

SECTION V

FINANCIAL PROVISIONS

5.1 This MOU creates no financial commitments regarding individual RUTF or CTE PAs. Detailed descriptions of the financial provisions for a specific project, including the total cost of the project and each Participant's cost share, will be contained in the specific RUTF or CTE PA.

5.2 For RUTF PAs, charges between Participants will be mutually determined on a case-by-case basis and specified in the PA.

5.2.1 For the U.S. DoD, charges will consist of Direct Costs and applicable Indirect Costs. Direct Costs, except for the cost of military personnel chargeable to the Customer Participant, will not be greater than what one component of the Performing Participant would charge to another component of the Performing Participant for the type and scope of the services provided. If required, Indirect Costs may also be charged depending on the nature and specifics of the effort. Indirect Costs charged to the Customer Participant will be only those required by the Performing Participant's laws and regulations.

5.2.2 For the NL MoD, T&E services provided by government facilities will be provided on an Actual Cost basis. T&E services provided by non-governmental facilities will be provided by the NL MoD only when the NL MoD has established a Preferred Rate.

5.2.3 The methods used for determining charges for T&E services by the U.S. DoD and NL MoD are deemed to be substantially equivalent.

5.3 For CTE PAs, each Participant will contribute its equitable share of the full Financial and Non-Financial Costs, including overhead costs, administrative costs and cost of claims, and will receive an equitable share of the results of each CTE PA as mutually determined.

5.4 The financial and non-financial provisions for a CTE PA, including the total cost of the CTE PA and each Participant's share of the total cost, will be included in the CTE PA.

5.5 For each CTE PA, the POs will be responsible for establishing the detailed financial management procedures under which the project will operate. Where necessary, these procedures will be detailed in an FMPD proposed by the POs, and subject to the approval of the MAs or SC, if one is established.

5.6 Each Participant will perform, or have performed, its tasks and will use its best efforts to perform the tasks within the cost estimates specified in each PA. Each Participant will bear the full costs it incurs for performing, managing, and administering its own activities under this

MOU and participation in each PA, including its share of the costs of any Contracts awarded pursuant to paragraph 5.13.

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

5.7.1 costs associated with any unique national requirements identified by a Participant;

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

5.8 For CTE PAs with shared costs that involve the establishment of a JPO with CPP assignments to the other Participant's facilities or the JPO, the CTE PA will address the financial and non-financial contributions required for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.9 In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.8, the cost of CPP in the JPO or assigned to the other Participant's facilities will be borne as follows:

5.9.1 The Host Participant will bear the costs of all pay and allowances of Host Participant personnel in the JPO;

5.9.2 The Parent Participant will bear the following CPP-related costs:

5.9.2.1 all pay and allowances;

5.9.2.2 transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the Host Participant's nation prior to the CPP's commencement of a tour of duty in the JPO or field activity, and return transportation of the foregoing from the place of assignment in the Host Participant's nation upon completion or termination of the tour of duty;

5.9.2.3 compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the Parent Participant's laws and regulations;

5.9.2.4 preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents; and

5.9.2.5 all temporary duty costs, including travel costs, when such duty is carried out pursuant to a unique requirement of the Parent Participant.

5.10 For CTE PAs that do not involve the establishment of a JPO, but do involve the assignment of one Participant's CPP to the facilities of the other Participant, the Participants will bear the costs as set forth in paragraph 5.9. The Host Participant will also be responsible for the following:

5.10.1 All temporary duty costs, including travel costs in connection with the performance of any duty carried out in support of a CTE PA or pursuant to a requirement of the Host Participant.

5.10.2 Costs incurred as a result of a change in location in work ordered by the Host Participant during the period of exchange.

5.10.3 Administrative and support costs such as CPP-related training, office space, security services, information technology services, communication services, supplies, and use of facilities and equipment necessary for the performance of tasks assigned to CPP.

