DEFENSE

Cooperation

Memorandum of Understanding between the
UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Washington and Canberra
April 14 and 23, 2003

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."

AUSTRALIA

Defense: Cooperation

Memorandum of understanding signed
at Washington and Canberra
April 14 and 23, 2003;
Entered into force April 23, 2003.
With annexes.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF DEFENCE

OF AUSTRALIA

FOR

TEST AND EVALUATION PROGRAM (TEP) COOPERATION

(SHORT TITLE: TEP MOU)

DATE: 23 April 2003

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INTRODUCTION

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

Recognizing the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defense Commitments done at Sydney on December 1, 1995 (Chapeau Agreement) applies to Test and Evaluation Activities under this MOU, including Project Arrangements for the Reciprocal Use of Test Facilities;

Having a common interest in defense;

Recognizing the benefits to be obtained from standardization, rationalization, and interoperability of military equipments;

Desiring to improve their mutual conventional defense capabilities through the application of emerging technology;

Having a mutual need to engage in a broad range of cooperative or reciprocal Test and Evaluation (T&E) Activities to satisfy common operational requirements;

Having independently conducted testing of the applications of various technologies, and having recognized the benefits of cooperation in the T&E arena;

Have reached the following understandings:

SECTION I

DEFINITIONS

The Participants have jointly decided upon the following definitions for terms used in this MOU:

Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic or documentary form or in the form of equipment or technology.
Computer Data Base	A collection of data recorded in a form capable of being processed by a computer. This definition does not include Computer Software.
Computer Program	A set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
Computer Software	Computer Programs, source code, source code listings, design details, algorithms, processes, flow charts, formulae, and related materials that would enable the software to be reproduced, recreated, or recompiled. Computer Software does not include Computer Data Bases or Computer Software Documentation.
Computer Software Documentation	Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the Computer Software.
Contract	Any mutually binding legal relationship under national laws which obligates a Contractor to furnish supplies or services, and obligates one or both of the Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Participant, which has authority to enter into, administer, or terminate Contracts.

Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.
Controlled Unclassified Information	Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this MOU, the information will be marked to identify its "in confidence" nature. It could include information that has been declassified, but remains controlled.
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Participant assigned under a specific Project Arrangement (PA) who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning or other functions in furtherance of a Cooperative Test and Evaluation Project Arrangement.
Cooperative Test & Evaluation (CTE) Project Arrangement (PA)	An implementing arrangement, under this MOU that specifies the provisions for cooperation on a specific TEP Activity.
Customer Participant	The Participant on whose behalf a test effort is conducted at a Test Facility of the Performing Participant.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Participant.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Direct Cost	Any item of cost that is easily and readily identified to a specific unit of work or output within the Test Facility where the use occurred, that would not have been incurred if such use had not occurred; may include costs of labor, materials, facilities, utilities, equipment, supplies, and any other resources of the Test Facility that are consumed or damaged in connection with the use or the maintenance of the Test Facility for the purposes of the use.
Financial Costs	Any costs that, due to their nature, will be paid using monetary contributions from the Participants.
Host Participant	The Participant to which Cooperative Project Personnel are

	assigned for duty pursuant to a CTE PA.
Indirect Cost	Any item of cost that is not easily and readily identified to a specific unit of work or output within the Test Facility where the use occurred; may include general and administrative expenses for such activities as supporting base operations, manufacturing, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.
Jointly Generated Foreground Information	Information jointly generated by the Participants in the performance of a TEP Activity.
Non-financial Costs	Any costs that, due to their nature, will be met using non-monetary contributions from the Participants.
Parent Participant	The Participant to which Cooperative Project Personnel belong.
Patent	Legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all Patents including, but not limited to, Patents of implementation, improvement or addition, petty Patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protection as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Performing Participant	The Participant conducting a test effort at its Test Facilities on behalf of the Customer Participant.
Project Background Information	Information not generated in the performance of a TEP Activity.
Project Equipment	Any test articles, material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in a TEP PA or a Project Equipment Transfer.
Project Foreground Information	Information generated in the performance of a TEP Activity.
Project Information	Any information provided to, generated in, or used in a TEP Activity under this MOU regardless of form or type and whether or not subject to copyright, Patent or other legal protection.
Project Invention	Any invention or discovery formulated or made (conceived or "first actually reduced to practice") in the course of work performed under a PA. The term "first actually reduced to practice" means the first demonstration, sufficient to establish to

	one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Reciprocal Use of Test Facilities (RUTF) PA	An implementing arrangement under this MOU that specifies the cost, schedule and performance aspects of a test effort conducted by the Performing Participant's test facility for the Customer Participant.
TEP	Australia-U.S. Test & Evaluation Program.
TEP Activity	Any activity in support of information exchange, Working Groups, Project Arrangements and PETs, as specified in Section III (Scope of Work) of this MOU.
TEP Project Arrangement	An implementing arrangement under this MOU that can be either a Reciprocal Use of Test Facilities (RUTF) PA or a Cooperative Test & Evaluation (CTE) PA.
Test and Evaluation (T&E)	The overall process of data taking, data reduction and the analysis of that data for a specific purpose or application.
Test Facility	Range or other facility at which testing of defense equipment may be accomplished.
Third Party	A government other than the government of a Participant and any person or other entity whose government is not the government of a Participant.
Working Group	Any group authorized to conduct TEP-related T&E activities by the Management Agents (MAs), in accordance with Section III (Scope of Work) and Section IV (Management.)

SECTION II

OBJECTIVES

2.1 This MOU establishes a comprehensive framework for implementing a program of cooperation on mutually determined topics related to defense Test & Evaluation (T&E). Specific objectives of this MOU are:

2.1.1 to share test resources through reciprocal and cooperative use of Test Facilities, ranges and other test capabilities and testing tools;

2.1.2 to provide for the conduct of cooperative test and evaluation of systems of shared interest;

2.1.3 to conduct joint T&E-related tests and experiments to advance test technologies and procedures;

2.1.4 to conduct cooperative development of test capabilities, test procedures and methods, and test standards and criteria;

2.1.5 to exchange testing related information such as test capability specifications, test criteria, standards, procedures, lessons learned and certain test data;

2.1.6 to provide for the transfer of test technologies and procedures; and

2.1.7 to maximize the effective utilization of each Participant's Test Facilities.

2.2 The Participants intend to use their best efforts to accommodate testing requirements of the other Participant. However, each Participant has the right to refuse to conduct a proposed TEP Activity in its country if, for example, it determines that the proposed TEP Activity:

2.2.1 does not fall within its national security interests;

2.2.2 is not permitted by international treaties or protocols to which either Participant's Government is a party;

2.2.3 cannot be accommodated within the test program resources of the Performing Participant;

2.2.4 cannot be conducted within constraints set by any national, state or local environmental laws or ordinances; or

2.2.5 would pose an unacceptable risk to life or property.

SECTION III

SCOPE OF WORK

3.1 The scope of work for this MOU will include the following TEP Activities:

3.1.1 accommodation of testing requirements on a customer-reimbursable basis under the provisions of a Reciprocal Use of Test Facilities Project Arrangement (RUTF PA). This may include access to, or transfer of, test instrumentation and other testing tools. This may also include the conduct of joint tests where both Participants have an interest;

3.1.2 conduct of cooperative T&E on systems of shared interest;

3.1.3 conduct of joint tests and experiments to advance the state of the art of test technology;

3.1.4 cooperative development of new or existing test instrumentation, equipment, facilities, and other testing tools;

3.1.5 cooperative development of testing criteria, standards and procedures;

3.1.6 exchange of information on T&E policy, testing criteria, standards and procedures and other test-related or test-derived information including, but not limited to, doctrine, tactics and operational requirements related to TEP;

3.1.7 transfer of test technologies and procedures;

3.1.8 familiarization with each other's facilities and identification of potential cooperative T&E opportunities; and

3.1.9 assignment of personnel between the Participants to facilitate development of test capabilities and to assist with the conduct of T&E efforts.

3.2 The following mechanisms will be utilized to undertake the TEP Activities described in paragraph 3.1:

3.2.1 Information Exchange:

3.2.1.1 Information exchange will take place on an equitable basis in all areas concerning TEP. This MOU permits the exchange of Computer Data Bases, Computer Software and Computer Software Documentation as information. This MOU permits the exchange of information for any purpose under the scope of this MOU, including harmonizing the Participants' respective TEP requirements and for formulating, developing, and negotiating any TEP Activity. Information

exchange need not necessarily coincide in time, technical field, or in the form of information.

3.2.1.2 Computer Data Bases, Computer Software or Computer Software Documentation associated with TEP Activities may be transferred under this MOU in accordance with national procedures, subject to the following limitations:

3.2.1.2.1 such transfers must be necessary or useful to the conduct of the TEP Activity as determined by the providing Participant; and

3.2.1.2.2 such transfers may occur only where national authority for such release has been obtained by the providing Participant. Such release may be subject to restrictions on use imposed by the providing Participant.

