

DEFENSE

Joint Strike Fighter Program

**Agreement Between the
UNITED STATES OF AMERICA
and CANADA
Supplementing the
Memorandum of Understanding
of January 17, 2001**

Signed at Washington February 7, 2002

with

Annexes



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.”

CANADA

Defense: Joint Strike Fighter Program

*Agreement supplementing memorandum of
understanding of January 17, 2001.
Signed at Washington February 7, 2002;
Entered into force February 7, 2002.
With annexes.*

SUPPLEMENT
BETWEEN THE
DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND THE
DEPARTMENT OF NATIONAL DEFENCE
OF CANADA
UNDER THE MEMORANDUM OF UNDERSTANDING
CONCERNING THE COOPERATIVE FRAMEWORK FOR
SYSTEM DEVELOPMENT AND DEMONSTRATION OF THE
JOINT STRIKE FIGHTER

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INTRODUCTION

The Department of National Defence of Canada (CA DND) and the Department of Defense of the United States of America (U.S. DoD), hereinafter referred to as the "Participants":

Recognizing that this Supplement is subject to the Memorandum of Understanding among the Minister of National Defence of Canada, the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, and the Secretary of Defense on behalf of the Department of Defense of the United States of America concerning the Cooperative Framework for System Development and Demonstration (SDD) of the Joint Strike Fighter (JSF SDD Framework MOU) and any amendments thereto;

Recognizing the unique and extensive defense technology and industrial relationship between Canada and the United States and the importance of reducing barriers and stimulating the two-way flow of defense equipment and technology and the industrial base necessary for the security of both nations;

Recognizing the importance of affordability as a cornerstone of the JSF Program;

Recognizing the benefits to be obtained from interoperability and standardization of defense equipment toward achieving compatibility in coalition operations;

Desiring to improve their mutual conventional defense capabilities through the joint development, sharing and application of new Air System technologies, and new management and engineering approaches, through full cooperation on technology release throughout the SDD Phase of the JSF Program and any cooperation in subsequent phases;

Recognizing the contributions that the CA DND has made to the Joint Strike Fighter (JSF) Program in the Conventional Take-off and Landing (CTOL) portion of the JSF Program Concept Demonstration Phase pursuant to the Memorandum of Understanding concerning the Joint Strike Fighter (JSF) Preferred Weapon System Concept Refinement Project of 2 January 1998 between the Department of Defense of the United States of America and the Department of National Defence of Canada;

Desiring to extend their JSF cooperation into the System Development and Demonstration (SDD) Phase with a view to

consideration of subsequent cooperation in JSF developmental upgrades, production, and support;

Have reached the following understandings:

SECTION I

DEFINITIONS OF TERMS AND ABBREVIATIONS

The Participants have jointly decided upon the following definitions for terms used in this Supplement.

JSF Cooperative Project
Personnel

CA DND military members or civilian employees assigned to the JSF Program Office or U.S. DoD field activities who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning or other functions in furtherance of the Project.

JSF Senior Warfighter Group

The operational community advisory group, chartered to support the JSF Program Office in the SDD Phase, that consists of representatives from the services of the JSF SDD Framework MOU Participants and which meets on an ad hoc basis.

SECTION II

OBJECTIVES AND SCOPE

2.1. The objective of this Supplement is to establish the detailed provisions concerning the responsibilities and benefits of the Participants under the Project in accordance with paragraph 2.1 of the JSF SDD Framework MOU.

2.2. The Participants intend to promote industrial and technological cooperation between the United States and Canada during the JSF SDD Phase.

2.3. During the JSF SDD Phase, the Participants will design, develop, and qualify the JSF Air System which fulfills the joint Operational Requirements Document (ORD) dated 13 March 2000, and any changes thereto, and is as common to the U.S. Air System as is possible within U.S. national disclosure policies. The Participants intend to enhance interoperability between the U.S. DoD and the CA DND through JSF SDD Phase cooperation and any cooperation in subsequent phases.

