DEFENSE

Cooperation

Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and the UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

Signed December 13 and 16, 2004

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."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Defense: Cooperation

Memorandum of understanding signed December 13 and 16, 2004;
Entered into force December 16, 2004.
With annexes.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

GOVERNMENT OF THE UNITED STATES

AND THE

GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN

AND NORTHERN IRELAND

RELATING TO THE PRINCIPLES GOVERNING COOPERATION

IN RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT

AND LOGISTICS SUPPORT OF DEFENSE CAPABILITY

(SHORT TITLE: US/UK RECIPROCAL DEFENSE PROCUREMENT MOU)

INTRODUCTION

The Government of the United States of America (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments,

Noting that the Governments established and have maintained understandings relating to reciprocal defense procurement since 1975,

Noting that the Governments' defense cooperation relationship is separately characterized by the Declaration of Principles for Defense Equipment and Industrial Cooperation signed on February 5, 2000, which is independent of but complementary to this MOU,

Are seeking to achieve greater cooperation in research, development, production, procurement, and logistics support of defense capability in order to:

—Make the most cost-effective and rational use of their respective industrial, economic and technological resources consistent with national laws, regulations, policies, and procedures;

-Promote the widest possible use of standard or

interoperable equipment; and

-Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the signatories to this Memorandum of Understanding (MOU).

In an effort to further the above aims, the Governments have sought to reach certain understandings and this Memorandum sets out the understandings in regard to the guiding principles governing mutual cooperation in the production and purchasing of defense capability.

The Governments intend the understanding of this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments recognize the efforts of European governmental defense cooperation organizations to enhance collaboration on defense capability programs by more comprehensive and systematic arrangements among the individual member nations. They, therefore, understand that in the event of a possible conflict between understandings entered into between one of these organizations and the USG, and this MOU, the signatories hereto will consult with a view to amending this MOU.

The Governments will regard this MOU as being part of the arrangements, in the larger context, for cooperation between Europe and North America within the Alliance.

The Agreement Concerning Defence Cooperation Arrangements of 27 May 1993 between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland will apply to this MOU and all annexes.

SECTION 1

Applicability

1.1 This MOU covers the acquisition of defense capability by the Department of Defense of the USG and the Ministry of Defence of HMG through:

1.1.1 Research and development;

1.1.2 Procurements of defense equipment and supplies; and

1.1.3 Procurements of defense services.

1.2 This MOU does not cover:

1.2.1 Construction, alteration or repair of public works or public facilities; or

1.2.2 Construction material supplied under construction contracts.

SECTION 2

Principles Governing Reciprocal Defense Purchasing

2.1 Both Governments intend to facilitate the mutual flow of the defense procurement for their armed services, aiming at a long term equitable balance in their exchanges, consistent with their national laws, regulations, policies, and procedures and taking into consideration the capability of their defense industrial and research and development bases.

2.2 This MOU is intended to cover areas in which, in the view of both Governments, bilateral co-operation could be achieved in research, development, production, procurement and logistics support of defense capability. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD), the European governmental defense cooperation organizations and the Senior NATO Logisticians Conference (SNLC).

2.3 In order to facilitate a more integrated and stronger industrial base, each Government intends to provide firms of the other country with treatment no less favorable than that accorded to domestic enterprises.

2.4 To facilitate these objectives the following principles will be observed by the Governments:

2.4.1 The Governments will identify and nominate for consideration by each other, defense items (defense equipment or defense services) believed suitable to satisfy their respective requirements. The Governments will decide between them the purchases to which this MOU will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis. However, unless otherwise prescribed by applicable laws, regulations, policies, or procedures, the

purchasing Government may choose whether to obtain the items on a government-to-government or industry-to-government basis.

2.4.2 In the interests of standardization and the effective utilization of scarce resources, each Government will, to the extent practical, adopt qualified defense items that have been developed or produced in the other country.

2.4.3 The Governments will regularly discuss measures to limit any adverse effects of offsets and other regulations or policies on the defense industrial base of each country.

2.4.4 Each Government recognizes and expects that the other uses sound processes for requirements definition, acquisition, and procurement and contracting, and that these processes both facilitate and depend on transparency and integrity in the conduct of procurements. Each Government will ensure its processes are consistent with the implementing procedures at Annex I, which will incorporate the following:

(i) Consistent with national laws and regulations, offers or proposals will be evaluated on the basis of non-discrimination on the grounds of place of manufacture, without applying price differentials under 'Buy National' laws and regulations, and without applying the costs of import duties;

(ii) Full and equitable consideration will be given to all qualified sources in each other's country and each country will give full and equitable consideration to all applications for qualification by sources in the other country, consistent with applicable laws, regulations, policies, and procedures;

(iii) Offers or proposals will be required to satisfy requirements of the purchasing office including performance, quality, delivery and costs;

(iv) Provisions for duty-free certificates and related documentation.

2.4.5 To facilitate potential or established programs, including purchases set up in implementation of this MOU, the Governments understand that consistent with their laws, regulations, policies, and procedures and subject to privately owned proprietary rights, each Government will, so far as it is

able, release to the other and to its agents information and technology the providing Government believes is necessary to facilitate such programs.

2.4.6 Arrangements regarding the placement of contracts by one government on behalf of the other government will be negotiated on a case-by-case basis and reflected in each individual cooperative project arrangement.

2.4.7 Nothing in this MOU serves to prevent the implementation of necessary export control provisions in individual cooperative project arrangements.

2.4.8 Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistics support of defense equipment purchased through procurements covered by this MOU. Both Governments will make their defense logistics systems and resources available for this purpose as required and jointly decided.

2.4.9 Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense organizations to implement the provisions of this MOU.

2.4.10 The Governments, through their appropriate representatives, will consult concerning the effective implementation of this MOU. Such consultations will be conducted on the basis of Section 3 of this MOU.

SECTION 3

Implementation Machinery

3.1 Each Government will, as required, review the understandings established under this MOU in light of any subsequent changes to its national laws, regulations, policies and procedures, and will consult with the other Government to jointly decide whether this MOU should be amended.

3.2 The Under Secretary of Defense for Acquisition, Technology, and Logistics, in conjunction with the Under Secretary of Defense for Policy and in coordination, as appropriate, with other DoD offices, will be the responsible authority in the United States of America.

3.3 The Chief of Defence Procurement, MoD, under the guidance of MoD Ministers and in consultation with the Chief of Defence Logistics, the Deputy Chief of Defence Staff (Equipment Capability) and the Head of the Defence Export Services, will be the responsible authority in the United Kingdom of Great Britain and Northern Ireland.

SECTION 4

Industrial Involvement

4.1 Implementation of this MOU will entail full industrial involvement. Notwithstanding the Governmental procedures to implement this MOU, it will be the basic responsibility of the industries in each country to identify and market their respective capabilities and to carry out the necessary actions to bring about industrial involvement.

