

## IAG COVER SHEET

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II  
AND THE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND THE  
UNITED STATES AIR FORCE

IN THE MATTER OF:	)	
	)	
THE U.S. DEPARTMENT OF THE	)	FEDERAL FACILITY
AIR FORCE	)	AGREEMENT UNDER
	)	
PLATTSBURGH AIR FORCE BASE	)	CERCLA SECTION 120
Clinton County, New York	)	Administrative
	)	Docket Number:
	)	II-CERCLA-FFA-10201
	)	
	)	
	)	

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

PARTS

I.	PURPOSE . . . . .	1
II.	JURISDICTION . . . . .	2
III.	PARTIES . . . . .	3
IV.	BACKGROUND . . . . .	3
V.	JURISDICTIONAL BACKGROUND . . . . .	8
VI.	PROJECT MANAGERS . . . . .	8
VII.	DEFINITIONS . . . . .	9
VIII.	STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION . . . . .	12
IX.	WORK TO BE PERFORMED . . . . .	13
X.	EMERGENCIES AND REMOVALS . . . . .	15
XI.	CONSULTATION . . . . .	17
XII.	RESOLUTION OF DISPUTES . . . . .	22
XIII.	ENFORCEABILITY . . . . .	25
XIV.	STIPULATED PENALTIES . . . . .	26
XV.	DEADLINES . . . . .	28
XVI.	EXTENSIONS . . . . .	29
XVII.	FORCE MAJEURE . . . . .	30
XVIII.	FUNDING . . . . .	31
XIX.	REPORTING . . . . .	32
XX.	NOTIFICATION . . . . .	32
XXI.	SAMPLING AND DATA AVAILABILITY . . . . .	33
XXII.	PRESERVATION OF RECORDS . . . . .	34
XXIII.	ACCESS . . . . .	34
XXIV.	FIVE YEAR REVIEW . . . . .	35

XXV. OTHER CLAIMS . . . . . 36  
XXVI. AMENDMENT OF AGREEMENT . . . . . 36  
XXVII. TRANSFER OF REAL PROPERTY . . . . . 37  
XXVIII. PUBLIC PARTICIPATION . . . . . 37  
XXIX. PUBLIC COMMENT AND EFFECTIVE DATE . . . . . 38  
XXX. RECOVERY OF NEW YORK STATE'S EXPENSES . . . . . 39  
XXXI. RECOVERY OF USEPA EXPENSES . . . . . 42  
XXXII. NEW YORK STATE'S RESERVATION OF RIGHTS . . . . . 42  
XXXIII. TERMINATION . . . . . 43

Attachment 1

Attachment 2

## I. PURPOSE

### A. The general purposes of this Agreement are to:

1. Ensure that environmental impacts on public health, welfare and environment associated with past and present activities at Plattsburgh Air Force Base ("PAFB") are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

2. Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter jointly referred to as "CERCLA"), the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), Superfund guidance and policy, the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), RCRA guidance and policy, and Applicable or Relevant and Appropriate Requirements ("ARARs"); and,

3. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

### B. The specific purposes of this Agreement are to:

1. Identify operable unit action or removal action alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. Operable unit alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of operable unit or removal actions to the United States Environmental Protection Agency ("USEPA") pursuant to CERCLA. This process is designed to promote cooperation among the Parties in identifying operable unit or removal action alternatives prior to selection of the final alternatives.

2. Establish requirements for the performance of a Remedial Investigation ("RI") to determine fully the nature and extent of the threat to the public health or welfare, or to the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a Feasibility Study ("FS") for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and ARARs.

3. Identify the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and ARARs.

4. Implement the selected operable unit and final remedial action(s) in accordance with CERCLA and ARARs and meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), for an interagency agreement among the Parties.

5. Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein.

6. Coordinate response actions at the Site with the mission and support activities at PAFB.

7. Expedite the cleanup process to the extent consistent with protection of human health and the environment.

## II. JURISDICTION

Each party is entering into this Agreement pursuant to the following authorities:

A. USEPA, Region II enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1), and Sections 3004(u) and (v), 3008(h) and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h) and 6961, and Executive Order 12580 (52 Federal Register 2923, January 29, 1987);

B. USEPA Region II, enters into those portions of this Agreement that relate to operable unit actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), Sections 3004(u) and (v), 3008(h) and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h) and 6961, and Executive Order 12580;

C. The U.S. Air Force enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1), Sections 3004(u) and (v), 3008(h) and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h) and 6961, Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. § 2701 et seq.;

D. The U.S. Air Force enters into those portions of this Agreement that relate to operable unit actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), Sections 3004(u) and (v), 3008(h) and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h) and 6961, Executive Order 12580 and the DERP.

E. The New York State Department of Environmental Conservation ("NYSDEC") enters into this Agreement pursuant to Sections 120 and 121 of CERCLA; Sections 6001, 3006, and 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6961, 6926, 6924(u) and (v),; New York State Environmental Conservation Law ("ECL") Article 27, Titles 9 and 13; and ECL 3-0301.

### III. PARTIES

The Parties to this Agreement are USEPA, NYSDEC and the U.S. Air Force. The terms of this Agreement shall apply to and be binding upon the USEPA, the State of New York, the U.S. Air Force and their employees, agents, and assigns. The U.S. Air Force will notify USEPA and NYSDEC of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection. This Agreement shall be enforceable against all of the above mentioned Parties by the Parties to this Agreement. The U.S. Air Force shall notify its agents, members, employees, response action contractors for PAFB, and all subsequent owners, operators and lessees of PAFB of the existence of this Agreement. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. NYSDEC is responsible for any state obligations to be carried out under this Agreement, and is the lead agency for the State of New York for purposes of this Agreement.

### IV. BACKGROUND

For purposes of this Agreement, the following constitutes background information to this Agreement. None of the information contained herein shall be considered admissions by any Party.

A. PAFB, approximately 3,440 contiguous acres, is located in the northeastern portion of New York State in Clinton County. The base is bordered on the north by the City of Plattsburgh and by the Town of Plattsburgh to the west, south and east, along a narrow three mile long strip of land between the base and Lake Champlain. The base is characterized by a gently sloping topography, predominantly eastward toward Lake Champlain and secondarily to the Saranac and Salmon rivers, which border the base to the east, north and south. Three areas (locations PB-13 class 4, PB-14 class 2, and PB-15 class 2) are mapped by New York State as designated, regulated wetland areas within the base boundary. A topographic basin, located in the southwestern portion of the base, drains south to the Salmon River. Surface

and storm drainage also exits through the base golf course area and then discharges one half a mile downstream into Lake Champlain. Ground water may be diverted toward and discharge into any of these drainage streams. Ground water generally flows east-southeastward, beneath PAFB and discharges into Lake Champlain or locally into the Salmon or Saranac rivers. Areas to the north and east of PAFB are supplied predominantly with public drinking water originating from a watershed approximately 15 miles to the northwest. Private wells supply businesses and residences to the west and southern adjacent areas. USEPA estimates that over 1,500 people are served by private or community ground water wells within a three mile radius of PAFB.

B. The United States Government has maintained a military facility at Plattsburgh since 1812. The U.S Army occupied the base until 1944 when the U.S. Navy took it over for two years. Use of the base was transferred to New York State in 1946 and back to the Department of Defense ("DOD") in 1951 at which time the DOD announced plans to increase the installation by 3000 acres and build an air base. The 380th Bombardment Wing, Medium, was activated in July, 1956, and included three bomber squadrons and a refueling squadron. Currently the base is a Strategic Wing with FB-111 bombers and a KC-135 tanker fleet. The 380th Combat Support Group is the major support unit assigned to the Wing. PAFB is owned and operated by the U.S. Air Force.

C. As a result of various national defense missions carried out at PAFB, including storage, maintenance, and mission operations, among others, hazardous substances and hazardous wastes have been placed or come to be located at PAFB in various places. At the present time, PAFB has one Treatment, Storage, and Disposal Facility ("TSDF") at building 1810, currently regulated under the RCRA interim status program, four hazardous waste accumulation points at buildings 2542, 2890, 2774/2753 and 2815, and satellite accumulation points at buildings 3578, 508 and 509. Containers of hazardous waste are located in these storage areas.

