

**BY ORDER OF THE COMMANDER
ARNOLD ENGINEERING
DEVELOPMENT COMPLEX**

**ARNOLD ENGINEERING
DEVELOPMENT COMPLEX
INSTRUCTION 99-120**



25 AUGUST 2016

Test and Evaluation

**COMMERCIAL TEST
SUPPORT AGREEMENTS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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RELEASABILITY: This publication has no releasability restrictions

OPR: AEDC/TST

Certified by: AEDC/TST
(Col Timothy D. West)

Supersedes: AEDCI 64-200, 13 May 2015

Pages: 11

This instruction implements AFTCI99-100, *Statement of Capability*, and establishes the policies and procedures necessary for the preparation, approval, and administration of Statements of Capability for commercial test customers. (Cooperative Research and Development Agreements (CRDA) are covered separately, in accordance with (IAW) Air Force Instruction (AFI) 61-302, *Cooperative Resource and Development Agreements* and Air Force Policy Directive (AFPD) 61-3, *Domestic Technology Transfer*.) Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 36-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS), located online at <https://www.my.af.mil/afirms/afirms/afirms/rims.cfm>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using an AF IMT 847, *Recommendation for Change of Publication*; route AF IMT 847 through the appropriate functional chain of command.

SUMMARY OF CHANGES

This publication has been substantially revised and as such should be reviewed in its entirety. Changes include the addition of Attachment 2, Standard Statement of Capability (SOC) Terms and Conditions, and substantial changes to Roles and Responsibilities.

1. Background

1.1. **Authority.** In accordance with my authority under 10 U.S.C. § 2681 and *Department of Defense Instruction (DoDI) 3200.18 Management and Operation of the Major Range and Test Facility Base (MRTFB)*, I hereby delegate my authority to enter into agreements with commercial entities that desire to conduct commercial test and evaluation activities at AEDC to the Test Operations Division Chief. This authority shall not be delegated further.

1.2. **Applicable Laws and Regulations.** The conduct of testing activities and the facility utilization are governed by the provisions of Public Law 81-415, *Unitary Wind Tunnel Plan Act of 1949*; 10 U.S.C. Sec. 2681, *Use of Test and Evaluation Installations by Commercial Entities*; DoD 7000.14-R, *Financial Management Regulation, Vol 11A, Reimbursable Operations Policy, Chapter 12, Major Range and Test Facilities*; DoD Directive 3200.11, *Major Range and Test Facility Base*; AFI 99-101, *Developmental Test and Evaluation*; AFI 65-601, Vol 1, *Budget Guidance and Procedures*; AFMCI 65-602, *Uniform Reimbursement and Pricing Procedures*; and such other laws and regulations as may be applicable.

1.3. **Scope.** The Test Operations Division Chief has the primary responsibility on behalf of the AEDC Commander to ensure effective management controls over all test programs executed at AEDC, including those performed for commercial customers. To bring AEDC into alignment with other parts of the AFTC enterprise, this responsibility is hereby expanded to include the preparation, approval, and administration of test support agreements. AEDC will no longer utilize a separate test contract, but instead employ the Statement of Capability (SOC) to document the agreement whereby commercial test customers will directly reimburse the Government.

2. Roles and Responsibilities

2.1. The AEDC Commander shall:

2.1.1. Publish an annual letter establishing surcharge rates for DoD, Other US Government Agencies, commercial organizations, and Foreign Military Sales (FMS).

2.1.2. Review and approve any deviations from the published AEDC surcharge rate letter.

2.2. The Test Operations Division Chief shall:

2.2.1. Maintain insight into and oversight of all test requests, including those from domestic and foreign agencies, individuals, and educational institutions desiring to have tests performed in AEDC facilities.

2.2.2. Review and approve all AEDC SOC's, including any changes to the standard terms and conditions associated with SOC's for commercial test support. The SOC shall serve as the binding agreement between AEDC and its customers on project cost, schedule, scope, technical performance, and associated risk.

2.2.3. Review and coordinate on any proposed deviations from the published AEDC surcharge rate letter. (Rate modification must be approved by the AEDC Commander prior to SOC approval.)

2.3. The applicable Combined Test Force (CTF) Director shall:

2.3.1. Convene and chair pre-test meetings with the test customer to fully define test requirements. (This task may be further delegated within the CTF.)