3.2.2 Working Groups (WGs):

3.2.2.1 WGs may be established to explore, study, and report on specific T&E issues. A WG will be limited in scope to a single, well-defined area and will endeavor to assess the T&E issue based on information provided by both Participants in such a way as to arrive at a jointly determined position within a set time limit. Each WG will have its own written terms of reference (TORs).

3.2.3 TEP Project Arrangements (PAs):

3.2.3.1 Reciprocal Use of Test Facilities (RUTF) PA: This type of PA will include specific provisions, consistent with this MOU and the model at Annex A, that specify the Performing and Customer Participants' responsibilities concerning the objectives, scope of work, estimated test schedule, management structure, financial provisions, Project Equipment Transfers (PETs) (if required), special disclosure and use of information provisions (optional), security classification for the PA and other special provisions as required. An Approval-In-Principle (AIP) will be required prior to negotiating a RUTF PA.

3.2.3.2 Cooperative T&E (CTE) PA: This type of PA will include specific provisions, consistent with this MOU and the model at Annex B, concerning the objectives, scope of work, sharing of work, management structure, financial provisions (if required), contractual provisions (if required), PETs (if required), special disclosure and use of information provisions (optional), security classification for the applicable PA and other special provisions as required.

3.2.3.3 The Participants recognize that there may be instances where a project contains elements including cooperative effort as well as the reciprocal use of

Test Facilities. Such projects will be treated as cooperative projects. Equitability will be required in all such projects.

3.2.4 Project Equipment Transfer:

3.2.4.1 The Participants recognize that it may be necessary to transfer Project Equipment for the purpose of implementing this MOU but not for the purposes of a specific TEP PA. In such cases, the Participants may conclude PETs consistent with the model at Annex C.

3.2.5 Familiarization Visits:

3.2.5.1 Familiarization visits may occur, in accordance with Section X (Visits to Establishments) to promote awareness of each other's facilities and to identify potential cooperative T&E opportunities.

3.3 Acquisition or production programs that may evolve from cooperation under one or more PAs under this MOU are outside the scope of this MOU and require conclusion of separate arrangements.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1 The Director, Operational Test & Evaluation (DOT&E), Office of the Secretary of Defense (or his/her successor in the event of reorganization) is designated U.S. MOU Director (U.S. MD). The First Assistant Secretary Science Policy (FASSP)(or his/her successor in the event of reorganization) is designated the AS MOU Director (AS MD). The MDs will be responsible for:

4.1.1 monitoring implementation of this MOU and exercising executive-level oversight;

4.1.2 monitoring the overall use and effectiveness of the MOU;

4.1.3 recommending amendments to this MOU to the Participants;

4.1.4 resolving issues brought forth by the Management Agents; and

4.1.5 approving PAs pursuant to paragraph 3.2.3 and the Participants' respective national procedures.

4.2 The Deputy Director, Resources and Ranges (DOT&E) (or his/her successor in the event of reorganization or his/her designee), is designated U.S. Management Agent (U.S. MA) for the MOU. The Director Trials (DTRIALS)(or his/her successor in the event of reorganization or his/her designee) is designated AS Management Agent (AS MA). The MAs will be responsible for:

4.2.1 monitoring and evaluating the work conducted under each TEP Activity and providing guidance and direction as necessary;

4.2.2 designating points of contact (POCs) and exercising overall supervision for information exchanges pursuant to paragraph 3.2.1;

4.2.3 approving the formation of WGs and their TORs pursuant to paragraph 3.2.2;

4.2.4 granting approval-in-principle (AIP) for RUTF PAs;

4.2.5 developing PAs pursuant to paragraph 3.2.3 and recommending approval of such PAs to the MDs;

4.2.6 establishing a Steering Committee (SC), when considered necessary, to monitor conduct of a CTE PA and exercising overall supervision over the SC members, if established, a Joint Project Office (JPO), if established, or Project Officers (POs) (if no SC or JPO is established);

4.2.7 obtaining DSA approval for Project Security Instructions and Classification Guides for CTE PAs that contain provisions for the generation or exchange of Classified Information;

4.2.8 developing and entering into PETs pursuant to paragraph 3.2.4;

4.2.9 approving familiarization visits pursuant to paragraph 3.2.5;

4.2.10 monitoring Third Party Sales and Transfers authorized in accordance with Section XII (Third Party Sales and Transfers)

4.2.11 approving a Financial Management Procedures Document (FMPD) pursuant to paragraph 5.5, in the absence of an SC; and

4.2.12 forwarding, when necessary, issues to the MDs for resolution.

4.3 Each WG established by the MAs under this MOU and within the provisions of the written TOR for the WG, will be responsible for:

4.3.1 submitting a proposed TOR to the MAs for approval;

4.3.2 conducting its assigned tasks and providing periodic progress reports to the MAs, including requesting further guidance as necessary; and

4.3.3 submitting final reports to the MAs for submission to the MDs.

4.4 If an SC is established under a particular PA, it will be responsible for:

4.4.1 providing policy and management direction to the POs during PA execution;

4.4.2 monitoring overall implementation, including technical, cost, and schedule performance against requirements;

4.4.3 approving plans for transfers of Project Equipment or disposal of jointly acquired Project Equipment, in accordance with Section VII;

4.4.4 resolving issues brought forth by the POs;

4.4.5 maintaining oversight of the security aspects of a project, including preparing a Project Security Instruction and a Classification Guide in the event that a CTE PA contains provisions for the generation or exchange of Classified Information;

4.4.6 approving assignment of personnel working on a project at the other Participant's facilities in accordance with the provisions set out in Appendix 1 to Annex B;

4.4.7 establishing and approving the detailed financial procedures of a CTE PA through an FMPD in the event that one Participant contracts on behalf of the other Participant or on behalf of both Participants; and

4.4.8 reporting status and activity of assigned PAs on an annual basis to the MAs and MDs.

4.5 In accordance with the terms of any TEP PA, the POs will have primary responsibility for effective implementation, efficient management and direction of their assigned PA including technical, cost, and schedule performance against requirements. Additionally, the POs will have the responsibilities under paragraph 4.4 if no SC is established for their CTE PA, except that the MAs will be responsible for approving the FMPD and resolving issues brought forth by the POs. The POs will also maintain a list of all PET Equipment transferred by either of the Participants under a TEP PA.

4.6 In accordance with the terms of an approved CTE PA with the provisions set out in Appendix 1 to Annex B of this MOU attached to the approved CTE PA, a Participant may assign Cooperative Project Personnel (CPP) to the JPO, or to the other Participant's facilities to assist in the implementation of an approved PA.

4.7 Special Procedures for RUTF PAs. The following special procedures will apply to RUTF PAs:

4.7.1 The Customer Participant's MA will submit a project proposal to the Performing Participant's MA. The project proposal will briefly describe the test effort requested

4.7.2 The Performing Participant's Test Facility will review the project proposal to determine if it is able and willing to provide the requested test effort.

4.7.3 If the Performing Participant's MA determines that performing the requested test effort is feasible, he or she will notify the Customer Participant's MA of AIP. AIP does not constitute a commitment to perform the test effort, but provides authority for the Participants to proceed with development and approval of the RUTF PA. If AIP will not be granted, the Performing Participant's MA will notify the Customer Participant's MA as soon as possible.

4.7.4 Each Participant's MA will submit a 12-month forecast of proposed tests to the other Participant's MA for AIP in accordance with a mutually determined schedule. Out-of-cycle project proposals may also be submitted for AIP.

4.8 The MAs, SCs, and/or POs will consult or meet as required, but at least annually. The Chairperson for each meeting will be the senior official of the host Participant. During such meetings, all decisions will be made unanimously with each Participant having one vote. In the event that the Participants are unable to reach a timely decision on an issue, each Participant will refer the issue to its higher authority for resolution. In the meantime, approved PAs will

continue to be implemented without interruption under the direction of the SC and/or POs while the issue is being resolved by higher authority.

SECTION V

FINANCIAL PROVISIONS

5.1 This MOU creates no financial commitments regarding individual RUTF or CTE PAs. Detailed descriptions of the financial provisions for a specific project, including the total cost of the project and each Participant's cost share, will be contained in the specific RUTF or CTE PA.

5.2 For RUTF PAs, charges between Participants will be mutually determined on a case-by-case basis and specified in the PA. These charges will consist of Direct Costs and applicable Indirect Costs. Direct Costs, except for the cost of military personnel chargeable to the Customer Participant, will not be greater than what one component of the Performing Participant would charge to another component of the Performing Participant for the type and scope of the services provided. If required, Indirect Costs may also be charged depending on the nature and specifics of the effort. Indirect Costs charged to the Customer Participant will be only those required by the Performing Participant's laws and regulations.

5.3 For CTE PAs, each Participant will contribute its equitable share of the full Financial and Non-Financial Costs, including overhead costs, administrative costs and cost of claims, and will receive an equitable share of the results of each CTE PA as mutually determined.

