

January 23, 2009  
UNITED STATES DEPARTMENT OF STATE  
BUREAU OF POLITICAL MILITARY AFFAIRS  
WASHINGTON, D.C. 20520

In the Matter of:

Analytical Methods, Inc

A Washington Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Office of the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Analytical Methods, Inc., ("Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. § 2778), and its implementing regulations, the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. pts. 120-130);

WHEREAS, the Department acknowledges that the Respondent described these matters in a voluntary disclosure submitted to the Department, and cooperated with the Department's investigation of this matter;

WHEREAS, the Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, the Respondent wishes to settle and dispose of all potential civil charges, penalties and sanctions arising from the Proposed Charging Letter, and the facts that the Respondent has disclosed in writing to the Department in its Voluntary Disclosure dated November 8, 2007 by entering into this Consent Agreement;

WHEREAS, the Respondent agrees that if the Department finds that this Consent Agreement was negotiated based on the Respondent's knowingly providing materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the related administrative order ("Order"), and bring additional charges against the Respondent. Additionally, the Respondent understands that a violation of this Consent Agreement is considered a violation of the Order, and

WHEREAS, the Department and the Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Assistant Secretary of State for Political-Military Affairs.

Now, WHEREFORE, the Department and the Respondent agree as follows:

Parties

(1) The Parties to this Consent Agreement are the Department and the Respondent, including the Respondent's assignees and successors.

Jurisdiction

(2) The Department has jurisdiction over the Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

Penalty

(3) The Respondent agrees that it shall pay in fines and in remedial compliance measures an aggregate civil penalty of five hundred thousand dollars (\$500,000) in complete settlement of alleged civil violations pursuant to Section 38 of the AECA and the ITAR, as set forth in the Proposed Charging Letter. The Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement, and that the Statute of Limitations shall be tolled until the last payment is made. The civil penalty shall be payable as follows:

- a) One hundred thousand dollars (\$100,000) shall be paid to the Department within fifteen (15) days of the date of the Order.
- b) A penalty of four hundred thousand dollars (\$400,000) dollars is hereby assessed, but this amount will be suspended in accordance with the following:
  - 1) Two hundred thousand dollars (\$200,000) will be suspended on the condition that Respondent has already applied this amount to self initiated pre-Consent Agreement remedial compliance measures, determined by the Office of Defense Trade Controls Compliance as set forth in paragraphs (3)(c) and (3)(d) below.
  - 2) The remaining two hundred thousand dollars (\$200,000) will be suspended on the condition that the Respondent applies this amount to Consent Agreement-authorized remedial compliance measures, determined by DTCC as set forth in paragraphs (3)(c) and (3)(d) below. Respondent will apply the remaining two hundred thousand dollars (\$200,000) over a three year period for the purpose of defraying a portion of the costs associated with the remedial compliance measures specified in this Consent Agreement.

c) In accordance with paragraph (3)(d), the Respondent's Chief Financial Officer will conduct a review of Respondent's expenditures for the compliance measures referenced in paragraphs (3)(b)(1) & (2), and provide the results of the review to DTCC. DTCC will determine from that review if the expenditures claimed by the Respondent to date were spent for self initiated pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance measures. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for self initiated pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance measures, such amounts will be credited against the suspended penalty amounts outlined in (3)(b)(1) and (3)(b)(2), respectively.

d) The Respondent will provide to DTCC no later than six months from the date of the Order an itemized accounting of all self initiated pre-Consent Agreement remedial compliance measures and Consent Agreement-authorized remedial compliance measures, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance within the terms of this Consent Agreement. DTCC will review the itemized accounting and approve the amounts that may be credited against the suspended penalty amounts outlined in paragraphs (3)(b)(1) and (3)(b)(2), respectively. To the extent that the accounting of self initiated pre-Consent Agreement remedial compliance measures leads DTCC to approve less than two hundred thousand dollars (\$200,000) for credit against the suspended penalty outlined in paragraph (3)(b)(1), the difference between the DTCC approved amount and two hundred thousand dollars (\$200,000) shall not be suspended and shall be paid as a cash penalty within thirty (30) days of DTCC's approval. To the extent that the accounting of Consent-Agreement-authorized remedial compliance measures leads DTCC to approve less than two hundred thousand dollar (\$200,000) for credit against the suspended penalty outlined in paragraph (3)(b)(2), the difference between the DTCC approved amount and two hundred thousand dollars (\$200,000) shall be used for additional Consent Agreement-authorized remedial compliance costs. The Respondent shall then annually after the

first report provide to DTCC for verification and approval an itemized accounting of all Consent Agreement-authorized remedial compliance expenditures. The Respondent shall have three (3) years from the date of the Order to claim and use any remaining portion of the two hundred thousand dollar (\$200,000) suspended penalty referenced in paragraph (3)(b)(2) on Consent Agreement-authorized remedial compliance costs.

