

SECTION V

FINANCIAL PROVISIONS

5.1. Each Participant will contribute its equitable share of the full costs of the Project, including overhead costs, administrative costs, and, in accordance with Section XIII (Liability and Claims), costs of claims, and will receive its equitable share of the results of the Project, in accordance with the provisions of this MOU. Administrative costs include, but are not limited to, the costs incurred by the PMO related to the facilities and equipment necessary for the performance of tasks by personnel assigned to the PMO, and the costs of travel by such personnel in support of Project efforts.

5.2. Participation in this Project will involve contribution to both Financial and Non-Financial Costs.

5.2.1. The Financial Costs of the Project will be borne equally by the Participants. The Participants estimate that the Financial Costs of the Project will not exceed a Cost Ceiling of US \$11.37 million (then year dollars). The estimated allocation of costs for the Cost Ceiling is depicted in Annex B (Estimated Allocation of Cost Ceiling). The Cost Ceiling may be changed only upon the written consent of the Participants. The Participants will endeavour to perform, or to have performed, the work specified in Section III (Scope of Work) and fulfill all of the responsibilities under this MOU within a Cost Target established in the FMPD. The difference between the Cost Ceiling and the Cost Target will be managed by the SC. If at any time the PM has reason to believe that the Cost Target of the Project will be exceeded, the SC will be notified promptly and the PM will submit a new estimate of the Cost Target of the Project together with supporting documentation for SC approval. The SC will direct the PM as to what action should be taken.

5.2.2. The Non-Financial Costs of the Project include the costs of providing personnel to the PMO. The US Participant will bear the costs of providing the PM in accordance with paragraph 5.4. The other Participants will bear, in accordance with paragraph 5.4, the costs of providing their personnel to the PMO under paragraph 4.7; if a Participant does not provide personnel, the costs of Contracting for services under paragraph 4.9 in lieu of providing personnel will be borne entirely by that Participant as a cost under paragraph 5.3.

5.2.3. The U.S. dollar will be the reference currency for the Project, and the Project fiscal year will be the U.S. fiscal year (1 October – 30 September).

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

- 5.3.1. Costs associated with national representation at meetings by non-PMO members;
- 5.3.2. Costs associated with any unique national requirements identified by a Participant, including the costs of items and services intended for an individual Participant's support of its national NILE system;
- 5.3.3. Costs of contracting for services under paragraph 4.9 in lieu of a Participant's providing personnel to the PMO; and
- 5.3.4. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this MOU.

5.4. The costs of personnel in the PMO will be borne as follows:

- 5.4.1. The Host Participant will be responsible for all pay and allowances of Host Participant personnel in the PMO.
- 5.4.2. Each CPP's Participant will be responsible for the following costs of that CPP:
 - 5.4.2.1. All pay and allowances.
 - 5.4.2.2. Transportation of the CPP 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 PMO, 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. The foregoing will apply to the CPP's dependents and their personal property to the extent permitted under the laws and regulations of the government of the CPP's Participant.
 - 5.4.2.3. Compensation for the loss of, or damage to, the personal property of the CPP or the CPP's dependents, subject to the laws and regulations of the government of the CPP's Participant.
 - 5.4.2.4. Preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents, subject to the laws and regulations of the government of the CPP's Participant.

5.5. The PM will be responsible for preparing the detailed financial management procedures under which the Project will operate. These procedures, which must accord with the national accounting and audit requirements of the Participants, will be detailed in a FMPD prepared by the PM and subject to the approval of the SC. The FMPD will include an estimated schedule for contributions, which will be consistent with the funding requirements of paragraph 5.6.

5.6. The Participants recognize that in Contracting for the work in paragraphs 3.1.1. through 3.1.11. in Section III (Scope of Work) and for the procurement requests authorized and submitted by a Participant for items and services to be provided under paragraph 3.1.12. of Section III (Scope of Work), it may become necessary for the Host Participant to incur contractual or other obligations on behalf of the other Participants prior to receiving the other Participants' funds. If the Host Participant incurs any such obligations, the other Participants will pay their equitable share of such obligations and will make such funds available in such amounts and at such times as required by the Contracts or other obligations and will pay any damages and costs that may accrue from the performance of or cancellation of the Contracts or other obligations in advance of the time such payments, damages, or costs are due.

