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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF DEFENSE OF

THE UNITED STATES OF AMERICA

AND

THE JAPAN DEFENSE AGENCY

CONCERNING

BALLISTIC MISSILE DEFENSE

(SHORT TITLE – U.S./JAPAN BMD MOU)

FOR OFFICIAL USE ONLY

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PREAMBLE

In recognition of the purposes of and subject to the Mutual Defense Assistance Agreement Between the United States of America and Japan, signed at Tokyo on March 8, 1954 (hereinafter referred to as "the MDAA"), and The Exchange of Notes Concerning the Transfer of Military Technologies, signed at Tokyo on November 8, 1983, as amended by the Exchange of Notes on January 8,1988, and any subsequent amendments thereto (hereinafter referred to as the "1983 Exchange of Notes"), and pursuant to the Exchange of Notes concerning the Cooperation on Ballistic Missile Defense, dated December 14, 2004 the Department of Defense of the United States of America (DOD) and the Japan Defense Agency (JDA) (hereinafter referred to as the "Parties") agree to this Memorandum of Understanding (MOU) concerning Ballistic Missile Defense (BMD).

The Parties:

Having a common interest in defense;

Recognizing the dangers resulting from the proliferation of weapons of mass destruction and ballistic missile delivery systems;

Having a mutual need for defenses against ballistic missiles;

Recognizing the substantial technical contributions resulting from past and ongoing cooperation and the benefits of future cooperation in BMD;

Desiring increasingly closer and beneficial cooperation in BMD through understanding of each Party's BMD plans and activities;

Have reached the following understandings:

ARTICLE I
PURPOSE AND SCOPE

The United States (U.S.) is deploying an evolving set of capabilities as part of the U.S. Ballistic Missile Defense System (U.S. BMDS). The U.S. BMDS is defined as those U.S. capabilities for defense against ballistic missiles of all ranges in all phases of their flight for the protection of the U.S., its friends and allies, and deployed forces. Japan is also acquiring and deploying BMD capabilities to protect lives and property in Japan as an inherently defensive system. Both Parties agree that bilateral cooperation is important to improve their BMD capabilities and to enhance the security of the two countries.

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The purpose of this MOU is to establish and define a framework under which specific activities set out in Annexes to this MOU or in other instruments such as those for Foreign Military Sales, basing, support, or licensed production, can be mutually approved to facilitate collaboration of the Parties in development of BMD capabilities. Annexes could include collaboration in research, development, testing and evaluation activities, production, deployment and support of missile defenses. This MOU will provide the Parties insight into each other's BMD-related programs. This will allow the Parties to make informed decisions regarding research, development, production, deployment and operation of BMD capabilities. This will also facilitate development and analysis of options for future BMD capabilities including interoperable Command, Control, Battle Management and Communications (C2BMC), and interceptor and sensor systems.

The scope of this MOU encompasses the exchange of information, regardless of type or form, relating to the U.S. BMDS program and missile defense related programs in Japan necessary to fulfill the purpose of this MOU and the establishment of Annexes to this MOU. Such Annexes could include, *inter alia*, joint work in development and planning for deployment of ballistic missile defense system elements and joint technical programs of cooperative research, development, testing and evaluation and other activities relating to BMD.

Each Annex will include specific provisions concerning the objectives, scope of work, sharing of tasks, management structure, financial arrangements, disclosure and use of information, third party transfers; and, where required, provisions concerning contractual and personnel arrangements, security classification and other matters as necessary.

ARTICLE II
MANAGEMENT

Although each Party is solely responsible for managing the cost, schedule, performance, and technical aspects of its own BMD-related programs, it will give due consideration to bilateral cooperation under this MOU in pursuing those programs. Both Parties acknowledge that close coordination with their respective defense authorities is necessary to ensure effective and mutually beneficial cooperation in full consideration of the security relationship between the two countries.