4.2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate guidance on its implementation.

4.3 The Governments will arrange that their respective procurement and requirements offices are made familiar with the principles and objectives of this MOU and will, consistent with their normal practice and procedures with their country's industry, assist sources in the country of the other Government to obtain information concerning proposed purchases, necessary qualification and appropriate documentation.

SECTION 5

Security, Release of Information and Visits

5.1 Any classified information or material exchanged under the provisions of this MOU will be used, transmitted, stored, handled and safeguarded in accordance with the 1961 US-UK General Security Agreement, as amended, including the Security Implementing Arrangement dated 27 January 2003 thereto.

5.2 Each Government will take all lawful steps available to it to keep information exchanged in confidence under this MOU free from disclosure under any legislative provision, unless the other Government consents to such disclosure.

5.3 To assist in providing the desired protection, each Government will mark such information furnished to the other with a legend indicating the country of origin, the security classification, the conditions of release, the fact that the information relates to this MOU and, if unclassified , that it is furnished in confidence.

5.4 Information provided by either Government to the other in confidence, and information produced by either Government pursuant to this MOU requiring confidentiality will be safeguarded in a manner that ensures its proper protection from unauthorized disclosures.

5.5 The Governments will maintain full and comprehensive lists of Technical Exchange Arrangements pursuant to this MOU to which both are signatories. These Arrangements will be taken into account when applications from the Government of either country including Government supported industry applications, are made for the disclosure of information relating to cooperation under the provisions of the MOU.

5.6 Bearing in mind the close cooperation of the two Governments to ensure the maintenance of NATO's technological superiority, they confirm that in considering each cooperative project carried out under this MOU, they will pay specific attention to exercising control both bilaterally and within multinational bodies over the transfer to third parties of technologies and associated manufacturing processes involved in defense programs. Within such a framework each Government may authorize release of information generated solely within its territory exclusively at its own cost and which does not incorporate any information provided by the other Government. Release of controlled information, know-how or articles will require the prior written permission of the providing Government.

5.7 A security review of all cooperative programs carried out under this MOU will be conducted annually by the appropriate national authorities to ensure Government and Industry compliance with the security regulations of the respective Governments for the protection of classified and unclassified but sensitive technology.

5.8 In accordance with the 1961 UK/US General Security Agreement, as amended, including the Security Implementing

Arrangement dated 27 January 2003, each Government will permit visits to its establishments, agencies and laboratories, and contractor industrial facilities, by employees of the other Government or by employees of the other Government's contractor(s), provided that the visit is authorized by both Governments and the employees have appropriate security clearances and a need-to-know.

5.9 All visiting personnel will comply with security and export control regulations of the host country. Any information disclosed or made available to visitors will be treated as if supplied to the Government sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

SECTION 6

Duration

6.1 This MOU, including Annexes I, II, III, IV, V, VI, and VII listed below, will come into effect upon signature by the Governments and will terminate on 1 January 2015.

I Implementing Procedures

II Mutual Acceptance of Test and Evaluation

III Reciprocal Audits of Contracts and Subcontracts

IV Logistics Support of Defense Equipment

V Reciprocal Government Quality Assurance

VI Meeting National Defense Requirements - Security of Supply

VII Flow of Technical Information

6.2 If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 2015, any such proposal will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to decide upon such actions as may be necessary to alleviate problems that may result from termination.

6.3 It is intended that contracts entered into as a result of the cooperation fostered by the understandings in this MOU will not be terminated solely because of the termination of this MOU.

6.4 Any difference of view regarding the interpretation or application of this MOU will be resolved by consultation between the two Governments and will not be referred to a national or international tribunal or third party for settlement.

SECTION 7

Amendments and Implementing Arrangements

7.1 Any changes or additions to this MOU, including its Annexes, that create or amend substantive benefits or commitments involving any Government are subject to approval at the same level as the MOU itself.

7.2 Implementing arrangements regarding the provisions of this MOU, including its Annexes, may be negotiated by appropriate subordinate officials of the responsible authority of each Government. Such arrangements may involve procedural matters, administrative direction and guidance, but will not create any substantive benefits or commitments involving any Government. No provision of any implementing arrangement will be inconsistent with this MOU. In the event of conflict, this MOU will be controlling.

The foregoing represents the understandings reached between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland upon the matters referred to herein.

Donald Rumsfeld

For the Government of the United States

Date: DEC 16 2004

Geoffrey Hoon

For the Government of the United Kingdom of Great Britain and Northern Ireland

Date: 13th December 2004

ANNEX I

IMPLEMENTING PROCEDURES

SECTION 1

Introduction

This Annex sets forth the procedures by which the Governments will implement the Memorandum of Understanding on Cooperation in Research and Development, Production, Procurement and Logistics Support of Defense Capability (hereinafter referred to as 'the MOU').

SECTION 2

General Procedures

2.1 Each Government will consider for its defense requirements qualified defense items (defense equipment or defense services) developed and/or produced in the other country. In addition, the responsible purchasing agencies of each Government will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

2.2 It will be the responsibility primarily of industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations of the purchasing country.

2.3 Each Government will, consistent with normal practice and procedures with their own country's industry, ensure that the responsible Government authorities in each country will assist sources in the other country by responding promptly to requests for appropriate information concerning:

2.3.1 Plans and programs for production, logistics support and acquisition of defense equipment and defense services.

2.3.2 Requirements for the qualification of sources.

2.3.3 Specifications, quality assurance standards and other appropriate documentation.

2.4 Full and equitable consideration will be given to all qualified industrial and/or Government sources in both the US and UK, in accordance with the policies and criteria of the respective purchasing agencies. In addition, each Government will give full and equitable consideration to all applications for qualification by sources in the other country, in accordance with the laws, policies, regulations and procedures of the purchasing Government and, in the case of HMG, relevant and applicable European Union regulations.

2.5 Offers will be required to satisfy requirements including performance, quality, supportability, delivery and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations, full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

2.6 Consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying price differentials under 'Buy National' laws and regulations and without applying the cost of import duty.

2.7 Consistent with national laws and regulations and, in the case of HMG relevant and applicable European Union regulations, provision will be made for duty-free entry certificates and related documentation.

2.8 This MOU is not intended to and does not create any substantive authority to authorize the export of defense articles or defense services, including technical data, controlled on the UK Military List or the United States Munitions List. Further, any export subject to the UK Export Control Act or the US Arms Export Control Act and the International Traffic in Arms Regulations must be compliant with such Acts and such Regulations.

SECTION 3

Actions

3.1 Both Governments will review and, where considered appropriate and necessary, revise regulations, policies and

procedures to ensure that the principles and objectives of the MOU, which are intended to be compatible with the broad aims of NATO Rationalization, Standardization and Interoperability, are taken into account.