D. In March, 1988, PAFB initiated two meeting formats, "Regulatory Progress" and Technical Review Committee ("TRC") meetings, to facilitate cooperation, exchange of information and participation in the Installation Restoration Program ("IRP"). Ten regulatory progress meetings and nine TRCs have been held since August, 1988. Regulatory progress meetings are attended by representatives from USEPA, NYSDEC, and PAFB. Representation on the TRC includes Clinton County, Town of Plattsburgh, City of Plattsburgh, a community representative, NYSDEC, USEPA and PAFB. Minutes of the TRC meetings are kept on file in the public repository at the Plattsburgh Public Library.

E. An ongoing multi-phase investigation has begun to determine the extent of contamination at several areas of concern ("AOCs")



at PAFB. Studies, investigations, and EPA comments to date include:

1. A DOD IRP Phase I Records Search was completed by Radian Corporation in April 1985. The study identified 22 potential disposal/spill areas at PAFB and concluded that 13 had the potential for contamination and contaminant migration and that 9 areas did not warrant further action. The report indicated that soil, sediment, and surface water samples collected at PAFB exhibited elevated concentrations of volatile organic compounds and petroleum hydrocarbons. Stained soils were observed during site walk-overs. On March 14, 1986, USEPA submitted comments on this report and agreed that 6 of the 9 sites did not warrant further action; however, USEPA recommended that areas LF-021 and the two landfills that comprise LF-022 be investigated more thoroughly. USEPA also requested more documentation of contaminated soil removal at area SP-1 and the PCB spill at SS-011.

2. A site investigation study for 13 sites was initiated in the fall of 1987 and continued through the summer of 1988. The purpose of this study was to confirm the presence of contamination in ground water, surface water, sediments and soil at PAFB. The workplan was submitted to USEPA in October, 1987, and fieldwork was conducted in accordance with that workplan. The workplan outlined a limited field investigation at the 13 areas recommended in the April, 1985 Phase I Records Search. In November, 1987, USEPA submitted comments on this workplan. However, as fieldwork had already begun, these comments were not incorporated into the workplan. Additionally six more sites, comprised of two former landfills (LF-022 and LF-023) and four other AOCs (Auto Hobby Shop [SS-018], Aerospace Ground Equipment Building [SS-006], Non-Destructive Inspection Building [SS-005], and the Golf Course Drainage System [GCD]) were added to the investigation based on their history of operations and visible soil staining. Results of this study were published in the Site Inspection Report, July 1989, which was released at the September 5, 1989, TRC meeting. Some of the findings of the Site Inspection Report included the following:

- a. Pesticides were detected in surface soils and sediment at SS-011.
- b. Hydrocarbons and pesticides were detected in the ground water and pesticides, PCBs, lead, and petroleum hydrocarbons were detected in the soil at landfill LF-021.
- c. Vinyl chloride and other aromatic contaminants were detected in ground water downgradient from landfill LF-023.

d. A floating, non-aqueous, liquid layer of free product consisting of fuel components and solvents was found on the ground water surface beneath the fire training area (FT-002). Solvents (particularly trichloroethylene) were detected in the groundwater both downgradient and upgradient (between FT-002 and LF-022) of this area.

3. On March 11, 1988, samples were taken from private drinking water wells of eight homes located south and west of landfill LF-023. On July 22, 1988, PAFB submitted to USEPA analytical results obtained from the samples. The data revealed no evidence of contamination by volatile organic contaminants.

4. Between July, 1988, and January, 1989, planning and fieldwork for remedial investigations at 5 areas of known or suspected contamination (FT-002, LF-022, LF-023, SS-011, and GCD) occurred. Copies of the RI Workplan, October, 1988, were provided to USEPA and NYSDEC Region V at the January 19, 1989 regulatory progress meeting, after fieldwork had already commenced. On 23 March, 1989, USEPA submitted to PAFB its comments on the RI Workplan. The purpose of the submittal was to communicate to PAFB what USEPA considered to be data gaps in the study and Quality Assurance/Quality Control standards that would be required by USEPA in future field investigations. Data from this investigation can be found in Validated Data, Five Priority Sites, August 1989, which was released at the September 5, 1989, TRC meeting.

5. At the September 5, 1989, TRC meeting, five additional AOCs were identified for further investigation. They include an electrical vault manhole within site SP-3, Former Engine Test Cell, Civil Engineering Paint Shop, Civil Engineering Pesticide Disposal Tank, and Landfill D-5.

6. At the October 19, 1989 TRC meeting a Technical Memorandum for Supplemental Fieldwork was distributed to USEPA and NYSDEC by PAFB for informational purposes. This technical memorandum contains supporting documentation for focused feasibility studies at FT-002 and SS-011. The work which had been performed and which was reflected in the technical memorandum included a product recovery test at FT-002 to assess free product recovery, field screening of soils to assess the extent and distribution of DDT in soils at the DRMO, and a bench-scale test of a solvent extraction procedure on soil from the DDT spill area at SS-011. Also included in the technical memorandum was a workplan to define drainage flow patterns at PAFB and determine how they interact with ground water.

7. Results of the bench-scale test for DDT-contaminated soils were included in the Plattsburgh AFB DDT-Contaminated

Soils B.E.S.T. Glassware Test Report for C.E. Environmental, Inc. by Resource Conservation Company, January, 1990.

8. Additional remedial investigation data results were tabularized in Validated Data, Supplemental Sampling Fire Training Area and Golf Course Drainage, January, 1990.

9. A February 20, 1990 letter to NYSDEC and USEPA from PAFB clarified the status of landfill remedial investigations at PAFB. This letter noted that a landfill, originally denoted D-7, is geographically within site LF-022.

10. On June 8, 1990, the Final Target Cleanup Level Evaluation (May, 1990) was transmitted to USEPA and NYSDEC. This document was intended to support the Air Force's recommendation that a 10 ppm background DDT level, after a proposed removal action at Site SS-011, will be protective of public health and the environment. On September 6, 1990, the USEPA transmitted comments regarding the document and concurrence for a 10 ppm cleanup level. NYSDEC transmitted a letter of concurrence for a 10 ppm cleanup level on September 17, 1990.

11. On July 27, 1990, a draft Sampling and Analysis Plan (July 1990) was transmitted to USEPA and NYSDEC. USEPA responded with comments on August 24, 1990 and NYSDEC responded on August 31, 1990. These comments were discussed at a project managers meeting at PAFB on September 10 and 11, 1990.

12. On August 17, 1990, PAFB transmitted the draft FT-002 Preliminary Site Characterization Summary (August, 1990) to USEPA and NYSDEC. The purpose of this document is to present a brief summary of the analytical results of remedial investigations performed at FT-002 to date and to provide a reference for evaluating future actions at the site.

13. A draft Community Relations Plan (June, 1990) was transmitted on August 3, 1990 to USEPA and NYSDEC for review. NYSDEC submitted its concurrence on the draft Community Relations Plan to PAFB on September 21, 1990. Concurrence on the document by USEPA was received on October 1, 1990.

14. On September 11 and 12, 1990, New York State Department of Health ("NYSDOH") sampled six residential drinking wells along Kemp Lane and three commercial activities along Route 22. All locations are located in the town of Plattsburgh. PAFB participated in the sampling event by collecting split samples. The sampling revealed trace levels of organic

compounds which were within NYSDOH public drinking water standards. Results of the sampling event were explained by a NYSDOH representative at the October 18, 1990 TRC meeting.

15. On October 2, 1990, the Engineering Evaluation/Cost Analysis ("EE/CA"), for site SS-011, Soil Removal Action was forwarded to USEPA and NYSDEC. On October 20, 1990, notice of the beginning of the 30 day public comment period on this proposed action was published in the Press-Republican, a local newspaper with regional circulation.

## V. JURISDICTIONAL BACKGROUND

A. PAFB was placed on the National Priorities List ("NPL") by the USEPA on November 21, 1989, 54 Federal Register 48184. The NPL was established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

B. PAFB is a "facility" within the meaning of SARA Section 211, 10 U.S.C. § 2701 et seq., and Executive Order 12580, under the jurisdiction of the Secretary of Defense.