5.11 For PETs concluded pursuant to Annex C in which operator personnel from the providing Participant are required, the responsibility for bearing all costs associated with such personnel, including but not limited to salaries and overhead, transportation, and subsistence, will be specified in the PET Form.

5.12 A Participant will promptly notify the other Participant if available funds will not be adequate to fulfill its duties as mutually determined under any TEP PA, or if it appears that the cost estimates in a PA will be exceeded. The Participants will immediately consult with a view toward continuation on a modified basis.

5.13 For CTE PA's where a Participant contracts on behalf of the other Participant or on behalf of both Participants, the POs or SC as appropriate, will be responsible for establishing the detailed financial management procedures under which the PA will operate prior to the transfer of funds between the Participants. The procedures, which will accord with the national accounting and audit requirements of the Participants, will be detailed in an FMPD. Each Participant will provide funds in the amounts and at the times set forth in the estimated schedule for monetary contributions, as specified in the FMPD.

5.14 For CTE PAs, the Participants recognize that, in performing Contracting responsibilities on behalf of the other Participant, it may become necessary for the Contracting Participant to incur contractual or other duties for the benefit of the other Participant prior to the receipt of the other Participant's funds. In such event, the other Participant will make such funds available in such amounts and at such times as required by the Contract or other duty, and will pay its equitable share, as mutually determined, of any damages and costs that may accrue from the

performance or Cancellation of the Contract or other duty in advance of the time such payments, damages, or costs are due.

5.15 Each Participant will be responsible for the audit of its activities or its Contractors' activities pursuant to a TEP PA. A Participant's audits will be in accordance with its own national practices. For CTE PA efforts where funds are transferred between the Participants, the receiving Participant will be responsible for the internal audit regarding administration of the other Participant's funds in accordance with the receiving Participant's national practices. Audit reports of such funds will be promptly made available by the receiving Participant to the other Participant.

SECTION VI

CONTRACTING PROVISIONS

6.1 If either Participant determines that Contracting is necessary to fulfill its duties under the scope of work of any TEP PA, that Participant will contract in accordance with its respective national laws, regulations and procedures.

6.2 When one Participant contracts on its own behalf to perform a task under a PA, it will be solely responsible for its own Contracting, and the other Participant will not be subject to any liability arising from such Contracts without its prior written consent.

6.3 If the Participants determine that it is appropriate under a CTE PA that one Participant contracts on behalf of the other Participant or for both Participants for tasks under that PA, the Contracting Agency will contract in accordance with its national laws, regulations, and procedures. In such cases, appropriate implementing provisions will be specified in the particular PA. If necessary to meet the requirements of a PA, the U.S. DoD or the NL MoD Contracting Agency as appropriate, will seek deviations from national regulations and procedures wherever possible. Sources from both Participants' industries will be allowed to compete on an equal basis for such Contracts. The U.S. DoD or the NL MoD Contracting Agency, as appropriate, will be the exclusive source for providing contractual direction and instructions to Contractors and prospective Contractors.

6.4 For all Contracting activities performed by either Participant, the POs will, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure that they are consistent with the provisions of this MOU and the applicable PA.

6.5 For all Contracting activities performed by either Participant, each Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information). Each Participant's Contracting Agency will insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU and the specific PA, including Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), and Section XII (Third Party Sales and Transfers). During the Contracting process, each Participant's Contracting Officer will advise prospective Contractors of their duty to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Participant's freedom to disclose Project Information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.6 In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Section VIII (Disclosure and Use of Project Information), or is notified by Contractors or prospective Contractors of any restrictions on the

disclosure and use of Project Information, that Participant's PO will notify the other Participant's PO of the restriction(s). The Participants will immediately consult, at the appropriate level, to assess the consequences and determine the way ahead.

6.7 Each Participant's PO will promptly advise the other Participant's PO of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible. If a Contract has been awarded on behalf of the other Participant or for both Participants, the Participant whose Contracting Agency is responsible for the Contract will consult with the other Participant before terminating the Contract.

