

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

(SHORT TITLE - BMD MOU RDT&E ANNEX)

INTRODUCTION

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

Recognizing this Annex is entered into pursuant 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 (U.S./Australia BMD MOU), which entered into effect on July 7, 2004;

Recognizing the benefits of cooperation in research, development, test and evaluation (RDT&E) of BMD;

Desiring to facilitate cooperative BMD RDT&E activities;

Have reached the following understandings:

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SECTION I

DEFINITIONS

For the purposes of this Annex, the following definitions will apply:

Background Information	Information not generated under this Annex or its Project Arrangements.
Classified Information	Official information that requires protection in the interests of national security and is so identified by the application of a security classification designation. It may be in oral, visual, magnetic, or documentary form, or in the form of equipment or technology.
Contract	Any mutually binding legal relationship under national law that 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 that has authority to enter into, administer, and/or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, and/or terminate Contracts.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of a Participant, excluding sales or other Third Party transfers.

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Designated Security Authority (DSA)	The Security Office approved by national authorities to be responsible for the security aspects of this Annex and its PAs.
Financial Costs	Any costs that, due to their nature, will be paid using monetary contributions from the Participants.
Foreground Information	Information generated under this Annex or its PAs.
Information	Any information 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 Intellectual Property rights, or other legal protection.
Intellectual Property	All copyright and neighboring rights, all rights in relation to inventions (including Patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know how), mask works fixed in semiconductor chip products, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.
Jointly Generated Foreground Information	Information generated with input from both of the Participants in the performance of work under this Annex.
Non-financial Costs	Any costs that, due to their nature, will be met using non-monetary contributions from the Participants.
Participant	A signatory to the U.S./Australia BMD MOU represented by its military and civilian personnel. Contractors and Contractor Support Personnel are not authorized to make binding decisions or otherwise act as agents of a Participant under the U.S./Australia BMD MOU.

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Participating Personnel (PP)	Military members or civilian employees of a Participant assigned to a joint program office or the other Participant's facilities who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of the U.S./Australia BMD MOU.
Patent	Legal protection of the right to exclude others from making, using, or selling an invention.
Project Arrangement (PA)	An implementing arrangement under this Annex that defines a specific collaborative activity.
Project Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in the performance of a project under this Annex or its PAs.
Project Information	Any Information provided to, generated by, or used in the performance of a project under this Annex or its PAs.
Project Invention	Any invention or discovery formulated or made in the course of work performed under this Annex or its PAs.
Project Purposes	Use for the conduct of a specific project defined by a Project Arrangement pursuant to this Annex.
Third Party	A government other than the government of a Participant or any person or other entity whose government is not the government of a Participant.

SECTION II

PURPOSE AND SCOPE

2.1 The purpose of this Annex is to establish a mechanism that will enable timely, efficient, and mutually beneficial BMDS-related Research, Development, Test and Evaluation (RDT&E) cooperation in support of an integrated defense against ballistic missiles launched at the territories or armed forces of the Participants.

2.2 The Participants will engage in mutually beneficial BMDS-related cooperation in order to develop relevant technologies and develop and integrate system elements capable of defense against ballistic missiles. This integration will support production and deployment of missile defense elements for the defense of population, territory, and deployed forces. The Participants will also cooperate in the development of Command and Control, Battle Management and Communications (C2BMC) capabilities necessary to support BMDS elements.

2.3 The Participants will plan and conduct a program of experiments and tests established through Project Arrangements (PAs) under this Annex to ensure that BMDS capabilities and supporting technologies are validated, and to ensure the full integration of system elements. The Participants will conduct such activities in a manner that ensures that as capabilities for missile defense are proven in testing, they can be made available for use by the Participants should an immediate need for the use of these capabilities arise.

2.4 The scope of work for this Annex will encompass cooperative activities in BMDS RDT&E. PAs to this Annex will be established by the Participants to define specific cooperative activities, and may encompass one or more of the following:

- 2.4.1 basic research, applied research, advanced technology development, concept of operation studies and analysis, advanced concept technology demonstrations, system prototypes, system development, demonstration and developmental or operational testing;
- 2.4.2 analyses related to future production, deployment, operations and support of BMDS elements; and
- 2.4.3 loan of Project Equipment and supplies for the purposes of research, development, test, or evaluation.