2.3.2. Review draft SOCs related to his/her mission area in order to ensure that project cost, schedule, scope, technical performance, and associated risk are adequately documented, and to ensure that all required terms and conditions are included in the SOC.

2.3.3. Review and coordinate on any SOC-unique modifications to the standard terms and conditions.

2.4. The AEDC Test Manager shall:

2.4.1. Orchestrate the preparation of a written SOC to document expected cost, schedule, scope, technical performance, and associated risk between AEDC and the customer.

2.4.2. Ensure all standard terms and conditions are incorporated into the draft SOC. In cases where the standard terms and conditions are not applicable or inappropriate, seek approval from the Test Operations Division Chief to amend or delete the language, as applicable.

2.4.3. Commercial customers performing work in support of a DoD contract, obtain a copy of the DoD contract, and/or related documentation that confirms their testing supports a DoD sponsor, as justification for charging DoD rates to commercial customers. Obtain a copy of the DoD contract number and full text of the requirement paragraph to justify the sponsored customer receiving a preferential DoD based rate.

2.4.4. For commercial customers supporting non-Federal programs, obtain a validated certification from the customer that no suitable commercial test facilities exist, or that commercial facilities are not capable of supporting their requirements.

2.4.5. Coordinate test project requirements with the applicable AEDC support contractor(s). Incorporate the project plan(s) from the support contractor(s) into the SOC.

2.4.6. Ensure compliance with the terms and conditions of the SOC during test execution. Update the SOC as necessary to ensure it remains an accurate summary of projected project cost, schedule, scope, technical performance, and associated risk.

2.4.7. Upon completion of the project, prepare a close-out SOC that documents as-executed project cost, schedule and scope. This SOC revision will constitute the authority to refund any remaining funds to the customer.

2.5. CTF Financial Management (FM) representative shall:

2.5.1. Create a unique Job Order Number (JON) for the effort.

2.5.2. Review the SOC and associated documentation in order to ensure it contains an accurate financial record of the project.

2.5.3. Ensure the associated JON is cited in the SOC; received funding can only be applied to those JONs directly identified.

2.5.4. Cite the SOC number on all cost and funding status reports.

2.5.5. Verify and inform the test manager of final project costs after receipt of a final completion notice. These costs will be reflected in the close-out SOC.

3. Required Records See Section 4 of AEDCI 99-100, *Test and Evaluation Project Management*.

RODNEY F. TODARO, Colonel, USAF
Commander

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFI61-302, *Cooperative Resources and Development Agreements*, 30 May 2001 AAFP61-3, *Domestic Technology Transfer*, 6 Feb 2001

Public Law 81-415, *Unitary Wind Tunnel Plan Act of 1949*

Title 10 U.S.C. Sec. 2681, *Use of Test and Evaluation Installations by Commercial Entities*

DoD Directive 3200.11, *Major Range and Test Facility Base*, 27 Dec 2007

DoD 7000.14-R, *Financial Management Regulation*, Vol 11A, *Reimbursable Operations Policy*, **Chapter 12**, *Major Range and Test Facilities*

AFI65-601, Vol 1, *Budget Guidance and Procedures*, 16 Aug 2012

AFMCI65-602, *Uniform Reimbursement and Pricing Procedures*, 21 Feb 2006

AFTCI91-203_AEDCSUP, *Air Force Test Center Instruction 91-203AEDC Supplement*

Adopted Forms

AF847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AEDC—Arnold Engineering Development Complex

AEDC/FM—Financial Management and Comptroller Directorate

AEDC/JA—Office of the Staff Judge Advocate

AEDC/SE—Safety Office

AEDC/TST—Test Operations Division

CTF—Combined Test Force

Attachment 2

STANDARD STATEMENT OF CAPABILITY (SOC) TERMS AND CONDITIONS

A2.1. The following terms and conditions apply to all AEDC SOC's for commercial test support. In accordance with (IAW) para 2.2.2 of AEDCI 99-20, approval by the Test Operations Division Chief is required to omit or amend any of these terms and conditions

A2.1.1. DISTRIBUTION STATEMENT: If applicable, all Customer data will be marked with the following statement: *This technical data is considered ITAR and/or EAR controlled pursuant to 22 CFR Part 120-130 and 15 CFR Parts 730-774 respectively. Transfer of this data by any means to a Non-US Person, whether in the United States or abroad, without the proper U.S. Government authorization (e.g., License, exemption, NLR, etc.), is strictly prohibited.*