3.2 Within 90 days of the effective date of this MOU, each Government will provide to the other copies of policy guidance and administrative procedures distributed within their respective defense organizations to implement the provisions of this MOU.

3.3 Recognizing that factors such as delivery date requirements, the interests of security, and the timely conduct of the contracting process must be considered, the following arrangements will be made to ensure free and full competition for the award of contracts:

3.3.1 Each Government will ensure that as a minimum the following are familiar with the principles, objectives and provisions of the MOU:

- its respective defense planning, programming, and procurement offices.

- its respective research and development offices.

- its respective agencies and industries responsible for the development, procurement, and logistics support of defense items (defense equipment and defense services).

3.3.2 Each Government may assist industries in its country to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial involvement in the implementation of the MOU.

3.3.3 Each Government will consider defense items (defense equipment and defense services) offered by the Government or industry of the other country as candidates for their respective requirements. In meeting their procurement requirements, the Governments will, as far as practicable, ensure that the industries of each country are afforded adequate time to be able to participate in the production and procurement process.

3.3.4 Both Governments acknowledge the potential benefits that can accrue from international competition and the

contribution it can make to the fulfillment of the aims set out in the Introduction Section of this MOU. Each Government will ensure that those defense items (defense equipment and defense services) excluded from consideration under the arrangements made as a result of this MOU, for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Each Government will designate a central point of contact who will review, upon request, items to which mobilization base restrictions have been applied. Periodically, representatives of each Government will meet to review the policy underpinning the items excluded from consideration under the MOU arrangements with the aim of permitting the purchase of each others defense products.

SECTION 4

Procurement Procedures

4.1. To the extent practicable, each Government will publish or have published, in a generally available periodical, a notice of proposed purchases in accordance with national rules or practices. The notice will contain:

4.1.1 Subject matter of the procurement.

4.1.2 Time limits set for the submission of offers or requests to participate in the bid-invitation process.

4.1.3 Addresses to which offers or requests to participate should be sent.

4.2 The contracting authorities will provide copies of invitations to tender/solicitations for proposed purchases in accordance with national rules or practices. Such invitations will contain the following information:

4.2.1 The nature and quantity of the products or services to be supplied.

4.2.2 Whether the procedure is by sealed bids, or negotiation.

4.2.3 The criteria on which the award is to be based, such as by lowest bid price or otherwise.

4.2.4 Any delivery date.

4.2.5 The address and closing date for submitting bids as well as the language or languages in which they must be submitted.

4.2.6 The address of the contracting authority responsible for awarding the contract and providing any appropriate information to potential suppliers.

4.2.7 Any economic and/or technical requirements, financial guarantees and information required from suppliers.

4.2.8 The amount and terms of any sum payable for tender/ solicitation documents.

4.3 Any "invitations to tender"/"solicitations" will be published in adequate time to enable interested suppliers to signify their interest, and will allow adequate time for response consistent with user requirements.

4.4 Tenderers/offerors will be promptly notified as to the outcome of the tender/solicitation process.

4.5 A supplier will, on request, be provided with pertinent information concerning the reasons why he was not allowed to participate in a procurement or was not awarded a contract.

4.6 The Governments will maintain procedures for the examination of complaints arising in connection with any phase of the procurement process, and will exchange pertinent information on these procedures.

SECTION 5

Administration

5.1 Each Government will designate representatives who will meet as needed to review progress in implementing the MOU. The representatives will discuss research and development, production, procurement and logistics support needs of each country and the likely areas of co-operation; and consider any other matters relevant to the MOU. The agenda will be jointly decided upon and made final 30 days prior to the date set for the meeting.

5.2 The Governments will exchange statistics on the monetary value of defense contracts each awards to firms of the other country. An annual summary will be prepared on a basis to be jointly decided. The summary will be reviewed annually.

ANNEX II

MUTUAL ACCEPTANCE OF TEST AND EVALUATION

Introduction

1. In furtherance of the principles governing reciprocal defense purchasing, as defined in the MOU and in accordance with the Implementing Procedures for the MOU (Annex I thereto), representatives of the DoD and MoD have engaged in discussions and presentations on Test and Evaluation (T&E) in defense procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the Governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the Governments' organizations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

d. Using mutually developed common International test Operations Procedures (ITOPs).

2. The purpose of this Annex, is to record the concurrence reached by the Governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of defense systems are considered:

a. Those still under development.

b. Those for which development is complete.

Points of Concurrence

3. The objective is to avoid redundant testing. Neither Government will duplicate tests where acceptable data is available from the other Government's official test program.

4. Existing T&E organizations and procedures of both Governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either Government.

5. To achieve a more widespread understanding of the Governments' T&E organizations and procedures in the DoD, in the MoD, and in the Industries of both countries, the Governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A DoD/MoD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Service's independent operational test agency and in the UK, the Project Manager.

7. Test data obtained through the use of ITOPs by one country will generally be accepted by the other country.

Mutual Acceptance Procedures

8. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations.

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be a jointly developed or jointly decided upon existing format.

b. For systems under development, the offering Government will invite participation by the other early in the T&E program. Should the other Government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of

information necessary for the purpose of such T&E.

c. For systems for which development is complete, the offering Government will ensure, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one Government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the Governments will jointly determine any additional testing to be carried out. Such additional testing may be conducted by either country or jointly by both countries as jointly decided. In addition, before such additional testing commences, concurrence will be reached by the Governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either Government releases T&E data to the other, it is understood that, in the absence of any specific understanding to the contrary, such data is made available in confidence to the receiving Government for the purpose of information and evaluation within such Government and for no other use. Such data will be marked and handled in accordance with Section 5 of the MOU.

9. In any case where concurrence cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the DoD this will be the Director, Operational Test and Evaluation, and for the MOD this will be the Defence Test and Evaluation Group Team Leader.

ANNEX III

RECIPROCAL AUDITS OF CONTRACTS AND SUBCONTRACTS

I. INTRODUCTION

This Annex sets forth the provisions and procedures under which the Governments, recognizing the need for reciprocity in the arrangements and the need for mutual benefit, will provide one another with contract audit services upon request in support of defense contracts and subcontracts, and Foreign Military Sales (FMS) contracts, to which the US/UK Reciprocal Defense Procurement MOU applies.

II. GENERAL PRINCIPLES

The objective of this Annex is to provide effective, efficient, impartial, and timely audit services to the cognizant contracting officers of the Governments. Either Government may request audit services from the other Government. Each Government will perform the audits requested by the other Government or otherwise required by this Annex, subject to the relevant laws of either Government. By arrangement between the Governments, the requesting Government may elect to perform an audit in circumstances where the other Government is unable to meet the request.

