DEFENSE

Research and Development

Memorandum of Understanding

Between the

UNITED STATES OF AMERICA

and AUSTRALIA

Signed at Tampa and Canberra
December 13, 2007 and February 28, 2008

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: Research and Development

Memorandum of understanding signed at Tampa and Canberra December 13, 2007 and February 28, 2008;
Entered into force February 28, 2008.
With annexes.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF DEFENCE

OF AUSTRALIA

CONCERNING

SPECIAL FORCES EQUIPMENT CAPABILITY

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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 (AS DOD), hereinafter referred to as the "Participants":

Acknowledging that the Exchange of Notes Constituting an Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defense Commitments, done at Sydney on December 1, 1995 (the Chapeau Agreement) applies 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, dated November 7, 2002 (Security Agreement);

Having a common interest in defense;

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

Seeking to make the best use of their respective research and development capacities, eliminate unnecessary duplication of work, and obtain the most efficient and cost-effective results through cooperation in Special Forces Equipment Capability (SFEC);

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

Having a mutual need for the SFEC and to satisfy common operational requirements; and

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

Have reached the following understandings:

SECTION I

DEFINITIONS

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

Australian Special Operations Command (AUS SOCOMD)	The Australian Command responsible for preparing Special Operations Forces (SOF) to carry out assigned missions; planning and conducting special operations; developing SOF doctrine, techniques, and procedures; and coordinating with the Australian Army to train and equip SOF.
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 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 includes Information that has been

	declassified but remains controlled.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Participant.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Equipment and Materiel	Any materiel, equipment, end item, subsystem, component, Special Tooling, or test equipment that is either owned by one Participant and provided for use pursuant to a Project Arrangement (PA) or Equipment and Materiel Transfer Arrangement (E&MTA) by that Participant, or is jointly acquired by both Participants and provided for use in a PA or an E&MTA.
Financial Costs	Project costs met with monetary contributions.
Financial Cost Ceiling	The maximum amount to which the Financial Cost Target may move without the prior written approval of the Participants.
Financial Cost Target	The accepted planning figure for the total Financial Cost of the Project.
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.
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.
National Program Managers	U.S. and AUS SFEC Program Managers who are appointed by the

(NPM)	General Officers Steering Committee (GOSC) and who are responsible for exercising overall management and direction of planning, staffing, and project execution activities conducted in accordance with this MOU.
Non-financial Costs	Project costs met with non-monetary contributions.
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 Arrangement (PA)	An implementing arrangement, established after this MOU has entered into effect, that specifies the arrangement for collaboration on a Project between the Participants.
Project Background Information	Information not generated in the performance of the Project.
Project Direction for Contracts (PDC)	Project management direction (contained in a PA) developed and approved in accordance with Section IV (Management (Organization and Responsibility)), which is implemented through the award or modification of Contracts. The PDC contains provisions that address the Participants' interests regarding technical requirements, Project objectives, and Contracting strategies. These PDC provisions provide the information necessary for the Contracting Agency to conduct procurements and negotiate and award Contracts and Contract modifications that achieve Project objectives.
Project Foreground Information	Information generated by the MOU Participants in the performance of a Project.
Project Invention	Any invention in any field of technology, provided it is new, involves an inventive step, and 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 Manager (PM)	An individual designated by one of the Participants as responsible for ensuring that national interests and resources, in connection with a specified PA, are managed appropriately.
Project Officer (PO)	An individual designated by one of the Participants as responsible for ensuring that national interests and resources, in connection with a specified Project within a Project Arrangement, are managed appropriately.
Project Purposes	Any use by or for a Participant in connection with the activities of a particular Project.
Prospective Contractor	Any entity that seeks to enter into a Contract 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.
Security Classification Guide (SCG)	A document for PAs used when requested by either of the Participants. The SCG identifies specific items, elements, or categories of Information or materiel to be protected; level of classification assigned; declassification instructions; and distribution and special handling instructions.
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 materiel, special test equipment, facilities (except foundations and similar improvements necessary for installing Special Tooling) general or special machine tools, or similar capital items.
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

OBJECTIVE(S)

2.1. The objectives of this MOU are:

2.1.1. To define and establish the general principles that will apply to the initiation, conduct, and management of Projects between representatives authorized in accordance with the national procedures of the Participants.

2.1.2. To establish the general principles that will apply to Information Exchanges (IEs) and of Equipment and Materiel Transfer Arrangements (E&MTAs) identified as being necessary for conducting cooperative and collaborative activities or implementing a Project Arrangement (PA).

2.1.2.1. Each IE and E&MTA will include specific provisions, consistent with this MOU, concerning the objectives, scope of work, sharing of Information, data distribution restrictions and controls, financial arrangements, contractual arrangements (if required), special provisions, and classification of the applicable PA.

2.1.2.2. In the event of a conflict between the provisions of this MOU and any IE, E&MTA, or PA, this MOU will govern.

SECTION III

SCOPE OF WORK

3.1. The overall work to be carried out under this MOU includes:

3.1.1. Collaboration on operational requirements, basic and applied research, advanced technology development, concept definition studies, program definition, and risk reduction relating to SFEC efforts.

3.1.2. Joint development of operational procedures and prototyping and demonstrating SFEC equipment.

3.1.3. Cooperative development of tactics, techniques, and procedures (TTP) and concepts of operation (CONOP) for SFEC activities through combined exercises and trials.

3.1.4. Exchange or loan of SFEC equipment specifically for the purpose of development, testing, evaluation, operational assessment, requirements definition, and development of TTPs and CONOPs.

3.2. Exchange of Information specifically for the purposes of evaluation and harmonization of the Participants' SFEC requirements and for formulating, developing, and negotiating PAs is permitted under this MOU.