5.7. The Host Participant will be responsible for the audit of the procurement activities for which it is responsible under the Project in accordance with its national practices. The Host Participant will be responsible for the internal audit regarding administration of the other Participants' Project funds in accordance with its national practices. All audit reports of such funds will be promptly made available by the Host Participant to the other Participants without restrictions. Where auditors of a non-Host Participant or its government need to obtain or to inspect specific Project financial data to fulfill its national obligations, the Host Participant will grant access to such specific financial data at mutually determined times and locations.

5.8. A Participant will promptly notify the other Participants if available funds are not adequate to fulfill its responsibilities under this MOU. If a Participant notifies the other Participants that it is terminating or reducing its funding for this Project, all Participants will immediately consult with a view toward continuation on a modified basis. In the event the Participants conclude, following consultation, that such continuation is not practicable, the termination provisions of Section XIX (Amendment, Withdrawal, Termination, Entry into Effect and Duration) will apply.

SECTION VI

CONTRACTING PROVISIONS.

6.1. The Host Participant (acting through the US DON) will be responsible for Contracting for this Project in accordance with U.S. Contracting laws, regulations and procedures. The Contracting Officer will, when it facilitates satisfying the objectives of this MOU, seek waivers of national regulations, procurement procedures, and practices. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors. Only industries of the Participants' nations will be eligible for award of Contracts and first-level subcontracts for this Project. Contractors will be encouraged to offer opportunities for subcontracting to industries or entities of all the Participants' nations.

6.2. The responsibilities of the SC regarding Contracting will be in accordance with paragraphs 4.5.13. and 4.5.14. The PM will be responsible for the coordination of activities relating to the Project, and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The PM will review statements of work prior to the development of solicitations to ensure that they are in accordance with this MOU. In addition, the Contracting Officer will keep the PM advised of all financial arrangements with the prime Contractor.

6.3. The Contracting Officer will negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU, 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, the Contracting Officer will advise prospective Contractors of their responsibility to notify the Contracting Agency immediately, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Project Information or permit its use.

6.4. In the event the Contracting Officer 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 potential Contractors of any restrictions on the disclosure and use of such Information, the matter will be referred promptly to the SC for resolution.

6.5. The Contracting Officer will immediately advise the PM of any cost growth, schedule change, or performance problems that occur under a Contract placed by the Contracting Agency in connection with this Project.

6.6. Should price or cost investigation be required, such services will be obtained through the responsible national authorities of the Participant within whose territory the performing

Contractor or subcontractor is located, consistent with the existing arrangements between the Participants in that regard.

6.7. The Host Participant will not secure rights for itself in Contracts for the Project beyond those which it secures for the other Participants, if this results in additional costs to the other Participants or any reduction of their rights.

SECTION VII

PROJECT EQUIPMENT

7.1. Each Participant may provide Project Equipment identified as being necessary for executing the MOU to another Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another Participant will be developed and maintained by the PM, approved by the SC, and incorporated into the PMP in accordance with Section IV (Management) prior to such transfers.

7.2. The receiving Participant(s) will maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant(s) will return the Project Equipment to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Participant(s) will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value specified in the PMP, which will be computed pursuant to the providing Participant's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Participant, the receiving Participant(s) will issue a certificate of loss to the providing Participant and pay the replacement value specified in the PMP.

7.3. The providing Participant will deliver Project Equipment to the receiving Participant(s) at a mutually agreed location. Possession of the Project Equipment will pass from the providing Participant to the receiving Participant(s) at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Participant(s).

7.4. All Project Equipment that is transferred will be used by the receiving Participant(s) only for the purposes of carrying out this MOU, unless otherwise consented to in writing by the providing Participant. In addition, in accordance with Section XII (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

7.5. Project Equipment transferred to one or more Participants under this MOU will be returned to the providing Participant prior to the termination or expiration of this MOU.

7.6. Any Project Equipment which is jointly acquired on behalf of the Participants for use under this MOU will be disposed of during the Project or when the Project ceases, as determined by the SC. The Participants will share the proceeds from any jointly acquired Project Equipment transferred or sold in the same ratio as Financial Costs are shared under this MOU.

