

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 – U.S./AUSTRALIA BMD MOU)

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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":

Acknowledging 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 (Chapeau Agreement), done in Sydney on December 1, 1995 applies to this MOU;

Recognizing the Agreement between the United States of America and Australia Relating to the Establishment of a Joint Defence Space Communications Station in Australia, done in Canberra on November 10, 1969;

Recognizing the Agreement between the Government of the United States of America and the Government of Australia Concerning Co-Operative and Collaborative Research, Development and Engineering, done in Washington, D.C. on October 21, 1994;

Recognizing the Memorandum of Agreement between the Government of the United States of America and the Government of Australia Concerning Reciprocal Defense Procurement, done in Washington, D.C. on April 19, 1995;

Recognizing the Statement of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry between the Department of Defense of the United States of America and the Department of Defence of the Commonwealth of Australia, signed on July 17, 2000;

Recognizing the Agreement between the Government of the United States of America and the Government of Australia Concerning Security Measures for the Protection of Classified Information, signed June 25, 2002 and which entered into force on 7 November 2002;

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 to address the proliferation of offensive ballistic missiles;

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Recognizing the U.S. Government's decision to develop and deploy a set of ballistic missile defense capabilities and Australia's desire to participate in the ballistic missile defense program;

Recognizing that such participation will enhance the security of the Participants;

Recognizing the substantial technical contributions resulting from past and continuing cooperation and the benefits of future cooperation in technologies and capabilities related to ballistic missile defense; and,

Recognizing Australia's policy of full knowledge and concurrence for Australia's contributions to joint activities;

Have reached the following understandings:

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SECTION I PURPOSE AND SCOPE

The United States (U.S.) plans to begin fielding a set of missile defense capabilities in 2004 as part of the Ballistic Missile Defense System ("BMDS"). The BMDS is defined as those capabilities for defense against ballistic missiles of all ranges in all phases of their flight for the protection of U.S. territory, friends and allies, and deployed forces. These capabilities will serve as a starting point for fielding improved and expanded missile defense capabilities later. The U.S. DoD established the BMDS Program to develop and field the BMDS. Australia has decided to participate in the BMDS program.

A key contribution to this U.S. DoD deployment is Australian support through its ongoing activity in hosting joint facilities. Australia also welcomes the opportunity for closer cooperation in other areas of missile defense including closer insight into the BMDS Program for both government and industry, to the mutual benefit of the Participants. In keeping with other arrangements, most notably the Memorandum of Agreement Between the Government of the United States of America and the Government of Australia Concerning Reciprocal Defense Procurement, done in Washington, D.C. on April 19, 1995; and the Statement of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry between the Department of Defense of the United States of America and the Department of Defence of the Commonwealth of Australia, signed on July 17, 2000, this MOU will also facilitate opportunities for U.S. and Australian industries to participate in activities supporting the BMDS Program.

The purpose of this MOU is to establish and define a framework under which specific activities can be mutually approved to facilitate Australian participation in the BMDS Program (including collaboration in Research, Development, Testing and Evaluation (RDT&E) and deployment and support of the BMDS) and to provide insight to Australia as a BMDS Program participant.

The scope of this MOU encompasses the exchange of information, regardless of type or form, relating to the BMDS Program and necessary to fulfill the purpose of this MOU and the establishment of Annexes to this MOU for the conduct of bilateral ballistic missile defense activities.

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

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This MOU provides no authority for placing contracts in connection with any cooperative activities under this MOU. Such authority will be derived specifically from any Annexes to this MOU that may be concluded separately by the Participants. While the Participants will seek to encourage industrial involvement from both countries, in order to achieve the best value for both Participants, no requirement will be imposed by any Participant for work sharing or other industrial or commercial compensation in connection with contracts done under the authority of such Annexes to this MOU.

SECTION II MANAGEMENT

The Director, Missile Defense Agency (MDA), U.S. DoD, is solely responsible for managing the cost, schedule, performance, and technical aspects of the U.S. BMDS Program.

An Executive Steering Committee (ESC) will be established to oversee all interfaces and collaborative efforts pursuant to this MOU. The ESC will be jointly chaired by the Director, Missile Defense Agency, and the Australian Deputy Secretary Strategy. Decisions of the ESC will be made by consensus. The ESC will meet annually, or as mutually arranged. All cooperative activities under this MOU involving Australian financial and non-financial contributions will be managed by the ESC in accordance with this MOU.

