DEFENSE

Cooperation

Memorandum of Understanding

Between the

UNITED STATES OF AMERICA

and AUSTRALIA

Signed at Washington and Canberra
April 3 and 17, 2009

with

Annexes

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."

AUSTRALIA

Defense: Cooperation

Memorandum of understanding signed
at Washington and Canberra
April 3 and 17, 2009;
Entered into force April 17, 2009.
With annexes.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF DEFENCE OF AUSTRALIA

CONCERNING COOPERATION IN THE

P-8A POSEIDON SPIRAL 1 DEVELOPMENT

PROGRAM

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INTRODUCTION

The Department of Defense of the United States of America (U.S. DoD) and the Department of Defence of Australia (ADOD) hereinafter referred to as the "Participants":

Recognizing the Exchange of Notes Constituting an Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defence Commitments done at Sydney on December 1, 1995 (the Chapeau Agreement) will apply to this Memorandum of Understanding (MOU);

Recognizing the Agreement Concerning Security Measures for the Protection of Classified Information between the Governments of Australia and the United States of America, which entered into force November 7, 2002 (Security Agreement);

Recognizing the Implementing Arrangement between the Department of Defence of Australia and the Department of Defense of the United States of America concerning Industrial Security, which entered into force February 8, 2007 (Security Arrangement);

Having a common interest in defense;

Recognizing the benefits to be obtained from standardization, rationalization, and interoperability of military equipments;

Desiring to improve their mutual conventional defense capabilities through the application of emerging technology;

Having a mutual need for the development of the maritime systems to satisfy common operational requirements;

Having independently conducted studies, research, exploratory development, and testing of the applications of various technologies, recognize the benefits of cooperation in the maritime domain;

Having established numerous data exchange agreements for the exchange of Information concerning all aspects of the maritime domain;

Recognizing the importance of cooperation between the Participants' research and development organizations and industries, and seeking to reduce barriers to that cooperation; and

Desiring to cooperate on the P-8A Poseidon Spiral 1 aircraft, missions systems, and associated ground systems with a view to subsequent cooperation in production, support, and follow-on development;

Have reached the following understandings:

SECTION I

DEFINITIONS AND ACRONYMS

The Participants have jointly decided upon the following definitions and acronyms for terms used in this MOU:

Baseline P-8A Poseidon	The P-8A weapon system as developed during the P-8A System Development and Demonstration phase, which involves the modification and airworthiness certification of an existing commercial aircraft, and delivered for all production lots preceding the introduction of capability developed during Spiral 1. The P-8A weapon system includes the air vehicle, mission systems, training, sustainment plans, supporting equipment and technologies, and developmental and operational testing leading to Initial Operating Capability.
Classified Information	Official Information that requires protection in the interests of national security and is so designated by the application of a security classification marking. This Information may be in oral, visual, magnetic, or documentary form or in the form of equipment or technology.
Contract	Any mutually binding legal relationship under national laws that obligates a Contractor to furnish supplies or services, and obligates one or both of the Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the governmental organizations of the Participants. Contracting includes a description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.

Contracting Agency	The entity within the governmental organization of a Participant that has authority to enter into, administer, or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.
Contractor Support Personnel	Persons specifically identified as providing administrative, managerial, scientific, or technical support services to a Participant under a support Contract.
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. It could include Information that has been declassified but remains controlled.
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Parent Participant assigned to the Joint Project Office (JPO) or a facility of the other Participant who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of the Project.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Participant.
DON	Department of the Navy
Designated Security Authority (DSA)	The security authority designated by national authorities to be responsible for the coordination and implementation of national industrial security aspects of this MOU.
Financial Cost	The maximum amount to which the financial

Ceiling	contributions that one or both Participants may contribute to this MOU without the prior written approval of the Participants.
Financial Costs	Project costs met with monetary contributions.
Financial Management Procedures Document (FMPD)	A document that describes the estimated schedule, handling, and auditing of monetary contributions for the Project in which one Participant contracts on behalf of the other Participant or on behalf of both Participants to fulfill the objectives of the Project.
Host Participant	The Participant whose nation serves as the location of the JPO.
Information	Knowledge that can be communicated by any means, regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, computer software, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form, and whether or not subject to Intellectual Property rights.
Initial Operational Capability (IOC)	That date when the first unit or units of a system are fielded, have completed testing, and are determined to be ready for deployment and operational field support.
Intellectual Property	In accordance with the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights of April 15, 1994, all copyright and related rights, all rights in relation to inventions (including Patent rights), all rights in registered and unregistered trademarks (including service marks), registered and unregistered designs, undisclosed

	Information (including trade secrets and know-how), layout designs of integrated circuits, and geographical indications, and any other rights resulting from creative activity in the industrial, scientific, literary, and artistic fields.
JPO	Joint Project Office
MMA	Maritime Multimission Aircraft: This is the superseded nomenclature for the P-8A Poseidon aircraft.
Non-financial Costs	Project costs met with non-monetary contributions.
P-8A Poseidon Spiral 1 Development	The acquisition strategy and subsequent development and testing efforts to provide capability upgrades for the baseline P-8A.
Parent Participant	The Participant that sends its CPP to the JPO or facility located in the nation of the other Participant.
Participant	A signatory to this MOU represented by its military and civilian personnel. Contractors and Contractor Support Personnel will not be representatives of a Participant under this MOU.
Patent	Grant by any Government or a regional office acting for more than one Government of the right to exclude others from making, using, importing, selling, or offering to sell an invention. The term refers to any and all patents including, but not limited to, patents of implementation, improvement or addition, petty patents, utility models, appearance design patents, registered designs, and inventor certificates or like statutory protection, as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Project	The system development and demonstration of

	the P-8A Poseidon Spiral 1 as set out in Section II (Objectives) and Section III (Scope of Work).
Project Background Information	Information not generated in the performance of the Project.
Project Equipment	Any material, equipment, end item, subsystem, component, Special Tooling, or test equipment jointly acquired or provided for use in the Project.
Project Foreground Information	Information generated in the performance of the Project.
Project Information	Any Information provided to, generated in, or used in the Project.
Project Invention	Any invention in any field of technology, provided it is new, involves an inventive step, is capable of industrial application, and is formulated or made (conceived or "first actually reduced to practice") in the course of work performed under a Project. The term "first actually reduced to practice" means the first demonstration, sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Project Plan	A document that provides a description of the Project, including as necessary the detailed scope of work, delivery requirements, and milestones.
PSI	Project Security Instruction
Prospective Contractor	Any entity that seeks to enter into a Contract to be awarded by a Participant's Contracting Agency and that, in the case of a solicitation involving the release of export-controlled Information, is eligible to receive such Information.
Special Tooling	Jigs, dies, fixtures, molds, patterns,

	tapes, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services and excluding material, special test equipment, facilities (except foundations and similar improvements necessary for installing Special Tooling), general or special machine tools, or similar capital items.
Spiral 1	The term Spiral 1 has been replaced by P-8A Poseidon Spiral 1.
System Development and Demonstration (SDD)	The purpose of the SDD phase is to develop a system or an increment of capability; reduce integration and manufacturing risk; ensure operational supportability with particular attention to reducing the logistics footprint; implement human systems integration (HSI); design for producibility; ensure affordability and the protection of critical program information (CPI) by implementing appropriate techniques such as anti-tamper; and demonstrate system integration, interoperability, safety, and utility. SDD has two major efforts: System Integration and System Demonstration.
Third Party	A government other than the Government of a Participant and any person or other entity whose government is not the Government of a Participant.

