SCIENTIFIC COOPERATION

Agreement Between the
UNITED STATES OF AMERICA
and NEW ZEALAND

Signed at Washington January 8, 2010

with

Annex

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

NEW ZEALAND

Scientific Cooperation

Agreement signed at Washington January 8, 2010;
Entered into force September 9, 2010.
With annex.

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF NEW ZEALAND

ON

SCIENCE AND TECHNOLOGY COOPERATION

CONTRIBUTING TO

DOMESTIC AND EXTERNAL SECURITY CAPABILITIES

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF NEW ZEALAND (hereinafter referred to as the "Parties"):

HAVING a mutual interest in research and development relating to domestic and external security matters;

SEEKING to make the best use of their respective research and technology development capacities, eliminate unnecessary duplication of work and obtain the most efficient and cost effective results through cooperative activities;

DESIRING to increase the exchanges of information and personnel in areas pertinent to the identification of all hazards affecting domestic and external security threats and countermeasures and the development of technical standards, operational procedures, and supporting methodologies that govern the use of relevant technologies;

STRESSING that physical and cyber-based critical infrastructure and key resources and other domestic and external security capabilities, both governmental and private, are essential to the operation and security of the Parties' respective economies and governments;

NOTING that the Parties' economies are increasingly interdependent, and that infrastructure protection and domestic and external security, including transport security, are of paramount concern to the Parties' respective governments;

BEING AWARE of research, development, testing, evaluation, development of technical standards and operations in both countries in chemical, biological, radiological, nuclear and explosive countermeasures and in other areas that could enhance domestic and external security;

NOTING the important work accomplished under the Agreement between the Government of the United States of America and the Government of New Zealand for Scientific and Technological Cooperation, done at Washington on May 21, 1991;

RECOGNIZING a common desire to:

- expand the domestic and external security technology capabilities of each Party;
- minimise unnecessary duplication of work;
- obtain more efficient and cost-effective results; and
- adapt more flexibly to the dynamic threat and all hazard environment

through cooperative activities that are mutually beneficial and that relate to the application of state-of-the-art and emerging security technologies, making best use of the Parties' respective research, development, and testing and evaluation capacities;

AFFIRMING a common interest in enhancing the longstanding collaborative efforts of the Parties' respective agencies, private sector and governmental organizations, and academic institutions in generating scientific and technological solutions to counter threats, reduce vulnerabilities, and respond to and recover from incidents and emergencies in those areas having the potential for causing significant security, economic, and social impacts; and

DESIRING to set forth a vehicle for the conduct of cooperative scientific and technological research, development, testing and evaluation in the field of domestic and external security;

HAVE AGREED as follows:

ARTICLE 1

Definitions

For purposes of this Agreement between the Government of the United States of America and the Government of New Zealand on Science and Technology Cooperation contributing to Domestic and External Security Capabilities (the "Agreement"), the Parties have adopted the following definitions:

Agreement Director	Has the meaning given to it in Article 5 (Management) of this Agreement.
Business Confidential Information	Has the meaning given to it in Section IV of Annex I (Intellectual Property Rights) to this Agreement.
Classified Contract	A Contract that requires, or will require, access to Classified Information by a Contractor or by its employees in the performance of a Contract.
Classified Information	Official information that requires protection for national security, law enforcement, domestic security, or other reasons and is so designated by the application of the appropriate security classification markings in accordance with the national laws, regulations, policies, or directives of either Party. It may be stored in any form or medium whatsoever, including, but not limited to, oral, visual, magnetic, electronic, or documentary form, or in the form of Equipment and Material or technology. Classified Information shall have the same meaning as that in the General Security of Information Agreement of 1952, as amended.
Contract	Any mutually binding legal relationship under the laws of either Party that obligates a Contractor to furnish supplies or services in relation to a Project Arrangement.
Contracting Agency	Any entity within the government organization or any governmental entity of a Party that has authority to enter into, administer, and/or terminate contracts.
Contractor	Any entity awarded a Contract by, or entering into a Contract with, a Party in relation to a Project Arrangement.
Controlled Unclassified Information	Information that is not deemed to be Classified Information in the United States, but to which access or distribution limitations have been applied in accordance with national laws, regulations, policies, or directives of either Party. Whether the information is provided or generated under this Agreement, it will be marked to identify its sensitive character. This

