

will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the Information relates to this Annex.

8.3 The POs, if so directed by the SMC, will ensure a Program Security Instruction/Security Classification Guide (PSI/SCG) is prepared within 60 days of the signature of the PA. The PSI/SCG will describe the methods by which Classified Information and material will be classified, marked, used, transmitted, and safeguarded. The PSI/SCG will be forwarded to the Participants' DSAs for review and approval prior to transfer of any Classified Information or material.

8.4 The DSA of the Participant in which a classified Contract is awarded pursuant to this Annex 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 Annex, the DSAs will:

- 8.4.1 ensure that such Contractor, prospective Contractor, subcontractor or prospective subcontractor and their facility(ies) have the capability to protect adequately the Classified Information under each Participant's National Industrial Security Program;
- 8.4.2 grant a security clearance to the facility(ies);
- 8.4.3 grant a security clearance for all personnel whose duties require access to Classified Information;
- 8.4.4 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 Annex;
- 8.4.5 carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and
- 8.4.6 ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of this Annex and any of its PAs.

8.5 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 Annex or any of its PAs only when enforceable measures are in effect to ensure that

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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.

8.6 Information and material exchanged in accordance with this Annex may be classified up to and including the TOP SECRET level. The existence of this Annex is UNCLASSIFIED and the contents are FOR OFFICIAL USE ONLY. The classification of the existence of any PA and the contents of any PA will be stated in that PA.

SECTION IX

THIRD PARTY SALES AND TRANSFERS

9.1 A Participant will not sell, transfer title to, transfer possession of, or otherwise disclose Background Information exchanged under this Annex to any Third Party without the prior written consent of the Government of the Participant which provided such information. The providing Participant's Government will be solely responsible for authorizing any transfers and, as applicable, specifying the method and conditions for implementing any transfers.

9.2 The Participants will not sell, transfer title to, transfer possession of, or otherwise disclose Foreground Information, or any item produced either wholly or in part from Foreground Information, or jointly acquired or produced Project Equipment, to a Third Party without the prior written consent of the other Participant's Government. In the event of such a transfer, the transferring Participant will be required to obtain written legally binding assurances from the Third Party not to transfer or permit retransfer of any of the Information provided, and that the Third Party will use such Information only for the purposes for which it was provided.

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

9.3.1 which is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work under this Annex or its PAs; and

9.3.2 which does not include any 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.

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9.4 The Participants will consult prior to taking any actions pertaining to Foreground Information of the type specified in paragraph 9.3. In the event questions arise whether the Foreground Information (or any item produced either wholly or in part from the 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 9.3, the Participants will resolve the matter prior to any sale or other transfer of such Foreground Information (or any item produced either wholly or in part from the Foreground Information) to a Third Party.

9.5 The Participants will establish specific provisions in each PA governing Third Party transfers, which may take precedence over this section of this Annex and the U.S./Australia BMD MOU. However, no PA will change the definition of Third Party as provided for in this Annex. Those provisions will take into account the extent of contributions of each Participant and the potential impact on the BMDS Program.

9.6 The above provisions apply to the transfer or sale of Project Equipment and disclosure of Information associated with such equipment.

SECTION X

CLAIMS

10.1 Claims arising under this Annex or its PAs will be dealt with in accordance with Section X (Liability and Claims) of the U.S./Australia BMD MOU.

10.2 Pursuant to subparagraph 1(b)(iv) of the Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defense Commitments, done in Sydney on December 1, 1995 (Chapeau Agreement), the Participants will share the costs of claims on the following basis:

- 10.2.1 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;
- 10.2.2 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 the Contract. The Contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined; and
- 10.2.3 For Contracts awarded on behalf of both Participants, the cost of claims arising under such Contracts will be shared in the same proportions as

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costs are shared in the applicable PA. The Contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined.

10.3 For the purposes of paragraph 10.2, "third party" means any person or entity who is not a Participant to the Annex.

SECTION XI

PARTICIPATION OF ADDITIONAL NATIONS

11.1 It is recognized that another nation's defense organization may wish to participate in activities pursuant to this Annex.

11.2 Mutual consent of the Participants will be required to conduct discussions with potential additional participants. The Participants will discuss and mutually determine arrangements under which a potential additional participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct the evaluation and hold discussions with the potential additional participant, that participant will enter into written legally binding obligations that such disclosure will be in accordance with the terms of Section VII (Disclosure and Use of Project Information), Section VIII (Security), and Section IX (Third Party Sales and Transfers) of this Annex and Section V (Controlled Unclassified Information) of the U.S./Australia BMD MOU.