3.3. Areas of SFEC collaboration, within the scope of paragraphs 3.1. and 3.2., include, but are not limited to the following:

3.3.1. Munitions, explosives, small arms, and fire control systems.

3.3.2. Command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) systems.

3.3.3. Mobility, materiel, and supporting systems.

3.3.4. Operator survival and mission support materiel.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. This MOU will be managed by a General Officers Steering Committee (GOSC). The U.S. Special Operations Command Acquisition Executive (or the successor in the event of reorganization) will represent the US DoD on the GOSC. The Director General Land Development will represent the Australian DoD on the GOSC, supported as required by the Deputy Special Operations Commander. Each GOSC representative will also appoint National Program Managers (NPMs) to manage specific PAs.

4.2. The GOSC will meet annually, with additional meetings held at the request of either representative. Meetings may be conducted in person or telephonically. Each meeting of the GOSC will be chaired by the representative of the Participant hosting the meeting. Decisions of the GOSC will be made unanimously. In the event that the GOSC is unable to reach a timely decision on an issue, each GOSC representative will refer the issue to his or her higher authority for resolution. In the meantime, approved PAs will continue to be implemented without interruption under the direction of the NPMs while the issue is being resolved by higher authority.

4.3. The GOSC will be responsible for:

4.3.1. Implementing this MOU and exercising executive-level oversight.

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

4.3.3. Appointing NPMs who will be responsible for implementing this MOU and for providing direction and guidance to the SFEC oversight offices.

4.3.4. Reviewing the semi-annual status report submitted by the NPMs.

4.3.5. Resolving issues brought forth by the NPMs.

4.3.6. Approving amendments to all Annexes of this MOU consistent with Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of this MOU.

4.3.7. Approving PAs submitted by the NPMs, and any revisions thereto, and reviewing the technical progress of the Projects against the PAs. The PA will include, but not be limited to, the following elements:

4.3.7.1. Detailed scope of work and corresponding work schedule, as appropriate;

4.3.7.2. References to applicable acquisition approval processes and documents; and

4.3.7.3. Project Direction for Contracts (PDCs) submitted by the NPMs in accordance with subparagraph 4.4.10.

4.4. The NPMs will be responsible for:

4.4.1. Developing PAs, and any revisions thereto, (for GOSC approval), and exercising executive-level oversight of those PAs;

4.4.2. Reviewing progress in meeting system requirements;

4.4.3. Reviewing the financial status of a PA to ensure compliance with the provisions of Section V (Financial Provisions) of this MOU;

4.4.4. 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;

4.4.5. Employing its best efforts to resolve, in consultation with the export control authorities of the Participants concerned, any export control issues raised in accordance with this Section or raised by a Participant's GOSC representative in accordance with paragraph 4.5.

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

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

4.4.8. Reviewing and approving equipment loan arrangements executed under provision of Section VIII (Equipment and Materiel Transfers) of this MOU; and

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

4.4.10. Developing (in conjunction with the Contracting Officer) and submitting for GOSC approval a PDC, and any necessary updates thereto, that will be used by the Contracting Agency, as appropriate, to develop Contracting strategies, requests for proposals, Contracts, and Contract modifications.

4.4.11. Providing the PDC, as approved, to the responsible Contracting Officer for implementation.

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

4.6. If a Participant finds it necessary to exercise a restriction on the retransfer of export-controlled Information as set out in paragraphs 9.2. and 9.3. of Section IX (Disclosure and Use of Project Information) of this MOU, it will promptly inform the other Participant. If the affected Participant objects, that Participant's GOSC representative will promptly notify the other Participant's GOSC representatives and they will immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

SECTION V

FINANCIAL PROVISIONS

5.1. This MOU creates no financial commitments regarding individual PAs. Detailed descriptions of the financial provisions for a specific Project, including the Financial Cost Ceiling of a Project and each Participant's cost share, will be contained in the specific PA.

5.2. Each Participant will contribute its equitable share of the full Financial Costs and Non-financial Costs of each PA, including overhead costs, administrative costs, and costs of claims and all such costs will be included as part of each Participant's contributions to the Project. The assignment of work represents a sharing of work to be performed on a Project-specific basis, and each Participant will receive an equitable share of the results.

5.3. Each Participant will fund the full extent of its participation in a Project. The tasks and costs to be performed by each Participant will be mutually determined by the Participants on a Project-by-Project basis.

5.4. The Participants will use their best efforts to perform, or to have performed, the work specified in each PA, within the Financial Cost Ceiling specified in each PA.

5.5. Cooperative efforts of the Participants over and above the jointly determined work set forth in Section III (Scope of Work) of this MOU will be subject to future mutual consent of the Participants.

5.6. The following costs will be borne entirely by the Participant incurring the costs:

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

5.6.2. Any other costs outside the scope of this MOU.

5.7. 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 MOU, both Participants will immediately consult with a view toward continuation on a mutually determined modified basis.

5.8. The Participants recognize that it may become necessary for one Participant, in accordance with the approved PDC, to incur contractual or other obligations for the benefit of the other Participant or both Participants prior to receipt of the other Participant's funds. The Participant incurring obligations or managing the Contract, from initial Contract award throughout the period of performance of the Contract will incur such obligations consistent with the PDC in accordance with Section IV (Management (Organization and Responsibility)) of this MOU, unless exceptional circumstances arise outside the control of the Participant managing the Contract. In the unlikely event such circumstances arise, the Participant managing the contract will use its best efforts to consult with the other Participant prior to incurring obligations beyond those envisioned in the approved PDC. In the event that one Participant incurs such contractual or other obligations, the other Participant will pay its equitable share of the Contract or other

obligation, and will make such funds available in such amounts and at such times as may be required by the Contract or other obligation, and will pay its equitable share of any damages and costs that may accrue from the performance of or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

5.9. For each Project, the Project Officers will be responsible for establishing the detailed financial procedures under which the Project will operate. These procedures must be in accordance with the national accounting and audit requirements of the Participants. When necessary, these procedures will be detailed in a financial management procedures document proposed by the Project Officers and subject to the approval of the NPM and the GOSC.