2.4. The U.S. DoD will use its best efforts to provide the CA DND with the opportunity to obtain equipment and systems produced under U.S. DoD programs other than the JSF Program, to the extent that such equipment and systems are needed to meet the JSF Air System performance requirements specified in the joint ORD and further detailed in the Joint Model Specification (JMS).

2.5. The U.S. DoD and CA DND may pursue future cooperation in JSF developmental upgrades, production, and support under separate arrangements, or amendments to the JSF SDD Framework MOU and this Supplement.

SECTION III

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

3.1. The JSF SDD Framework MOU established the Executive Committee (EC) and provided that the U.S. DoD EC representative will be the JSF Program Director (or successor in the event of reorganization). The CA DND EC representative will be the Director General, International and Industry Programs (or successor in the event of reorganization).

3.2. The JSF SDD Framework MOU also provided for plenary EC meetings. The U.S. DoD and the CA DND EC representatives will hold semi-annual U.S. DoD-CA DND-only meetings, if necessary, to address issues of concern to the Supplement; additional meetings will be held at the request of either of the representatives, when appropriate, giving one month's notice to the other. The Participant hosting the Supplement-specific EC meeting will chair the meeting, unless otherwise mutually determined. In addition to the Supplement-specific EC responsibilities contained in paragraph 4.5 of the JSF SDD Framework MOU, the following EC responsibilities under this Supplement will require unanimous decisions:

3.2.1. Approving and maintaining oversight of the U.S. DoD-CA DND JSF Program Office Integrated Project Team (IPT) Personnel Description Document (PDD).

3.2.2. Amending Annex A (Supplement Management Structure).

3.3. The U.S. DoD and CA DND EC representatives will also promptly apprise and consult on any matters that affect the Supplement and resolve any issues brought forth by the Director, JSF International Directorate (JSF/ID) and CA DND National Deputy.

3.4. In addition to the responsibilities related to the Supplement described in paragraph 4.7 of the JSF SDD Framework MOU, the Director, JSF/ID, will be responsible for:

3.4.1. Preparing, in conjunction with the CA DND National Deputy, a U.S. DoD/CA DND JSF Program Office IPT PDD for the approval of the U.S. DoD and CA DND EC members.

3.4.2. Referring to the U.S. DoD and CA DND EC members issues related to the Supplement that the Director, JSF/ID cannot resolve.

3.4.3. Accountability to the US DoD and CA DND EC members for timely release of Project Information furnished by the US DoD.

3.5. The CA DND will provide a National Deputy whose primary responsibility will be as the national representative for Canada. The CA DND National Deputy will also be initially assigned to the Air Vehicle IPT as a Coalition Warfare/C4I Support Officer within the JSF Program Office in accordance with Annex A. Specific CA DND National Deputy responsibilities are identified in Section 3.6 below. Specific IPT responsibilities for CA DND personnel will be identified in the U.S. DoD/CA DND JSF Program Office IPT PDD. Additionally, Annex B (JSF Cooperative Project Personnel) establishes provisions for the general conduct of CA DND personnel located in the JSF Program Office or U.S. DoD field activities. Annex A (Supplement Management Structure) depicts the management structure established for this Supplement.

3.6. In addition to assigned IPT responsibilities, the CA DND National Deputy will be responsible for:

3.6.1. Supporting the Director, JSF/ID in the day-to-day administrative management of both the JSF SDD Framework MOU and this Supplement.

3.6.2. Providing day-to-day CA DND representation within the JSF Program Office on all matters related to the Project to ensure effective CA DND insight into the Project.

3.6.3. Assisting the JSF/ID in developing the Financial Management Procedures Document (FMPD), Project Security Instruction and Classification Guide, and IPT PDD.

3.6.4. Performing other tasks, as may be assigned by the Director, JSF/ID.

3.7. CA DND military personnel and civilian employees not assigned to the JSF Program Office may attend JSF Program Reviews, Engineering Technical Meetings, and other similar events, subject to the requirements of Section X (Visits to Establishments) of the JSF SDD Framework MOU and subject to the approval of the Director, JSF/ID and the CA DND.