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

All Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out this Project. The Participants intend to acquire sufficient Project Information and rights to use such Information to accomplish the work detailed in Section III (Scope of Work) and to enable the Participants to achieve the overall objectives of the NILE Project stated in paragraph 2.1. and the specific objectives of the In-Service Support Phase stated in paragraph 2.2. of Section II (Objectives). Accordingly, the Participants will endeavor to identify the Project Information that will be required for the above mentioned uses and, within the limits of their national laws and regulations, to secure such Information and appropriate rights of use to such Information, and appropriate Patent rights.

8.2. Government Project Foreground Information

8.2.1. Disclosure: Project Foreground Information generated in whole or in part by a Participant's military personnel or civilian employees will be disclosed without charge to all Participants.

8.2.2. Use: Each Participant may use, or have used, all Government Project Foreground Information without charge for Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. If a Participant intends to use any Government Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of Section XII (Third Party Sales and Transfers) of this MOU will also apply.

8.3. Government Project Background Information

8.3.1. Disclosure: Each Participant, upon request, will disclose to the other Participants without charge any relevant Government Project Background Information generated by its military personnel or civilian employees outside the scope of this MOU, provided that:

8.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

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

8.3.1.3. disclosure is consistent with national disclosure policies, rules and regulations (as applicable) of the furnishing Participant.

8.3.2. Use: Government Project Background Information disclosed by one Participant to other Participants may be used without charge by, or on behalf of, the other Participants for NILE Purposes. However subject to proprietary rights held by other than the Participants and subject to the provisions of paragraph 12.2. of Section XII (Third Party Sales and Transfers) of this MOU, such Project Background Information furnished by a Participant may be used for Defense Purposes other than NILE, by the other Participants, without charge, when the use of such information is necessary for the use of the Project Foreground Information. The furnishing Participant, in consultation with the other Participants, will determine whether the use of such information is necessary. The furnishing Participant will retain all its rights with respect to such Project Background Information.

8.4. Contractor Project Foreground Information

8.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, will be disclosed without charge to all Participants. Project Foreground Information generated by a Contractor, but not delivered, will be made available by the Contractor, upon request of the Participants, for the costs related to its delivery in accordance with the Contract.

8.4.2. Use: Each Participant may use, or have used, without charge for Defense Purposes this Contractor Project Foreground Information. Each furnishing Participant will also retain its rights of use thereto in accordance with the applicable Contract. If a Participant intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Section XII (Third Party Sales and Transfers) of this MOU will also apply.

8.5. Contractor Project Background Information

8.5.1. Disclosure: Project Background Information (including information subject to proprietary rights) generated outside the scope of this MOU and delivered by Contractors or other entities under Contracts awarded by a Participant will be made available to the other Participants provided the following provisions are met:

8.5.1.1. such Project Background Information is necessary to or useful in the Project with the Participant in possession of the information determining, in consultation with the other Participants, whether it is "necessary to" or "useful in" the Project;

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

8.5.1.3. disclosure is consistent with national disclosure policies, rules and regulations (as applicable) of the furnishing Participant.

8.5.2. Use: Project Background Information delivered by Contractors under Contracts awarded in accordance with this MOU may be used by, or on behalf of, the Participants for NILE Purposes without charge, and for other Defense Purposes in accordance with such fair and reasonable terms as are arranged with the Contractor. Any other Contractor generated Project Background Information furnished by one Participant and disclosed to the other Participants may be used without charge by, or on behalf of, the other Participants for NILE Purposes only, and may be subject to further restrictions by holders of proprietary rights, and for other Defense Purposes in accordance with such fair and reasonable terms as are arranged with the Contractor. However, the furnishing Participant will retain all its rights with respect to such Project Background Information.

8.6. Alternative Uses of Project Information

8.6.1. Any Project Background Information provided by one Participant will be used by the other Participants only for the purposes provided for in this MOU, unless otherwise consented to in writing by the providing Participant.

8.6.2. The prior written consent of each Participant will be required for the use of Project Foreground Information for purposes other than those provided for in this MOU.