2.5 The provisions of the U.S./Australia BMD MOU are incorporated by reference in this Annex and will govern the activities of the Participants, including the provisions of the U.S. /Australia BMD MOU concerning Controlled Unclassified Information, Visits to Establishments, Security, Liability and Claims, and Settlement of Disputes.

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2.6 This Annex does not preclude entering into any other arrangement in the area of missile defense cooperation.

2.7 Detailed provisions of each individual PA will be consistent with this Annex and will generally follow the format and content provided at Attachment A (Sample PA). The provisions of this Annex are incorporated by reference in each PA. Specifically, each PA will include provisions concerning the objectives, scope of work, sharing of work, sharing of results, management structure, financial arrangements, Third Party transfers and security classification.

SECTION III

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

3.1 The U.S. BMDS Program will be directed by the Director, Missile Defense Agency (MDA), U.S. Department of Defense, who, is solely responsible for managing the cost, schedule, performance, and technical aspects of the integration of the activities under this Annex into the BMDS.

3.2 The role of the Executive Steering Committee (ESC) established for executive level oversight of activities under the U.S. /Australia BMD MOU includes oversight of all activities conducted pursuant to this Annex.

3.3 The activities conducted under this Annex will be directed by a Senior Management Committee (SMC). The SMC will consist of the Deputy Director of the Missile Defense Agency, U.S. Department of Defense and Chief, Intelligence Surveillance and Reconnaissance Division, Australian Defence Science and Technology Organisation or their designated representatives. The SMC will consult at least annually. The SMC will be chaired jointly. During meetings, all decisions will be made by consensus. Its members will:

- 3.3.1 establish a management structure for each PA;
- 3.3.2 appoint Project Officers (POs) to manage PA efforts;
- 3.3.3 provide direction to the POs during PA implementation;
- 3.3.4 monitor overall PA implementation, including technical, cost, and schedule performance against requirements;

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- 3.3.5 approve assignment of any Participating Personnel (PP) working on a PA at the other Participant's facilities in accordance with the Participating Personnel Attachment of the U.S. /Australia BMD MOU;
- 3.3.6 direct the overall security management of a PA including ensuring a security officer is appointed for each PA;
- 3.3.7 approve any required Financial Management Procedures Document (FMPD) of a PA; and
- 3.3.8 resolve issues brought forth by the POs.

3.4 In the event that the SMC is unable to reach a timely decision on an issue, each SMC member will refer the issue to its higher authority at the ESC for resolution. In the meantime, approved PAs will continue to be implemented without interruption under the direction of the POs.

3.5 In accordance with the provisions of this Annex and the PA for which they are assigned responsibilities by the SMC, the POs will have primary responsibility for:

- 3.5.1 effective implementation, efficient management and direction of their assigned project including technical, cost, and schedule performance against requirements;
- 3.5.2 maintaining a list of all Project Equipment transferred by either of the Participants and Project Equipment that is jointly acquired by the Participants;
- 3.5.3 developing the FMPD as described in Section IV (Financial Arrangements) of this Annex and forwarding it to the SMC for approval;
- 3.5.4 notifying the other PO of restrictions on the disclosure and use of Project Information as described in Section V (Contracting);
- 3.5.5 preparing a Program Security Instruction / Security Classification Guide (PSI/SCG) as described in Section VIII (Security) if so directed by the SMC;
- 3.5.6 referring any issues that cannot be resolved by the POs to the SMC; and
- 3.5.7 additional duties as specified in the corresponding PA.

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3.6 In accordance with the provisions of an approved PA, a Participant may use PP assigned to any U.S. DoD organization, Australian DoD organisation, or a BMDS project joint program office, to assist in the implementation of a PA.

SECTION IV

FINANCIAL ARRANGEMENTS

4.1 Each Participant will contribute its mutually determined equitable share of the full costs (financial and non-financial) of each PA, including overhead costs, administrative costs and cost of claims, and will receive an equitable share of the results of each PA.

4.2 The Financial and Non-financial Costs for a PA, including the total cost of the project and each Participant's share of the total cost, will be included in the PA. The PA will also include provisions for equitable sharing of the results.

4.3 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 a FMPD proposed by the POs and approved by the SMC.

4.4 Both Participants will perform, or have performed, their tasks and will use their 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 Annex and its PAs.

