

DEFENSE

Research and Development

**Memorandum of Understanding Between the
UNITED STATES OF AMERICA
and OTHER GOVERNMENTS**

Signed at Brussels, The Hague, Lisbon, Koblenz, Madrid,
Washington, Athens, Ankara, Canberra, Bergen, Copenhagen,
and Ottawa October 28 and December 5, 2013, January 9 and
15, April 1, 10, and 16, May 27, July 22 and 30, September 19,
and November 12, 2014

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.”

MULTILATERAL

Defense: Research and Development

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Brussels, The Hague, Lisbon, Koblenz, Madrid,
Washington, Athens, Ankara, Canberra, Bergen,
Copenhagen, and Ottawa October 28, and
and December 5, 2013, January 9 and 15,
April 1, 10, and 16, May 27, July 22 and 30,
September 19, and November 12, 2014;
Entered into force November 12, 2014.
With annexes.*

**MEMORANDUM OF UNDERSTANDING
FOR THE COOPERATIVE ENGINEERING &
MANUFACTURING DEVELOPMENT OF THE
EVOLVED SEASPARROW MISSILE
BLOCK 2**



“ESSM BLOCK 2 E&MD MOU”

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF THE
EVOLVED SEASPARROW MISSILE BLOCK 2**

AMONG:

THE MINISTER FOR DEFENCE ON BEHALF OF THE DEPARTMENT OF DEFENCE OF
AUSTRALIA

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF BELGIUM

AND

THE DEPARTMENT OF NATIONAL DEFENCE OF CANADA

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF DENMARK

AND

THE FEDERAL MINISTRY OF DEFENCE OF THE FEDERAL REPUBLIC OF GERMANY

AND

THE MINISTRY OF NATIONAL DEFENCE OF THE HELLENIC REPUBLIC

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF THE NETHERLANDS

AND

THE MINISTER OF DEFENCE OF THE KINGDOM OF NORWAY

AND

THE MINISTER OF DEFENCE OF PORTUGAL

AND

THE MINISTRY OF DEFENCE OF THE KINGDOM OF SPAIN

AND

THE MINISTRY OF NATIONAL DEFENCE OF TURKIYE

AND

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

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INTRODUCTION

The Minister for Defence on behalf of the Department of Defence of Australia (Australian DOD), the Department of National Defence of Canada (Canadian DND), the Minister of Defence of the Kingdom of Denmark (Danish MOD), the Minister of Defence of the Kingdom of The Netherlands (Netherlands MOD), the Minister of Defence of the Kingdom of Norway (Norwegian MOD), the Ministry of National Defence of Turkiye (MoND of Turkiye), and the Department of Defense of the United States of America (U.S. DoD), hereinafter referred to as the “Contributing Participants”, and the Minister of Defence of the Kingdom of Belgium (Belgian MOD), the Federal Ministry of Defence of the Federal Republic of Germany (German FMoD), the Ministry of National Defence of the Hellenic Republic (Hellenic MND), the Minister of Defence of Portugal (Portuguese MOD), and the Ministry of Defence of the Kingdom of Spain (Spanish MOD), hereinafter referred to as the “Non-contributing Participants”, and collectively referred to as the “Participants”:

Having a common interest in ship defense;

Recognizing the Memorandum of Understanding (MOU) for the International Development of the NATO SEASPARROW Surface Missile System dated June 10, 1968 (Development MOU), and the MOU for the Cooperative Support of the NATO SEASPARROW Surface Missile System dated May 31, 1977 (Support MOU);

Recognizing the Addendum to the Memorandum of Understanding for the Cooperative Support of the NATO SEASPARROW Surface Missile System Concerning the Cooperative Engineering and Manufacturing Development of the Evolved SEASPARROW Missile dated June 16, 1995 (ESSM E&MD Addendum); the Memorandum of Understanding for the Cooperative Production of the Evolved SEASPARROW Missile dated December 26, 1997 (ESSM Production MOU); and the Memorandum of Understanding for the Cooperative In-Service Support of the Evolved SEASPARROW Missile dated October 25, 2001 (ESSM Support MOU);

Recognizing the benefits to be derived from the standardization, rationalization, interoperability of military equipment among the Participants’ navies, the benefits to be obtained from cooperative programs, and the advantages to be gained from the use of their combined national capabilities in order to support systems and equipment operational in the Participants’ navies in the most efficient and cost effective manner possible;

Recognizing that the Participants have a requirement to enhance the performance, effectiveness and reliability of the Evolved SEASPARROW Missile (ESSM) and related elements;

Recognizing that work to be conducted under this MOU will build upon the results of missile improvement studies and risk reduction efforts related to an upgraded ESSM which have been performed under subparagraph 3.1.9 of Section 3 (Scope of Work) of the ESSM Support MOU;

Desiring to expand the current scope of cooperation, this MOU marks the beginning of a new cycle of cooperation among the Participants that may, if mutually determined among the Participants, lead to cooperative production and in-service support for the ESSM Block 2; and

Desiring to conduct the ESSM Block 2 Engineering & Manufacturing Development (E&MD) Phase as an expansion of the current North Atlantic Treaty Organization (NATO) SEASPARROW project;

Now, therefore, the undersigned Participants have reached the following understandings:

SECTION 1. DEFINITIONS

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

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 more Contributing Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the governmental organizations of the Participants that includes a description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the governmental organization of a Contributing Participant that has the authority to enter into, administer, or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Contracting Agency.
Contractor Support Personnel	Persons specifically identified as providing administrative, managerial, scientific, or technical support services to one or more Participants under a support Contract.
Contributing Participant	A Participant who is sharing in the costs associated with this ESSM Block 2 E&MD Phase.

Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations; this could include Information that has been declassified but remains controlled.
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Parent Participant, assigned to the NATO SEASPARROW Project Office (NSPO), performing managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other NSPO staff duties in furtherance of the ESSM Block 2 E&MD Phase.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of any Contributing Participant.
Designated Security Authority (DSA)	The security authority or authorities designated by national authorities to be responsible for the coordination and implementation of security aspects of this MOU.
ESSM	The Evolved SEASPARROW Missile cooperatively developed, produced, and supported under the ESSM E&MD Addendum, the ESSM Production MOU, and the ESSM Support MOU.
ESSM Block 2	An upgraded ESSM that meets the requirements specified in the ESSM Block 2 Requirements Document or any revisions thereto.
ESSM Block 2 E&MD Phase	The cooperative efforts under this ESSM Block 2 E&MD MOU to achieve the objectives in Section 2 (Objectives) and accomplish the work in Section 3 (Scope of Work) of this MOU.
ESSM Block 2 E&MD Phase Background Information	Any Information not generated in the performance of the ESSM Block 2 E&MD Phase.
ESSM Block 2 E&MD Phase Equipment	Any material, equipment, end item, subsystem, component, special tooling, or test equipment cooperatively acquired by the Contributing Participants or provided by a Participant for use in the ESSM Block 2 E&MD Phase.
ESSM Block 2 E&MD Phase Foreground Information	Any Information generated in the performance of the ESSM Block 2 E&MD Phase.
ESSM Block 2 E&MD Phase Information	Any Information provided to, generated in, or used in the ESSM Block 2 E&MD Phase.

ESSM Block 2 E&MD Phase Invention	Any product, process or other solution in any field of technology, provided it is new, involves an inventive step, is capable of industrial application, and is formulated or made (conceived or “first actually reduced to practice”) in the course of work performed under the ESSM Block 2 E&MD Phase. 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.
ESSM Block 2 E&MD Phase Plan	The acquisition baseline documents identified in Annex A (ESSM Block 2 E&MD Phase Plan) to this MOU.
Host Participant Information	A Participant in whose country the NATO SEASPARROW Project Office or a division thereof is physically located.
Information	Any knowledge provided, generated, or used regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including equipment, technology, photographs, correspondence, 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 or computer memory, whether or not subject to Intellectual Property rights or other legal protection.
Information and Evaluation Purposes	Review, analysis, or consideration to facilitate a Non-contributing Participant’s decision to become a Contributing Participant or for the purpose of voting on or complying with NSPSC decisions, and does not include the use of ESSM Block 2 E&MD Phase Information in the performance of research, development, production, or application of the ESSM Block 2 E&MD Phase Information to any program, plan, or project.