Contract audit reports will be advisory. The purchasing Government will retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors. Purchases by HMG under the FMS Program will be handled under the USG FMS procedures in existence at the time of acceptance of the FMS agreement.

There are many similarities between the USG Contract Cost Principles and Procedures set forth in the Federal Acquisition Regulation (FAR) Part 31 and the "Accounting Conventions for Non-Competitive Government Contracts", which are applicable in the UK. Nevertheless, when performing an audit for the USG, HMG will identify all costs which are expressly unallowable under the versions of the FAR Part 31 and Defense FAR Supplement (DFARS) Part 231 applicable to the proposal, contract, or other matter being audited. HMG will also apply the FAR Part 31 and DFARS Part 231 general principles of allocability, allowability,

and reasonableness. Aside from UK companies that qualify for exemption from FAR Part 30 and DFARS Part 230 cost accounting standards (except for compliance with CAS 401 and 402), by reason of filing an acceptable Disclosure Statement, UK companies will be audited for compliance with applicable FAR Part 30 and DFARS Part 230 cost accounting standards. Except as provided above, generally accepted HMG audit methods and practices will be used by HMG in performing audits for the USG. For forward pricing audit reviews, both the financial and the technical elements will be evaluated and reported, unless a limited audit scope is requested.

HMG will accept audits performed by the USG which use FAR Part 31 and DFARS Part 231 cost principles and FAR Part 30 and DFARS Part 230 cost accounting standards, subject to review in the event of changes in the cost principles or cost accounting standards.

Neither Government will duplicate or review the work of the other except in regards the provision of feedback to the performing Government on the utility and clarity of audit reports. The Governments will hold periodic discussions to evaluate the operational effectiveness of the reciprocal audit arrangement. Each Government will evaluate its compliance with this audit Annex in accordance with the MOU provisions and timescales. A copy of the results of each such review will be provided to the other Government.

Solicitations, contracts and subcontracts will contain adequate provisions to enable the Governments to act for and on behalf of one another under this Annex and will authorize access to contractors' facilities and records as necessary.

Nothing in this Annex is to be construed to limit a purchasing Government's rights or remedies, including access to contractor's records, in accordance with the terms of the contract or subcontract as required by the law or policy of the purchasing Government.

III. SCOPE OF AUDIT ANNEX

This Annex encompasses audits in support of contracts and subcontracts for defense equipment and services, and FMS contracts, to which this MOU applies. It does not cover audits for architecture and engineering, construction, base support, operation and maintenance, or banking services, or contractors

solely in the business of supporting U.S. presence in the UK. For purposes of this Annex, contract audit services will include the following types of audits:

Forward Pricing Audits: Review of proposals submitted in contemplation of a contract award or a contract modification, or in relation to negotiating a price of an unpriced contract based on estimated costs, to determine the allocability, allowability, and reasonableness of each proposed cost element.

Accounting System Audits: Review of contractor accounting records, procedures, and systems to determine their accuracy, currency, completeness, and compliance with contract requirements.

Estimating System Audits: Evaluation of cost estimating systems.

Post Award Audits: Verification after contract award of the currency, accuracy, and completeness of cost or pricing data submitted to the purchasing Government as of the completion of negotiations. Post award audits will be performed automatically, without a request, by both Governments whenever required under the purchasing Government's policies and on a sample basis for non-mandatory cases. In addition, additional post award audits can be requested by either Government. Post award audits will be performed under the provisions of this Annex provided that the requesting Government has made available to the performing Government all data regarding the price negotiation and agreement.

Reimbursement Vouchers Audits: Verification of payment vouchers and claims for interim payments submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g., material reimbursement), recommending cost disallowances when appropriate.

Audits of Disclosed Accounting Practices: Verification of contractor compliance with disclosed accounting practices and contractual accounting requirements.

Overhead Cost Audits: Evaluation of overhead cost records prior to overhead settlements.

Termination Audits: Evaluation of overhead termination

costs and contract cost records prior to termination settlements.

Final Pricing Audits: Review and verification of actual costs incurred in the performance of cost reimbursement and fixed price incentive contracts for purposes of establishing the final cost or price.

Post Costing Audits: For relevant contracts placed by the UK, comparison and analysis, after contract completion, of out-turn, i.e., incurred, costs as against estimated costs used as a basis for pricing.

Other: Audit services considered necessary and requested by contracting country.

Both Governments will use, when appropriate, audit work already carried out by the performing Government for its own purposes in order to satisfy the requirements of the requesting Government.

Requests for audit services which fall below the current value threshold adopted by the requesting Government will only be accepted by the performing Government if adequate written justification of the need for the audit is provided.

IV. PROCEDURES

Request for contract audit services in the UK will be sent with a copy of the contractor's proposal (if applicable) using air mail, telephone facsimile or by e-mail to:

Defense Procurement Agency
Pricing and Forecasting Group
ATTN: PFG MOU Audit/Policy
LARCH 1A, #2102
MOD ABBEY WOOD
BRISTOL BS34 8JH
UNITED KINGDOM

Tel: 011 44-117-91-34123
Fax: 011 44-117-91-33965
E-mail: PFGAccSpt-AC@DPA.MOD.UK

Request for contract audit services in the US will be sent

with a copy of the contractor's proposal (if applicable) using air mail, telephonic facsimile or by e-mail to:

DoD Central Control Point
Defense Contract Management Agency
ATTN: DCMA-FBR
6350 Walker Lane, Suite 300
Alexandria, VA 22310-3241
USA

Tel: 703-428-1327
Fax: 703-428-1505
E-mail: dodccp@dcma.mil

Requests for audits will specify:

i. The type of audit services needed.

ii. The contractor's name and address.

iii. The subcontractor's name and address (if applicable).

iv. The proposal reference and value (if applicable).

v. Audit coverage required including any items requiring special review.

vi. The calendar date (not the number days after receipt of audit request) that the audit report is needed.

vii. A contact name, telephone number, facsimile number, and e-mail address.

Requests will be acknowledged via telephonic facsimile or e-mail by the performing Government and a point of contact, telephone number, facsimile number, and e-mail address will be provided.

Each Government will establish the following procedures:

i. Every audit report will identify the senior manager responsible for the audit as a liaison person and his or her telephone number. This senior manager will assist in obtaining clarifications of audit requests or audit reports whenever necessary. The senior manager will also assist in resolving problems with the timeliness, content, or quality

of audit reports.

ii. When difficulties cannot be resolved between the requesting officer and the identified senior manager of the performing Government, the issue will be escalated to successive levels of management.

iii. Each Government will appoint a central liaison officer for the purpose of addressing matters of general audit policy and procedure.