SECTION II

OBJECTIVES

2.1 The objectives of this Project are to:

2.1.1. Complete the development and detailed system design for capability upgrades to the Baseline P-8A Poseidon airframe, mission system, and related support systems to meet the U.S. DoD operational, performance, and interoperability requirements, as specified in paragraph 2.1. of Annex A (System Requirements and Australian Operational Requirements);

2.1.2. Develop and design variations from the Baseline P-8A Poseidon airframe and mission system to meet Australian operational requirements as defined in Annex A (System Requirements and Australian Operational Requirements) and as agreed to by the P-8A Poseidon Spiral 1 Steering Committee (SC) and funded additionally by ADOD;

2.1.3. Develop and implement management and control processes to ensure the Participants receive best value within the Financial Cost Ceiling;

2.1.4. Produce test articles to support Developmental Test and Evaluation (DT&E) and Operational Test and Evaluation (OT&E) programs for the Spiral 1 capability upgrades developed per paragraph 2.1.1. and 2.1.2. of this MOU;

2.1.5. Develop integrated logistics support and training systems necessary to support DT&E and OT&E of the Spiral 1 Systems and to enable transition to production and subsequent fielding of operational squadrons for the Participants;

2.1.6. Conduct development and operational testing of P-8A Poseidon Spiral 1 and Australian operational requirements capabilities as set out in paragraphs 2.1.1. and 2.1.2. of this MOU;

2.1.7. Conduct cooperative studies and discussion of follow-on efforts, directed toward the cooperative

production, support, and incremental development on the P-8A system, training systems, and supporting equipment and technologies; and

2.1.8. Promote and encourage greater maritime surveillance interoperability between the Participants' manned and unmanned systems, trainers, and associated support systems.

SECTION III

SCOPE OF WORK

3.1. Conduct technical, cost, risk, and logistics analysis of proposed technologies; evaluate system requirements through cost/performance trade-off analysis; provide technical and management support for the development of P-8A Spiral 1 acquisition documentation; and provide engineering and management of technical development effort.

3.2. Design, develop, fabricate, integrate, demonstrate, validate, and test hardware and software that provides capability upgrades to the Baseline P-8A Poseidon to meet U.S. DoD and ADOD operational requirements and performance specifications, and ensure the prime Contractor fulfills its obligations under any Contract related to cooperative efforts by the Participants, both shared and unique. Candidate capability upgrades are outlined in Annex A (System Requirements and Australian Operational Requirements). Such efforts will exploit, to the maximum extent practicable, concepts and technology maturation demonstrations and modeling and simulation and analysis capabilities. This will include, but is not limited to, the following tasks:

3.2.1. Verify and certify the completeness of the design and development process, leading to developmental testing and the operational assessment of the capability upgrades for the Baseline P-8A Poseidon aircraft;

3.2.2. Develop and provide test articles, ground stations, and system integration laboratories to support integration, developmental test, and demonstration activities of joint capability upgrades;

3.2.3. Participate in development test planning and testing, and operational test planning as part of the P-8A Poseidon Spiral 1 integrated test team;

3.2.4. Evaluate and conduct performance analysis for development and testing of P-8A Poseidon Australian operational requirements;

3.2.5. Develop and implement a program management system that uses integrated product and process development, earned value management, technical performance measures, and risk management tracking systems as management tools to provide cost, schedule, and performance Information.

3.2.6. Participate in program reviews.

3.2.7. Participate in P-8A Poseidon program roadmap discussions, planning efforts, and reviews to determine future requirements, capabilities, and development efforts.

3.2.8. Participate in P-8A Poseidon production planning to consider ADOD requirements in production line allocations, on the assumption that the ADOD will participate in the P-8A Poseidon production, support, and follow-on development MOU.

3.3. The U.S. DoD will make its best efforts to provide the ADOD sufficient Project Background Information to make an informed decision to proceed into a cooperative production, sustainment, and follow-on development arrangement. Such Project Background Information may include cost, performance, risk, schedule, sustainment and support concepts, and life cycle ownership costs and risks Information. Additionally, the U.S. DoD will provide sufficient insight into the Baseline P-8A Poseidon airworthiness certification to enable recognition of the U.S. DoD-granted certifications by the ADOD.

3.4. As reflected in Annex A (System Requirements and Australian Operational Requirements), the U.S. DoD will make its best efforts to facilitate ADOD development and testing of the ADOD integrated ground environment, including the provision of appropriate Project Background Information relating to P-8A system interfaces, and if necessary, Contracting on behalf of ADOD in support of both ADOD and its industry capability partner, on a not-to-interfere basis with Project goals, schedules, or Contracting. In the event that U.S. DoD agencies require funding in order to accomplish tasks in support of ADOD integrated ground environment/P-8A interface efforts, the FMPD and Project Plan will set out funding mechanisms and schedules in order that these tasks can be performed in a timely and efficient manner.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. This Project will be directed and administered on behalf of the Participants by an organization consisting of a Steering Committee (SC) and a Joint Project Office (JPO) headed by a Project Manager (PM). Each Participant will provide a Deputy Project Manager (DPM). The SC will exercise authority over the PM, in accordance with this MOU. The PM will have primary responsibility for effective implementation, efficient management, and direction of the Project in accordance with this MOU. The DPMs will manage the day-to-day implementation of the Project in accordance with the Project Plan and this MOU.

4.2. The SC will consist of a representative designated by each Participant. The SC will meet annually with additional meetings held at the request of either representative. Each meeting of the SC will be chaired by the representative of the Participant hosting the meeting. Decisions of the SC will be made unanimously. Decisions of the SC will be formally documented and signed by both SC members. In the event that the SC is unable to reach a timely decision on an issue, each SC representative will refer the issue to his higher authority for resolution. In the meantime the approved Project Plan will continue to be implemented without interruption under the direction of the PM while the issue is being resolved by higher authority.

4.3. The SC will be responsible for:

4.3.1. Exercising executive-level oversight of the Project.

4.3.2. Reviewing progress in meeting system requirements as specified in Annex A (System Requirements and Australian Operational Requirements) of this MOU.

4.3.3. Approving the Project Plan prepared and submitted by the PM, as assisted by the DPMs, in accordance with subparagraph 4.6.2. of this Section, and any revisions thereto, and reviewing the technical progress of the Project against the Project Plan. The Project Plan will include, but not be limited to, the following elements:

4.3.3.1. Detailed scope of work and corresponding work schedule, as appropriate.

4.3.3.2. References to applicable acquisition approval processes and documents.

4.3.4. Approving the FMPD and any changes to the FMPD as developed by the DPMs and proposed by the PM.

4.3.5. Reviewing the financial status of the Project to ensure compliance with the provisions of Section V (Financial Provisions) of this MOU and the FMPD.

4.3.6. Resolving issues brought forth by the PM.

4.3.7. Reviewing and forwarding to the Participants for approval recommended amendments to this MOU in accordance with Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of this MOU.

4.3.8. Approving amendments to Annexes A, B, and C of this MOU consistent with Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of this MOU.

4.3.9. Employing its best efforts to resolve, in consultation with the export control authorities of the Participant concerned, any export control issues identified by the DPMs and raised by the PM in accordance with subparagraph 4.6.10. of this section or raised by a Participant's SC representative in accordance with subparagraph 9.1.2.4. of Section IX (Disclosure and Use of Project Information) of this MOU.

4.3.10. Providing recommendations to the Participants for the addition of new Participants in accordance with Section XV (Participation of Additional Nations) of this MOU.

4.3.11. Monitoring Third Party sales and transfers authorized in accordance with Section XIII (Third Party Sales and Transfers) of this MOU.

4.3.12. Reviewing the annual status report prepared by the DPMs and submitted by the PM.

4.3.13. Approving plans to manage and control the transfer of Project Equipment provided by either Participant to support the execution of the Project in accordance with Section VIII (Project Equipment).

4.3.14. Approving plans for the disposal of jointly acquired Project Equipment under this MOU in accordance with Section VIII (Project Equipment).

4.3.15. Issuing written decisions regarding sole source contracting for Australian operational requirements in accordance with paragraph 6.8. of this MOU.

4.4. The JPO will be established at Naval Air Systems Command, Naval Air Station Patuxent River, Maryland to manage the Project. The Program Executive Officer Air Anti-Submarine, Assault, and Special Mission programs (PEO(A)), as the U.S. DoD SC representative, will appoint the U.S. PM. As head of the JPO, the U.S. PM will be responsible for overseeing the overall progress of the Project and the efforts of the DPMs, who will assist the PM with implementing this MOU and providing day-to-day management of the Project.

4.5. The Participants will each provide national representation to the JPO by designating a Deputy Project Manager (DPM). As depicted in Annex B (Joint Project Office Organization) to this MOU, each DPM will report to the PM heading the JPO.