3.8. Representatives from the Participants' operational communities will participate in the JSF Senior Warfighter Group.

SECTION IV

FINANCIAL PROVISIONS

4.1. The CA DND share of the Financial Cost Target of the Project, as identified in Section V (Financial Provisions) of the JSF SDD Framework MOU, is \$100 million Then Year U.S. dollars. In no event will the CA DND share of the Financial Cost Target be increased without the written consent of the CA EC representative on behalf of the CA DND. The CA DND non-financial contribution includes: 1) funding, in the amount of \$50 million Then Year U.S. dollars, provided by the Technology Partnerships Canada (TPC) for TPC contracts involving Project work, 2) the use of any of the services of the Canadian Commercial Corporation, 3) the resources of any Canadian test and evaluation facilities utilized during SDD, and 4) the personnel assigned to the JSF Program Office or U.S. DoD field activities in accordance with Annex A (Supplement Management Structure). The U.S. DoD share of the Financial Cost Target is established in Section V (Financial Provisions) of the JSF SDD Framework MOU.

4.2. U.S. DoD research and development costs incurred for the Air System will not apply to any Air Systems that may be exported to the CA DND pursuant to U.S. commercial export licenses in accordance with any future cooperative production arrangements. On any future foreign military sale by the U.S. Government to the Canadian Government of the Air System, the U.S. DoD will consider excluding from the price of the Air System all of the U.S. DoD research and development costs incurred for the Air System, provided that the CA DND does not withdraw from the JSF SDD Framework MOU and this Supplement. In any event, the amount of the CA DND research and development costs incurred for the JSF Air System will be excluded from the price of any Air System sold by the U.S. Government to the Canadian Government.

4.3. The Participants recognize that pursuant to paragraph 12.7 of the JSF SDD Framework MOU, they will be given the opportunity to receive levies from sales and other transfers to Third Parties of equipment developed under that MOU in order to recoup their investment in the Project.

4.4. Recognizing that it is important to both Participants to minimize the exchange rate risk upon the cost of the Project, the Participants will use their best efforts to formulate a solution that will be reflected in the FMPD.

4.5. In furtherance of the provisions paragraph 5.11 of Section V (Financial Provisions) of the JSF SDD Framework MOU, and upon mutual agreement, CA DND or CA supreme audit institution auditors may assist the U.S. DoD on any audit elements required to

satisfactorily perform the audit. In addition, in the event that CA DND or CA supreme audit institution auditors need to obtain or to inspect specific Project financial data in order to fulfill their national obligations, the U.S. DoD will arrange for access to such specific financial data at mutually agreed times and locations.

4.6. In the event external audits concerning the Project are conducted by the supreme audit institutions of the Participants' nations, such reports will be provided by the applicable Participant to the EC representative of the other Participant. The Director, JSF/ID, and the CA DND National Deputy will apprise each other as soon as possible of external audits concerning the Project by the supreme audit institutions of the Participants' nations.

SECTION V

CONTRACTING PROVISIONS

5.1. The Participants recognize that the provisions of the Memorandum of Understanding between the Department of Defense of the United States of America and the Department of National Defence of Canada Concerning Procurement of Defense Supplies of 9 June 1996 establish the following contracting objectives:

5.1.1. Subject to national laws, policies and regulations, the United States will, in evaluating offers from Canadian sources on procurement for defense supplies, at both the prime and subcontract levels, give full consideration, without application of the Buy American Act differentials, to all qualified Canadian offers.

5.1.2. Subject to national laws, policies and regulations, Canada will, in evaluating offers from United States sources on procurement for defense supplies, at both the prime and subcontract levels, give full consideration, without any discrimination, to all qualified United States offers.