5.10. 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.

5.11. Each Participant will provide funds for each Project in accordance with the estimated schedule of financial contributions contained in the financial management procedures document.

5.12. Each Participant will be responsible for the audit of the procurement activities for which it is responsible pursuant to a PA in accordance with its own national practices. For PAs in which funds are transferred from one Participant to the other Participant, the receiving Participant will be responsible for the internal audit regarding administration of the other Participant's funds in accordance with national practices. Audit reports of such funds will be promptly made available by the receiving Participant to the providing Participant.

SECTION VI

CONTRACTING PROVISIONS

6.1. If either Participant determines that Contracting is necessary to fulfill that Participant's responsibilities under Section III (Scope of Work) of this MOU, that Participant will contract in accordance with its respective national laws, regulations, and procedures. Sources from both Participants' industries will be allowed to compete on an equal basis for such Contracts.

6.2. When one Participant individually contracts to perform a task under this MOU, it will be solely responsible for its own Contracting, and the other Participant will not be subject to any liability arising from such Contracts.

6.3. For all Contracting activities performed by either Participant, the Project Officers will, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure that they are consistent with the provisions of the MOU.

6.4. Each Participant's Contracting Officer will negotiate to obtain the rights to use and disclose Project Information required by Section IX (Disclosure and Use of Project Information) of this MOU. Each Participant's Contracting Agency will insert into its prospective Contracts (and require its subcontractors 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), including the export control provisions in accordance with this MOU, in particular paragraphs 6.5. and 6.6. During the Contracting process, each Participant's Contracting Officer will advise Prospective Contractors of their responsibility to notify the Contracting Agency immediately, before Contract award, if they are subject to any license or agreement that will restrict that Participant's 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.

6.5. Each Participant will legally bind its Contractors to a requirement that the Contractor will not retransfer or otherwise use export-controlled Information furnished by another 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 another Participant to its Contractors if the legal arrangements required by this paragraph have been established.

6.6. 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 another 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 another 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.

6.7. In the event that a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Information as required by Section IX (Disclosure and Use of Project Information), or is notified by Contractors or Prospective Contractors of any restrictions on the disclosure and use of Project Information, that Participant's Contracting Agency will refer the matter to the SFEC oversight office, which will submit it to the GOSC for resolution.

6.8. The Project Officers will promptly advise the Project Manager and NPM of any anticipated or actual cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

6.9. Upon mutual consent, consistent with Section II (Objectives) of this MOU, a Participant may Contract for the unique national requirements of the other Participant.

6.10. The NPM will be responsible for coordinating with the responsible Contracting Officer in the development of PDC relating to the Project, and providing PDC approved by the GOSC to the Contracting Officer in accordance with Section IV (Management (Organization and Responsibility)), and will cooperate, as requested, with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, Contract award, and Contract modifications. The PM 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 advised of all significant developments associated with award and performance of Project Contracts, and will keep the PM advised of all financial arrangements with the prime Contractor.

6.11. Should a Participant's Contracting Agency determine that quality assurance services, pricing, or cost investigation services are required, such services will be obtained through the responsible national authorities of the Participant within whose territories the performing Contractor or subcontractor is located, consistent with the Details of Agreement Between the Defense Authorities of the United States of America and the Commonwealth of Australia for Mutual Acceptance of Government Quality Assurance, dated November 29, 1994.

SECTION VII

WORK SHARING

7.1. The Participants will work toward the goal that the work to be performed under this MOU will be shared in proportion to the cost contribution of the Participants to the maximum extent possible, consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project. This work will encompass those requirements contained in Section III (Scope of Work) of this MOU that are common to the Participants and involve cooperation in a PA.

7.2. Sources from both nations will be permitted to bid on Project work. Each Participant will encourage its Contractors to provide competitive opportunities to sources from the other nation for participating in the work of the Project, provided that such participation does not adversely affect the Project.

7.3. 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.

SECTION VIII

EQUIPMENT AND MATERIEL TRANSFERS

8.1. For the purpose of executing this MOU, each Participant may transfer, without charge to the other Participant, such Equipment and Materiel identified as being necessary for conducting cooperative and collaborative activities or for implementing a PA. The details of any transfer of Equipment and Materiel will be specified in an E&MTA or a PA, as appropriate. Equipment and Materiel identified at the time of PA signature will be specified in the PA as set out in Annex A (Model Project Arrangement) to this MOU. Equipment and Materiel transfers may also be undertaken separate from a PA as set out in Annex B (Equipment and Materiel Transfer Arrangement) to this MOU. Approval for all E&MTAs will be in accordance with the Participants' respective national laws and procedures.

8.2. The providing Participant will make its best efforts to ensure that the Equipment and Materiel is furnished to the receiving Participant in a serviceable and usable condition according to the intended purpose. However, the providing Participant makes no warranty or guarantee of fitness of the Equipment and Materiel for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Equipment and Materiel, or any part thereof.

8.3. The receiving Participant will maintain any such Equipment and Materiel in good order, repair, and operating condition. Unless the providing Participant has authorized the Equipment and Materiel to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Equipment and Materiel to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Equipment and Materiel and pay the cost to restore it. If the Equipment and Materiel is damaged beyond economical repair, the receiving Participant will return the Equipment and Materiel to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value as mutually determined by the Participants. If the Equipment and Materiel is lost or stolen 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 as computed pursuant to the providing Participant's national laws and regulations. If known at the time of entry into effect, the replacement value of the Project Equipment will be specified in the Project Arrangement.

8.4. The providing Participant, at its expense, will deliver the Equipment and Materiel to the receiving Participant at a mutually determined location. Possession and responsibility for the Equipment and Materiel will pass from the providing Participant to the receiving Participant at the time of receipt of the Equipment and Materiel. Any further transportation is the responsibility of the receiving Participant.

8.5. All Equipment and Materiel 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), Equipment and Materiel will not be retransferred to a Third Party without the prior written consent of the providing Participant.