In exercising direction and oversight of all activities under this MOU, the ESC is responsible for endorsing mutually beneficial cooperative activities; authorizing exchanges of information; approving security procedures and financial management procedures; reviewing and approving third party transfers; reviewing and approving plans for work; and concluding Annexes under this MOU. The ESC will resolve issues affecting both Participants that arise during execution of any of the activities detailed in this MOU that are not resolved at lower levels.

The Participants may, as required, appoint program personnel to fill specific positions pursuant to Annexes to this MOU. Appointment of such program personnel will be subject to the provisions of Attachment A to this MOU.

SECTION III FINANCIAL PROVISIONS

Each Participant will contribute its equitable share of the full financial and non-financial costs, and will share equitably the benefits of activities conducted pursuant to

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this MOU. Each Participant will bear entirely its costs associated with any unique national requirements that it identifies to satisfy its own needs, as well as pay costs associated with national representation at meetings. A Participant will promptly notify the other Participant if available funds are not adequate to fulfill its responsibilities under this MOU. In such instances, the Participants will immediately consult with a view toward continuation on a changed or reduced basis.

SECTION IV DISCLOSURE AND USE OF INFORMATION

Both Participants recognize that successful cooperation depends on full and prompt exchange of information and will use their best efforts to facilitate the exchange of such information. The MDA and the Australian DoD will control all government-to-government and government-to-industry information exchanged under this MOU. Both Participants will provide sufficient insight into arrangements that ensure shared information, regardless of form, is protected.

Except as provided for below, information and material may be exchanged pursuant to this MOU. A Participant (including its Contractor Support Personnel, who are individuals whose services are provided, under contract, by non-governmental sources to support the Participant's government officials directly by providing scientific, engineering, or technical advice and assistance and who are legally bound by contract not to use the information received in the course of their duties for purposes other than their direct government support role) may use information exchanged under this MOU solely for information and evaluation purposes as set out in Section I (Purpose And Scope). Annexes may specify additional uses of such exchanged information.

No information furnished pursuant to this MOU will be used by the receiving Participant or its Contractor Support Personnel for any purpose other than the purpose for which it was furnished without the specific prior written consent of the furnishing Participant specifying the authorized use of the information. Notwithstanding any other provision in this MOU, the receiving Participant will not disclose information furnished or generated under this MOU to contractors or any other persons, other than its Contractor Support Personnel, without the specific prior written consent of the furnishing Participant. Information that is exchanged under this MOU will only be disclosed to Third Parties by the receiving Participant in accordance with Section VII (Security) and Section VIII (Third Party Transfers). For purposes of this MOU, a Third Party is a government other than the government of a Participant or any person or other entity whose government is not the government of a Participant.

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Notwithstanding any other provision in this Section, 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 laws, regulations and policies of the furnishing Participant.

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

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

Patent applications that contain classified information to be filed under this MOU or any of its Annexes will be protected and safeguarded in accordance with the requirements contained in Section VII (Security) of this MOU.

SECTION V CONTROLLED UNCLASSIFIED INFORMATION

Except as otherwise provided in this MOU or authorized in writing by the originating Participant, 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 under this MOU and its annexes will be controlled as follows:

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

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 Section VIII (Third Party Transfers); and,

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 the

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preceding sub-paragraph, 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.

To assist in providing the appropriate controls, the originating Participant will ensure that information is appropriately marked to indicate its "in confidence" nature. The Participants will decide in advance and in writing on the markings to be placed on controlled unclassified information. Controlled unclassified information received 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 Participants will ensure that the contractors are legally bound to control such information in accordance with the provisions of this Section.

SECTION VI VISITS TO ESTABLISHMENTS

Each Participant will permit visits to its establishments by personnel (including non-government personnel) of the other Participant, provided that the visit is authorized by both Participants 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 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.

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

SECTION VII SECURITY

All classified information or material received pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the Agreement between

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the Government of the United States of America and the Government of Australia Concerning Security Measures for the Protection of Classified Information, signed June 25, 2002, which entered into force on November 7, 2002.