A2.2. PROPRIETARY STATEMENT: If applicable, all Customer data will be marked with the following statement: *Customer PROPRIETARY INFORMATION: The information contained in this document is Customer proprietary information and is disclosed in confidence. It is the property of Customer and shall not be used, disclosed to others or reproduced without the express written consent of Customer, including, but without limitation, it is not to be used in the creation, manufacture, development, or derivation of any repairs, modifications, spare parts, designs, or configuration changes or to obtain FAA or any other Government or regulatory approval to do so. If consent is given for reproduction in whole or in part, this notice and the notice set forth on each page of this document shall appear in any such reproduction in whole or in part.*

A2.3. Data Information Management, The test article and data developed as a result of the testing will be handled in accordance with established Governmental procedures for safeguarding such articles or information against unauthorized disclosure and as stipulated herein. These procedures authorize AEDC to disclose such information to its support contractors as required to perform the scope of work described in the SOC; said information is protected under preexisting nondisclosure agreements between AEDC and its support contractors. Any disclosure that results from (a) Clause 4, Dissemination of Data, or (b) other official Government users, including Government publications or advertisements, are not unauthorized disclosures.

A2.4. Dissemination of Data. Data and correspondence related to this SOC shall be directed to the address specified by the Customer listed above. The Customer agrees that data obtained from testing at AEDC is solely for the use of the Customer's staff and will not be used for advertising purposes. It is further understood and agreed that test support provided by AEDC in no way constitutes an Air Force endorsement of the article being tested. The Government will distribute any technical report related to this SOC to the Government organization sponsoring the test, the Defense Technical Information Center, the Air University, and AFMC, unless otherwise specified in writing by the Customer.

A2.5. Property Disposition. The Customer shall be responsible for the manufacture, transportation and maintenance of test articles and other property provided to the Government in support of this effort. At the conclusion of this effort, the Customer agrees to promptly issue shipping instructions, or other disposal instructions, at no cost to the Government, for any residual property, including models, supplies, and instrumentation. Test material remaining after

project completion will be shipped to Customer "Freight Collect" unless the AEDC Test Manager is notified otherwise within 30 days after project completion.

A2.6. DESTRUCTION NOTICE. For unclassified limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document.

A2.7. Charges. Testing is performed on a cost-reimbursable basis. Actual costs incurred are billed in accordance with current policies and accounting procedures and existing Government regulations. During the fiscal year, AEDC rates are reviewed and validated quarterly in compliance with DoD and Air Force cost-reimbursement directives. This process may require rate adjustments during the fiscal year, which may result in additional billings or refunds to the Customer.

A2.8. Advanced Payments.

A2.8.1. The Customer shall pay the Government the estimated total cost of the SOC as determined by the Government at least two weeks prior to commencement of performance. The Government shall provide the Customer with a monthly summary of the status of charges and an accounting of funds remaining on the SOC. If additional funding is required, the Government shall promptly notify the Customer of the additional funding required and shall modify the SOC. The Customer shall provide the Government the additional funds no later than seven days after receiving such notification, or within such time as approved by the Government. Failure of the Customer to provide funds as required herein will result in the discontinuance of performance.

A2.8.2. If the Customer chooses to provide funds to AEDC in excess of the SOC ceiling to support an ongoing test project without having first received a proposed SOC modification, the AEDC Test Manager may unilaterally modify this SOC to allow AEDC's acceptance of those funds. The Customer's provision of and AEDC's acceptance of these funds is deemed agreement by both parties for AEDC to continue work on test projects funded by the SOC. This authority applies only to work related to the previously defined scope of the test project.

A2.8.3. The Government shall adjust the SOC amount upon conclusion of performance to reflect actual charges for the cost-reimbursable portion of the work. Upon the Government's final determination of the actual cost-reimbursable charges, the Government shall refund any funds remaining on the SOC to the Customer.

A2.9. LOST TEST TIME (LTT) POLICY: LTT may occur during conduct of this test. Cost and schedule contingencies have been included in the estimate to account for reasonable levels of LTT. In general, the test customer will pay for LTT unless it is caused by gross negligence/error by AEDC personnel. Details of the AEDC LTT policy are available from the AEDC DoD test manager.

A2.10. GOVERNMENT Preemption of Test. The Government reserves the right to preempt all tests in the event of unforeseen higher priority National test requirements or a malfunction or failure of test equipment. In such event, the test will be accomplished as soon as possible after completion of preemptor's test or upon repair of equipment. The Government will not be liable for any costs accruing to the Customer as a result of preemption and/or rescheduling.