4.6. The PM will be responsible for:

4.6.1. Managing the cost, schedule, performance requirements, technical, security, and financial aspects of the Project described in this MOU in consultation with the DPMs, including any issues regarding Australian operational requirements.

4.6.2. Submitting the Project Plan developed by the DPMs and the responsible Contracting Officer and any necessary revisions thereto, as described in subparagraph 4.3.3. of this Section; for SC approval and, in consultation with the DPMs,

implementing the plan and any revisions approved by the SC.

4.6.3. Executing the financial aspects of the Project in accordance with Section V (Financial Provisions) of this MOU and the FMPD.

4.6.4. Referring issues to the SC that cannot be resolved by the PM.

4.6.5. Developing and recommending amendments to this MOU and Annexes to the SC.

4.6.6. In conjunction with the DPMs, developing and implementing SC-approved plans to manage and control the transfer of Project Equipment provided by either Participant in accordance with Section VIII (Project Equipment).

4.6.7. In conjunction with the DPMs, developing and forwarding to the SC a Project Security Instruction (PSI) and a Classification Guide for the Project within three months after MOU signature, and implementing them upon final approval.

4.6.8. Forwarding recommendations to the SC for the addition of new Participants in accordance with Section XV (Participation of Additional Nations) of this MOU.

4.6.9. Monitoring export control arrangements required to implement this MOU and, if applicable, referring immediately to the SC any export control issues that could adversely affect the implementation of this MOU.

4.6.10. Providing an annual status report to the SC.

4.6.11. Exercising configuration management in accordance with the Project Plan.

4.6.12. Exercising software management in accordance with the Project Plan.

4.6.13. Appointing a Project security officer.

4.6.14. Submitting to the SC for approval an FMPD prepared by the DPMs.

4.7. A DPM from both Participants will be assigned to the JPO. The primary responsibility of the DPM is to assist the PM with the following duties:

4.7.1. Providing recommendations to the PM for Project direction, schedule, and budget.

4.7.2. Referring issues to the PM that cannot be resolved within the JPO.

4.7.3. Assisting the PM in developing the Project Plan, FMPD, PSI, and other related documents.

4.7.4. Reviewing and providing inputs regarding P-8A Spiral 1 Contract strategies, P-8A Spiral 1 requests for proposals, P-8A Spiral 1 Contracts and modifications, at the discretion of the Contracting Officer.

4.7.5. Participating in and providing inputs to Project strategy and management meetings and Project reviews.

4.7.6. Assisting the PM in preparing the annual status report to the SC.

4.7.7. Assisting the PM in developing and implementing SC-approved plans to manage and control the transfer of Project Equipment and for the disposal of jointly acquired Project Equipment.

4.8. The Australian DPM will also be responsible for:

4.8.1. Exercising administrative management of the Australian CPPs assigned to the Project.

4.8.2. Providing ADOD representation within the JPO on all matters relating to the Project.

4.8.3. Performing other tasks as may be assigned by the PM consistent with the position description.

4.8.4. Informing the Australian SC representative of Project status and progress.

SECTION V

FINANCIAL PROVISIONS

5.1. The Participants estimate that the performance of the responsibilities under this MOU will not cost more than a Financial Cost Ceiling of $225.672 million Then Year (TY) U.S. dollars. The U.S. dollar will be the reference currency for the Project, and the Project fiscal year will be the U.S. fiscal year. The Financial Cost Ceiling may be changed only upon the mutual written consent of the Participants. The Participants will use their best efforts to perform, or to have performed, the work specified in Section III (Scope of Work) of this MOU and fulfill all of their responsibilities under this MOU within the Financial Cost Ceiling. If at any time the PM has reason to believe that the Financial Cost Ceiling of the Project will be exceeded, the PM will promptly notify the SC and will set forth a new estimate of the Financial Cost Ceiling of the Project together with supporting documentation. The SC will advise the PM as to what action should be taken.

5.2. Each Participant will contribute its equitable share of the full Financial Costs and Non-financial Costs of the Project, including overhead costs, administrative costs, and costs of claims, and will receive an equitable share of the results of the Project.

5.3. The full Financial Costs and Non-financial Costs of the Project will be shared as follows:

U.S. DoD Financial	$165.672 million TY U.S.
ADOD Financial	$ 60.000 million TY U.S.
Total Financial	$225.672 million TY U.S.
U.S. DoD Non-financial	$296.100 million TY U.S.
ADOD Non-financial	$ 23.340 million TY U.S.
Total Non-Financial	$319.440 million TY U.S.

5.4. Participation in the Project will include both financial and non-financial contributions to support Project efforts. Values have been mutually determined for Project non-financial contributions.

5.5. Participation in the Project will also include financial and non-financial contributions for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of Project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.6. In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.5. of this Section, the cost of personnel in the JPO will be borne as follows:

5.6.1. The Host Participant will bear the costs of all pay and allowances of Host Participant personnel in the JPO.

5.6.2. The Parent Participant will bear the following Cooperative Project Personnel (CPP)-related costs:

5.6.2.1. All pay and allowances of CPP assigned to the JPO.

5.6.2.2. Transportation of CPP, CPP dependents, and their personal property to the JPO location prior to commencement of the CPP assignment in the JPO, and return transportation of the foregoing from the JPO location upon completion or termination of the CPP assignment.

5.6.2.3. Compensation for loss of, or damage to, the personal property of CPP or CPP dependents, subject to the laws and regulations of the Parent Participant's Government.

5.7. The sum of the Participants' Project financial contributions equals the Financial Cost Ceiling for the Project reflected in this Section of the MOU.

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

5.8.1. Costs associated with national representation at meetings by non-JPO members.

5.8.2. Costs associated with any unique national requirements identified by a Participant.

5.8.3. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this MOU.

5.9. If the U.S. DoD decides subsequently that it wishes to use Project Information generated in performance of an Australian operational requirement, or to acquire any item that results from an Australian operational requirement, the U.S. DoD will make equitable arrangements with the ADOD (as determined by the SC) for the U.S. DoD share of the costs of those efforts in accordance with paragraph 5.2. of this Section.

5.10. The PM, as assisted by the DPMs, will be responsible for establishing the detailed financial management procedures under which the Project will operate. These procedures, which must be in accord with the national accounting and audit requirements of the Participants, will be detailed in the FMPD prepared by the DPMs and submitted by the PM for approval by the SC. Each Participant will fund the Project in accordance with the estimated schedule of financial contributions contained in the FMPD, which will be consistent with paragraph 5.11. of this Section.

5.11. A Participant will promptly notify the other Participant if available funds are not adequate to fulfill its responsibilities under this MOU. If a Participant notifies the other Participant that it is terminating or reducing its funding for this Project, both Participants will immediately consult, with a view toward continuation on a modified basis.

5.12. The Participants recognize that it may become necessary for one Participant to incur contractual or other responsibilities for the benefit of the other Participant, or both of the Participants prior to receipt of the other Participant's funds. In such event, the other Participant will make such funds available in such amounts and at such times as required by the Contract or other responsibility and will pay any damages and costs that may accrue from the performance or cancellation of the Contract or other responsibility in advance of the time such payments, damages, or costs are due.

5.13. Each Participant will, consistent with its national laws, regulations, and policies, provide to the other Participant the

Information and assistance described in paragraphs 5.14. and 5.15. of this Section.

5.14. The U.S. DoD 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 U.S. DoD will use its best efforts to perform any audits requested by the ADOD and agreed to by the U.S. DoD.

5.15. The U.S. DoD will be responsible for the internal audit regarding administration of the other Participant's Project funds in accordance with U.S. national practices. The U.S. DoD will promptly make audit reports of such funds available to the other Participant. Upon the mutual consent of the U.S. DoD and the ADOD, auditors will be permitted to assist the U.S. DoD on any audit elements required to satisfactorily perform the audit. In addition, if ADOD or its auditors need to obtain or to inspect specific Project Information in order to fulfill its national obligations, the U.S. DoD will arrange for access to such specific Information at mutually determined times and locations.