(4) Respondent is precluded from applying any portion of the one hundred thousand dollar (\$100,000) cash penalty set forth in paragraph (3)(a), any additional cash penalty paid based on an amount in paragraph (3)(b)(1) not being suspended, and the two hundred thousand dollar (\$200,000) suspended penalty set forth in paragraph (3)(b)(2), as reimbursable or recoverable costs in any contract or other dealing with any agency of the U.S. Government, including any subcontract with respect to such a contract or as a Federal tax deduction. Respondent agrees that the one hundred thousand (\$100,000) cash penalty, any additional cash penalty paid based on an amount in paragraph (3)(b)(1) not being suspended, and the two hundred thousand (\$200,000) suspended penalty: (a) will be treated as expressly unallowable costs under the Federal Acquisition Regulations; (b) will not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or subcontract; and (c) will not be taken as a federal tax deduction. In the event Respondent violates these prohibitions, the Department will deem it a "failure to apply funds appropriately for the required purpose."

(5) Any failure to apply funds appropriately for the required purpose, or to provide a satisfactory accounting shall result in a lifting of the suspension pursuant to paragraph (3)(b)(2) above. In that case, the Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been properly applied and accounted for as expenditures in compliance with this Consent Agreement.

#### Defense Services and Defense Articles

(6) The Respondent acknowledges and accepts the authority of the Department to designate what is a defense article, and that the ITAR requires written authorization before such articles are exported,

regardless of whether the underlying defense article is used in a commercial system or product.

(7) Respondent further acknowledges that the Commodity Jurisdiction process, set forth in § 120.4 of the ITAR, is the only official mechanism by which questions regarding jurisdiction and categorization may be addressed. The Respondent acknowledges and accepts that:

(a) the definition of “defense services” in the ITAR is well established and clearly understood by them as setting out responsibilities and requirements which are binding as a matter of law and regulation on them;

(b) the furnishing of defense services to foreign persons – regardless of whether the underlying defense article(s) is of U.S. or foreign origin – is appropriately subject to the Department’s control under the ITAR, even when no technical data is involved (e.g., all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain);

(c) the law and regulations governing “defense services” and proposals to foreign persons are sufficiently clear and specific as to be enforceable by the U.S. Government on criminal and civil grounds;

(d) that generally software specifically designed, developed, configured, adapted or modified for a military application is a defense article;

(e) that software designated as dual-use can be used to provide an ITAR regulated defense service and can become an ITAR regulated defense article when adapted or modified for a military application; and

(f) the Respondent is responsible and obligated as a matter of law and regulation to comply with the requirements of such laws and regulations as they pertain to “defense services” and related matters.

### Debarment

(8) The Respondent has acknowledged the seriousness of the violations cited in the Proposed Charging Letter. The Respondent has cooperated with the Department's investigation, expressed regret for these activities and taken steps to improve its compliance programs. It has also undertaken to make amends by paying a cash penalty, and implementing the significant additional remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined not to impose an administrative debarment against Respondent based on the civil charges in the Proposed Charging Letter at this time. The Department reserves all rights to impose additional sanctions, including debarment under the ITAR, against the Respondent, any subsidiary or other affiliate over which the Respondent exercises control, if it does not fulfill the provisions of the Consent Agreement or is responsible for other compliance or law enforcement issues under the AECA, or under other statutes enumerated in § 120.27 of the ITAR.

### Registration

(9) Respondent acknowledges that in order to engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services Respondent is required to be registered and to maintain that registration with the Department.

### Compliance Oversight

(10) Within 30 days of the date of the Order, Respondent, with the concurrence of the Director DTCC, will designate a qualified ITAR experienced person or obtain formal ITAR training for a qualified employee to serve as a Senior Compliance Officer (SCO). The SCO will provide oversight and support in all matters involving the AECA and the ITAR. This oversight will be structured to achieve the Respondent's consistent application of the AECA and the ITAR. Additionally, the Respondent will implement a formal ITAR export compliance program that shall include annual training for all employees involved in ITAR regulated activities and obtaining an ITAR Compliance Manual for company use. Respondent shall ensure that legal support is made available as necessary to the SCO for compliance

with the AECA and the ITAR, and appropriate legal oversight is performed with respect to such matters.

#### On-site Reviews by the Department and Reporting

(11) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future munitions licenses and other authorizations, the Respondent agrees to arrange and facilitate, with minimum advance notice, on-site reviews by the Department while this Consent Agreement remains in effect.