An Executive Steering Committee (ESC) will be established to oversee all interfaces and collaborative efforts under this MOU. The ESC consists of, for the DOD, the Director, Missile Defense Agency, who will be advised by senior representatives of the Office of the Secretary of Defense and, for the JDA, the Director General, Bureau of Defense Policy, and the Director General, Bureau of Finance and Equipment. The

hosting Party will chair meetings of the ESC. Decisions of the ESC will be made unanimously. The ESC will meet at least semi-annually, but may be convened at the request of one of the Parties. All cooperative activities detailed in this MOU will be managed by the ESC in accordance with this MOU. The ESC may also convene a Ballistic Missile Defense Working Group (BMD WG) to address specific topics. The BMD WG will meet at the request of one of the Parties.

In exercising direction and oversight of all activities under this MOU, the ESC is responsible for identifying mutually beneficial cooperative activities; authorizing exchanges of information; approving security procedures and financial management procedures; reviewing third party transfers; reviewing and approving plans for work; and concluding Annexes to this MOU. The ESC will also review the Parties' latest developments and future plans for BMD programs that are related to bilateral cooperative activities in order to allow the Parties to make more robust BMD plans based on each other's latest program developments and future plans and to establish a more predictable and sustainable cooperative partnership. The members of the ESC will brief semi-annually to their respective senior acquisition and policy officials of their respective Parties on the status of cooperative BMD activities. The ESC will resolve issues affecting both Parties that arise during execution of any of the activities detailed in this MOU that are not resolved at lower levels.

The Parties may appoint program personnel to fill specific positions pursuant to Annexes of this MOU.

ARTICLE III
FINANCIAL PROVISIONS

Each Party will contribute its equitable share of the full financial and non-financial costs and will share equitably the benefits resulting from activities conducted under this MOU. Each Party will bear entirely the costs associated with any unique national requirements that it identifies to satisfy its own needs. Each Party will also pay costs associated with national representation at meetings. All obligations of the Parties will be subject to the availability of their respective appropriated funds. A Party will promptly notify the other Party if available funds are not adequate to fulfill its obligations under this MOU. In such instances, the Parties will immediately consult with a view toward continuation on a changed or reduced basis.

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ARTICLE IV
DISCLOSURE AND USE OF INFORMATION

Both Parties recognize that successful cooperation depends on full and prompt exchange of information. Both Parties will provide sufficient insight into arrangements that ensure shared information is protected. The Parties will control all information exchanged under this MOU.

Except as provided for below, information may be exchanged pursuant to this MOU, and a Party, including its contractor support personnel, may use the information exchanged under this MOU, exclusive of its Annexes, solely for development and analysis of options for future BMD capabilities as set out in Article I (Purpose And Scope). For the purposes of this MOU, contractor support personnel are individuals whose services are provided under contract by non-governmental sources to support the Party's government officials directly by providing scientific, engineering, or technical advice and assistance and who cannot, by contract, use the information transferred from the contracting Party for any purposes other than those defined by their contract.

Information will not be used by the receiving Party, including its contractor support personnel, for any purpose other than the purpose for which it was provided without the specific prior written consent of the providing Party, specifying the authorized use of the information. Notwithstanding any other provision in this MOU, the receiving Party will not disclose information exchanged or generated under this MOU to anyone not its personnel or contractor support personnel without the specific prior written consent of the providing Party. Information that is exchanged under this MOU will only be disclosed to third parties by the receiving Party in accordance with Article VII (Security) and Article VIII (Third Party Transfers). For purposes of this MOU, a "third party" is a government other than the government of a Party and any person or other entity whose government is not the government of a Party.

Where a Party, including its contractor support personnel, generates information by using information provided by the other Party under this MOU, exclusive of its Annexes:

The generated information will be disclosed to the other Party, including its contractor support personnel, without charge.

Each Party, including its contractor support personnel, may use the information solely for development and analysis of options for future BMD capabilities as set out in Article I (Purpose And Scope). The information will not be used by either Party, including its contractor support personnel, for any other purpose without the specific prior written consent of the other Party, specifying the authorized use of the information.

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Each Party will not disclose the information to anyone not its personnel or contractor support personnel without the specific prior written consent of the other Party. The information will only be disclosed to third parties by either Party in accordance with Article VIII (Third Party Transfers).

In the event questions arise regarding the origin of information generated under this MOU or any item produced either wholly or in part from the generated information, the matter will be brought to the immediate attention of the other Party. If necessary, the matter will be referred to the ESC for resolution.

