

DEFENSE

Missiles

**Agreement Between the
UNITED STATES OF AMERICA
and OTHER GOVERNMENTS**

Signed at Washington, Bonn and Rome
October 14, 1997, February 5 and March 7, 1998

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.”

MULTILATERAL

Defense: Missiles

*Agreement signed at Washington, Bonn and Rome
October 14, 1997, February 5 and March 7, 1998;
Entered into force March 7, 1998.
With annexes.*

AGREEMENT
AMONG THE
FEDERAL MINISTRY OF DEFENSE OF THE FEDERAL REPUBLIC
OF GERMANY
AND THE
MINISTRY OF DEFENSE OF THE REPUBLIC
OF ITALY
AND THE
DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
FOR THE
HIGH SPEED ANTI-RADIATION MISSILE (HARM) AGM-88 UPGRADE

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PREAMBLE

The Federal Ministry of Defense (MoD) of the Federal Republic of Germany, the Ministry of Defense (MoD) of the Republic of Italy, and the Department of Defense (DoD) of the United States of America, hereinafter referred to as the "Parties":

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 for the High-speed Anti-Radiation Missile (HARM) Upgrade to satisfy common operational requirements; and,

Having independently identified operational deficiencies related to the current HARM weapon system and analyzed benefits of various potential upgrades, recognize the benefits of cooperation in the HARM Upgrade Project;

Have agreed as follows:

ARTICLE I

DEFINITIONS

The Parties have agreed upon the following definitions for terms used in this Agreement:

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.
Contract	Any mutually binding legal relationship which obligates a Contractor to furnish supplies or services, and obligates one or more of the Parties to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Parties. 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 Party, which has authority to enter into, administer, or terminate Contracts. For this Agreement, the Contracting Agency will be the U.S. Department of the Navy.
Contracting Officer	A person representing a Contracting Agency of a Party who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Party'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 Agreement, the information will be marked to identify its "in confidence" nature. It could include information which has been declassified, but remains controlled.

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Cooperative
Operational
Requirements
Document (CORD)

The document that specifies detailed performance requirements which must be met by the Block IIIB and Block VI missile configurations developed in the Engineering and Manufacturing Development (EMD) Effort, and which establishes performance goals that will influence EMD.

Cost Ceiling

The maximum Financial and Non-financial contribution required under this Agreement in Then Year Dollars.

Defense
Purposes

Manufacture or other use in any part of the world by or for the armed forces of any Party.

Designated
Security
Authority (DSA)

The security office approved by national authorities to be responsible for the security aspects of this Agreement.

Engineering and
Manufacturing
Development (EMD)
Effort

The cooperative program for the engineering and manufacturing development of the HARM Inertial Navigation System (INS) Upgrade.

Financial Costs

Any HARM Upgrade Project costs that, due to their nature, will be paid using monetary contributions from the Parties.

Financial
Policy and
Procedures
Document

The specific processes and procedures to be followed by the International HARM Upgrade Project Team (IHUPT) for all financial management aspects of the HARM Upgrade Project.

HARM Block IIIB

The missile configuration which will result when a current HARM AGM-88B (Block III or Block IIIA) missile is retrofitted with the precision Inertial Navigation System (INS) kit and associated Block IIIB software developed during the HARM Upgrade Project EMD Effort. The resulting configuration will be designated the "HARM AGM-88B (Block IIIB)", referred in this MOU as "HARM Block IIIB".

HARM Block VI

The missile configuration which will result when a current HARM AGM-88C (Block IV or V) missile is retrofitted with the precision Inertial Navigation System (INS) kit and

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	associated Block VI software developed during the HARM Upgrade Project EMD Effort. The resulting configuration will be designated the "HARM AGM-88D (Block VI)", referred in this MOU as "HARM Block VI".
HARM Upgrade Project	A cooperative Project to conduct an EMD Effort to develop a HARM INS Upgrade.
IHUPT	International HARM Upgrade Project Team.
Inertial Navigation System (INS) Upgrade	The hardware kit to be designed and developed during the HARM Upgrade Project EMD Effort which will consist of an Inertial Measurement Unit (IMU) coupled with a Global Positioning System (GPS) receiver. The combination of the IMU and the GPS will replace the current gyro systems in the HARM control section.
International Operational Requirements Working Group (IORWG)	The tri-national group of operational users and requirements officers responsible for establishing HARM Upgrade Project requirements and prioritizing future requirements for the HARM Upgrade Project in the Cooperative Operational Requirements Document.
Non-financial Costs	Any HARM Upgrade Project costs that, due to their nature, will be met using non-monetary contributions from the Parties.
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.
Project Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment used in the HARM Upgrade Project.

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Project
Background
Information

Information not generated in the performance of the HARM Upgrade Project.

Project
Foreground
Information

Project Information generated in the performance of the HARM Upgrade Project.

Project
Information

Any information provided to, generated in, or used in the HARM Upgrade Project regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form 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 Project. 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.

Project Plan

The overall management plan to document the detailed efforts to be accomplished in the HARM Upgrade Project. This plan shall address such areas as configuration management, software management, Project schedule and milestones, and other pertinent areas applicable to the management of the HARM Upgrade Project.

Technology
Evaluation and
Assessment (TEA)
Effort

The cooperative effort to continually identify and assess emerging technologies needed to improve the capability of HARM, and future defense suppression weapons, to defeat current and future threats.

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Then Year Dollars A figure, based initially on FY97 dollars, that takes into account all variations in inflation over the life of the HARM Upgrade Project.