8.6. Upon expiration or termination of the transfer period specified in the PA or the E&MTA, the receiving Participant will return the Equipment and Materiel, at its expense, to the providing Participant at the location mutually determined. Possession and responsibility of the Equipment and Materiel will pass from the receiving Participant to the providing Participant at the time of its receipt. Any further transportation is the responsibility of the providing Participant.

8.7. Any Equipment and Materiel that is jointly acquired on behalf of both Participants for use in a Project will be disposed of during the Project, or when the PA or is terminated, as approved or directed by the GOSC. Jointly acquired Equipment and Materiel will remain the property of both Participants in the same ratio as Financial Costs and Non-financial Costs are shared in the Project under which it is acquired. The Participant who has custody of the jointly acquired Equipment and Materiel will maintain such jointly acquired Equipment and Materiel in good order and operating condition, normal wear and tear excepted, unless the Participants have mutually determined in writing that it be expended or otherwise consumed by that Participant in connection with this MOU or applicable PA. If jointly acquired Equipment and Materiel is damaged or lost while in custody of a Participant, the provisions of this Section, and in particular paragraph 8.4. regarding repair or replacement, will apply. Where a person or entity, other than the Participants (including their personnel), damages jointly acquired Equipment and Materiel, and the cost of making good such damage is not recoverable from such person or entity, the Participants will share such costs in the same ratios as the financial contributions to the PA.

8.8. Disposal of jointly acquired Equipment and Materiel may include a transfer of the interest of one of the Participant's Equipment and Materiel to the other Participant; the sale or transfer to a U.S. or Australian entity; or the sale or transfer of such Equipment and Materiel 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 Equipment and Materiel transferred or sold to a Third Party or other U.S. or Australian entity in the same ratio as Financial Costs and Non-financial Costs are shared in the relevant PA.

8.9. The providing Participant will transfer the Equipment and Materiel for the mutually determined transfer period. The transfer period may be extended by written mutual consent of the Participants provided that the duration of the transfer period will not exceed the effective period of the PA or E&MTA.

8.10. The providing Participant will furnish the receiving Participant such Information as is necessary to enable the Equipment and Materiel to be used. If the Participants mutually determine that specific training is required for use of Equipment and Materiel, they will mutually determine the appropriate arrangements for the provision of such training.

8.11. The receiving Participant will inspect and inventory the Equipment and Materiel upon receipt. The receiving Participant will also inspect and inventory the Equipment and Materiel prior to its return (unless the Equipment and Materiel is to be expended or consumed).

8.12. The receiving Participant will provide written notice of consumption or expenditure of Equipment and Materiel approved for such consumption or expenditure. In the event that the intended consumption or expenditure does not occur, the receiving Participant will, unless otherwise determined by the providing Participant, return the Equipment and Materiel, at its expense, to the providing Participant at a mutually determined location. Any further transportation is the responsibility of the providing Participant.

8.13. The Participants will ensure, by all reasonable means, the protection of Intellectual Property rights in Equipment and Materiel.

8.14. Equipment and Materiel transferred to one Participant under an E&MTA or under a PA will be returned to the providing Participant prior to the termination or expiration of this MOU.

8.15. Each Participant waives all claims against the other Participant for damage to, or loss of, jointly acquired Equipment and Materiel arising from the performance of official duties. However, if the Participants mutually decide to repair damaged, jointly acquired Equipment and Materiel in order to complete a PA, the costs (Financial and Non-financial) of such repair will be shared in the same proportions as the established Participants' contributions under the PA. In any case, if the Participants mutually determine that damage or loss is caused by reckless acts, reckless omission, willful misconduct, or gross negligence, the costs of any liability, including the cost of repairs, will be borne by the responsible Participant.

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 MOU and its PAs. The Participants intend to acquire sufficient Project Information and rights to use such Information to enable collaboration on SFEC activities pursuant to this MOU. The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Objectives, Scope of Work, and Contracting Provisions of this MOU and the objectives and scope of applicable PAs and E&MTAs. Subject to the rights that both Participants are accorded under this MOU, title to Foreground Information generated by a Participant or its Contractor will reside with that Participant and/or its Contractors, in accordance with that Participant's national laws, regulations, and policies. Nothing in this MOU will affect title to Background Information of the Participants or their Contractors.

9.1.2. Transfer of Project Information will be consistent with furnishing Participant's applicable export control laws and regulations. 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., 6.5., and 6.6. of Section VI (Contracting Provisions) of this MOU. Export-controlled Information may be furnished by U.S. Contractors and their subcontractors or U.S. Prospective Contractors and their prospective subcontractors to the other Participant's Contractors, subcontractors, Prospective Contractors, and prospective subcontractors pursuant to this MOU, subject to the conditions established in licenses or other approvals issued by the U.S. Government under the requirements of the Arms Export Control Act and the International Traffic in Arms Regulations, and the Export Administration Act and the-Export Administration Regulations, and any amendments thereto. Export-controlled Information may be furnished by Australian Contractors and their subcontractors or Australian Prospective Contractors and their prospective subcontractors to the other Participant's Contractors, subcontractors, Prospective Contractors, and prospective subcontractors pursuant to this MOU, subject to the conditions established in licenses or other approvals issued by the Australian Government under the requirements of the Export Control Act and its relevant Australian regulations. The furnishing of all export-controlled Information by the Contractors and sub-contractors of one Participant's nation to those of the other pursuant to this MOU will be subject to the conditions established in export licenses or other approvals issued by the Government of the exporting Contractor or sub-contractor in accordance with that exporting nation's applicable export control laws and regulations.