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, geographical indications, and any other rights resulting from creative activity in the industrial, scientific, literary, and artistic fields.
National Deputy	A military member or civilian employee of a Participant assigned to the NATO SEASPARROW Project Office (NSPO) who performs NSPO staff duties assigned by the NSPO PM and additional duties, which may or may not be related to the NSPO, on behalf of that Participant's Government. When performing these NSPO staff duties as assigned by the NSPO PM, a Parent Participant's National Deputy will be considered a CPP. When performing additional duties related to the NSPO assigned by a Parent Participant, a National Deputy will be considered a CPP. When a National Deputy performs additional duties unrelated to the NSPO, and performed outside NSPO facilities, the National Deputy will not be considered a CPP, and the status with regard to the assignment in the Host Participant's country will be determined under other applicable written arrangements between the Host Participant and the Parent Participant or between their respective Governments.
Non-contributing Participant	A Participant who is not sharing in the costs associated with this ESSM Block 2 E&MD Phase.
Parent Participant	A Participant, other than the Host Participant, that assigns a military member or civilian employee to the NATO SEASPARROW Project Office or a division thereof.
Participant	A signatory to this MOU, which includes both Contributing Participants and Non-contributing Participants. 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.
Prospective Contractor	Any entity that seeks to enter into a Contract to be awarded by a Participant's Contracting Agency and that, in the case of a solicitation involving the release of export-controlled ESSM Block 2 E&MD Phase Information, is eligible to receive such Information.
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.
Total Cost Ceiling	The maximum amount to which the Total Cost Target may move.
Total Cost Target	The estimated planning figure of the total costs of performance of Section 3 (Scope of Work) of this MOU plus the costs of performance of the ESSM Block 2 risk reduction efforts.
U.S.-Restricted ESSM Block 2 Item	Those items with regard to which U.S. national disclosure policy prohibits dissemination of design and manufacturing Information to the other Participants. ESSM Block 2 items in this category are: portions of the guidance section, including all non-releasable hardware, software, and firmware (e.g. the Target Detection Device); AEGIS S-band uplink/downlink module, S-band-associated software and firmware; and the U.S. National Security Agency cryptographic device and associated interface design standards located in the warhead-compatible telemeter or telemetry data transmitter set and encryption support module.

SECTION 2. OBJECTIVES

- 2.1 The overall objective of the ESSM Block 2 E&MD Phase is to conduct the cooperative efforts required to provide an improved ship defense capability that will meet the operational requirements as defined in the ESSM Block 2 Requirements Document, as identified in Annex A (ESSM Block 2 E&MD Phase Plan) to this MOU. This MOU sets out the arrangements that will govern the ESSM Block 2 E&MD Phase.
- 2.2 The specific objectives of the Contributing Participants in the ESSM Block 2 E&MD Phase are to:
 - 2.2.1 Cooperatively design, develop, test and evaluate an upgraded ESSM that employs a dual mode X-band active and semi-active guidance capability, leveraging existing technology to the maximum extent practicable.
 - 2.2.2 Utilize the baseline ESSM propulsion stack.
 - 2.2.3 Support the baseline ESSM semi-active guidance modes and link systems.
 - 2.2.4 Maximize backward compatibility with the baseline ESSM, such that the ESSM Block 2 will be capable of being loaded in existing launching systems that host the baseline ESSM (Mk29, Mk41, Mk48, Mk56, and Mk57), and capable of being launched and intercepting targets at least as effectively as the baseline ESSM with only minimal modifications to the associated combat systems.
 - 2.2.5 Optimize the design to minimize life cycle costs.
 - 2.2.6 Share the work undertaken among the Contributing Participants in proportion to their contributions and promote the involvement of their industries.
 - 2.2.7 Plan and execute the transition to production of ESSM Block 2.
- 2.3 Participation under this MOU will provide the Participants with the opportunity for future cooperation in ESSM Block 2 production and support. Such future cooperation will be the subject of separate written arrangements by the Participants or amendments to this MOU.
 - 2.3.1 Prior to commencement of any future phases of cooperation, the Participants will meet to consider the development of such arrangements. A proposed ESSM Block 2 production MOU will be negotiated to allow for signature immediately following a decision by the Contributing Participants to proceed to production of ESSM Block 2. If a decision to proceed to production is made by the Contributing Participants, cooperation relating to in-service support will be negotiated to allow for signature of an ESSM Block 2 support MOU prior to the first delivery of low rate initial production missiles.

2.3.2 The Participants recognize that Contributing Participant(s) deciding not to participate in follow-on production will not be entitled to any reimbursement of their ESSM Block 2 E&MD Phase and risk reduction contributions from the Contributing Participants. The Participants recognize that Participant(s) deciding not to participate in follow-on production will not assert Intellectual Property rights restrictions, other than those provided in Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information), except that:

2.3.2.1 Should the U.S. DoD not participate, the U.S. DoD will use its best efforts to furnish U.S.-Restricted ESSM Block 2 Items in accordance with Foreign Military Sales arrangements to ESSM Block 2 production phase Participants.

SECTION 3. SCOPE OF WORK

- 3.1 The ESSM Block 2 E&MD Phase encompasses the cooperative design, development, fabrication (of test articles), test and evaluation of an upgraded ESSM as set out in Annex A (ESSM Block 2 E&MD Phase Plan) to this MOU. The scope of work includes, but is not limited to, the following:
- 3.1.1 Design and engineering.
 - 3.1.2 Conduct of studies to ensure design optimization.
 - 3.1.3 Incorporation of design margins for accommodating future performance improvements.
 - 3.1.4 Development, building and testing of sections, systems, subsystems, and functional elements to demonstrate compliance with performance requirements.
 - 3.1.5 Design, redesign, and modification of test and simulation equipment and test environments to accommodate ESSM Block 2 capabilities.
 - 3.1.6 Generation of ESSM Block 2 missile interface control documents, handbooks, and technical notes to allow Contributing Participants to integrate ESSM Block 2 with existing or future national platforms and combat system elements.
 - 3.1.7 Conduct of flight tests and associated analysis and reporting.
 - 3.1.8 Modeling and simulation to support ESSM Block 2 system and subsystem performance.
 - 3.1.9 Development of acquisition and systems engineering documentation required for ESSM Block 2 E&MD Phase execution and milestone approvals.
 - 3.1.10 Demonstration of manufacturing readiness to support the development of production-representative all-up-rounds.
 - 3.1.11 Development and implementation of a plan for successful transition from E&MD to low-rate initial production.
 - 3.1.12 Initial planning for in-service support and training.
 - 3.1.13 Delivery of a technical data package suitable for production of an ESSM Block 2.
 - 3.1.14 Administration of the ESSM Block 2 E&MD Phase.

- 3.2 The ESSM Block 2 will be designed to be launched from Mk29, Mk41, Mk48, Mk56, and Mk57 launching systems. Other than the development of the interface control documents as set out in subparagraph 3.1.6 of this Section, the scope of this MOU will not include integration efforts in NATO SEASPARROW Surface Missile System (NSSMS) elements or other combat system elements. The integration efforts in NSSMS elements will be accomplished under the provisions of the Support MOU, including system modifications to fire control systems under the cognizance of the NATO SEASPARROW Project Steering Committee (NSPSC).
- 3.3 In order to facilitate a Non-contributing Participant's decision to become a Contributing Participant, the Contributing Participants will make summary-level Information available to the Non-contributing Participants for Information and Evaluation Purposes only, in accordance with subparagraph 4.5.1 of Section 4 (Management (Organization and Responsibility)) and subparagraph 10.1.2 of Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information) of this MOU.
- 3.4 The activities listed in paragraphs 3.1 and 3.2 of this Section will be conducted primarily as efforts common to all Contributing Participants; however, additional activities may be conducted to satisfy a national requirement or national requirements.

SECTION 4. MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

- 4.1 Executive oversight of the ESSM Block 2 E&MD Phase will be exercised by the existing NSPSC. The NSPSC will oversee the ESSM Block 2 E&MD Phase in accordance with the principles and procedures set forth herein. The ESSM Block 2 E&MD Phase will be administered by the existing NSPO, which is headed by a Project Manager (NSPO PM).
 - 4.1.1 These organizations were established by the Development MOU, reestablished by the Support MOU, used for the ESSM E&MD Addendum, and given additional responsibilities for the ESSM Production Phase by the ESSM Production MOU and for the ESSM In-Service Support Phase by the ESSM Support MOU.
 - 4.1.2 This MOU assigns additional responsibilities to the NSPSC and the NSPO PM, who will perform these additional responsibilities on a cooperative basis in conjunction with their responsibilities under the cited Support MOU, the ESSM Production MOU, and the ESSM Support MOU.
- 4.2 The NSPSC responsibilities under this MOU will include:
 - 4.2.1 Conducting executive-level oversight of this MOU.
 - 4.2.2 Approving budgets, financial schedules, and the financial management procedures document (FMPD) (and any revisions thereto) prepared by the NSPO PM, and reviewing the financial status of the ESSM Block 2 E&MD Phase to ensure compliance with the provisions of Section 5 (Financial Provisions) of this MOU.
 - 4.2.3 Approving and revising the acquisition baseline documents shown in Annex A (ESSM Block 2 E&MD Phase Plan) to this MOU.
 - 4.2.4 Resolving issues brought forth by the NSPO PM.
 - 4.2.5 Approving acquisition/contracting strategies and identifying those acquisitions that require NSPSC endorsement prior to award.
 - 4.2.6 Reviewing the NSPO PM's recommendations and advising the Participants to commence negotiation of amendments to this MOU in accordance with Section 20 (Amendments) of this MOU.
 - 4.2.7 Reviewing and forwarding recommendations to the Contributing Participants concerning requests for sales or transfers in accordance with Section 14 (Sales and Transfers) of this MOU.