Third Party Any person or other entity whose governing authority is not a Party to this Agreement.

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ARTICLE II

OBJECTIVES

- 2.1. The HARM Upgrade Project shall consist of an EMD Effort to design, develop, and test a HARM INS Upgrade for the AGM-88B and the AGM-88C missiles and associated software.
- 2.2. The objectives of the EMD Effort are to:
- 2.2.1. Cooperatively design, develop, and test a HARM INS Upgrade for the AGM-88B and the AGM-88C missiles and related software that meet the operational requirements as set forth in the CORD 475-88-94 with greater effectiveness and less likelihood of engaging friendly or neutral countries' air defense systems; and,
 - 2.2.2. Cooperatively plan for a possible production effort to produce kits developed in the EMD Effort.
- 2.3. It is the intent of the Parties to carry the HARM Upgrade Project through to completion and to then enter into discussions for the establishment of a separate written agreement for a production effort. Should this Project proceed to a production effort, determination of equitability of all contributions from, and benefits to, Parties shall be reassessed to reflect and compensate for any lack of equitability in the execution of this MOA. This MOA does not contain any arrangements for or responsibility by the Parties to implement a production effort. Any commitment by the Parties to a production effort shall be the subject of a separate written arrangement between the Parties.
- 2.4. It is the intent of the Parties to conduct a separate TEA Effort which shall identify and assess emerging technologies to meet operational requirements not addressed in the INS Upgrade, and then to enter into discussions for the establishment of a separate agreement for a TEA Effort.

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ARTICLE III

SCOPE OF WORK

3.1. The HARM Upgrade Project EMD Effort shall encompass common EMD work, which is shared by all Parties, and HARM Block IIIB and HARM Block VI software work directly related to the common EMD work. The EMD Effort shall be executed in accordance with the Steering Committee approved HARM Upgrade Project Plan.

3.1.1. Common EMD work consists of integrated design, development, and fabrication of test articles; testing of an INS integrated into a missile control section; testing of required missile-borne computer software modifications; and planning for the Production Effort associated with each Party's applicable AGM-88B and AGM-88C missile systems. Development and operational testing and related support shall also be shared effort common to all Parties.

3.1.2. HARM Block IIIB and HARM Block VI software work directly related to the common EMD work described in paragraph 3.1.1. shall include software development, independent verification and validation, test and evaluation of software versions and technical support associated with each Party's applicable AGM-88B and AGM-88C missile systems.

ARTICLE IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. The HARM Upgrade Project shall be directed and administered on behalf of the Parties by an organization consisting of a Steering Committee (SC), and an International HARM Project Team (IHUPT) headed by a Program Manager (PM). The SC shall have overall authority over the PM, in accordance with this Agreement. The PM shall have primary responsibility for effective implementation, efficient management, and direction of the HARM Upgrade Project in accordance with this Agreement.

4.2. The SC shall consist of a representative appointed by each of the Parties. The SC shall meet annually with additional meetings held at the request of any representative. Each meeting of the SC shall be chaired by the representative of the Party hosting the meeting. Subject to the provisions of Article XI (Visits to Establishments), the SC members may be assisted by national specialists. Decisions of the SC shall be made unanimously. In the event that the SC is unable to reach a timely decision on an issue, each SC representative shall refer the issue without delay to its higher authority for resolution. In the meantime, the SC-approved HARM Upgrade Project Plan shall continue to be implemented without interruption under the direction of the PM while the issue is being resolved by higher authority.

4.3. The SC shall be responsible for:

- 4.3.1. Exercising executive-level oversight of the HARM Upgrade Project.
- 4.3.2. Reviewing progress in meeting system requirements as developed by the IORWG and specified in the CORD.
- 4.3.3. Reviewing and approving the HARM Upgrade Project Plan.
- 4.3.4. Approving the Project Financial Policies and Procedures Document, and reviewing the financial status of the HARM Upgrade Project to ensure compliance with the provisions of Article V (Financial Provisions) and Annex A (Financial Matters) to this Agreement.

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- 4.3.5. Developing an Annex to this Agreement which sets forth procedures for the collection and distribution of levies in accordance with Article XIII (Third Party Sales and Transfers), paragraph 13.3.
 - 4.3.6. Resolving issues brought forth by the PM.
 - 4.3.7. Reviewing and forwarding to the Parties for approval recommended amendments to this Agreement in accordance with Article XIX (Amendment, Withdrawal, Termination, Entry Into Force, and Duration).
 - 4.3.8. Approving amendments to Annexes to this Agreement consistent with Article XIX (Amendment, Withdrawal, Termination, Entry Into Force, and Duration).
 - 4.3.9. Approving plans for the disposal of jointly acquired Project Equipment under this Agreement in accordance with Article VII (Project Equipment).
 - 4.3.10. Maintaining oversight of the security aspects of the HARM Upgrade Project, including reviewing and obtaining approval from the appropriate Designated Security Authority of a HARM Upgrade Project Security Instruction and a Classification Guide prior to the transfer of classified or Controlled Unclassified Information.
 - 4.3.11. Providing recommendations to the Parties for the addition of new Parties in accordance with Article XIV (Participation of Additional Nations).
 - 4.3.12. Monitoring Third Party sales and transfers authorized in accordance with Article XII (Third Party Sales and Transfers).
 - 4.3.13. Reviewing the semi-annual status report submitted by the PM.
 - 4.3.14. Reviewing and endorsing the EMD Contract(s) developed by the PM prior to EMD contractual signature.
- 4.4. The U.S. shall appoint the PM who shall have overall responsibility for implementing this Agreement. In addition, each Party shall appoint a Deputy PM (DPM) who shall report

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directly to the PM, in accordance with Annex B. The PM and DPMs, along with their supporting staff, shall comprise the IHUPT. This IHUPT shall be responsible for day-to-day management of the HARM Upgrade Project and shall be located within the Washington, D.C. Metropolitan area, or elsewhere as directed by the PM.

