

SECTION VIII
DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

Both Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this MOU and its PAs. The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Section II (Objective), Section III (Scope of Work), Section VI (Contractual Arrangements) and the applicable PA.

8.2. Government Project Foreground Information

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

8.2.2. Use: Each Participant may use all Government Project Foreground Information without charge for its Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.3. Government Project Background Information

8.3.1. 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:

8.3.1.1. 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 and regulations of the furnishing Participant.

8.3.2. Use: Government Project Background Information disclosed by one Participant to the other may be used without charge by the other Participant for Project purposes; however, the furnishing Participant will retain all its rights with respect to such Project Background Information. Where the use of Government Project Background Information is necessary to enable the use of Project Foreground Information, such Project Background Information may be used for Defense Purposes, unless the provisions of the applicable PA limit such use of the 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 both Participants.

8.4.2. Use: Each Participant may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.5. Contractor Project Background Information

8.5.1. Disclosure: Any Project Background Information (including information subject to proprietary rights) generated and delivered by contractors will be made available to the other Participant provided the following conditions 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 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 and regulations of the furnishing Participant.

8.5.2. Use: Project Background Information furnished by one Participant's contractors and disclosed to the other Participant may be used without charge by the other Participant for Project purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant will retain all its rights with respect to such Project Background Information.

8.6. Project Information subject to proprietary rights:

8.6.1. All unclassified Project Information subject to proprietary rights will be identified, marked, and handled as Controlled Unclassified Information. All classified Project Information subject to proprietary rights will be so identified and marked.

8.6.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes of 19 October 1970, and its Implementing Procedures of 1 January 1971, will apply to this MOU.

8.7. Alternative Uses of Project Information

8.7.1. Any Project Background Information provided by one Participant will not be disclosed or used by the other Participant except for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant.

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

8.8. Patents:

8.8.1. 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:

8.8.1.1. provides that the Participant will hold title to all Project Inventions together with the right to make Patent application 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 Participant a license for the Project Inventions, and any Patents therefore, 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 the 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 provisions of sub-paragraphs 8.8.4 through 8.8.7 below will apply in regard to Patent rights for all Project Inventions made by any Participants' 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.

8.8.4. Where a Participant has or can secure the right to file a Patent application with regard to a Project Invention, that Participant will consult the other Participant regarding the filing of such Patent application. The Participant having such rights 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 such rights, or its Contractors, as appropriate, Patent applications covering any such Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution.

8.8.5. Each Participant will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.

8.8.6. 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 the Patent Project Invention for Defense Purposes throughout the world.

8.8.7. 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 Defence and for which Applications for Patents Have Been Made, signed on 21 September 1960, and its Implementing Procedures.

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. above, 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 above, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may 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* for each PA to this MOU.

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 industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have 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 the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will cite this MOU and the appropriate PA as the basis for the request and will be submitted in accordance with the International Visit Request Procedures described in MISWG Document Number 7.

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

SECTION XI SECURITY

11.1. All Classified Information or material provided or generated pursuant to this MOU and any of its PAs will be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, dated 14 April 1961, as amended, including the Industrial Security Annex thereto, of 18 April 1984, as amended.

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

11.3. Each Participant will take all lawful steps available to it to ensure that information provided or generated pursuant to this MOU and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.8 below, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

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

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

11.3.3. the recipient will comply with any distribution and access restrictions on information that is provided under the MOU.

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

11.5. The DSA of the Participant in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractors of any Classified Information received under this MOU, the DSAs will:

11.5.1. ensure that such Contractor, prospective Contractor, or subcontractors and their facility(ies) have the capability to protect the information adequately;

11.5.2. grant a security clearance to the facility(ies), if appropriate;

11.5.3. grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate;

11.5.4. 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;

11.5.5. carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and

11.5.6. ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU.

11.6. The POs will prepare a Project Security Instruction and a Classification Guide for each PA involving the transfer of Classified Information or material. The Project Security Instruction and Classification Guide will describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded. The appropriate Instruction and Guide will be developed by the POs within three months after signature of a PA. They will be reviewed and forwarded to the Participants' DSA's for approval and will be applicable to all government and Contractor personnel participating in the PA. Each 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 DSAs prior to the transfer of any Classified Information or Controlled Unclassified Information.