A2.11. GOVERNMENT Termination, Prohibition, or Suspension OF TESTING. The Test Operations Division Chief is authorized to terminate, prohibit or suspend immediately any test or

evaluation activity if he/she certifies in writing that the test or evaluation activity is or would be detrimental to: (a) the public health and safety; (b) property (either public or private); or (c) any national security interest of the United States.

A2.12. Termination/Rescheduling by THE CUSTOMER. Unless otherwise agreed to by the parties, the Customer may terminate or reschedule test facilities at any time prior to testing by providing written notification to the AEDC DoD test program manager. If the Customer elects to terminate or reschedule this SOC, the Customer shall reimburse the Government for all obligations incurred up to the date of receipt by AEDC of its termination or rescheduling notice, including all costs incurred in restoring the facility to the condition it was in before preparations were made to conduct the test and for any other costs resulting directly from the termination or rescheduling. The rights and remedies of the Government provided by this clause are in addition to any other rights and remedies provided by law or this SOC.

A2.13. GOVERNMENT LIABILITY. The Government's liability is as provided under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).

A2.14. CUSTOMER LIABILITY. The Customer hereby agrees to indemnify and hold harmless the Government, its agencies and instrumentalities against all suits, actions, claims, costs, or demands for death, personal injury, and property damage to which the Government, its agencies and instrumentalities may be subject by reason of damage or injury (including death) to the property or person of anyone (i) arising or resulting from any and all operations performed under this SOC by either the Government or its support contractor(s), and (ii) resulting from use of the test article, test equipment or facilities by the Customer, its agents, employees or subcontractors in connection with the performance of this SOC. The Customer hereby waives any and all claims which, but for this waiver, it may have, or which it may hereafter acquire, against the Government, arising out of the operation above described.

A2.14.1. The Customer furthermore hereby agrees to indemnify the Government for any loss, damage, or destruction to any Government property to include environmental damage, real or personal resulting from the manufacture, transportation, installation, test, or other use of the test article, test equipment or facilities by the Customer, its agents, employees or subcontractors in connection with the performance of this SOC. This property liability shall be absolute and not subject to the Disputes clause of this SOC.

A2.15. Insurance. The Customer shall, at its own expense, provide and maintain during the entire performance of this SOC insurance of at least the following kinds and minimum amounts:

A2.15.1. Workers' Compensation and Employer's Liability – \$100,000;

A2.15.1.1. General Liability (Bodily Injury) – \$500,000 per occurrence;

A2.15.1.2. Automobile Liability - \$200,000 per person,

A2.15.1.2.1. \$500,000 per occurrence for death or bodily injury,

A2.15.1.2.2. \$20,000 per occurrence for property damage or loss;

A2.15.1.2.3. Property Damage Liability – \$3,000,000 per occurrence;

A2.15.2. Before commencing work under this SOC, the Customer shall provide to the AEDC Test Manager a copy of the policy showing AEDC as a named insured. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation

or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this SOC is to be performed prescribe, or (2) until 30 days after the insurer or the Customer gives written notice to the AEDC Test Manager, whichever period is longer. The Customer should consult its insurer for Tennessee requirements.

A2.15.3. The Customer shall insert the substance of this entire clause in any contracts that will require work at AEDC in connection with this SOC and shall require those Customers to provide and maintain the insurance required above. The Customer shall maintain a copy of all such Contractor's proofs of required insurance in favor of the Government. The Customer shall maintain a copy of all such Contractor's proofs of required insurance, and shall make copies available to the AEDC Test Manager upon request within five working days of the Customer's receipt of the request.

A2.16. Health and Safety on Government Installations. In performing work under this SOC on a Government installation, the Customer shall:

A2.16.1. Comply with the prescribed health and safety requirements within the AEDC industrial complex, including, but not limited to Personnel Protection Equipment (PPE), lockout/tagout procedures, confined space procedures, etc. (PPE requirements are prescribed with signage to include hardhats, safety glasses, hearing protection, and safety shoes as required.)