5.16. On any future sale by the U.S. DoD to the ADOD of the P-8A Poseidon Spiral 1, the U.S. DoD will exclude from the price of the P-8A Poseidon specific U.S. DoD research and development costs incurred for P-8A Poseidon Spiral 1 efforts, provided that the ADOD does not terminate their participation in this MOU.

SECTION VI

CONTRACTING PROVISIONS

6.1. The U.S. DoD (acting through the Department of the Navy) will be primarily responsible for Contracting for this Project in accordance with U.S. laws, regulations, and procedures. The ADOD may perform Contracting for its unique national requirements, or may, upon request, Contract to meet Project requirements. In the event that the ADOD contracts for either its own unique national requirements, or Project requirements, such Contracting will be in accordance with Australian laws, regulations, and procedures. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors.

6.2. The PM and DPMs will cooperate, as requested, with the Contracting Officers in the areas of Contract procedures, Contract negotiation, evaluation of offers, Contract award, and Contract modifications. The PM and DPMs will review statements of work prior to the development of solicitations to ensure that they are in accordance with this MOU. The Contracting Officer will keep the PM and DPMs advised of all significant developments associated with award and performance of Contracts, and will keep the PM and DPMs advised of all financial arrangements with Contractors.

6.3. The Contracting Officer will use best efforts to obtain the rights to use and disclose Project Information required by Section IX (Disclosure and Use of Project Information) of this MOU. The Contracting Officer will insert into prospective Contracts (and require it's Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), Section XIII (Third Party Sales and Transfers), and Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of this MOU, including the export control provisions in accordance with this MOU, in particular paragraphs 6.4. and 6.5. of this Section. During the Contracting process, the Contracting Officer will advise Prospective Contractors of their responsibility to notify immediately the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Information or permit its use. The Contracting Officer will also advise Prospective Contractors to

employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

6.4. Each Participant will legally bind its Contractors to a requirement that the Contractor will not retransfer or otherwise use export-controlled Information furnished by the other Participant for any purpose other than the purposes authorized under this MOU. The Contractor will also be legally bound not to retransfer the export-controlled Information to another Contractor or subcontractor unless that Contractor or subcontractor has been legally bound to limit use of the Information to the purposes authorized under this MOU. Export-controlled Information furnished by one Participant under this MOU may only be retransferred by the other Participant to its Contractors if the legal arrangements required by this paragraph have been established.

6.5. Each Participant will legally bind its Prospective Contractors to a requirement that the Prospective Contractor will not retransfer or otherwise use export-controlled Information furnished by the other Participant for any purpose other than responding to a solicitation issued in furtherance of the purposes authorized under this MOU. Prospective Contractors will not be authorized use for any other purpose if they are not awarded a Contract. The Prospective Contractors will also be legally bound not to retransfer the export-controlled Information to a prospective subcontractor unless that prospective subcontractor has been legally bound to limit use of the export-controlled Information for the purpose of responding to the solicitation. Export-controlled Information furnished by one Participant under this MOU may only be retransferred by the other Participant to its Prospective Contractors if the legal arrangements required by this paragraph have been established. Upon request by the furnishing Participant, the receiving Participant will identify its Prospective Contractors and prospective subcontractors receiving such export-controlled Information.

6.6. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Section IX (Disclosure and Use of Project Information) of this MOU, or is notified by Contractors or Prospective Contractors of any restrictions on the disclosure and use of Information, the matter will be referred to the SC for resolution.

6.7. The Contracting Officer will immediately advise the PM of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible. The Contracting Officer will act in the best interest of both Participants in Contract administration decisions.

6.8. Upon mutual consent, consistent with Section II (Objectives) of this MOU, a Participant may contract for the unique national requirements of the other Participant. The U.S. DoD will provide the ADOD with insight into subcontracting related to Australian operational requirements via IPT participation, attendance at Program Management Reviews, and DPM participation in the Contract administration process. At the request of the ADOD and as reflected in a written SC decision, in relation to a Contract or subcontract for ADOD operational requirements, the Contracting Officer may place the Contract or require the Contractor to place the subcontract with a supplier specified by ADOD.

6.9. When Contracting on behalf of the other Participant for national operational requirements, the Contracting Participant will investigate in a timely manner concerns that a Contractor is not meeting contractual requirements. The DPMs will work with the Contracting Officer and the PM to determine an appropriate course of action if a Contractor is not meeting contractual requirements.

6.10. The personnel of a Participant whose national operational requirements are included in a Contract may participate in the Contract administration (including acceptance procedures) of that Contract to the extent authorized in writing by the Contracting Officer regarding those national operational requirements.

6.11. A Participant whose national operational requirements are included in a Contract may request cost and pricing data in relation to those national operational requirements in that Contract. Unless it is subject to the Intellectual Property rights of a Contractor or subcontractor, the Participant will be provided such cost and pricing data, at the discretion of the Contracting Officer. If requested, the Contracting Officer will use best efforts to obtain the written consent of the Contractor or subcontractor to provide such data to the Participant in relation to those national operational requirements. The Participants understand that such data cannot be provided if the Contractor or subcontractor does not provide written consent.

6.12. The DPMs may provide written recommendations to the award fee board, in accordance with the applicable Contracting Agency's process and procedures regarding the level of Contractor achievement related to their articles and services that have been placed on Contract. At the discretion of the Contracting Officer, the DPM of a Participant may be a member of an award fee board when the award fee under discussion relates to the national operational requirements of that Participant.

SECTION VII

INDUSTRIAL PARTICIPATION

7.1. Sources from both nations will be permitted to bid on Project work that is not being performed by the prime Contractor. Additionally, each Participant will encourage its Contractors to provide competitive opportunities to sources from the other nation to participate in the work of the Project, provided that such participation does not affect the Project adversely, and is consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project. The U.S. DoD will make its best efforts to facilitate timely export control authorizations to allow Australian industry to compete for opportunities in the Project.

7.2. No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

7.3. The Participants will encourage timely notification of Contracting and subcontracting opportunities for the Project.

7.4. The Participants acknowledge that, subject to the Contracting Participant's laws and regulations and to the submission of best value offers, industries that are in the Participants' nations and that were awarded subcontracts in support of the Project will be better positioned for and thus normally be awarded subcontracts for follow-on production, support, and future development efforts.

SECTION VIII

PROJECT EQUIPMENT

8.1. Each Participant may provide Project Equipment identified as being necessary for executing the MOU to the other Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to the other Participant will be developed and maintained by the PM with the assistance of the DPMs, submitted by the PM to the SC for approval, and incorporated into Annex C (Inventory of Project Equipment Exchanges) in accordance with Section IV (Management (Organization and Responsibility)) of this MOU prior to such transfers.

8.2. The receiving Participant 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 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 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 Annex C (Inventory of Project Equipment Exchanges), 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 will issue a certificate of loss to the providing Participant and pay the replacement value specified in Annex C (Inventory of Project Equipment Exchanges) to this MOU.

8.3. The providing Participant will deliver Project Equipment to the receiving Participant at a mutually determined location. Possession of the Project Equipment will pass from the providing Participant to the receiving Participant at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Participant.

8.4. All Project Equipment that is transferred will be used by the receiving Participant 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

XIII (Third Party Sales and Transfers) of this MOU, Project Equipment will not be re-transferred or sold to a Third Party without the prior written consent of the providing Participant.

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

8.6. Any Project Equipment that is jointly acquired on behalf of both Participants for use under this MOU will be disposed of during this Project or when the Project ceases, as determined by the SC.

8.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Participant in such Project Equipment to the other Participant, or the sale of such Project Equipment to a Third Party in accordance with Section XIII (Third Party Sales and Transfers) of this MOU. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this MOU.

8.8. Liability for loss of or damage to a P-8A aircraft used in development or test of shared requirements in the Project will be shared in accordance with the ratio of the Participants' shared Financial and Non-financial Costs.

SECTION IX

DISCLOSURE AND USE OF PROJECT INFORMATION

9.1. General

9.1.1. Both 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 enable the successful accomplishment of the Project as defined in Section III (Scope of Work). The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Section II (Objectives) and Section III (Scope of Work) of this MOU.