Classified information and material will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSA) of the Participants. Such information and material will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU.

Each Participant will take all lawful steps available to it to ensure that classified information and material received under this MOU are protected from further disclosure, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

Except as authorized under this MOU, the recipient Participant will not release the classified information or material to any Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section VIII (Third Party Transfers);

The recipient Participant will not use the classified information or material for any purposes other than those provided for in this MOU; and,

The recipient Participant will comply with any distribution and access restrictions on information or material provided under this MOU.

The Participants will investigate all cases in which it is known or where there are grounds for suspecting that classified information or material received under this MOU has been lost or disclosed to unauthorized persons. Each Participant will also promptly and fully inform the other Participant of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

For any facility wherein classified information or material is to be used, the responsible Participant will approve the appointment of a person or persons of sufficient rank to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU. These officials will be responsible for limiting access to classified information or material involved in this MOU to those persons who have been properly approved for access, possess an appropriate security clearance, and have the requisite need-to-know.

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Each Participant will ensure that access to the classified information and material is limited to those persons who possess requisite security clearances and have a specific need for access to the information.

Classified information and material may be exchanged in accordance with this MOU up to the TOP SECRET level. The existence of this MOU is UNCLASSIFIED and the contents are FOR OFFICIAL USE ONLY.

SECTION VIII THIRD PARTY TRANSFERS

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

The Participants will not sell, transfer title to, transfer possession of or otherwise disclose information or material generated under this MOU, exclusive of its Annexes or other related instruments, to a Third Party without the prior written consent of the other Participant. In the event that consent for such a transfer is obtained, the transferring Participant will be required to obtain written assurances from the third party not to transfer, allow unauthorized use of, or permit retransfer of any of the information or material provided, and will use such information or material only for the purposes for which it was provided.

The Participants will establish specific provisions in each Annex to this MOU governing third party transfer, which may take precedence over this Section. However, no Annex will change the definition of Third Party as provided for in this MOU, unless this MOU is amended by the written consent of the Participants. Those provisions will take into account the extent of financial or other contributions of each Participant and the potential impact on the BMDS Program.

SECTION IX EXTENSION TO MULTILATERAL PARTICIPATION

By mutual consent of the Participants, cooperative activities pursuant to this MOU may allow the participation of governments of other nations. Unless the Participants

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otherwise mutually determine, the terms of such participation will be the same as for the Participants.

SECTION X LIABILITY AND CLAIMS

All liability and claims arising under or pertaining to this MOU will be governed by the Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defense Commitments, done in Sydney on December 1, 1995 (Chapeau Agreement). Costs will be shared in accordance with the proportions stated in the individual Annexes under this MOU. The Participants will share any costs required to be shared under subparagraph 1(b)(ii) of the Chapeau Agreement on the following basis:

Where responsibility for the damage, loss, injury or death, can be specifically attributed to one Participant, the cost of handling and settling the claim will be the sole responsibility of that Participant;

Where both Participants are responsible for the damage, loss, injury or death, the cost of handling and settling the claim will be apportioned between the Participants based on their degree of responsibility for the damage, loss, injury or death; and,

Where it is not possible to attribute responsibility for damage, loss, injury or death, the cost of handling and settling the claim will be distributed equally between the Participants.

SECTION XI CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants 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 pursuant to this MOU.

Each Participant 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

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and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.

SECTION XII SETTLEMENT OF DISPUTES

Disputes between the Participants arising under or relating to this MOU will be resolved only by consultations between Participants, and not be referred to any individual, any national court or any international tribunal or any other forum for resolution or settlement.

SECTION XIII GENERAL PROVISIONS

All activities of the Participants under this MOU and any Annex will be carried out in accordance with their national laws and regulations, including their export control laws and regulations, and their international responsibilities. Such activities will be subject to the availability of appropriated funds. In the case of inconsistency between this MOU and its Annexes, the MOU will govern.

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

The MOU may be terminated at any time by the mutual written consent of both Participants. 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 Participant may terminate this MOU upon 180 days written notification to the other Participant. Such notification will be the subject of immediate consultation by the ESC to decide upon the appropriate course of action to conclude activities under the MOU. The terminating Participant will minimize the impact upon the other Participant by continuing its Participation, financial or otherwise, to the effective date of termination. In any case, the cost to the terminating Participant will not exceed its total financial commitment for jointly approved activities, taking into account the amounts already contributed by the terminating Participant.