- 4.2.8 Approving plans to manage and control the transfer of ESSM Block 2 E&MD Phase Equipment provided by any Participant to support the execution of the ESSM Block 2 E&MD Phase in accordance with Section 9 (ESSM Block 2 E&MD Phase Equipment) of this MOU.
- 4.2.9 Approving plans for the disposition of cooperatively acquired ESSM Block 2 E&MD Phase Equipment in accordance with Section 9 (ESSM Block 2 E&MD Phase Equipment) of this MOU.
- 4.2.10 Maintaining oversight of the security aspects of the ESSM Block 2 E&MD Phase, including the NSPO PM's preparation of an ESSM Block 2 E&MD Phase project security instruction (PSI) and classification guide (CG), and obtaining approval from the respective Participants' Designated Security Authorities (DSAs) of a PSI and CG prior to the transfer of Classified Information or Controlled Unclassified Information (including export-controlled Information).
- 4.2.11 Upon request of a Non-contributing Participant, providing recommendations to the Participants for the accession of the Non-contributing Participant to Contributing Participant status in accordance with Section 17 (Accession of Non-contributing Participants) of this MOU.
- 4.2.12 Providing recommendations to the Participants for the addition of new Participants in accordance with Section 18 (Accession of Potential Participants) of this MOU.
- 4.2.13 Maintain oversight of work share requirements as set forth in Section 8 (Work Sharing) of this MOU.
- 4.2.14 Approving requests and budget changes for equipment, parts, technical support and related services outside normal budgeted requirements, as requested by a Contributing Participant(s) or the NSPO PM, for conduct of the ESSM Block 2 E&MD Phase, in accordance with Section 5 (Financial Provisions) of this MOU.
- 4.2.15 Coordinating approval of levies and the procedures for assessing and distributing levies to the Contributing Participants in accordance with Section 14 (Sales and Transfers) of this MOU.
- 4.2.16 Approving changes to Annex B (NSPO ESSM Block 2 E&MD Phase Staffing Requirements) to this MOU after consideration of changes recommended by the NSPO PM.

- 4.2.17 Approving the comprehensive final report on the ESSM Block 2 E&MD Phase prior to expiration or termination of this MOU in accordance with Section 21 (General Provisions, Withdrawal, Termination, Entry into Effect, and Duration) of this MOU.
 - 4.2.18 Employing its best efforts to resolve, in consultation with the export control authorities of the Participant concerned, any export control issues raised by the NSPO PM in accordance with subparagraph 4.7.16 of this Section or raised by a Participant's NSPSC member in accordance with subparagraph 10.1.4.4 of Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information) of this MOU.
- 4.3 Decisions on the following topics will be made by unanimous vote of the NSPSC members:
- 4.3.1 Approval of the annual budget for the ESSM Block 2 E&MD Phase and any revisions thereto.
 - 4.3.2 Issues concerning ESSM Block 2 E&MD Phase work share allocation among the Contributing Participants.
 - 4.3.3 Approval of the acquisition baseline documents shown in Annex A (ESSM Block 2 E&MD Phase Plan) to this MOU.
 - 4.3.4 Approval of acquisition/contracting strategies.
 - 4.3.5 Approval of the comprehensive final report on the ESSM Block 2 E&MD Phase.
 - 4.3.6 Approval of any increases to the Total Cost Target up to the Total Cost Ceiling.
 - 4.3.7 Approval of the FMPD and any revisions thereto.
- 4.4 All other decisions related solely to the ESSM Block 2 E&MD Phase will be made by a majority vote of the NSPSC members, all votes being equally weighted. The Chairman or the Vice Chairman, in the absence of the Chairman, will have one additional vote solely for the purpose of resolving any tied vote of the NSPSC.
- 4.5 The following principles will apply to the voting process:
- 4.5.1 Selected summary-level ESSM Block 2 E&MD Phase Information will be released to the Non-contributing Participants in order to support the decision-making process of the Non-contributing Participants' NSPSC members. The Contributing Participants' NSPSC members will determine the range and depth of this ESSM Block 2 E&MD Phase Information in accordance with paragraph

3.3 of Section 3 (Scope of Work) and subparagraph 10.1.2 of Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information) of this MOU.

- 4.5.2 All Participants' NSPSC members will have the opportunity to vote on all NSPSC decisions.
 - 4.5.3 Any NSPSC member representing a Non-contributing Participant will not dissent to the wishes of all the representatives of the Contributing Participants in the case of decisions requiring unanimous vote nor to the majority of the representatives of the Contributing Participants in the case of decisions requiring majority vote.
 - 4.5.4 If a decision clearly interferes with or adds costs to programs under the cognizance of the NSPSC other than the ESSM Block 2 E&MD Phase, a Non-contributing Participant may raise concerns prior to a vote taking place, recognizing that it has the ability to avoid incurring additional costs under the Support MOU, the ESSM Production MOU, and the ESSM Support MOU.
 - 4.5.5 In the event that one or more Non-contributing Participants' NSPSC members abstain from voting, they will be considered to have voted with the Contributing Participants' NSPSC members in the case of a unanimous decision, or with the majority of the Contributing Participants' NSPSC members in the case of a majority vote decision, as applicable.
 - 4.5.6 In the event that the NSPSC is unable to reach a timely decision on an issue related to the ESSM Block 2 E&MD Phase, each Participant's NSPSC member will, as soon as possible, refer the issue to their appropriate national authorities for resolution. In the meantime, approved ESSM Block 2 E&MD Phase activities will continue to be implemented while the issue is being resolved by those authorities.
- 4.6 The NSPSC will have overall authority over the NSPO PM who will be appointed by the U.S. DoD. The NSPO PM will have responsibility and authority for execution of the ESSM Block 2 E&MD Phase in accordance with this MOU and will report to and be accountable to the NSPSC for effective implementation, efficient management, and timely execution of the ESSM Block 2 E&MD Phase. The Contributing Participants will provide personnel, including Cooperative Project Personnel (CPP), to fill functional billets within the NSPO in accordance with Annex B (NSPO ESSM Block 2 E&MD Phase Staffing Requirements) and Annex C (Cooperative Project Personnel (CPP)) to this MOU. The NSPO staff will be the minimum size recommended by the NSPO PM and approved by the NSPSC to be necessary for the successful administration and operation of the ESSM Block 2 E&MD Phase.

- 4.7 The NSPO PM responsibilities under this MOU include:
- 4.7.1 Managing the cost, schedule, performance requirements, technical, security, work share allocation, and financial aspects of the ESSM Block 2 E&MD Phase in accordance with the provisions of this MOU.
 - 4.7.2 Preparing budget and financial schedules for NSPSC approval in accordance with Section 5 (Financial Provisions) of this MOU, and developing and submitting the FMPD, and any revisions thereto, to the NSPSC for approval.
 - 4.7.3 Consolidating national requirements, as applicable, preparing procurement requests, and providing administrative and technical support to the Contracting Agency in the placing of Contracts for material, supplies, and services under this MOU.
 - 4.7.4 Referring issues to the NSPSC that cannot be resolved by the NSPO PM.
 - 4.7.5 Recommending amendments to this MOU to the NSPSC.
 - 4.7.6 Preparing and implementing plans approved by the NSPSC to manage and control the transfer of ESSM Block 2 E&MD Phase Equipment provided by any Participant to support the execution of the ESSM Block 2 E&MD Phase in accordance with Section 9 (ESSM Block 2 E&MD Phase Equipment) of this MOU.
 - 4.7.7 Preparing and implementing plans approved by the NSPSC for the disposition of cooperatively acquired ESSM Block 2 E&MD Phase Equipment in accordance with Section 9 (ESSM Block 2 E&MD Phase Equipment) of this MOU.
 - 4.7.8 Forwarding recommendations to the NSPSC for the change of status of Non-contributing Participants in accordance with Section 17 (Accession of Non-contributing Participants) of this MOU and the addition of new Participants in accordance with Section 18 (Accession of Potential Participants) of this MOU.
 - 4.7.9 Providing technical and procurement support for the ESSM Block 2 E&MD Phase related equipment, services, and supplies, as requested by the Contributing Participants and as approved by the NSPSC.
 - 4.7.10 Developing and forwarding a PSI and CG for the ESSM Block 2 E&MD Phase to the NSPSC within two (2) weeks after the effective date of this MOU, for approval by the respective Participants' DSAs prior to the transfer of Classified Information or Controlled Unclassified Information, and updates to the PSI and CG, as necessary.

