DEFENSE

Security of Information

Agreement between the
UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Canberra June 25, 2002

with

Exchange of Notes

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

AUSTRALIA

Defense: Security of Information

Agreement signed at Canberra June 25, 2002;
Entered into force November 7, 2002.
With exchange of notes.

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE

UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF AUSTRALIA

CONCERNING SECURITY MEASURES

FOR THE PROTECTION OF CLASSIFIED INFORMATION

Preamble

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA (hereinafter referred to as "the Parties")

HAVING a mutual interest in the protection of classified information;

HAVE AGREED as follows:

ARTICLE 1
Commitment to the Protection of Classified Information

Each Party shall protect classified information received directly or indirectly from the other Party according to the terms set forth herein and in accordance with its laws and regulations.

ARTICLE 2
Definition of Classified Information

For the purpose of this Agreement, classified information is defined as information that is generated by or for the Government of the United States of America or the Government of Australia or that is under the jurisdiction or control of one of them, and which requires protection in the interests of national security of that government and that is so designated by the assignment of a security classification by that government. The information may be in oral, visual, electronic, or documentary form, or in the form of material including, equipment or technology.

ARTICLE 3
Marking of Classified Information

Classified information shall be marked as follows:

A. For the United States of America, classified information is marked CONFIDENTIAL, SECRET, or TOP SECRET. For Australia, it is marked RESTRICTED, CONFIDENTIAL, PROTECTED, SECRET, HIGHLY PROTECTED or TOP SECRET.

B. The corresponding national security classifications are:

In Australia	In the United States of America
TOP SECRET	TOP SECRET
SECRET or HIGHLY PROTECTED	SECRET

CONFIDENTIAL or PROTECTED RESTRICTED	CONFIDENTIAL No US equivalent, but shall be protected as if it is CONFIDENTIAL, unless otherwise advised by the Government of Australia

C. Each Party shall stamp, mark or designate the name of the originating government on all classified information received from the other Party. The information shall be stamped, marked or designated with a national security classification marking of the recipient Party no lower than the corresponding classification specified by the originating government that will afford a degree of protection at least equivalent to that afforded to it by the releasing Party.

ARTICLE 4
Protection of Classified Information

No individual shall be entitled to access to classified information received from the other Party solely by virtue of rank, appointment, or security clearance. Access to the information shall be granted only to those individuals whose official duties require such access and who have been granted a personnel security clearance in accordance with the prescribed standards of the Parties. The recipient Parties shall ensure that:

A. The recipient Party shall not release the information to a government, person, firm, institution, organization or other entity of a third country without the prior written approval of the releasing Party;

B. The recipient Party shall afford the information a degree of protection equivalent to that afforded it by the releasing Party;

C. The recipient Party shall not use or permit the use of the information for any other purpose than that for which it was provided without the prior written approval of the releasing Party;

D. The recipient Party shall respect private rights, such as patents, copyrights, or trade secrets, which are involved in the information;

E. Each facility or establishment that handles information shall maintain a registry of the clearance of individuals at the facility or establishment who are authorized to have access to such information;

F. Accountability and control procedures shall be established to manage the dissemination of and access to the information; and

G. The recipient Party shall comply with any additional limitations on the use, disclosure, release and access to the information which may be specified by the originating Party.

ARTICLE 5
Personnel Security Clearances

1. The determination on the granting of a personnel security clearance to an individual shall be consistent with the interests of national security and shall be based upon all available information indicating whether the individual is of unquestioned loyalty, integrity, trustworthiness, and excellent character, and of such habits and associates as to cast no doubt upon his or her discretion or good judgement in the handling of classified information.

2. Each Party shall conduct an appropriate investigation, in sufficient detail to provide assurance that the above criteria have been met with respect to any individual of its nationality to be granted access to classified information received from the other Party.