C. PAFB is also a "facility" pursuant to Section 6001 of RCRA, 42 U.S.C. § 6961, and as such is subject to all federal, state, interstate and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent as any "person" (as that term is defined in Section 1004(15) of RCRA 42 U.S.C. Section 6903(15) and in 6 NYCRR Section 370.2(b)(102)) is subject to such requirements.

## VI. PROJECT MANAGERS

The USEPA, NYSDEC and the U.S. Air Force shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify all other Parties of the name and address of its Project Manager. Any Party may change its designated Project Manager by notifying the other Parties, in writing, within five days of the change. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Manager as set forth in Part XX, Notification, of this Agreement. Each Project Manager shall be responsible for insuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Manager represents.

Subject to the limitations set forth in Part XXIII, Access, Project Managers or their designated representatives shall have the authority to: (1) take samples, request split or duplicate samples and ensure that work is performed properly; (2) observe, take photographs and make such other reports on the progress of this work as the Project Manager deems appropriate; (3) review records, files and documents relevant to this Agreement; and (4) recommend and request minor field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures or designs utilized in carrying out this Agreement.

Any field modifications proposed under this Part by any Party must be approved orally or in writing by all three (3) Project Managers or their designated representatives to be effective. The Project Manager (or his/her designated representative) recommending the field modification shall memorialize the modification and submit the documentation to other Project Managers in writing within ten (10) working days of the oral agreement, if the agreement is made orally. If agreement cannot be reached on the proposed additional work or modification to work, the matter may be taken to dispute resolution as set forth in Part XII.

The Project Manager for the U.S. Air Force or his/her designee shall be physically present on PAFB or reasonably available to supervise fieldwork performed pursuant to this Agreement.

The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement.

The NYSDEC Project Manager may be accompanied at any meeting or site visit by a representative of the NYSDOH or the representative of any other New York State agency concerned with activities under this Agreement at PAFB.

## VII. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA Section 101, 42 U.S.C. 9601 and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (hereinafter National Contingency Plan or NCP), shall control the meaning of the terms used in this Agreement.

In addition:

- A. "Agreement" shall refer to this Federal Facility Agreement.
- B. "AOC" or "Area of Concern" shall include locations at the Site of potential or suspected contamination from releases of hazardous substances, pollutants or contaminants as well as known

or actual contamination from such releases, including, but not limited to, any Solid Waste Management Units. Such areas require study and a determination of what if any remediation may be necessary.

C. "ARAR" shall mean applicable or relevant and appropriate requirements. Applicable requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria or limitations promulgated under federal or New York State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at the Site. Relevant and appropriate requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under federal or New York State law that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location or other circumstance at the Site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to this Site.

D. "Authorized Representative" or "Designated Representative" includes a Party's contractors acting in any capacity, including an advisory capacity, when so designated by that Party.

E. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. Section 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 and any subsequent Amendments.

F. "Days" shall mean calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday, or holiday shall be due on the following business day.

G. "DOD" shall mean the United States Department of Defense, its employees and authorized representatives.

H. "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA, the NCP and the substantive and procedural requirements thereunder, which at a minimum meets the substantive requirements of a RCRA Corrective Measures Study, and which fully develops, screens, and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or release of hazardous substances, pollutants, or contaminants at and from the Site.

I. "Hazardous substance" shall include hazardous substances as defined by CERCLA and hazardous waste/constituents as defined by RCRA.

J. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereof.

K. "Operable Unit" or "OU" shall have the same meaning as provided in the NCP.

L. "Operation and maintenance" shall mean activities required to maintain the effectiveness of response actions.

M. "Plattsburgh Air Force Base" or "PAFB" shall mean all of the approximately 3440 contiguous acres owned and operated by the U.S. Air Force in Clinton County, New York State.

N. "Quality Assured Data" shall mean data that have undergone quality assurance as set forth in the approved Quality Assurance Project Plan.

O. "RCRA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. Section 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616 and all subsequent Amendments.

P. "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP and the substantive and procedural requirements thereunder, which at a minimum meets the substantive requirements of a RCRA Facility Investigation, and which serves as a mechanism for collecting data for Site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data gathered during the RI will also be used to conduct a public health evaluation, perform a feasibility study, and support design of a selected remedy.

Q. "Site" shall include PAFB as defined above, any area off PAFB to or under which a release of hazardous substances has migrated, or threatens to migrate, from a source on or at PAFB and any contiguous area necessary for carrying out the response.

R. "State" shall mean the State of New York, represented by the New York State Department of Environmental Conservation (NYSDEC).

S. "Solid Waste Management Unit" ("SWMU") shall have the meaning set forth in the proposed rule, 55 Federal Register 30874, provided that when the rule is promulgated in final form, the final regulatory definition will control.

### VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate the U.S. Air Force's response obligations under CERCLA and ARARs, and RCRA corrective action obligations which relate to the release of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 *et seq.*; satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), for a RCRA permit, and Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

B. Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement shall be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA as to those releases (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621.

C. The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at PAFB may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the U.S. Air Force for ongoing hazardous waste management activities at PAFB, the issuing party shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that judicial review of any permit conditions which reference this Agreement shall, to the extent authorized by law, only occur under the provisions of CERCLA and ARARs.

D. Nothing in this Agreement shall alter the authority of either USEPA or the U.S. Air Force with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. §



9604, or any authority NYSDEC may have with respect to removal actions.

#### IX. WORK TO BE PERFORMED

Under this Agreement the U.S. Air Force agrees that it shall:

A. Investigate, and remediate as required, AOCs listed in Attachment 1 to this Agreement (as well as any additional AOCs the investigation and remediation of which is required pursuant to this Agreement) in accordance with the terms of this Agreement. For AOCs listed in Attachment 2, conduct a Site Inspection as described below and conduct further investigation and remediation of those AOCs if required pursuant to this Agreement.

B. Conduct a Preliminary Assessment ("PA") and Site Inspections ("SI"s) which comply with the requirements of a RCRA Facility Assessment ("RFA"), the NCP, CERCLA, RCRA guidance and ARARs. Identify, in PA/SI report(s) and via a facility map, all discernible source AOCs, including any landfills, surface impoundments, land treatment units, waste piles, tanks, container storage areas, incinerators, injection wells, waste recycling units, waste water treatment units, and known past or present solid or hazardous waste treatment, storage or disposal areas and any other areas at the Site of known actual, potential, or suspected contamination from a release of hazardous substances, pollutants, or contaminants. The PA/SI report(s) shall also identify location of unit/disposal area; design features; operating practices (past and present); period of operation; age of unit/disposal area; general physical conditions and method used to close the unit/disposal area; quantity and types of hazardous substances; and approximate date, quantity, and substance identification of any past releases of hazardous substances; as well as any other relevant information.

1. For each AOC PAFB will propose in the PA/SI report(s) a classification of "Action" or "No Action" based on all relevant information and data available. No Action AOCs shall be those AOCs a) from which no release of hazardous substances, pollutants, or contaminants has occurred; or b) from which a release has occurred which does not pose a threat to the public health, welfare or the environment.

2. Pursuant to Part XI, Consultation, USEPA and NYSDEC will determine which AOCs, in addition to those AOCs listed in Attachment 1 to this Agreement, will be designated Action AOCs and be investigated and remediated under this Agreement. This determination will be made from the data supplied by the U.S. Air Force, an on-site visual inspection conducted by USEPA and NYSDEC, and from any other data collected by the Parties

(including, but not limited to, AOCs identified by the U.S. Air Force). No Action AOCs which meet the definition of a SWMU and are designated in the PA report will be identified in the 6 NYCRR Part 373/RCRA Hazardous Waste Management Part B Permit application as required by the permitting process. No Action AOCs which meet the definition of a SWMU at which SI sampling occurred will be identified in a No Action Record of Decision ("No Action ROD").

3. After the Action/No Action AOC determinations have been made pursuant to paragraph B.2 above, USEPA and NYSDEC may still add or delete Action AOCs on the basis of additional information which more accurately reflects the area of contamination and/or new areas of contamination related in whole or in part to the Site. PAFB is under a continuing obligation during this Agreement to notify USEPA and NYSDEC of any new AOC or potential AOCs of which PAFB becomes aware. The decision to redesignate an AOC from Action to No Action pursuant to this paragraph will be documented in a No Action ROD describing the basis for redesignation.