	definition includes, but is not limited to, information marked "Sensitive Homeland Security Information," "Sensitive Security Information," "For Official Use Only," "Law Enforcement Sensitive Information," "Protected Critical Infrastructure Information," "Restricted," "Trusted Information Sharing Network for Critical Infrastructure Protection (TISN) In Confidence," "In Confidence," and "Sensitive." Controlled Unclassified Information may include Business Confidential Information.
Cooperative Activity	Any form of activity described in Article 7 (Forms of Cooperative Activity) of this Agreement on which the Parties agree to cooperate to achieve the objectives of this Agreement. Such activity will normally take the form of a Project.
Critical Infrastructure and Key Resources	Governmental and/or private activities or sectors that are identified by each Party in its laws, executive orders, directives or policies as "Critical Infrastructure and Key Resources."
Designated Security Authority (DSA)	The government authority responsible for the development of policies and procedures governing security of Classified or Controlled Unclassified Information covered by this Agreement.
Domestic and External Security	Refer to a concerted national effort to prepare for, protect against, prevent, respond to, and recover from all hazards, including terrorism, through actions such as, but not limited to, border and transport security, law enforcement, protection of critical infrastructure and key resources and emergency management.
Equipment and Material	Material shall encompass everything regardless of its physical character or makeup including documents, writing, hardware, equipment, machinery, apparatus, devices, models, photographs, recordings, reproductions, notes, sketches, plans, prototypes, designs, configurations, maps and letters, as well as all other products, substances or material from which information can be derived.
General Security of Information Agreement	Security of Information Agreement between the United States Secretary of Defense and the New Zealand Minister of Defence of September 2 1952, as

amended by the Exchange of Notes between the Government of the United States of America and the Government of New Zealand concerning the Safeguarding of Classified Information of 1961 and the Exchange of Notes constituting an Understanding, adding to the Annex of General Security Procedures contained in the Exchange of Notes of November 17, 1961; of 1982.

Intellectual Property

Has the meaning given in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967 and may include other subject matter as agreed by the parties.

Participant

Any non-federal (in the case of the United States) or non-central (in the case of New Zealand) government person or entity, including but not limited to a private sector organization, academic institution, or laboratory (or subsidiary thereof) engaged in Cooperative Activity in accordance with Article 9 (Participants).

Personnel Security Clearance Assurance (PSCA)

a. A certification provided by one of the Parties concerning the level of personnel security clearance held by an individual who is employed by a government agency or by a Contractor under the jurisdiction of one of the Parties.
b. A statement provided by the DSA of an individual's country of citizenship concerning that individual's eligibility for a personnel security clearance at a level specified by the requesting Party for individuals who are citizens of one Party but are to be employed by the other Party or its Contractors.

Project

A specific form of Cooperative Activity described in Article 8 (Projects).

Project Arrangement

The instrument setting out the scope of any Project to be carried out by the Parties described in Article 8 (Projects).

Project Background Information

Any information furnished to a Project regardless of form or type, including that of a scientific, technical,

	business, or financial nature, and including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, software, source code, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations; whether in magnetic tape, electronic media, computer memory, or any other form and whether or not subject to intellectual property protections.
Project Development	That stage of a Project during which Project Foreground Information arises through the development of technologies, prototype equipment and other activities included in a Project.
Project Foreground Information	Any information created in a Project, regardless of form or type, including that of a scientific, technical, business, or financial nature, and including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, software, source code, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations; whether in magnetic tape, electronic media, computer memory, or any other form and whether or not subject to intellectual property protections.
Receiving Party	The Party to which Classified Information is transferred.
Research, Development, Testing and Evaluation (RDT&E)	Programs and activities, including basic research, applied research, advanced technology development, proof of principle, verification, validation, and development of technical standards of the Parties and/or Participants that seek to identify, develop, and implement technological and analytical solutions, tools and techniques to address the domestic and external security capability needs of each Party.
Sending Party	The Party that originates and/or transfers Classified Information to the Receiving Party.
Sponsorship Arrangement	A written agreement between a Participant, including a Contractor, and a Party where the Party engages the

	Participant to carry out work on its behalf relating to Cooperative Activity.
Technology Management Plan	A specific component of the Project Arrangement jointly developed by the Parties in which they agree on how Project Background and Foreground Information will be handled, and which will discuss among other things, the rights of the Parties and their Contractors and Participants concerning Intellectual Property created under this Agreement, including how any royalties shall be shared, where such Intellectual Property shall be protected, and who shall be responsible for obtaining that protection and granting licenses.
Third Party	Any entity or person who is neither a Party to this Agreement nor a Participant in any of its Cooperative Activities.
Transport Security	Includes aviation, maritime, surface transport, offshore oil and gas and supply chain security measures that contribute to attaining and maintaining a more secure transport sector against the threat of terrorism and other unlawful acts.

ARTICLE 2

Objective

The objective of this Agreement is to establish a framework to encourage, develop and facilitate bilateral Cooperative Activity in science and technology that contributes to the domestic and external security capabilities of both Parties in:

a) the prevention and detection of, response to, and forensics and attribution applied to, terrorist or other domestic and external security threats, hazards, and indicators;

b) the promotion and development of Transport Security, including through administrative and operational Cooperative Activities;

c) the protection of Critical Infrastructure and Key Resources; and

d) crisis response, consequence management, and mitigation for high-consequence events.