- 4.7.11 Providing an ESSM Block 2 E&MD Phase status report at each NSPSC meeting.
- 4.7.12 Providing the comprehensive final report on the ESSM Block 2 E&MD Phase prior to expiration or termination of this MOU in accordance with Section 21 (General Provisions, Withdrawal, Termination, Entry into Effect, and Duration) of this MOU for approval by the NSPSC.
- 4.7.13 Developing and recommending acquisition/contracting strategies to the NSPSC.
- 4.7.14 Proposing changes to Annex B (NSPO ESSM Block 2 E&MD Phase Staffing Requirements) to this MOU.
- 4.7.15 Supporting Contributing Participants' reasonable and appropriate ESSM Block 2 E&MD Phase governance requirements in accordance with this MOU, including, but not limited to:
 - 4.7.15.1 Making ESSM Block 2 E&MD Phase financial records available for national audits;
 - 4.7.15.2 Providing copies of signed Contracts upon request; and
 - 4.7.15.3 Providing access to technical documentation and Contract documentation prior to signature.
- 4.7.16 Monitoring export control arrangements required to implement this MOU and, if applicable, referring immediately to the NSPSC any export control issues that could adversely affect the implementation of this MOU.
- 4.7.17 Appointing an ESSM Block 2 E&MD Phase security officer.
- 4.7.18 Supporting audit requirements and distributing audit reports to the Contributing Participants in accordance with Section 7 (Audits) of this MOU.

SECTION 5. FINANCIAL PROVISIONS

- 5.1 The Total Cost Ceiling and Total Cost Target will be met with monetary contributions. Each Contributing Participant will contribute its equitable share of the Total Cost Ceiling and the Total Cost Target, which includes overhead costs and administrative costs, and will receive equitable benefits as specified in this MOU. The Contributing Participants acknowledge that the costs of claims under this MOU, including the costs of Contract claims, may be over and above their share of the Total Cost Ceiling, and will be shared on an equitable basis in accordance with the applicable provisions of this MOU.
- 5.2 The cost of performing, or having performed, the cooperative efforts to achieve Section 3 (Scope of Work) of this MOU and the cost of the ESSM Block 2 risk reduction efforts will not exceed the Total Cost Ceiling of 935.00 million fiscal year (FY) 2011 constant-year U.S. dollars. The U.S. dollar will be the reference currency for the ESSM Block 2 E&MD Phase, and the FY will be the U.S. FY. The Total Cost Ceiling may be changed only through an amendment to this MOU.
- 5.3 The Contributing Participants will use their best efforts to perform, or to have performed, these cooperative efforts within a Total Cost Target of 883.00 million FY 2011 constant-year U.S. dollars.
- 5.4 The Total Cost Target will be shared by the Contributing Participants as follows:

Contributing Participant	Percentage	Contributions to Total Cost Target in millions of FY 2011 constant-year U.S. dollars
Australian DOD	22	194.26
Canadian DND	18	158.94
Danish MOD	5	44.15
Netherlands MOD	5	44.15
Norwegian MOD	5	44.15
MoND of Turkiye	5	44.15
U.S. DoD	40	353.20
Total	100	883.00

- 5.5 The Contributing Participants acknowledge that the contributions made by them for ESSM Block 2 risk reduction efforts will be recognized as contributions towards their share of the Total Cost Target, as specified in paragraph 5.4 of this Section. The contributions as of June 30, 2013 were 72.48 million FY 2011 constant-year U.S. dollars, as specified in subparagraph 5.5.1 of this Section. Accordingly, the Contributing Participants' remaining contributions required for the Total Cost Target will be 810.52 million FY 2011 constant-year U.S. dollars.

- 5.5.1 As of June 30, 2013, the following contributions were allocated to risk reduction efforts by the Contributing Participants within the Total Cost Target:

Contributing Participant	Contributions in millions of FY 2011 constant-year U.S. dollars
Australian DOD	20.82
Canadian DND	20.05
Danish MOD	4.00
Netherlands MOD	4.02
Norwegian MOD	4.90
MoND of Turkiye	0.13
U.S. DoD	18.56
Total	72.48

- 5.5.2 The remainder of the contributions to the Total Cost Target will be shared by the Contributing Participants as follows:

Contributing Participant	Contributions in millions of FY 2011 constant-year U.S. dollars
Australian DOD	173.44
Canadian DND	138.89
Danish MOD	40.15
Netherlands MOD	40.13
Norwegian MOD	39.25
MoND of Turkiye	44.02
U.S. DoD	334.64
Total	810.52

- 5.6 The difference between the Total Cost Target and the Total Cost Ceiling will be managed by the NSPSC. If at any time the NSPO PM has reason to believe that the Total Cost Target will be exceeded, the NSPO PM will promptly notify the NSPSC and will set forth a new estimate of the Total Cost Target, together with supporting documentation. The NSPSC will direct the NSPO PM as to what action should be taken.

- 5.6.1 If an increase to the Total Cost Target is approved by the NSPSC, the Contributing Participants will share this increase up to the Total Cost Ceiling according to the percentages set out in paragraph 5.4 of this Section, or as set forth in an NSPSC decision based on the affected Contributing Participants' benefitting assets, available funds and relevance to other programs under cognizance of the NSPSC.

- 5.7 The Total Cost Target and the Total Cost Ceiling will include costs related to administration of the ESSM Block 2 E&MD Phase as referenced in subparagraph 3.1.14 of Section 3 (Scope of Work) of this MOU, which consist of NSPO costs of travel, NSPO training costs, Contract award, Contract administration, office space, office equipment,

office operation costs, building expenses, security services, information technology services, communications services, administrative support, meeting support, and supplies.

- 5.8 Except as otherwise provided in this Section, the costs of personnel assigned to the NSPO will be included in the costs allocated to the operation of the NSPO in the annual budget for this ESSM Block 2 E&MD Phase, as applicable. Such costs will include the salary at the equivalent U.S. pay scale and equivalent U.S. expenses and relevant allowances of cooperative travel as approved by the NSPO PM. Contributing Participants will be compensated or have their share of the costs under paragraph 5.4 of this Section adjusted to account for the provisions of such personnel under arrangements developed by the NSPO PM and approved by the NSPSC.
- 5.9 The payment of personnel costs in the NSPO will be handled as follows:
- 5.9.1 The Host Participant will make initial payment for salary, relevant allowances, and travel of Host Participant personnel.
 - 5.9.2 The Parent Participant will make initial payment for salary, relevant allowances, and travel for their CPP, in accordance with their national laws and regulations.
 - 5.9.3 Any subsequent compensation or adjustment of costs for the Contributing Participants to account for these personnel costs will be made in accordance with paragraph 5.8 of this Section.
- 5.10 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:
- 5.10.1 Costs associated with national representation at meetings by non-NSPO personnel.
 - 5.10.2 Costs associated with the National Deputy assigned to the NSPO unless otherwise determined by the NSPO PM in accordance with policy direction by the NSPSC that efforts associated with such costs are of benefit to the ESSM Block 2 E&MD Phase.
 - 5.10.3 Costs associated with any national requirements identified by a Participant.
 - 5.10.4 Costs associated with posting accommodation, relocation to and from the Host Participant's country, medical services, insurance, allowances not covered by paragraph 5.8 of this Section, and other expenses specific to CPP and their dependents, in accordance with their national laws, regulations and policies.
 - 5.10.5 Any other costs not expressly stated as shared costs.

- 5.11 The NSPO PM will be responsible for establishing the detailed financial management procedures in an FMPD under which the ESSM Block 2 E&MD Phase will operate. The FMPD will be subject to approval by the NSPSC in accordance with subparagraph 4.2.2 of Section 4 (Management (Organization and Responsibility)) of this MOU. The FMPD will meet the requirements of Section 7 (Audits) of this MOU. Each Contributing Participant will fund the ESSM Block 2 E&MD Phase in accordance with the estimated schedule of contributions contained in the FMPD, which will be consistent with paragraph 5.12 of this Section.
- 5.12 The Contributing Participants recognize that it may become necessary for one Contributing Participant to incur contractual or other obligations for the benefit of one or more of the other Contributing Participants prior to receipt of the other Contributing Participants' funds. In the event that one Contributing Participant incurs such contractual or other obligations, the other Contributing Participants will pay their 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 their 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.
- 5.13 A Contributing Participant will promptly notify the other Contributing Participants if available funds are not adequate to fulfill its responsibilities under this MOU. If a Contributing Participant notifies the other Contributing Participants that it is ceasing or reducing its funding for the ESSM Block 2 E&MD Phase, all Participants will immediately consult with a view toward continuation on a modified basis. If consultations among the Contributing Participants do not result in a mutual determination to continue on a modified basis, the notifying Contributing Participant will withdraw in accordance with the provisions of paragraph 21.5 of Section 21 (General Provisions, Withdrawal, Termination, Entry into Effect, and Duration) of this MOU.