Each Government will provide audit reports in a timely manner. Audit reports submitted in accordance with the requested due dates, are timely. The particular features of each audit will influence the time needed to complete the audit, and each request should include the contractor proposal or a proposal summary schedule. In respect of audit of forward pricing proposals, requested due dates should not generally be set at less than 45 days from the date of receipt of the audit request or upon receipt of an acceptable proposal for audit, whichever is the latest. In special circumstances, requested due dates may be set at less than 45 days by arrangement between the Governments.

If the due date specified by the requesting Government cannot be met, the performing Government will contact the point of contact identified in the audit request to explain the reasons for the delay. If the failure to meet the requested due date is caused by external factors, not within the control of the Government performing the audit (such as not obtaining necessary cost data from a contractor), the purchasing Government will attempt to assist in resolving the problem and grant reasonable extensions as appropriate. If the inability to meet the requested due date is caused by action or inaction of the performing Government, the issue will be escalated to successive levels of management and the audit liaison person.

The Governments will provide each other with access to all available information concerning contractor cost estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. Contracts requiring the disclosure of accounting practices will normally authorize contractors to file such disclosures with their own Governments. In the US, the files will be maintained by the office administering the contracts. In the UK, the files will be maintained by the audit agency section responsible for

auditing the contractor concerned.

In order to facilitate periodic appraisal of this Annex, both Governments consent to maintain a list of all audits performed for the other, identifying the specific office that requested the audit.

V. CONTENT OF AUDIT REPORTS

In general, the Governments will endeavor to provide each other with audit reports that reflect the scope and depth normally provided under their respective national arrangements. The level of detail to be provided in forward pricing audits will be sufficient to determine adequately the fairness and reasonableness of the cost and/or price proposal and good value for money.

All audit reports will describe the type, scope, depth of the evaluation performed, and a point of contact with a telephone number. The audit reports will describe what was reviewed or evaluated, the methodology used to perform the review, findings of the review, recommendations of the auditor, and the basis for the recommendations. The audit report will address any areas that were specifically requested for review. Each contract or subcontract audit performed will include the appropriate steps to evaluate for unallowable costs and identify any unallowable costs. The audit report should identify the extent to which issues raised by the auditor were discussed with the contractor. Supporting evaluations by technical and other specialists will be included in the reports as appropriate. In the case of audits performed for the US by the UK, normal practice will involve both the accountancy and cost engineering personnel of the UK audit agency. The purchasing Government may request additional clarifications or supporting data, if necessary, and will have the final authority to determine when the information provided is adequate for its purposes.

For forward pricing audits, the reports will, for each element of proposed cost, identify: the offeror's proposed cost; the basis for the proposed cost (which should include, subject to respective national laws, regulations, established policies, and procedures, the years over which the costs fall, rates, labor costs/hours, materials, subcontracts, allowances, and contingencies); how the auditor evaluated it; any recommended exceptions (questioned costs); and rationale supporting the recommended exceptions (questioned costs). The

audit report will make recommendations, subject to Section VI below, and provide information to a level of detail sufficient for the purchasing Government to determine adequately the fairness and reasonableness of the proposed costs and hours and to permit it to develop and justify its negotiation position. The audit will verify, and the audit report will state, that the proposed rates are in line with the forward pricing rate agreement agreed with the contractor when carrying out Defense work for their respective Governments.

VI. PROTECTION OF INFORMATION

Every audit report will contain criteria and qualifications regarding the release of the report which must be strictly observed by the requesting Government. No privileged or confidential, commercial or financial information contained in a report will be disclosed to third parties other than the Governments without the express consent of the authorized officers of both Governments and the audited contractor. However, the contracting officer will normally release a summary of the results of audits of subcontractors to higher tier contractors for negotiation purposes. This summary will exclude material which is commercially confidential to the audited subcontractor. Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as it would normally receive under the laws and rules of the Government which possesses it.

VII. CHARGES

Services will be provided under this Annex without charge provided that a joint review of the services, in accordance with the MOU provisions and timescales, indicates that equitable reciprocity is being maintained. After such joint review either Government may propose the introduction of charges.

ANNEX IV

LOGISTICS SUPPORT OF DEFENSE EQUIPMENT

In implementing Section 2, paragraph 2.2, of the Reciprocal Defense Procurement MOU, the Governments will be governed by the following:

1. When developing or procuring equipment, the Governments will decide upon the basis for joint follow-on logistics support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistics support and other forms of logistics cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistics support, paragraph 2.4.8 of Section 2 of the MOU will apply.

4. The Governments will issue directives and guidelines to their respective armament and logistics agencies to achieve their described goals of the MOU.

ANNEX V

RECIPROCAL GOVERNMENT QUALITY ASSURANCE

1. Scope

This Annex sets forth the provisions under which each Government, in its country, will provide the other Government with Government Quality Assurance (GQA) services in support of defense contracts and subcontracts to which the MOU applies. The services exchanged under the provisions of this Annex are limited to GQA services.

2. Process

GQA services will be requested and performed in accordance with the provisions of Allied Quality Assurance Publication (AQAP) 2070, *NATO Mutual Government Quality Assurance (GQA) Process*, and NATO Standardization Agreement (STANAG) 4107, *Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications*. For the purposes of this Annex, the process includes, but is not limited by, the U.S. reservations identified in STANAG 4107.

In order to ensure the prompt processing and management of each country's requests for GQA services, the requests will be sent directly, and electronically where possible, to the Government's focal point identified in STANAG 4107, Annex A. Each focal point is responsible for directing the request for GQA to the appropriate national organization responsible for the performance of the GQA services.

3. Charges

GQA services exchanged under the provisions of this Annex will be provided free of charge. In the event of unusually heavy costs being incurred appropriate charges may be negotiated.

The expenses for product expended will be borne by the contracting parties.

4. Review

When necessary, a review of the services exchanged under this Annex may be initiated by either Government to ensure the provisions of this Annex continue to be effectively implemented and continue to meet the needs of the Governments.

The national GQA organizations are responsible for managing and continuously improving their implementation of the Mutual GQA process.

5. Protection of Information

Information and/or data generated as a result of the GQA services is shared between the Government organizations involved in the GQA process in accordance with the provisions of AQAP-2070. All other non-GQA information or data obtained through implementation of this Annex will be protected in accordance with Section 5 of the MOU.

ANNEX VI

MEETING NATIONAL DEFENSE REQUIREMENTS - SECURITY OF SUPPLY

1. INTRODUCTION

Among the consequences of globalization and industrial restructuring are the creation of transnational defense companies, possible loss of certain domestic industrial capabilities and capacities, and increasing acceptance of mutual defense interdependence. In this environment, the Governments recognize the value of dialogue, consultation, and arrangements that facilitate the supply of defense articles and defense services. As a consequence, the Governments believe that it is desirable that each Government utilize a Priorities System that provides for preferential treatment of contracts and subcontracts that promote national defense and support to Allies.