4.5. The PM, assisted by the DPMs, shall be responsible for:

- 4.5.1. Managing the cost, schedule, performance requirements, technical, and financial aspects of the HARM Upgrade Project described in this Agreement.
- 4.5.2. Preparing and executing the HARM Upgrade Project Plan with SC approval.
- 4.5.3. Preparing the Financial Policies and Procedures Document, requesting release of national funds ("call for funds"), and executing the financial aspects of the HARM Upgrade Project in accordance with Article V (Financial Provisions) and Annex A (Financial Matters).
- 4.5.4. Referring issues to the SC that cannot be resolved by the PM.
- 4.5.5. Preparing the EMD contracts.
- 4.5.6. Developing and recommending amendments to this Agreement and its Annexes to the SC.
- 4.5.7. Developing and implementing SC-approved plans to manage and control the transfer of Project Equipment provided by any Party in accordance with Article VIII (Project Equipment).
- 4.5.8. Developing and implementing SC-approved plans for the disposal of jointly acquired Project Equipment under this Agreement in accordance with Article VIII (Project Equipment).
- 4.5.9. Developing and forwarding to the SC a HARM Upgrade Project Security Instruction and a Classification Guide for the Project within three months after Agreement signature, and implementing them upon final approval.

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- 4.5.10. Forwarding recommendations to the SC for the addition of new Parties in accordance with Article XV (Participation of Additional Nations).
- 4.5.11. Providing a semi-annual status report to the SC.
- 4.5.12. Exercising configuration management in accordance with the approved HARM Upgrade Project Plan.
- 4.5.13. Exercising software management in accordance with the approved HARM Upgrade Project Plan.

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ARTICLE V

FINANCIAL AND NON-FINANCIAL PROVISIONS

5.1. The Parties estimate that the performance of the HARM Upgrade Project obligations under this Agreement shall not cost more than a total Cost Ceiling of \$102.95 million Then Year (TY) U.S. dollars.

5.2. The Cost Ceiling specified in paragraph 5.1 may be changed only upon written agreement between the Parties. The U.S. dollar shall be the reference currency for the HARM Upgrade Project, and the Project fiscal year shall be the U.S. fiscal year.

5.3. The full Financial and Non-financial costs of the HARM Upgrade Project, as identified in this Article and in Annex A (Financial Matters) of this Agreement, shall be shared as follows:

<u>Party</u>	<u>Cost Share (TY \$ Million)</u>
Germany	31.35
Italy	31.35
U.S.	40.25

5.4. The Parties shall use their best efforts to perform, or to have performed, the EMD Effort specified in Article III (Scope of Work) and fulfill the obligations under this Agreement as specified in Annex A (Financial Matters).

5.5. Each Party shall contribute its equitable share of the full Financial Costs and Non-financial Costs of the HARM Upgrade Project, including overhead costs, administrative costs, and costs of claims, and shall receive an equitable share of the results of the HARM Upgrade Project. The financial and non-financial contributions required to support HARM Upgrade Project efforts are detailed in Annex A (Financial Matters).

5.6. The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred:

5.6.1. Costs associated with national representation at meetings by non-IHUPT members.

5.6.2. Costs associated with any unique national requirements identified by a Party.

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- 5.6.3. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.
- 5.6.4. Costs incurred by the IHUPT to make alternative arrangements when a Party is unable to provide its contribution of personnel to the IHUPT.
- 5.7. The IHUPT shall be responsible for establishing arrangements on the detailed financial management procedures under which the Project will operate. These procedures will be detailed in the SC-approved Project Financial Policies and Procedures Document and must agree with the national accounting and audit requirements of the Parties. An estimated financial schedule for the HARM Upgrade Project will be contained in the Financial Policy and Procedures Documents.
- 5.8. The Parties recognize that it may become necessary for the DOD, in accordance with the Financial Policy and Procedures Document, to incur contractual or other obligations for the benefit of the other Parties prior to receipt of the Parties' funds. In the event that the DOD incurs such obligations, the Parties shall make funds available in such amounts and at such times as may be required by the terms of the contract or other obligation and shall make them available in advance of the time such payments are due.
- 5.9. The IHUPT shall maintain complete records of all work performed, obligations and commitments incurred, and monies received and expended, and shall ensure that the normal internal audit surveillance and checks of accounting and procurement procedures will be applied in accordance with the standard accounting practices of the U.S. The audit of the IHUPT financial information for the EMD Project shall be performed on an annual basis by the DOD on behalf of the Parties. Reports of such audits shall be released without any restrictions to the other Parties. The other Parties may assist the DOD on any audit elements required to satisfactorily perform the audit. Where Party auditors need to obtain or inspect Party-specific EMD Project financial data which is necessary to fulfill their national obligations, the DOD shall grant access to such specific financial information in the possession and control of DOD.
- 5.10. A Party shall promptly notify the other Parties if available funds are not adequate to fulfill its obligations under this Agreement. If a Party notifies the other Parties that it is terminating or reducing its funding for the HARM Upgrade Project, all Parties shall immediately consult with a view toward continuation on a modified basis. Should a Party be unable to

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provide adequate funds to the HARM Upgrade Project, it shall unilaterally withdraw from this Agreement in accordance with the provisions of Article XIX (Amendment, Withdrawal, Termination, Entry into Force, and Duration), paragraph 19.5.

