

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1 Except to the extent permitted in paragraph 12.2, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) or jointly acquired or produced Project Equipment to any Third Party without the prior written consent of the other Participant's government. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participant. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:

12.1.1 not retransfer, or permit the further retransfer of, any equipment or information provided; and

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

12.2 Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information that:

12.2.1 is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section III (Scope of Work);

12.2.2 does not include any Project Foreground Information or Project Background Information of the other Participant, and whose generation, test, or evaluation has not relied on the use of Project Equipment of the other Participant.

12.3 In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 12.2, the matter will be brought to the immediate attention of the other Participant's MA. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

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

12.5 Consent for Third Party sales and transfers of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project

Foreground Information, will be subject to foreign policy, national security considerations, and national laws, regulations, and policies. One Participant's government approval of the other Participant's government sale or transfer to a Third Party will take into account its willingness to sell or transfer such Project Equipment or Project Foreground Information to the same Third Party.

SECTION XIII

LIABILITY AND CLAIMS

13.1 With the exception of claims for loss of or damage to Project Equipment transferred from one Participant to the other Participant, which is addressed in Section VII (Project Equipment), claims arising under this MOU, including RUTF PAs, will be dealt with in accordance with paragraph 1 of the Chapeau Agreement.

CTE PAs

13.2 The Participants will share any costs required to be shared under subparagraph 1(b)(ii) of the Chapeau Agreement in the same proportions as costs are shared in the PA.

13.3 The Participants will share any costs required to be shared under subparagraph 1(b)(iv) of the Chapeau Agreement as follows:

13.3.1 For Contracts where one Participant contracts solely on its own behalf, the Participant awarding the Contract will pay the cost of claims arising under that Contract.

13.3.2 For Contracts where one Participant contracts on behalf of the other Participant, the Participant on whose behalf the Contract was awarded will pay the cost of claims arising under that Contract. The contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined in a PA.

13.3.3 For Contracts awarded on behalf of both Participants, the costs of claims arising under such Contracts 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. The contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined in a PA.

RUTF PAs

13.4 Unless mutually determined in a PA, the Performing Participant will pay all costs of claims under subparagraph 1(b)(ii) of the Chapeau Agreement.

13.5 The Participants will pay all costs of claims under subparagraph 1(b)(iv) of the Chapeau Agreement as follows:

13.5.1 For Contracts where one Participant contracts solely on its own behalf, the Participant awarding the Contract will pay the cost of claims arising under that Contract.

13.5.2 For Contracts where one Participant contracts on behalf of the other Participant, the Participant on whose behalf the Contract was awarded will pay the cost of claims

arising under that Contract. The contracting Participant will not indemnify Contractors against third party liability claims.

SECTION XIV

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

14.1 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 under a TEP Activity.

14.2 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 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. Any such costs will not be considered to fall under either Participant's shared costs.

SECTION XV

SETTLEMENT OF DISPUTES

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

SECTION XVI

GENERAL PROVISIONS

16.1 All activities of the Participants under this MOU will be carried out in accordance with their national laws. The obligations of the Participants will be subject to the availability of funds for such purposes.

16.2 In the event of a conflict between the terms of this MOU and any TEP PA or PET Form, this MOU will take precedence.

SECTION XVII

AMENDMENT, TERMINATION, ENTRY INTO EFFECT, AND DURATION

17.1 This MOU, or PAs to this MOU, may be amended by the mutual written consent of the Participants.

17.2 This MOU, or PAs to this MOU, may be terminated at any time by the mutual written consent of the Participants. In the event the Participants consent to terminate this MOU, or PAs to this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms. Termination of this MOU will result in the termination of all PAs to this MOU.

17.3 Either Participant may terminate this MOU, or PAs to this MOU, upon 90 days written notice of its intent to terminate to the other Participant. Such notice will be the subject of immediate consultation to decide upon the appropriate course of action to conclude the activities under this MOU or PA. In the event of such termination, the following rules apply:

17.3.1 The Participants will continue participation, financial or otherwise, in all PAs subject to the notice of termination, up to the effective date of termination;

17.3.2 Except as to Contracts awarded on behalf of both Participants, each Participant will be responsible for its own project-related costs associated with termination of the Project. For Contracts awarded on behalf of both Participants, the terminating Participant will pay all Contract modification and termination costs that would not otherwise have been incurred but for the decision to terminate. However, in no event will a terminating Participant's total financial contribution, including Contract termination costs, exceed that Participant's total financial contribution for the PA being terminated;