This Annex is an implementing arrangement to the "Declaration of Principles for Defense Equipment and Industrial Cooperation" dated the 5th day of February 2000. It is intended as specific implementation of the "Meeting National Defense Requirements" section in the Annex to that document. It sets forth the principles each Government intends to follow to provide reciprocal priorities support.

II. DEFINITIONS

a. *Security of Supply* - a nation's ability to assure a supply of defense products, materials and services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.

b. *Priorities System* - procedures under which a Government can assign priority to, and provide preferential acceptance and performance of, certain contracts (including subcontracts and purchase orders) over other contracts to meet approved defense requirements. As defined here, a Priorities System addresses only the Industrial Resources defined below.

c. *Industrial Resources* - materials, services, and facilities, including construction materials, needed to

meet approved defense requirements. This term includes any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service. *Industrial Resources,* for the purposes of this arrangement, do not include commercial end items commonly available in the country of the supplier.

III. MAJOR PRINCIPLES

Security of Supply presupposes, where possible, bilateral cooperation and coordination, including the mutual acceptance and support of industrial resource priorities set by either Government.

Complementary, mutual Priorities Systems arrangements between the Governments are important to ensure that industrial resources needed to meet critical defense requirements are provided in a timely, effective, and efficient manner. Such Priorities Systems are not designed to rectify poor provisioning and should not be used as a substitute for the normal contracting process.

Each Government will provide reciprocal priorities support. The US will provide priorities support by utilizing its existing Priorities System that is based on national law. The UK will provide reciprocal priorities support by utilizing its system that is based on a Government-Industry Code of Conduct.

To the greatest extent practicable, each Government will at all times (including, but not limited to crisis, emergency, or armed conflict):

a. assign or facilitate the assignment of priority designations to specified defense contracts that are issued by the other Government, or by contractors, subcontractors, or suppliers working on an approved defense program requirement of the other Government, to suppliers located in its territory and participating in the relevant Priorities System,

b. facilitate the acceptance and priority performance by participating contractors, subcontractors, or suppliers located in its territory of designated defense contracts as necessary to meet customer delivery requirements,

c. when requested, provide assistance to seek to resolve conflicts among designated contracts in order to ensure timely delivery of Industrial Resources under these contracts, and

d. as appropriate, and on a reciprocal basis, endeavor to enter into Security of Supply arrangements with other Governments that are members of the North Atlantic Treaty Organization, the European Union, and other Allies.

IV. ACTIONS

US

In furtherance of the above principles, and when requested to do so by designated UK Ministry of Defence authorities, the US Department of Defense will arrange for the UK Ministry of Defence, or UK contractors, subcontractors, or suppliers, to use priority ratings on defense contracts placed with US contractors, subcontractors and suppliers. Priority performance will be provided under the US Defense Priorities and Allocations System (DPAS). The US DPAS:

a. establishes priority designations for contracts performed in the US, and provides preference in performance of those contracts,

b. defines US industry's responsibilities, setting forth rules to ensure timely delivery of industrial products, materials, and services to meet approved national defense program requirements,

c. provides assistance procedures to cope with special circumstances caused by production related problems, and

d. sets forth compliance procedures.

The Office of the Under Secretary of Defense (Industrial Policy) will keep the US defense procurement community informed of all UK companies participating in the UK DPAS (see below).

UK

In furtherance of the above principles, the UK Ministry of Defence will maintain and support procedures under which UK companies are requested to participate in a Code of Conduct

approved by the Governments. The Code of Conduct describes a system known as the UK Defense Priorities and Allocations System (UK DPAS). The UK Ministry of Defence will notify the US Department of Defense of the UK Companies participating in UK DPAS. The Code of Conduct with UK industry requires accredited UK Companies to do all they reasonably can in accordance with US contracts procedures to provide preference to contracts supporting US Department of Defense programs, including:

a. accepting that a contract they are entering into or are party to with the US Department of Defense or with a US company will be accepted as a contract falling under UK DPAS (UK DPAS contracts) where that contract would qualify for rating under US DPAS if entered into with a US Company;

b. inserting provisions into any subcontract designed to ensure due performance of such a contract;

c. responding in a timely manner to requests of the US Department of Defense for amendments to the timing of deliveries provided that the customer is willing to compensate them as required by the relevant contractual provisions, and

d. bringing to the attention of the Governments conflicts between UK DPAS contracts and other contracts.

In relation to UK DPAS contracts, the UK Ministry of Defence will liaise with accredited UK contractors, subcontractors, and suppliers as described below, when requested to do so by the US Deputy Under Secretary of Defense (Industrial Policy) and/or the involved UK Company. The UK Ministry of Defence will use its best efforts to facilitate US Department of Defense requests for priority performance.

In the event that a UK Company intends to refuse to provide priorities support requested by the US Department of Defense, the UK Government will, as detailed in the Code of Conduct, investigate the circumstances surrounding the case. The US Department of Defense will have the opportunity to provide the UK Ministry of Defence with details of the case. The UK Company will be entitled to respond either in writing or orally. The UK Ministry of Defence will consult with the UK Department of Trade and Industry.

a. If the UK Ministry of Defence considers that the UK

Company has acted reasonably, the UK Ministry of Defence will, if requested to do so by the UK Company, notify the US Department of Defense. The US Department of Defense will act on that notification as it considers appropriate. The UK Ministry of Defence will use its good offices with the US Department of Defense to resolve any remaining difficulties. Participation of the UK Company in the UK DPAS and the benefits received under the system will not be affected.

b. If the UK Company is considered to have acted unreasonably, the UK Ministry of Defence will request assurance that the Company will take such steps considered necessary to rectify the situation. Failure to comply with this request may result in the participation of the UK Company in the UK DPAS being suspended or terminated.

In the event that a UK Company cannot satisfy a request to amend a UK DPAS contract without incurring a financial loss, and the relevant customer is unwilling to reimburse it, the Company may reasonably decline the request. Under no circumstances will a UK Company be required to suffer a loss without compensation in order to fulfill the commitments detailed in this Annex.

US and UK

The UK and US do not intend to place the financial responsibility of implementing this Annex in the UK with UK industry.

All commitments of the Governments under this Annex will be subject to the availability of funds for such purposes.

In fulfilling their commitments under this Annex, the Governments recognize that US and UK Companies may have contracts with other customers, which the Governments do not wish to undermine.

When a US or UK Company brings a conflict relating to prioritization of supply between the UK and US Governments or any other customer to the attention of the Governments, the Governments will endeavor to resolve the conflict by consultation. Each Government reserves the right to decide final prioritization requirements within its territory, and the other Government will give deference to such requirements.