11.3 Potential additional nations may participate in activities being conducted under an existing PA. In that event, this Annex may be amended in accordance with Section 12.3.

SECTION XII

GENERAL PROVISIONS

12.1 All activities of the Participants pursuant to this Annex will be carried out in accordance with their national laws, regulations, and policies, including their respective export control laws and export control regulations. The conduct of RDT&E activities pursuant to this Annex will be subject to the availability of funds for such purposes.

12.2 In the event of an inconsistency between the provisions of this Annex and any PA approved under its auspices, this Annex will govern.

12.3 This Annex, including Attachment A (Sample PA), may be amended by the mutual written consent of the Participants.

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12.4 This Annex or any PA may be terminated at any time by the mutual written consent of the Participants. In the event both Participants consent to terminate this Annex or a PA, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms.

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

12.5.1 The Participants will continue participation in all PAs subject to the notice of termination, up to the effective date of termination.

12.5.2 Except as to Contracts awarded on behalf of both Participants, each Participant will be responsible for its own costs associated with termination. For Contracts awarded on behalf of the other Participant or 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 as determined in the PA.

12.5.3 All Project Information and rights therein received under the provisions of this Annex or PAs prior to termination of this Annex or PAs will be retained by the Participants, subject to the provisions of this Annex and applicable PAs.

12.5.4 If requested by the other Participant, the terminating Participant may continue to administer the project Contract(s) that it awarded on behalf of the other Participant on a reimbursable basis.

12.5.5 Specific project termination provisions consistent with this Section may be established in PAs.

12.6 The respective rights and responsibilities of the Participants as outlined in Sections IV (Disclosure and Use of Information), V (Controlled Unclassified Information), VII (Security), VIII (Third Party Transfers), X (Liability and Claims) and XIII (Provisions) of the U.S. /Australia BMD MOU, and in Sections VI (Project Equipment), VII (Disclosure and Use of Project Information), VIII (Security), IX (Third Party Sales and Transfers), X (Claims) and XII (General Provisions) of this Annex, will continue notwithstanding termination or expiration of this Annex or its PAs.

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12.7 This Annex, which consists of twelve (12) Sections and one (1) Attachment, will come into effect upon signature by both Participants and will remain in effect for the duration of the U.S. / Australia BMD MOU unless terminated by either Participant. It may be extended by mutual written consent of the Participants. All PAs will terminate upon the termination or expiration of this Annex or the U.S. /Australia BMD MOU.

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 therein.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF
DEFENSE OF THE UNITED STATES
OF AMERICA

Henry H. Obering
Signature

LTGEN H. OBERING
Name

DIRECTOR MDA
Title

4 OCTOBER 2005
Date

CANBERRA
Location

FOR THE DEPARTMENT OF
DEFENCE OF AUSTRALIA

Roger Lough
Signature

ROGER LOUGH
Name

CHIEF DEFENCE SCIENTIST
Title

4 OCTOBER 2005
Date

CANBERRA
Location

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ATTACHMENT A
SAMPLE PROJECT ARRANGEMENT
TO ANNEX A
RESEARCH, DEVELOPMENT, TEST AND EVALUATION (RDT&E)
TO THE
MEMORANDUM OF UNDERSTANDING BETWEEN THE
DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA AND THE
DEPARTMENT OF DEFENCE OF AUSTRALIA
CONCERNING BALLISTIC MISSILE DEFENSE (BMD MOU)
DATED

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PROJECT ARRANGEMENT NO. _____*

BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND THE

DEPARTMENT OF DEFENCE OF AUSTRALIA

CONCERNING

(FULL DESIGNATION OF THE PROJECT)

* The Project Arrangement Numbers will be assigned by the U.S. Missile Defense Agency

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TABLE OF CONTENTS

INTRODUCTION	A-
DEFINITION OF TERMS AND ABBREVIATIONS	A-
OBJECTIVES	A-
SCOPE OF WORK	A-
SHARING OF TASKS AND RESULTS	A-
BREAK DOWN AND SCHEDULE OF TASKS	A-
MANAGEMENT	A-
FINANCIAL ARRANGEMENTS	A-
CLASSIFICATION	A-
DISCLOSURE AND USE OF INFORMATION	A-
PRINCIPAL ORGANIZATIONS INVOLVED	A-
PROJECT EQUIPMENT	A-
SPECIAL PROVISIONS AND THIRD PARTY TRANSFERS	A-
ENTRY INTO EFFECT, DURATION, AMENDMENT AND TERMINATION	A-
PARTICIPATING PERSONNEL	A-

(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.)

