

## SECTION X

### CONTROLLED UNCLASSIFIED INFORMATION

10.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

- 10.1.1 Such information will be used only for the purposes authorized for use of Project Information as specified in Section IX (Disclosure and Use of Project Information).
- 10.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1, and will be subject to the provisions of Section XIII (Third Party Sales and Transfers).
- 10.1.3 Each Participant 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), except as provided in subparagraph 10.1.2, unless the originating Participant 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 originating Participant.

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

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

10.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

## SECTION XI

### VISITS TO ESTABLISHMENTS

11.1 Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participants or by employees of the other Participants' Contractor(s), provided that the visit is authorized by the sending and receiving Participants and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2 All visiting personnel will be required to comply with security regulations of the hosting Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

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

11.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participants will be submitted through official channels in accordance with recurring international visit procedures.

## SECTION XII

### SECURITY

12.1 All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the Participants' national security laws and regulations.

12.2 Classified Information 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 will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the information relates to this MOU.

12.3 Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure except as provided by paragraph 12.9., unless the other Participants consent to such disclosure. Accordingly, each Participant will ensure that:

12.3.1 The recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section XIII (Third Party Sales and Transfers).

12.3.2 The recipient will not use the Classified Information for other than the purposes provided for in this MOU.

12.3.3 The recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.

12.4 Each Participant will maintain the security classifications assigned to information by the originating Participant and will afford to such information the same degree of security protection provided by the originating Participant.

12.5 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participants of the

details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.6 The DSA of a Participant that awards a classified Contract under this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information provided or generated under this MOU, the recipient Participant will:

- 12.6.1 Ensure that such Contractor, prospective Contractor, or subcontractor and its facilities have the capability to protect the Classified Information adequately.
- 12.6.2 Grant a security clearance to the facility(ies), if appropriate.
- 12.6.3 Grant a security clearance for all personnel whose duties require access to the Classified Information, if appropriate.
- 12.6.4 Ensure that all persons having access to the information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and the provisions of this MOU.
- 12.6.5 Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
- 12.6.6 Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Project.

12.7 The SM PM will prepare a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide will be developed by the SM PM within three months after this MOU enters into force and forwarded to the SMCC. The Instruction and Guide will be reviewed and forwarded to the Participants' DSAs for final approval and will be applicable to all government and Contractor personnel participating in the Project. The Classification Guide will be subject to regular review and

revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

12.8 Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participants will be consulted for approval prior to permitting such access.

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

12.10 Information provided or generated pursuant to this MOU may be classified as high as SECRET.

## SECTION XIII

### THIRD PARTY SALES AND TRANSFERS

13.1 The U.S. Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information or any item produced either wholly or in part from Project Foreground Information to Third Parties.

13.2 Participants other than the U.S. Participant will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the U.S. Government and the other Participants. Furthermore, the Participants other than the U.S. Participant will not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written consent of the U.S. Government and the other Participants. The Participants recognize that such sales, disclosures, or other transfers will not be authorized by the Participants unless the government of the intended recipient consents in writing that it will:

13.2.1 Not retransfer, or permit the further retransfer of, any equipment or information provided; and

13.2.2 Use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.

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

## SECTION XIV

### LIABILITY AND CLAIMS

14.1 For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution and for the benefit of the Project, the following provisions will apply.

14.2 Each Participant waives all claims against the other Participants in respect to damage caused to its military or civilian personnel or damage caused to its property by personnel or agents (which do not include contractors) of another Participant. If however, such damage results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant, its personnel or agents, the costs of any liability will be borne by that Participant alone.

14.3 Claims from third parties for damage of any kind caused by one of the Participants' personnel or agents will be processed by the most appropriate Participant, as determined by the Participants. The cost incurred in satisfying such claims will be borne by the Participants in the same percentage as they share the shared costs of the Project. If however, such liability results from the reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant's personnel or agents, the costs of any liability will be borne by that Participant alone.

14.4 In the case of damage caused to or by jointly acquired property of the Participants, where the cost of making good such damage is not recoverable from other persons, such cost will be borne by the Participants in the same percentage as they share the shared costs of the Project.

14.5 Claims arising under any Contract awarded pursuant to Section VI (Contracting Provisions) will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against liability claims by any other persons. However, in exceptional circumstances (e.g., involving certain nuclear activity or other unduly hazardous activity where the cost of insurance is excessively high) the Participants may consider whether to indemnify Contractors against liability claims by any other persons.

SECTION XV

ADDITION OF NEW PARTICIPANTS

15.1 It is recognized that potential additional participants may wish to join the MOU.

15.2 Unanimous consent of the Participants will be required to conduct discussions with potential additional participants. The Participants will discuss the arrangements and formulate the provisions under which additional participants might join. This will require an amendment to this MOU by the Participants.

## SECTION XVI

### CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

16.1 Insofar as existing laws and regulations of the Participants permit, the Participants will endeavor to ensure that readily identifiable taxes, customs, duties and similar charges or quantitative/qualitative restrictions on imports and exports will not be imposed in connection with this Project.