5.4 The financial and non-financial provisions for a CTE PA, including the total cost of the CTE PA and each Participant's share of the total cost, will be included in the CTE PA.

5.5 For each CTE PA, the POs will be responsible for establishing the detailed financial management procedures under which the project will operate. Where necessary, these procedures will be detailed in an FMPD proposed by the POs, and subject to the approval of the MAs or SC, if one is established.

5.6 Each Participant will perform, or have performed, its tasks and will use its best efforts to perform the tasks within the cost estimates specified in each PA. Each Participant will bear the full costs it incurs for performing, managing, and administering its own activities under this MOU and participation in each PA, including its share of the costs of any Contracts awarded pursuant to paragraph 5.13.

5.7 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:

5.7.1 costs associated with any unique national requirements identified by a Participant;

5.7.2 any other costs not expressly stated as shared costs or any other costs outside the scope of this MOU and its PAs.

5.8 For CTE PAs with shared costs that involve the establishment of a JPO with CPP assignments to the other Participant's facilities or the JPO, the CTE PA will address the financial and non-financial contributions required for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.9 In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.8, the cost of CPP in the JPO or assigned to the other Participant's facilities will be borne as follows:

5.9.1 The Host Participant will bear the costs of all pay and allowances of Host Participant personnel in the JPO;

5.9.2 The Parent Participant will bear the following CPP-related costs:

5.9.2.1 all pay and allowances;

5.9.2.2 transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the Host Participant's nation prior to the CPP's commencement of a tour of duty in the JPO or field activity, and return transportation of the foregoing from the place of assignment in the Host Participant's nation upon completion or termination of the tour of duty;

5.9.2.3 compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the Parent Participant's laws and regulations;

5.9.2.4 preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents; and

5.9.2.5 All temporary duty costs, including travel costs, when such duty is carried out pursuant to a unique requirement of the Parent Participant.

5.10 For CTE PAs that do not involve the establishment of a JPO, but do involve the assignment of one Participant's CPP to the facilities of the other Participant, the Participants will bear the costs as set forth in 5.9. The Host Participant will also be responsible for the following:

5.10.1 All temporary duty costs, including travel costs in connection with the performance of any duty carried out in support of a CTE PA or pursuant to a requirement of the Host Participant.

5.10.2 Costs incurred as a result of a change in location in work ordered by the Host Participant during the period of exchange.

5.10.3 Administrative and support costs such as CPP-related training, office space, security services, information technology services, communication services, supplies, and use of facilities and equipment necessary for the performance of tasks assigned to CPP.

5.11 For PETs concluded pursuant to Annex C in which operator personnel from the providing Participant are required, the responsibility for bearing all costs associated with such personnel, including but not limited to salaries and overhead, transportation, and subsistence, will be specified in the PET Form.

5.12 A Participant will promptly notify the other Participant if available funds will not be adequate to fulfill its obligations as mutually determined under any TEP PA, or if it appears that the cost estimates in a PA will be exceeded. The Participants will immediately consult with a view toward continuation on a modified basis.

5.13 For CTE PA's where a Participant contracts on behalf of the other Participant or on behalf of both Participants, the POs or SC as appropriate will be responsible for establishing the detailed financial management procedures under which the PA will operate prior to the transfer of funds between the Participants. The procedures, which will accord with the national accounting and audit requirements of the Participants, will be detailed in an FMPD. Each Participant will provide funds in the amounts and at the times set forth in the estimated schedule for monetary contributions, as specified in the FMPD.

5.14 For CTE PAs, the Participants recognize that, in performing Contracting responsibilities on behalf of the other Participant, it may become necessary for the Contracting Participant to incur contractual or other obligations for the benefit of the other Participant prior to the receipt of the other Participant's funds. In such event, the other Participant will make such funds available in such amounts and at such times as required by the Contract or other obligation and will pay its equitable share, as mutually determined, of any damages and costs that may accrue from the performance or Cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

5.15 Each Participant will be responsible for the audit of its activities or its Contractors' activities pursuant to a TEP PA. A Participant's audits will be in accordance with its own national practices. For CTE PA efforts where funds are transferred between the Participants, the receiving Participant will be responsible for the internal audit regarding administration of the other Participant's funds in accordance with the receiving Participant's national practices. Audit reports of such funds will be promptly made available by the receiving Participant to the other Participant.

SECTION VI

CONTRACTING PROVISIONS

6.1 If either Participant determines that Contracting is necessary to fulfill its obligations under the scope of work of any TEP PA, that Participant will contract in accordance with its respective national laws, regulations and procedures.

6.2 When one Participant contracts on its own behalf to perform a task under a PA, it will be solely responsible for its own Contracting, and the other Participant will not be subject to any liability arising from such Contracts without its prior written consent.

6.3 If the Participants determine that it is appropriate under a CTE PA that one Participant contracts on behalf of the other Participant or for both Participants for tasks under that PA, the Contracting Agency will contract in accordance with its national laws, regulations, and procedures. In such cases, appropriate implementing provisions will be specified in the particular PA. If necessary to meet the requirements of a PA, the U.S. DoD or the AS DoD Contracting Agency as appropriate, will seek deviations from national regulations and procedures wherever possible. Sources from both Participants' industries will be allowed to compete on an equal basis for such Contracts. The U.S. DoD or the AS DoD Contracting Agency as appropriate, will be the exclusive source for providing contractual direction and instructions to Contractors and prospective Contractors.

6.4 For all Contracting activities performed by either Participant, the POs will, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure that they are consistent with the provisions of this MOU and the applicable PA.

6.5 For all Contracting activities performed by either Participant, each Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information). Each Participant's Contracting Agency will insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU and the specific PA, including Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), and Section XII (Third Party Sales and Transfers). During the Contracting process, each Participant's Contracting Officer will advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Participant's freedom to disclose Project Information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.6 In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Section VIII (Disclosure and Use of Project Information), or is notified by Contractors or prospective Contractors of any restrictions on the disclosure and use of Project Information, that Participant's PO will notify the other Participant's PO of the restriction(s). The Participants will immediately consult, at the appropriate level, to assess the consequences and determine the way ahead.

6.7 Each Participant's PO will promptly advise the other Participant's PO of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible. If a Contract has been awarded on behalf of the other Participant or for both Participants, the Participant whose Contracting Agency is responsible for the Contract will consult with the other Participant before terminating the Contract.

6.8 No requirement will be imposed by either Participant for worksharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

SECTION VII

PROJECT EQUIPMENT

7.1 For the purpose of carrying out a TEP PA, each Participant may transfer, without charge to the other Participant, such Project Equipment identified as being necessary for implementing a TEP PA. The TEP PA will provide specific details of any transfer of Project Equipment. Project Equipment identified at the time of TEP PA signature will be detailed in the RUTF PA as set out in Annex A (Model RUTF PA) or the CTE PA as set out in Annex B (Model CTE PA). Project Equipment which cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the POs in the format at Annexes A and B, Appendix 2, Inventory of Project Equipment Transfers (PETs). Approval for all PETs will be in accordance with national procedures.

7.2 For PETs concluded pursuant to Annex C, each Participant may transfer, without charge to the other Participant, Project Equipment, in accordance with the model at Annex C (PET Form). Approval for all PETs will be in accordance with national procedures.

7.3 Project Equipment transferred will be used by the receiving Participant for the purposes specified in the PA or PET Form only. Project Equipment will remain the property of the providing Participant. In addition, the receiving Participant will maintain the Project Equipment in good order, repair, and operable condition. Unless the providing Participant has consented that the transferred Project Equipment may be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, reasonable wear and tear excepted, or return the Project Equipment and pay the cost to restore the Project Equipment to such condition. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. If the Project Equipment is lost or stolen while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. The providing and receiving Participants will specify that in no case will any payment respecting damage or loss exceed the amount indicated in the applicable TEP PA or PET Form.

7.4 The providing Participant will make every effort to ensure that the Project Equipment is furnished in a serviceable and usable condition according to its intended purpose. However, the providing Participant makes no warranty or guarantee of fitness of the Project Equipment for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Project Equipment, or any part thereof.

7.5 The providing Participant will transfer the Project Equipment for the approved period, unless extended by written amendment or terminated by either Participant. The duration of the

transfer period will not exceed the effective period of the TEP PA or PET Form.

7.6 The providing Participant, at its expense, will deliver the Project Equipment to the receiving Participant at the location mutually approved. Responsibility for Project Equipment will pass from the providing Participant to the receiving Participant at time of receipt. Any further transportation will be mutually determined by the Participants and specified in the TEP PA or PET Form.

7.7 The providing Participant will furnish the receiving Participant such information as is necessary to enable the Project Equipment to be used.

7.8 The receiving Participant will inspect and inventory the Project Equipment upon receipt. The receiving Participant will also inspect and inventory the Project Equipment prior to its return (unless the Project Equipment is to be expended or consumed).

