

MEMORANDUM OF UNDERSTANDING

05 - 293

BETWEEN

THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

AND THE

DEPARTMENT OF DEFENCE OF
AUSTRALIA

CONCERNING

COLLABORATION ON

TACTICAL MISSILE

DESIGN, DEVELOPMENT, TEST AND EVALUATION

(Short Title: Tactical Missile MOU)

CERTIFICATION OF AUTHENTICITY

I hereby certify this to be a true copy of Memorandum of Understanding Between the Department of Defense of the United States of America and the Department of Defence of Australia Concerning Collaboration on Tactical Missile Design, Development, Test and Evaluation.

The Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation, Armaments Cooperation Division, maintains custody of a signed copy of the Agreement.


MARY BUEHLER
INTERNATIONAL AGREEMENTS SPECIALIST

TABLE OF CONTENTS

	Introduction	4
Section I	Definitions	5
Section II	Objectives	10
Section III	Scope of Work	11
Section IV	Management (Organization and Responsibilities)	14
Section V	Financial Provisions	17
Section VI	Contracting Provisions	20
Section VII	Work Sharing	22
Section VIII	Equipment and Material Transfers	23
Section IX	Disclosure and Use of Information	26
Section X	Controlled Unclassified Information	33
Section XI	Visits to Establishments	34
Section XII	Security	35
Section XIII	Third Party Sales and Transfers	38
Section XIV	Liability and Claims	39
Section XV	Participation of Additional Nations	40
Section XVI	Customs Duties, Taxes and Similar Charges	41
Section XVII	Settlement of Disputes	43
Section XVIII	Amendment, Termination, Entry into Effect and Duration	44
Annex A	Model Project Arrangement	46
Annex B	Model Cooperative Project Personnel (CPP) Form	55

Annex B-1	Model Cooperative Project Position Description	59
Annex C	Model Equipment and Material Transfer Form	61

INTRODUCTION

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

Recognizing the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defense Commitments done at Sydney on December 1, 1995 (Chapeau Agreement) applies to this Memorandum of Understanding (MOU);

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 potential mutual interest in the design, analysis, development, test and evaluation of the Tactical Missile Systems to satisfy national operational requirements;

Having independently conducted research and exploratory development of the applications of various technologies, recognize the benefits of cooperation in Tactical Missile programs of mutual interest;

Desiring to carry out collaborative design, analysis, development, test and evaluation of Tactical Missiles to address their needs;

Have reached the following understandings:

SECTION I

DEFINITIONS

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

Background Information	Information not generated in the performance of a Tactical Missile (TM) Activity.
Best Value	The value providing greatest benefit to both Participants.
Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic or documentary form or in the form of equipment or technology.
Contract	Any mutually binding legal relationship under national laws which obligates a Contractor to furnish supplies or services, and obligates one or both of the Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Participant, which has authority to enter into, administer, 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.
Contractor Support Personnel	Persons specifically identified for support Contracts who provide administrative, managerial, scientific, or technical support services to a Participant under a Contract with that Participant that prohibits using information received under the contract for any purpose other than those authorized under

this MOU or the applicable PA.