8.7. Proprietary Project Information

8.7.1. All Project Information subject to proprietary rights will be identified and marked, and it will be handled as Controlled Unclassified Information or as Classified Information, depending on its security classification.

8.7.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defense Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defense Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Project Information related to this MOU.

8.8. Patents

8.8.1. The Contracting 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:

- 8.8.1.1. 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
- 8.8.1.2. 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 Participants a license for the Project Inventions, and any Patents therefor, on terms in compliance with the provisions of paragraph 8.8.2. below.
- 8.8.2. In the event that a Contractor holds title (or elects to retain title) for a Project Invention, the Contracting Participant will secure for all 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.
- 8.8.3. The following provisions will apply in regard to Patent rights for all Project Inventions made by any Participant's military personnel 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:
 - 8.8.3.1. 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 Participants regarding the filing of a Patent application for such Project Invention. The Participant which has, or has the right to receive, title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participants 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 a Patent granted thereon, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution or maintenance of a Patent granted thereon;
 - 8.8.3.2. The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions; and
 - 8.8.3.3. The other Participants will acquire non-exclusive, irrevocable, royalty-free licenses to practice or have practiced, by or on behalf of the Participants, throughout the world for Defense Purposes, any Project Invention for which a Participant holds a Patent.

- 8.8.4. Patent applications which contain Classified Information, to be filed under this MOU, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.
- 8.8.5. Insofar as possible, each Participant will extend to the other Participants any relief from Patent infringement claims arising in the course of work performed under the Project that it may be able to claim on its own behalf. Each Participant will notify the other Participants of any Patent infringement claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Participants will provide information available to them that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory against a Participant or Participants, and will consult with the other Participants during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in the same percentage as they share the full Financial Costs of the Project. 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.

SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1. 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:

- 9.1.1. Such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information);
- 9.1.2. Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1. and will be subject to the provisions of Section XII (Third Party Sales and Transfers); and
- 9.1.3. 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 9.1.2., 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.

9.2. 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.

9.3. Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4. 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 X

VISITS TO ESTABLISHMENTS

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor facilities by employees of the other Participants or by employees of the other Participants' Contractors, provided that the visit is authorized by the Participants that are involved in the visit and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2. All 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.

10.3. 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.

10.4. 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 as reflected in the Project Security Instruction.

SECTION XI

SECURITY

11.1. All Classified Information provided or generated pursuant to this MOU will be used, stored, handled, transmitted, and safeguarded in accordance with the Participants' national security laws and regulations, to the extent that they provide a degree of protection no less stringent than that provided for NATO Classified Information as set out in the document "Security Within the North Atlantic Treaty Organization," CM(55)15(Final), of 15 October 1997, and its subsequent amendments.

11.2. Classified Information will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) (or National Security Authority (NSA) as applicable) of the Participants. Such Classified Information 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.

11.3. 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 permitted by paragraph 11.8. unless the other Participants consent to such disclosure. Accordingly, each Participant will ensure that:

11.3.1. The recipients 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 out in Section XII (Third Party Sales and Transfers);

11.3.2. The recipients will not use the Classified Information for other than the purposes provided for in this MOU; and

11.3.3. The recipients will comply with any distribution and access restrictions on information that is provided under this MOU.

11.4. 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.

11.5. The 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 and material will be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide will be developed by the PM within three months after this MOU enters into effect. They will be reviewed and forwarded by the SC to the appropriate

DSAs or NSA, and upon approval 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 NSA or DSAs. Pending approval of the In-Service Support Phase Project Security Instruction and Classification Guide, the D&D Subphase Two Project Security Instruction and Classification Guide will continue to apply.

11.6. The NSA or 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 any Contractors or subcontractors, or prospective Contractors or subcontractors, of any Classified Information received under this MOU, the NSA or DSA will:

- 11.6.1. Ensure that such Contractors or subcontractors, or prospective Contractors or subcontractors, and their facilities have the capability to protect the Classified Information adequately;
- 11.6.2. Grant a security clearance to the facilities, if appropriate;
- 11.6.3. Grant a security clearance for all personnel whose duties require access to the Classified Information, if appropriate;
- 11.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and the provisions of this MOU;
- 11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and
- 11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Project.