7.9 Upon expiration or termination of the transfer period specified in the TEP PA or the PET Form (taking into account any extension), the receiving Participant will return the Project Equipment, at its expense, to the providing Participant at the location mutually approved. Responsibility for the Project Equipment will pass from the receiving Participant to the providing Participant at the time of its receipt. Any further transportation is the responsibility of the providing Participant.

7.10 The receiving Participant will provide written notice of consumption or expenditure of Project Equipment approved for such consumption or expenditure. In the event the intended consumption or expenditure does not occur, the receiving Participant will, unless otherwise determined by the providing Participant, return the Project Equipment, at its expense, to the providing Participant to the location mutually approved. Any further transportation is the responsibility of the providing Participant.

7.11 The Participants will ensure, by all reasonable means, the protection of intellectual property rights in Project Equipment.

7.12 Each Participant waives all claims against the other Participant for damage to or loss of jointly acquired Project Equipment arising from the performance of official duties. However, if the Participants mutually decide to repair damaged jointly acquired Project Equipment in order to complete PA efforts, the cost of such repair will be shared in a manner that results in sharing the total costs of the PA in the proportions established for the Participants' contributions under the PA. In any case, if the damage or loss is caused by reckless acts, reckless omission, willful misconduct or gross negligence, the costs of any liability, including the cost of repairs, will be borne by the responsible Participant.

7.13 Any Project Equipment that is jointly acquired on behalf of the Participants for use under any TEP PA will be disposed of as mutually approved by the SC or the MAs if an SC is not established.

7.14 Disposal of jointly acquired Project Equipment may include a transfer of the interest of

one of the Participants in such Project Equipment to the other Participant, the sale or transfer of such Project Equipment to a Third Party in accordance with Section XII (Third Party Sales and Transfers), or sale or transfer to other entities. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party or other entity in the same ratio as costs are shared in the CTE PA.

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1 General

Both Participants recognize that successful cooperation depends on full and prompt exchange of information necessary for carrying out each TEP Activity. The Participants intend to acquire sufficient Project Information, and rights to use such information to promote the objectives of this MOU. The nature and amount of Project Information to be acquired will be consistent with Section II (Objectives), Section III (Scope of Work), Section VI (Contracting Provisions), and the PAs and PET Forms under this MOU. Subject to the rights both Participants are accorded under this MOU, title to Project Foreground Information generated by a Participant or its Contractor will reside in that Participant and/or its Contractors, in accordance with that Participant's national laws, regulations, and policies. Nothing in this MOU will affect title to Project Background Information of the Participants or their Contractors.

Information Exchange and Working Groups

8.2 The disclosure and use provisions which govern exchange of information and WGs authorized in Section III (Scope of Work), paragraphs 3.2.1 and 3.2.2 are as follows:

8.2.1Disclosure: At its discretion, the furnishing Participant may disclose information to the other Participant. Prior written permission from the furnishing Participant will be required for further disclosure of the information by the receiving Participant to any other entity, for example, a Contractor. Such permission will not be required in the case of further disclosure to the receiving Participant's Contractor support personnel, who are under a legally binding non-disclosure agreement.

8.2.2 Use: Use of information will be for information and evaluation purposes only. Written permission from the furnishing Participant will be required for any other use.

RUTF PAs

8.3 Unless the Participants mutually determine otherwise in writing, the following provisions will apply to RUTF PAs:

8.3.1 The Customer Participant's use of information will be for Defense Purposes only. Written permission from the Performing Participant will be required for any other use.

8.3.2 The Performing Participant's use of information will be for information and evaluation purposes only. Written permission from the Customer Participant will be required for any other use.

Other TEP Activities

8.4 Unless the Participants mutually determine otherwise in writing, the following disclosure and use provisions which govern other TEP Activities authorized in Section III (Scope of Work), paragraphs 3.2.3 and 3.2.4, will apply.

8.5 Government Project Foreground Information:

8.5.1 Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to the other Participant.

8.5.2 Use: Each Participant may further disclose, use or have used on its behalf government Project Foreground Information without charge for its Defense Purposes only. The furnishing Participant will retain all its rights with respect to such government Project Foreground Information. The sale or other transfer of government Project Foreground Information will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.6 Contractor Project Foreground Information:

8.6.1 Disclosure: Contractor Project Foreground Information generated and delivered by Contractors will be disclosed without charge to the other Participant.

8.6.2 Use: Each Participant may further disclose, use or have used on its behalf all Contractor Project Foreground Information without charge for its Defense Purposes only. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use therein in accordance with the applicable Contract(s). The sale or other transfer of Government Project Foreground Information will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.7 Government Project Background Information:

8.7.1 Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant government Project Background Information generated by its military or civilian employees, provided that:

8.7.1.1 such government Project Background Information is necessary to or useful in the TEP Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TEP Activity;

8.7.1.2 such government Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.7.1.3 disclosure is consistent with national disclosure policies and regulations of the disclosing Participant.

8.7.2 Use: A Participant may use or have used Government Project Background Information disclosed by the other Participant without charge for conducting the TEP Activity for which it was provided only. However, subject to proprietary rights held by other than the Participants, government Project Background Information may be used for Defense Purposes by the receiving Participant without charge when the use of such government Project Background Information is necessary for the use of government Project Foreground Information. The furnishing Participant (after consultation with the receiving Participant) will determine whether such use of government Project Background Information is necessary. The furnishing Participant will retain all its rights with respect to such government Project Background Information.

8.8 Contractor Project Background Information:

8.8.1 Disclosure: Any relevant Contractor Project Background Information (including information subject to proprietary rights) which is or has been generated outside of the TEP Activity and delivered by Contractors of one of the Participants, will be disclosed to the other Participant provided the following provisions are met:

8.8.1.1 such Contractor Project Background Information is necessary to or useful in the TEP Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TEP Activity;

8.8.1.2 such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.8.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

8.8.2 Use: A Participant may use or have used Contractor Project Background Information disclosed by the other Participant without charge to conduct the TEP Activity for which it was provided only.. Any other use will be in accordance with the terms arranged with the Contractor, and may be the subject of further restrictions by holders of proprietary rights. The furnishing Participant will retain all its rights with respect to such Contractor Project Background Information.

8.9 Jointly Generated Foreground Information:

8.9.1 Disclosure: All Jointly Generated Foreground Information generated under a TEP Activity will be disclosed to both Participants promptly and without charge.

8.9.2 Use: Each Participant generating or receiving Jointly Generated Foreground Information may use or have used such information without charge only for its Defense Purposes unless mutually determined otherwise in writing.

8.9.3 Information generated by WGs will be treated as Jointly Generated Foreground Information unless otherwise decided.

8.10 Alternative Uses of Project Information:

8.10.1 The prior written consent of each Participant's government will be required for the use of Project Foreground Information for any purposes other than those provided for in this MOU or any of its PAs.

8.10.2 Any Project Background Information provided by one Participant will be used by the other Participant for the purposes set forth in this MOU only, unless otherwise consented to in writing by the furnishing Participant's government.

8.11 Project Information Subject to Proprietary Rights:

8.11.1 All unclassified Project Information subject to proprietary rights will be identified, marked and handled as Controlled Unclassified Information in accordance with Section IX (Controlled Unclassified Information). All classified Project Information subject to proprietary rights will be identified, marked and handled in accordance with Section IX (Controlled Unclassified Information) and Section XI (Security).

8.12 Patents

8.12.1 Each Participant will include in its Contracts a provision governing the disposition of rights in regard to Project Inventions and Patent rights relating thereto, which either:

8.12.1.1 Provides that the Participant will hold title to all Project Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor; or

8.12.1.2 Provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make Patent applications for the same, while securing for the Participant a license for the Project Inventions, and any Patents therefor, on terms in compliance with the provisions of paragraph 8.12.2 below.

8.12.2In the event that a Contractor holds title (or elects to retain title) for a Project Invention, the contracting Participant will secure for both Participants non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.

8.12.3 The provisions of sub-paragraphs 8.12.4 through 8.12.8 below will apply in regard to Patent rights for all Project Inventions made by any Participant's military or civilian employees, including those within Government-owned facilities, and for all Project

Inventions made by Contractors for which the contracting Participant holds title or is entitled to acquire title.

8.12.4 Where a Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that Participant will consult with the other Participant regarding the filing of a Patent application for such Project Invention. The Participant which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application or maintenance of the Patent granted thereon, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution or the maintenance.

8.12.5 The Participants will provide to each other copies of Patent applications filed and Patents granted with regard to Project Inventions.

8.12.6 Each Participant will grant to the other Participant a non-exclusive, irrevocable, royalty-free license under its Patents for Project Inventions, to practice or have practiced, by or on behalf of the Participant, the patented Project Invention for Defense Purposes throughout the world.

8.12.7 Patent applications that contain Classified Information to be filed under this MOU or any of its PAs, will be protected and safeguarded in accordance with the requirements contained in Section XI (Security) of this MOU.