17.3.3 All Project Information and rights therein received under the provisions of this MOU or PAs prior to termination of the MOU or its PAs will be retained by the Participants, subject to the provisions of this MOU and its PAs;

17.3.4 If requested by the other Participant, the terminating Participant may continue to administer the project Contract(s) which it awarded on behalf of the other Participant on a reimbursable basis; and

17.3.5 Additional PA termination provisions consistent with this Section may be established in the PA.

17.4 The respective rights and obligations of the Participants regarding Section VII (Project Equipment), Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), Section XII (Third Party Sales and Transfers), Section XIII (Liability and Claims), Section XV (Settlement of Disputes) and this Section XVII (Amendment, Termination, Entry Into Effect, and Duration) will continue notwithstanding termination or expiration of this MOU or any of its PAs.

17.5 This MOU, which consists of seventeen (17) Sections and three (3) Annexes, will come into effect on the date of last signature, and will remain in effect for fifteen (15) years unless terminated by either Participant. This MOU will be automatically extended for successive five-year periods unless one Participant notifies the other in writing that it does not desire this MOU to be extended.

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 herein.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

Thomas P. Christie
Signature

Thomas P. Christie
Name

Director, Operational Test and Evaluation
Title

14 April 2003
Date

Washington, D.C.
Location

FOR THE DEPARTMENT OF DEFENCE
OF AUSTRALIA

Russ Shalders
Signature

VADM RUSS SHALDERS
Name

VICE CHIEF OF THE DEFENCE FORCE
Title

23 APRIL 2003
Date

CANBERRA
Location

ANNEX A

MODEL RECIPROCAL USE OF TEST FACILITIES (RUTF) PROJECT ARRANGEMENT
(PA)

RUTF PA NUMBER *

UNDER THE U.S. DOD-AS DOD
TEST AND EVALUATION PROGRAM (TEP) COOPERATION
MEMORANDUM OF UNDERSTANDING (MOU)
DATED

CONCERNING
(FULL DESIGNATION OF THE TEST AND TEST LOCATION)

(DATE)

**The U.S. DoD will assign the Project Arrangement number.*

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SECTION I

INTRODUCTION

This Reciprocal Use of Test Facilities (RUTF) Project Arrangement (PA) is entered into pursuant to the MOU between the Department of Defense of the United States of America (U.S. DoD) and the Department of Defence of Australia (AS DoD) for Test and Evaluation Program (TEP) Cooperation of (date).

The Participants have determined that conducting _____ at _____ is mutually beneficial.

(RUTF PAs may involve performance of multiple test events at multiple Test Facilities over multiple years.)

SECTION II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the MOU.)

SECTION III

T&E OBJECTIVES

The T&E objectives of this _____ PA are:

- a. To determine the _____
- b. To evaluate the _____
- c. To accomplish/improve _____

SECTION IV

SCOPE OF WORK

Test Description

- a. _____ is designed to _____.
- b. _____ is comprised of _____.

(Include any Customer Participant-provided test personnel, equipment (other than Project Equipment), or other assistance in this Section and provide the applicable details in the PA.)

Test Facility Services

(Outline the tasks and services to be performed by the Test Facility.)

The following T&E Activities will be performed by _____ during a period of up to _____ days/weeks during _____.

- a.
- b.
- c.

The following support will be provided by the Test Facility:

(For example: Technical and analytical assistance, consultation for preparation of the test plan, qualified personnel to conduct the T&E, any other specified support to customer.)

SECTION V

ESTIMATED TEST SCHEDULE

Day/Week/Month 1:

Dates

(List of activities to occur each day)

Day/Week/Month 2:

Dates

(List of activities to occur each day)

Day/Week/Month 3:

Dates

(List of activities to occur each day)

The dates and duration of the test are subject to change by either Participant. The U.S. DoD and AS DoD POs will keep each other informed of progress and apprise each other of potential schedule change, delay or cancellation.

The final report will be transmitted to the MAs six months before the termination date of this PA.

SECTION VI

MANAGEMENT

This PA will be directed and administered on behalf of the Participants by one PO from each Participant. POs are responsible for the implementation of the provisions of the MOU and PA.

Direct liaison between the Participants' POs is authorized. Alternate POs may also be designated. The POs are:

U.S. DoD PO: Title/Position _____

Organization _____

Mail Address _____

Phone & Fax _____

E-mail _____

AS DoD PO: Title/Position _____

Organization _____

Mail Address _____

Phone & Fax _____

E-mail _____

(The POs, as appropriate, may develop and agree to a test plan.)