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

4.5.1 costs associated with any unique national requirements identified by the Participant; and

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

4.6 For PAs with shared costs that involve the establishment of an office with PP assignments to the other Participant's facilities, the PA will address the Financial Costs and Non-financial Costs required for administration and associated support services including, but not limited to, costs of travel incurred in support of project efforts, training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

4.7 In addition to the shared costs of project office administration and associated support services costs described in paragraph 4.6, the cost of PP in the project office or

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assigned to the other Participant's facilities will be borne as follows:

4.7.1 The host Participant will bear the costs of all pay and allowances of host Participant personnel in the project office.

4.7.2 The parent Participant will bear PP-related costs in accordance with Attachment A to the U.S./Australia BMD MOU.

4.8 For PAs without shared costs that involve the assignment of one Participant's PP to the facilities of the other Participant, the Participants will bear the costs as set forth in 4.7, except that the host Participant will also bear the assignment-related administrative and support costs such as PP costs of travel incurred in support of a project, PP-related training, office space, security services, information technology services, communications services, and supplies.

4.9 A Participant will promptly notify the other Participant if available funds will not be adequate to fulfill its responsibilities under a PA, or if it appears that the cost estimates in a PA will be exceeded, and both Participants will immediately consult with a view toward continuation on a modified basis.

4.10 If the Participants mutually determine that one Participant should contract on behalf of the other Participant or on behalf of both Participants, the POs 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.

4.11 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 at the other Participant's request, 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.

4.12 Each Participant will be responsible for the audit of its activities or its Contractors' activities pursuant to this Annex. A Participant's audits will be in accordance with its own national practices and the FMPD. For PAs 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

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Participant's national practices. Audit reports of such funds will be promptly made available by the receiving Participant to the other Participant.

SECTION V

CONTRACTING

5.1 If either Participant determines that Contracting pursuant to this Annex is necessary to fulfill that Participant's responsibilities under Section II (Purpose and Scope) of this Annex, that Participant will contract in accordance with its national laws, regulations, and procedures. Upon mutual determination and as stated in the PA between the Participants, one Participant may Contract on behalf of both Participants to accomplish the responsibilities of both Participants. In addition, upon mutual consent, consistent with Section II (Purpose and Scope) of this Annex, a Participant may contract for the unique national requirements of the other Participant. In all cases, the Contracting Agency will award Contracts in accordance with its laws, regulations and procedures. Unless otherwise agreed in a PA, sources from both Participants' industries will be allowed to compete on an equal basis for Contracts to be awarded pursuant to this Annex.

5.2 When one Participant contracts to perform its tasks, it will be solely responsible for its own Contracting, and the other Participant will not be subject to any liability arising from such Contracts.

5.3 For all Contracting activities performed by either Participant, upon request, a copy of all statements of work will be provided to the requesting Participant prior to the development of solicitations to ensure that they are consistent with the provisions of the U.S./Australia BMD MOU, this Annex and the applicable PA.

5.4 Contracting Officers will negotiate to obtain the rights to use and disclose information required by Section VII (Disclosure and Use of Project Information) of this Annex and corresponding sections of its PAs. Contracting officers will insert into all prospective Contracts (and require Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of the U.S./Australia BMD MOU, this Annex and its PAs, including Sections V (Controlled Unclassified Information), VII (Security), VIII (Third Party Transfers), IV (Disclosure and Use of Information), and XIII (General Provisions) of the U.S./Australia BMD MOU, and Sections VII (Disclosure and Use of Project Information), VIII (Security), IX (Third Party Sales and Transfers), and XII (General Provisions) of this Annex. Contracting Officers will also insert into all prospective Contracts (and require Contractors to insert in subcontracts) suitable provisions to ensure that Contractors are legally bound to comply with the Participants' respective export control laws and regulations. Each Participant's Contracting Agency will also advise their prospective Contractors of their responsibility to notify immediately the Contracting

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Agency, before Contract award, if they are subject to any license, agreement, or legal impediment that will restrict that Participant's freedom to disclose Information or permit its use, and to employ their best efforts not to enter into any new license, agreement or arrangement that will result in such restrictions.

5.5 Each Participant will encourage its Contractors to provide competitive opportunities to sources from both Participants to participate in the work to be performed under this Annex and each PA, provided that such participation does not adversely affect the purposes of this Annex.