Participation in the UK DPAS may be offered by UK companies as an indication of their reliability in supplying industrial resources to the US Department of Defense and the contractors supplying it. Likewise, US companies may offer being subject to the US DPAS as an indication of their reliability in supplying industrial resources to the UK Ministry of Defence and the contractors supplying it.

V. PROCEDURES

Essential to the implementation of this Annex and the ability of the Governments to provide priorities support to each other when needed is the designation of a point-of-contact within each Government. This person serves as the focal point for the implementation and administration of this Annex and is the person to whom all requests for priority designations, priorities assistance, and related issues should be directed.

US

In the US, the Department of Commerce oversees and administers the US DPAS. The Department of Commerce has delegated to the Department of Defense authority under the US DPAS to apply priority designations to contracts supporting approved national defense programs. The Department of Defense conducts daily US DPAS operations and sponsors allied nation requests for priorities support in the US to the Department of Commerce for approval.

a. Requests for priorities authorization and/or assistance in the US should be directed to:

The Deputy Under Secretary of Defense (Industrial Policy)
3330 Defense Pentagon
Washington, DC 20301

b. Copies of correspondence should be provided to:

Bureau of Industry and Security
Attention: DPAS
Room 3876
US Department of Commerce
Washington, DC 20230

UK

In the UK, the Defence Procurement Agency will administer this Annex. Priority assistance will be handled on an ad hoc basis between Government and Industry. The Department of Trade and Industry will keep under review this assistance on the basis of information it receives with a view to understanding and responding to issues that affect the interests of UK industry.

Requests to apply priority designations and/or assistance to contracts supporting UK defence projects may be sent direct from Integrated Project Teams in either the Defence Procurement Agency or Defence Logistics Organisation.

This MOU Annex does not affect the special arrangements for emergency procurement, which remain via established channels of communication with British Defence Staff Washington and United Kingdom Defence Procurement Office Washington.

a. Requests for priorities assistance in the UK under this MoU Annex should be directed to:

International Relations Group 2
Defence Procurement Agency
Maple 1a # 2133
MoD Abbey Wood
Bristol BS34 8JH

b. Copies of correspondence should be provided to:

DPA Sec CDC
Defence Procurement Agency
Maple 1c # 2120
MoD Abbey Wood
Bristol BS34 8JH

SRG MA
Defence Procurement Agency
Yew 1c #1154
MoD Abbey Wood
Bristol BS34 8JH

Department of Trade and Industry
Manager, Defence Industries
151 Buckingham Palace Road
London SW1W 9SS

US and UK

Representatives of the Governments will review their established Priorities Systems policies and procedures at the request of either Government; and will adjust them and the provisions of this Annex as feasible and necessary to comport with evolving national Priorities Systems and to provide Security of Supply. Industry will be consulted during any such review.

If either Government considers it necessary to discontinue its participation under this Annex, it will notify the other Government in writing of its intent to withdraw from the Annex. The two Governments will immediately consult to evaluate the consequences of such withdrawal and the possibility of avoiding it by, inter alia, continuing the cooperation under the Annex on a changed basis. If agreement cannot be reached on the way forward, this Annex will be terminated six months after the date of notification.

ANNEX VII

FLOW OF TECHNICAL INFORMATION

Section 1 INTRODUCTION

1.0 This Annex implements the flow of technologies and Technical Information provisions of the Declaration of Principles for Defense Equipment and Industrial Cooperation between the Department of Defense (DoD) of the United States of America and the Ministry of Defence (MoD) of the United Kingdom of Great Britain and Northern Ireland dated 5 February 2000.

Section 2 DEFINITIONS OF TERMS

2.0 The Governments have jointly decided upon the following definitions for terms used in this Annex:

Contracting Agency	An entity within the United States Government (USG) or Her Majesty's Government (HMG) which has authority to enter into, administer, and/or terminate contracts.
Contractor	An entity awarded a contract by a Contracting Agency of the USG or HMG.
Technical Information	Knowledge of a scientific or technical nature that can be communicated by any means, regardless of form or type, including, but not limited to, photographs, reports, manuals, threat data, experimental data, test data, computer software, software documentation (including source code), 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 subject to copyright, patent or other legal protection.
Third Party	A government other than the USG or the HMG and any person or other entity whose government is not the USG or HMG.

Section 3 OBJECTIVES

3.1 The objectives of this Annex are to:

3.1.1 Ensure the timely flow of Technical Information between the Governments and between their defense-related industries;

3.1.2 Establish arrangements to improve the processes relating to the disclosure, transfer, and use of Technical Information between the Governments consistent with respective national export control laws, regulations, and procedures, national disclosure policies, and proper safeguards; and

3.1.3 Encourage the harmonization of the regulations, policies, and procedures of the Governments for controlling disclosure, transfer, and use of Technical Information in the field of defense.

Section 4 GENERAL PROVISIONS

4.1 This Annex will be in accordance with the Governments' respective national laws, regulations, and procedures and carried out in accordance therewith. The responsibilities of the Governments under this Annex will be subject to the availability of funds for such purposes.

4.2 Where a Government becomes aware of a subsequent change to its national laws, regulations, policies, or procedures that may affect the understandings established under this Annex, that Government will consult with the other Government to mutually determine whether this Annex should be amended.

4.3 Nothing in this Annex impacts in any way export control or national disclosure laws, regulations, policies, or procedures. Export control and national disclosure issues must be referred to the appropriate authority.

Section 5 MANAGEMENT AND ORGANIZATION

5.1 The implementation and application of this Annex will be monitored by the Joint Technical Information Group (JTIG). The JTIG will be jointly chaired by the responsible Deputy Director of Defense Procurement (Program Acquisition and International Contracting) on behalf of the USG and by the Director of

Intellectual Property Rights on behalf of HMG. The co-chairs will select other individuals, as appropriate, to serve on the JTIG. The JTIG will have one standing working group, the Export and Licensing Working Group (ELWG), jointly chaired by designees of the USG and HMG. The JTIG may establish other working groups on particular issues as needed.

5.2 The JTIG will be responsible for:

5.2.1 Executive-level monitoring of the implementation and application of this Annex.

5.2.2 Encouraging the harmonization of the Governments' regulations, policies, and procedures for controlling disclosure, transfer, use, and related matters of Technical Information in the field of defense.

5.2.3 Consideration of proposals for harmonizing and improving provisions related to the disclosure, transfer, and use of Technical Information in cooperative project arrangements or governmental sales arrangements.

5.2.4 Exploration of contractual and related issues regarding shared data environments.

5.2.5 Undertaking appropriate steps to explore the development of training opportunities or forums concerning Technical Information flow for government and industry personnel involved in cooperative project arrangements or governmental sales arrangements.