9.1.2. The following export control provisions will apply to the transfer of Project Information:

9.1.2.1. Transfer of Project Information will be consistent with the furnishing Participant's applicable export control laws and regulations.

9.1.2.2. Unless otherwise restricted by duly authorized officials of the furnishing Participant at the time of transfer to the other Participant, all export-controlled Information furnished by one Participant to the other Participant may be retransferred to the other Participant's Contractors, subcontractors, Prospective Contractors, and prospective subcontractors, subject to the requirements of paragraphs 6.4. and 6.5. of Section VI (Contracting Provisions) of this MOU.

9.1.2.3. Export-controlled Information may be furnished by Contractors, subcontractors, Prospective Contractors, and prospective

subcontractors of one Participant's nation to the Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of the other Participant's nation pursuant to this MOU, subject to the conditions established in licenses or other approvals issued by the Government of the former Participant in accordance with its applicable export control laws and regulations.

9.1.2.4. If a Participant finds it necessary to exercise a restriction on the retransfer of export-controlled Information as set out in subparagraph 9.1.2.2. of this Section, it will promptly inform the other Participant's representative. If a restriction is then exercised and the affected Participant objects, that Participant's SC representative will promptly notify the other Participant's SC representative and they will immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

9.1.3. Notwithstanding any other provision in this Section, disclosure of Project Information will be in accordance with the Participants' respective national disclosure policies. The Participants will use their best efforts to maximize disclosure of Project Information under this MOU within national disclosure policies and in accordance with the applicable security bilateral agreements and arrangements.

9.2. Government Project Foreground Information

9.2.1. Disclosure: All Project Foreground Information generated by a Participant's military or civilian employees (hereinafter referred to as "Government Project Foreground Information") will be disclosed promptly and without charge to the other Participant.

9.2.2. Use: Each Participant may use 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. Any sale or other transfer to a Third Party will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU.

9.3. Government Project Background Information

9.3.1. 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:

9.3.1.1. Such Government Project Background Information is necessary to the Project, with the Participant in possession of the Information determining whether it is "necessary to" the Project.

9.3.1.2. Such Government Project Background Information may be made available only if the rights of holders of Intellectual Property rights are not infringed.

9.3.1.3. Disclosure of such Government Project Background Information is consistent with national disclosure policies and regulations of the furnishing Participant.

9.3.1.4. Any disclosure or transfer of such Government Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.

9.3.2. Use: Government Project Background Information furnished by one Participant to the requesting Participant may be used without charge by or for

the requesting Participant for Project purposes. However, subject to Intellectual Property rights held by entities other than the Participants, such Government Project Background Information may be used for Defense Purposes by the requesting Participant, without charge, when such Information is necessary for the use of Project Foreground Information. The furnishing Participant, in consultation with the other Participant, will determine whether the Government Project Background Information is necessary for the use of Project Foreground Information. The furnishing Participant will retain all its rights with respect to such Government Project Background Information.

9.4. Contractor Project Foreground Information

9.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors (hereinafter referred to as "Contractor Foreground Information") will be disclosed without charge to both Participants.

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

9.5. Contractor Project Background Information

9.5.1. Disclosure: A Contracting Participant will make available to the other Participant promptly and without charge all Contractor Project Background Information generated by Contractors that is delivered under Contracts awarded in accordance with this MOU. Any other Project Background Information that is generated by Contractors and

that is in the possession of one Participant will be made available promptly and without charge to the other Participant, upon its request, provided the following conditions are met:

9.5.1.1. Such Contractor Project Background Information is necessary to the Project, with the Participant in possession of the Information determining, after consultation with the requesting Participant, whether it is "necessary to" the Project.

9.5.1.2. Such Contractor Project Background Information may be made available only if the rights of holders of Intellectual Property rights are not infringed.

9.5.1.3. Disclosure of such Contractor Project Background Information is consistent with national disclosure policies and regulations of the furnishing Participant.

9.5.1.4. Any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.

9.5.2. Use: Any Contractor Project Background Information furnished by one Participant's Contractors and disclosed to a requesting Participant may be used without charge by the requesting Participant for Project purposes, subject to any restrictions by holders of Intellectual Property rights other than the Participants; also, when necessary for the use of Project Foreground Information, such other Contractor Project Background Information may be used by the requesting Participant for Defense Purposes, subject to such fair and reasonable terms as may be necessary to be arranged with the Contractor. The furnishing Participant, in consultation with the requesting Participant,

will determine whether such other Contractor Project Background Information is necessary for the use of Project Foreground Information. The furnishing Participant will retain all its rights with respect to Contractor Project Background Information.

9.6. Notwithstanding paragraphs 9.2., 9.4., and 9.5. of this Section, if an effort under this MOU is for the national operational requirements of the ADOD, and in order to carry out effective Project management, the U.S. DoD will receive, and may use or have used, for Project purposes, all Project Foreground Information generated under this MOU for the national operational requirements of the ADOD. The U.S. DoD will also receive all Contractor Project Background Information delivered under Contracts awarded for the national operational requirements of the ADOD, and may use or have used that Information for Project purposes, subject to any restrictions by holders of Intellectual Property rights.

9.7. Alternative Uses of Project Information

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

9.7.2. The prior written consent of the U.S. DoD will be required for the use of Project Foreground Information by the ADOD for purposes other than those set out in this MOU.

9.8. Proprietary Project Information

9.8.1. All Project Information that is subject to disclosure and use restrictions with respect to Intellectual Property rights will be identified and marked, and it will be handled as Controlled Unclassified Information or as Classified Information, depending on its security classification.

9.8.2. The PSI will contain provisions regarding communication of Project Information when such Project Information is subject to Intellectual Property rights.

9.9. Patents

9.9.1. Each Participant will include in all its Contracts for the Project a provision governing the disposition of rights in regard to Project Inventions and Patent rights relating thereto that either:

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

9.9.1.2. Provides that the Contractor will hold title (or may elect to retain title) for such 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 thereto, on terms in compliance with the provisions of subparagraph 9.9.2. of this Section.

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

9.9.3. The provisions of subparagraphs 9.9.4. through 9.9.7. below will apply in regard to Patent rights for all Project Inventions made by the 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.

9.9.4. When a Participant has or can secure the right to file a Patent application with regard to a Project Invention, that Participant will consult with the other Participant regarding the filing of such Patent application. The Participant that has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding title, Patent applications covering that Project Invention. A Participant will immediately notify other Participant that a Patent application has been filed. If a Participant, having filed or caused to be filed a Patent application, abandons prosecution of the application or ceases maintaining the Patent granted or issued on the application, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution or maintain the Patent as the case may be.

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

9.9.6. 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 Project Invention throughout the world for Defense Purposes.

9.9.7. Patent applications to be filed under this MOU which contain Classified Information will be protected and safeguarded in accordance with the requirements contained in the Agreement between the United States and Australia regarding Interchange of Patent Rights and Technical Information for Defense Purposes: Filing of Classified Patent Applications, dated October 2, 1961.

9.10. Each Participant will notify the other Participant of any Intellectual Property infringement claims brought against that Participant arising in the course of work performed under the Project on behalf of the other Participant.

Insofar as possible, the other applicable Participant will provide Information available to it that may assist in defending such claims. Each Participant will be responsible for handling such Intellectual Property infringement claims brought against it, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving such Intellectual Property infringement claims in proportion to their financial and non-financial contributions for that work specified in Section V (Financial Provisions) of this MOU.

9.11. The Participants will, as permitted by their national laws, regulations, 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 Patent, or as determined to be necessary for work under the Project, authorization and consent for non-commercial copyright, granted or otherwise provided by their respective countries.

SECTION X

CONTROLLED UNCLASSIFIED INFORMATION

10.1. 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:

10.1.1. Such Information will be used only for the purposes authorized for use of Project Information as specified in Section IX (Disclosure and Use of Project Information) of this MOU.

10.1.2. Access to such Information will be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1., and will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU.

10.1.3. Each Participant will take all appropriate lawful steps available to it, including national classification, to keep such Information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2. of this Section, 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.