Notwithstanding any other provision in this article, information will be exchanged only where it may be done without incurring liability to holders of proprietary rights and where disclosure is consistent with national disclosure policies and regulations of the providing Party. The Parties will use their best efforts to facilitate disclosure of information under this MOU within national disclosure policies and regulations. Any specific disclosure limitations will be described in the Annexes to this MOU.

No transfer of ownership of information will take place under this MOU. Information will remain the property of the providing Party or its contractors.

The Parties will specify in each Annex to this MOU provisions concerning the types of information that may be exchanged under that Annex and the permissible uses of such information.

All unclassified information subject to proprietary rights will be identified and marked, and it will be handled in accordance with Article V (Controlled Unclassified Information). All classified information subject to proprietary rights will be so identified and marked and will be handled in accordance with Article VII (Security).

ARTICLE V
CONTROLLED UNCLASSIFIED INFORMATION

Except as otherwise provided in this MOU or authorized in writing by the providing Party, controlled unclassified information (which is unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations, and is appropriately marked to identify its "in confidence" nature) received or generated under this MOU will be controlled as follows:

Such information will be used only for the purposes authorized for use of information as specified in Article IV (Disclosure and Use of Information);

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Access to such information will be limited to personnel whose access is necessary for the above permitted use, and will be subject to the provisions of Article VIII (Third Party Transfers).

Each Party will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions) unless the providing 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 will be given to the providing Party.

To assist in providing the appropriate controls, the providing Party will ensure that such information is appropriately marked to indicate its "in confidence" nature. The Parties will decide in advance and in writing on the markings to be placed on controlled unclassified information. Controlled unclassified information received or generated under this MOU will be handled in a manner that ensures control as provided for above.

Prior to authorizing the release of controlled unclassified information to contractors, the Parties will ensure that the contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE VI
VISITS TO ESTABLISHMENTS

Each Party will permit visits to its establishments by personnel (including non-government personnel) of the other Party, provided that the visit is authorized by both Parties and visiting personnel have appropriate security clearances and a need-to-know.

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

Requests for visits by personnel of one Party to establishments of the other Party will be coordinated through official channels, and will conform with the recognized visit procedures of the host country and cite this MOU. Lists of personnel of each Party required to visit on a continuing basis will be submitted through official channels in accordance with recurring and extended international visit procedures.

ARTICLE VII
SECURITY

Any classified information (for the purpose of this MOU, classified information includes classified material) that may be transferred between the Parties under this MOU will be provided in accordance with the MDAA, and will, in particular, be afforded protection pursuant to Article III thereof, and applicable laws and regulations of each country pertaining thereto. Such classified information will be used only for the purposes of this MOU.

Any items, plans, specifications, technical data, or other information classified and provided by one Party to the other will be transferred only through government-to-government channels and will be assigned a classification marking by the receiving Party that will ensure a degree of protection equivalent to that required by the Party providing the information.

All classified information transferred between the Parties, including that subsequently released to contractors, will be clearly identified as such and protected in accordance with the following principles:

The receiving Party will not release the information to a third party without the approval of the providing Party;

The receiving Party will afford the information a degree of protection equivalent to that afforded to it by the providing Party;

The receiving Party will respect and protect against disclosure of private rights, such as patents, copyrights, or other rights in data, which are involved in the information.

Each Party will permit security experts of the other Party to make visits, when it is mutually convenient, for discussing and observing its procedures and facilities for the protection of classified information provided to it by the other Party.

The receiving Party will investigate all cases in which it is known or where there are grounds for suspicion that classified information from the providing Party has been lost or disclosed to unauthorized persons. The receiving Party will also promptly and fully inform the providing Party of the details of any such occurrence and of the final results of the investigation and corrective action taken to preclude recurrence.

Information that is provided under this MOU by either Party to the other in confidence, or generated pursuant to activities under this MOU and requiring

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confidentiality, will be assigned a classification designation by the receiving Party that will ensure a degree of protection against unauthorized disclosure equivalent to that required by the providing Party. The receiving Party will take necessary measures in accordance with applicable laws and regulations in order to ensure that information so received is adequately protected and is not disclosed to unauthorized persons without the express written consent of the providing Party.

