

AGREEMENT  
BETWEEN THE  
UNITED STATES OF AMERICA AND UKRAINE  
ON COOPERATION IN THE EXPLORATION AND USE  
OF OUTER SPACE FOR PEACEFUL PURPOSES

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

Recognizing the role of the two states in the exploration and use of outer space for peaceful purposes;

Recognizing the existing potential of the Parties and the mutual benefit to be gained from working together for the peaceful use of space for the welfare of all humankind;

Considering the desirability of enhanced cooperation between the two nations in space research and technology for the development of both states;

Considering the respective interest of the Parties in the potential for commercial applications of space technologies for the benefit of the peoples of both countries;

Recognizing the need to combine efforts for the efficient exploration of outer space to be an important factor in international political harmony;

Taking into consideration the Agreement between the Government of the United States of America and the Government of Ukraine on Science and Technology Cooperation, of March 4, 1994, the United States-Ukraine Joint Statement on Economic and Commercial Cooperation, of March 4, 1994, as well as other bilateral and multilateral agreements regarding science and technology cooperation to which both states are Parties;

Have agreed as follows:

Article I

The Parties, through their implementing agencies, shall carry out civil space cooperation in the fields of space communications, life and microgravity sciences and applications, studies of the Planet Earth, and other activities of mutual interest on the basis of equality, reciprocity and mutual benefit

Cooperation may include activities in such areas as:

- Remote sensing for earth sciences and applications;
- Telecommunications, space communications, professional/scientific information exchanges and telemedicine;
- Life and biomedical sciences, biotechnology, and applications;
- Microgravity science and applications;
- Space research and technology, and materials applications;
- Space sciences;
- Study of the processes of the commercial application of space-based technologies to the public and private sectors;
- Scientist and student exchanges; and
- Other space-related activities of mutual interest.

#### Article II

For purposes of developing and carrying out the cooperation envisaged in Article I of this Agreement, the Parties hereby designate, respectively, as their principal implementing agencies the National Aeronautics and Space Administration for the United States and the National Space Agency of Ukraine for Ukraine.

The Parties may designate additional implementing agencies as they deem necessary to facilitate the conduct of specific cooperation in such fields as those in Article I of this Agreement.

Each of the cooperative projects will be the subject of a specific written arrangement between the designated implementing agencies that defines the nature and scope of the project, the individual and joint responsibilities of the designated implementing agencies related to the project, and financial arrangements, if any. Intellectual property shall be protected in accordance with the provisions of Annex 1, which constitutes an integral part of this Agreement.

It is envisaged that scientific cooperation under this Agreement may lead to the generation of scientific data. The Parties will make such data available on the basis of free and open exchange, consistent with specific written arrangements to implement cooperative projects under this Agreement.

#### ARTICLE III

Cooperation under this Agreement shall be conducted in accordance with national laws and regulations of each party, and shall be subject to the availability of appropriated funds.

#### ARTICLE IV

This Agreement shall be without prejudice to the cooperation of either Party with other states and international organizations.

#### ARTICLE V

The Parties have agreed that the activities under this Agreement shall be implemented in such a way so as to ensure adequate and effective protection of intellectual property created or furnished under this Agreement. Allocation of rights to any intellectual property created under this Agreement shall take place in accordance with Annex 1, which constitutes an integral part of this Agreement. However, to the extent that it is necessary and appropriate, such arrangements may contain different provisions for protection and allocation of intellectual property.

#### ARTICLE VI

The Parties shall facilitate the movement of persons and goods necessary to implement this Agreement into and out of their territories, subject to their laws and regulations.

Subject to its laws and regulations, each Party shall facilitate provision of the appropriate entry and residence documentation for the other Party's nationals who enter, exit, or reside within its territory in order to carry out the activities under this Agreement.

The Parties shall, to the extent consistent with their laws and regulations, use best efforts to arrange free customs clearance for entrance to, and exit from, their respective countries for equipment required for implementation of this Agreement.

#### ARTICLE VII

A comprehensive cross-waiver of liability between the designated implementing agencies and their related entities (e.g., contractors, subcontractors, and participating entities associated with the Parties, including any state involved in carrying out the obligations of either of the Parties under this Agreement) shall apply to the activities under this Agreement. The cross-waiver of liability shall be broadly construed. The terms of the waiver are set out in Annex 2, which constitutes an integral part of this Agreement.

Liability for third-party claims may be determined in accordance with the Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention") of March 29, 1972. In the event of a claim arising out of the Liability Convention for which both Parties may be held jointly or severally liable, the Parties shall then consult promptly on any potential liability, on the apportionment of such liability, and on the defense of such claim.

#### ARTICLE VIII

This Agreement shall enter into force on the date of receipt by the American side of a diplomatic note that the Ukrainian side has concluded the internal procedures required for entry into force of this Agreement, and shall be in effect for 5 years. It may be extended for an additional 5-year period by an exchange of diplomatic notes. This Agreement may be terminated by either Party on six months written notice of its intent to terminate, through the diplomatic channel, to the other Party.

Done at Washington, this ~~twenty-second~~ day of November, 1994, in duplicate, in the English and Ukrainian languages, both texts being equally authentic.

FOR THE UNITED STATES  
OF AMERICA:



FOR UKRAINE:



## ANNEX 1: INTELLECTUAL PROPERTY

Pursuant to Article V of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

### I. SCOPE

a. This Annex is applicable to all cooperation 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 have the meaning found in Article 2 of the convention establishing the World Intellectual Property Organization, done in Stockholm, July 14, 1967.

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

d. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions 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.