A2.16.2. Comply with the health and safety rules of the Government installation that concern related activities not directly addressed in this SOC;

A2.16.3. Take all reasonable steps and precautions to prevent accidents and preserve the health and safety of Customer and Government personnel performing or in any way coming in contact with the performance of this SOC;

A2.16.4. Take such additional immediate precautions as the AEDC Test Manager may reasonably require for health and safety purposes;

A2.16.5. Prior to Customer employees or their guests arriving at AEDC to access permit-required confined spaces or hazardous areas, document to the cognizant AEDC project manager that employees or guests requiring such access have received any OSHA-required, employer-provided training in permit-required confined spaces (29 CFR 1910.146) and the control of hazardous energy (lockout/tagout) (29 CFR 1910.147); and

A2.16.6. Provide Customer employees or their guests any OSHA-required, PPE (examples include, but are not limited to, hard hats, safety glasses, ear plugs, safety shoes, safety harnesses, and gas detection meters) required to access permit-required confined spaces or hazardous areas.

A2.16.7. The AEDC Test Manager may, by written order, direct Air Force Occupational Safety and Health Standards (AFOSH) and/or health/safety standards as may be required in the performance of this SOC and any adjustments resulting from such direction will be in accordance with this provision. Any violation of these health and safety rules and requirements, unless promptly corrected as directed by the AEDC Test Manager, shall be grounds for temporary suspension of work until imminent danger conditions are corrected

and ultimately grounds for termination of this SOC. Please contact the AEDC Test Manager for additional information or assistance regarding AFOSH or PPE requirements at AEDC.

A2.17. AFTC SAFETY REVIEW PROCESS. The proposed test/activity must be reviewed using the procedures contained in AFTCI 91-203, AFTC Test Safety Review Policy, and any local supplements to this instruction. To support this review, safety planning must begin early in the program. This process culminates in a Safety Review Board (SRB) in which test-unique hazards and baseline facility operations risks, along with the associated mitigation procedures, are discussed. Customer participation is encouraged. The SRB must be completed prior to testing.

A2.18. Mishap Investigation(s). In the event of any mishap resulting in the loss, damage or destruction to the test article or the Government Test Facility, the Customer agrees to provide technical support for any investigations to assess the cause. Safety investigations will be conducted in accordance with procedures outlined in AFI 91-204, Safety Investigations and Reports, for those mishaps described therein. Any resulting safety report will not be provided to the Customer and will not be used by either party to assess legal responsibility or blame for the mishap.

A2.18.1. Accident Investigations will be performed in accordance with AFI 51-503, Aerospace and Ground Accident Investigations, and will include any mishap that may reasonably be expected to give rise to (1) claims against the US Government in excess of \$50,000; (2) litigation against US or any 3rd party, or (3) involve a fatality or permanent disabling injury. The purpose of this type investigation will be to gather and preserve evidence for claims, litigation, disciplinary and administrative actions. The information obtained as a result of the investigation will not be privileged and will be released to third parties in accordance with the above referenced regulation.

A2.19. Permits and Responsibilities. Customer shall, without expense to the Government be responsible for obtaining and maintaining all federal, state, and local operating authorities, permits and licenses, necessary, beyond AEDC's current operating authorities, to perform the testing and/or development contemplated by this SOC. Customer is advised that these may include, but are not limited to: The National Environmental Policy Act (NEPA); The National Historic Preservation Act (NHPA); Endangered Species Act; Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); Clear Water Act (CWA), Clean Air Act (CAA); Safe Drinking Water Act (SDWA); and applicable federal, state, regional and local equivalents.

A2.20. DISPUTES. Except as otherwise provided in this SOC, any dispute concerning a question of fact arising under this SOC which is not disposed of by agreement shall be decided by the AEDC Test Operations Division Chief, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Customer. This decision shall be final and conclusive, within 30 days from the date of receipt of such copy, unless the Customer mails or otherwise furnishes to the AEDC Test Manager a copy of his written appeal. This appeal shall be heard by AEDC Commander. The decision of the duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The Customer shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. The "Disputes" clause

does not preclude consideration of law questions in connection with decisions provided for herein, provided, that nothing in this SOC shall be construed as making final the decision of any Government administrative official, representative, or board on a question of law.

A2.21. Order of Precedence. The rights and obligations of the parties to this SOC shall be subject to and governed by these clauses and the other documents incorporated by reference. Any inconsistency in the SOC shall be resolved by giving precedence in the following order, (a) the SOC provisions, (b) these Clauses, and (c) other documents incorporated by reference.

A2.22. Severability. If a provision of this SOC is held illegal, invalid, or unenforceable, that holding shall not affect the legality, validity, or enforceability of any other provision of this SOC.