9.1.3. As set forth in paragraph 3.2. of this MOU, the Participants may exchange Information under this MOU for the purpose of harmonizing the Participants' requirements for formulating, developing, and negotiating PAs and E&MTAs. The Participant furnishing such Information

will clearly indicate to the receiving Participant that it is furnishing such Information for this purpose. Until a PA is signed, or if no PA is signed, a Participant may use Information received pursuant to paragraph 3.2 only for Information and evaluation purposes and will not disclose or transfer such Information to a Third Party without the prior written consent of the providing Participant. Objections to restrictions on the retransfer of export-controlled Information will be managed in accordance with paragraph 4.6. of this MOU.

9.2. Government Project Foreground Information

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

9.2.2. Use: Subject to the export control approval of the Government of the furnishing Participant pursuant to paragraph 9.1., each Participant may use all Government Project Foreground Information without charge for Defense Purposes unless otherwise mutually determined to in a PA or an E&MTA. 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 Project Background Information is necessary to or useful in the Project, with the Participant in possession of the Information determining whether it is "necessary to" or "useful in" the Project;

9.3.1.2. Such 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 is consistent with national disclosure policies and regulations of the furnishing Participant; and

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: Subject to the export control approval of the Government of the furnishing Participant pursuant to paragraph 9.1., Government Project Background Information disclosed by one Participant to the other may be used without charge by the other Participant only for the purposes of the MOU. 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 will be disclosed without charge to both Participants.

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

9.5. Contractor Project Background Information

9.5.1. Disclosure: Any Project Background Information (including Information subject to Intellectual Property rights) generated and delivered by Contractors will be made available to the other Participant provided the following provisions are met:

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

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 is consistent with national disclosure policies and regulations of the furnishing Participant; and

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

9.6. Alternative Uses of Project Information

9.6.1. 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.

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

9.7. Proprietary Rights: All unclassified Project Information 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, in accordance with Section X (Controlled Unclassified Information) and Section XII (Security) of this MOU.

9.7.1. In addition to paragraph 10.4. of this MOU, prior to transferring Information subject to Intellectual Property rights to Contractors, the Participants will ensure the Contractors are legally bound to respect such Intellectual Property rights.

9.8. Patents

9.8.1. 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:

9.8.1.1. 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

9.8.1.2. 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 paragraph 9.8.2. below.

9.8.2. 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 Participants 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.

9.8.3. The provisions of subparagraphs 9.8.4. through 9.8.7. 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.

9.8.4. Where a Participant has or can secure the right to file a Patent application with regard to a Project Invention, that Participant will consult 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 the 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.

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

9.8.6. Each Participant will grant to the other Participant a non-exclusive, irrevocable, royalty-free license under its Patents for Project Inventions, to practice or have practiced the Project Invention throughout the world for Defense Purposes.

9.8.7. Patent applications to be filed under this MOU that contain Classified Information will be protected and safeguarded in accordance with the requirements of Section XI (Security) and the Agreement between the U.S. and Australia regarding Interchange of Patent Rights and Technical Information for Defense Purposes: Filing of Classified Patent Applications, dated October 2, 1961.

9.9. Intellectual Property Rights Infringement Claims: Each Participant will notify the other Participant of any Intellectual Property rights infringement claims brought against that Participant arising in the course of work performed under the MOU on behalf of the other Participant. Insofar as possible, the other Participant will provide Information available to them that may assist in defending such claims. Each Participant will be responsible for handling such Intellectual Property rights 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 rights infringement claims in proportion to their financial contributions for that work specified in Section V (Financial Provisions) of this MOU.

9.10. Authorization and Consent: 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 this MOU of any Invention covered by Patent, or as determined to be necessary for work under this MOU, authorization and consent for non-commercial copyright, granted or otherwise provided by their respective Governments.

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, which may include national classification, available to it to keep such Information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2., unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the Information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

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 Project Security Instruction (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.

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. All visits will be in accordance with the Security Agreement.

11.2 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.

11.3. 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.

11.4. 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 host country. Requests for visits will bear the name of this MOU and, as appropriate, the relevant PA or E&MTA.

11.5. 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 established procedures for 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 Security Agreement.

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, denote the country of origin and the provisions of release, and the fact that the Information relates to this MOU and the associated PA or E&MTA.

12.3. Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 12.8., unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

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

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

12.3.3. The recipient will comply with any distribution and access restrictions on Information that is provided under this MOU.

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

12.5. As necessary, the POs will prepare a PSI and a Classification Guide (CG) for each PA. 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 Project Officers within three months after the PA enters into effect. They will be reviewed and forwarded to the Participants' DSAs for approval and will be applicable to all government and Contractor personnel participating in the PA. 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. The PSI and the CG for this MOU will be developed within 180 days of its entry into effect.

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

12.6.1. Ensure that such Contractor, Prospective Contractor, subcontractor, or prospective 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 whose duties 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 with 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; and

12.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of this MOU including its PAs and E&MTAs.

12.7. Contractors, Prospective Contractors, subcontractors, or prospective 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 written approval prior to permitting such access.

12.8. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Classified 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 this MOU or any of its PAs.

12.10. Information provided or generated pursuant to this MOU and any of its PAs may be classified as high as TOP SECRET. There is no authorization to provide Special Compartmented Information (SCI) materiel under this MOU. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED. The classification of any PA and its contents will be stated in that PA.

SECTION XIII

THIRD PARTY SALES AND TRANSFERS

13.1. Except to the extent permitted in paragraph 13.2. of this MOU, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from Project Foreground Information) or jointly acquired or produced Equipment and Materiel to any Third Party without the prior written consent of the Government of the other Participant. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner, without the prior written consent of the Government of the other Participant. Such consent will not be given unless the Government of the intended recipient confirms in writing with the Participants that it will:

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

13.1.2. Use, or permit the use of, the equipment, materiel, or Information provided only for the purposes specified by the Participants.

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

13.2.1. Is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section III (Scope of Work) of this MOU; and

13.2.2. Does not include any Project Foreground Information or Project Background Information of the other Participant, and whose generation, test, or evaluation has not relied on the use of Project Equipment or Materiel of the other Participant.