ARTICLE 3

Means of Achieving Objectives

1. The Parties shall seek to achieve the objectives set out in Article 2 (Objective) by means which may include, but are not limited to:

   a) facilitating a systematic exchange of technologies, personnel, and information derived from or applied to similar and complementary operational Research, Development, Testing and Evaluation;

   b) collaborating to develop technologies and prototype systems that assist in countering present and anticipated terrorist actions in their respective territories and other domestic and external security threats that satisfy their common strategic interests and requirements;

   c) integrating or adapting the domestic and external security technologies of each Party to save development costs;

   d) conducting evaluation and testing of prototype domestic and external security technologies;

   e) developing an approach to identify shared priorities, including in areas of research for Cooperative Activity;

   f) ensuring consistent and appropriate measures of effectiveness by development and implementation of appropriate standards and supporting test protocols and methodologies;

   g) involving, as appropriate, a wide range of public and private sector research and development organizations in Cooperative Activity developed pursuant to this Agreement;

   h) providing reciprocal opportunities to engage in Cooperative Activity, with shared responsibilities and contributions, which are commensurate with the Parties' or the Participants' respective resources;

   i) providing comparable access to government-sponsored or government-supported programs and facilities for visiting researchers and experts, and comparable access to and exchange of information and Equipment and Material;

   j) facilitating prompt exchange of information and Equipment and Material, which may affect Cooperative Activity, and facilitating the dissemination

of information and Equipment and Material, consistent with applicable national laws, regulations, policies and directives; and

k) utilizing and applying Project Foreground Information derived from Cooperative Activity to benefit both Parties.

2. All activities of the Parties pursuant to this Agreement shall be carried out in accordance with their national laws and regulations.

ARTICLE 4

Executive Agents

1. The Under Secretary of Science and Technology of the United States Department of Homeland Security is the primary official within the Government of the United States with responsibility for executive oversight of Cooperative Activity, as defined in this Agreement, for the United States and is hereby designated as the "U.S. Executive Agent" responsible for the administration of this Agreement. The duties of the U.S. Executive Agent may be delegated to other officials within the Department of Homeland Security.

2. The Deputy Secretary of the New Zealand Ministry of Foreign Affairs and Trade is the primary official within the Government of New Zealand with responsibility for executive oversight of Cooperative Activity for New Zealand and is hereby designated as the "New Zealand Executive Agent" responsible for the administration of this Agreement. The duties of the New Zealand Executive Agent may be performed on his or her behalf by the Director of the Americas Division of the Ministry of Foreign Affairs and Trade.

3. Prior to undertaking Cooperative Activity (including any Project) under this Agreement, the Parties shall agree in writing upon the nature, scope, and duration of the Cooperative Activity.

4. Where, because of changes in the administrative arrangements for either Party, responsibility for the oversight of this Agreement is no longer held by those currently designated as "U.S. Executive Agent" or "New Zealand Executive Agent", the relevant Party shall provide the other Party in writing with the details of its new Executive Agent without requiring amendment to this Agreement.

ARTICLE 5

Management

1. The Executive Agents shall appoint Agreement Directors who shall be responsible for the day-to-day management of this Agreement and its Cooperative Activities. In addition the Agreement Directors shall be responsible for:

   a) promoting Cooperative Activity under this Agreement;

   b) managing activities carried out under this Agreement and its Projects and exercising technical and financial oversight;

   c) serving as a repository for any and all documentation that is generated pursuant to this Agreement, including Project Arrangements and any annexes thereto;

   d) monitoring the overall use and effectiveness of this Agreement;

   e) recommending amendments to this Agreement to the Parties;

   f) resolving issues arising under this Agreement;

   g) authorizing involvement by Participants in Cooperative Activities pursuant to this Agreement;

   h) establishing and maintaining security guidelines, including but not limited to procedures related to exchange, storage, and transmission of information and equivalent security markings to be applied to exchanged information in accordance with Article 12 (Information Security);

   i) ensuring that any requirements to exchange Classified Information in connection with any Project are fully identified in advance and specifically agreed to prior to the conclusion of any Project Arrangement;

   j) developing and maintaining an outline of the Cooperative Activities and their associated costs; and

   k) developing and maintaining a strategic plan setting out the objectives of the Cooperative Activities being carried out at any given time and the Parties' intentions for future cooperation.

2. The Agreement Directors shall meet at least annually to review implementation of the Agreement and at such other times as they consider necessary to implement this Agreement. The Agreement Directors shall be responsible for coordinating with other coordination bodies established by the Parties.

