proprietary or confidential at the time of disclosure and shall be reduced to writing or other tangible form, marked as proprietary and a copy delivered to the receiving party by the disclosing party within thirty (30) days after such disclosure or demonstration of any such data. All protection and restrictions as to use and disclosure shall apply during such thirty (30) day period. Any markings, stamps, or legends identifying proprietary or confidential information hereunder shall not impose any obligations on either party inconsistent with this Agreement.

3. The above restrictions on use and disclosure shall not apply to such data if the same:
- a. Is in the public domain or in the possession of the receiving party without restriction at the time of receipt under this Agreement;
 - b. Is used or disclosed with prior written approval of the disclosing party;

- c. Is used or disclosed after five (5) years from the date of first receipt under this Agreement;
- d. Is independently developed by the receiving party;
- e. Becomes known to the receiving party from a source other than the disclosing party without breach of this Agreement by the receiving party;
- f. Is made available by the disclosing party to a third party on an unrestricted, non-confidential basis; or

4. No party shall be liable for inadvertent, accidental or mistaken use or disclosure of data obtained under this Agreement despite the exercise of the same reasonable precautions as the receiving party takes to safeguard its own proprietary information. Any copies of the data made by the receiving party shall reproduce the proprietary markings and any other legends contained thereon.

No party warrants that the data it discloses hereunder will meet the requirements of the other party or that such data, when combined with other information, or when used in a particular manner by the recipient will be sufficient or suitable for the recipient's purposes. Neither party assumes responsibility or liability whatever under this Agreement for any use of data by the recipient or its customers or agents.

5. Nothing in this Agreement shall grant to any party the right to make commitments of any kind for, or on behalf of, any party without the prior written consent of any other applicable party. Nothing herein shall grant, expressly or impliedly, any ownership right or license to use (except for the purposes stated above) data disclosed hereunder.

6. The term of this agreement, during which data may be exchanged, shall be for a period of five (5) years from the date hereof.
7. All notices hereunder shall be given by letter addressed as specified in paragraph 15 of the Consortium Agreement.
8. Security: To the extent that the obligations of the parties hereunder involve access to information classified "Top Secret", "Secret", or "Confidential", the provisions of FAR 52.204-2 Alt 1, or corresponding regulations of the appropriate Government agency, as applicable, shall apply.
9. The recipient of information transmitted under this Agreement acknowledges its obligations to control access to technical data under the U.S. Export Laws and Regulations and agrees to adhere to such Laws and Regulations with regard to any technical data received under this Agreement.