ARTICLE VI

CONTRACTING PROVISIONS

6.1. The DOD (acting through the Department of the Navy) shall be responsible for Contracting for the HARM Upgrade Project in accordance with U.S. Contracting laws, regulations and procedures. Contracts will be awarded by the DOD to German and Italian firms chosen with the approval of the defense ministries of those nations. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors.

6.2. The PM shall be responsible for the coordination of activities relating to the HARM Upgrade Project, and shall cooperate with the Contracting Officer in the areas of Contract preparations, Contract negotiation, evaluation of offers, and Contract award. The PM shall review statements of work prior to the development of solicitations to insure that they are in accordance with this Agreement. In addition, the Contracting Officer shall keep the PM advised of all financial arrangements with the Contractor(s).

6.3. The Contracting Officer shall negotiate to obtain the rights to use and disclose HARM Upgrade Project Information required by Article IX (Disclosure and Use of Project Information). The Contracting Officer shall insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information), Article XII (Security) and Article XIII (Third Party Sales and Transfers). During the Contracting process, the Contracting Officer shall advise prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

6.4. In the event the Contracting Officer is unable to secure adequate rights to use and disclose HARM Project Information as required by Article IX (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of

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information, the matter shall be referred to the SC for resolution.

6.5. The Contracting Officer shall immediately advise the PM of any cost growth, schedule change, or performance problems of any Contract for which the Contracting Officer is responsible.

6.6. Upon request of the Contracting Agency, the Parties will provide services in connection with the placement of Contracts free of charge. These services will be provided by each Party through the normal contract administration agencies serving the Contractors within each Party.

ARTICLE VII

WORK SHARING

7.1. The Parties recognize that the sharing of HARM Upgrade Project work among nations of the Parties is a goal of the Parties. To that end, whenever feasible, sources from each nation shall be permitted to bid on Project work on equal terms and conditions. Each Party shall encourage its industry to provide competitive opportunities to sources from the other nations to participate in the work of the HARM Upgrade Project, provided that such participation does not adversely impact the Project and is consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project.

7.2. No requirement shall be imposed by any Party for work sharing or other industrial or commercial compensation in connection with this Agreement that is not in accordance with this Agreement.

ARTICLE VIII

PROJECT EQUIPMENT

8.1. Each Party may provide Project Equipment identified as being necessary for executing the Agreement to the other Parties. Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to another Party shall be developed and maintained by the PM, and approved by the SC in accordance with Article IV (Management) prior to such transfers. This list shall specifically identify Project Equipment intended to be consumable.

8.2. The receiving Party(ies) shall maintain any such Project Equipment in good order, repair, and operable condition and return the items in as good condition as received, normal wear and tear excepted. The receiving Party(ies) shall pay the cost of damage (other than normal wear and tear) to or loss of Project Equipment.

8.3. The Parties recognize there may be some HARM Upgrade Project Equipment which shall be expended during the course of Project. There shall be no requirement to return or compensate the Providing Party for loss of or damage to consumable Project Equipment.

8.4. All Project Equipment that is transferred shall be used by the receiving Party(ies) only for the purposes of carrying out this Agreement. In addition, in accordance with Article XIII (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Party.

8.5. Project Equipment transferred to one or more Parties under this Agreement shall be returned to the providing Party prior to the termination or expiration of this Agreement.

8.6. Any Project Equipment which is jointly acquired on behalf of the Parties for use under this Agreement shall be disposed of during this Project or when the Project ceases, as agreed by the SC.

8.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Party in such Project Equipment to another Party, or the sale of such equipment to a Third Party in accordance with Article XIII (Third Party Sales and Transfers) of this Agreement. The Parties shall share the consideration

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from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this Agreement.

ARTICLE IX

DISCLOSURE AND USE OF PROJECT INFORMATION

9.1. General

All Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this HARM Upgrade Project. The Parties intend to acquire sufficient Project Information and rights to use such information to enable the design, development, and testing of the INS Upgrade. The nature and amount of Project Information to be acquired shall be consistent with the objectives stated in Article II (Objectives), Article III (Scope of Work), the Cooperative Operational Requirements Document, and the specific conditions and limitations identified in Annex C (Control and Distribution of Classified Project Information).

9.2. Government Project Foreground Information

9.2.1. Disclosure: Project Foreground Information generated in whole or in part by a Party's military or civilian employees shall be disclosed without charge to all Parties.

9.2.2. Use: Each Party may use all Government Project Foreground Information without charge for Defense Purposes. The Party generating Government Project Foreground Information shall also retain its rights of use thereto. If a Party intends to use any Government Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of Article XIII (Third Party Sales and Transfers) of this Agreement shall also apply.

9.3. Government Project Background Information

9.3.1. Disclosure: Each Party, upon request, shall disclose to the other Parties any relevant Government Project Background Information generated by its military or civilian employees outside the scope of this Agreement provided that:

9.3.1.1. such Project Background Information is necessary to or useful in the HARM Upgrade Project, with the Party in possession of the information determining whether it is

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"necessary to" or "useful in" the HARM Upgrade Project;

9.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and,

9.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

9.3.2. Use: Government Project Background Information furnished by one Party to the other Parties may be used without charge by the other Parties for Project Purposes only; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

9.4. Contractor Project Foreground Information

9.4.1. Disclosure: Project Foreground Information generated and delivered under a Contract by Contractor(s), shall be disclosed without charge to all Parties.