3. Before a representative of a Party releases classified information to an officer or representative of the other Party, the receiving Party shall provide to the releasing Party an assurance that the officer or representative possesses the necessary level of security clearance and requires access for official purposes, and that the information will be protected by the receiving Party.

ARTICLE 6
Release of Classified Information to Contractors

Prior to the release to a contractor or prospective contractor of any classified information received from the other Party, the recipient Party shall:

A. Ensure that such contractor or prospective contractor and the contractor's facility have the capability to protect the information;

B. Grant to the facility an appropriate facility security clearance;

C. Grant appropriate personnel security clearances for all individuals whose duties require access to the information;

D. Ensure that all individuals having access to the information are informed of their responsibilities to protect the information in accordance with applicable laws and regulations;

E. Carry out periodic security inspections of cleared facilities to ensure that the information is protected as required herein; and

F. Ensure that access to the information is limited to those persons who have a need to know for official purposes.

ARTICLE 7
Responsibility for Classified Information

Each Party shall be responsible for all classified information of the other Party while the information is under its jurisdiction and control. While in transit, the transiting Party shall be responsible for all classified information until custody of the information is formally transferred to the other Party.

ARTICLE 8
Responsibility for Facilities

Each Party shall be responsible for the security of all government and private facilities and establishments where classified information of the other Party is kept and shall assure for each such facility or establishment that qualified individuals are appointed who shall have the responsibility and authority for the control and protection of the information.

ARTICLE 9
Storage of Classified Information

Classified information shall be stored in a manner that assures access only by those individuals who have been authorized access pursuant to Articles 4 and 5 of this Agreement.

ARTICLE 10
Transmission

Classified information shall be transmitted between the Parties through government-to-government channels or channels mutually approved in advance in writing by the governments. The minimum requirements for the security of the information during transmission shall be as follows:

A. <u>Documents</u>

(i) Documents or other media containing classified information shall be transmitted in double, sealed envelopes, the innermost envelope bearing only the classification of the documents or other media and the organizational address of the intended recipient, the outer envelope bearing the organizational address of the recipient, the organizational address of the sender, and the registry number, if applicable.

(ii) No indication of the classification of the enclosed documents or other media shall be made on the outer envelope. The sealed envelope shall then be transmitted according to the prescribed procedures of the Parties.

(iii) Receipts shall be prepared for packages containing classified documents or other media that are transmitted between the Parties, and a receipt for the enclosed documents or media shall be signed by the final recipient and returned to the sender.

B. Classified Material

(i) Classified material, including equipment, shall be transported in sealed, covered vehicles, or be securely packaged or protected in order to prevent identification of its details, and kept under continuous control to prevent access by unauthorized persons.

(ii) Classified material, including equipment, which must be stored temporarily awaiting shipment shall be placed in protected storage areas. The areas shall be protected by intrusion-detection equipment or guards with security clearances who shall maintain continuous surveillance of the storage areas. Only authorized personnel with the requisite security clearance shall have access to the storage areas.

(iii) Receipts shall be obtained on every occasion when classified material, including equipment, changes hands en route, and a receipt shall be signed by the final recipient and returned to the sender.

C. Electronic Transmissions. Classified information transmitted by electronic means shall be encrypted.

ARTICLE 11
Visits

1. Visits by representatives of one Party to facilities and establishments of the other Party, that require access to classified information, or where a security clearance is required to permit access, shall be limited to those necessary for official purposes. Authorization shall only be granted to representatives who possess a valid security clearance.

2. Authorization to visit the facilities and establishments shall be granted only by the Party in whose territory the facility or establishment to be visited is located or by government officials designated by that Party. The visited Party, or its designated officials, shall be responsible for advising the facility or establishment of the proposed visit, and the scope and highest level of classified information that may be furnished to the visitor.

3. Requests for visits by representatives of the Parties shall be submitted through the Embassy of the United States in Canberra , in the case of United States visitors, and through the Embassy of Australia in Washington D.C., in the case of Australian visitors.