16.2 The Participants concerned will endeavor to ensure that such taxes, customs, duties and similar charges from which relief is available as aforesaid do not enter into the price of information or materials produced under this Project. The Participants will administer such taxes, customs, duties and similar charges in the manner most favorable to the satisfactory execution of the arrangements described in this MOU.

16.3 If taxes, customs, duties, or similar charges are levied, they will be borne by the Participant of the country in which they are levied as a cost to that Participant over and above that Participant's shared costs of the Project.

16.4 If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these will be met by the EU member end recipient. To this end, parts or components of the equipment coming from outside the EU will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The method of apportionment of such duties between EU member Participants will be decided by consultation. They will be levied as a cost over and above the relevant Participant's shared costs of the Project.

## SECTION XVII

### SETTLEMENT OF DISPUTES

Disputes among the Participants arising under or relating to this MOU will be resolved only by consultation among the Participants and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

SECTION XVIII

GENERAL PROVISIONS

18.1 The working language for the MOU will be the English language.

18.2 All data and information generated and provided under this MOU and its implementing Contracts and provided by one Participant to the other Participants will be furnished in the English language.

18.3 All activities of the Participants under this MOU will be carried out in accordance with their national laws including their export control laws and export control regulations. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

## SECTION XIX

### AMENDMENT, WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT, AND DURATION

19.1 This MOU may be amended by written amendment signed by the Participants.

19.2 In the event of a conflict between a Section of this MOU and any Annex to this MOU, the Section will prevail.

19.3 If any Participant considers it necessary to withdraw from this MOU, it will promptly notify the other Participants and the matter will be subject to immediate consultation among the Participants to enable them to fully evaluate and determine the consequences. Any Participant may withdraw from this MOU upon 90 days written notification to the other Participants.

19.3.1 A withdrawing Participant will meet in full its commitments, financial or otherwise, up to the end of the effective date of withdrawal.

19.3.2 Except as to Contracts awarded on behalf of the Participants under this MOU, each Participant will be responsible for its own Project-related costs associated with the withdrawal of a Participant.

19.3.3 For Contracts awarded on behalf of the Participants, the withdrawing Participant will pay any Contract modification or Contract termination costs incurred under Contracts that would otherwise not have been incurred but for the decision to withdraw from this MOU. However, the total financial contribution by any withdrawing Participant, including Contract modification or termination costs, will in no event exceed the amount the withdrawing Participant would have contributed had it remained in this MOU.

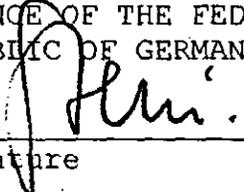
19.3.4 All Project Information and rights therein received under the provisions of this MOU prior to withdrawal will be retained by the Participants.

19.4 This MOU may be terminated at any time upon the unanimous written consent of the Participants. In the event the Participants consent to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable provisions.

19.5 The respective benefits and responsibilities of the Participants regarding Section VIII (Project Equipment), Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), Section XIII (Third Party Sales and Transfers), and Section XIV (Liability and Claims), and this Section XIX (Amendment, Withdrawal, Termination, Entry into Effect, and Duration) will continue to apply notwithstanding termination of, withdrawal from or expiration of this MOU.

19.6 This MOU, which consists of 19 sections and 2 Annexes, will enter into effect upon signature by all Participants and will remain in effect for 15 years.

FOR THE FEDERAL MINISTRY OF  
DEFENCE OF THE FEDERAL  
REPUBLIC OF GERMANY

  
\_\_\_\_\_  
Signature

Harald Stein  
\_\_\_\_\_  
Name

Vicepresident  
\_\_\_\_\_  
Title

20.10.2004  
\_\_\_\_\_  
Date

BwB - Koblenz  
\_\_\_\_\_  
Location

19.5 The respective benefits and responsibilities of the Participants regarding Section VIII (Project Equipment), Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), Section XIII (Third Party Sales and Transfers), and Section XIV (Liability and Claims), and this Section XIX (Amendment, Withdrawal, Termination, Entry into Effect, and Duration) will continue to apply notwithstanding termination of, withdrawal from or expiration of this MOU.

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FOR THE MINISTER OF DEFENCE  
OF THE KINGDOM OF THE  
NETHERLANDS



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Signature

RADM P.S. Bedet  
Name

Chief of Naval Materiel  
Title

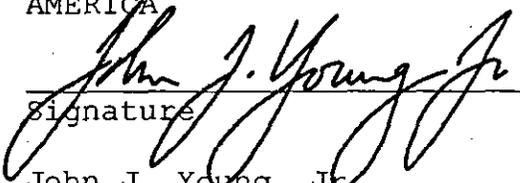
21 October 2004  
Date

The Hague, The Netherlands  
Location

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FOR THE DEPARTMENT OF DEFENSE  
OF THE UNITED STATES OF  
AMERICA

  
\_\_\_\_\_  
Signature

John J. Young, Jr.  
\_\_\_\_\_  
Name

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

3 Dec 2004  
\_\_\_\_\_  
Date

Washington, DC  
\_\_\_\_\_  
Location