5.2. The Participants recognize the importance of the Canadian Commercial Corporation's role, as outlined in the Defence Production Sharing Agreement of 1 July 1956, in facilitating CA industrial participation and in reducing risks to the JSF Program.

5.3. In order for the CA DND to assure itself that subcontracting competitions are conducted fairly and provide best value, the U.S. DoD will provide the CA DND with insight into the subcontracting for the Project via IPT participation, attendance at Program Management Reviews, and access to the JSF Program Office electronic network.

SECTION VI

DISCLOSURE AND USE OF PROJECT INFORMATION

6.1. In accordance with paragraph 8.1.2 of Section VIII (Disclosure and Use of Project Information) of the JSF SDD Framework MOU, the following disclosure limitations will apply to this Supplement: The U.S. DoD will not disclose Project Information contrary to its national disclosure policies.

6.2. In accordance with paragraph 8.1.3 of Section VIII (Disclosure and Use of Project Information) of the JSF SDD Framework MOU, the extent and manner to which the CA DND will be given access to electronically provided Project Foreground Information are as follows: The CA DND will have timely access to such electronic data to the extent consistent with the disclosure limitations in paragraph 6.1 of this Supplement.

6.3. Subject to the provisions of Section VIII (Disclosure and Use of Project Information) of the JSF SDD Framework MOU and to U.S. national disclosure policies, the CA DND will be provided all of the Project Information acquired in the implementation of Section III (Scope of Work) of that MOU, including but not limited to the following: operation and support of the CA DND JSF Air System; implementation of Affordability Initiatives, including new and innovative project management, logistic, manufacturing, and engineering practices, and the investigation of the costs and benefits associated with the Participants' operation of the Air System.

6.4. Paragraphs 8.2.2, 8.4.2, and 8.5.2 of Section VIII (Disclosure and Use of Project Information) of the JSF SDD Framework MOU require that each Supplement specify the purposes for which each Participant other than the U.S. DoD may use or have used Government Project Foreground Information, Contractor Project Foreground Information, and Contractor Project Background Information delivered under Contracts awarded in accordance with the JSF SDD Framework MOU, respectively. For the CA DND, those purposes will be Project purposes.

6.5. Paragraph 8.8.2 and 8.8.6 of Section VIII (Disclosure and Use of Project Information) of the JSF SDD Framework MOU require each Supplement to specify the purposes for which a Participant other than the U.S. DoD may practice or have practiced Project Inventions for which a Contractor or a Participant, respectively, grants a license under its Patents. For the CA DND, those purposes will be Project purposes.

6.6. The Participants acknowledge that CA DND's rights of use regarding Project Information and Patents under paragraphs 6.4

and 6.5 will allow CA DND to use that Information for the purposes of achieving the objectives in Section II (Objectives) and Section III (Scope of Work) of the JSF SDD Framework MOU.

SECTION VII

SECURITY

7.1. All Classified Information or Material provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between Canada and the United States of America, of 30 January 1962, and including the Industrial Security Annex thereto, of 8 February 1985.

7.2. Existence of this Supplement is UNCLASSIFIED and the contents are UNCLASSIFIED.

SECTION VIII

AMENDMENT, WITHDRAWAL, ENTRY INTO EFFECT, AND DURATION

8.1. This Supplement may be amended in accordance with Section XVIII (Amendment, Withdrawal, Termination, Entry into Effect, and Duration) of the JSF SDD Framework MOU.

8.2. The CA DND may withdraw from the JSF SDD Framework MOU and this Supplement if it concludes that the Canadian industrial participation in this Project is not satisfactory.

8.3. This Supplement, which consists of eight (8) Sections and two (2) Annexes, will enter into effect on the date by which both of the following circumstances have occurred: this Supplement has been signed by both Participants, and the JSF SDD Framework MOU amendment to add CA DND has entered into effect. This Supplement will remain in effect for the duration of the JSF SDD Framework MOU, unless terminated earlier by the Participants.