13.3. In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 13.2., the matter will be brought to the immediate attention of the other Participant's NPM. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

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

13.5. Consent for Third Party sales and transfers of Project Foreground Information or jointly acquired or produced Equipment and Materiel, or any item produced either wholly or in part from Project Foreground Information, will be subject to foreign policy and national security considerations and national laws, regulations, and policies. A Participant's Government's approval of the other Participant's 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.

SECTION XIV

LIABILITY AND CLAIMS

14.1. Claims arising under this MOU and any PA will be dealt with under paragraph 1 of the Chapeau Agreement. Any costs to be shared under paragraph 1.b)ii. of the Chapeau Agreement will be shared as follows:

14.1.1. When one Participant alone is responsible for the injury, death or damage, the costs will be the sole responsibility of that Participant;

14.1.2. When the Participants are jointly responsible for injury, death, or damage, or it is not possible to attribute responsibility for the injury, death, or damage, the costs 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.

14.3. Any costs as a result of claims arising under any Contract awarded under a PA will be shared in accordance with the ratio of the Participants' Financial and Non-financial Costs, or as mutually determined by the Participants.

SECTION XV

PARTICIPATION OF ADDITIONAL NATIONS

15.1. It is recognized that other national defense organizations may wish to participate in this MOU.

15.2. Mutual consent of the Participants will be required to conduct discussions with potential additional Participants. The Participants will discuss the arrangements under which another Participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), 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 may require amendment of this MOU or the establishment of a new MOU.

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 duties, 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 MOU including any PA/E&MTA.

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. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.

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 an Annex, E&MTA, or PA to this MOU, the MOU will take precedence.

18.3. This MOU may be amended by the mutual written consent of the Participants.

18.4. This MOU may be terminated at any time upon the mutual written approval of the Participants. In the event the Participants decide to terminate this MOU or any PA, the Participants will consult prior to the date of termination to ensure that termination occurs under the most economical and equitable provisions. Termination of this MOU will result in the termination of all PAs and E&MTAs under this MOU.

18.5. Either Participant may terminate this MOU or any of its PAs upon 120 days written notification to the other Participant of its intent to terminate. Such notice will be the subject of immediate consultation by the GOSC to decide upon the appropriate course of action to conclude the activities under this MOU. In the event the MOU or any of its PAs is terminated, the following rules apply:

18.5.1. The Participants will continue participation, financial or otherwise, up to the effective date of termination. Each Participant will make available to the other Participant all Foreground Information generated prior to termination and which has not been provided to the other Participant prior to the termination.

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

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

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

18.5.5. Each Participant will make available to the other Participant all Foreground Information generated prior to termination that has not been provided to the other Participant prior to the termination.

18.5.6. Additional termination provisions consistent with this Section may be established in individual PAs.

18.6. The respective rights and obligations of the Participants regarding Section VIII (Equipment and Materiel Transfers), 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 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 an Introduction, eighteen (18) Sections, and two (2) Annexes, will enter into effect upon signature by both Participants and will remain in effect for 15 years unless otherwise mutually terminated by the Participants. The MOU may be extended by written mutual consent of the Participants.

The foregoing represents the understanding reached between the Department of Defense of the United States of America and the Department of Defence of Australia upon the matters referred to herein.

Signed in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

Signature

Dr. D.G. Uhler
Name

Acquisition Executive
Title

13 DEC 2007
Date

US Special Operations Command
Location

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Address

FOR THE DEPARTMENT OF DEFENCE
OF AUSTRALIA

Signature

VADM M.J. Tripovich
Name

Chief Capability Development Group
Title

28 Feb 2008
Date

Department of Defence
Location

R1-Shopfront
Russell Offices
CANBERRA
Act 2600
Australia

Address

ANNEX A

MODEL PROJECT ARRANGEMENT

PROJECT ARRANGEMENT NO. XXX*

(***INSERT FULL PROJECT TITLE***)

DATED MM/DD/YYYY

TO THE

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF DEFENCE

OF AUSTRALIA

CONCERNING

SPECIAL OPERATIONS EQUIPMENT CAPABILITIES

Project Arrangement Numbers will be issued where XXX is a sequential number.

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SECTION XII	DISPOSITION OF DELIVERABLES
SECTION XIII	ENTRY INTO EFFECT, DURATION, AND TERMINATION

(At a minimum, a PA should include the above sections, with Breakdown and Schedule of Work, Special Arrangements, and Equipment and Materiel Transfers being optional. If additional topics need to be addressed, sections, annexes, or special provisions should be included as necessary and appropriate. If optional paragraphs are not used or if additional topics are added, renumber sections as appropriate.)

INTRODUCTION

This Project Arrangement (PA) *(Number)* is entered into pursuant to the Memorandum of Understanding between Department of Defense of the United States of America and the Department of Defence of Australia Concerning Special Forces Equipment Capability of *(date)* (the MOU), the provisions of which are hereby incorporated by reference.

SECTION I

DEFINITION OF TERMS AND ABBREVIATIONS

DEFINITION TERM

(Define only those terms used in this PA that have not been defined in the MOU)

SECTION II

OBJECTIVES

2.1. The objectives of this _____ PA are:

2.1.1. The development of _____

_____

2.1.2. The improvement of _____

_____

SECTION III

CLASSIFICATION

(***Unless otherwise authorized in a PA, consistent with the national disclosure policies and regulations of both Participants, only one of the following possibilities must be selected***)

3.1. No Classified Information will be exchanged under this PA.

3.2. The highest level of Classified Information which may be exchanged under this PA is CONFIDENTIAL.

3.3. The highest level of Classified Information which may be exchanged under this PA is SECRET.

3.4. The highest level of Classified Information which may be exchanged under this PA is TOP SECRET.

(If deemed appropriate, both Participants will provide specific guidance to the other Participant for the protection of their respective classified materiel. Should Project Foreground Information be classified, the Participants will develop a mutually approved Project Security Instruction and Classification Guide(s) to govern the marking and handling of such Information developed under this PA)