## II. ALLOCATION OF RIGHTS

a. The Parties, or their designated implementing agencies, in accordance with Article II of this Agreement, 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 Section II(a) above, shall be allocated as follows:

1. Visiting researchers and scientists visiting primarily in furtherance of their education shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher or scientist named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

2. (a) For intellectual property created during joint research with participation from the two Parties, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own country. Rights and interests in third countries will be determined in agreements concluded pursuant to Article II of this Agreement. The rights to intellectual property shall be allocated with due regard for the economic, scientific and technological contributions from each Party to the creation of intellectual property. If research is not designated as "joint research" in the relevant arrangement concluded pursuant to Article II of this Agreement, rights to intellectual property arising from the research shall be allocated in accordance with Paragraph IIb1. In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by their institution from the licensing of the property.

(b) Notwithstanding Paragraph IIb2(a), if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests in all countries which provide rights to such intellectual property. Persons named as inventors of the property shall nonetheless be entitled to royalties as provided in Paragraph IIb2(a).

### III. BUSINESS-CONFIDENTIAL INFORMATION

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as "business-confidential" if a person having information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, 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 2: LIABILITY

With regard to activities undertaken pursuant to this Agreement, neither Party shall make any claims against the other, the other's employees, the other's related entities (e.g., contractors, subcontractors, and other participating entities associated with the Parties, including any state involved in carrying out the obligations of either of the Parties under this Agreement) or employees of the other's related entities for any injury to or death of its own employees or employees of its own related entities, or for damage to or loss of its own property or the property of its related entities, arising out of activities under this Agreement, whether such injury, death, damage or loss arises through negligence or otherwise. This cross-waiver will apply only if the person, entity, or property causing the damage is involved in activities under this Agreement, and the person, entity or property damaged is damaged by virtue of its involvement in activities under this Agreement.

In addition, each Party shall extend the cross-waiver of liability as set forth in the paragraph above to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the other Party, employees of the other Party, the other Party's related entities, and employees of the other Party's related entities.

This cross-waiver of liability specifically includes a cross-waiver of liability arising from the Liability Convention where the person, entity, or property causing the damage is involved in activities under this Agreement, and the person, entity or property damaged is damaged by virtue of its involvement in activities under this Agreement.

Notwithstanding the other provisions of this Annex, this cross-waiver of liability shall not be applicable to:

- (a) claims between a Party and its own related entity or between its own related entities;
- (b) claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person, except where a subrogee is one of the Parties;
- (c) claims for injury, death, damage, or loss caused by willful misconduct;
- (d) intellectual property claims.

Nothing in this Agreement shall be construed to create the basis for a claim or suit where none would otherwise exist.



THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 22, 1994

JOINT STATEMENT ON FUTURE AEROSPACE COOPERATION  
BETWEEN THE UNITED STATES AND UKRAINE

President Clinton and President Kuchma underscored the important role that cooperation in civil and commercial aerospace activities can play in furthering scientific, technical and economic ties between the United States and Ukraine. As a first significant step in this cooperation, the two Presidents signed an agreement on cooperation in the exploration and use of outer space for peaceful purposes that will expand joint efforts in space communications, space technology, life and microgravity sciences applications, remote sensing and earth sciences, space sciences and telecommunications.

The two Presidents agreed that future joint activities should be explored. Both Presidents recognized that the Ukrainian aerospace industry can make a valuable contribution to Ukraine's economic reform and development as it undertakes the transition to a market economy. They resolved to work together to open prospects for Ukrainian access to international aerospace markets. Noting that a preliminary dialogue addressing the potential for commercial space opportunities between the United States and Ukraine had already begun, they agreed to hold further talks on commercial launches and the scope of these activities, in accordance with market principles, with the principles contained in international arrangements for integrating economies in transition into the international space launch market, and consistent with current obligations of the two countries.

President Clinton and President Kuchma also directed the National Aeronautics and Space Administration and the Ukrainian National Space Agency to identify potential experiments and payloads, which could qualify for flight on the Space Shuttle and also to create an opportunity for a Ukrainian Payload Specialist to fly on the Space Shuttle. Both agencies will jointly report their recommendations for such a mission by March 31, 1995.

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Daily item:

**National Space Agency of Ukraine (NSAU) request for Extending CTR Programs**

Mr. Nehoda, head of the newly formed NSAU (roughly equivalent to U.S. NASA) briefed Dr. Look, his staff and CTR program office representatives on the potential for expanding the CTR program to include not only missile and silo eliminations, as required by the START Treaty, but also to include the elimination of the highly technical production equipment used to produce reentry vehicles, shrouds, penetration aids, solid rocket motor fuels, and specific test stands used for launch assist devices and control and navigation tests. Mr. Nehoda provided a rough estimate of the equipment value to be eliminated at \$2 billion and suggested a \$150 million CTR program of assistance beginning with approximately \$20M in the FY 1999. The dollar estimates are rough order of magnitude guesses by Ukrainian officials and therefore highly suspect at this point and Dr. Look dissuaded any near term (FY99) assistance; however, he stressed it was worthy of further review to consider the concept of eliminating the specific production equipment associated with reentry vehicle technology and missile test and development equipment used for specific military applications. Mr. Nehoda presented his request in the context of an overall reformation of the Ukrainian missile program away from military applications and toward commercial applications with which his country hoped to form commercial partners with U.S. companies. He wants the U.S. government to facilitate such partnerships and stated that his newly formed organization was at a decision point on where to concentrate its efforts. Other potential partnerships (he provided as examples without elaboration) could include further collaboration with the Russian Federation on updating the SS-18 as an alternative to Russia's indigenous effort to deploy the SS-X-27, or possible collaboration with China. Although, he stressed commercial cooperation with the U.S. as the preferred alternative. (Mullins)