Termination of this MOU will also result in termination of its Annexes or other instruments related to it.

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The rights and responsibilities of the Participants regarding disclosure and use of information, controlled unclassified information, classified information/materials, security, third party transfers, and settlement of disputes and liabilities and claims set forth in this MOU will continue notwithstanding the termination of, withdrawal from or expiration of this MOU or any of its Annexes or other instruments related to it.

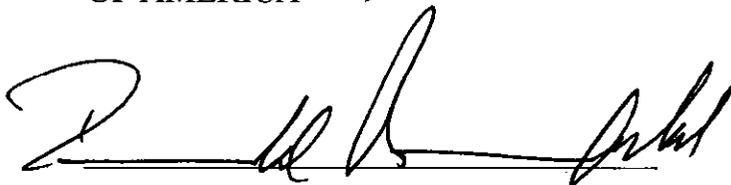
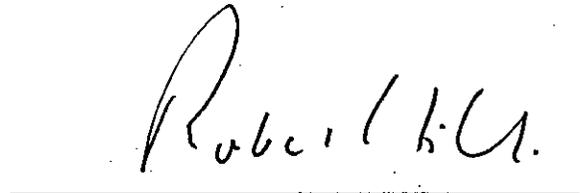
This MOU, which consists of thirteen [13] Sections and one [1] Attachment, will enter into effect from the date of the signature of both Participants and remain in effect for twenty-five (25) years. The Participants will consult no later than five (5) years prior to the expiration of this MOU to decide whether to extend its duration. This MOU may be extended by mutual written consent of the Participants. This MOU does not preclude entering into any other arrangement in the area of missile defense cooperation.

The foregoing represents the understandings reached between the Department of Defense of the United States of America and the Department of Defence of Australia upon the matters referred to therein.

DONE, in Washington this 7th day of July, 2004.

SECRETARY OF DEFENSE ON
BEHALF OF THE DEPARTMENT OF
DEFENSE OF THE UNITED STATES
OF AMERICA

MINISTER FOR DEFENCE ON
BEHALF OF THE DEPARTMENT OF
DEFENCE OF AUSTRALIA

A handwritten signature in black ink, appearing to be "D. M. ...", written over a horizontal line.A handwritten signature in black ink, appearing to be "Robert Hill", written over a horizontal line.

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ATTACHMENT A

PARTICIPATING PERSONNEL

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 – U.S./AUSTRALIA BMD MOU)

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PARTICIPATING PERSONNEL

1. Purpose and Scope.

This Attachment to the U.S./Australia BMD MOU (the MOU) establishes the provisions that will govern the conduct of U.S. DoD or Australian DoD Participating Personnel (PP). During the term of the MOU, each Participant will be permitted to assign its military members or civilian employees to organizations of the other Participant in accordance with this Attachment.

Commencement of assignments will be subject to any requirements that may be imposed by the other Participant or its government regarding acceptance of PP, such as, but not limited to, visas and visit request documentation.

Assignment, position descriptions and length of assignment for PP will be established and approved by ESC members. PP will be able to perform all of the duties for assignments under this Attachment. The PP will not perform any duties on behalf of a contractor. PP will not act as liaison officers for their parent organizations or governments. However, such personnel may act from time to time on behalf of their ESC member if the latter so authorizes in writing.

PP will not be assigned to command or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the host Government.

2. Security.

The ESC members will establish the required level of access to classified information and facilities in which classified information is used. This access will be consistent with, and limited by, Section I (Purpose and Scope) of the MOU and the corresponding provisions of Annexes, and will be kept to the minimum required to accomplish the work assignments.

The parent Participant will file visit requests for the PP through prescribed channels in compliance with the host Participant's procedures. The Participants will cause security assurances to be filed, through their respective embassies, specifying the security clearances for the PP being assigned. The security assurances will be prepared and forwarded through prescribed channels in compliance with established procedures.