5.6 Although the Participants will seek to encourage industrial involvement from both nations, no requirement will be imposed by any Participant for work sharing or other industrial or commercial compensation in connection with this Annex or its PAs. Sources from both nations will be permitted to bid for Contracts to be performed under this Annex and its PAs. The Participants recognize the provisions of the Memorandum of Agreement between the Government of Australia and the Government of the United States of America Concerning Reciprocal Defense Procurement, done in Washington, DC on April 19, 1995, which provides that full consideration will be given to qualified sources in each other's country, consistent with national procurement policy and criteria.

5.7 The U.S. DoD will provide the Australian DoD with timely insight into subcontracting pursuant to the BMDS Program. The Director, Missile Defense Agency will, upon request, provide to the Australian ESC representative a summary of activity of Australian industries participating in the BMDS Program.

5.8 In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Section VII (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 to assess the consequences and determine the way ahead.

5.9 The transfer of export controlled information furnished by one Participant will be authorized by the Government of the furnishing Participant only to those Contractors of the other Participant who will limit the end use of the Information received for the sole purpose of furthering the purposes authorized under the U.S./Australia BMD MOU. The Participants will establish legal arrangements with their Contractors to require that their Contractors do not retransfer or otherwise use export controlled information for any purpose other than the purposes authorized under the U.S./Australia BMD MOU. Such legal arrangements will also provide that the Contractor will not re-transfer the export-controlled information to another Contractor without the Government of the furnishing Participant's consent.

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5.10 Each Participant will promptly advise the other Participant 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, and conditions arise that could result in termination of such Contract, the Participant whose Contracting Agency is responsible for the Contract will consult with the other Participant before termination of the Contract.

SECTION VI

PROJECT EQUIPMENT

6.1 For the purpose of carrying out a PA, each Participant may transfer to the other Participant, without charge, such Project Equipment identified as being necessary for implementing a PA. The PA will provide specific details of any transfer of Project Equipment. 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. Approval for all Project Equipment transfers will be in accordance with national procedures.

6.2 Project Equipment transferred will be used by the receiving Participant for the purposes specified in the PA 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 otherwise mutually determined in the PA. Unless the providing Participant has otherwise consented, 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. In no case will any payment respecting damage or loss exceed the replacement value indicated in the applicable PA.

6.3 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.

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6.4 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 PA.

6.5 The providing Participant, at its expense, will deliver the Project Equipment, along with an equipment condition report and inventory, to the receiving Participant at a mutually determined location. Responsibility for Project Equipment will pass from the providing Participant to the receiving Participant at time of receipt. Any further transportation will be the responsibility of the receiving Participant.

6.6 The providing Participant will furnish the receiving Participant such Information as is necessary to enable the Project Equipment to be used and maintained. If the Participants mutually determine that specific training is required for use of the Project Equipment, they will mutually determine the conditions for the provision of such training to include allocation of training costs, prior to the transfer of the Project Equipment.

6.7 Upon receipt of the equipment the receiving Participant will inspect and inventory the Project Equipment. 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).

6.8 Upon expiration or termination of the transfer period specified in the PA (taking into account any extension), the receiving Participant will return the Project Equipment along with an equipment condition and inventory report, at its expense, to the providing Participant at a mutually determined location. 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.

6.9 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 at a mutually determined location. Any further transportation is the responsibility of the providing Participant.

6.10 The Participants will ensure, by all reasonable means, the protection of Intellectual Property rights in Project Equipment.

6.11 Any Project Equipment that is jointly acquired on behalf of both Participants for use under this Annex will be disposed of during the PA or when the PA expires or is terminated, as approved or directed by the SMC. Jointly acquired Project Equipment will remain the property of both the Participants in the same ratio as Financial and Non-

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financial Costs are shared in the PA under which it is acquired. The Participant who has custody of the jointly acquired Project Equipment will maintain such jointly acquired Project Equipment in good order and operable condition, normal wear and tear excepted, unless the Participants have mutually determined that it be expended or otherwise consumed by that Participant in connection with this Annex or relevant PA. If jointly acquired Project Equipment is damaged or lost while in the custody of a Participant, the provisions of this Section and in particular paragraph 6.2 will apply. Where a person or entity, other than the Participants (including their personnel), damages jointly acquired Project Equipment, and the cost of making good such damage is not recoverable from such person or entity, the Participants will share such costs in the same ratios as the PA.