SECTION VII

PROJECT EQUIPMENT TRANSFERS

7.1 For the purpose of carrying out a TEP PA, each Participant may transfer, without charge to the other Participant, such Project Equipment identified as being necessary for implementing a TEP PA. The TEP PA will provide specific details of any transfer of Project Equipment. Project Equipment identified at the time of TEP PA signature will be detailed in the RUTF PA as set out in Annex A (Model RUTF PA) or the CTE PA as set out in Annex B (Model CTE PA). Project Equipment which cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the POs in the format at Annexes A and B, Appendix 2, Inventory of Project Equipment Transfers (PETs). Approval for all PETs will be in accordance with national procedures.

7.2 For PETs concluded pursuant to Annex C, each Participant may transfer, without charge to the other Participant, Project Equipment, in accordance with the model at Annex C (PET Form). Approval for all PETs will be in accordance with national procedures.

7.3 Project Equipment transferred will be used by the receiving Participant for the purposes specified in the PA or PET Form only. Project Equipment will remain the property of the providing Participant. In addition, the receiving Participant will maintain the Project Equipment in good order, repair, and operable condition. Unless the providing Participant has consented that the transferred Project Equipment may be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, reasonable wear and tear excepted, or return the Project Equipment and pay the cost to restore the Project Equipment to such condition. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. If the Project Equipment is lost or stolen while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. The providing and receiving Participants will specify that in no case will any payment respecting damage or loss exceed the amount indicated in the applicable TEP PA or PET Form.

7.4 The providing Participant will make every effort to ensure the Project Equipment is furnished in a serviceable and usable condition according to its intended purpose. However, the providing Participant makes no warranty or guarantee of fitness of the Project Equipment for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Project Equipment, or any part thereof.

7.5 The providing Participant will transfer the Project Equipment for the approved period, unless extended by written amendment or terminated by either Participant. The duration of the transfer period will not exceed the effective period of the TEP PA or PET Form.

7.6 The providing Participant, at its expense, will deliver the Project Equipment to the receiving Participant at the location mutually approved. Responsibility for Project Equipment will pass from the providing Participant to the receiving Participant at time of receipt. Any further transportation will be mutually determined by the Participants and specified in the TEP PA or PET Form.

7.7 The providing Participant will furnish the receiving Participant such information as is necessary to enable the Project Equipment to be used.

7.8 The receiving Participant will inspect and inventory the Project Equipment upon receipt. The receiving Participant will also inspect and inventory the Project Equipment prior to its return (unless the Project Equipment is to be expended or consumed).

7.9 Upon expiration or termination of the transfer period specified in the TEP PA or the PET Form (taking into account any extension), the receiving Participant will return the Project Equipment, at its expense, to the providing Participant at the location mutually determined. Responsibility for the Project Equipment will pass from the receiving Participant to the providing Participant at the time of its receipt. Any further transportation is the responsibility of the providing Participant.

7.10 The receiving Participant will provide written notice of consumption or expenditure of Project Equipment approved for such consumption or expenditure. In the event the intended consumption or expenditure does not occur, the receiving Participant will, unless otherwise determined by the providing Participant, return the Project Equipment, at its expense, to the providing Participant to the location mutually determined. Any further transportation is the responsibility of the providing Participant.

7.11 The Participants will ensure, by all reasonable means, the protection of intellectual property rights in Project Equipment.

7.12 Each Participant waives all claims against the other Participant for damage to or loss of jointly acquired Project Equipment arising from the performance of official duties. However, if the Participants mutually decide to repair damaged jointly acquired Project Equipment in order to complete PA efforts, the cost of such repair will be shared in a manner that results in sharing the total costs of the PA in the proportions established for the Participants' contributions under the PA. In any case, if the damage or loss is caused by reckless acts, reckless omission, willful misconduct or gross negligence, the costs of any liability, including the cost of repairs, will be borne by the responsible Participant.