Classification of information provided under this MOU will be determined by the Party that provides such information.

Each Party will have classification authority over information generated under this MOU that is not the result of using the other Party's information.

The classification of information generated under this MOU that uses information of the other Party will be at a classification level no less than that of the other Party's information.

Prior to the release of classified information to a contractor or subcontractor, each Party will apply a comprehensive security plan based on the security requirements described in the MDAA and applicable laws and regulations of each country pertaining thereto. The comprehensive security plan will contain, as a minimum, measures to:

Ensure the capability of the facility to protect classified information;

Limit access to the minimum number of qualified personnel whose duties require access to classified information; and

Enable inspections by officials of each Party, in addition to periodic self-inspections, to verify compliance with the comprehensive security plan.

Each Party will place each contractor or subcontractor under contractual obligation to comply with the comprehensive security plan and enforce their obligations to the maximum extent of their respective national laws and regulations.

Each Party will exercise due prudence, both prior and subsequent to the award or approval of a contract or subcontract requiring or permitting access to classified information, in order to prevent the risk of unauthorized transfer of such information or materials to a third country, firm, person, organization or government that, in the judgment of competent authorities of each Party, has ownership or control over the contractor or subcontractor.

Prior to the transfer of any classified information between the Parties, the Parties will jointly prepare security guidelines. These guidelines will describe the methods by

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which classified information and materials will be marked, used, transmitted, and safeguarded.

The existence of this MOU is UNCLASSIFIED and the contents are FOR OFFICIAL USE ONLY. Each Party will take all lawful steps available to it to keep the contents of this MOU free from disclosure (including requests under any legislative provisions) unless the other Party consents to such disclosure. If it becomes probable that the contents of this MOU may have to be disclosed under a legislative provision, immediate notification will be given to the other Party.

ARTICLE VIII
THIRD PARTY TRANSFERS

A Party will not sell, transfer title to, transfer possession of, or otherwise disclose information exchanged but not generated under this MOU to any third party without the prior written consent of the Party that provided such information or materiel. The providing Party will be solely responsible for authorizing any transfers and, as applicable, specifying the method and conditions for implementing any transfers.

The Parties will not sell, transfer title to, transfer possession of or otherwise disclose information generated under this MOU to a third party without the prior written consent of the other Party. In the event of such a transfer, the transferring Party will be required to obtain written assurances from the third party not to transfer or permit retransfer of any of the information or materiel provided, and to use such information or materiel only for the purposes for which it was provided.

Notwithstanding the provision in the preceding paragraph, a Party will retain the right to use, sell, disclose, or transfer possession of information generated solely by that Party or that Party's contractors under this MOU without using information generated or provided by the other Party, or any item produced by the Party either wholly or in part from such solely generated information.

The Parties will establish specific provisions in each Annex to this MOU governing third party transfers, which may take precedence over this article of the MOU. However, no Annex will change the definition of a third party as provided for in this MOU. Those provisions will take into account the extent of financial or other contributions of each Party and the potential impact on the U.S. BMDS program and the Japanese BMD program.

In the event questions arise regarding the origin of information generated under this MOU or any item produced either wholly or in part from the generated information, the matter will be brought to the immediate attention of the other Party. If necessary, the

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matter will be referred to the ESC for resolution prior to any sale, disclosure, or other transfer of such generated information or any item produced either wholly or in part from the generated information.

ARTICLE IX
MILITARY TECHNOLOGIES

If particular technical information that will be transferred under this MOU from Japan to the United States can possibly be considered as military technology (defined in the 1983 Exchange of Notes), the matter may be presented to the ESC, with the Party's technical explanation for discussion prior to referral to the Joint Military Technology Commission established under the 1983 Exchange of Notes.

If a determination is made by the Government of Japan that particular technical information that will be transferred under this MOU is military technology, the transfer of such particular technical information from Japan to the United States will then be pursuant to the 1983 Exchange of Notes and the Detailed Arrangements of December 27, 1985 concerning the Transfer of Japanese Military Technologies. It will be marked in accordance with the relevant laws and regulations of Japan.