9.4.2. Use: Each Party may use without charge for Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Parties. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall also retain rights of use thereto in accordance with the applicable Contract(s). If a Party intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Article XIII (Third Party Sales and Transfers) of this Agreement shall also apply. The Parties shall consider acquiring the legal rights to use Contractor Project Foreground Information in a sale.

9.5. Contractor Project Background Information

9.5.1. Disclosure: Any relevant Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors or other entities under Contracts awarded by a Party outside the scope of this

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Agreement, shall be made available to the other Parties provided the following conditions are met:

- 9.5.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the HARM Upgrade Project;
 - 9.5.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and,
 - 9.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party.
- 9.5.2. Use: Project Background Information furnished by one Party's Contractors and disclosed to the other Parties may be used without charge by the other Parties for Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

9.6. Proprietary Project Information

- 9.6.1. All Project Information subject to proprietary interests shall be identified and marked, and it shall be handled as Controlled Unclassified Information.
- 9.6.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defense Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defense Purposes, approved by the North Atlantic Council on 1 January 1971, shall apply to proprietary Project Information related to this Agreement.

9.7. Patents

- 9.7.1. Where a Party owns title to a Project Invention, or has the right to receive title to a Project Invention, that Party shall consult with the other Parties regarding the filing of a Patent

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application for such Project Invention. The Party which has or receives title to such Project Invention shall, in other countries, file, cause to be filed, or provide the other Parties with the opportunity to file on behalf of the Party holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Parties of that decision and permit the other Parties to continue the prosecution.

- 9.7.2. The other Parties shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 9.7.3. The other Parties shall acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Parties, throughout the world for Defense Purposes, any Project Invention owned by a Party.
- 9.7.4. Patent applications which contain Classified Information, to be filed under this Agreement, shall be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.
- 9.7.5. Each Party shall notify the other Parties of any Patent infringement claims made in its territory arising in the course of work performed under the HARM Upgrade Project. Insofar as possible, the other Parties shall provide information available to them that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Parties during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in the same percentage as they share the full Financial Costs and Non-financial Costs of the HARM Upgrade Project. The Parties shall, in accordance with their national laws and practices, give their

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authorization and consent for all use and manufacture in the course of work performed under the HARM Upgrade Project of any invention covered by a Patent issued by their respective countries.

ARTICLE X

CONTROLLED UNCLASSIFIED INFORMATION

10.1. Except as otherwise provided in this Agreement or authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

10.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in Article IX (Disclosure and Use of Project Information).

10.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1., and shall be subject to the provisions of Article XIII (Third Party Sales and Transfers).

10.1.3. Each Party shall 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 10.1.2., unless the originating Party 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 shall be given to the originating Party.

10.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the HARM Upgrade Project Security Instruction.

10.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 10.1.

10.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure

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the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE XI

VISITS TO ESTABLISHMENTS

11.1. Each Party shall permit visits to its Government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Parties or by employees of the other Parties' Contractors, provided that the visit is authorized by the Party to be visited and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2. All visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

11.3. Requests for visits by personnel of one Party to a facility of another Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host country. Requests for visits shall bear the name of the HARM Upgrade Project.

11.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Parties shall be submitted through official channels in accordance with Recurring International Visit Procedures.

ARTICLE XII

SECURITY

12.1. All Classified Information and material provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the Parties' national security laws and regulations, to the extent that they provide a degree of protection no less stringent than that provided for NATO Classified Information and material as set forth in the document "Security Within the North Atlantic Treaty Organization," CM(55)15(Final), of 31 July 1972, and its subsequent amendments.

12.2. Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the National Security Authorities (NSA's), as appropriate, or the Designated Security Authorities (DSAs) of the Parties. Such information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

12.3. Each Party shall take all lawful steps available to it to ensure that information provided or generated pursuant to this Agreement is protected from further disclosure except as provided by paragraph 12.8., unless the other Parties consent to such disclosure. Accordingly, each Party shall ensure that:

12.3.1. The recipients shall 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 Party in accordance with the procedures set forth in Article XIII (Third Party Sales and Transfers).

12.3.2. The recipients shall not use the Classified Information for other than the purposes provided for in this Agreement.

12.3.3. The recipients shall comply with any distribution and access restrictions on information that is provided under this Agreement.

12.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified

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Information or material provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Parties of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.5. The NSA or DSA of the Party that awards a classified Contract under this Agreement shall assume responsibility for administering within its territory security measures for the protection of the Classified Information or material, in accordance with its laws and regulations. Prior to the release to any Contractors, prospective Contractors, or subcontractors of any Classified Information received under this Agreement, the DSA of recipient Parties shall:

- 12.5.1. Ensure that such Contractors, prospective Contractors, or subcontractors and their facilities have the capability to protect the information adequately.
- 12.5.2. Grant a security clearance to the facilities, if appropriate.
- 12.5.3. Grant a security clearance for all personnel whose duties require access to the information, if appropriate.
- 12.5.4. Ensure that all persons having access to the information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and the provisions of this Agreement.
- 12.5.5. Carry out periodic security inspections of cleared facilities to ensure that the information is properly protected.
- 12.5.6. Ensure that access to the information is limited to those persons who have a need-to-know for purposes of the HARM Upgrade Project.