The foregoing represents the understandings reached between the Department of Defense of the United States of America and the Department of National Defence of Canada upon the matters referred to therein.

Signed, in duplicate, in the English language by authorized representatives.

FOR THE DEPARTMENT OF
DEFENSE OF THE UNITED
STATES OF AMERICA:



Signature

E. C. Aldridge, Jr.

Name

USD(AT&L)

Title

February 7, 2002

Date

Washington, D.C.

Location

FOR THE DEPARTMENT OF
NATIONAL DEFENCE OF
CANADA:



Signature

Alan S. Williams

Name

ADM (Materiel)

Title

February 7, 2002

Date

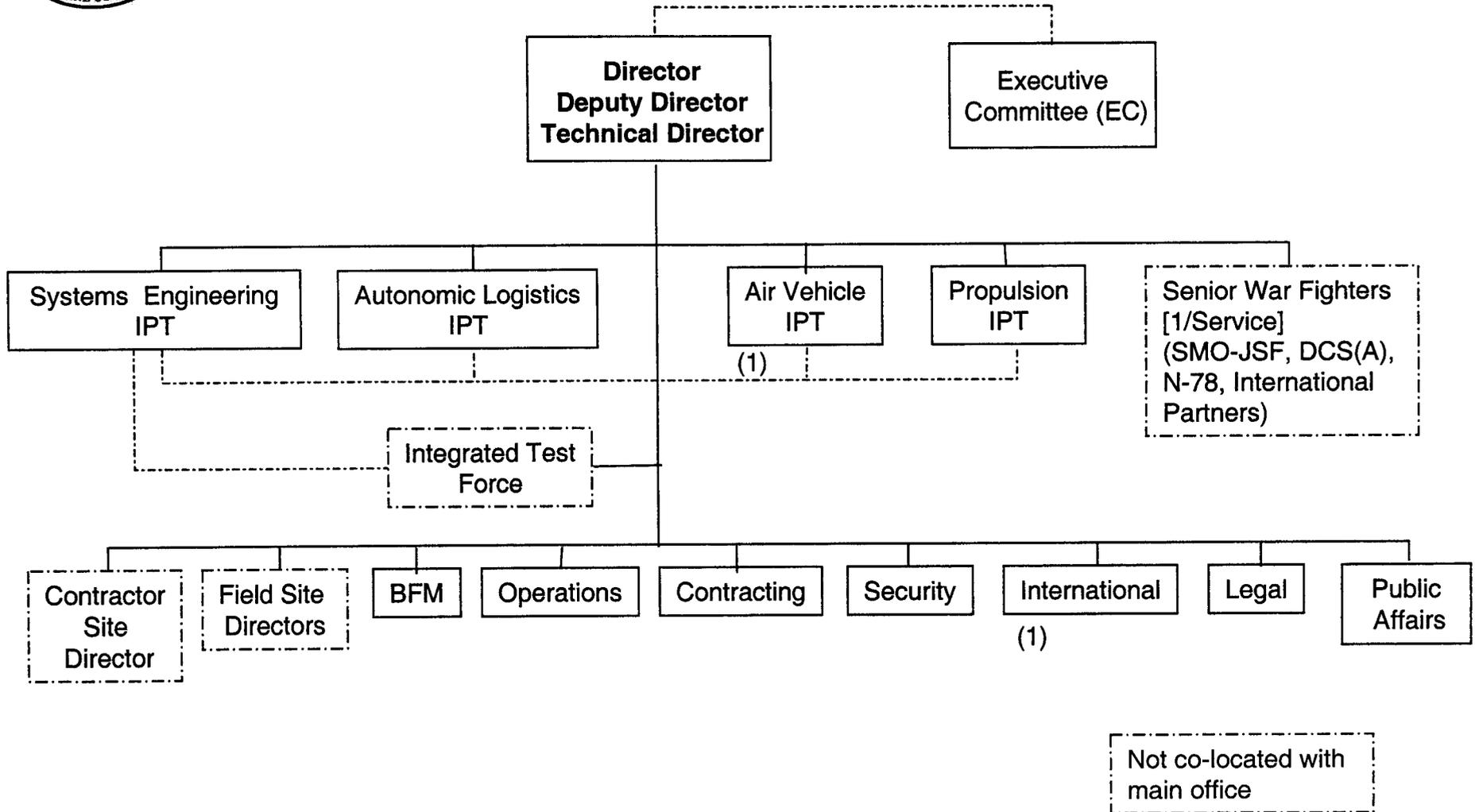
Washington, D.C.