SECTION IV

STATEMENT OF WORK

4.1. The following work will be undertaken under this PA:

4.1.1. Develop _____

_____

4.1.2. Evaluate _____

_____

4.1.3. Design, fabricate and test _____

_____

SECTION V

SHARING OF WORK

5.1. The allocation of the work is as follows:

5.1.1. The U.S. DoD will:

5.1.2. The AS DOD will:

5.1.3. The Participants will jointly:

SECTION VI

MANAGEMENT

6.1. This PA will be directed and administered on behalf of the Participants by an organization consisting of a Project Manager (PM) and Project Officers (PO) from each Participants. The PMs are:

U.S. DoD PM	Title/Position	_____
	Organization	_____
	Address	_____
		_____
		_____
AS DOD PM	Title/Position	_____
	Organization	_____
	Address	_____
		_____
		_____

6.2. The POs are:

U.S. DoD PO	Title/Position	_____
	Organization	_____
	Address	_____
		_____
		_____
AS DOD PO	Title/Position	_____
	Organization	_____
	Address	_____
		_____
		_____

SECTION VII

BREAKDOWN AND SCHEDULE OF WORK (OPTIONAL)

(Use this format when the tasks covered under this Project may be performed using multiple phases, or requiring milestones or decision points.)

7.1. The Project will proceed according to the following phases and schedule:

Phase 1	Start	End
Description of Phase 1	MM/DD/YY	MM/DD/YY

(Milestone 1) (e.g., Transmittal of Feasibility Report)

Phase 2	Start	End
Description of Phase 2	MM/DD/YY	MM/DD/YY

(Milestone 2) (e.g., Decision to proceed to Phase 3)

Phase 3	Start	End
Description of Phase 3	MM/DD/YY	MM/DD/YY

(Milestone 3) (e.g., Evaluation, analysis of results)

(Add as many phases as necessary.)

7.2. The final report must be transmitted to the National Program Managers six months before the termination date for this PA.

SECTION VIII

FINANCIAL ARRANGEMENTS

8.1. The Participants estimate that the cost of performance of the tasks under this PA will not exceed U.S. $ + Australian $, at an exchange rate of ____ Australian Dollars = 1 U.S. Dollar.

8.1.1. The U.S. DoD share of the work will not cost more than: _____ U.S. dollars.

8.1.2. The AS DOD share of the work will not cost more than: _____ AS dollars.

8.2. Cooperative efforts of the Participants over and above the mutually determined tasks set forth in the Scope of Work, Sharing of Tasks and Financial Arrangements Sections will be subject to amendment to this PA or signature of a new PA.

SECTION IX

SPECIAL ARRANGEMENTS (OPTIONAL)

9.1. (***Optional - include any special contractual, Intellectual Property rights, or other provisions relevant to the specific PA.***)

SECTION X

PRINCIPAL ORGANIZATIONS INVOLVED

10.1. The Australian organizations are:

10.2. The U.S. organizations are:

SECTION XI

EQUIPMENT AND MATERIEL TRANSFERS (OPTIONAL)

Providing Participant	Receiving Participant	Qty	Description	Part/ Stock #	Consumables/ Non-Consumables	Date Provided	Return Date	Estimated Replacement Value *	Security Classification

(Fill in as appropriate)

*Estimated Replacement Value is a good faith estimate of the replacement value at the time of the loan.

NOTES:

1. In the event that the cooperative efforts under the PA requires the provision of Equipment and Materiel to either Participant, a list of such Equipment and Materiel must be developed in general accordance with the proceeding table. (Equipment and Materiel that cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the PM in the format above.)

2. If jointly acquired Equipment and Materiel is an aspect of the cooperative effort under the PA, terms and conditions for the disposal of such jointly acquired Equipment and Materiel must be included in the PA.

SECTION XII

DISPOSITION OF DELIVERABLES

12.1. Australia receives:

12.2. U.S. receives:

NOTE: The final report must be transmitted to the SFEC GPs six months before the termination date for this PA.

SECTION XIII

ENTRY INTO EFFECT, DURATION AND TERMINATION

13.1. This PA ***(Number)***, (***Insert full PA Title)***, under the Special Forces Equipment Capability Memorandum of Understanding between the Department of Defence of Australia and the Department of Defense of the United States of America (signed *(date)*), consists of *(Number)* sections and will enter into effect upon its signature and will remain in effect for five years unless terminated by the Participants. It may be extended by written mutual consent of the Participants. The foregoing represents the understandings reached among the PA Participants on the matters referred to therein.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date
_____	_____
Location	Location

ANNEX B

MODEL EQUIPMENT AND MATERIEL TRANSFER ARRANGEMENT

E&MTA NUMBER (EMTA-XXXX*)

TO THE

MEMORANDUM OF UNDERSTANDING

BETWEEN THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF DEFENCE

OF AUSTRALIA

CONCERNING

SPECIAL FORCES EQUIPMENT CAPABILITY MODERNIZATION

(The U.S. NPM will assign the EMT number)

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(At a minimum, an E&MTA should include the above sections, with Special Provisions being optional. If additional topics need to be addressed, sections or annexes should be included as necessary and appropriate. If optional paragraph is not used or if additional topics are added, renumber sections as appropriate.)

INTRODUCTION

This Equipment and Materiel Transfer Arrangement (E&MTA) is entered into pursuant to the Memorandum of Understanding between the United States Department of Defense and the Department of Defence of Australia concerning Special Forces Equipment Capability (the "SFEC MOU"), which entered into effect on ***(Insert effective date of the MOU)***. This E&MTA is being executed by authorized representatives of the providing and receiving Participants pursuant to Section VIII (Equipment and Materiel Transfers) of the SFEC MOU.