12.6. The PM shall prepare a Project Security Instruction and a Classification Guide for the HARM Upgrade Project. The Project Security Instruction and the Classification Guide shall describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide shall be developed by the PM within three months after this Agreement enters into force. They shall be

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reviewed and forwarded to the appropriate DSAs, and shall be applicable to all government and Contractor personnel participating in the HARM Upgrade Project. The Classification Guide shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The HARM Upgrade Project Security Instruction and the Classification Guide shall be approved by the appropriate DSAs prior to the transfer of any Classified Information or Controlled Unclassified Information.

12.7. Contractors, prospective Contractors, or subcontractors which are determined by 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 Agreement only when enforceable measures are in effect to ensure that nationals or entities of a Third Party shall 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 Parties shall be consulted for approval prior to permitting such access.

12.8. For any facility wherein Classified Information or material is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information or material involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

12.9. Each Party shall ensure that access to 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 the HARM Upgrade Project.

12.10. Information or material provided or generated pursuant to this Agreement may be classified as high as SECRET. The existence of this Agreement is UNCLASSIFIED and the contents are UNCLASSIFIED.

ARTICLE XIII

THIRD PARTY SALES AND TRANSFERS

13.1. The Parties shall not sell, transfer title to, disclose, or transfer possession of HARM Upgrade Project Foreground Information or jointly acquired Project Equipment to any Third Party without the prior written consent of the other Parties. Furthermore, no Party shall permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Parties. Such consent shall not be given unless the government(s) of the intended recipient(s) agree in writing with the Parties that it(they) shall:

- 13.1.1. not retransfer, or permit the further transfer of, any equipment or information provided; and
- 13.1.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Parties.

13.2. A Party shall not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by another Party to any Third Party without the prior written consent of the Party which provided such equipment or information. The providing Party shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

13.3 Sales and other transfers, to a Third Party, of equipment developed or Project Information generated under this Agreement may attract a levy. A Party may reduce or waive the assessment of its share of the levy. Any agreement between the Parties regarding the amount of such a levy, and the procedures for collecting and distributing the levy, shall be set forth in an Annex to this Agreement. Absent an Annex, each Party shall access and collect its levy in accordance with its own national laws and regulations.

ARTICLE XIV

CLAIMS AND LIABILITY

14.1. Having regard to multilateral and bilateral treaties and agreements of the Parties concerning liability for claims and subject to such treaties and agreements, when applicable, for liability arising out of the execution of the HARM Upgrade Project, the provisions set forth below shall apply:

14.1.1. With the exception of claims for loss or damage to Project Equipment provided by a contributing Party under Article VIII (Project Equipment), each Party waives all claims against the other Parties for injury to or death of its military or civilian personnel, and for damage to or loss of its property, or cooperatively acquired property caused by personnel or agents (which do not include HARM Upgrade Project Contractors) of the other Parties. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Party's personnel or agents, the cost of any liability shall be borne by that Party alone.

14.1.2. Claims from any other persons for injury, death, damage, or loss of any kind shall be processed by the most appropriate Party, as determined by the Parties. Generally, this shall be the Party country in which the claim arose. Any costs determined to be owed the claimant for claims pertaining to the HARM Upgrade Project effort shall be borne by the contributing Parties proportionately according to the cost share of each Party in this Agreement. If however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Party's or Party's personnel or agents, the cost of any liability shall be borne by that (those) Party(ies) alone.

14.1.3. In the case of damage caused by or to cooperatively acquired property of the Parties, where the cost of making good such damage is not recoverable from other persons, such cost shall be

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borne proportionately according to the cost share of each Party in this Agreement.

- 14.1.4. Claims arising under any Contract awarded pursuant to Article VI (Contracting Provisions) shall be resolved in accordance with the provisions of the Contract.

ARTICLE XV

PARTICIPATION OF ADDITIONAL NATIONS

15.1. It is recognized that other nations may wish to join the HARM Upgrade Project.

15.2. Mutual consent of the Parties shall be required to conduct discussions with potential additional Parties. The Parties shall discuss the arrangements under which another Party might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure shall be in accordance with Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information) and Article XIII (Third Party Sales and Transfers).

15.3. The Parties shall jointly formulate the provisions under which additional Parties might join. The addition of new Parties to the HARM Upgrade Project shall require amendment of this Agreement by the Parties to incorporate any additional necessary multilateral provisions.

ARTICLE XVI

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

16.1. Customs duties, import and export taxes, and similar charges shall be administered in accordance with each Party's respective laws and regulations. Insofar as existing national laws and regulations permit, the Parties shall 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 the HARM Upgrade Project.

16.2. Each Party shall 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 Party in whose country they are levied shall bear such costs.

16.3. If, in order to apply European Communities (EC) regulations, it is necessary to levy duties, then these shall be met by the EC member end recipient. To this end, parts or components of the equipment coming from outside the EC shall proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The duties shall be levied as a cost over and above the relevant Party's shared costs of the HARM Upgrade Project.

ARTICLE XVII

SETTLEMENT OF DISPUTES

17.1. Disputes among the Parties arising under or relating to this Agreement shall be resolved only by consultation among the Parties and shall not be referred to an individual, to a national court, to an international tribunal, or to any other person or entity for settlement.

ARTICLE XVIII

LANGUAGE

18.1. The working language for the HARM Upgrade Project shall be the English language.

18.2. All data and information generated under this Agreement and its implementing Contracts and provided by one Party to the other Parties shall be furnished in the English language.