6.12 Disposal of jointly acquired or produced Project Equipment may include a transfer of the interest of one of the Participants in such Project Equipment to the other Participant, and the sale or transfer of such Project Equipment to another entity, including to a Third Party in accordance with Section IX (Third Party Sales and Transfers). The Participants will share the consideration from jointly acquired or produced Project Equipment transferred or sold to a Third Party or other entity in the same ratio as Financial and Non-financial Costs are shared in the PA.

SECTION VII

DISCLOSURE AND USE OF PROJECT INFORMATION

7.1 General

7.1.1 The Participants may exchange Information under this Annex for the purpose of developing an understanding of their BMD-related technical needs and for formulating, developing, and negotiating new PAs under this Annex. The Participant providing such Information will clearly indicate, by appropriate markings, to the receiving Participant that it is providing such Information for these purposes. Any Information exchanged before a PA is signed, or if no PA is signed, will be used by the receiving Participant, and its Contractor Support Personnel, only for evaluation purposes, and will not be disclosed or transferred to any other individual or entity such as a Contractor or Third Party without prior written consent of the providing Participant.

7.1.2 In the event that authority is received to further disclose Information provided as indicated above the recipient will be placed under a legally binding obligation not to further disclose such Information or use the Information provided for other than the specified purposes.

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7.1.3 No transfer of ownership of Information exchanged will occur under this Annex. Such Information will remain the property of the providing Participant or its Contractors. Information may be exchanged only when it does not incur a liability to holders of Intellectual Property rights and may not be dealt with by the receiving Participant in any manner that may prejudice such rights. All disclosures must be consistent with national disclosure policies and regulations of the providing Participant. Transfer of such Information to Contractors will be consistent with each Participant's applicable respective export control laws and export control regulations.

7.1.4 The Participants intend to acquire sufficient Project Information and benefits or rights to use such Information to achieve the objectives of this Annex. The provisions below establish the principles regarding the availability to the Participants of Project Information, rights to use Project Information, and Patent rights for Project Inventions, and will apply unless otherwise specified in a PA.

7.2 Government Foreground Information

7.2.1 Disclosure: Foreground Information generated in whole or in part by a Participant's military or civilian employees will be disclosed without charge to both Participants. Government Foreground Information may not be disclosed or transferred to Contractors by the receiving Participant without the prior written consent of the providing Participant.

7.2.2 Use: Each Participant may use all Government Foreground Information without charge only for the purposes established in the PA. The Participant generating Government Foreground Information will retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section IX (Third Party Sales and Transfers) of this Annex.

7.3 Government Background Information

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

7.3.1.1 such Government Background Information is necessary to or useful to achieving the purposes of this Annex. The Participant in possession of the information will determine whether it is

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"necessary to" or "useful in" achieving the purposes of this Annex;

- 7.3.1.2 such Government Background Information may be made available without incurring liability to holders of Intellectual Property rights;
- 7.3.1.3 disclosure is consistent with national disclosure policies and regulations of the providing Participant;
- 7.3.1.4 any disclosure or transfer of such Government Background Information to Contractors is consistent with the providing Participant's export control laws and export control regulations; and
- 7.3.1.5 such Government Background Information is not disclosed or transferred to Contractors by the receiving Participant without the prior written consent of the Government of the providing Participant.

7.3.2 Use: Government Background Information provided by one Participant to the other may be used without charge by the other Participant only for the purposes for which it was provided and for which it is necessary or useful. The providing Participant will retain its rights with respect to such Government Background Information. The receiving Participant will not use such Information for any other purpose without the prior written consent of the providing Participant.

7.4 Contractor Foreground Information

- 7.4.1 Disclosure: Foreground Information generated and delivered by Contractors will be disclosed without charge to both Participants. Contractor Foreground Information may not be disclosed or transferred to Contractors by the receiving Participant without the prior written consent of the Government of the providing Participant.
- 7.4.2 Use: Each Participant may use without charge only for the purposes established in the PA all Contractor Foreground Information generated and delivered by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Foreground Information will retain its rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of

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Contractor Foreground Information will be subject to the provisions of Section IX (Third Party Sales and Transfers) of this Annex.