ARTICLE 6

Areas of Cooperative Activity

1. The Parties shall facilitate Cooperative Activity in broad areas related to domestic and external security. Areas of Cooperative Activity may include, but are not limited to:

   a) development and implementation of all hazard, threat, and vulnerability assessments, interdependency analyses, and methodologies related to potential hazards and threats to domestic and external security;

   b) assessment and evaluation of prior operational experience for the purpose of articulating operational deficiencies into definable technical requirements and appropriate standards and supporting methodologies;

   c) integration of existing technologies for use in surveillance and detection in support of permissible domestic and external security activities, or in defense against terrorism and other domestic and external threats and hazards;

   d) research and development of technologies and systems to meet user requirements, capability gaps, or national needs;

   e) testing and evaluation of specific prototype systems for domestic and external security applications in both laboratory environments and real or simulated operational settings. This includes technologies associated with enhanced detection and monitoring of potential terrorist activities and those associated with recovery and reconstitution of damaged or compromised systems;

   f) preparation of detailed final test reports to allow either Party or its Participants to evaluate follow-on efforts individually or to allow the transition of successful prototypes into operational deployments;

   g) system protection (including protection of automated infrastructure control systems) and information assurance (including protecting the integrity of data and information in control systems);

h) reciprocal education, training, and exchange of scientific and technical personnel, and exchange of Equipment and Material in science and technology areas including Research, Development, Testing and Evaluation;

i) development and exchange of best practices, standards, and guidelines ; and

j) commercialization and other exploitation of Project Foreground Information and any resulting Equipment and Material developed through Cooperative Activity to achieve the effective transition of technology from the research and development environment to the operational environment.

ARTICLE 7

Forms of Cooperative Activity

Cooperation under this Agreement may include, but is not limited to, any of the following:

a) coordinated research Projects and joint research Projects;

b) joint task forces to examine emergent domestic and external security challenges;

c) joint studies and scientific or technical demonstrations;

d) joint organization of field exercises, scientific seminars, conferences, symposia, and workshops;

e) training of scientists and technical experts;

f) visits and exchanges of scientists, engineers, or other appropriate personnel;

g) exchanges or sharing of information and Equipment and Material;

h) exchange of information on practices, laws, regulations, standards, methods, and programs relevant to cooperation under this Agreement;

i) joint use of laboratory facilities and Equipment and Material, for conducting scientific and technological activities including Research, Development, Testing and Evaluation; and

j) joint management of the commercialisation and exploitation of Equipment and Material and Project Foreground Information developed through Cooperative Activity.

ARTICLE 8

Projects

1. Cooperative Activity under this Agreement shall normally be implemented in the form of Projects to be conducted pursuant to Project Arrangements.

2. Project Arrangements shall ordinarily contain the following terms and conditions for each Project:

a) its nature;

b) its scope;

c) its duration;

d) the manner in which it will be funded;

e) specific details of any transfer of Equipment and Material and the identity of personnel and/or organizations, if any, to be committed to the Project;

f) Project Background Information to be used in the Project;

g) any specific provisions for terminating Participant involvement;

h) whether the use of Classified Information will be required;

i) any safety measures to be followed, including, where appropriate, specific procedures for dealing with hazardous or dangerous material;

j) any applicable cost sharing provisions;

k) any applicable cost ceiling;

l) currency variation arrangements;

m) any necessary technical annexes;

n) the allocation of responsibility for any taxes, duties or other government charges that may arise;

o) provisions addressing the national law that shall apply to Contracts made in relation to the Project Arrangement;

p) a Technology Management Plan containing details concerning the sharing, allocation and protection and/or benefits derived from the creation, use or exploitation of Intellectual Property under the Project, including any restrictions on third party sales or transfers;

q) any other consistent terms and conditions necessary to ensure the required development of the Project

3. Project Arrangements are subject to the provisions of this Agreement. In the case of any inconsistency, the terms of this Agreement shall prevail.

ARTICLE 9

Participants

1. Subject to the provisions of this Article, a Party may engage a Participant to carry out work relating to Cooperative Activity on its behalf. The engagement of any Participant in the implementation of any Cooperative Activity shall require the non-sponsoring Party's prior review and written approval.

2. Before engaging a Participant to carry out work, a Party must enter into a Sponsorship Arrangement unless such an agreement already exists that can support Cooperative Activities pursuant to this Agreement.

3. The Party engaging a Participant shall ensure that the Participant agrees to:

   a) carry out any work relating to Cooperative Activity in accordance with the terms of this Agreement; and

   b) report to that Party's Agreement Director on a periodic basis.

4. The Parties' Agreement Directors shall jointly determine the frequency and scope of the reporting requirement referred to in paragraph 3(b) of this Article.

5. In the event that a question arises with respect to a Participant and/or its activities under this Agreement, the Parties shall consult to consider the Participant's role in Cooperative Activity. If either Party objects to a Participant's continued participation and requests its termination, the Party that sponsored the Participant shall give the request sympathetic consideration, including as to the consequences of terminating the Participant's participation.

6. Nothing in this Agreement or any Project Arrangement precludes a Party who has sponsored a Participant from suspending its own Participant's activities or replacing the Participant in one or more of its Project Arrangements.

ARTICLE 10

Contracting

1. The Parties shall ensure that Project Arrangements are supported by Contracts where necessary or appropriate. The Contracts may be formed between the Parties and their Participants, or the Contracts may be formed amongst the Participants, where appropriate.