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SECTION I

INTRODUCTION

This Project Arrangement (PA) is entered into pursuant to Annex A to the Memorandum of Understanding between the Department of Defense of The United States of America and the Department of Defence of Australia Concerning Ballistic Missile Defense which entered into effect on July 7, 2004.

SECTION II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the BMD MOU RDT&E ANNEX.)

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 carried out under this PA.

- a. Develop _____

- b. Evaluate _____

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- c. Design, fabricate and test _____

SECTION V

SHARING OF TASKS AND RESULTS

The tasks will be as follows:

- a. U.S. DoD and Australian DoD will jointly _____

- b. The U.S. DoD will _____

- c. The Australian DoD will _____

The results will be shared as follows:

SECTION VI

BREAK DOWN 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:

<u>Phase 1</u>	<u>Start</u>	<u>End</u>
Description of Phase 1	MM/DD/YY	MM/DD/YY

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

<u>Phase 2</u>	<u>Start</u>	<u>End</u>
Description of Phase 2	MM/DD/YY	MM/DD/YY

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

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<u>Phase 3</u>	<u>Start</u>	<u>End</u>
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 Senior Management Committee (SMC) six months before the termination date for this PA.

SECTION VII

MANAGEMENT

1. This PA will be directed and administered on behalf of the Participants by a single Project Officer (PO) (or a Project Officer from each Participant). The PO(s) is (are):

U.S. DoD PO Title/Position _____

Organization _____

Address _____

Australian DoD PO Title/Position _____

Organization _____

Address _____

2. Project Office(s) will be established in _____ (name of U.S. location) (and in _____ name of Australian location). The PO(s) is (are) responsible for management of those tasks listed in Section V (Sharing of Tasks and Results) in this PA.

3. Additional Management Procedures:

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Mention only those additional management responsibilities not covered under the BMD MOU or RDT&E Annex. For instance, if a PA will be administered by one joint program office staffed by members from each Participant, add the following paragraph:

Either Participant may assign personnel to the Joint Program Office (JPO) to assist in administering a PA. Pursuant to Attachment A of the BMD MOU, 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.

(If required: Special Provisions for the personnel provided are described in Appendix (1) of this PA.)

SECTION VIII

FINANCIAL ARRANGEMENTS

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

Cooperative efforts of the Participants over and above the jointly approved tasks set forth in the Scope of Work, Sharing of Tasks and Results, and Financial Arrangements sections will be subject to amendment to this PA or execution of a new PA.

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

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

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Australia						
U.S.						

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(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 SMC (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

CLASSIFICATION

The existence of the PA is _____ and its contents are _____.

The highest level of Classified Information exchanged under this PA is _____.

SECTION X

DISCLOSURE AND USE OF INFORMATION

Each Participant may use, or have used, all Government Foreground Information without charge for _____.

Each Participant may use, or have used, without charge all Contractor Foreground Information generated and delivered by Contractors of the other Participant for _____.

Each Participant may use, or have used, without charge, all Jointly Generated Foreground Information for _____.

(Insert the rights of Foreground Information agreed by the Participants for this PA. Rights of use will usually be Defense Purposes, Project Purposes, or other purposes as specified in this PA. Where 'Other Purposes' are specified these bespoke rights of use should be fully defined and set out above.)

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SECTION XI

PRINCIPAL ORGANIZATIONS INVOLVED

(List government laboratories, research centers, and other organizations for both the US and Australia.)

SECTION XII

PROJECT EQUIPMENT

NOTES:

1. In the event that the collaborative efforts under the PA require the provision of Project Equipment to either Participant, then a list of such Project Equipment must be developed in accordance with the following table.

Providing	Receiving	Qty	Description	Part/ Stock #	Consumables / Non- Consumables	Approx Value	Duration	Remarks

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

SECTION XIII

SPECIAL PROVISIONS AND THIRD PARTY TRANSFERS

(Identify any procedures, specifications, or other necessary attributes of the Project not delineated in other Sections). Articles and services provided under this PA will be in accordance with the Participants' respective national laws, including their export control laws and export control regulations, and any applicable multilateral and bilateral treaties and agreements, as well as with Annex A, Section VIII (Security) and Section IX (Third Party Sales and Transfers).

(Identify mutually determined provisions concerning Third Party transfers. In most cases, provisions established in the Annex will apply.)

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