Command, Control, Safety and Security Considerations

The performing Participant will retain command and control over all facilities, personnel, equipment and support units. Both Participants will adhere to standing operating procedures regarding command, control, safety and security, except where mutually determined otherwise in writing. In accordance with Section XI, (Security) of the MOU:

- a. The Participants are responsible for security of all publications and reference material.
- b. The performing Participant is responsible for the security of test site materials and publications.
- c. POs will coordinate security requirements prior to all classified testing.

SECTION VII

FINANCIAL PROVISIONS

The cost estimate for performance of the tasks under this PA is \$ _____. In no event will the Performing Participant exceed this cost estimate without the prior written consent of the Customer Participant. If the Performing Participant has reason to believe that this cost estimate will be exceeded, the Performing Participant will immediately notify the Customer Participant and will set forth a new cost estimate together with supporting documentation. The Participants will consult as soon as possible regarding the action to be taken in view of the revised cost estimate.

The Performing Participant will submit a request for payment to the Customer Participant at least 45 days in advance of the test requiring payment of the estimated cost. The Customer Participant will review the request for payment and respond with payment no later than five (5) days prior to the scheduled commencement of the test. The test effort will not commence until the funds are received.

(The Participants may adjust the time periods as necessary for each test.)

Upon completion of the test (including submission of the final report), the Performing Participant will provide a final statement of account to the Customer Participant, which details the actual costs incurred and payments received from the Customer Participant. After completing review of the final statement of account, the Participants will reconcile the account and make any final payments.

Requests for payment will contain the following information:

Date
PA Number
Invoice ID
Financial Manager's Contact Information
Financial Coding
Invoice Total

SECTION VIII

SPECIAL DISCLOSURE AND USE OF INFORMATION PROVISIONS (Optional)

(Insert any special disclosure and use of information provisions needed to implement the PA.)

SECTION IX
CLASSIFICATION

Only one of the three following possibilities must be selected:

- a. No Classified Information will be exchanged under this PA;
- b. The highest level of Classified Information exchanged under this PA is: CONFIDENTIAL; or
- c. The highest level of Classified Information exchanged under this PA is: SECRET.

The existence of this PA is *[Insert Classification]* and its contents are *[Insert Classification]*.

SECTION X
PRINCIPAL ORGANIZATIONS INVOLVED

(List Test Facilities and other organizations of the Participants.)

SECTION XI
PROJECT EQUIPMENT TRANSFERS

NOTES:

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replace ment Value

1. Specifically identify the test article. In the event that the cooperative efforts under the PA require the provision of other Project Equipment to either Participant, a list of such Project Equipment must be developed in general accordance with the preceding table. (Project Equipment that 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, and in the format at Appendix 2 to this Annex.)

2. *If jointly acquired Project Equipment is an aspect of the cooperative efforts under the PA, then terms and conditions for the disposal of such jointly acquired Project Equipment must be included in the PA.*

SECTION XII

ENTRY INTO EFFECT, DURATION AND TERMINATION

This _____ RUTF PA, a TEP Activity under the MOU between the Department of Defense of the United States of America and the Department of Defence of Australia, will come into effect upon signature by the Participants, and will remain in effect for ____ years unless terminated by either Participant. It may be extended by the written mutual determination of the Participants.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

FOR THE DEPARTMENT OF
DEFENCE OF AUSTRALIA

Signature

Signature

Name

Name

Title

Title

Date

Date

Location

Location

APPENDIX 1 – COST ESTIMATE MODEL

COST ESTIMATE FOR THE (Name of Test)
 Test Period (Insert Date)

Item	Task Description/Service	Labor	Facility Use	Materials	Travel	Total
<u>DIRECT COSTS</u>						
1	Test Planning					
2	Test Article Safety Inspection					
3	Test Preparation & Setup					
4	Flight Time & Flt Support					
5	Range Firings					
6	Ground Support (Telemetry & Communications)					
7	Toxic Fumes Test					
8	Human Factors Evaluation					
9	Technical / Review Meetings					
10	Secure Storage					
11	Supplies & Materials					
12	Contingencies (Retest, etc...)					
13	Data Analysis					
n	Report Preparation					

INDIRECT COSTS

(Indirect Costs charged to the Customer Participant will be only those required by the Performing Participant's laws and regulations. These costs may be itemized in a format similar to the table above.)

RUTF PA ID # XXXX

Note: The above table is a notional example. Cost estimate tables should be tailored to align with the requirements of particular tests.

APPENDIX 2 -- INVENTORY OF PROJECT EQUIPMENT TRANSFERS

Providing Participant	Receiving Participant	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Return Date	Replacement Value