2. All Contracts made pursuant to Project Arrangements shall include terms and conditions equivalent to the provisions of this Agreement, the relevant Project Arrangements, and their associated Technology Management Plans. Without limiting the foregoing, each Party or its Contracting Agency shall negotiate to obtain the rights for both Parties to use and disclose Project Foreground Information as specified in Article 13 (Intellectual Property Management and Use of Information) and to obtain the rights contained in Article 14 (Publication of Research Results) unless the other Party agrees in writing that they are unnecessary in a particular case, and each Party's Contracting Agency shall insert into its Contracts, and require its contractors and subcontractors to insert in subcontracts, suitable provisions to satisfy Article 12 (Information Security), Article 13 (Intellectual Property Management and Use of Information), Article 14 (Publication of Research Results) and Article 17 (Third Party Sales and Transfers).

ARTICLE 11

Finance

1. Subject to the availability of funds and to the provisions of this Article, each Party shall bear its own costs of discharging its responsibilities under this Agreement and its associated Project Arrangements.

2. Except as provided in paragraph 1 of this Article, this Agreement creates no standing financial commitments.

3. Notwithstanding paragraph 1 of this Article, the Parties may agree to share costs for Cooperative Activity. Detailed descriptions of the financial provisions for Cooperative Activity, including the total cost of the activity and each Party's cost share, shall be agreed between the Parties in Project Arrangements in accordance with paragraph 4 of this Article.

4. At the commencement of each Project, the Parties shall establish the equitable share of the total costs, including overhead costs and administrative costs. They shall also establish a cost target, a cost ceiling, and the apportionment of potential liability to be borne by each Party in the Project. In determining each Party's equitable share of total costs, the Parties may take into account:

   a) funds provided by one Party to the other for work under this Agreement ("financial contributions");

   b) material, personnel, use of Equipment and Material and facilities provided for the performance of work under this Agreement ("non-financial contributions") to directly support Agreement efforts. The Parties also recognize that prior work can constitute a non-financial contribution; and

   c) the ownership of Project Background Information utilized in the Project.

5. The following costs shall be borne entirely by the Party incurring the costs and are not included in the cost target, cost ceiling, or Project costs:

   a) costs associated with any unique national requirements identified by a Party; and/or

   b) any costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.

6. A Party shall promptly notify the other if available funds are not adequate to undertake activities arising as a result of this Agreement. If a Party notifies the other that it is terminating or reducing its funding for a Project, both Parties shall immediately consult with a view toward continuation on a changed or reduced basis. If this is not acceptable to both Parties, the respective rights and responsibilities of the Parties (and Participants) under Article 12 (Information Security), Article 13 (Intellectual Property Management and Use of Information) and Article 14 (Publication of Research Results) shall continue notwithstanding the termination or expiration of the Project.

7. Prior to the commencement of each Project, the Parties shall jointly develop a Technology Management Plan.

8. Each Party shall be responsible for any audit of its activities in support of Cooperative Activity, including the activities of any of its Participants. Each Party's audits shall be in accordance with its own national practices. For Project Arrangements where funds are transferred from one Party to the other Party, the receiving Party shall be responsible for the internal audit regarding administration of the other Party's funds in accordance with national practices. Audit reports of such funds shall be promptly made available by the receiving Party to the other.

9. The U.S. dollar shall be the reference currency for this Agreement, and the fiscal year for any Project shall be the U.S. fiscal year.

ARTICLE 12

Information Security

1. All exchanges of information and Equipment and Material, including Classified Information, between the Parties and between Parties and Participants, shall be carried out in accordance with the applicable laws and regulations of the Parties, including those relating to the unauthorized transfer or re-transfer of such information and Equipment and Material.

   The transfer of technical data for the purpose of discharging the Parties' obligations with regard to interface, integration, and safety shall normally be made without restriction, except as required by national laws and regulations relating to export control or the control of classified data. If design, manufacturing, and processing data, and associated software, which is business confidential but not export controlled, is necessary for interface, integration, or safety purposes, the transfer shall be made and the data and associated software shall be appropriately marked.

   All information, Equipment and Material subject to export controls shall not be transferred pursuant to this Agreement unless such transfers are compliant with the originating Party's export control laws, regulations and policies.

2. Classified Information:

   a) All Classified Information provided or generated pursuant to this Agreement and any of its Project Arrangements shall be stored, handled, transmitted, and safeguarded in accordance with the General Security of Information Agreement. The Parties shall agree on any implementing security arrangements that are deemed necessary. Prior to the sharing of Classified Information, the providing Party will ensure that the information is properly marked and that the receiving Party is aware of the pending transfer.

   b) The Parties shall appoint a DSA to establish implementing security arrangements and procedures consistent with this Agreement.

   c) Each Party shall 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 Cooperative Activity established pursuant to this Agreement.

d) Each Party shall ensure that it incorporates the provisions of this Article into Project Arrangements. In addition, if either Party deems it necessary, Project Arrangements shall include:

   i) detailed provisions dealing with the prevention of unauthorized transfer or re-transfer of information and Equipment and Material; and/or

   ii) detailed distribution and access restrictions on information and Equipment and Material.

e) Each Party shall take all necessary lawful steps available to it to ensure that Classified Information provided or generated pursuant to this Agreement is protected from disclosure, unless the other Party consents to such disclosure.