4. If the U.S. Air Force does not agree with a determination by the other Parties pursuant to paragraphs 2 or 3 above concerning AOCs, it may dispute the matter under the procedures in Part XII, Resolution of Disputes.

C. Conduct Remedial Investigation(s) (RIs) on the Action AOCs designated under paragraphs A and B.2, or added under paragraph B.3 above, which comply with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs.

D. Conduct Feasibility Studies (FSs) on these Action AOCs which comply with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs.

E. Publish its proposed remedial action plan(s) ("PRAPs"), following completion of the RI and the FS and consultation with USEPA and NYSDEC as described in Part XI, Consultation, for public review and comment in accordance with Sections 117(a) and (d) of CERCLA, 42 U.S.C. §§117(a) and (d) and ARARs. Upon completion of the public comment period, all Parties will consult as to the need for modification of the PRAP(s) and additional public comment based on public response.

F. Submit to USEPA and NYSDEC, when public comment has been properly considered, its draft ROD(s), as specified in Part XI, Consultation, in accordance with applicable guidance. If the Parties agree, the draft ROD(s) shall be adopted by USEPA, the U.S. Air Force and NYSDEC in accordance with Part XI, Consultation. The U.S. Air Force shall prepare the final ROD(s). If the Parties are unable to reach agreement on a draft ROD, the draft ROD will be subject to dispute resolution (Part XII), with the USEPA Administrator having the ultimate authority to select the Remedial Action ("RA") pursuant to Part XI, Consultation. In

the event that the USEPA Administrator selects the final RA(s), USEPA shall prepare the final ROD(s). If the dispute is resolved prior to reaching the USEPA Administrator, the U.S. Air Force shall prepare the final ROD. The final selection of the RA(s) by the USEPA Administrator shall be final and not subject to dispute resolution; however, NYSDEC reserves any rights it may have to obtain judicial review of the remedy selected. Notice of the final ROD(s) adopted shall be published by the Party preparing it and shall be made available to the public prior to commencement of the RA, in accordance with CERCLA Section 117, 42 U.S.C. § 9617, pursuant to Part XXVIII, Public Participation.

G. Propose and submit to USEPA and NYSDEC for review and comment as described in Part XI, Consultation, a remedial design ("RD"), which complies with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs, following final selection of the RA(s), for implementation of the selected RA(s).

H. Propose and submit to USEPA and NYSDEC, for review and comment as described in Part XI, Consultation, Remedial Action Workplan(s) which complies with the requirements of the NCP, CERCLA, CERCLA guidance and policy, RCRA, and ARARs, for implementation of the selected RA(s). PAFB shall implement the Remedial Action Workplan(s) in accordance with the requirements and schedules set forth therein.

I. Provide for long-term operation and maintenance at the Site for the purpose of completing all remedial actions.

#### X. EMERGENCIES AND REMOVALS

##### A. Discovery and Notification

If any party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency or endangerment arises from activities conducted pursuant to this Agreement, the U.S. Air Force shall then take immediate action to notify the appropriate state and local agencies and affected members of the public. Once defined pursuant to Section 2(e) of Executive Order 12580, that definition of the term "emergency" shall be used for this Agreement. This provision should not be construed to release the U.S. Air Force from any notification requirements established under applicable law.

## B. Work Stoppage

In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in paragraph A, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred for a work stoppage determination in accordance with paragraph H in Part XII, Resolution of Disputes.

## C. Removal Action

1. The provisions of this paragraph shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. § 9601(23), including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

2. Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.

3. All reviews conducted by USEPA and the State pursuant to 10 U.S.C. § 2705(b)(2) will be expedited to the extent practicable so as not to unduly jeopardize fiscal resources of the U.S. Air Force for funding the removal actions.

4. If a Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, including but not limited to discovery of contamination of a drinking water well at concentrations that exceed any state or federal drinking water action level or standard, the Party may request that the U.S. Air Force take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. Such actions might include provision of alternative drinking water supplies or other response actions listed in CERCLA Section 101(23) or (24), or such other relief as the public interest may require.

## D. Notice and Opportunity to Comment

1. The U.S. Air Force shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. § 2705(a) and (b). The U.S. Air Force agrees to provide the information described below in accordance with such obligation.

2. For emergency response actions, the U.S. Air Force shall provide USEPA and the State with notice in accordance with paragraph A. Such oral notification shall, except in the case of

extreme emergencies, include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the U.S. Air Force On-Scene Coordinator recommendations. Within forty-five (45) days of completion of the emergency action, the U.S. Air Force will furnish USEPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent USEPA guidance, for such actions.

3. For other removal actions, the U.S. Air Force will provide USEPA and the State with any information required by CERCLA, the NCP, and pertinent USEPA guidance, such as an EE/CA (in the case of non-time-critical removals as described in the NCP), an Action Memorandum and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph D.2. Such information shall be furnished in writing as early as practicable, but not less than forty-five (45) days before the response action is to begin.

4. All activities related to ongoing removal actions shall be reported by the U.S. Air Force in the progress reports as described in Part XIX, Reporting.

#### E. Dispute

Any dispute among the Parties as to whether a proposed non-emergency response action is a proper removal action under CERCLA, or as to the consistency of such a removal action with the final remedial action, shall be resolved pursuant to Part XII, Resolution of Disputes. Such dispute may be brought directly to the DRC or the SEC at any Party's request.

## XI. CONSULTATION

### Review and Comment Process for Draft and Final Documents

#### A. Applicability:

The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding PA/SI, RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the U.S. Air Force will normally be responsible for issuing

primary and secondary documents to USEPA and NYSDEC. As of the effective date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with paragraphs B through J below.

The designation of a document as "draft" or "final" is solely for purposes of consultation with USEPA and NYSDEC in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

B. General Process for PA/SI, RI/FS and RD/RA documents:

1. Primary documents include those reports that are major, discrete portions of PA/SI, RI/FS or RD/RA activities. Primary documents are initially issued by the U.S. Air Force in draft subject to review and comment by USEPA and NYSDEC. Following receipt of comments on a particular draft primary document, the U.S. Air Force will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either sixty (60) days after issuance if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

2. Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the U.S. Air Force in draft subject to review and comment by USEPA and NYSDEC. Although the U.S. Air Force will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports:

1. The U.S. Air Force shall complete and transmit draft reports for the following primary documents to USEPA and NYSDEC for review and comment in accordance with the provisions of this Part:

- a. Preliminary Assessment
- b. SI Workplan
- c. SI Report
- d. RI/FS Workplan (including a Scope of Work, Data Quality Objectives, a Sampling and Analysis Plan and a Quality Assurance Project Plan)
- e. Risk Assessment
- f. Community Relations Plan
- g. RI Report
- h. FS Report

- i. Proposed Remedial Action Plan
- j. Record of Decision
- k. Remedial Design
- j. Remedial Action Workplan

2. Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The U.S. Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XV, Deadlines, of this Agreement.

D. Secondary Documents:

1. The U.S. Air Force shall complete and transmit draft reports for the following secondary documents to USEPA and NYSDEC for review and comment in accordance with the provisions of this Part:

- a. Initial Screening of Remedial Alternatives
- b. Treatability Studies (if appropriate for the Site)
- c. Sampling and Data Results

2. Although USEPA and NYSDEC may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by paragraph B hereof. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XV, Deadlines, of this Agreement. The Project Managers also may agree in writing upon additional secondary documents that are within the scope of the listed primary reports.

E. Meetings of the Project Managers on Development of Reports:

The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed by all the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in paragraphs C and D above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs:

1. For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed. NYSDEC shall timely identify potential state ARARs as required by CERCLA and the NCP. Draft ARAR determinations shall be prepared by the U.S. Air Force

in accordance with Section 121(d)(2) of CERCLA, the NCP and pertinent guidance issued by USEPA.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a Site, the particular actions proposed as a remedy and the characteristics of a Site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued. The State will identify to the U.S. Air Force those state agencies which may wish to submit ARARs, and the U.S. Air Force will solicit submission of ARARs from the identified agencies.