Location



Annex A

Supplement Management Structure



Note (1): CA National Deputy - Coalition Warfare/C4I Support Officer

ANNEX B
JSF COOPERATIVE PROJECT PERSONNEL

1.0. Purpose and Scope.

1.1. This Annex establishes the provisions which will govern the conduct of JSF Cooperative Project Personnel. The CA DND will assign military members or civilian employees to the JSF Program Office or U.S. DoD field activities in accordance with Section III (Management (Organization and Responsibility)), Annex A (Supplement Management Structure) and this Annex. JSF Cooperative Project Personnel will fulfill all the responsibilities for the positions assigned to them under this Supplement. Commencement of assignments will be subject to any requirements that may be imposed by the U.S. DoD or the U.S. Government regarding acceptance of JSF Cooperative Project Personnel, such as, but not limited to, visas and visit request documentation. The U.S. DoD and CA DND EC representatives will determine the length of tour for the positions at the time of initial assignment.

1.2. JSF Cooperative Project Personnel will be assigned to the JSF Program Office or U.S. DoD field activities for Project work and will report to their designated supervisor within those organizations regarding that work. JSF Cooperative Project Personnel will perform Project work as defined in the Position Description Document (PDD) and will not act as liaison officers for the CA DND. However, such personnel may act from time to time on behalf of the CA DND's EC representative if the latter so authorizes.

1.3. JSF Cooperative Project Personnel will not be assigned to command or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the U.S. Government.

2.0. Security.

2.1. The U.S. DoD and CA DND EC representatives will establish the maximum level of security clearance required to permit JSF Cooperative Project Personnel to have access to Classified Information and Material and facilities in which Classified Information and Material are used in accordance with the Program Security Instruction (PSI) and Classification Guide (CG). Access to Classified Information and Material and facilities in which Classified Information and Material are used will be consistent with, and limited by, Section II (Objectives) and Section III (Scope of Work) of the JSF SDD Framework MOU and

the corresponding provisions of this Supplement, and will be kept to the minimum required to accomplish the work assignments.

2.2. The CA DND will cause security assurances to be filed, through the CA Embassy, specifying the security clearances for the JSF Cooperative Project Personnel being assigned. The security assurances will be prepared and forwarded through prescribed channels in compliance with established U.S. procedures.

2.3. The Participants will use their best efforts to ensure that both CA DND and U.S. DoD personnel assigned to the JSF Program Office or U.S. DoD field activities are aware of, and comply with, applicable laws and regulations pertaining to Controlled Unclassified Information and Classified Information and Material as well as the requirements of Section IX (Controlled Unclassified Information), Section X (Visits to Establishments), Section XI (Security), and paragraph 18.7 of Section XVIII (Amendment, Withdrawal, Termination, Entry into Effect, and Duration) of the JSF SDD Framework MOU and the corresponding provisions of this Supplement, and the PSI and CG. Prior to commencing assigned duties, JSF Cooperative Project Personnel will, as required by U.S. Government laws, regulations, or procedures, sign a certification concerning the conditions and responsibilities of CPP.

2.4. JSF Cooperative Project Personnel will at all times be required to comply with the security and export control laws, regulations and procedures of the U.S. Government. Any violation of security procedures by JSF Cooperative Project Personnel during their assignment will be reported to the CA DND for appropriate action. JSF Cooperative Project Personnel committing willful violations of security and export control laws, regulations, or procedures during their assignments will be withdrawn from the Project with a view toward appropriate administrative or disciplinary action by the CA DND.