f) Any declassification of any joint Project Foreground Information must be agreed upon by both Parties prior to declassification.

g) Classified Information shall be transferred only through official government-to-government channels or through channels approved by both Parties. Such Classified Information shall be given the equivalent level of classification in the country of receipt as it was given in the country of origin and shall be marked with a legend containing the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

h) The Parties shall investigate all cases in which it is known or where there are reasonable grounds for suspecting that Classified Information provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each Party shall promptly and fully inform the other of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

i) Unless both Parties agree in writing that it is unnecessary in a particular case, Contractors, prospective Contractors, subcontractors, or private sector Participants that are determined by either Party to be under financial, administrative, policy or management control of nationals or entities of any country that is not a Party to this Agreement may only participate in a Contract or subcontract requiring access to Classified Information that has been classified on grounds of national security if enforceable measures are in effect to ensure that the nationals or entities of that country do not have access to such Classified Information.

j) Information or Equipment and Material provided or generated pursuant to this Agreement may not be classified any higher than the "TOP SECRET" level.

3. Controlled Unclassified Information: The nature and amount of the Controlled Unclassified Information to be acquired and disseminated pursuant to this Agreement shall be consistent with the objectives of this Agreement and the following guidelines and procedures:

a) Controlled Unclassified Information shall be used by the receiving Party only for the purposes directly related to Cooperative Activity conducted pursuant to this Agreement;

b) access to Controlled Unclassified Information shall be limited to those personnel of the receiving Party whose access is necessary for the permitted use under this Agreement;

c) all necessary lawful steps shall be taken, which may include national classification where appropriate, to keep Controlled Unclassified Information free from unauthorized disclosure, including requests under any public access provisions;

d) Controlled Unclassified Information provided under this Agreement is to be marked by the Party providing it with a legend containing the country of origin, the conditions of release, the fact that it relates to this Agreement and a statement to the effect that access to the information is controlled; and

e) Controlled Unclassified Information provided or generated pursuant to this Agreement shall be stored, handled, and transmitted in a manner that ensures proper control. Prior to authorizing the release of Controlled Unclassified Information to any Participant, the authorizing Party shall ensure the Participant is legally required to control such information in accordance with the provisions of this Article.

4. Business Confidential Information:

a) Each Party shall safeguard and protect identified Business Confidential Information that is furnished or is created pursuant to this Agreement in accordance with Annex I to this Agreement. The receiving Party shall maintain security over such items, and they shall not be retransferred without the authority of the government that provided such items.

b) The Parties shall ensure that any Participants are legally required to control and safeguard Business Confidential Information in accordance with this Agreement.

ARTICLE 13

Intellectual Property Management and Use of Information

1. General: Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out Cooperative Activities. The Parties intend to acquire sufficient Project Background Information and/or rights to use such information to enable the development of technologies, prototype equipment, and other activities included in a Project. The nature and amount of information to be acquired and disclosed shall be consistent with this Agreement and the terms of individual Project Arrangements.

2. Exploitation: Issues related to the management of Project Background Information and Project Foreground Information, including the allocation of any benefits (including royalties) derived from the creation and exploitation of Intellectual Property in Project Foreground Information in respect of Cooperative Activities under this Agreement shall be governed by the Articles of this Agreement, including the provisions of Annex I to this Agreement, and any Technology Management Plans associated with a Project.

3. Government Furnished Project Background Information:

   a) Disclosure: Unless a Project Arrangement provides otherwise, each Party shall disclose to the other Project Background Information in its possession or control, provided that:

      (i) the Project Background Information is necessary to or useful in the implementation of a proposed or existing Project established pursuant to this Agreement. The Party in possession or control of the information shall determine whether it is "necessary to" or "useful in" establishing new Projects or implementing existing ones;

      (ii) the Project Background Information shall be made available without adversely affecting the rights of holders of Intellectual Property or Business Confidential Information; and

      (iii) disclosure is consistent with national disclosure policies, laws, and regulations of the furnishing Party.

   b) Use: Unless a Project Arrangement provides otherwise, Government Furnished Project Background Information disclosed by one Party to the other may be used without charge by the other Party for Project Development purposes only; and the furnishing Party shall retain all its

rights with respect to such Government Furnished Project Background Information. Where the use of Government Furnished Project Background Information is necessary to enable the use of Project Foreground Information, such Government Furnished Project Background Information may be used by the receiving Party for domestic and external security purposes, upon agreement of the Parties and in accordance with applicable laws and regulations.