11.7. Contractors, prospective Contractors, subcontractors or prospective subcontractors which are determined by NSA/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 Participants will be consulted for approval prior to permitting such access.

11.8. 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.

11.9. Each Participant will ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project.

11.10. Information or material provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is Unclassified and the contents are Unclassified.

11.11. On behalf of, and in consultation with, the INFOSEC authorities of the other Participants, the Host Participant INFOSEC authority will coordinate INFOSEC aspects of the In-Service Support Phase, including as required, the transfer, sale, exchange, use, or disposal of INFOSEC information or material consistent with this MOU. The Host Participant will endeavor to ensure that INFOSEC information to the level necessary for the In-Service Support Phase will be made available to the PMO in a timely manner. To the extent that separate arrangements may be required for use under this MOU of INFOSEC information or material, such arrangements will be the subject of written arrangements between the INFOSEC authorities of the Host Participant and each other Participant. The Participants will use their best efforts to conclude such arrangements in a time frame consistent with the activities of this MOU.

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1. The Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired or produced Project Equipment, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the other Participants. Furthermore, no Participant will permit any such sale, disclosure, or transfer by others, including by the owner of the item, without the prior written consent of the other Participants. Such consent will not be given unless the government of each intended recipient consents in writing 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. A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by another Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing or obtaining authorization for such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

12.3. Consent for Third Party sales and transfers of Project Foreground Information or jointly acquired Project Equipment will not be withheld except for reasons of foreign policy, national security, or national laws. No Participant will refuse approval of a sale or transfer to a Third Party when it would be willing to sell or transfer such equipment or information to the same Third Party.

12.4. Sales or any other transfers to Third Parties of Project Foreground Information or any equipment embodying such Information may attract a levy to be shared among the Participants. Prior to any such sale or other transfer, the amount of the levy and the procedures for assessing and distributing such levy will be mutually determined by all Participants, taking into account their respective national laws, regulations, and procedures. Each Participant may reduce or waive its portion of the levy, but no Participant will be denied its prerogative to impose its portion of the levy.

SECTION XIII

LIABILITY AND CLAIMS

13.1. Subject to multilateral and bilateral treaties and agreements of the governments of the Participants concerning liability for claims, when applicable, the following provisions will apply regarding liability arising out of, or in connection with activities carried out in the performance of official duty in the execution of this MOU:

13.1.1. With the exception of loss of or damage to Project Equipment provided by one Participant to another, which is addressed under Section VII (Project Equipment), each Participant waives all claims against the other Participants for injury or death to its military or civilian personnel, and for damage to or loss of its property, or jointly acquired property, arising from the performance of official duties under this MOU.

13.1.2. In the event of claims from any other persons or entities for injury or death to persons or damage to or loss of property arising from the performance of official duties under this MOU, the Participants will share the costs of resolving the claims in the same percentage as they share the Financial Costs of the Project. Such claims will be processed by the appropriate Participant as decided by the Participants.

13.1.3. As to 13.1.1. and 13.1.2. above, if the Participants decide that the damage, loss, injury, or death is caused by reckless acts, reckless omission, willful misconduct, or gross negligence, the cost of any liability will be borne entirely by the Participant of the culpable person.

13.1.4. If a person or entity, other than the Participants (including their personnel), damages jointly acquired property, and the cost of making good such damage is not recoverable from such person or entity, such cost will be borne by the Participants in the same percentage as they share the Financial Costs of the Project.

13.2. Claims arising under any Contract awarded pursuant to Section VI (Contractual Arrangements) 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 nuclear activity or any 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.

13.3. Patent infringement claims will be settled in accordance with paragraph 8.8.5. of Section VIII (Disclosure and Use of Project Information).

SECTION XIV

ADDITION OF NEW PARTICIPANTS

14.1. The Participants recognize that other national defense organizations may wish to join the Project and, in principle, would favor the addition of new participants.

14.2. Unanimous consent of the Participants will be required to conduct discussions with potential additional participants. The Participants will discuss the arrangements under which another participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security) and Section XII (Third Party Sales and Transfers).

14.3. The Participants will jointly formulate the provisions, including financial provisions, under which additional participants might join. The addition of a new participant will require the unanimous written consent of the Participants, which will be reflected in an amendment to this MOU.