8.12.8 Each Participant will notify the other Participant of any Patent infringement claims made in its territory arising in the course of work performed under any PA of this MOU. Insofar as possible, the other Participant will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in a manner they determine to be fair at the time the Patent infringement claim is resolved. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the project of any invention covered by a Patent issued by their respective countries.

SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU and any of its PAs, will be controlled as follows:

9.1.1 such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information);

9.1.2 access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1, and will be subject to the provisions of Section XII (Third Party Sales and Transfers);

9.1.3 each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

9.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. Where necessary appropriate markings will be defined:

9.2.1 for Working Groups, in the TOR;

9.2.2 for RUTF PAs or PETs, through an exchange of correspondence between the POs; or

9.2.3 for CTE PAs in the Project Security Instruction.

9.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

SECTION X

VISITS TO ESTABLISHMENTS

10.1 Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform to the established visit procedures of the host Participant. Requests for visits will bear the name of this MOU and the appropriate PA.

10.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.

SECTION XI

SECURITY

11.1 All Classified Information provided or generated pursuant to this MOU and any of its PAs will be stored, handled, transmitted and safeguarded in accordance with 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 which entered into force on 7 November 2002.

11.2 Classified Information will be transferred through official government-to-government channels only or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU and the applicable PA.

11.3 Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.8, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

11.3.1 the recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section XII (Third Party Sales and Transfers);

11.3.2 the recipient will not use the Classified Information for other than the purposes provided for in this MOU and

11.3.3 the recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.

11.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons or other entities. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5 When a CTE PA contains provisions for the exchange of Classified Information, the POs will prepare a Project Security Instruction (PSI) and a Classification Guide (CG) for the CTE PA. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded. The PSI and CG will be developed by the PO within three months after the CTE PA enters into effect. They will be reviewed and

forwarded to the Participants' DSAs for approval and will be applicable to all government and Contractor personnel participating in the project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6 The DSA of the Participant in which a classified Contract is awarded pursuant to this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, subcontractor, or prospective subcontractor of any Classified Information provided or generated under this MOU, the DSAs will:

11.6.1 ensure that such Contractor, prospective Contractor, subcontractor or prospective subcontractor and their facility(ies) have the capability to protect the Classified Information adequately under each Participant's National Industrial Security Program;

11.6.2 grant a security clearance to the facility(ies);

11.6.3 grant a security clearance for all personnel whose duties require access to Classified Information;

11.6.4 ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this MOU;

11.6.5 carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and

11.6.6 ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU and any of its PAs.

11.7 Contractors, prospective Contractors, subcontractors or prospective subcontractors which are determined by the DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU or any of its PAs only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

11.8 For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Classified Information pertaining to this MOU and any of its PAs. These officials will be responsible for limiting access to Classified Information involved in this MOU and any of its PAs to those persons who have been properly approved for access and have a need-to-know.

11.9 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in this MOU or any of its PAs.

11.10 Information provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED. The classification of the existence of any PA and its contents will be stated in that PA.

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1 Except to the extent permitted in paragraph 12.2, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) or jointly acquired or produced Project Equipment to any Third Party without the prior written consent of the other Participant's government. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participant. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:

12.1.1 not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2 use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.

12.2 Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information that:

12.2.1 is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section III (Scope of Work);

12.2.2 does not include any Project Foreground Information or Project Background Information of the other Participant, and whose generation, test, or evaluation has not relied on the use of Project Equipment of the other Participant.

12.3 In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 12.2, the matter will be brought to the immediate attention of the other Participant's MA. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

12.4 A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Participant to any Third Party without the prior written consent of the Participant that provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

12.5 Consent for Third Party sales and transfers of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project

Foreground Information, will be subject to foreign policy, national security considerations, and national laws, regulations, and policies. One Participant's government approval of the other Participant's government sale or transfer to a Third Party will take into account its willingness to sell or transfer such Project Equipment or Project Foreground Information to the same Third Party.

SECTION XIII

LIABILITY AND CLAIMS

13.1 With the exception of claims for loss of or damage to Project Equipment transferred from one Participant to the other Participant, which is addressed in Section VII (Project Equipment), claims arising under this MOU, including RUTF PAs, will be dealt with in accordance with paragraph 1 of the Chapeau Agreement.

CTE PAs

13.2 The Participants will share any costs required to be shared under subparagraph 1(b)(ii) of the Chapeau Agreement in the same proportions as costs are shared in the PA.

13.3 The Participants will share any costs required to be shared under subparagraph 1(b)(iv) of the Chapeau Agreement as follows:

> 13.3.1 For Contracts where one Participant contracts solely on its own behalf, the Participant awarding the Contract will pay the cost of claims arising under that Contract.
>
> 13.3.2 For Contracts where one Participant contracts on behalf of the other Participant, the Participant on whose behalf the Contract was awarded will pay the cost of claims arising under that Contract. The contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined in a PA.
>
> 13.3.3 For Contracts awarded on behalf of both Participants, the costs of claims arising under such Contracts will be shared in a manner that results in sharing the total costs of the PA in the proportions established for the Participants' contributions under the PA. The contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined in a PA.

RUTF PAs

13.4 Unless mutually determined in a PA, the Performing Participant will pay all costs of claims under subparagraph 1(b)(ii) of the Chapeau Agreement.

13.5 The Participants will pay all costs of claims under subparagraph 1(b)(iv) of the Chapeau Agreement as follows:

> 13.5.1 For Contracts where one Participant contracts solely on its own behalf, the Participant awarding the Contract will pay the cost of claims arising under that Contract.
>
> 13.5.2 For Contracts where one Participant contracts on behalf of the other Participant, the Participant on whose behalf the Contract was awarded will pay the cost of claims

arising under that Contract. The contracting Participant will not indemnify Contractors against third party liability claims.

SECTION XIV

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

14.1 Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under a TEP Activity.

14.2 Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs. Any such costs will not be considered to fall under either Participant's shared costs.

SECTION XV

SETTLEMENT OF DISPUTES

15.1 Disputes between the Participants arising under or relating to this MOU or any of its PAs will be resolved by consultation between the Participants only and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

SECTION XVI

GENERAL PROVISIONS

16.1 All activities of the Participants under this MOU will be carried out in accordance with their national laws. The obligations of the Participants will be subject to the availability of funds for such purposes.

16.2 In the event of a conflict between the terms of this MOU and any TEP PA or PET Form, this MOU will take precedence.

SECTION XVII

AMENDMENT, TERMINATION, ENTRY INTO EFFECT, AND DURATION

17.1 This MOU, or PAs to this MOU, may be amended by the mutual written consent of the Participants.

17.2 This MOU, or PAs to this MOU, may be terminated at any time by the mutual written consent of the Participants. In the event the Participants consent to terminate this MOU, or PAs to this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms. Termination of this MOU will result in the termination of all PAs to this MOU.

17.3 Either Participant may terminate this MOU, or PAs to this MOU, upon 90 days written notice of its intent to terminate to the other Participant. Such notice will be the subject of immediate consultation to decide upon the appropriate course of action to conclude the activities under this MOU or PA. In the event of such termination, the following rules apply:

17.3.1 The Participants will continue participation, financial or otherwise, in all PAs subject to the notice of termination, up to the effective date of termination;

17.3.2 Except as to Contracts awarded on behalf of both Participants, each Participant will be responsible for its own project-related costs associated with termination of the Project. For Contracts awarded on behalf of both Participants, the terminating Participant will pay all Contract modification and termination costs that would not otherwise have been incurred but for the decision to terminate. However, in no event will a terminating Participant's total financial contribution, including Contract termination costs, exceed that Participant's total financial contribution for the PA being terminated;

17.3.3 All Project Information and rights therein received under the provisions of this MOU or PAs prior to termination of the MOU or its PAs will be retained by the Participants, subject to the provisions of this MOU and its PAs;

17.3.4 If requested by the other Participant, the terminating Participant may continue to administer the project Contract(s) which it awarded on behalf of the other Participant on a reimbursable basis; and

17.3.5 Additional PA termination provisions consistent with this Section may be established in the PA.

17.4 The respective rights and obligations of the Participants regarding Section VII (Project Equipment), Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), Section XII (Third Party Sales and Transfers), Section XIII (Liability and Claims), Section XV (Settlement of Disputes) and this Section XVII (Amendment, Termination, Entry Into Effect, and Duration) will continue notwithstanding termination or expiration of this MOU or any of its PAs.

17.5 This MOU, which consists of seventeen (17) Sections and three (3) Annexes, will come into effect on the date of last signature, and will remain in effect for fifteen (15) years unless terminated by either Participant. This MOU will be automatically extended for successive five-year periods unless one Participant notifies the other in writing that it does not desire this MOU to be extended.