G. Review and Comment on Draft Reports:

1. The U.S. Air Force shall complete and transmit each draft primary report to USEPA and NYSDEC on or before the corresponding deadline established for the issuance of the report. The U.S. Air Force shall complete and transmit each draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XV, Deadlines, of this Agreement.

2. Unless the Parties mutually agree to another time period, all draft reports shall be subject to a 30-day period for review and comment. Review of any document by USEPA and NYSDEC may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, consistency with CERCLA, the NCP and any pertinent guidance or policy issued by the USEPA or NYSDEC. Comments by USEPA and NYSDEC shall be provided with adequate specificity so that the U.S. Air Force may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the U.S. Air Force, USEPA or NYSDEC shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, USEPA or NYSDEC may extend the 30-day comment period for an additional 30 days by written notice to the U.S. Air Force prior to the end of the 30-day period. On or before the close of the comment period, USEPA and NYSDEC shall transmit by next day mail their written comments to the U.S. Air Force.

3. Representatives of the U.S. Air Force shall make themselves readily available to USEPA and NYSDEC during the comment period for the purpose of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the U.S. Air Force on the close of the comment period.

4. In commenting on a draft report which contains a proposed ARAR determination, USEPA and NYSDEC shall include a reasoned statement of whether they object to any portion of the proposed



ARAR determination. To the extent that either USEPA or NYSDEC does object, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

5. Following the close of the comment period for a draft report, the U.S. Air Force shall give full consideration to all written comments on the draft report submitted during the comment period. Within 30 days of the close of the comment period on a draft secondary report, the U.S. Air Force shall transmit to USEPA and NYSDEC its written response to comments transmitted within the comment period. Within 30 days of the close of the comment period on a draft primary report, the U.S. Air Force shall transmit to USEPA and NYSDEC a draft final primary report, which shall include the U.S. Air Force's response to all written comments, transmitted within the comment period. While the resulting draft final report shall be the responsibility of the U.S. Air Force, it shall be the product of consensus to the maximum extent possible.

6. The U.S. Air Force may extend the 30-day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional 20 days by providing notice to USEPA and NYSDEC. In appropriate circumstances, this time period may be further extended in accordance with Part XVI, Extensions, hereof.

#### H. Availability of Dispute Resolution for Draft Final Primary Documents:

1. Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Part XII, Resolution of Disputes.

2. When dispute resolution is invoked on a draft primary report, work may be stopped to the extent allowed by and in accordance with the procedures set forth in Part XII, Resolution of Disputes.

#### I. Finalization of Reports:

The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the U.S. Air Force's position be sustained in dispute resolution. If the U.S. Air Force's determination is not sustained in the dispute resolution process, the U.S. Air Force shall prepare, within not more than 35 days of the conclusion of the dispute resolution process, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XVI, Extensions, hereof.

J. Subsequent Modifications of Final Reports (Including Additional Work or Modification to Work):

Following finalization of any primary report pursuant to paragraph I above, a Party to this Agreement may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in paragraphs J.1 and J.2 below.

1. Any Party to this Agreement may seek to modify a report after finalization if it determines, based on new information (e.g., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information; and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

3. Nothing in paragraph J shall alter USEPA's or NYSDEC's ability to request the performance of additional work which was not contemplated by this Agreement. The U.S. Air Force's obligation to perform such work under this Agreement must be established by either a modification of a report or document or by amendment to this Agreement.

XII. RESOLUTION OF DISPUTES

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. Any Party may invoke this dispute resolution procedure.

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within sixty (60) days after: (1) issuance of a draft final primary document pursuant to Part XI, Consultation, of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall, with copies to the other

Parties, submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position. The other Parties may submit statements setting forth their positions and supporting information.

B. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The USEPA representative on the DRC is the Emergency and Remedial Response Division Director of USEPA Region II. The U.S. Air Force's representative is the Director of Environmental Management, Strategic Air Command. The NYSDEC representative on the DRC is the Director of the Division of Hazardous Waste Remediation. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XX, Notification.

D. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded, within seven (7) days after the close of the twenty-one (21) day resolution period to the Senior Executive Committee (SEC) for resolution.

E. The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The USEPA representative on the SEC is the Regional Administrator of USEPA's Region II or his/her designated representative. The U.S. Air Force's representative on the SEC is the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health or his/her designated representative. The NYSDEC representative on the SEC is the Assistant Commissioner of Hazardous Waste Remediation or his/her designated representative. Written notice of any delegation of authority from a Party's representative on the SEC shall be provided to all other Parties pursuant to the procedures of Part XX, Notification. The SEC

members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, USEPA's Regional Administrator shall issue a written position on the dispute within twenty-one (21) days of the close of the twenty-one (21) day resolution period. The U.S. Air Force or NYSDEC may, within twenty-one (21) days of the Regional Administrator's issuance of USEPA's position, issue a written notice elevating the dispute to the Administrator of USEPA for resolution in accordance with all applicable laws and procedures. Other Parties may submit statements of position to the Administrator. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day resolution period, the Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

F. Upon escalation of a dispute to the Administrator of USEPA pursuant to paragraph E, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the USEPA Administrator shall meet and confer with the U.S. Air Force's Secretariat Representative and the Commissioner of the NYSDEC or their designated representative(s) to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the U.S. Air Force and NYSDEC with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

G. The pendency of any dispute under this Part shall not affect the U.S. Air Force's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

H. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Emergency and Remedial Response Division Director for USEPA's Region II or, after the State receives authorization for its corrective action program ("corrective action authorization"), NYSDEC's Director of the Division of Hazardous Waste Remediation requests in writing that work related to the dispute be stopped because, in USEPA's or NYSDEC's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. Prior to corrective action authorization NYSDEC may request USEPA's Division Director to stop work for the

reasons stated above. To the extent possible, the Parties seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Parties may meet to discuss the work stoppage. Following this meeting, and further consideration of the issues, USEPA's Division Director (and/or, after corrective action authorization, NYSDEC's Division Director) will issue, in writing, a final decision with respect to the work stoppage. The final written decision may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of any Party.

I. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, the U.S. Air Force shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

J. Except as provided below, resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of that dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

Notwithstanding the provisions of this Part, the State reserves all of the rights it may have to obtain judicial review of any remedy selected by the Administrator, and all rights reserved pursuant to Part XXXII, New York State's Reservation of Rights.

### XIII. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA (including any standard, regulation, condition, requirement or order under ARARs) and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

2. All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA;

3. All terms and conditions of this Agreement which relate to operable units or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the operable units or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; and

4. Any final resolution of a dispute pursuant to Part XII of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA.

C. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

#### XIV. STIPULATED PENALTIES

A. In the event that the U.S. Air Force fails to submit a primary document to USEPA or NYSDEC pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, USEPA may assess a stipulated penalty against the U.S. Air Force. Similarly, in such instances NYSDEC may demand of the U.S. Air Force and, pursuant to such demand, USEPA may assess a stipulated penalty. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

B. Upon determining that the U.S. Air Force has failed in a manner set forth in paragraph A, USEPA or NYSDEC shall so notify the U.S. Air Force in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the U.S. Air Force shall, within fifteen (15) days after receipt of the notice, invoke dispute resolution on the question of whether the failure did in fact occur. The U.S. Air Force shall not be liable for the stipulated penalty assessed by USEPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of stipulated penalty shall be final until the conclusion of dispute

resolution procedures related to the assessment of the stipulated penalty.

C. The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the U.S. Air Force under this Agreement, each of the following:

1. The federal facility responsible for the failure;
2. A statement of the facts and circumstances giving rise to the failure;
3. A statement of any administrative or other corrective action taken at the relevant federal facility, or a statement of why such measures were determined to be inappropriate;
4. A statement of any additional action taken by or at the federal facility to prevent recurrence of the same type of failure; and
5. The total dollar amount of the stipulated penalty assessed for the particular failure.

D. 1. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substance Superfund and the appropriate state fund in accordance with paragraph D.2 of this Part, only in a manner and to the extent expressly provided for in the Acts authorizing funds for and appropriations to DOD.

2. USEPA and NYSDEC agree, to the extent allowed by law, to share equally any stipulated penalties paid by the U.S. Air Force between the Hazardous Substance Superfund and the appropriate state fund.