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

11.8. For any facility wherein Classified Information or material 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 or material pertaining to this MOU and any of its PAs. These officials will be responsible for limiting access to Classified Information or material involved in this MOU and any of its PAs 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 the Classified Information is limited to those persons who possess required security clearances and have a specific need for access to the information in order to participate in this MOU and any of its PAs.

11.10. Information or material provided or generated pursuant to this MOU and any of its PAs may be classified as high as SECRET, unless a PA specifically authorizes a higher classification. The existence of this MOU is Unclassified and the contents are Unclassified. The classification of a specific PA and its contents will be stated in the PA.

SECTION XII
THIRD PARTY SALES AND TRANSFERS

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

12.1.1. which is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under a PA or Section III (Scope of Work); and

12.1.2. which 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.

12.2. In the event questions arise 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 12.1. above, the matter will be brought to the immediate attention of the other Participant's PO. 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.

12.3. Except to the extent permitted in paragraph 12.1 above, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information to any Third Party without the prior written consent of the other Participants. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner, without the prior written consent of the other Participant. Such consent will not be given unless the government of the intended recipient agrees in writing with the Participants that it will:

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

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

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 which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

12.5. Consent for Third Party sales and transfers of Project Foreground Information or jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information will not be withheld except for reasons of foreign policy, national security, or national laws. A Participant will not refuse approval of such 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.

SECTION XIII
LIABILITY AND CLAIMS

13.1. Claims arising under this MOU will be dealt with under paragraph 1 of the Agreement Concerning Defense Cooperation Arrangements of 27 May 1993. Any cost sharing arrangements under paragraph 1(b)(ii) will be in the same ratio as the cost sharing arrangements established in each individual PA to this MOU.

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 restrictions on imports and exports, are not imposed in connection with work carried out under each Project.

14.2. Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are waived or otherwise 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.

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 only by consultation between the Participants 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 and its PAs will be carried out in accordance with their national laws. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

16.2. This MOU may be amended only by the written approval of the Participants. Any of the PAs under this MOU may be amended only by the written approval of the Participants' RDP Executive Agents.

Termination

16.3. This MOU and any of its PAs may be terminated at any time upon the written approval of the Participants. In the event the Participants decide to terminate this MOU or any PA, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms.

16.4. Either Participant may terminate this MOU or any of its PAs upon 120 days written notification of its intent to terminate to the other Participant. To decide upon the appropriate course of action, such notice of termination will be the subject of immediate consultation by the MPs if concerning the MOU, or by the appropriate EAs if concerning a PA. In the event that the MOU or any of its PAs is terminated the following rules apply:

16.4.1 The terminating Participant will continue participation, financial or otherwise, up to the effective date of termination of its participation.

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

16.4.3 All Project Information and rights therein received under the provisions of this MOU and any of its PAs prior to the termination of participation will be retained by the terminating Participant, subject to the provisions of this MOU.

16.4.4 Each Participant will make available to the other Participant all Project Foreground Information generated and delivered to it prior to termination of participation, and which has not been provided to the other Participant prior to the termination of participation.

16.4.5 If requested by the other Participant, the terminating Participant may continue to administer Project Contract(s), which it awarded on behalf of all the other Participant, on a reimbursable basis.

16.5. The respective rights and responsibilities 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), and Section XV (Settlement of Disputes) will continue to apply notwithstanding termination, expiration, or withdrawal from this MOU or any of its PAs.

Entry Into Effect And Duration

16.6. This MOU, which consists of sixteen (16) Sections and two (2) Annexes, will enter into effect upon signature by both Participants, and unless terminated or extended, will remain in effect for twenty-five (25) years. PAs will enter into effect upon signature by the Participants. All PAs will automatically terminate upon the termination or expiration of this MOU.

The foregoing represents the understandings reached between the Secretary of Defense on behalf of the Department of Defense of the United States of America and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

SIGNED in duplicate.

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

FOR THE SECRETARY OF STATE
FOR DEFENCE OF THE UNITED
KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND:

A. Volkman
Signature

[Handwritten Signature]
Signature

Alfred Volkman
Name

G. H. B. JORDAN
Name

Director, International Cooperation
Title

DUS(SFT)
Title

26 April 2000
Date

11th April 2000
Date

Washington, D.C.
Location

Washington
Location