The foregoing represents the understandings reached between the Department of Defense of the United States of America and the Department of Defence of Australia, upon the matters referred to herein.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
Thomas P Christie	
Signature	Signature
Thomas P. Christie	VADM RUSS SHALDERS
Name	Name
Director, Operational Test and Evaluation	VICE CHIEF OF THE DEFENCE FORCE
Title	Title
14 April 2003	23 APRIL 2003
Date	Date
Washington, D.C.	CANBERRA
Location	Location

ANNEX A

MODEL RECIPROCAL USE OF TEST FACILITIES (RUTF) PROJECT ARRANGEMENT (PA)

RUTF PA NUMBER *

UNDER THE U.S. DOD-AS DOD
TEST AND EVALUATION PROGRAM (TEP) COOPERATION
MEMORANDUM OF UNDERSTANDING (MOU)
DATED

CONCERNING
(FULL DESIGNATION OF THE TEST AND TEST LOCATION)

(DATE)

****The U.S. DoD will assign the Project Arrangement number.***

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SECTION I

INTRODUCTION

This Reciprocal Use of Test Facilities (RUTF) Project Arrangement (PA) is entered into pursuant to the MOU between the Department of Defense of the United States of America (U.S. DoD) and the Department of Defence of Australia (AS DoD) for Test and Evaluation Program (TEP) Cooperation of (date).

The Participants have determined that conducting _____ at _____ is mutually beneficial.

(RUTF PAs may involve performance of multiple test events at multiple Test Facilities over multiple years.)

SECTION II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the MOU.)

SECTION III

T&E OBJECTIVES

The T&E objectives of this _____ PA are:

a. To determine the _____

b. To evaluate the _____

c. To accomplish/improve _____

SECTION IV

SCOPE OF WORK

Test Description

a. _____ is designed to _____.

b. _____ is comprised of _____.

(Include any Customer Participant-provided test personnel, equipment (other than Project Equipment), or other assistance in this Section and provide the applicable details in the PA.)

Test Facility Services

(Outline the tasks and services to be performed by the Test Facility.)

The following T&E Activities will be performed by _____during a period of up to _____ days/weeks during _____.

a.

b.

c.

The following support will be provided by the Test Facility:

(For example: Technical and analytical assistance, consultation for preparation of the test plan, qualified personnel to conduct the T&E, any other specified support to customer.)

SECTION V

ESTIMATED TEST SCHEDULE

Day/Week/Month 1:
Dates ***(List of activities to occur each day)***

Day/Week/Month 2:
Dates ***(List of activities to occur each day)***

Day/Week/Month 3:
Dates ***(List of activities to occur each day)***

The dates and duration of the test are subject to change by either Participant. The U.S. DoD and AS DoD POs will keep each other informed of progress and apprise each other of potential schedule change, delay or cancellation.

The final report will be transmitted to the MAs six months before the termination date of this PA.

SECTION VI

MANAGEMENT

This PA will be directed and administered on behalf of the Participants by one PO from each Participant. POs are responsible for the implementation of the provisions of the MOU and PA.

Direct liaison between the Participants' POs is authorized. Alternate POs may also be designated. The POs are:

U.S. DoD PO: Title/Position _____

Organization _____

Mail Address _____

Phone & Fax _____

E-mail _____

AS DoD PO: Title/Position _____

Organization _____

Mail Address _____

Phone & Fax _____

E-mail _____

(The POs, as appropriate, may develop and agree to a test plan.)

Command, Control, Safety and Security Considerations

The performing Participant will retain command and control over all facilities, personnel, equipment and support units. Both Participants will adhere to standing operating procedures regarding command, control, safety and security, except where mutually determined otherwise in writing. In accordance with Section XI, (Security) of the MOU:

a. The Participants are responsible for security of all publications and reference material.

b. The performing Participant is responsible for the security of test site materials and publications.

c. POs will coordinate security requirements prior to all classified testing.

SECTION VII

FINANCIAL PROVISIONS

The cost estimate for performance of the tasks under this PA is $ _____. In no event will the Performing Participant exceed this cost estimate without the prior written consent of the Customer Participant. If the Performing Participant has reason to believe that this cost estimate will be exceeded, the Performing Participant will immediately notify the Customer Participant and will set forth a new cost estimate together with supporting documentation. The Participants will consult as soon as possible regarding the action to be taken in view of the revised cost estimate.

The Performing Participant will submit a request for payment to the Customer Participant at least 45 days in advance of the test requiring payment of the estimated cost. The Customer Participant will review the request for payment and respond with payment no later than five (5) days prior to the scheduled commencement of the test. The test effort will not commence until the funds are received.

(The Participants may adjust the time periods as necessary for each test.)

Upon completion of the test (including submission of the final report), the Performing Participant will provide a final statement of account to the Customer Participant, which details the actual costs incurred and payments received from the Customer Participant. After completing review of the final statement of account, the Participants will reconcile the account and make any final payments.

Requests for payment will contain the following information:

Date
PA Number
Invoice ID
Financial Manager's Contact Information
Financial Coding
Invoice Total

SECTION VIII

SPECIAL DISCLOSURE AND USE OF INFORMATION PROVISIONS *(Optional)*

(Insert any special disclosure and use of information provisions needed to implement the PA.)

SECTION IX

CLASSIFICATION

Only one of the three following possibilities must be selected:

a. No Classified Information will be exchanged under this PA;

b. The highest level of Classified Information exchanged under this PA is: CONFIDENTIAL; or

c. The highest level of Classified Information exchanged under this PA is: SECRET.

The existence of this PA is ***[Insert Classification]*** and its contents are ***[Insert Classification].***

SECTION X

PRINCIPAL ORGANIZATIONS INVOLVED

(List Test Facilities and other organizations of the Participants.)

SECTION XI

PROJECT EQUIPMENT TRANSFERS

NOTES:

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replace ment Value

1. Specifically identify the test article. In the event that the cooperative efforts under the PA require the provision of other Project Equipment to either Participant, a list of such Project Equipment must be developed in general accordance with the preceding table. (Project Equipment that cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the POs, and in the format at Appendix 2 to this Annex.)

2. If jointly acquired Project Equipment is an aspect of the cooperative efforts under the PA, then terms and conditions for the disposal of such jointly acquired Project Equipment must be included in the PA.

SECTION XII

ENTRY INTO EFFECT, DURATION AND TERMINATION

This _____ RUTF PA, a TEP Activity under the MOU between the Department of Defense of the United States of America and the Department of Defence of Australia, will come into effect upon signature by the Participants, and will remain in effect for ____ years unless terminated by either Participant. It may be extended by the written mutual determination of the Participants.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date
_____	_____
Location	Location

APPENDIX 1 – COST ESTIMATE MODEL

COST ESTIMATE FOR THE (Name of Test)
Test Period (Insert Date)

Item	Task Description/Service	Labor	Facility Use	Materials	Travel	Total
DIRECT COSTS						
1	Test Planning					
2	Test Article Safety Inspection					
3	Test Preparation & Setup					
4	Flight Time & Flt Support					
5	Range Firings					
6	Ground Support (Telemetry & Communications)					
7	Toxic Fumes Test					
8	Human Factors Evaluation					
9	Technical / Review Meetings					
10	Secure Storage					
11	Supplies & Materials					
12	Contingencies (Retest, etc…)					
13	Data Analysis					
n	Report Preparation					

INDIRECT COSTS
(Indirect Costs charged to the Customer Participant will be only those required by the Performing Participant's laws and regulations.
These costs may be itemized in a format similar to the table above.)

RUTF PA ID # XXXX

Note: The above table is a notional example. Cost estimate tables should be tailored to align with the requirements of particular tests.

APPENDIX 2 -- INVENTORY OF PROJECT EQUIPMENT TRANSFERS

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replace ment Value

ANNEX B

MODEL COOPERATIVE TEST & EVALUATION (CTE) PROJECT ARRANGEMENT (PA)

CTE PA NUMBER – ***(-CTE-XXXX*)***

UNDER THE
U.S. DOD – AS DOD
TEST AND EVALUATION PROGRAM (TEP) COOPERATION
MEMORANDUM OF UNDERSTANDING (MOU)

DATED

CONCERNING

(FULL DESIGNATION OF THE PROJECT)

****The U.S. DoD will assign the Project Arrangement number.***

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(At a minimum, a PA should include the above sections. If additional topics need to be addressed, sections, annexes, or special provisions should be included as necessary and appropriate.)

SECTION I

INTRODUCTION

This Cooperative Test & Evaluation (CTE) Project Arrangement (PA) is entered into pursuant to the MOU between the Secretary of Defense of the United States of America (U.S. DoD) and the Department of Defence of Australia (AS DoD) for Test and Evaluation Program (TEP) Cooperation (date).

SECTION II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the MOU.)

SECTION III

OBJECTIVES

The objectives of this _____ PA are:

a. The development of _____
_____.

b. The improvement of _____
_____.

SECTION IV

SCOPE OF WORK

The following work will be undertaken under this PA.

a. Develop _____
_____.

b. Evaluate _____
_____.

c. Design, fabricate and test _____
_____.

SECTION V

SHARING OF TASKS

The sharing of tasks will be as follows:

a. The U.S. DoD will _____
_____.

b. The AS DoD will _____
_____.

c. U.S. DoD and AS DoD will jointly_____
_____.