SECTION I

DESCRIPTION AND QUANTITY

1.1 The following Equipment and Materiel will be transferred by the providing Participant to the receiving Participant:

Providing Participant	Receiving Participant	Qty	Description	Part/ Stock #	Consumables/ Non-Consumables	Date Provided	Return Date	Estimated Replacement Value *	Security Classification

(Fill in as appropriate)

*Estimated replacement value is a good faith estimate of the replacement value at the time of the loan.

1.2 ***(Choose one of the following alternatives or use both if both situations apply.)***

Alternative A – Use when return of Equipment and Materiel is planned.

None of the Equipment and Materiel identified in paragraph 1.1 is intended to be consumed or expended during the course of the SFEC activities described in subparagraph 2.1.1.

Alternative B –Use when return of Equipment and Materiel is not planned due to its consumption during the activity.

The Equipment and Materiel (**specify as appropriate by highlighting in paragraph 1.1)** described in paragraph 1.1. is intended to be consumed or expended during the course of the SFEC activities described in subparagraph 2.1.1.

SECTION II

PURPOSE

2.1 The purpose of this E&MTA is to support the following SFEC activities:

2.1.1. ***(Fill in as appropriate)***

SECTION III

MANAGEMENT AND RESPONSIBILITIES

3.1 Each Participant will establish a point of contact that will be responsible for implementing this E&MTA.

3.1.1 For the providing Participant the point of contact is * *(title and address)*

3.1.2 For the receiving Participant the point of contact is * *(title and address)*

***Insert the appropriate, title/office symbols, addresses, and telephone numbers of the individuals assigned to implement the E&MTA.**

3.2. Responsibilities of the Providing Participant

3.2.1 Transfer of the Equipment and Materiel. The providing Participant will transfer the Equipment and Materiel listed above for the duration of the transfer period specified in paragraph 6.4 unless extended by mutual written consent.

3.2.2 Equipment and Materiel Delivery. The providing Participant will deliver the Equipment and Materiel (**specify arrangements**). Possession and responsibility for the Equipment and Materiel will pass from the providing Participant to the receiving Participant at the time of receipt of the Equipment and Materiel at the mutually determined location specified. Any further transportation is the responsibility of the receiving Participant unless otherwise specified in this paragraph.

3.2.3 Information. The providing Participant will furnish the receiving Participant such Information as is necessary to enable the Equipment and Materiel to be used in the activities described in subparagraph 2.1.1 in accordance with Section IX (Disclosure and Use of Information) of the SFEC MOU.

3.3 Responsibilities of the Receiving Participant

3.3.1 Inspection and Inventory. The receiving Participant will inspect and inventory the Equipment and Materiel upon receipt. The receiving Participant will also inspect and inventory the Equipment and Materiel prior to its return to the providing Participant unless the Equipment and Materiel is consumed in accordance with subparagraph 3.3.2.

3.3.2 **(Choose one of the following alternatives or use both if both situations apply.)**

Alternative A – Use when return of Equipment and Materiel is planned.

Return of Equipment and Materiel – Upon expiration or termination of the transfer period specified in paragraph 6.4 (taking into account any approved extensions by the providing Participant), the receiving Participant will return the Equipment and Materiel to the providing Participant (**specify arrangements**). Possession and responsibility for the Equipment and Materiel will pass from the receiving Participant to the providing Participant at the time of receipt of the Equipment and Materiel at the mutually determined location specified. If the Equipment and Materiel is lost, unintentionally destroyed, or damaged beyond economical repair, while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss/destruction/irreparable damage to the providing Participant.

Alternative B – Use when return of Equipment and Materiel is not planned due to its consumption during the activity.

Consumption of Equipment and Materiel – It is intended that the receiving Participant will consume the Equipment and Materiel specified in paragraph 1.1 during the course of the activities described in subparagraph 2.1.1. If this does occur, the receiving Participant will provide written notice of its consumption to the providing Participant. In the event consumption does not occur prior to the end of the transfer period specified in paragraph 6.4, the receiving Participant will return the Equipment and Materiel to the providing Participant **(specify arrangements**). Possession and responsibility for the Equipment and Materiel will pass from the receiving Participant to the providing Participant at the time of receipt of the Equipment and Materiel at the mutually determined location specified. If the Equipment and Materiel is lost, unintentionally destroyed, or damaged beyond repair prior to its intended consumption while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss/destruction/irreparable damage to the providing Participant.

3.4 This E&MTA provides only for transfer of Equipment and Materiel associated with the activities described in subparagraph 2.1.1. Signature of this E&MTA does not imply any commitment by a Participant to participate in any activities beyond the E&MTA described herein.

SECTION IV

SPECIAL PROVISIONS (OPTIONAL)

4.1 (Insert any special provisions as required.)

SECTION V

CLASSIFICATION

5.1 ***(Insert only one of the two following paragraphs; note that one of these two options will be selected.)***

No classified Equipment or Materiel will be transferred under this E&MTA.

or

The highest level of classified Equipment and Materiel transferred under this E&MTA is ***(insert level of classification)***.

SECTION VI

MODIFICATION, TERMINATION, AND TRANSFER PERIOD

6.1 The provisions of this E&MTA may be amended or extended in accordance with paragraph 18.3. of the SFEC MOU.

6.2 The Equipment and Materiel Transfer described in this E&MTA may be terminated in accordance with paragraphs 18.4.–18.6. of the SFEC MOU. Additionally, this E&MTA may be terminated unilaterally by the providing Participant or the receiving Participant at any time in accordance with paragraph 18.5. of the SFEC MOU.

6.3 Responsibilities regarding security and protection against unauthorized use, disclosure, or transfer that accrued prior to termination or expiration of the transfer period will continue to apply without limit of time in accordance with Section XVIII (Amendment, Termination, Entry into Effect, and Duration) of the SFEC MOU.

6.4 The transfer period for the Equipment and Materiel described herein begins on the date of the last signature below, and unless terminated or extended, it will continue until ***(enter date or amount of time)***.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date
_____	_____
Location	Location