7.13 Any Project Equipment that is jointly acquired on behalf of the Participants for use under any TEP PA will be disposed of as mutually determined by the SC, or the MAs if an SC is not established.

7.14 Disposal of jointly acquired Project Equipment may include a transfer of the interest of one of the Participants in such Project Equipment to the other Participant, the sale or transfer of such Project Equipment to a Third Party in accordance with Section XII (Third Party Sales and Transfers), or sale or transfer to other entities. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party or other entity in the same ratio as costs are shared in the CTE PA.

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1 General

Both Participants recognize that successful cooperation depends on full and prompt exchange of information necessary for carrying out each TEP Activity. The Participants intend to acquire sufficient Project Information, and rights to use such information to promote the objectives of this MOU. The nature and amount of Project Information to be acquired will be consistent with Section II (Objectives), Section III (Scope of Work), Section VI (Contracting Provisions), and the PAs and PET Forms under this MOU. Subject to the rights both Participants are accorded under this MOU, title to Project Foreground Information generated by a Participant or its Contractor will reside in that Participant and/or its Contractors, in accordance with that Participant's national laws, regulations, and policies. Nothing in this MOU will affect title to Project Background Information of the Participants or their Contractors.

Information Exchange and Working Groups

8.2 The disclosure and use provisions that govern exchange of information and WGs authorized in Section III (Scope of Work), paragraphs 3.2.1 and 3.2.2 are as follows:

8.2.1 Disclosure: At its discretion, the furnishing Participant may disclose information to the other Participant. Prior written permission from the furnishing Participant will be required for further disclosure of the information by the receiving Participant to any other entity, for example, a Contractor. Such permission will not be required in the case of further disclosure to the receiving Participant's Contractor support personnel, who are under a legally binding non-disclosure agreement.

8.2.2 Use: Use of information will be for information and evaluation purposes only. Written permission from the furnishing Participant will be required for any other use.

RUTF PAs

8.3 Unless the Participants agree otherwise in writing, the following provisions will apply to RUTF PAs:

8.3.1 The Customer Participant's use of information will be for Defense Purposes only. Written permission from the Performing Participant will be required for any other use.

8.3.2 The Performing Participant's use of information will be for information and evaluation purposes only. Written permission from the Customer Participant will be required for any other use.

Other TEP Activities

8.4 Unless the Participants agree otherwise in writing, the following disclosure and use provisions that govern other TEP Activities authorized in Section III (Scope of Work), paragraphs 3.2.3 and 3.2.4, will apply.

8.5 Government Project Foreground Information:

8.5.1 Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to the other Participant.

8.5.2 Use: Each Participant may further disclose, use or have used on its behalf government Project Foreground Information without charge for its Defense Purposes only. The furnishing Participant will retain all its rights with respect to such government Project Foreground Information. The sale or other transfer of government Project Foreground Information will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.6 Contractor Project Foreground Information:

8.6.1 Disclosure: Contractor Project Foreground Information generated and delivered by Contractors will be disclosed without charge to the other Participant.

8.6.2 Use: Each Participant may further disclose, use or have used on its behalf all Contractor Project Foreground Information without charge for its Defense Purposes only. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use therein in accordance with the applicable Contract(s). The sale or other transfer of Contractor Project Foreground Information will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.7 Government Project Background Information:

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

8.7.1.1 such government Project Background Information is necessary to, or useful in the TEP Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TEP Activity;

8.7.1.2 such government Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.7.1.3 disclosure is consistent with national disclosure policies and regulations of the disclosing Participant.

8.7.2 Use: A Participant may use or have used Government Project Background Information disclosed by the other Participant without charge for conducting the TEP Activity for which it was provided only. However, subject to proprietary rights held by other than the Participants, government Project Background Information may be used for Defense Purposes by the receiving Participant without charge when the use of such government Project Background Information is necessary for the use of government Project Foreground Information. The furnishing Participant (after consultation with the receiving Participant) will determine whether such use of government Project Background Information is necessary. The furnishing Participant will retain all its rights with respect to such government Project Background Information.