(12) The SCO shall provide to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter, status reports on ITAR compliance program enhancements, training and their impact on or benefit to ensuring ITAR compliance. After the initial report, these reports may be combined with the reports outlined in paragraph (3)(c) above; and

(13) Any such reports shall not affect Respondent's use of the Voluntary Disclosure procedures set forth in § 127.12 of the ITAR and any benefits gained there from.

#### Audit

(14) Respondent shall, within eighteen (18) months of the date of the Order, have an audit conducted by an outside consultant with expertise in AECA/ITAR matters, approved by the Director, DTCC. The audit shall provide a thorough assessment of the effectiveness of the Respondent's implementation of all measures set forth in this Consent Agreement with a focus on defense services, technical data/software exports, those actions undertaken to address the compliance problems identified in the Proposed Charging Letter, the policies, procedures and training established by Respondent, and such other areas as may be identified by the Director, DTCC. Additionally, the audit will assess the overall effectiveness of Respondent's ITAR compliance programs.

(15) Specifically, within twelve (12) months of the date of the Order, Respondent will submit a draft audit plan to the Director, DTCC for review and comment. Then, within eighteen months (18) of the date of the Order, the audit will be completed and a written report containing

recommendations for improvements with respect to Consent Agreement measures, or compliance with the AECA or the ITAR more generally will be prepared. Respondent will submit the report to the Director, DTCC along with Respondent's plan on how it will address those recommendations. Subsequently, at the two and a half (2.5) year anniversary of the date of the Order, Respondent shall have another audit conducted by the same or another outside consultant, approved by the Director, DTCC, and submit the results of the audit to the Director, DTCC to confirm whether Respondent addressed the compliance recommendations from the initial report. Respondent shall submit a draft audit plan for this audit to the Director, DTCC for review and comment at least forty-five (45) days prior to beginning the audit.

### Understandings

(16) No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Specifically, the Respondent acknowledges and accepts that there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department of State concerning export licenses or other U.S. Government authorizations.

(17) The Respondent acknowledges the nature and seriousness of the offenses charged in the Proposed Charging Letter, including that there was likely harm to the national security interests of the United States. If this Consent Agreement is not approved pursuant to an Order entered by the Assistant Secretary for Political-Military Affairs, the Department and the Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement.

(18) The Department agrees that, upon signing of the Order, this Consent Agreement resolves with respect to the Respondent the civil penalties or administrative sanctions with respect to violations of § 38 of the AECA or the ITAR arising from facts the Respondent has disclosed in writing

to the Department in its voluntary disclosure dated November 8, 2007, and/or that have been identified in the Proposed Charging Letter.

### Waiver

(19) The Respondent waives, upon the signing of the Order, all rights to seek any further steps in this matter, including an administrative hearing pursuant to Part 128 of the ITAR. The Respondent also waives any such rights with respect to any additional penalty (with the exception of any suspension or debarment action) assessed by the Director/DTCC in connection with an alleged material violation of this Consent Agreement (limited to one million dollars (\$1,000,000)) except as follows: In the event that the Director, Office of Defense Trade Controls Compliance determines that the Respondent has materially violated this Consent Agreement and impose such additional penalty, and the Respondent disputes such determination, the Respondent may appeal such determination to the Assistant Secretary for Political-Military Affairs, and the decision of the Assistant Secretary for Political-Military Affairs shall be the final determination in the matter, which may not be appealed. The Respondent also waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

### Certification

(20) Three (3) months prior to the three (3) year anniversary of the date of the Order, the Respondent shall submit to the Director, DTCC a written certification that all aspects of this Consent Agreement have been implemented and that Respondent's export compliance program has been assessed, and that Respondent certifies that this export compliance program is adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR. Such certification shall specifically address compliance with paragraph (4) of this Consent Agreement. The Consent Agreement shall remain in force beyond the three (3) year term until such certification is submitted and the Director, DTCC determines based on this certification and other factors that all compliance measures set forth in this Consent Agreement have been implemented, and that the Respondent's ITAR compliance program

appears to be adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR.

Documents to be made public

(21) The Respondent understands that the Department will make this Consent Agreement, the Proposed Charging Letter and the Order, when entered, available to the public.

When Order Becomes Effective

(22) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political-Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

U.S. Department of State

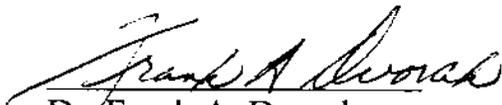


Frank J. Ruggiero  
Acting Assistant Secretary for  
Political-Military Affairs

2/18/04

Date

Analytical Methods, Inc.



Dr. Frank A. Dvorak  
Chief Executive Officer

1/27/09

Date