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The Participants will at all times be required to comply with applicable laws and regulations, as well as the requirements of Section IV (Disclosure and Use of Information), Section V (Controlled Unclassified Information), and Section VII (Security) of the MOU, and the corresponding provisions of applicable Annexes. Prior to commencing assigned duties, PP will, if required by the host Participant's laws, regulations, policies, or procedures, sign a certification concerning the provisions and responsibilities of PP.

PP will at all times be required to comply with the security and related export laws, regulations, and procedures of the host Participant. Any violation of security or export procedures by PP during their assignment will be reported to their parent Participant for appropriate action. PP committing willful violations of security or export laws, regulations, or procedures during their assignments will be withdrawn from their assignment by their parent Participant with a view toward appropriate administrative or disciplinary action.

All classified information made available to PP will be considered as classified information furnished to the Australian DoD or the U.S. DoD and will be subject to all of the provisions and safeguards provided for in the MOU, this Attachment, and applicable Annexes.

PP will not have personal custody of classified information or controlled unclassified information, unless approved by the host Participant and as authorized by the parent Participant. They will be granted access to such information when access is necessary to perform their assigned work. They may not have unsupervised access to classified libraries or operating centers, or to document catalogues unless the information therein is releasable to the public.

PP will not serve as a conduit between the U.S. DoD and the Australian DoD for requests for and/or transmission of classified information or controlled unclassified information unless specifically authorized in writing to do so.

3. Administrative Matters.

The provisions of any applicable Status of Forces Agreement (SOFA) in force between the governments of the Participants will apply to PP. In the event that provisions of the SOFA are inconsistent with provisions of this Attachment, the provisions of SOFA take precedence.

Upon or shortly after arrival, PP will be briefed by the host Participant about applicable laws, orders, regulations, and customs and the need to comply with them. PP

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will also be provided briefings arranged by the host Participant regarding applicable entitlements, privileges, and responsibilities such as:

Any medical or dental care that may be provided to PP and their dependents; and,

Purchasing and patronage privileges at military commissaries, exchanges, theaters, and clubs for PP and their dependents, subject to applicable laws and regulations.

The PP, and those dependents accompanying them, will obtain motor vehicle liability insurance coverage in accordance with applicable laws and regulations. In the case of claims involving the use of private motor vehicles by PP and their dependents, their recourse will be against such insurance providers.

The host Participant will establish standard operating procedures for PP in the following areas:

Working hours, including holiday schedules;

Leave authorization, consistent to the extent possible with the military or civilian personnel regulations and practices of both Participants;

Dress regulations, consistent to the extent possible with the military or civilian personnel regulations and practices of both Participants; and,

Performance evaluations, recognizing that such evaluations must be rendered in accordance with the parent Participant's military or civilian personnel regulations and practices.

Unless otherwise provided for by the provisions of any applicable SOFA, PP will be subject to the laws of the government of the host Participant.

The host Participant may withdraw from work under this MOU a PP committing an offense under the laws of the government of either Participant. However, disciplinary action will not be taken by the host Participant against PP from the providing Participant, nor will PP exercise disciplinary authority over host Participant personnel. In accordance with the host government's laws, regulations, and procedures, the host Participant will assist the parent Participant in carrying out investigations of offenses involving PP.

The Participants will consult with each other when either Participant seeks the early termination of a PP assignment.

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The host Participant will be responsible for the following:

Travel and subsistence costs in connection with the performance of any duty carried out at the request of the host Participant, other than as provided for below;

Costs incurred as a result of a change in location of work ordered by the host Participant during the period of assignment; and,

Facilities, equipment, training and administrative support necessary for the performance of duties assigned to PP.

The parent Participant will be responsible for all other costs and expenses of assigned PP, including, but not limited to:

All pay and allowances;

Accommodation;

Formal and informal training or for training necessary for maintenance of professional or military competencies.

Travel to and from the country of the host Participant, except as specified above;

All temporary duty costs, including travel costs, when such duty is carried out at the request of the parent Participant;

The movement of dependents and the household effects of PP;

Preparation and shipment of remains and funeral expenses in the event of the death of PP or their dependents; and,

All expenses in connection with the return of PP, along with their dependents, when an assignment has been terminated.

Any medical or dental care that may be provided to PP or their dependants at host Participant medical facilities will be subject to the requirements of the laws and regulations of the government of the host Participant, including reimbursement when required by such laws and regulations.

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