8.8 Contractor Project Background Information:

8.8.1 Disclosure: Any relevant Contractor Project Background Information (including information subject to proprietary rights) which is or has been generated outside of the TEP Activity and delivered by Contractors of one of the Participants, will be disclosed to the other Participant provided the following provisions are met:

8.8.1.1 such Contractor Project Background Information is necessary to, or useful in the TEP Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TEP Activity;

8.8.1.2 such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.8.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

8.8.2 Use: A Participant may use or have used Contractor Project Background Information disclosed by the other Participant without charge to conduct the TEP Activity for which it was provided only. Any other use will be in accordance with the terms arranged with the Contractor, and may be the subject of further restrictions by holders of proprietary rights. The furnishing Participant will retain all its rights with respect to such Contractor Project Background Information.

8.9 Jointly Generated Foreground Information:

8.9.1 Disclosure: All Jointly Generated Foreground Information generated under a TEP Activity will be disclosed to both Participants promptly and without charge.

8.9.2 Use: Each Participant generating or receiving Jointly Generated Foreground Information may use or have used such information without charge only for its Defense Purposes unless mutually determined otherwise in writing.

8.9.3 Information generated by WGs will be treated as Jointly Generated Foreground Information unless mutually determined otherwise.

8.10 Alternative Uses of Project Information:

8.10.1 The prior written consent of each Participant's government will be required for the use of Project Foreground Information for any purposes other than those provided for in this MOU or any of its PAs.

8.10.2 Any Project Background Information provided by one Participant will be used by the other Participant for the purposes set forth in this MOU only, unless otherwise consented to in writing by the furnishing Participant's government.

8.11 Project Information Subject to Proprietary Rights:

8.11.1 All unclassified Project Information subject to proprietary rights will be identified, marked and handled as Controlled Unclassified Information in accordance with Section IX (Controlled Unclassified Information). All classified Project Information subject to proprietary rights will be identified, marked and handled in accordance with Section IX (Controlled Unclassified Information) and Section XI (Security).

8.12 Patents

8.12.1 Each Participant will include in its Contracts a provision governing the disposition of rights in regard to Project Inventions and Patent rights relating thereto, which either:

8.12.1.1 Provides that the Participant will hold title to all Project Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor; or

8.12.1.2 Provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make Patent applications for the same, while securing for the Participant a license for the Project Inventions,

and any Patents therefore, on terms in compliance with the provisions of paragraph 8.12.2 below.

8.12.2 In the event that a Contractor holds title (or elects to retain title) for a Project Invention, the contracting Participant will secure for both Participants non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.

8.12.3 The provisions of sub-paragraphs 8.12.4 through 8.12.8 below will apply in regard to Patent rights for all Project Inventions made by any Participant's military or civilian employees, including those within Government-owned facilities, and for all Project Inventions made by Contractors for which the contracting Participant holds title or is entitled to acquire title.

8.12.4 Where a Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that Participant will consult with the other Participant regarding the filing of a Patent application for such Project Invention. The Participant that has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application or maintenance of the Patent granted thereon, that Participant will notify the other Participant of that decision, and permit the other Participant to continue the prosecution or the maintenance.

8.12.5 The Participants will provide to each other copies of Patent applications filed and Patents granted with regard to Project Inventions.

8.12.6 Each Participant will grant to the other Participant a non-exclusive, irrevocable, royalty-free license under its Patents for Project Inventions, to practice or have practiced, by or on behalf of the Participant, the patented Project Invention for Defense Purposes throughout the world.

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

8.12.8 Each Participant will notify the other Participant of any Patent infringement claims made in its territory arising in the course of work performed under any PA of this MOU. Insofar as possible, the other Participant will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in a manner they

determine to be fair at the time the Patent infringement claim is resolved. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the project of any invention covered by a Patent issued by their respective countries.