2.5. All Classified Information and Material made available to JSF Cooperative Project Personnel will be considered as Classified Information and Material furnished to the CA DND and will be subject to all of the provisions and safeguards provided for in Section XI (Security) of the JSF SDD Framework MOU, Section VI (Security) of this Supplement, and the PSI and the CG.

2.6. JSF Cooperative Project Personnel will not have exclusive custody of Classified Information and Material or Controlled Unclassified Information, unless approved by the JSF Program Office and as authorized by the CA DND on a case-by-case basis. They will be granted access to such Information and material in accordance with Section IX (Controlled Unclassified

Information) and Section XI (Security) of the JSF SDD Framework MOU and the provisions of the PSI during normal duty hours and when access is necessary to perform Project work.

2.7. JSF Cooperative Project Personnel will not serve as a conduit between the U.S. DoD and CA DND for requests for and/or transmission of Classified Information and Material or Controlled Unclassified Information unless specifically authorized by the PSI.

3.0. Administrative Matters.

3.1. Consistent with U.S. laws and regulations, JSF Cooperative Project Personnel will be subject to the same restrictions, conditions, and privileges as U.S. DoD personnel of comparable rank and in comparable assignments. Further, to the extent authorized by U.S. laws and regulations and applicable bilateral or multilateral agreements or arrangements, JSF Cooperative Project Personnel and their authorized dependents will be accorded:

3.1.1. Exemption from any U.S. Government tax upon income received from the CA DND.

3.1.2. Exemption from any U.S. Government customs and import duties or similar charges levied on items entering the country for their official or personal use, including their baggage, household effects, and private motor vehicles.

3.2. Upon or shortly after arrival, JSF Cooperative Project Personnel will be informed by the JSF Program Office about applicable laws, orders, regulations, and customs and the need to comply with them. JSF Cooperative Project Personnel will also be provided briefings arranged by the JSF Program Office regarding applicable entitlements, privileges, and obligations such as:

3.2.1. Any medical and dental care that may be provided to JSF Cooperative Project Personnel and their dependents at U.S. DoD medical facilities, subject to applicable laws and regulations, including reimbursement requirements, and any bilateral or multilateral agreements or arrangements.

3.2.2. Purchasing and patronage privileges at military commissaries, exchanges, theaters and clubs for JSF Cooperative Project Personnel and their dependents, subject to applicable laws and regulations, and any bilateral agreements or arrangements.

3.2.3. Responsibility of JSF Cooperative Project Personnel and those dependents accompanying them to obtain motor vehicle

liability insurance coverage in accordance with laws and regulations applicable in the area where they are residing. In case of claims involving the use of private motor vehicles by JSF Cooperative Project Personnel and their dependents, the recourse will be against such insurance.

3.3. The JSF PD, through the JSF Program Office, will establish standard operating procedures for JSF Cooperative Project Personnel in the following areas:

3.3.1. Working hours, including holiday schedules.

3.3.2. Leave authorization, consistent to the extent possible with the military or civilian personnel regulations and practices of both Participants.

3.3.3. Dress regulations, consistent to the extent possible with the military or civilian personnel regulations and practices of both Participants.

3.3.4. Performance evaluations, recognizing that such evaluations must be rendered in accordance with the CA DND's military or civilian personnel regulations and practices.

3.4. JSF Cooperative Project Personnel committing an offense under the laws of the government of either Participant may be withdrawn from this Project with a view toward further administrative or disciplinary action by the CA DND. Disciplinary action, however, will not be taken by the U.S. DoD against JSF Cooperative Project Personnel, nor will JSF Cooperative Project Personnel exercise disciplinary authority over U.S. DoD personnel. In accordance with U.S. laws, regulations, and procedures, the U.S. DoD will assist the CA DND in carrying out investigations of offenses involving JSF Cooperative Project Personnel.