4. Participant Furnished Project Background Information:

a) Disclosure: Unless a Project Arrangement provides otherwise, Project Background Information furnished by a Participant sponsored by one Party shall be made available to the other Party provided the following conditions are met:

(i) the Project Background Information is necessary to or useful in the Arrangement. The Party in possession or having control of the information shall determine whether it is "necessary to" or "useful in" a Project;

(ii) the Project Background Information may be made available without adversely affecting the rights of holders of Business Confidential Information or Intellectual Property; and

(iii) disclosure is consistent with national disclosure policies, laws, and regulations of the furnishing Party.

b) Use: Project Background Information furnished by Participants may be subject to restrictions by holders of Intellectual Property. In the event that it is not subject to restrictions preventing its use, it may only be used by the Parties for Project Development purposes. If a Party wants to use Participant Furnished Project Background Information for purposes other than Project Development, (which other purposes shall include, without limitation, sales and licences to Third Parties), then the requesting Party must obtain any required licenses from the owner or owners of the rights to that information.

5 Project Foreground Information:

Project Foreground Information may be commercialised where appropriate, in which case benefits derived from the utilisation and application of such information shall be distributed according to the relative contributions of the Parties to the Project, the cost of commercialisation, the degree of commitment of the Parties to obtaining legal protection of Intellectual Property, and such other factors as are deemed appropriate, as determined in a Technology Management Plan. Intellectual Property rights in Project

Foreground Information shall be allocated as provided in Annex I to this Agreement.

ARTICLE 14

Publication of Research Results

1. The Parties agree that the provisions of paragraph A of Section III of Annex I to this Agreement shall apply to the publication of any research results created under this Agreement.

2. Publication Review: The Parties agree that publication of the results may be one of the goals of this Agreement, to stimulate further research in the public or private sector. In order to protect the rights of the Parties, including to avoid prejudice to the holders of Intellectual Property and Business Confidential Information, each Party shall transmit to the other for its review any material containing such results and intended for publication, or other disclosure, at least sixty (60) working days before such material is submitted to any editor, publisher, referee or meeting organizer, or is otherwise disclosed. In the absence of an objection by the other Party within that sixty-day period the publication or other disclosure may proceed. If either Party raises an objection to the public release of publications arising from this Agreement, public release will not occur unless and until there is agreement between the Parties as to the conditions for public release. It is the responsibility of each Party to coordinate with its sponsored Participants who work under a Project Arrangement to determine whether all potential Intellectual Property or Business Confidential Information interests have been properly considered.

3. Affiliation: The sponsorship and financial support of the Parties for Cooperative Activity shall not be used in any public statement of a promotional nature or used for commercial purposes without the express written permission of both Parties.

4. Publicity and Acknowledgements: All publications relating to the results of the Projects established pursuant to this Agreement shall include, as applicable, a notice indicating that the underlying investigation received financial support from the Government of the United States and/or the Government of New Zealand. Two copies of such publications shall be sent to each of the Agreement Directors by the individual or entity that is the author of the publications.

ARTICLE 15

Entry of Personnel and Equipment and Material

1. With respect to Cooperative Activity under this Agreement, each Party, in accordance with its national laws and regulations, and as appropriate, shall facilitate:

   a) prompt and efficient entry into and exit from its territory of appropriate Equipment and Material, to especially include instrumentation, test equipment and Project Background and Foreground Information;

   b) prompt and efficient entry into and exit from its territory, and domestic travel and work of, persons participating on behalf of the Parties or Participants in the implementation of this Agreement;

   c) prompt and efficient access, as appropriate, to relevant geographical areas, information, Equipment and Material and institutions, for persons participating on behalf of the Parties, or Participants, in the implementation of this Agreement; and

   d) mutual logistic support.

2. Customs duties, import and export taxes, and similar charges shall be administered in accordance with each Party's respective laws and regulations. Insofar as existing laws and regulations permit, each Party shall use its best efforts to ensure that readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with Projects carried out under this Agreement.

ARTICLE 16

Research Safety

1. The Parties shall establish and implement policies and practices, in accordance with Article 8 of this Agreement, to ensure and provide for the safety of their employees, the public, and the environment during the conduct of Cooperative Activities subject to applicable national laws and regulations. If any Cooperative Activity involves the use of dangerous or hazardous materials, the Parties shall establish and implement an appropriate safety plan.

2. Consistent with the Parties' national laws and regulations, the Parties shall take appropriate steps to protect the welfare of any subjects involved in

Cooperative Activities. Such steps may include the provision of medical treatment and, where appropriate, financial relief.

ARTICLE 17

Third Party Sales and Transfers

1. Neither Party shall:

   a) sell, transfer title to, disclose, or transfer possession of Project Foreground Information, or equipment incorporating Foreground Information, to a Third Party without the prior written consent of the other Party; or

   b) permit any such sale, disclosure, or transfer by others, including by the owner of the item, without the prior written consent of the other Party. Such sales and transfers shall be consistent with Article 13 (Intellectual Property Management).

2. For the purposes of this Article, States, Territories, Protectorates and other domestic government entities are not considered to be Third Parties.

ARTICLE 18

Dispute Resolution

1. Except for disputes concerning Intellectual Property and those procedures set forth in Article 14 (Publication of Research Results), all questions or disputes arising under or relating to this Agreement between the Parties that cannot be resolved by the Agreement Directors shall be submitted to the Executive Agents. Such questions and disputes shall be resolved only by consultation between the Parties and shall not be referred to a national court, an international tribunal, or to any other person or entity for resolution.