SECTION VI

BREAKDOWN AND SCHEDULE OF TASKS
(OPTIONAL)

(Use this format when the tasks covered under this project may be performed using multiple phases, requiring milestones or decision points.)

The Project will proceed according to the following phases and schedule. Note that national priorities may pre-empt agreed-upon schedules in PAs.

Phase 1	Start	End
Description of Phase 1	MM/DD/YY	MM/DD/YY

(Milestone 1) (e.g., Transmittal of Feasibility Report)

Phase 2	Start	End
Description of Phase 2	MM/DD/YY	MM/DD/YY

(Milestone 2) (e.g., Decision to proceed to Phase 3)

Phase 3	Start	End
Description of Phase 3	MM/DD/YY	MM/DD/YY

(Milestone 3) (e.g., Evaluation, analysis of results)

(Add as many phases as necessary.)

The final report must be transmitted to the MAs six months before the termination date for this PA.

SECTION VII

MANAGEMENT

(If a PA does not require a Steering Committee, use the following format to set forth how the PA will be managed.)

Alternative 1

1. This PA will be directed and administered on behalf of the Participants by one Project Officer (PO) from each Participant. The POs are:

U.S. DoD PO Title/Position _____

Organization _____

Address _____
_____
_____

AS DoD PO Title/Position _____

Organization _____

Address _____
_____
_____

2. Project Offices will be established in _____ ***(name of U.S. location)*** and in _____ ***(name of Australian location)***. The POs are responsible for management of those tasks listed as national responsibilities in Section V (Sharing of Tasks) in this PA.

3. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under Section IV (Management) of the MOU.)

(If a Project requires the establishment of a Steering Committee, use the following format to set forth how the Project will be managed.)

Alternative 2

1. This PA will be directed and administered on behalf of the Participants by an organization consisting of a Steering Committee (SC) and one Project Officer (PO) from each Participant. The SC members are:

U.S. DoD Co-Chairman Title/Position _____

Organization _____

Address _____
_____
_____

AS DoD Co-Chairman Title/Position _____

Organization _____

Address _____
_____
_____

2. The POs are:

U.S. DoD PO Title/Position _____

Organization _____

Address _____
_____
_____

AS DoD PO Title/Position _____

Organization _____

Address _____
_____
_____

3. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under Section IV of the MOU. For instance, if a PA will be administered by one joint program office (JPO) staffed by members from each Participant, add the following paragraph:

4.X Either Participant may assign personnel to the JPO to assist in administering a PA. The Host Participant will provide office space and administrative support to personnel of the other Participant in accordance with the Host Participant's normal practice. A Participant's assigned personnel will be subject to the normal procedures and regulations of the Host Participant. Provisions for the personnel provided are described in Appendix 1 to this PA.)

SECTION VIII

FINANCIAL PROVISIONS

The Participants estimate that the cost of performance of the tasks under this PA will not exceed U.S.$___ + AS $___.

Cooperative efforts of the Participants over and above the mutually determined tasks set forth in the SCOPE OF WORK and SHARING OF TASKS and FINANCIAL PROVISIONS Sections will be subject to amendment to this PA or signature of a new PA.

(If a PA will involve the assignment of CPP, the PA will include a provision that refers to paragraphs 5.8 - 5.10 of the MOU, identifies which Participant is sending or hosting CPP, and specifies the number of CPP to be assigned. In addition, the PA will include the amount of financial and non-financial contributions related to CPP in one of the two alternatives below in this Section.)

(If a PA will not involve one Participant contracting for the other or both Participants, and no funds will be exchanged between the Participants, use the following format for the Financial Arrangements. Both financial and non-financial contributions should be included in the total U.S. DoD and AS DoD costs.)

Alternative 1

The U.S. DoD tasks will not cost more than: _____ U.S. $.

The AS DoD tasks will not cost more than: _____ AS $.

Or:

(If a PA will involve one Participant contracting for the other Participant or both Participants, or the Participants will transfer or exchange funds between them, use the following format for the Financial Arrangements.)

Alternative 2

(Cost of performance includes Financial and Non–financial Costs.)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
U.S. DoD						
AS DoD						

(Using the above table and whatever description is necessary, explain and demonstrate how the PA will be funded. Identify both financial (funds) and non-financial (range time, use of equipment, etc.) contributions and identify the amount of funds to be transferred between the Participants.)

(The Financial Management Procedures Document (FMPD) should be developed by the POs and submitted to the SC (if appropriate) for approval. The FMPD should include, as a minimum, schedule, handling, funding levels by year, and auditing procedures for monetary contributions anticipated for this PA.)

SECTION IX

SPECIAL DISCLOSURE AND USE OF INFORMATION PROVISIONS ***(OPTIONAL)***

(Insert any special disclosure and use of information provisions unique to the PA.)

SECTION X

CLASSIFICATION

Only one of the three following possibilities must be selected:

a. No Classified Information will be exchanged under this PA;

b. The highest level of Classified Information exchanged under this PA is: CONFIDENTIAL; or

c. The highest level of Classified Information exchanged under this PA is: SECRET.

The existence of this PA is ***[Insert classification]*** and its contents are ***[Insert classification]***.

SECTION XI

PRINCIPAL ORGANIZATIONS INVOLVED

(List Test Facilities and other organizations of the Participants.)

SECTION XII

PROJECT EQUIPMENT TRANSFERS

NOTES:

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replace ment Value

1. In the event that the cooperative efforts under the PA require the provision of Project Equipment to either Participant, a list of such Project Equipment must be developed in general accordance with the preceding table. (Project Equipment that cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the POs in the format at Appendix 2 to this Annex.)

2. If jointly acquired Project Equipment is an aspect of the cooperative efforts under the PA, terms and conditions for the disposal of such jointly acquired Project Equipment must be included in the PA.

SECTION XII

ENTRY INTO EFFECT, DURATION AND TERMINATION

This _____ CTE PA, a Project under the MOU between the Department of Defense of the United States of America and the Department of Defence of Australia, will come into effect upon signature by the Participants, and will remain in effect for _____ years unless terminated by either Participant. It may be extended by the written mutual determination of the Participants.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date
_____	_____
Location	Location

APPENDIX 1 - COOPERATIVE PROJECT PERSONNEL (CPP)

ASSIGNMENT OF (INSERT NAME OF PROJECT) COOPERATIVE PROJECT PERSONNEL

1.0 Purpose and Scope.

1.1 This Appendix to the Project Arrangement (PA) establishes the provisions that will govern the conduct of the U.S. DoD or AS DoD Cooperative Project Personnel (CPP). During the term of the PA, each Participant will be permitted to assign military members or civilian employees of its U.S. DoD/AS DoD to the joint project office (JPO) if established, or to U.S. DoD or AS DoD field activities in accordance with this Appendix. CPP will be able to perform all the responsibilities for the positions assigned to them under this PA. Commencement of assignments will be subject to any requirements that may be imposed by the other Participant or its Government regarding acceptance of PA CPP, such as, but not limited to, visas and visit request documentation. The U.S. DoD and AS DoD SC representatives, or in the event no SC is established, the POs, will determine the length of tour for the positions at the time of initial assignment.

1.2 CPP will be assigned to the JPO or to U.S. DoD or AS DoD field activities for project work (including work at U.S. or AS Contractor facilities) and will report to their designated supervisor within those organizations regarding that work. The designated supervisor will be responsible for the creation of a document describing the duties of each CPP position, which will be subject to approval by the SC or, in the event no SC is established, the POs. CPP will not act as liaison officers for their parent organizations or Governments. However, such personnel may act from time to time on behalf of their SC representative (or PO as applicable), if the latter so authorizes in writing.

1.3 CPP 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 Host Participant's government.

2.0 Security.

2.1 The U.S. DoD and AS DoD SC representatives (or POs as applicable) will establish the maximum level of security clearance required, if any, to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the Project Security Instruction (PSI) and Classification Guide (CG). Access to Classified Information and facilities in which Classified Information is used will be consistent with, and limited by, Section III (Objectives) and Section IV (Scope of Work) of this PA and the corresponding provisions of this Appendix, and will be kept to the minimum required to accomplish the work assignments.

2.2 The Parent Participant will file visit requests for the CPP through prescribed channels in compliance with the Host Participant's procedures. The Participants will cause security assurances to be filed, through their respective embassies, specifying the security clearances for the CPP being assigned. The security assurances will be prepared and forwarded through prescribed channels in compliance with established procedures.

2.3 The Participants will use their best efforts to ensure that both the U.S. DoD and AS DoD personnel assigned to the JPO or field activities are made aware of, and required to comply with, applicable laws and regulations, as well as the requirements of Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), and Section XI (Security) of the MOU, and the corresponding provisions of this Appendix, and the PSI and CG. Prior to commencing assigned duties, CPP will, if required by the Host Participant's laws, regulations, policies, or procedures, sign a certification concerning the conditions and responsibilities of CPP.