Controlled Unclassified Information	Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. It could include information, which has been declassified, but remains controlled. Whether the information is provided or generated under this MOU or its PAs, the information 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". AS export-controlled information will be marked as "Australian Export Controlled".
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Participant assigned under a specific Project Arrangement (PA) who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of a PA.
Cost Ceiling	The maximum amount to which the Cost Target for a TM PA may move without the prior written approval of the Participants.
Cost Target	The accepted planning figure of the total financial cost of a PA.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Participant.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Equipment and Material	Any material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in a PA or an Equipment and Material Transfer.
Financial Costs	Any costs that, due to their nature, will be paid using monetary contributions from the Participants.
Foreground Information	Information generated in the performance of a TM Activity.
Host Participant	The Participant whose nation serves as the location where CPP are assigned for duty pursuant to a PA under this MOU.
Information	Any information provided to, generated in, or used in a TM Activity 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 <i>Intellectual Property Rights</i> or other legal protection.
Intellectual Property Rights	All copyright and neighboring rights and 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 any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.
Jointly Generated Foreground Information	Information jointly generated by the Participants in the performance of a TM Activity.
Non-financial Costs	Any costs that, due to their nature, will be met using non-monetary contributions from the Participants.
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.
Participant	A signatory to this MOU represented by its military and civilian personnel. Contractors and Contractor Support Personnel will not be representatives of a Participant under this MOU or its PAs.
Parent Participant	The Participant that sends its CPP to the nation of the other Participant.
Project Arrangement (PA)	An implementing arrangement under this MOU that specifies the provisions for cooperation.
Project Invention	Any invention or discovery formulated or made (conceived or

	first actually reduced to practice) in the course of work performed under a PA. The term first actually reduced to practice means the first demonstration, sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Project Manager (PM)	A representative of a Participant, appointed by the Participant(s), who has primary responsibility for effective implementation, efficient management, and direction of subsequently developed PAs.
Project Plan	Document that provides a description of a PA's major events, delivery requirements and milestones that is updated periodically.
Project Purposes	Any use by or for a Participant relating to a PA including all phases of the project carried out jointly or separately by the Participants.
Special Tooling	Jigs, dies, fixtures, molds, patterns, tapes, gauges, other equipment and manufacturing aids, and all components of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services and excluding material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.
Steering Committee (SC)	Representatives appointed by the Participants delegated executive-level responsibility for policy guidance and management oversight of the MOU and applicable PA(s).
Tactical Missile (TM)	A short to immediate range missile as distinguished from a strategic missile.
Tactical Missile Activity	Any activity in support of Section III (Scope of Work) of this MOU.
Tactical Missile System	The missile, canister, logistics, support and test equipment, training, and fire control mechanism.
Third Party	A government other than the government of a Participant and any person or other entity whose government is not the

government of a Participant.

Working Group

Any group established by the SC to explore, study and report on areas of mutual interest, in accordance with Sections III (Scope of Work) and IV (Management).

SECTION II

OBJECTIVES

- 2.1 This MOU establishes a comprehensive framework for implementing a program of cooperation on mutually determined topics related to the development and harmonization of requirements, design, research, development, testing, and certification of TM Systems. The specific level of cooperation will be determined through discussions conducted by the Participants under this MOU, consistent with their respective national interests. Information exchange for the specific purposes of identifying areas of potential cooperation, and for formulating, developing and negotiating TM Project Arrangements (PAs) is permitted under this MOU. Each Participant may transfer Equipment and Material to the other Participant for the purposes of carrying out TM Activities. Specific objectives of this MOU include:
 - 2.1.1 conducting information exchange for the specific purposes of identifying areas of potential cooperation, capability gaps, requirements harmonization, and for formulating, developing and negotiating TM PAs.
 - 2.1.2 establishing Working Groups to address specific TMs issues and capabilities, including but not limited to tactics, techniques, methods and procedures for the employment of TMs, and the identification of system modifications.
 - 2.1.3 establishing PAs for the conduct of cooperative TM System design, development, qualification and certification, and
 - 2.1.4 conducting Equipment and Material Transfers (E&MT).
- 2.2 The Participants intend to exercise their best efforts to accommodate the TM System requirements and capabilities of the other Participant. However, each Participant may decline to participate in a proposed TM Activity.
- 2.3 The Participants intend to consider future collaboration on production and follow-on support of TM Systems, which would be the subject of separate written arrangements.