SECTION 6. CONTRACTUAL PROVISIONS

- 6.1 The U.S. DoD, acting through the Department of the Navy, will be primarily responsible for Contracting for the benefit of the Contributing Participants throughout the ESSM Block 2 E&MD Phase in accordance with U.S. Contracting laws, regulations, and procedures. However, if it is determined by the NSPSC, a Contributing Participant other than the U.S. DoD may issue Contracts for the benefit of the Contributing Participants throughout the ESSM Block 2 E&MD Phase in accordance with that Participant's established national Contracting laws, regulations, and procedures. The Contracting Officer will, when it facilitates satisfying the objectives of this MOU, seek applicable waivers of the Contracting Participant's national regulations, procurement procedures, and practices. The Contracting Officer for each Contract will be the exclusive source for providing contractual direction and instructions to Contractors.
- 6.2 Upon determination of the NSPSC, consistent with Section 2 (Objectives) of this MOU, a Contributing Participant may perform Contracting for the national requirements of another Contributing Participant.
- 6.3 In developing the acquisition/contracting strategies for the ESSM Block 2 E&MD Phase, the NSPO PM in conjunction with the Contracting Officer will consider all relevant acquisition/contracting methods to achieve the objectives of this MOU. The NSPO PM, in consultation with the Contributing Participants, will review statements of work and procurement requests prior to issuance of solicitations to ensure that they are in accordance with this ESSM Block 2 E&MD MOU and that they include the national requirements of a Contributing Participant, if any. The Contracting Officer will keep the NSPO PM informed of all significant developments associated with the negotiation, award, and performance of Contracts. Upon being informed of any significant developments, the NSPO PM will immediately inform the Contributing Participants.
- 6.4 The Contracting Officer will negotiate with the Prospective Contractor(s) to obtain the rights to disclose and use ESSM Block 2 E&MD Phase Information required by Section 10 (Disclosure and Use of ESSM Block E&MD Phase Information) of this MOU. The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section 7 (Audits), Section 8 (Work Sharing), Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information), Section 11 (Controlled Unclassified Information), Section 13 (Security), Section 14 (Sales and Transfers), and Section 21 (General Provisions, Withdrawal, Termination, Entry into Effect, and Duration) of this MOU, including the export control provisions of this MOU, in particular paragraphs 6.5 and 6.6 of this Section. During the Contracting process, the Contracting Officer will advise Prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Information or permit its use. The

Contracting Officer will also require Prospective Contractors to employ their best efforts not to enter into any new license or agreement that will result in such restrictions.

- 6.5 Each Contributing 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 Contributing 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 the Contracting Officer is unable to secure adequate rights to use and disclose ESSM Block 2 E&MD Phase Information, as required by Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information) of this MOU, or is notified by Contractors or Prospective Contractors of any restrictions on the disclosure and use of Information, the matter will be referred to the NSPSC for resolution.
- 6.8 When Contracting on behalf of the other Contributing Participant(s), a Contracting Participant will protect the interests of the other Contributing Participant(s). The Contracting Participant will investigate, in a timely manner, concerns that a Contractor has not met, or may not meet, contractual requirements and, upon verification of the validity of such concerns, will pursue contractual remedies and use Contract disputes processes to the same extent as that Contracting Participant would in protecting its own interests. The Contracting Participant will keep the affected Contributing Participant(s) informed during this process and will take their views into full consideration.

- 6.9 The Contracting Officer will promptly advise the NSPO PM of any anticipated or actual cost growth, schedule change, or performance problems of any Contract for which that Contracting Officer is responsible. Upon being informed of any cost growth, schedule change, or performance problems, the NSPO PM will promptly inform the Contributing Participants.
- 6.10 Upon request of the Contracting Agency and in accordance with any applicable bilateral or multilateral agreements or arrangements, Participants will provide support in connection with the placement and administration of Contracts and subcontracts in their countries.
- 6.11 The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable provisions to satisfy the hazardous materials laws and regulations requirements of each of the Contributing Participants, as identified in writing by the Contributing Participants to the NSPO PM prior to submission of the procurement request to the Contracting Officer. In the event the Prospective Contractor will not be able to meet the hazardous material requirements or there will be an additional cost associated with meeting these requirements, the Contracting Officer will immediately advise the NSPO PM, who will similarly advise the NSPSC, so that the Contributing Participants may consult and review their status under this MOU.

SECTION 7. AUDITS

- 7.1 The Participants acknowledge the need to comply with the audit requirements of their respective Governments, which among others may include requirements for financial audits, audits of Contract price and performance, and quality assurance. Accordingly, each Participant will, to the maximum extent permissible within its national laws, regulations and disclosure policies, provide to the other Participants or the national audit authorities of the other Participants, as applicable, the Information and assistance described in this Section.
- 7.2 The final audit regarding administration and execution of the ESSM Block 2 E&MD Phase will be performed by the U.S. DoD on behalf of the Contributing Participants, at the conclusion of the ESSM Block 2 E&MD Phase. Reports of this audit will be released to the maximum extent permissible and in a timely manner to all the Contributing Participants. The Participants will assist the U.S. DoD on any audit elements required to satisfactorily perform the audit.
- 7.3 Any audit may be initiated either by a Contributing Participant to satisfy national audit requirements, or by two or more Contributing Participants to satisfy similar audit requirements.
 - 7.3.1 Such audit will be conducted in consultation with the NSPO PM, who will coordinate audit support resources and will assist to determine which Participant or other entity is the most appropriate to conduct the audit.
 - 7.3.2 The Contributing Participant(s) requesting the audit will consult with the NSPO PM to identify the costs associated with the audit. If the NSPO PM determines that the audit cannot be conducted without undue impact on the execution of the ESSM Block 2 E&MD Phase, or further guidance is necessary, the audit requirement may be referred to the NSPSC for further resolution.
 - 7.3.3 If the NSPSC determines that additional funding is required to conduct the audit, the Contributing Participant(s) requesting the audit will provide such funds consistent with any applicable bilateral or multilateral agreements or arrangements between the Participants.
 - 7.3.4 If a Contributing Participant or its national audit authority needs to obtain or to inspect specific ESSM Block 2 E&MD Phase Information in order to fulfill its national obligations, the NSPO PM will coordinate access to such specific ESSM Block 2 E&MD Phase Information at mutually determined times and locations.

- 7.3.5 Reports of any audit will be released to the maximum extent permissible and in a timely manner to all the Contributing Participants, taking into account any funding provided by the Contributing Participant(s) requesting the audit.
- 7.4 Audit of Contracting activities will be the responsibility of the Contracting Participant in accordance with its national audit laws, regulations, and policies. Where necessary, this audit may be conducted by the Participant in whose country the Contractor or subcontractor is located. The Participants will use their best efforts to perform any audits requested by a Contributing Participant. In the event that an audit of the Contracting activities requested by another Contributing Participant cannot be performed by the Contracting Participant or the Participant in whose country the Contractor or subcontractor is located, then the Contracting Participant will coordinate for the requesting Contributing Participant to perform the audit itself. The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable provisions to ensure necessary access to Contractors' and subcontractors' premises and records. Each Participant's audit reports will be made available to the Contributing Participants to the maximum extent permissible and in a timely manner.
- 7.5 Audits performed under this Section will not relieve Contractor(s) and subcontractor(s) of their obligations to ensure performance in accordance with the Contract or subcontract.
- 7.6 Audits performed under this Section will be conducted in accordance with the national laws, regulations, and policies of the auditing Participant and consistent with existing bilateral or multilateral agreements or arrangements between the Participants. Where no applicable agreements or arrangements exist, provision of audits may be negotiated on a case-by-case basis between or among the relevant Participants, recognizing applicable NATO and other international standards.

SECTION 8. WORK SHARING

- 8.1 Work performed under this MOU will consist of government work and industrial work. Government work will be performed primarily by the U.S. Government. The NSPO PM will, in accordance with Section 4 (Management (Organization and Responsibility)) of this MOU and to the extent practicable, share government work with the other Contributing Participants.
- 8.2 Industrial work will be shared among the Contributing Participants in accordance with their cost share percentages as specified in paragraph 5.4 of Section 5 (Financial Provisions) of this MOU. Industrial work sharing will be consistent with the need to maintain high technical merit, attain reasonable costs, comply with releasability policies, and achieve the timely, economic, and efficient execution of this MOU.
- 8.3 Contributing Participants may make separate arrangements with the Contractor responsible for the industrial work.
- 8.4 The NSPO PM will report ESSM Block 2 E&MD Phase government and industrial work share to the NSPSC. If a Contributing Participant considers it has not received its fair share of the industrial work in accordance with this Section, that Contributing Participant may raise the matter with the NSPSC.
- 8.5 No requirement will be imposed by any Participant for work sharing or for other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

SECTION 9. ESSM BLOCK 2 E&MD PHASE EQUIPMENT

9.1 Any Participant may provide ESSM Block 2 E&MD Phase Equipment that is identified as being necessary for executing this MOU to another Participant. Such transfers will be made in accordance with the providing Participant’s national laws, regulations, and policies. Such equipment will remain the property of the providing Participant. A list of all ESSM Block 2 E&MD Phase Equipment provided by one Participant to another Participant will be developed and maintained by the NSPO PM consistent with the template below and approved by the NSPSC in accordance with Section 4 (Management (Organization and Responsibility)) of this MOU prior to such transfers.