2.4 CPP will at all times be required to comply with the security and export laws, regulations, and procedures of the Host Participant, as briefed in accordance with paragraph 3.2 of this Appendix. Any violation of security or export procedures by CPP during their assignment will be reported to the Parent Participant for appropriate action. CPP committing willful violations of security or export laws, regulations, or procedures during their assignments will be withdrawn from the project with a view toward appropriate administrative or disciplinary action by the Parent Participant.

2.5 All Classified Information made available to CPP will be considered as Classified Information furnished to the U.S. DoD or AS DoD, and will be subject to all of the provisions and safeguards provided for in this PA, this Appendix, the MOU, the PSI and the CG.

2.6 CPP will not have personal custody of Classified Information or Controlled Unclassified Information, unless approved by the JPO if established and as authorized by the Parent Participant. They will be granted access to such information in accordance with the provisions of the PSI during normal duty hours when access is necessary to perform project work. They may not have unsupervised access to classified libraries or operating centers, or to document catalogues, unless the information therein is releasable to the public.

2.7 CPP will not serve as a conduit between the U.S. DoD and the AS DoD for requests for and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized by the PSI.

3.0 Administrative Matters.

3.1 Consistent with Host Participant's laws and regulations, and subject to applicable multilateral and bilateral treaties, agreements and arrangements, CPP will be subject to the same restrictions, conditions, and privileges as Host Participant personnel of comparable rank and in comparable assignments. Further, to the extent authorized by the

Host Participant's laws and regulations, and applicable multilateral and bilateral treaties, agreements and arrangements, CPP and their authorized dependents will be accorded:

3.1.1 Exemption from any Host Participant tax upon income received from their parent organization or government.

3.1.2 Exemption from any Host Participant 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, CPP will be informed by the JPO or Host Participant duty station about applicable laws, orders, regulations, and customs and the need to comply with them. CPP will also be provided briefings arranged by the JPO or Host Participant duty station regarding applicable entitlements, privileges, and obligations such as:

3.2.1 Any medical or dental care that may be provided to CPP and their dependents at the Host Participant's medical facilities, subject to applicable laws and regulations, including reimbursement when required by such laws and regulations, and any bilateral or multilateral agreements or arrangements.

.

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

3.2.3 Responsibility of CPP 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 CPP and their dependents, the recourse will be against such insurance.

3.3 The POs, through the JPO and Host Participant field activities, will establish standard operating procedures for CPP 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 providing Participant's military or civilian personnel regulations and practices.

3.4 CPP 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 Parent Participant. Disciplinary action, however, will not be taken by the Host Participant against CPP from the Parent Participant, nor will CPP from the Parent Participant exercise disciplinary authority over Host Participant personnel. In accordance with the Host Participant's laws, regulations, and procedures, the Host Participant will assist the Parent Participant in carrying out investigations of offenses involving CPP.

APPENDIX 2 - INVENTORY OF PROJECT EQUIPMENT TRANSFERS

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replace ment Value

ANNEX C

MODEL PROJECT EQUIPMENT TRANSFER (PET) FORM

PET NUMBER ***(PET-XXXX*)***

UNDER THE U.S. DOD-AS DOD
TEST AND EVALUATION PROGRAM (TEP) COOPERATION
MEMORANDUM OF UNDERSTANDING (MOU)

BETWEEN

(Insert titles of the Organizations participating in the transfer)

****The U.S. DoD will assign the PET number.***

INTRODUCTION

This Project Equipment transfer (PET) is entered into pursuant to the Memorandum of Understanding (MOU) between the Department of Defence of Australia and the Department of Defense of the United States of America concerning Test and Evaluation Programs (TEP) ***(insert effective date of the TEP MOU)***. This TEP PET Form is being executed by authorized representatives of the providing and receiving Participants pursuant to Section VII (Project Equipment) of the TEP MOU.

SECTION I
DESCRIPTION AND QUANTITY

1.1 The following Project Equipment will be transferred by the providing Participant to the receiving Participant:

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replace ment Value

(Fill in as appropriate)

1.2 ***(Choose one of the following alternatives, or use both if both situations apply.)***

Alternative A -- Use when return of Project Equipment is planned.

None of the Project Equipment identified in paragraph 1.1 is intended to be consumed or expended during the course of the TEP Activity described in paragraph 2.1.1.

Alternative B -- Use when return of Project Equipment is not planned due to its consumption during the activity.

The Project Equipment (specify as appropriate by highlighting in paragraph 1.1) described in paragraph 1.1 is intended to be consumed or expended during the course of the TEP Activity described in paragraph 2.1.1.

SECTION II
PURPOSE

2.1 The purpose of this PET is to support the following TEP Activity.

2.1.1 ***(Fill in as appropriate)***

SECTION III
MANAGEMENT AND RESPONSIBILITIES

3.1 Each Participant will establish a point of contact that will be responsible for implementing this PET.

3.1.1 For the providing Participant the point of contact is *

3.1.2 For the receiving Participant the point of contact is *

* ***Insert the appropriate names, titles/office symbols, addresses, and telephone numbers of the individuals assigned to implement this PET.***

3.2 Responsibilities of the Providing Participant

3.2.1 Transfer of the Project Equipment- The providing Participant will transfer the Project Equipment listed above for the duration of the transfer period specified in paragraph 6.4 unless extended by mutual written consent.

3.2.2 Project Equipment Delivery - The providing Participant will deliver the Project Equipment ***(specify arrangements)***. Responsibility for the Project Equipment will pass from the providing Participant to the receiving Participant at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Participant unless otherwise specified in this paragraph.

3.2.3 Information - The providing Participant will furnish the receiving Participant such information as is necessary to enable the Project Equipment to be used in the TEP Activity described in paragraph 2.1.1 in accordance with Section VIII (Disclosure and Use of Information) of the TEP MOU.

3.3 Responsibilities of the Receiving Participant

3.3.1 Inspection and Inventory — The receiving Participant will inspect and inventory the Project Equipment upon receipt. The receiving Participant will also inspect and inventory the Project Equipment prior to its return to the providing Participant, unless the Project Equipment is consumed in accordance with paragraph 3.3.2.

3.3.2 ***(Choose one of the following alternatives, or use both if both situations apply.)***

Alternative A -- Use when return of Project Equipment is planned.

Return of Project Equipment: Upon expiration or termination of the transfer period specified in paragraph 6.4 (taking into account any approved extension by the providing Participant), the receiving Participant will return the Project Equipment to the providing Participant ***(specify arrangements)***. If the Project Equipment is lost, unintentionally destroyed, or damaged beyond economical repair, while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss/destruction/irreparable damage to the providing Participant.

Alternative B -- Use when return of Project Equipment is not planned due to its consumption during the Activity.

Consumption of Project Equipment: It is intended that the receiving Participant will consume the Project Equipment specified in paragraph 1.1 during the course of the TEP Activity described in paragraph 2.1.1. If this does occur, the receiving Participant will provide written notice of its consumption to the providing Participant. In the event consumption does not occur prior to the end of the transfer period specified in paragraph 6.4, the receiving Participant will return the Project Equipment to the providing Participant ***(specify arrangements)***. If the Project Equipment is lost, unintentionally destroyed, or damaged beyond repair prior to its intended consumption while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss/destruction/irreparable damage to the providing Participant.

3.4 This TEP PET Form provides only for transfer of Project Equipment associated with the TEP Activity described in paragraph 2.1.1. Signature of this TEP PET Form does not imply any commitment by a Participant to participate in any activities beyond the PET described herein.

SECTION IV
SPECIAL PROVISIONS *(OPTIONAL)*

4.1 ***(Insert any special provisions as required.)***

SECTION V
CLASSIFICATION

5.1 ***(Insert only one of the two following paragraphs; note that one of these two options must be selected.)***

No classified Project Equipment will be transferred under this TEP PET Form.

or

The highest level of classified Project Equipment under this TEP PET Form is ***(insert level of classification).***

SECTION VI
MODIFICATION, TERMINATION, AND TRANSFER PERIOD

6.1 The provisions of this PET Form may be modified or extended by written mutual consent of authorized representatives of the Participants in accordance with Section VII (Project Equipment) of the TEP MOU.

6.2 The PET described in this TEP PET Form may be terminated at any time in accordance with the following provisions.

6.2.1 Through the mutual written consent of the authorized representatives of the Participants.

6.2.2 Unilaterally by the receiving Participant on 60 days written notice to the providing Participant.

6.2.3 Unilaterally by the providing Participant at any time.

6.3 Responsibilities regarding security and protection against unauthorized use, disclosure, or transfer that accrued prior to termination or expiration of the transfer period will continue to apply without limit of time in accordance with Section XVII (Amendment, Termination, Entry Into Effect, and Duration) of the TEP MOU.

6.4 The transfer period for the Project Equipment described herein begins on the date of the last signature below, and, unless terminated or extended, will continue until ***(enter date or amount of time).***

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date
_____	_____
Location	Location