SECTION III

SCOPE OF WORK

- 3.1 The overall work to be carried out under this MOU includes:
- 3.1.1 The identification of operational capabilities and the harmonization of operational requirements.
 - 3.1.2 The analysis and evaluation of operational requirements and programmatic options for achieving the required capability.
 - 3.1.3 The design and development of TM Systems that meet the required capability.
 - 3.1.4 Collaborating in the conduct of ACTDs.
 - 3.1.5 The testing and validation of TM Systems' performance.
- 3.2 The following mechanisms will be utilized to undertake the TM activities described in paragraph 3.1:
- 3.2.1 Information Exchange:
 - 3.2.1.1 Information exchange will take place on an equitable basis in all areas concerning TMs. This MOU permits the exchange of Information for any purpose under the scope of this MOU, including harmonization of TM capability requirements of the Participants and the formulating, developing, and negotiating of any TM Activity. Information exchange need not necessarily coincide in time, technical field, or in the form of Information.
 - 3.2.1.2 Computer data bases, computer software or computer software documentation associated with TM Activities may be transferred under this MOU in accordance with national procedures, subject to the following limitations:
 - 3.2.1.2.1 such transfers must be necessary or useful to the conduct of the TM activities as determined by the providing Participant; and
 - 3.2.1.2.2 such transfers may occur only where the providing Participant has obtained national authority for such release. Such

release may be subject to restrictions on use imposed by the providing Participant.

3.2.2 Working Groups (WGs):

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

3.2.3 Project Arrangements:

This MOU may be implemented through PAs. Each PA will be subject to the terms and conditions of this MOU and may include provisions concerning the objectives, scope of work, sharing of tasks, management, financial arrangements, security classification, entry into effect, duration and termination and other special provisions as required.

3.2.4 Advanced Concept Technology Demonstrations (ACTDs):

The Participants recognize that it may be to their mutual advantage to conduct technology demonstrations, such as ACTDs, to evaluate evolving technology and TM concepts. The plan for the demonstrations will be documented in a TM PA (Annex A) tailored to meet the requirements of the project.

3.2.5 Equipment and Material Transfer:

The Participants recognize that it may be necessary to transfer Equipment and Material for the purpose of implementing this MOU, but not for the purposes of a specific PA. In such cases, the Participants may execute an Equipment and Material Transfer as identified at Annex C (Model Equipment and Material Transfer Form).

3.2.6 Familiarization Visits:

Familiarization visits may occur, in accordance with Section XII (Visits to Establishments).

3.2.7 Cooperative Project Personnel (CPP):

CPP may be assigned for PA work and will report to their designated supervisor regarding that work.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITIES)

- 4.1 This MOU and its PAs will be directed and administered on behalf of the Participants by an organization consisting of a Steering Committee (SC), and Project Managers (PMs) for PAs. A Joint Project Office (JPO) may be established for a PA when required. The SC will have overall authority over the PM(s).
- 4.2 The SC will consist of the US Army's Program Executive Officer for Tactical Missiles and the AS Director General Guided Weapons and Explosive Ordnance. The SC will meet at least annually with additional consultation as required at the request of either Participant. The representative hosting the meeting will chair the meeting. The Participants will alternate hosting SC meetings unless otherwise mutually determined. The host Participant will provide, without charge, appropriate meeting facilities, including secretarial and administrative support. Decisions of the SC will be made unanimously. In the event that the SC is unable to reach a timely decision on an issue, each SC representative will refer the issue to its higher authority for resolution. In the meantime, existing arrangements will continue to be implemented without interruption while the issue is being resolved by higher authority. The SC's responsibilities include, but are not limited to:
 - 4.2.1 Exercising executive-level oversight of the TM Activities, to include the approval of Working Group written Terms of Reference (TOR).
 - 4.2.2 Reviewing progress in meeting requirements of TM Activities.
 - 4.2.3 Reviewing the technical progress of TM Activities.
 - 4.2.4 Reviewing the financial status of PAs, to include the Financial Management Procedures Document (FMPD) when necessary, to ensure compliance with the provisions of Section V (Financial Provisions), and the financial provisions of the PA.
 - 4.2.5 Resolving issues brought forth by the PM(s).
 - 4.2.6 Reviewing and forwarding to the Participants for approval recommended amendments to this MOU in accordance with Section XVIII (Amendment, Termination, Entry Into Force, and Duration).
 - 4.2.7 Providing recommendations to the Participants as to the conditions under which a new participant may accede in accordance with Section XV (Participation of Additional Nations).