10.2. To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked to ensure its "in confidence" nature. The Participants' export-controlled Information will be marked in accordance with the applicable Participant's export control markings as documented in the PSI. The Participants will also decide, in advance and in writing, on the markings to be placed on any other types of Controlled Unclassified Information and describe such markings in the PSI.

10.3. Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 10.1. of this Section.

10.4. 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 XI

VISITS TO ESTABLISHMENTS

11.1. 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 Contractors, provided that the visit is authorized by both Participants and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2. All visiting personnel will be required to comply with security regulations of the hosting 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.

11.3. Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform to the established visit procedures of the hosting Participant. Requests for visits will bear the name of the Project.

11.4. 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 XII

SECURITY

12.1. All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the Agreement concerning Security Measures for the Protection of Classified Information, between Australia and the United States, which entered into force on November 7, 2002. The ADOD DSA is the Head, Defence Security Authority.

12.2. Classified Information will be transferred only through official Government-to-Government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information will bear the level of classification and denote the country of origin, the provisions of release, and the fact that the Information relates to this MOU.

12.3. Each Participant will take all appropriate 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 12.8. of this Section, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that the recipient:

12.3.1. 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 detailed in Section XIII (Third Party Sales and Transfers) of this MOU.

12.3.2. Will not use the Classified Information for other than the purposes provided for in this MOU.

12.3.3. Will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.

12.4. 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 Participant of the details of any such occurrence, and of the final results of the investigation and of the corrective action taken to preclude recurrence.

12.5. The PM will prepare a PSI and a Classification Guide (CG) for the Project. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded, and will require that markings for all export-controlled Classified Information will include the applicable export control markings identified in the PSI in accordance with paragraph 10.2. of Section X (Controlled Unclassified Information) of this MOU. The PSI and CG will be developed by the PM within three months after this MOU enters into effect. The PSI and CG will be reviewed and forwarded to the Participants' DSAs for approval and will be applicable to all Government and Contractor personnel participating in the Project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

12.6. The DSA or their designees of the Participant that awards a classified Contract will assume responsibility for administering security measures within its territory for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, Prospective Contractor, or subcontractor of any Classified Information received under this MOU, the DSAs will:

12.6.1. Ensure that such Contractor, Prospective Contractor or subcontractor (and their facilities) have the capability to protect the Classified Information adequately.

12.6.2. Grant a security clearance to the facilities, if appropriate.

12.6.3. Grant a security clearance for all personnel with duties that require access to Classified Information, if appropriate.

12.6.4. 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.

12.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

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

12.7. Contractors, Prospective Contractors, or subcontractors that 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 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.

12.8. For any facility in which 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.

12.9. Each Participant will ensure that access to the 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.

12.10. Information 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.

SECTION XIII

THIRD PARTY SALES AND TRANSFERS

13.1. Subject to paragraph 13.3. of this Section, the U.S. DoD will retain the right to sell, transfer title to, disclose, or transfer possession of Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Foreground Information to Third Parties. The U.S. DoD will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information to Third Parties without prior consultation with the other Participant through the SC. Furthermore, the U.S. DoD will not permit any such sale, disclosure, or transfer by others, including by the owner of the item, without prior consultation with the other Participant. The U.S. DoD recognizes that sales, disclosures, or other transfers described in this paragraph will only be made if the government of the intended recipient consents in writing that it will:

13.1.1. Not retransfer, or permit the further retransfer of, any equipment or information provided; and

13.1.2. Use, or permit the use of, the equipment or information provided only for the purposes for which such equipment or information is furnished.

13.2. The ADOD will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired 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 U.S Government. Furthermore, the ADOD will not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written consent of the U.S Government. The ADOD recognizes that such sales, disclosures, or other transfers will not be authorized by the U.S. Government unless the government of the intended recipient confirms in writing with the U.S. DoD that it will:

13.2.1. Not retransfer, or permit the further retransfer of, any equipment or Information provided.

13.2.2. Use, or permit the use of, the equipment or Information provided only for the purposes for which such equipment or Information is furnished.

13.3. In the case of Project Foreground Information that is funded wholly by ADOD for its national operational requirements, or any item that is produced from such Project Foreground Information, the U.S. DoD will not sell, transfer title to, disclose, or transfer possession of such Project Foreground Information or any item produced from such Project Foreground Information to any Third Party without the prior written consent of the ADOD. Furthermore, the U.S. DoD will not permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the ADOD. The U.S. DoD recognizes that sales, disclosures, or other transfers described in this paragraph will be made only if the Government of the intended recipient consents in writing that it will:

13.3.1. Not retransfer or permit the further retransfer of any equipment or Information provided; and

13.3.2. Use, or permit the use of the equipment or Information provided only for the purposes for which such equipment or Information is furnished.

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

13.5. Consent to Third Party sales and transfers of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information will be subject to foreign policy considerations, national security considerations, and national laws, regulations, and policies. A Participant Government's approval of the other Participant' Government's proposed sale or transfer to a Third Party will take into account its willingness to sell or transfer such equipment or Information to the same Third Party.

13.6. Sales and other transfers by a Participant or a Contractor to Third Parties of equipment developed in this Project may attract a levy to be shared between the U.S. DoD and the ADOD in accordance with their contributions to funding the development of that equipment in accordance with the following provisions and the procedures contained in the FMPD:

13.6.1. Prior to any such sale or other transfer, the amount of any levy and procedures for assessing and distributing such levy will be mutually determined by the Participants consistent with the laws and regulations of each Participant, using a pro rata recovery method to be specified in the FMPD and as described in paragraph 13.6.2. of this Section.

13.6.2 The PM, in consultation with U.S. DoD authorities, will determine the total qualifying non-recurring costs for research and development and production of the equipment proposed for sale or transfer. The research, development, and production non-recurring costs of such equipment must exceed $50 million U.S. to qualify for levy collection by one Participant or its Contractors for the other Participant. Qualifying non-recurring costs for levy collection will be determined in accordance with U.S. laws and U.S. DoD regulations concerning recoupment of non-recurring costs. Once qualifying non-recurring costs have been determined for the equipment proposed for sale or transfer, the PM will divide those total costs by the total projected production of that equipment, based on the projected procurement quantities of the Participants and Third Parties. Upon SC approval, the resulting figure will constitute the levy that may be assessed for the equipment proposed for sale or transfer. Each Participant's share of that levy will be calculated by multiplying the levy by the ratio of the Participant's total qualifying non-recurring costs for research and development and production of the equipment to all of the Participants' total qualifying non-recurring costs for research and development and production of the equipment.

13.7. Levies for the equipment addressed in paragraphs 13.6. of this Section will be collected for both Participants in accordance with this Section, but in no event will levies continue to be collected for a Participant after that Participant's total qualifying non-recurring costs for that equipment have been recouped. The U.S. DoD will be responsible for collecting levies on behalf of both Participants and will reimburse the ADOD based on the levies calculated in accordance with this Section. The U.S. DoD will bear that responsibility even if the U.S. DoD decides to reduce or waive its share of the levies in accordance with paragraph 13.8. of this Section.

13.8. A Participant may reduce or waive the assessment of its share of a levy on any Third Party sale or transfer.

SECTION XIV

LIABILITY AND CLAIMS

14.1. Claims arising under this MOU will be dealt with under paragraph 1 of the Chapeau Agreement. Any costs, including costs of claims, to be shared under paragraph 1.b)ii. of the Chapeau Agreement will be shared in accordance with the ratio of the Participants' shared Financial and Non-financial Costs.

14.2. The Contracting Participant will not indemnify Contractors against liability for claims by any other persons.

SECTION XV

PARTICIPATION OF ADDITIONAL NATIONS

15.1. It is recognized that other national defense organizations may wish to join the Project.

15.2. The U.S. DoD will consult with the ADOD prior to conducting 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 IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), and Section XIII (Third Party Sales and Transfers) of this MOU.

15.3. The Participants will jointly formulate the provisions under which additional Participants might join. The addition of new Participants to the Project will require amendment of this MOU by the Participants.

SECTION XVI

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

16.1. 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 customs duties, import and export taxes, and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this Project.

16.2. Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work of this Project. If any such customs duties, import and export taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs over and above that Participant's shared costs of the Project.