ARTICLE 12
Security Visits

Implementation of the security requirements set out in the Agreement can be advanced through reciprocal visits by security personnel of the Parties. Accordingly, security representatives of each Party, after prior consultation, shall be permitted to visit the other Party, to discuss and observe the implementing procedures of the other Party in the interest of achieving reasonable comparability of the security systems. Each Party shall assist the security representatives in determining whether classified information received from the other Party is being adequately protected.

ARTICLE 13
Security Standards

1. On request, each Party shall provide the other Party with information about its security standards, procedures and practices for safeguarding of classified information.

2. Each Party shall promptly notify the other Party of any proposed changes to its laws and regulations that would affect the protection of classified information under this Agreement. In such case, the Parties shall consult to consider possible amendments to this Agreement. In the interim, such classified information shall continue to be protected as described herein, unless otherwise approved in writing by the originating Party.

ARTICLE 14
Reproduction of Classified information

When classified documents or other media containing classified information are reproduced, all original security markings thereon shall also be reproduced or marked on each copy. Such reproduced documents or media shall be placed under the same controls as the original document or media. The number of copies shall be limited to that required for official purposes.

ARTICLE 15
Destruction of Classified Information

1. Classified documents and other media containing classified information received from the other Party shall be destroyed by burning, shredding, pulping, or

other means preventing reconstruction of the classified information contained therein.

2. Classified material, including equipment, containing classified information shall be destroyed so that it is no longer recognizable and so as to preclude reconstruction of the transmitted classified information in whole or in part.

ARTICLE 16
Downgrading and Declassification

1. The Parties agree that classified information should be downgraded in classification or should be declassified as soon as information requires a lower degree of protection or no further protection against unauthorized disclosure.

2. The originating Party has complete discretion concerning downgrading or declassification of its own classified information. The recipient Party shall not downgrade the security classification of classified information received from the other Party without the prior written consent of the originating Party.

ARTICLE 17
Loss or Compromise

The originating Party shall be informed immediately of all losses or compromises, as well as possible losses or compromises, of its classified information, and the recipient Party shall initiate an investigation to determine the circumstances. The results of the investigation and information regarding measures taken to prevent recurrence shall be forwarded to the originating Party.

ARTICLE 18
Disputes

Disagreements between the Parties arising under or relating to this Agreement shall be settled through consultations between the Parties and shall not be referred to a national court, to an international tribunal, or to any other person or entity for settlement.

ARTICLE 19
Costs

Each Party shall be responsible for meeting its own costs incurred in implementing this Agreement.

ARTICLE 20
Succession

1. The "Security Agreement" between the Department of Defense of the United States of America and the Department of Defence of Australia which came into effect on 29 August 1950, as amended, the United States-Australian Arrangements for facilitating Disclosure of Classified Military Information to Commonwealth Nations which came into effect on 29 August 1950 and the "General Security of Information Agreement" between the Government of Australia and the Government of the United States of America concluded by an exchange of notes dated 2 May 1962, as amended, ("the 1950 and 1962 Security Agreements") shall terminate on the date that this Agreement enters into force.

2. Following termination, any information which was protected in accordance with "the 1950 and 1962 Security Agreements" shall continue to be protected in accordance with this Agreement. Any reference in an existing agreement or arrangement between the Parties to one or more of "the 1950 and 1962 Security Agreements" shall be considered to be a reference to this Agreement.

ARTICLE 21
Entry into Force, Amendment and Termination

1. Following signature by both Parties, this Agreement shall enter into force on the date that the Government of Australia notifies the Government of the United States of America through the diplomatic channel that all domestic procedures as are necessary to give effect to this Agreement in Australia have been satisfied.

2. Amendments and Supplemental Annexes to the present Agreement shall be made by mutual written agreement of the Parties.

3. The Parties or any department or agency of the Parties, within the limits of their responsibilities and authorities, may mutually determine implementing arrangements regarding classified information in general or that are specific to those departments or agencies.