5.2.6 Facilitating the resolution of issues that arise relating to implementation of this Annex to limit the need to refer the issue to higher officials for resolution.

5.2.7 Facilitating the reciprocal treatment of contractors by the Governments regarding Technical Information.

5.2.8 Examining methods of assisting cooperative projects in the proper use of streamlined export license processes.

Section 6 *DEFENSE TRADE AND SECURITY INITIATIVES*

6.1 The Governments will use their best efforts to take full advantage of governmental defense trade and security Initiatives

(including global project authorizations) in the planning and implementation of cooperative project arrangements.

Section 7 TECHNICAL INFORMATION PROVISIONS

7.1 In keeping with the goal of reducing barriers to effective defense cooperation, the Governments will use their best efforts to ensure that, under cooperative project arrangements, the USG and HMG receive Technical Information acquired in or made available for the scope of work of those arrangements, that is necessary to operate fully and safely, support, and dispose of their defense systems, to the extent consistent with their respective export control laws, regulations, and procedures and national disclosure policies and the specific disclosure and use provisions of the pertinent cooperative project arrangements.

7.2 Recognizing the importance of ensuring consistency of the provisions for information disclosure and use of cooperative project arrangements with those of the contracts that implement the scope of work of those arrangements, the Governments will ensure coordination with, and as necessary between, their acquisition (including contracting) personnel and intellectual property rights personnel, during the negotiation of such arrangements. The Governments will ensure that US and UK industries are appropriately consulted during the negotiation of cooperative project arrangements leading to jointly funded contracts. The Governments will also ensure the consistency of such contracts with the provisions of the pertinent cooperative project arrangements.

7.3 In each cooperative project arrangement that involves contracting for the work required under such arrangement, each Government's Contracting Agency will insert into its contracts suitable provisions to satisfy the arrangement's provisions regarding export controls, disclosure, retransfer, and use of Technical Information and defense equipment.

7.4 In any cooperative project arrangement that involves jointly funded contracts for the work required under those arrangements, the applicable Government's Contracting Agency will keep the other Government informed of developments during the contracting process. Source selection information will be transferred only if approved by the Source Selection Authority and then only to individuals who have signed forms agreeing not to disclose such information. Such forms will not prohibit the disclosure of project-related Technical Information that is not

source selection information to authorized Government officials.

7.5 The Government of a Contracting Agency will notify the other Government, in a timely manner, of any requirement for the export, disclosure, transfer, and use of Technical Information of a cooperative project arrangement which might not be met under a contract implementing the affected arrangement. When any requirement for the export, disclosure, transfer, and use of Technical Information of a cooperative project arrangement cannot be met, the Governments will consult with one another to determine how to proceed with the execution of the affected arrangement.

7.6 The Governments will make their best efforts to identify the Technical Information that will be required to achieve the objectives and scope of an individual cooperative project arrangement. The Governments will also make their best efforts to identify that Technical Information that may be subject to restrictions as a result of national disclosure policies and export control requirements.

7.7 Where a Government wishes to purchase directly from industry defense equipment or software that was developed by or on behalf of the other Government, the Governments will consult, upon the purchasing Government's request, as to the appropriateness of entering into a cooperative project arrangement or a governmental sales arrangement which includes the provision of Technical Information and technical assistance necessary to fully and safely operate, support, and dispose of the defense equipment and software concerned.

7.8 When such action would be appropriate and efficient in implementing a cooperative project arrangement or governmental sales arrangement, and subject to national laws, regulations, and procedures regarding security and export controls and to the information disclosure and use provisions of the applicable arrangement, each Government will consider permitting Technical information generated by that Government's personnel, which is in the possession of its Contractors, to be transferred directly by those Contractors to the other Government or that other Government's Contractors.

7.9 Where a Government is requested to provide defense equipment, software, or services to the purchasing Government, the provisions of the associated governmental sales arrangement may reflect the purchasing Government's request for greater

rights in Technical Information than would normally be provided under such arrangements. In the event that such rights cannot be secured, or can only be secured at additional cost, the purchasing Government will be promptly notified of such event.

7.10 It is recognized that there may be instances in which a Government makes a direct commercial purchase of defense equipment or software that has been developed under contracts funded by the other Government. It is further recognized that in some of those instances the purchasing Government might place contracts relating to that equipment or software which result in the generation of additional Technical Information relating to that equipment or software. If the developing Government requests this additional Technical Information, the Governments may enter into a governmental sales arrangement pursuant to which the purchasing Government uses its best efforts to provide the developing Government the right to receive, use or have used, any such additional Technical Information necessary to enable the developing Government to repair, maintain and operate its defense equipment or software.

7.11 Subject to security and export control laws, regulations, and procedures, and national disclosure policies, Technical Information provided with a Request for Tender/Proposal by a Government to qualified sources in the other Government's country will be the same as that provided to its national qualified sources.

7.12 To assist in protecting contractor Technical Information arising under a cooperative project arrangement, the contractor will be directed to mark all Technical Information. The Contractor will also be required to set forth any restrictions relating to the disclosure of the Technical Information or use of the Technical Information. Technical Information will not be presumed to be available for unrestricted export, disclosure, transfer, and use by the contracting Government unless specifically designated.

7.13 Recognizing the importance of software documentation (including source code) in cooperative project arrangements, the Governments note that Technical Information includes software documentation (including source code) and that the provisions of this Section 7, entitled "Technical Information Provisions", apply thereto.

Section 8 RECOUPMENT CHARGES

8.1 Regarding governmental sales arrangements for defense equipment between the Governments, the selling Government will waive recoupment charges related to recovery of its non-recurring development and production costs on a case-by-case basis, to the extent authorized under its national laws and regulations. Regarding direct commercial sales arrangements between industry and one Government involving defense equipment developed by or for the other Government, the developing Government will waive, or otherwise not impose, recoupment charges related to recovery of its non-recurring development and production costs on a case-by-case basis, to the extent authorized under its national laws, regulations, and procedures.

8.2 Regarding governmental sales arrangements between a Government and a Third Party, and direct commercial sales arrangements between industry and a Third Party, cooperative project arrangements will not contain provisions requiring or authorizing the DoD and MoD to impose upon such sales arrangements recoupment charges for the recovery of each other's non-recurring costs for the cooperative development or production of defense equipment and Technical Information. The foregoing sentence will not apply to cooperative project arrangements into which the DoD and MoD have entered prior to the date that this Annex becomes effective, and will also not apply to individual cooperative project arrangements in those cases in which the DoD and MoD jointly decide that such application is not in their best interests.

Section 9 FINANCIAL PROVISIONS

9.1 Each Government will bear the costs associated with its responsibilities under this Annex.

Section 10 AMENDMENTS

10.1 This Annex may be amended by mutual written consent of authorized representatives of both Governments.