ARTICLE XIX

AMENDMENT, WITHDRAWAL, TERMINATION,
ENTRY INTO FORCE, AND DURATION

19.1. All activities of the Parties under this Agreement shall be carried out in accordance with their national laws and the obligations of the Parties shall be subject to the availability of appropriated funds for such purposes.

19.2. In the event of a conflict between an Article of this Agreement and any Annex to this Agreement, the Article shall control.

19.3. Except as otherwise provided, this Agreement may be amended by the mutual written consent of the Parties. Annexes A, B, C of this Agreement may be amended by the written approval of the SC.

19.4. This Agreement may be terminated at any time upon the mutual written consent of the Parties. In the event the Parties consent to terminate this Agreement, the Parties shall consult prior to the date of termination to ensure termination on the most economical and equitable terms.

19.5. Any Party may withdraw from this Agreement upon 180 days written notification to the other Parties. Such notice shall be the subject of immediate consultation by the SC to decide upon the appropriate course of action. In the event of such withdrawal, the following rules apply:

19.5.1. The withdrawing Party shall continue participation, financial or otherwise, up to the effective date of withdrawal.

19.5.2. In the event of a withdrawal by one or more of the Parties, each Party shall pay the direct costs it incurs as a result of the withdrawal(s), however, the total contribution by any Party, including withdrawal costs, shall not exceed cost share for each Party as set forth in Article V (Financial Provisions).

19.5.3. All HARM Upgrade Project Information and rights therein received under the provisions of this Agreement prior to the withdrawal shall be

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retained by the Parties, subject to the provisions of this Agreement.

19.6. The respective rights and responsibilities of the Parties regarding Article VIII (Project Equipment), Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information), Article XII (Security), Article XIII (Third Party Sales and Transfers), and Article XIV (Liability and Claims), shall continue notwithstanding termination of, withdrawal from, or expiration of this Agreement.

19.7. This Agreement, which consists of nineteen Articles and three Annexes, shall enter into force from the date of the last signature and shall remain in force for 15 years. It may be extended by written agreement of the Parties.

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IN WITNESS WHEREOF, the undersigned, being duly authorized by their governments have signed this Agreement.

DONE, in triplicate, in the English language.

FOR THE FEDERAL MINISTRY OF
DEFENSE OF THE FEDERAL
REPUBLIC OF GERMANY



Signature

Ministerialdirektor

Hans-Jürgen Hofer

Name
Bundesministerium der Verteidigung
- Abteilungsleiter Rüstung -

Title

5. FEBR 1998

Date

BONN

Location

FOR THE MINISTRY OF DEFENSE OF
THE REPUBLIC OF ITALY



Signature

Gen. Alberto ZIGNANI

Name

Segretario Generale della Difesa e
Direttore Nazionale degli Armamenti

Title

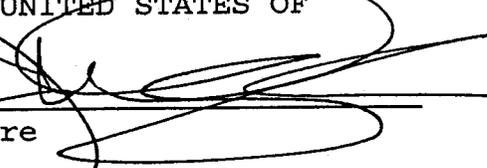
7. March 1998

Date

Roma

Location

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF
AMERICA



Signature

John W. Douglass

Name

Assistant Secretary of the
Navy (Research, Development
and Acquisition)

Title

OCT 14 1997

Date

Washington, D.C.

Location

ANNEX A

FINANCIAL MATTERS

1. Costs associated with the EMD Effort shall be shared as follows:

1.1. Common EMD Work Costs: Financial and Non-financial Costs associated with the development of the common modification kit described in Section III (Scope of Work), paragraph 3.1.1. shall be shared equally among the three Parties in accordance with Table A-1.

1.2. Block IIIB and Block VI EMD-related Work Costs: Financial costs associated with the HARM Block IIIB and HARM Block VI software work described in Section III (Scope of Work), paragraph 3.1.2, shall be shared in accordance with Table A-1 by those Parties receiving the respective upgraded HARM Block IIIB or HARM Block VI.

1.3. Non-financial Costs of personnel shall be shared in accordance with Table A-1.

2. Each Party shall provide EMD Effort financial and non-financial contributions in accordance with Table A-1.

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TABLE A-1

EMD TOTAL CONTRIBUTIONS
(in Then Year U.S. Dollars)

	FY98	FY99	FY00	FY01	FY02	TOTAL
ITALIAN TOTAL CONTRIBUTION (\$K)	7769	8708	7665	4618	2590	31350
FINANCIAL COST SHARE	7469	8408	7365	4318	2290	29850
NON-FINANCIAL CONTRIBUTION	300	300	300	300	300	1500
GERMAN TOTAL CONTRIBUTION (\$K)	7769	8708	7665	4618	2590	31350
FINANCIAL COST SHARE	7469	8408	7365	4318	2290	29850
NON-FINANCIAL CONTRIBUTION	300	300	300	300	300	1500
U.S. TOTAL CONTRIBUTION (\$K)	13818	2633	8463	9293	6043	40250
FINANCIAL COST SHARE	1500	2210	7040	6870	4670	22290
NON-FINANCIAL CONTRIBUTION	12318	423	1423	2423	1373	17960
TOTAL EMD CONTRIBUTIONS	29356	20049	23793	18529	11223	102950

3. Each Party shall provide a minimum equivalent of two (2) manyears per year to prior coordination of the PM, at no impact to the figures at Annex A, Table A-1.