Nomenclature	NSN/Part No./Model No.	Quantity	Replacement Value	Providing Participant	Receiving Participant	Consumable (Yes/No)	Transfer Date	Return Date

9.2 The receiving Participant will maintain any such ESSM Block 2 E&MD Phase Equipment in good order, repair, and operable condition. Unless the providing Participant has authorized the ESSM Block 2 E&MD Phase Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return such equipment in as good condition as received, normal wear and tear excepted, or return such equipment and pay the cost to restore it. If such equipment is damaged beyond economical repair, the receiving Participant will notify the providing Participant and return such equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value, which will be computed pursuant to the providing Participant's national laws and regulations. If such equipment is lost while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value.

9.3 The providing Participant will deliver ESSM Block 2 E&MD Phase Equipment to the receiving Participant at a mutually determined location. Possession of such equipment will pass from the providing Participant to the receiving Participant at the time of receipt thereof. Any further transportation will be the responsibility of the receiving Participant.

9.4 Unless otherwise mutually determined by the providing and receiving Participants, all ESSM Block 2 E&MD Phase Equipment that is transferred will be used by the receiving Participant only for the purposes of carrying out this MOU. In addition, in accordance with Section 14 (Sales and Transfers) of this MOU, ESSM Block 2 E&MD Phase Equipment will not be retransferred or sold to a Third Party without the prior written approval of the providing Participant.

9.5 Unless otherwise mutually determined by the providing and receiving Participants, ESSM Block 2 E&MD Phase Equipment transferred to one or more Participants under

this MOU will be returned to the providing Participant prior to the termination or expiration of this MOU or the withdrawal of either the providing or receiving Participant.

- 9.6 Any ESSM Block 2 E&MD Phase Equipment that is cooperatively acquired on behalf of the Contributing Participants for use under this MOU will be disposed of prior to the expiration of the ESSM Block 2 E&MD Phase, as determined by the NSPSC in accordance with Section 4 (Management (Organization and Responsibility)) of this MOU.
- 9.7 Disposal of cooperatively acquired ESSM Block 2 E&MD Phase Equipment may include a transfer of the interest of one Contributing Participant in such equipment to another Participant or the sale of such equipment to a Third Party in accordance with Section 14 (Sales and Transfers) of this MOU. The Contributing Participants will share the payment from cooperatively acquired ESSM Block 2 E&MD Phase Equipment transferred or sold to a Third Party or a Non-contributing Participant in the same ratio as costs are shared under this MOU.

SECTION 10. DISCLOSURE AND USE OF ESSM BLOCK 2 E&MD PHASE INFORMATION

10.1 General

- 10.1.1 All Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out this ESSM Block 2 E&MD Phase. However, any disclosure of Information will be in accordance with the providing Participant's national laws, regulations, and policies. The Contributing Participants intend to obtain sufficient ESSM Block 2 E&MD Phase Information and rights to use such Information to enable the execution of the ESSM Block 2 E&MD Phase, future production, support, and follow-on development of the ESSM Block 2. The nature and amount of ESSM Block 2 E&MD Phase Information to be obtained will be consistent with the objectives stated in Section 2 (Objectives) and Section 3 (Scope of Work) of this MOU.
- 10.1.2 The Contributing Participants will disclose to the Non-contributing Participants selected summary-level ESSM Block 2 E&MD Phase Information as determined by the Contributing Participants' NSPSC members in accordance with subparagraph 4.5.1 of Section 4 (Management (Organization and Responsibility)) and paragraph 3.3 of Section 3 (Scope of Work) of this MOU. This summary-level Information will be provided in order to facilitate a Non-contributing Participant's decision to become a Contributing Participant. Sensitive or protected Information, including Classified Information or Controlled Unclassified Information, will be provided to Non-contributing Participants with the approval of the Contributing Participants' NSPSC members on a case by case basis to permit detailed analysis for a Non-contributing Participant considering transition to Contributing Participant status or as required in relation to the baseline ESSM. The Non-contributing Participants will have the right to use this Information only for Information and Evaluation Purposes and they will have no rights to disclose or transfer this Information.
- 10.1.3 Notwithstanding any other provision in this Section, the U.S. DoD will neither disclose ESSM Block 2 E&MD Phase Information related to U.S.-Restricted ESSM Block 2 Item production, manufacturing, and maintenance design data, manufacturing know-how, and software source code and documentation, nor ESSM Block 2 U.S. employment doctrine, U.S. raw test data, U.S.-specific threat data, and ESSM Block 2 countermeasures vulnerability, unless otherwise authorized by the U.S. DoD pursuant to its national disclosure laws, regulations, and policies.

10.1.4 With regard to the Contributing Participants, the following export control provisions will apply to the transfer of ESSM Block 2 E&MD Phase Information:

10.1.4.1 Transfer of ESSM Block 2 E&MD Phase Information will be consistent with the furnishing Participant's applicable export control laws and regulations.

10.1.4.2 Unless otherwise restricted by duly authorized officials of the furnishing Participant at the time of transfer to another Participant, all export-controlled Information furnished by one Participant to another Participant may be retransferred to the other Participant's Contractors, subcontractors, Prospective Contractors, and prospective subcontractors, subject to the requirements of paragraphs 6.5 and 6.6 of Section 6 (Contractual Provisions) of this MOU.

10.1.4.3 Export-controlled Information may only be furnished by Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of one Participant's country to the Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of another Participant's country pursuant to this MOU, subject to the conditions established in licenses or other approvals issued by the Government of the furnishing Participant in accordance with its applicable export control laws and regulations.

10.1.4.4 If a Participant finds it necessary to exercise a restriction on the retransfer of export-controlled Information as set out in subparagraph 10.1.4.2 of this Section, it will promptly inform the other Participants. If a restriction is then exercised and the affected Participant(s) objects, the NSPSC representative of the affected Participant(s) will notify promptly the other Participants' NSPSC representatives and they will immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

10.1.4.5 The Participants will use their best efforts to facilitate timely export authorizations related to the scope of work under this MOU.

10.2 Government ESSM Block 2 E&MD Phase Foreground Information

10.2.1 Disclosure: Except as provided in subparagraph 10.1.3 of this Section, all ESSM Block 2 E&MD Phase Foreground Information generated by a Contributing Participant's military or civilian employees (hereinafter referred to

as “Government ESSM Block 2 E&MD Phase Foreground Information”) will be disclosed promptly and without charge to the other Contributing Participants.

10.2.2 Use: Each Contributing Participant may use or have used all Government ESSM Block 2 E&MD Phase Foreground Information without charge for Defense Purposes. The Contributing Participant generating Government ESSM Block 2 E&MD Phase Foreground Information will retain all its rights thereto. If a Contributing Participant intends to use the Government ESSM Block 2 E&MD Phase Foreground Information in a sale or other transfer to a Third Party, the provisions of Section 14 (Sales and Transfers) of this MOU will apply.

10.3 Government ESSM Block 2 E&MD Phase Background Information

10.3.1 Disclosure: Except as provided in subparagraph 10.1.3 of this Section, each Contributing Participant, upon request, will disclose promptly and without charge to the other Contributing Participants any relevant ESSM Block 2 E&MD Phase Background Information generated by its military or civilian employees (hereinafter referred to as “Government ESSM Block 2 E&MD Phase Background Information”), provided that:

10.3.1.1 Such Government ESSM Block 2 E&MD Phase Background Information is necessary to or useful in the ESSM Block 2 E&MD Phase, with the Contributing Participant in possession of the Information determining, after consulting with the other Contributing Participants, whether it is “necessary to” or “useful in” the ESSM Block 2 E&MD Phase.

10.3.1.2 Such Government ESSM Block 2 E&MD Phase Background Information may be made available only if it does not result in infringement of Intellectual Property rights.

10.3.1.3 Disclosure of such Government ESSM Block 2 E&MD Phase Background Information is consistent with national disclosure laws, regulations, and policies of the furnishing Participant.

10.3.1.4 Any disclosure or transfer of such Government ESSM Block 2 E&MD Phase Background Information to Contractors is consistent with the furnishing Participant’s export control laws and regulations.

10.3.2 Use:

10.3.2.1 Government ESSM Block 2 E&MD Phase Background Information furnished by a Contributing Participant may be used without charge by or for the receiving Contributing Participant for ESSM Block 2 E&MD Phase purposes.

10.3.2.2 However, when Government ESSM Block 2 E&MD Phase Background Information is necessary for the use of ESSM Block 2 E&MD Phase Foreground Information, such Government ESSM Block 2 E&MD Phase Background Information may be used for Defense Purposes by the receiving Contributing Participant, without charge, subject to Intellectual Property rights held by entities other than the Contributing Participants. The furnishing Participant, in consultation with the receiving Contributing Participant, will determine whether the Government ESSM Block 2 E&MD Phase Background Information is necessary for the use of ESSM Block 2 E&MD Phase Foreground Information.