4. This Agreement shall not apply to information for which special arrangements or agreements may be required, such as atomic energy information that the United States designates as 'Restricted Data'.

5. Either Party may terminate this Agreement by notifying the other Party in writing, ninety days in advance of its intention to terminate the Agreement.

6. Unless terminated in accordance with paragraph 4, this Agreement shall remain in force for a period of twenty five years and shall be automatically extended in five year increments thereafter.

7. Notwithstanding the termination of this Agreement, all classified information provided pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Canberra this twenty-fifth day of June 2002

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Thomas Schiffer

FOR THE GOVERNMENT OF AUSTRALIA

EMBASSY OF THE
UNITED STATES OF AMERICA

Canberra, June 25, 2002

No. 81

Excellency:

I have the honor to refer to the Agreement between the Government of Australia and the Government of the United States of America concerning security measures for the protection of classified information ("GSOIA") and to express the following understandings of the United States, which are intended to aid the interpretation of the GSOIA based on the parties' discussions during the negotiations.

The Parties confirm that the phrase "classified information received from the other Party" wherever it appears in the text of the Agreement is

His Excellency

Alexander Downer

Minister for Foreign Affairs of Australia,

Canberra

intended to mean classified information, in the broadest sense, provided directly or indirectly by one Party to the other Party, or to an officer or other representative of the Parties, including classified information jointly generated by the Parties. The phrase is intended to cover classified information that is provided to the recipient Party for its own purposes or for the purposes of passing to a contractor of the originating Party.

It is the intention of the Parties that, in Article 2, "generated by or for the Government of the United States or the Government of Australia or that is under the jurisdiction or control of one of them and which requires protection in the interests of national security of that government" be read as descriptive of the nature of the information with which the Agreement is concerned. It will be information of this nature that will be assigned a security classification. The Parties confirm, however, that they will protect classified information in accordance with the terms of the Agreement on the basis only that it is designated by the assignment of a security classification. No questioning of the nature of the information will be required or will be made to invoke the protections of the Agreement.

The Parties note that the term "personnel security clearance" wherever it appears in the text refers for the purposes of the Government of Australia to a "personal security clearance".

In respect of the requirements for security clearances in the Agreement, the Parties acknowledge the special status of elected representatives at the federal level, and confirm their intention to continue to apply their current practices to them.

It is the intention of the Parties that protection of private rights, such as patents, copyrights or trade secrets, is an issue to be dealt with in detail separately from the Agreement. While the Parties in Article 4 D confirm their commitment to respect private rights, how this commitment will be manifested will depend upon separate detailed agreements or arrangements and the laws of the Parties. The extent of knowledge of a recipient Party of such rights may also be relevant.

I would appreciate your Excellency confirming that the understandings described above are also the understandings of the Government of Australia.

Accept, Excellency, the renewed assurance of my highest consideration.

Thomas Schieffer

N° LGB 02/100

Excellency:

I have the honour to refer to your Note of 25 June 2002 the text of which is copied below.

> "I have the honour to refer to the Agreement between the Government of Australia and the Government of the United States of America concerning security measures for the protection of classified information ("GSOIA") and to express the following understandings of the United States, which are intended to aid the interpretation of the GSOIA based on the parties' discussions during the negotiations.
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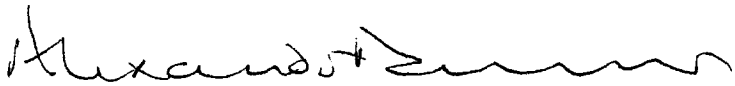
I would appreciate your Excellency confirming that the understandings described above are also the understandings of the Government of Australia."

I affirm that the understandings described above are also the understandings of the Government of Australia

Accept, Excellency, the assurances of my highest considerations.



Alexander Downer
Minister for Foreign Affairs

CANBERRA
25 June 2002