SECTION XVII

SETTLEMENT OF DISPUTES

17.1. Disputes between the Participants arising under or relating to this MOU 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 XVIII

AMENDMENT, TERMINATION, ENTRY INTO EFFECT, AND DURATION

18.1. All activities of the Participants under this MOU will be carried out in accordance with their respective national laws and regulations, including their respective export control laws and regulations. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

18.2. In the event of a conflict between a Section of this MOU and any Annex to this MOU, the MOU will control.

18.3. Except as otherwise provided, this MOU may be amended by the mutual written consent of the Participants. Annexes A, B, and C of this MOU may be amended by the written approval of the SC, provided that any such amendment is consistent with the sections of this MOU.

18.4. This MOU may be terminated at any time upon the written consent of the Participants. In the event both Participants consent to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination in the most economical and equitable manner.

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

18.5.1. The Participant terminating this MOU will continue participation, financial or otherwise, up to the effective date of termination.

18.5.2. Except as to Contracts awarded on behalf of both Participants, each Participant will be responsible for its own Project-related costs associated with termination of the Project. For Contracts awarded on behalf of both Participants, the Participant terminating this MOU 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 share of the Financial Cost Ceiling for financial contributions as established in Section V (Financial Provisions) of this MOU.

18.5.3. Each Participant will be responsible for its own Project-related costs associated with termination of the Project.

18.5.4. All Project Information and rights therein received under the provisions of this MOU prior to the termination of this MOU will be retained by the Participants, subject to the provisions of this MOU.

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

18.6. The respective benefits and responsibilities of the Participants regarding Section VIII (Project Equipment), Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), Section XIII (Third Party Sales and Transfers), Section XIV (Liability and Claims), and this Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of this MOU will continue to apply notwithstanding termination or expiration of this MOU.

18.7. This MOU, which consists of eighteen (18) Sections, and four (4) Annexes, will enter into effect upon signature by both Participants and will remain in effect for 8 (eight) years. It may be extended by written concurrence of the Participants.

The foregoing represents the understandings reached between the Department of Defense of the United States of America and the Department of Defence of Australia

Signed, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
Signature	Signature
SEAN J. STACKLEY	AIR VICE-MARSHAL COLIN THORNÉ
Name	Name
ASN (RD&A)	HEAD AEROSPACE SYSTEMS DIVISION
Title	Title
3 APRIL 2009	17 APRIL 2009
Date	Date
PENTAGON	CANBERRA AUSTRALIA.
Location	Location

ANNEX A

SYSTEM REQUIREMENTS AND AUSTRALIAN OPERATIONAL REQUIREMENTS

1. General Description of P-8A Poseidon Spiral 1 Operational Requirement.

The P-8A Poseidon program was initiated in response to the Joint Requirements Oversight Council (JROC) validated Mission Needs Statement (MNS), "Broad Area Maritime and Littoral Armed Intelligence, Surveillance and Reconnaissance," and the requirements for the program are defined in the MMA Operational Requirements Document (ORD)/ Capability Development Document (CDD), validated and approved by JROC on December 8, 2003. Subsequently, the acquisition plan approved for the P-8A was based on procurement of a baseline capability and included design, development testing and production of a capability to meet ORD/CDD requirements. An evolutionary acquisition strategy consisting of incremental capability improvements that will retain cost-wise effectiveness for winning major combat operations through 2020 was also approved in the acquisition plan. The plan stated the baseline capability in initial production P-8A aircraft will be updated using "Spirals" to design develop operational capability to meet emerging threats. The improved capability developed during the incremental improvement programs will be forward and back fitted to insure the operational capability of the P-8A weapon system continues to meet operational requirements.

Operational requirements for the first increment of capability improvements have been identified and be developed and baselined in Spiral 1. The DON Spiral 1 core objectives shall be the baseline requirements for the cooperative project and are listed in paragraph 2.1. below. The Australian operational requirements variations from this content of Spiral 1 will be considered provided funds are supplied by ADOD, and the variations do not unacceptably degrade existing system performance or negatively affect incorporation of DON Spiral 1 requirements or impact Spiral 1 delivery schedules. The current list of Australian operational requirements for consideration are listed in paragraph 2.2. The capabilities in paragraph 2.1. and 2.2. will be evaluated by the Participants and combined into a consolidated final list. The Project will include a detailed analysis of the critical technologies, technology maturity, technical risk, and a cost assessment required to incorporate the proposed capabilities.

2. Capabilities Required.

2.1. Candidate DON capabilities (Spiral 1 Priority): In order to pace the threat, the Participants have concluded that the capability improvements listed below are first priority for Spiral 1 development. These capability improvements include, but are not limited to:

Advanced Extended Echo Ranging System
Automatic Identification System
Acoustic Rapid Commercial-Off-The-Shelf Insertion
Integrated Broadcast Services
Capability upgrades to the Tactical Support Center

2.2. Candidate Australian Operational Requirements:

The ADOD has identified the following capability improvements as possible Australian operational requirements.

Integration of MU90 torpedo
Integration of Harpoon Block II or III
Integration of Joint Air to Surface Standoff Missile (JASSM)
JASSM-MI Link 16 mid-course guidance
Radar Auto Track
Radar Ground Moving Target Indicator
EO/IR upgrades (Rangefinder, Designator)
6th Crew Station
Barra sonobuoy integration
Air Launched Rescue Craft

2.3. Australian Integrated Ground Environment (IGE) and Industry Capability Partner (ICP):

The ADOD has identified an Australian operational requirement to integrate a variety of national systems with both P-8A and Broad Area Maritime Surveillance (BAMS) Unnmanned Aerial System (UAS) ground elements. The ADOD has designated an ICP who will be under Contract to the ADOD to provide the IGE and associated elements in order to accomplish this integration effort. The U.S. DoD will assist the ADOD and the ICP on a not-to-interfere basis with Project goals, schedules, and Contracting, in order to facilitate and assist in the accomplishment of this effort in terms of anticipated P-8A system interfaces with the IGE. If necessary, the ADOD can request that the U.S. DoD Contract on its behalf in order to accomplish elements of these efforts.

ANNEX B

JOINT PROJECT OFFICE ORGANIZATION

1. Staffing for the JPO will be as shown below.

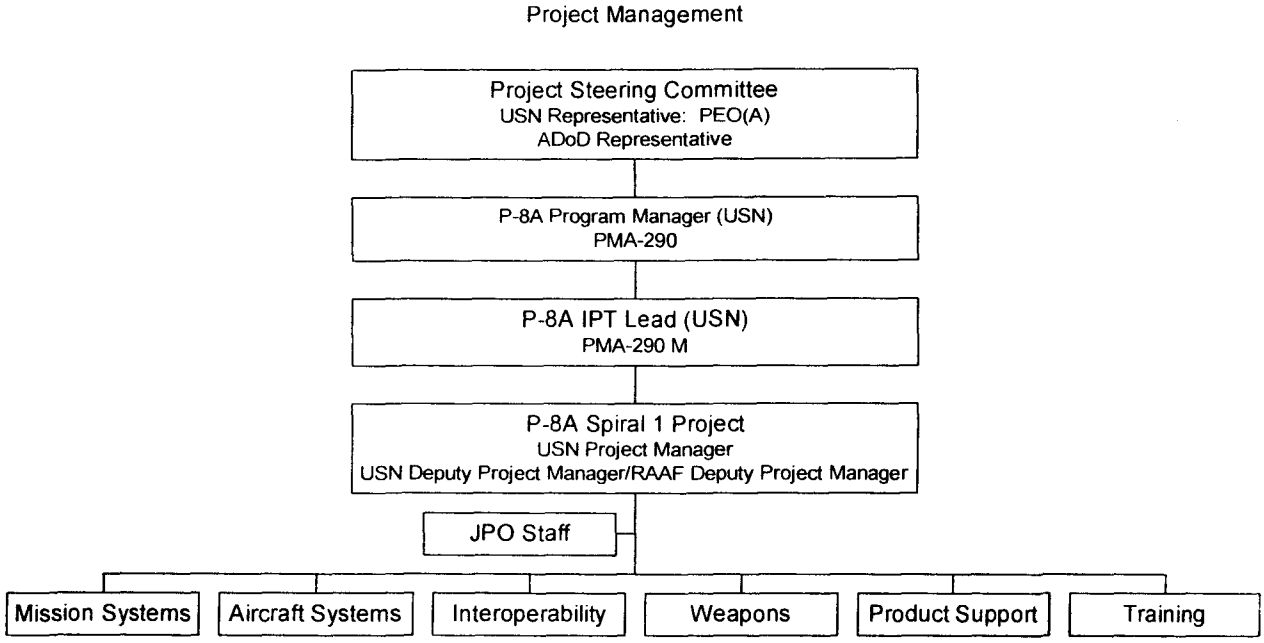

TABLE B-1

The ADOD may assign up to three CPP (a DPM and two IPT members). The Steering Committee and the Project Manager will have the responsibilities regarding CPP as set out in Annex D (Cooperative Project Personnel).