- 4.2.8 Monitoring Third Party sales and transfers authorized in accordance with Section XIII (Third Party Sales and Transfers).
 - 4.2.9 Reviewing semi-annual status reports submitted by PM(s).
 - 4.2.10 Approving plans for the transfer of Equipment and Material provided by either Participant in accordance with Section VIII (Equipment and Material Transfer).
 - 4.2.11 Approving plans for the disposal of jointly acquired Equipment and Material under this MOU in accordance with Section VIII (Equipment and Material Transfer).
 - 4.2.12 Maintaining oversight of the security aspects of TM Activities, including reviewing and obtaining approval from the appropriate Designated Security Authorities of an MOU implementing security instruction, a Project Security Instruction (PSI), and a Classification Guide prior to the transfer of Classified Information or Controlled Unclassified Information.
 - 4.2.13 Reviewing and approving project documentation submitted by PM(s) to include Project Plans and their amendments.
 - 4.2.14 Appointing and removing PM(s) and CPP when necessary.
 - 4.2.15 Reviewing and submitting for approval PA proposals through national staffing channels.
- 4.3 PMs appointed by the SC will manage PAs. As mutually determined by the SC, there will be a PM from one Participant and a Deputy PM (DPM) from the other Participant. The Participants, working through the SC, may establish a JPO, when required. If a JPO is established, the PM will be appointed by the Host Participant and the DPM will be appointed by the other Participant. The PMs will be responsible for:
- 4.3.1 Implementing, directing and managing their PA.
 - 4.3.2 Developing, submitting to the SC for approval, and executing the PA Project Plan and amendments thereto.
 - 4.3.3 Managing the schedule, performance requirements and technical aspects of the project described in the PAs under this MOU.
 - 4.3.4 Drafting PA WG TORs and submitting them to the SC for approval.

- 4.3.5 Executing the financial aspects of the PA, in accordance with Section V (Financial Provisions) of this MOU, including developing the FMPD for submission to the SC for approval.
- 4.3.6 Referring issues to the SC that cannot be resolved by the PM.
- 4.3.7 Providing a semi-annual PA status report to the SC.
- 4.3.8 Appointing a PA security officer to be approved by the SC.
- 4.3.9 Developing and forwarding to the SC a PSI and a Classification Guide (CG) in accordance with Section XII (Security).
- 4.3.10 Developing and implementing SC-approved plans to manage and control the transfer of Equipment and Material provided under the PA, in accordance with Section VIII (Equipment and Material Transfers).

4.4 Working Groups

- 4.4.1 WGs may be established by the SC as necessary to examine areas of mutual interest under this MOU and/or to perform work under specific PAs. WGs will consist of representatives from both Participants. Each Participant will have one vote in WG matters, though a Participant may have as many representatives attend WG meetings as the Participant deems necessary. WGs will meet at least annually, and more often if deemed necessary. WGs meetings will normally be held virtually (VTC). When a physical meeting occurs, the location and chairmanship of meetings will alternate between the Participants, with the hosting Participant providing, without charge, appropriate meeting facilities, including security and administrative support.
- 4.4.2 WGs will be responsible for:
 - 4.4.2.1 Developing and submitting a TOR and any required changes, through the PMs, if applicable, to the SC for approval.
 - 4.4.2.2 Implementing the approved TOR.
 - 4.4.2.3 Recommending potential PAs to SC.
 - 4.4.2.4 Interacting with and providing information to other WGs, as directed by either the PM, if applicable, or the SC.
 - 4.4.2.5 Referring issues to the PM, if applicable, or the SC that cannot be resolved at the WG level.