E. In the case of a NYSDEC demand for issuance of stipulated penalty where USEPA chooses not to assess the penalty demanded by the State or if the State does not receive one-half (1/2) of the penalty assessed, NYSDEC may pursue any penalty, remedy or sanction it may have under law.

F. In the event that the U.S. Air Force fails to pay any stipulated penalty as provided hereunder, the U.S. Air Force shall inform the USEPA and NYSDEC of the specific basis for the failure to pay the penalties.

G. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in CERCLA 109, 42 U.S.C. § 9609.

H. This Part shall not affect the U.S. Air Force's ability to obtain an extension of a timetable, deadline or schedule pursuant to Part XVI, Extensions, of this Agreement.

I. Nothing in this Agreement shall be construed to render any officer or employee of the U.S. Air Force personally liable for

the payment of any stipulated penalty assessed pursuant to this Part.

#### XV. DEADLINES

A. Within twenty-one (21) days of the effective date of this Agreement, the U.S. Air Force shall propose deadlines for completion of the following draft primary documents for those AOCs listed in Attachment 1 to this Agreement:

1. RI/FS Workplan (including Scope of Work, Data Quality Objectives, Sampling and Analysis Plan, and Quality Assurance Project Plan)
2. Risk Assessment(s)
3. Community Relations Plan
4. RI Report(s)
5. FS Report(s)
6. Proposed Remedial Action Plan(s) (PRAPs)
7. Record(s) of Decision (RODs)

B. The following deadlines have been established, in conjunction with the State, for additional draft primary documents pursuant to this Agreement:

1. Within twenty-one (21) days of the effective date of this Agreement, the U.S. Air Force shall propose deadlines for completion of an SI Report for those AOCs listed in Attachment 2 to this Agreement.

2. A PA Report, in accordance with Part IX, Work To Be Performed, of this Agreement, shall be submitted within one hundred and twenty (120) days after the effective date of this Agreement.

3. Within twenty-one (21) days after the PA Report becomes final, the U.S. Air Force shall propose deadlines for completion of an SI Workplan and SI Report for those sites identified in the PA at which an SI is required.

4. Within twenty-one (21) days after each final determination by USEPA and NYSDEC regarding which AOCs, in addition to those listed in Attachment 1 to this Agreement, will be investigated and remediated under this Agreement, the U.S. Air Force shall propose deadlines for the completion of the draft primary documents listed in paragraph A, above, for such AOCs.

C. Within fifteen (15) days of receipt USEPA and NYSDEC shall review and provide comments to the U.S. Air Force regarding the proposed deadlines in paragraphs A, B.1, B.3, and B.4 above. Within fifteen (15) days following receipt of the comments the U.S. Air Force shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If they agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Workplans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall



immediately be submitted for dispute resolution pursuant to Part XII, Resolution of Disputes, of this Agreement. The final deadlines established pursuant to this paragraph shall be published by USEPA, in conjunction with the State.

D. Within twenty-one (21) days of issuance of a Record of Decision, the U.S. Air Force shall propose deadlines for completion of the following draft primary documents:

1. Remedial Design
2. Remedial Action Work Plan (to include a schedule for RD/RA)

These deadlines shall be proposed, finalized and published utilizing the same procedures set forth in paragraph C above.

E. The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XVI, Extensions, of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the remedial investigation.

#### XVI. EXTENSIONS

A. Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the U.S. Air Force shall be submitted to USEPA and NYSDEC in writing and shall specify:

1. The timetable, deadline or schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related timetable and deadline or schedule that would be affected if the extension were granted.

B. Good cause exists for an extension when sought in regard to:

1. An event of force majeure;
2. A delay caused by the failure of another Party to this Agreement to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution pursuant to this Agreement or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; provided that if the possibility of the delay was foreseeable, it was identified at the time the initial request for an extension was made; and

5. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. Absent agreement of the Parties with respect to the existence of good cause, the U.S. Air Force may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within seven (7) days of receipt of a request for an extension of a timetable, deadline or schedule, USEPA and NYSDEC shall advise the U.S. Air Force in writing of their respective positions on the request. Any failure by USEPA or NYSDEC to respond within the 7-day period shall be deemed to constitute its concurrence in the request for extension. If USEPA or NYSDEC does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

E. If there is consensus among the Parties that the requested extension is warranted, the U.S. Air Force shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.

F. Within seven days of receipt of a statement of nonconcurrence with the requested extension, the U.S. Air Force may invoke dispute resolution.

G. A timely and good faith request for an extension shall toll any assessment of related stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

#### XVII. FORCE MAJEURE

A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in, or prevents the performance of, any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe

despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the U.S. Air Force; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the U.S. Air Force shall have made timely request for such funds as part of the budgetary process as set forth in Part XVIII, Funding, of this Agreement; provided, however, that the U.S. Air Force shall exercise reasonable diligence to minimize any such delays. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

#### XVIII. FUNDING

It is the expectation of the Parties to this Agreement that all obligations of the U.S. Air Force arising under this Agreement will be fully funded. The U.S. Air Force agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. § 9620(e)(5)(B), the U.S. Air Force shall include in its submission to DOD's annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

Any requirement for the payment or obligation of funds, including stipulated penalties, by the U.S. Air Force established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense for Environment (DASD(E)) to the U.S. Air Force will be the source of funds for those activities eligible for Defense Environmental Restoration Account ("DERA") funding required by this Agreement consistent

with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total U.S. Air Force CERCLA implementation requirements, the DOD shall employ and the U.S. Air Force shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of USEPA and the states.

#### XIX. REPORTING

The U.S. Air Force agrees it shall submit to the Project Managers, as set forth in Part XX, Notification, quarterly written Progress Reports which describe the actions which the U.S. Air Force has taken during the previous quarter to implement the requirements of this Agreement. Progress Reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress Reports shall be submitted by the tenth (10) day of each quarter following the effective date of this Agreement. The Progress Reports shall include a detailed statement of the manner and extent to which the requirements and time schedules of this Agreement are being met. The Progress Reports shall identify any anticipated delays (or money shortfalls) in meeting time schedules, the reason(s) for the delay and actions taken and to be taken to prevent or mitigate the delay.

When the U.S. Air Force Project Manager recognizes that a force majeure event has occurred and that it will require an extension of a timetable schedule or deadline, that circumstance will be reported in the following Progress Report. However, inclusion of such information in the Progress Report shall not alter the U.S. Air Force's obligation to provide timely requests for extension.

#### XX. NOTIFICATION

Unless otherwise specified, ten (10) copies of any Report or Submittal provided pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by means providing return receipt, and addressed or hand delivered to:

CERCLA Regional Project Manager for  
Plattsburgh Air Force Base  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
26 Federal Plaza, Room 2930  
New York, New York 10278

and eight (8) copies to:

Mr. Marsden Chen, Director  
Bureau of Eastern Remedial Action  
Division of Hazardous Waste Remediation  
N.Y.S. Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010

along with one (1) copy sent to:

Mr. Andrew Bellina, P.E., Chief  
Air and Waste Management Branch  
U.S. Environmental Protection Agency, Region II  
26 Federal Plaza, Room 1043  
New York, New York 10278

Documents sent to the U.S. Air Force shall be addressed as follows unless the U.S. Air Force specifies otherwise by written notice:

380 CSG/DEV  
Plattsburgh Air Force Base, NY 12903-5000  
Attn: Mr. Al Rascoe

Unless otherwise agreed, all routine correspondence may be sent via regular mail to the above-named persons.

#### XXI. SAMPLING AND DATA AVAILABILITY

The Parties shall make available to each other quality assured results of sampling, tests or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within sixty (60) days of the completion of a sampling event. If quality assurance procedure is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

The sampling Party's Project Manager shall notify the other Parties' Project Managers not less than fourteen (14) days in advance of any sample collection. If it is not possible to provide fourteen (14) days prior notification, the sampling Party's Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Each Party shall allow, to the extent practicable,

split or duplicate samples to be taken by the other Parties, or their authorized representatives, of any such samples.