10.3.2.3 The furnishing Participant will retain all its rights with respect to Government ESSM Block 2 E&MD Phase Background Information.

10.4 Contractor ESSM Block 2 E&MD Phase Foreground Information

10.4.1 Disclosure: Except as provided in subparagraph 10.1.3 of this Section, ESSM Block 2 E&MD Phase Foreground Information generated and delivered by Contractors (hereinafter referred to as “Contractor ESSM Block 2 E&MD Phase Foreground Information”) will be disclosed promptly and without charge to the Contributing Participants.

10.4.2 Use: Each Contributing Participant may use or have used without charge for Defense Purposes all Contractor ESSM Block 2 E&MD Phase Foreground Information. The Participant whose Contractors generate and deliver Contractor ESSM Block 2 E&MD Phase Foreground Information will also retain all its rights thereto in accordance with the applicable Contracts. Any sale or other transfer to a Third Party of Contractor ESSM Block 2 E&MD Phase Foreground Information will be subject to the provisions of Section 14 (Sales and Transfers) of this MOU.

10.5 Contractor ESSM Block 2 E&MD Phase Background Information

10.5.1 Disclosure: Except as provided in subparagraph 10.1.3 of this Section, a Contributing Participant entering into Contracts will make available to the other

Contributing Participants promptly and without charge all ESSM Block 2 E&MD Phase Background Information generated by Contractors (hereinafter referred to as “Contractor ESSM Block 2 E&MD Phase Background Information”) that is delivered under Contracts awarded in accordance with this MOU. Any other ESSM Block 2 E&MD Phase Background Information that is generated by Contractors and that is in the possession of one Contributing Participant will be made available promptly and without charge to the other Contributing Participants, upon their request, provided the following conditions are met:

- 10.5.1.1 Such Contractor ESSM Block 2 E&MD Phase Background Information is necessary to or useful in the ESSM Block 2 E&MD Phase, with the Contributing Participant in possession of the Information determining, after consulting with the other Contributing Participants, whether it is “necessary to” or “useful in” the ESSM Block 2 E&MD Phase.
- 10.5.1.2 Such Contractor ESSM Block 2 E&MD Phase Background Information may be made available only if it does not result in infringement of Intellectual Property rights.
- 10.5.1.3 Disclosure of such Contractor ESSM Block 2 E&MD Phase Background Information is consistent with national disclosure laws, regulations, and policies of the furnishing Participant.
- 10.5.1.4 Any disclosure or transfer of such Contractor ESSM Block 2 E&MD Phase Background Information to Contractors is consistent with the furnishing Participant’s export control laws and regulations.

10.5.2 Use:

- 10.5.2.1 Contractor ESSM Block 2 E&MD Phase Background Information delivered under Contracts awarded in accordance with this MOU, and any other Contractor ESSM Block 2 E&MD Phase Background Information furnished by a Contributing Participant's Contractors, may be used without charge by or for the receiving Contributing Participant for ESSM Block 2 E&MD Phase purposes, subject to any Intellectual Property rights restrictions and conditions.
- 10.5.2.2 However, when necessary for the use of ESSM Block 2 E&MD Phase Foreground Information, such Contractor ESSM Block 2 E&MD Phase Background Information may be used by the

receiving Contributing Participant for Defense Purposes, subject to any Intellectual Property rights restrictions and conditions. The furnishing Participant, in consultation with the receiving Contributing Participant, will determine whether the Contractor ESSM Block 2 E&MD Phase Background Information is necessary for the use of ESSM Block 2 E&MD Phase Foreground Information.

10.5.2.3 The furnishing Participant will retain all its rights with respect to Contractor ESSM Block 2 E&MD Phase Background Information.

10.6 Alternative Uses of ESSM Block 2 E&MD Phase Information

10.6.1 Any ESSM Block 2 E&MD Phase Background Information furnished by one Contributing Participant will be used by the receiving Contributing Participant only for the purposes set forth in this MOU, unless otherwise consented to in writing by the furnishing Contributing Participant.

10.6.2 The prior written consent of the Contributing Participants will be required for the use of ESSM Block 2 E&MD Phase Foreground Information (excluding U.S.-Restricted ESSM Block 2 Items) for purposes other than those set forth in this MOU.

10.6.3 The prior written consent of the U.S. DoD will be required for the use of ESSM Block 2 E&MD Phase Foreground Information related to U.S.-Restricted ESSM Block 2 Items for purposes other than those set forth in this MOU.

10.7 Proprietary ESSM Block 2 E&MD Phase Information

10.7.1 All ESSM Block 2 E&MD Phase Information that is subject 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.

10.7.2 The PSI will contain such provisions as are necessary to ensure the protected communication of ESSM Block 2 E&MD Phase Information that is subject to Intellectual Property rights. For NATO member Participants, the provisions of the NATO Agreement on Communication of Technical Information for Defense Purposes, done at Brussels, October 19, 1970, and the Implementing Procedures for the NATO Agreement on Communication of Technical Information for Defense Purposes approved by the North Atlantic Council on January 1, 1971 (or any successor agreement or procedures), will apply to Information that is subject to Intellectual Property rights. The Australian DOD consents to the insertion of provisions in the PSI that are no less stringent than the

aforementioned NATO Agreement and Implementing Procedures. As to the Australian DOD, in the event of an inconsistency between the PSI and the NATO Agreement, the PSI will prevail.

10.8 Patents

- 10.8.1 Each Contributing Participant will include in all its Contracts for the ESSM Block 2 E&MD Phase a provision governing the disposition of rights in regard to ESSM Block 2 E&MD Phase Inventions and Patent rights relating thereto that either:
- 10.8.1.1 Provides that the Participant will hold title to all such ESSM Block 2 E&MD Phase Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor concerned; or
 - 10.8.1.2 Provides that the Contractor will hold title (or may elect to retain title) to such ESSM Block 2 E&MD Phase Inventions together with the right to make Patent applications for the same, while securing for the Contributing Participants a license for the ESSM Block 2 E&MD Phase Inventions, and any Patents thereto, on terms in compliance with the provisions of subparagraph 10.8.2 of this Section.
- 10.8.2 In the event that a Contractor owns title (or elects to retain title) to any ESSM Block 2 E&MD Phase Invention, the Contracting Participant will secure for the other Contributing Participants non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented ESSM Block 2 E&MD Phase Invention throughout the world for Defense Purposes.
- 10.8.3 The provisions of subparagraphs 10.8.4 through 10.8.7 of this Section will apply in regard to Patent rights for all ESSM Block 2 E&MD Phase Inventions made by the Contributing Participants' military or civilian employees and for all ESSM Block 2 E&MD Phase Inventions made by Contractors for which the Contracting Participant holds title or is entitled to acquire title.
- 10.8.4 When a Contributing Participant has or can secure the right to file a Patent application with regard to an ESSM Block 2 E&MD Phase Invention, that Contributing Participant will consult with the other Contributing Participants regarding the filing of such Patent application. The Contributing Participant that has or receives title to such ESSM Block 2 E&MD Phase Invention will, in other countries, file, cause to be filed, or provide the other Contributing Participants with the opportunity to file on behalf of the Participant holding

title, Patent applications covering that ESSM Block 2 E&MD Phase Invention. A Contributing Participant will immediately notify the other Contributing Participants that a Patent application has been filed. If a Contributing 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 Contributing Participant will notify the other Contributing Participants in writing of that decision and permit the other Contributing Participants to continue the prosecution or maintain the Patent as the case may be.

- 10.8.5 Each Contributing Participant will be furnished with copies of Patent applications filed and Patents granted with regard to ESSM Block 2 E&MD Phase Inventions.
- 10.8.6 Each Contributing Participant will grant to the other Contributing Participants a non-exclusive, irrevocable, royalty-free license under its Patents for ESSM Block 2 E&MD Phase Inventions, to practice or have practiced the patented ESSM Block 2 E&MD Phase Invention throughout the world for Defense Purposes.
- 10.8.7 For NATO member Participants, Patent applications to be filed, or assertions of other Intellectual Property rights, under this MOU that contain Classified Information will be protected and safeguarded in a manner no less stringent than the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for Which Applications for Patents Have Been Made, done in Paris on September 21, 1960, and its Implementing Procedures (or any successor agreement and procedures). The Australian DOD consents to the insertion of provisions in the PSI that are no less stringent than the aforementioned NATO Agreement and its Implementing Procedures. As to the Australian DOD, in the event of an inconsistency between the PSI and the NATO Agreement, the PSI will prevail.
- 10.9 Each Contributing Participant will notify promptly the other Contributing Participants in writing of any Intellectual Property rights infringement claims brought against that Participant arising in the course of work performed under the ESSM Block 2 E&MD Phase on behalf of the other Contributing Participants. Insofar as possible, the other Contributing Participants will provide Information available to it that may assist in defending such claims. Each Contributing Participant will be responsible for handling such Intellectual Property rights infringement claims brought against it, and will consult with the other Contributing Participants during the handling, and prior to any settlement, of such claims. The Contributing Participants will share the costs of resolving such Intellectual Property rights infringement claims in proportion to their contributions for that work specified in Section 5 (Financial Provisions) of this MOU.