ANNEX C

INVENTORY OF PROJECT EQUIPMENT EXCHANGES

NOMENCLATURE	PART NO./ MODEL NO.	REPLACEMENT VALUE	RECEIVING PARTICIPANT	DATE TRANSFERRED

ANNEX D

COOPERATIVE PROJECT PERSONNEL

1.0. Purpose and Scope

1.1. This Annex establishes the provisions that will govern the conduct of Cooperative Project Personnel (CPP). The Parent Participant will assign military members or civilian employees to the JPO in accordance with Section IV (Management (Organization and Responsibility)), Annex B (Joint Project Office Organization), and this Annex. CPP must be able to perform all the responsibilities assigned to them under this MOU. Commencement of assignments will be subject to any requirements that may be imposed by the Host Participant or its Government regarding acceptance of CPP, such as, but not limited to, visas and visit request documentation. The SC will determine the length of tour for the positions at the time of initial assignment.

1.2. CPP will be assigned to the JPO for Project work and will report to their designated JPO supervisor regarding that work. The PM will be responsible for the creation of a document describing the duties of each CPP position, which will be subject to approval by the SC. CPP will not act as liaison officers on behalf of the Parent Participant. CPP may act from time to time on behalf of their respective SC member if the latter so authorizes in writing.

1.3. CPP will not be assigned to command or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Participant's Government.

2.0. Security

2.1. The SC will establish the maximum level of security clearance required, if any, to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the Project Security Instruction (PSI) and Classification Guide (CG). Access to Classified Information and facilities in which Classified Information is used will be consistent with, and limited by, Section II (Objectives) and Section III (Scope of Work) of this MOU and will be kept to the minimum required to accomplish the work assignments.

2.2. The Parent Participant will file visit requests for the CPP through prescribed channels in compliance with the Host Participant's procedures. As part of the visit request procedures, the Parent Participant will cause security assurances to be filed, through the Parent Participant's government's embassy located in the Host Participant's country specifying the security clearances for the CPP being assigned.

2.3. The Host Participant and Parent Participant will use their best efforts to ensure that CPP assigned to the JPO are aware of, and comply with, applicable laws and regulations as well as the requirements of Section X (Controlled Unclassified Information), Section XI (Visits to Establishments), Section XII (Security), and paragraph 18.6. of Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of this MOU and the provisions of the PSI and CG. Prior to commencing assigned duties, CPP will, if required by the Host Participant Government's laws, regulations, policies, or procedures, sign a certification concerning the conditions and responsibilities of CPP.

2.4. CPP will at all times be required to comply with the security and export control laws, regulations, and procedures of the Host Participant's Government. Any violation of security procedures by CPP during their assignment will be reported to the Parent Participant for appropriate action. CPP committing significant violations of security and export control laws, regulations, or procedures during their assignments will be withdrawn from the Project with a view toward appropriate administrative or disciplinary action by their Parent Participant.

2.5. All Classified Information made available to CPP will be considered as Classified Information furnished to the Parent Participant, and will be subject to all provisions and safeguards provided for in Section XII (Security), the PSI, and CG.

2.6. CPP will not have personal custody of Classified Information or Controlled Unclassified Information unless approved by the Host Participant and as authorized by the Parent Participant. They will be granted access to such Information in accordance with Section X (Controlled Unclassified Information), Section XII (Security) of this MOU, and the PSI during normal duty hours at the JPO and when access is necessary to perform Project work.

2.7. CPP assigned to the JPO will not serve as a conduit between the Host Participant and Parent Participant for requests and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized in the PSI.

3.0. Technical and Administrative Matters

3.1. Consistent with the Host Participant's government laws and regulations, and subject to applicable multilateral or bilateral agreements or arrangements, CPP will be subject to the same restrictions, conditions, and privileges as Host Participant personnel of comparable rank and in comparable assignments. Further, to the extent authorized by the Host Participant Government's laws and regulations, and any applicable multilateral or bilateral agreements or arrangements, CPP and their authorized dependents will be accorded:

3.1.1 Exemption from any Host Participant's Government tax upon income received from the Parent Participant; and

3.1.2 Exemption from any Host Participant's Government customs and import duties or similar charges levied on items entering the country for their official or personal use, including their baggage, household effects, and private motor vehicles.

3.2. On arrival, CPP will be provided briefings arranged by the JPO about applicable laws, orders, regulations, and customs and the need to comply with them. CPP will also be provided briefings arranged by JPO regarding entitlements, privileges, and obligations such as:

3.2.1. Any medical and dental care that may be provided to CPP and their dependents at Host Participant medical facilities, subject to the requirements of applicable laws and regulations, including reimbursement requirements.

3.2.2. Purchasing and patronage privileges at military commissaries, exchanges, theaters, and clubs for CPP and their dependents, subject to the requirements of applicable laws and regulations.

3.2.3. The Host Participant will provide, if available, housing and messing facilities for CPP and their dependents on the same basis and priority as for its own personnel. CPP will pay messing and housing charges to the same extent as Host Participant personnel. At locations where facilities are not provided by the Host Participant for its own personnel, the Parent Participant will make suitable arrangements for its CPP.

3.2.4. Responsibility of CPP and their accompanying dependents to obtain motor vehicle liability insurance coverage in accordance with the laws and regulations applicable in the area where they are residing. In case of claims involving the use of private motor vehicles by CPP, the recourse will be against such insurance.

3.3. The PM, through the JPO, will, in consultation with the CPP, establish standard operating procedures for CPP in the following areas:

3.3.1. Working hours, including holiday schedules.

3.3.2. Leave authorization, consistent to the extent possible with the military and civilian personnel regulations and practices of the Host Participant and Parent Participant.

3.3.3. Dress regulations, consistent to the extent possible with the military and civilian personnel regulations and practices of the Host Participant and Parent Participant.

3.3.4. Performance evaluations, recognizing that such evaluations will be rendered in accordance with the Parent Participant's military or civilian personnel regulations and practices.

3.4. CPP committing an offense under the laws of the Government of the Host Participant or Parent Participant may be withdrawn from this Project with a view toward further administrative or disciplinary action by the Parent Participant. Disciplinary action, however, will not be taken by the Host Participant against CPP, nor will the CPP exercise disciplinary powers over the Host Participant's personnel. In accordance with Host

Participant Government's laws and regulations, the Host Participant will assist the Parent Participant in carrying out investigations of offenses involving CPP.

3.5. During their JPO assignment, CPP will not be placed in the following duty status or environments unless mutually decided by the SC:

3.5.1. Areas of political sensitivity where their presence may jeopardize the interests of either the Host Participant or Parent Participant, or where, in the normal course of their duty, they may become involved in activities that may embarrass either Participant.

3.5.2. Deployments in non-direct hostility situations, such as UN peacekeeping or multi-national operations, or third countries.

3.5.3. Duty assignments in which direct hostilities are likely. Should a JPO to which CPP are assigned become involved in hostilities unexpectedly, CPP assigned to that JPO will not be involved in the hostilities. Any such CPP approved by the SC for involvement in hostilities will be given specific guidance as to the conditions under which the assignment will be carried out by the appropriate authorities of the Host Participant and Parent Participant.