## XXII. PRESERVATION OF RECORDS

Each Party to this Agreement shall preserve for a minimum of ten (10) years after termination of this Agreement all of its records and documents in its possession or in the possession of its contractors which relate in any way to the presence of hazardous substances, pollutants and contaminants at PAFB which relate to the actions carried out pursuant to this Agreement, despite any document retention policy to the contrary. After this ten (10) year period, each Party shall notify the other Parties at least ninety (90) days prior to destruction of any such documents or records. Upon request by any Party, the requested Party shall make available such records or documents or copies thereof, unless withholding is authorized and determined appropriate by law.

## XXIII. ACCESS

A. Without limitations on any authority conferred on USEPA and NYSDEC by statute or regulation, USEPA, NYSDEC or their authorized representatives, shall have authority to enter PAFB at all reasonable times for purposes consistent with the provisions of the Agreement. Such access shall include, but not be limited to:

1. inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
2. inspecting field activities of the U.S. Air Force and its contractors relevant to this Agreement, to assure that the activities of the U.S. Air Force, its response action contractors or lessees in implementing this Agreement are carried out in compliance with the terms of this Agreement;
3. conducting such tests as the NYSDEC and the USEPA Project Managers deem necessary; and
4. verifying the data submitted to USEPA and NYSDEC by the U.S. Air Force.

The U.S. Air Force shall honor all requests for such access by USEPA and NYSDEC; however, such access shall be obtained in conformance with any statutory or U.S. Air Force regulatory requirements, and in a manner minimizing interference with any military operations at PAFB.

B. The Parties agree that this Agreement is subject to CERCLA 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site

Specific Presidential Orders as may be necessary to protect national security.

C. All Parties with access to PAFB pursuant to this section shall comply with all applicable health and safety plans. Implementation of the health and safety plan during PAFB activities under this Agreement will remain the responsibility of the U.S. Air Force and/or its contractors.

D. To the extent that activities pursuant to this Agreement must be carried out on property outside the control of the U.S. Air Force, the U.S. Air Force agrees to exercise its authorities pursuant to Section 104(e) of CERCLA to obtain access for itself, USEPA and NYSDEC from the present owners and occupants, and within a time period sufficient to meet any schedules established for such activities pursuant to this Agreement. The U.S. Air Force may request the assistance of the State and USEPA in obtaining such access to non-U.S. Air Force properties; however, the U.S. Air Force shall have ultimate responsibility in obtaining access in accordance with its statutory authority.

E. With respect to non-U.S. Air Force property upon which monitoring wells, pumping wells, treatment facilities are to be located, or other response actions are to be taken pursuant to this Agreement, any access obtained shall, to the extent practicable, be conditioned upon (1) that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property, and (2) that the owners of any such property shall notify the U.S. Air Force, NYSDEC, and USEPA by certified mail, at least thirty (30) days prior to any conveyance of an interest in the property, of the property owner's intent to convey and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions pursuant to this Agreement.

#### XXIV. FIVE YEAR REVIEW

Consistent with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action no less often than each five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review any of the Parties propose additional action or modification of the remedial action such proposal shall be handled under Part XI, Consultation, of this Agreement.

To synchronize the five-year reviews for all operable units and final remedial actions, the following procedure will be used:

Review of operable unit remedial actions will be conducted every five (5) years counting from the initiation of the remedial action for the first operable unit, until initiation of the final remedial action for the Site. At that time, a separate review for all operable units shall be conducted. Review of the final remedial action (including all operable units) shall be conducted every five (5) years, thereafter.

#### XXV. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from PAFB.

Unless specifically agreed to in writing by the Parties, USEPA and the State shall not be held as a party to any contract entered into by the U.S. Air Force to implement the requirements of this Agreement.

This Agreement shall not restrict USEPA or NYSDEC from taking any legal or response action for any matter not specifically addressed by this Agreement.

USEPA, NYSDEC and the U.S. Air Force shall provide a copy of this Agreement to appropriate contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Agreement prior to beginning work to be conducted under this Agreement.

Nothing in this Agreement shall preclude, limit or affect in any way any claims for damages for injury to, destruction of, or loss of natural resources, or for the costs of assessing such injury, destruction or loss.

#### XXVI. AMENDMENT OF AGREEMENT

This Agreement can be amended in accordance with Part XXIX, Public Comment and Effective Date, upon written consent of all Parties. Such amendments may be proposed by any Party and shall be effective the third business day following the day the last Party to sign the amendment sends its notification of signing to



the other Parties. The Parties may agree to a different effective date.

#### XXVII. TRANSFER OF REAL PROPERTY

At least ninety (90) days prior to any transfer, the U.S. Air Force shall notify USEPA and NYSDEC of the proposed transfer of real property subject to this Agreement and the provision made for any additional remedial actions. The U.S. Air Force shall also notify USEPA and NYSDEC of any substantial change of use proposed for any AOC.

The U.S. Air Force shall not transfer any real property comprising any portion of PAFB except in compliance with Section 120(h) of CERCLA and any proposed or promulgated regulation thereunder.

#### XXVIII. PUBLIC PARTICIPATION

A. The Parties agree that the work done under this Agreement, including any proposed remedial action plan(s) and record(s) of decision with respect to PAFB, arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 117 and 113(k), 42 U.S.C. §§ 9617 and 9613(k), the NCP, USEPA guidance on public participation and administrative records.

B. The U.S. Air Force shall develop and implement a Community Relations Plan (CRP) as required by Part XI, Consultation, which responds to the need for an interactive relationship with all interested community elements, both on and off PAFB, regarding environmental activities conducted pursuant to this Agreement by the U.S. Air Force. The U.S. Air Force agrees to develop and implement the CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C. § 9617, the NCP, USEPA guidance on community relations and the NYSDEC Inactive Waste Site Citizen Participation Plan.

C. The public participation requirements of this Agreement shall be implemented so as to be consistent with the public participation requirements applicable to RCRA permits under 40 CFR Part 124 and Section 7004 of RCRA.

D. Any Party issuing a news release to the media regarding any of the work required by this Agreement shall advise the other Parties of such news release and the contents thereof, at least forty-eight (48) hours before the issuance of such news release and of any subsequent changes prior to release.

E. The U.S. Air Force has established a Technical Review Committee as described in 10 U.S.C. § 2705(c).

F. The U.S. Air Force has established and shall maintain an administrative record at or near PAFB in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613. The administrative record shall be maintained in accordance with USEPA regulations, policy and guidelines. Submissions to the administrative record will be provided to USEPA and NYSDEC by the time of inclusion into the record. NYSDEC or USEPA may designate documents for inclusion in the administrative record.

G. The U.S. Air Force agrees it shall follow the public participation requirements of CERCLA §§ 113(k) and 117, and comply with any guidance and/or regulations promulgated by USEPA with respect to such Sections.

#### XXIX. PUBLIC COMMENT AND EFFECTIVE DATE

A. Within fifteen (15) days of the date of USEPA's signing of this Agreement, USEPA shall provide public notice that this Agreement has been developed and shall announce the availability of this Agreement to the public for a forty-five (45) day review and comment period. USEPA shall accept comments from the public on behalf of all Parties for a period of forty-five (45) days after such announcement. At the end of the comment period, USEPA shall promptly transmit to the other Parties copies of all comments received. The Parties shall review all such comments and shall either:

1. Determine that the Agreement should be made effective in its present form, in which case USEPA shall immediately issue a written notice to that effect to the other Parties, and the Agreement shall become effective on the date said notice is issued; or

2. If the determination in paragraph 1 above is not made, the Parties shall meet to discuss and agree upon any proposed changes. If the Parties do not mutually agree on all needed changes within fifteen (15) days from the close of the public comment period, the Parties shall submit their written notices of position, concerning those provisions still in dispute, directly to the Dispute Resolution Committee, and the procedures of Part XII, Resolution of Disputes, shall be applied to the disputed provisions. Upon resolution of any proposed changes, the Agreement, as modified, may be re-executed by the Parties, with USEPA signing last, and, if so re-executed, shall become effective on the date that it is signed by USEPA.

B. Any response action underway upon the effective date of this Agreement shall be subject to oversight by the Parties.

XXX. RECOVERY OF NEW YORK STATE'S EXPENSES

A. The U.S. Air Force agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Part, and subject to Part XVIII, Funding, for all reasonable costs it incurs in providing services in direct support of the U.S. Air Force's environmental restoration activities pursuant to this Agreement at the Site, provided that the costs of such services have not been reimbursed to the States by other federal mechanisms (such as USEPA funding).

B. Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to PAFB:

1. Timely technical review and substantive comment on reports or studies which the U.S. Air Force prepares in support of its response actions and submits to the State.

2. Identification and explanation of unique state requirements applicable to military installations in performing response actions, especially state applicable or relevant and appropriate requirements (ARARs).

3. Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate state requirements, or in accordance with agreed upon conditions between the State and the U.S. Air Force that are established in the framework of this Agreement.

4. Support and assistance to the U.S. Air Force in the conduct of public participation activities in accordance with federal and state requirements for public involvement.

5. Participation in the review and comment functions of the U.S. Air Force Technical Review Committee.

6. Other services specified in this Agreement.

C. Within ninety (90) days after the end of each quarter of the federal fiscal year, the State shall submit to the U.S. Air Force an accounting of all state costs actually incurred during that quarter in providing direct support services under this Part. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The U.S. Air Force has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of

what it plans to do in the next year in the same level of detail as the billing documents.

D. Except as allowed pursuant to paragraphs E or F below, within ninety (90) days of receipt of the accounting provided pursuant to paragraph C above, the U.S. Air Force shall reimburse the State in the amount set forth in the accounting.

E. In the event the U.S. Air Force contends that any of the costs set forth in the accounting provided pursuant to paragraph C above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at paragraph I below.

F. The U.S. Air Force shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the U.S. Air Force total lifetime Defense Environmental Restoration Account (DERA) project costs incurred throughout construction of the remedial action(s). This total reimbursement limit is currently estimated to be a sum of one million dollars (\$1,000,000) over the life of the Agreement. Circumstances could arise whereby fluctuations in the U.S. Air Force estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.

1. Funding of support services must be constrained so as to avoid unnecessary diversion of the limited DERA funds available for the overall cleanup, and

2. Support services should not be disproportionate to overall project costs and budget.

G. Either the U.S. Air Force or the State may request, on the basis of significant upward or downward revisions in the U.S. Air Forces's estimate of its total lifetime costs throughout construction used in paragraph F above, a renegotiation of the cap. Failing an agreement, either the U.S. Air Force or the State may initiate dispute resolution in accordance with paragraph I below.

H. This Agreement is the mechanism for payment of the costs incurred by the State in providing the services listed in paragraph B of this Part in relation to DERA-funded work carried out at the Site after the effective date of this Agreement. Full payment of state costs pursuant to this Agreement constitutes final settlement of any claims the State of New York may have for performance, after the effective date of this Agreement, of the foregoing services.

I. Part XII, Resolution of Disputes, notwithstanding, this paragraph shall govern any dispute between the U.S. Air Force and the State regarding the application of this Part or any matter controlled by the Part including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the U.S. Air Force and the State that these procedures shall govern resolution of disputes concerning state reimbursement, informal dispute resolution is encouraged.

1. The U.S. Air Force and state Project Managers shall be the initial points of contact for coordination of dispute under this paragraph.

2. If the U.S. Air Force and state Project Managers are unable to resolve a dispute, the matter shall be referred to the U.S. Air Force's Director of Environmental Management, Strategic Air Command and NYSDEC's Director of the Division of Hazardous Waste Remediation, or their designated representatives, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.

3. If the U.S. Air Force's Director of Environmental Management, Strategic Air Command and NYSDEC's Director of the Division of Hazardous Waste Remediation are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the U.S. Air Force's Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health and the NYSDEC's Assistant Commissioner of Hazardous Waste Remediation, or their designated representatives.

4. In the event the NYSDEC's Assistant Commissioner of Hazardous Waste Remediation and the U.S. Air Force's Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health are unable to resolve a dispute, the State retains the legal and equitable remedies it may have to recover its expenses. In addition, the State may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

J. Nothing herein shall be construed to limit the ability of the U.S. Air Force to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

1. Identification, investigation, and cleanup of any contamination beyond the boundaries of the U.S. Air Force Facility;

2. Laboratory analysis; or

3. Data collection for field studies.

K. Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement.

L. The U.S. Air Force and the State agree that the terms and conditions of this Part shall become null and void when the State

enters into a Defense/State Memorandum of Agreement (DSMOA) with the DOD which addresses State reimbursement.

M. The State is entitled to recover under this Part off-base removal costs incurred by the State in connection with releases on, or from the Site. Recovery of such response costs shall not be subject to the 1% cap provided in paragraph F.

#### XXXI. RECOVERY OF USEPA EXPENSES

The Parties agree to amend this Agreement at a later date in accordance with any decision agreed to by the U.S. Air Force and USEPA concerning recovery of USEPA expenses.

#### XXXII. NEW YORK STATE'S RESERVATION OF RIGHTS

A. Nothing in this Agreement shall preclude the State from exercising any administrative, legal, or equitable remedies available to it to require additional response actions by the U.S. Air Force in the event that the State determines that the implementation of the requirements of this Agreement is no longer protective of the public health or welfare or the environment. Prior to making such a determination, the State agrees to exhaust the dispute resolution process described in Part XII (Resolution of Disputes). Dispute resolution need not be so exhausted where the Commissioner transmits in writing by telefax with a copy by next day mail to the other parties a brief description of the basis for the Commissioner's determination that an imminent and substantial endangerment to public health or welfare or the environment warrants the immediate exercise of any administrative, legal, or equitable remedies available to the State to require additional response actions by the U.S. Air Force. As to disputes arising under this paragraph, any final resolution under Part XII (Resolution of Disputes) by the Administrator shall not preclude the State from exercising any administrative, legal, or equitable remedies available to it to require additional response actions by the U.S. Air Force.

B. In addition, the State reserves the following rights:

1. Any and all rights it may have under CERCLA, including, but not limited to, Sections 113, 120, 121 and 310. The State agrees to exhaust the dispute resolution process described in Part XII (Resolution of Disputes) prior to exercising any rights to judicial review that it may have of any action taken or decision made pursuant to this Agreement; provided, that nothing in this subparagraph shall be construed as nullifying the terms of paragraph A, above.

Any final resolution by the Administrator under Part XII (Resolution of Disputes) shall not preclude the State from exercising any rights it may have under CERCLA.

2. The right to seek penalties or other relief against the U.S. Air Force for a failure to comply with this Agreement, as authorized by Part XIV (Stipulated Penalties).

3. The right to procure enforcement of this Agreement.

C. This Agreement shall not restrict the State from taking any legal or response action for any matter not specifically addressed by this Agreement.

D. Nothing in this Agreement shall preclude, limit or affect in any way any claims for damages for injury to, destruction of, or loss of natural resources or for the costs of assessing such injury, destruction or loss.

#### XXXIII. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the U.S. Air Force of written notice from USEPA and NYSDEC that the U.S. Air Force has demonstrated, to the satisfaction of USEPA and NYSDEC, that all the terms and requirements of this Agreement have been completed. If USEPA and NYSDEC deny or otherwise fail to grant a termination notice within a reasonable time period after receiving a written U.S. Air Force request for such notice, such denial may be the basis for dispute resolution.

This provision shall not affect the statutory requirements for periodic review at maximum five year intervals of the efficacy of the remedial actions.





ATTACHMENT 1

1. FT-002 Fire Training Area
2. SS-004 Flight Line and Industrial Area
3. SS-005 Non-Destructive Inspection Facility (NDI)
4. SS-006 Aerospace Ground Equipment Facility (AGE)
5. SS-010 Heavy Equipment Maintenance Facility
6. SS-011 Defense Reutilization and Marketing Office (DRMO)
7. SS-013 Munitions Maintenance Squadron (MMS)
8. SS-016 Nose Dock 8
9. SS-017 Building 2774
10. SS-018 Auto Hobby Shop
11. LF-021 Landfill D-2
12. LF-022 Landfill D-3 and D-7
13. LF-023 Landfill D-4

ATTACHMENT 2

1. SD-001 Golf Course Drainage
2. SS-007 Former Engine Test Cell
3. SS-019 Paint Shop
4. SS-020 Pesticide Tank
5. LF-024 Landfill D-5