7.5 Contractor Background Information

7.5.1 Disclosure: Any Contractor Background Information (including information subject to Intellectual Property rights) generated and delivered by Contractors will be made available to the other Participant provided the following conditions are met:

7.5.1.1 such Contractor Background Information is necessary to or useful in a specific project. The Participant in possession of the information will determine whether it is "necessary to" or "useful in" the specific project;

7.5.1.2 such Contractor Background Information may be made available without incurring liability to holders of Intellectual Property rights;

7.5.1.3 disclosure is consistent with national disclosure policies and regulations of the providing Participant;

7.5.1.4 any disclosure or transfer of such Contractor Background Information to Contractors is consistent with the providing Participants' export control laws and export control regulations; and

7.5.1.5 such Contractor Background Information is not disclosed or transferred to Contractors by the receiving Participant without the prior written consent of the Government of the providing Participant.

7.5.2 Use: Contractor Background Information provided by one Participant's Contractors and provided to the other Participant may be used without charge by the other Participant only for the Project Purposes of the particular PA for which it is necessary or useful, and it may also be subject to further restrictions by holders of Intellectual Property rights. The providing Participant will retain its rights with respect to such Contractor Background Information. The receiving Participant will not use such Information provided for any other purpose without the prior written consent of the providing Participant.

7.6 Jointly Generated Foreground Information

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- 7.6.1 Disclosure: All Jointly Generated Foreground Information generated under this Annex will be disclosed to both Participants promptly and without charge.
- 7.6.2 Use: Each Participant generating or receiving Jointly Generated Foreground Information may use or have used such information without charge only for the purposes established in the PA.
- 7.7 Alternative uses of Information
- 7.7.1 The prior written consent of each Participant will be required for the use of any Foreground Information for purposes other than those provided for in this Annex or any PA under it.
- 7.7.2 Any Background Information provided by one Participant will be used by the other Participant only for the purposes set forth in this Annex, or any PA under it, unless otherwise consented to in writing by the providing Participant.
- 7.8 Project Information subject to Intellectual Property rights
- 7.8.1 All unclassified Project Information subject to Intellectual Property rights will be identified and marked, and it will be handled in accordance with the provisions in Section V (Controlled Unclassified Information) of the U.S./Australia BMD MOU. All classified Project Information subject to Intellectual Property rights will be so identified, marked and handled in accordance with the provisions of 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 signed June 25, 2002 and entered into force on November 7, 2002, the U.S./Australia BMD MOU, and this Annex.
- 7.9 The Participants will include provisions in all Contracts to govern the disposition of and rights in Project Inventions made under this Annex and its PAs, and the right to file Patent applications. Either the Participant or its Contractor may be granted the right to hold title to such inventions. However, in the case of Contractors holding title, provisions of the Contract will ensure that both Participants have non-exclusive, irrevocable, royalty-free licenses under all Patents secured. These provisions also apply to inventions made by the Participants' military or civilian employees, including within government-owned facilities.

7.10 The Participants will consult with regard to the filing of Patent applications, including any filing of Patents in other countries prior to filing or any public disclosure. The Participant with rights to hold title to an invention will be responsible for filing of patent applications. Should it choose not to file patent applications, the other Participant will be notified and permitted to file patent applications after consultations with the Participant with initial patent rights. Each Participant will be provided with copies of the Patent applications filed and patent applications granted with regard to inventions.

7.11 In the event that the rights to file Patent applications are not clearly the responsibility of one or the other Participant, the Participants will resolve those rights by consultation.

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

7.13 Each Participant will be responsible for responding to claims of Patent infringement made on its territory and will consult during the handling, and prior to any settlement of such claims, including the apportionment of any associated costs. Each Participant will provide assistance to respond to such claims as requested.

7.14 All Controlled Unclassified Information provided or generated pursuant to the U.S./Australia BMD MOU will be marked to identify its "in confidence" nature. U.S. export controlled Information will be marked as "International Traffic in Arms Regulations (ITAR)-Controlled." Australian export controlled Information will be marked as "Australian Export Controlled." Controlled Unclassified Information could include information that has been declassified, but remains controlled.

SECTION VIII

SECURITY

8.1 Pursuant to the U.S. /Australia BMD MOU, all Classified Information or material received under this Annex and 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 signed June 25, 2002, which entered into force on November 7, 2002.

8.2 Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information and material

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