ARTICLE X
CLAIMS AND LIABILITY

Claims arising out of cooperative research, development, test and evaluation activities established under Annexes to this MOU will be dealt with as follows:

(1) The Parties waive all their claims, other than contractual claims and claims expressly specified in an Annex, against each other and against each other's personnel, for damage to or loss of property owned by them that was caused by their personnel in the performance of official duties.

(2) The Parties waive all their claims against each other and the other Party's personnel for injury or death suffered by any of its personnel while such personnel were engaged in the performance of official duties.

(3) If, however, such injury, death, damage, or loss referred to in (1) or (2), above, results from willful misconduct of a Party's personnel, then the cost of any liability will be borne by that Party alone.

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(4)Nothing herein will be construed as waiving the claims or suits of personnel of the Party or any other persons that might exist under applicable national laws and regulations.

(5)Claims, other than contractual claims and claims expressly specified in an Annex, not covered by (1) or (2) above, will be dealt with by each Party in accordance with respective national laws and regulations, and provisions agreed to in an Annex.

Claims arising under or related to any contract will be resolved in accordance with the provisions of the contract.

ARTICLE XI
CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

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

Each Party will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Party in whose country they are levied will bear such costs.

ARTICLE XII
SETTLEMENT OF DISPUTES

Disputes between the Parties regarding the implementation or interpretation of this MOU will be resolved only by consultations between Parties, and not be referred to any individual, any national court or any international tribunal or any other forum for resolution or settlement.

ARTICLE XIII
GENERAL PROVISIONS

All activities of the Parties under this MOU or any Annex will be carried out in accordance with their national laws and regulations, including their export control laws

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and regulations, and their international responsibilities. Each Party will take necessary measures, including any required coordination within its government, in accordance with its laws and regulations, to ensure the scope of annexes to this MOU will be within the scope of the Exchange of Notes concerning the Cooperation on Ballistic Missile Defense, dated December 14, 2004. In the event of a conflict between language in the MOU and an Annex, the language in the MOU governs.

Except as otherwise provided, this MOU may be amended by the written consent of the Parties.

The MOU may be terminated at any time by the mutual written consent of both Parties. In that event, the ESC will consult prior to the date of termination to ensure termination on the most economic and equitable terms, subject to the provisions of this MOU.

A Party may terminate this MOU upon 180 days written notification to the other Party. Such notification will be the subject of immediate consultation by the ESC to decide upon the appropriate course of action.

In the event of such termination, the terminating Party will minimize the impact upon the other Party by continuing its cooperation, financial or otherwise, to the effective date of termination, and may bear additional costs for the other Party resulting from such termination subject to the availability of their respective appropriated funds. In any case, the cost to the terminating Party will not exceed its total financial commitment for jointly approved activities, taking into account the amounts already contributed by the terminating Party. The amount of such cost and the details of necessary arrangements will be as agreed by the ESC.

This MOU will automatically terminate if the Exchange of Notes concerning Cooperation on Ballistic Missile Defense, dated December 14, 2004 is terminated.

The rights and responsibilities of the Parties regarding Article IV (Disclosure and Use of Information), Article V (Controlled Unclassified Information), Article VII (Security), Article VIII (Third Party Transfers), Article IX (Military Technologies), Article X (Claims and Liability), and Article XII (Settlement of Disputes) set forth in this MOU will continue notwithstanding the termination of, withdrawal from or expiration of this MOU or any of its Annexes.

This MOU, which consists of the Preamble, thirteen (13) Articles and any Annexes, will enter into effect from the date of the signature of both Parties and remain in effect for twenty-five (25) years. The Parties will consult no later than five (5) years prior to the expiration of this MOU to decide whether or not to extend its duration. This MOU may be extended by mutual written consent of the Parties. This MOU does not

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preclude entering into any other arrangement in the area of missile defense cooperation.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Memorandum of Understanding.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE JAPAN DEFENSE AGENCY
Signature	Signature
Name	Name
Title	Title
December 14, 2004	December 17, 2004
Date	Date
WASHINGTON DC	Tokyo
Location	Location

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