ANNEX B

HARM UPGRADE PROJECT ORGANIZATION

1. The HARM Upgrade Project organization shall be as shown in Figure B-1.

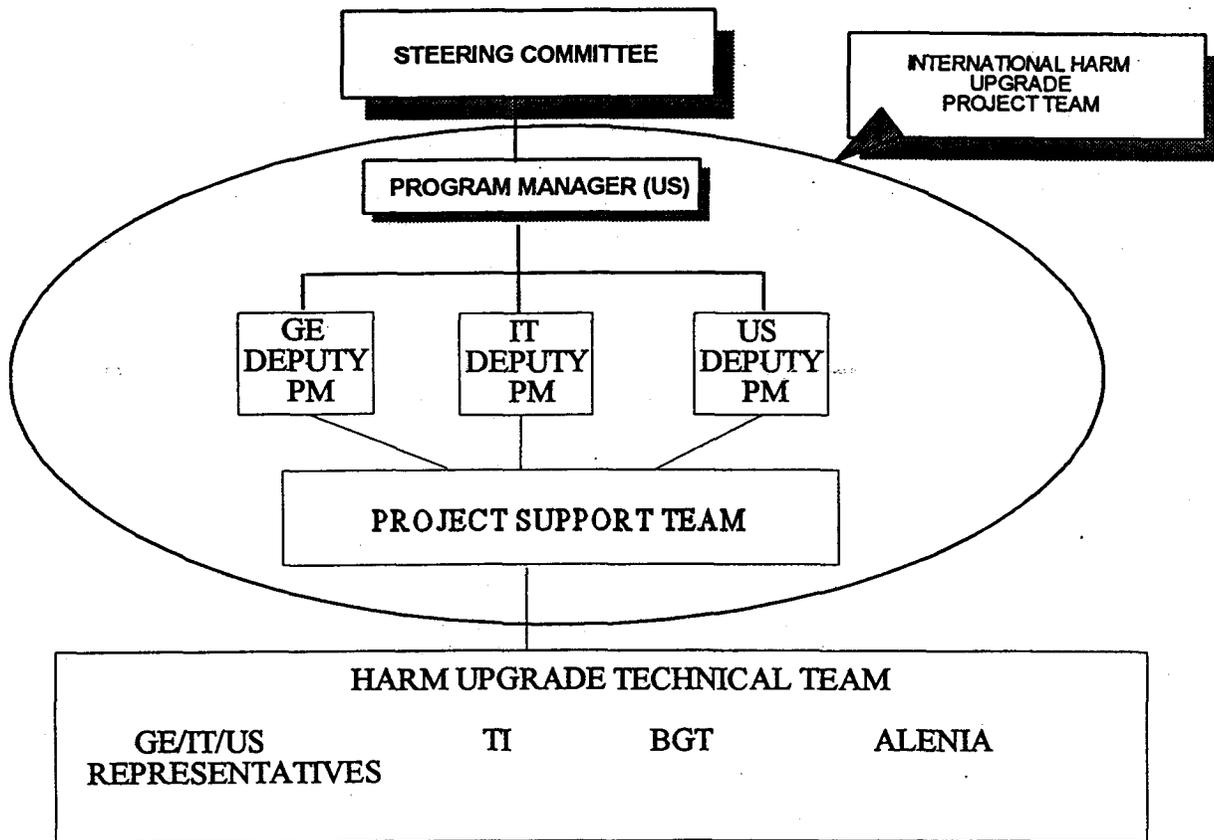


Figure B-1

ANNEX C

CONTROL AND DISTRIBUTION OF CLASSIFIED INFORMATION

1. Specific conditions and limitations for access and control of classified information related to the HARM Upgrade Project EMD Effort are as follows:

1.1. Software: German and Italian access to classified missile software source code shall be at the Naval Air Warfare Center, China Lake, California. Access to this data shall be for the purpose of cooperative design, validation, and performance testing of the HARM Upgrade Project and shall allow the international technical representatives the ability to perform systems engineering functions associated with aircraft integration, system tests, and simulation.

1.2. Performance Data: All Parties shall have access to weapon performance and design information, up to the SECRET level, required to execute the HARM Upgrade Project. This information shall include general AGM-88B and C missile and component performance capabilities; weapon system performance improvements resulting from the HARM Upgrade Project; and design/performance information associated with the HARM Upgrade Project, including hardware and software design and performance specifications. Operational and Maintenance Data, up to the SECRET level, may be exchanged along with Production Data specifically related to the HARM Upgrade Project.

1.3. Hardware: All Parties are authorized to receive AGM-88C missiles (as non-financial contributions under this MOA or via Foreign Military Sales procedures) in addition to the missile modification kits associated with the HARM Upgrade Project. Depot level modifications of all missiles which result from the HARM Upgrade Project shall be performed at facilities designated by the HARM SC. All missile hardware associated with GPS security devices shall be designed and produced in the U.S. In addition, any installation of newly developed missile software required as a result of the HARM Upgrade Project shall be accomplished by approved government or contractor personnel who have been approved by the PM.

2. Specific conditions and limitations for access and control of classified information related to the HARM Upgrade Project TEA Effort are as follows:

2.1. System Performance and Design Trade Studies: All Parties shall have access, up to the SECRET level, to system performance analyses, trade studies, hardware demonstration test results, and results of operational modeling and simulation relating to advanced

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seeker, propulsion, warhead, target detection, and missile system concepts related to the Defense Suppression Mission Area.