2. Resolution of disputes concerning Intellectual Property shall be resolved as provided for in Annex I to this Agreement.

3. Each Party shall ensure that any Sponsorship Arrangement that it enters into with a Participant includes provisions for dispute resolution consistent with paragraphs 1 and 2.

ARTICLE 19

Status of Annex I

1. Annex I forms an integral part of this Agreement and a reference to this Agreement includes a reference to Annex I.

ARTICLE 20

Entry into Force, Duration, Amendment, and Termination

1. The Parties shall exchange diplomatic notes confirming that each Party has completed all domestic procedures necessary for the Agreement to enter into force. The Agreement shall enter into force on the date of receipt of the latter notification.
2. This Agreement may be amended in writing by the agreement of the Parties. Any amendment will enter into force upon signature or as otherwise agreed by the Parties.
3. This Agreement shall remain in force until terminated in writing by either Party, with such termination taking effect six months from the date of the written notice of termination.
4. This Agreement may also be terminated at any time by the mutual written agreement of the Parties.
5. Unless otherwise agreed, termination of this Agreement shall not affect the validity or duration of any Cooperative Activity previously undertaken pursuant to it.
6. The respective rights and responsibilities of the Parties (and Participants) under Article 12 (Information Security), Article 13 (Intellectual Property Management and Use of Information), Article 14 (Publication of Research Results), Article 17 (Third Party Sales and Transfers), Article 18 (Dispute Resolution) and Annex I shall continue notwithstanding the termination or expiry of this Agreement. In particular, all Classified Information exchanged or generated under this Agreement shall continue to be protected in the event of the termination or expiry of the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, in duplicate, on this 8th day of January 2010.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF NEW ZEALAND:

ANNEX I

Intellectual Property Rights

I. General Obligation

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. Rights to such intellectual property shall be allocated as provided in this Annex.

II. Scope

A. This Annex is applicable to all Cooperative Activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain the rights to Intellectual Property allocated in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of Intellectual Property between a Party and its employees and/or its contractors, which shall be determined by that Party's laws and practices.

C. Except as otherwise provided in this Agreement, disputes concerning Intellectual Property arising under this Agreement shall be resolved through discussions between the concerned participants or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of United Nations Commission on International Trade Law (UNCITRAL) shall govern.

D. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

III. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names

of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of Intellectual Property arising from Project Foreground Information created in a Project under this Agreement, other than those rights described in paragraph III.A above, shall be allocated as follows:

(1) Visiting researchers shall receive, for any intellectual property they create, rights, awards, bonuses and royalties in accordance with the policies of the host institution.

(2) (a) Unless otherwise agreed in a Project Arrangement or other arrangement, the Parties or their Participants shall jointly develop provisions of a Technology Management Plan regarding the ownership and exploitation rights to Intellectual Property created in the course of the Cooperative Activities other than those covered by paragraph III.B(1) of this Annex. The Technology Management Plan shall consider the relative contributions of the Parties, Participants and Contractors to the Cooperative Activities, the cost of commercialization, the degree of commitment in obtaining legal protection and licensing of the Intellectual Property, and such other factors as are deemed appropriate.

(b) If the Parties or their Participants do not agree on provisions of a Technology Management Plan under subparagraph (a) within a reasonable time, not to exceed six months from the time a Party becomes aware of the creation of Intellectual Property in the course of the Cooperative Activities, the Parties or their Participants shall resolve the matter in accordance with the provisions of paragraph II.C of this Annex. Pending resolution of the matter, any Intellectual Property created by persons employed or sponsored by one Party under Cooperative Activities shall be owned by that Party and Intellectual Property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties, but such Intellectual Property shall be commercially exploited only by mutual agreement.

(c) Notwithstanding paragraphs III.B(2)(a) and (b) above, if either Party believes that a particular project may lead to or has led to the creation of Intellectual Property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the Intellectual Property. If an agreement cannot be reached within three months of the date of the

initiation of the discussions, cooperation on the Project in question shall be terminated at the request of either Party. Creators of Intellectual Property shall nonetheless be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.

(d) For each invention made under any Cooperative Activity, the Party employing or sponsoring the inventor(s) shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

IV. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

Without prior written consent, the receiving Party may not disclose any Business Confidential Information provided to it by the other Party except to appropriate employees and government personnel. If expressly agreed in writing between the Parties, Business Confidential Information may be disclosed by the receiving Party to contractors and sub-contractors. Such disclosures shall be for the use only within the scope of their contracts with their respective Party relating to cooperation under this Agreement. The Parties shall impose, or shall have imposed, an obligation on those receiving such information to keep it confidential. If a Party becomes aware that, under the laws or regulations applicable to it, it will be, or may reasonably expect to become, unable to meet the non-disclosure provisions, it shall immediately inform the other Party. The Parties shall thereafter agree on an appropriate course of action.