10.10 The Contributing Participants will, as permitted by their national laws, regulations, and policies, give their authorization and consent for all use and manufacture in the course of work performed under the ESSM Block 2 E&MD Phase of any ESSM Block 2 E&MD Phase Invention covered by Patent, or as determined to be necessary for work under the ESSM Block 2 E&MD Phase, authorization and consent for non-commercial copyright, granted or otherwise provided by their respective countries.

SECTION 11. CONTROLLED UNCLASSIFIED INFORMATION

- 11.1 Except as otherwise provided in this MOU or authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:
- 11.1.1 Such Information will be used only for the purposes authorized for use of ESSM Block 2 E&MD Phase Information as specified in Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information) of this MOU.
 - 11.1.2 Access to such Information will be limited to personnel whose access is necessary for the permitted use under subparagraph 11.1.1 of this Section and will be subject to the provisions of Section 14 (Sales and Transfers) of this MOU.
 - 11.1.3 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 11.1.2 of this Section, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the Information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.
- 11.2 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 will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The Participants’ export-controlled Information will be marked in accordance with the applicable Participant’s export control markings. The appropriate markings will be defined in the PSI.
- 11.3 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 MOU.

SECTION 12. VISITS TO ESTABLISHMENTS

- 12.1 For purposes of this MOU, each Participant will permit visits to its government establishments, agencies, laboratories, and Contractor facilities by employees of the other Participants or by employees of the other Participants' Contractor(s), provided that the visit is authorized by the Participants involved in the visit, and the employees have any necessary and appropriate security clearances and a need-to-know.
- 12.2 All visiting personnel will be required to comply with security regulations of the hosting Participant. Any Information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel and will be subject to the provisions of this MOU.
- 12.3 Requests for visits, on a one-time or recurring basis, by personnel of one Participant to a facility of another Participant will be coordinated through official channels and will conform to the established visit procedures of the hosting Participant. Requests for visits will bear the name of the ESSM Block 2 E&MD Phase.

SECTION 13. SECURITY

- 13.1 All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, safeguarded, and disposed of in accordance with the Participants' applicable national security laws and regulations and with applicable security agreements and arrangements between or among the Participants, to the extent that they provide a degree of protection no less stringent than that provided for NATO classified material as set forth in the NATO C-M(2002)49, "Security Within the North Atlantic Treaty Organization", and its related directives, issued June 17, 2002, including all supplements and amendments thereto.
- 13.2 Classified Information will be transferred only through official government-to-government channels or through channels approved by the DSAs of the Participants. Such Classified Information will bear the level of classification and denote the country of origin, the provisions of release, and the fact that the Information relates to this MOU.
- 13.3 Each Participant will take all appropriate lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by this Section. Accordingly, each Participant will ensure that the recipient:
- 13.3.1 Will not release the Classified Information to any Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section 14 (Sales and Transfers) of this MOU.
 - 13.3.2 Will not use the Classified Information for other than the purposes provided for in this MOU.
 - 13.3.3 Will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.
- 13.4 The Participants will investigate all cases in which it is known or when 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 will inform promptly and fully the other Participants in writing of the details of any such occurrence, and of the final results of the investigation and of the corrective action taken to preclude recurrence.
- 13.5 The NSPO PM will prepare a PSI and a CG for the ESSM Block 2 E&MD Phase. The PSI and the CG will describe the methods by which ESSM Block 2 E&MD Phase Information will be classified, marked, used, transmitted, safeguarded, and disposed of, and will require that all export-controlled Classified Information includes the applicable export control markings identified in the PSI in accordance with paragraph 11.2 of Section 11 (Controlled Unclassified Information) of this MOU. The PSI and CG will be submitted by the NSPSC members to their respective DSAs for approval within one

month after this MOU enters into effect. The approved PSI and CG will be applicable to all Government and Contractor personnel participating in the ESSM Block 2 E&MD Phase. 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 Participants' DSAs prior to the transfer of any Classified Information or Controlled Unclassified Information.

- 13.6 The DSA of the Participant that awards a classified Contract will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, Prospective Contractor, or subcontractor of any Classified Information received under this MOU, the DSAs or their designees will:
- 13.6.1 Ensure that such Contractor, Prospective Contractor, or subcontractor (and their facilities) has the capability to protect the Classified Information adequately.
 - 13.6.2 Grant a security clearance to the facilities, if appropriate.
 - 13.6.3 Grant a security clearance for all personnel with duties that require access to Classified Information, if appropriate.
 - 13.6.4 Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations and the provisions of this MOU.
 - 13.6.5 Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
 - 13.6.6 Ensure that access to the Classified Information is limited to those persons who have a need-to-know for the purposes of this MOU.
- 13.7 Contractors, Prospective Contractors, or subcontractors that are determined by DSAs to be under financial, administrative, policy, or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Contributing Participants will be consulted for approval prior to permitting such access.
- 13.8 For any facility in which Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Information pertaining to this MOU. These officials will be responsible for limiting access to Classified Information

involved in this MOU to those persons who have been properly approved for access and have a need-to-know.

- 13.9 Each Participant will ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the ESSM Block 2 E&MD Phase. All Classified Information made available to a Participant's personnel will be considered as Classified Information furnished to that Participant, unless otherwise restricted by the furnishing Participant. A Participant's personnel will not have personal custody of Classified Information or Controlled Unclassified Information unless authorized by that Participant or the furnishing Participant, as appropriate, or approved by the NSPO PM.
- 13.10 Information provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is unclassified and the contents are unclassified.

SECTION 14. SALES AND TRANSFERS

- 14.1 Except as provided in paragraph 14.3 of this Section, the Contributing Participants will not sell, transfer title to, disclose, or transfer possession of ESSM Block 2 E&MD Phase Foreground Information, cooperatively acquired or produced ESSM Block 2 E&MD Phase Equipment, or any item produced either wholly or in part from ESSM Block 2 E&MD Phase Foreground Information to any Third Party without the prior written approval of the Governments of all the Contributing Participants. Furthermore, the Contributing Participants will not permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written approval of the Governments of all the Contributing Participants. Such approval will not be given unless the Government of the intended recipient confirms in writing to the providing Participant that it will:
- 14.1.1 Not retransfer, or permit the further retransfer of, any equipment or Information provided, and
 - 14.1.2 Use, or permit the use of, the equipment or Information provided only for the purposes specified by the Contributing Participants,
- unless otherwise approved in writing by the providing Participant, who will obtain the prior written approval of the Governments of all of the Contributing Participants.
- 14.2 The Contributing Participants will not sell, transfer title to, disclose, or transfer possession of ESSM Block 2 E&MD Phase Equipment or ESSM Block 2 E&MD Phase Background Information provided by another Contributing Participant to any Third Party without the prior written approval of the Government of the Contributing Participant that provided such equipment or Information. The providing Participant's Government will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.
- 14.3 In recognition of the significant past and ongoing investments made by the U.S. DoD in the design, development, and production of U.S.-Restricted ESSM Block 2 Items, and where only U.S.-Restricted ESSM Block 2 Items are involved, the U.S. DoD may, after consultation with the other Contributing Participants, sell, transfer title to, disclose, or transfer possession of such U.S.-Restricted ESSM Block 2 Items to Non-contributing Participants or Third Parties. The U.S. DoD may, after consultation with the other Contributing Participants, permit sale, disclosure, or transfer of possession of U.S.-Restricted ESSM Block 2 Items. The U.S. DoD recognizes the importance to the other Contributing Participants of U.S. DoD decisions on such potential sales, disclosures, and transfers and will accordingly take into account the national positions expressed by the other Contributing Participants in making its decisions. The U.S. DoD recognizes that sales, disclosures, or other transfers described in this paragraph will only be made if the Government(s) of the recipient(s) consents in writing that it will:

- 14.3.1 Not retransfer, or permit the further retransfer of, any equipment or Information provided, and
- 14.3.2 Use, or permit the use of, the equipment or Information provided only for the purposes for which such equipment or Information is furnished.
- 14.4 Sales and other transfers of equipment developed or ESSM Block 2 E&MD Phase Foreground Information generated under this MOU may attract a levy to be shared among the Contributing Participants. Prior to any such sale or other transfer, the amounts of any levy and the procedures for assessing and distributing such levy will be mutually determined by the Contributing Participants and coordinated through the NSPSC consistent with the laws and regulations of each Contributing Participant. Any Contributing Participant may reduce the assessment of its share of the levy consistent with the laws and regulations of that Contributing Participant.
- 14.5 As to paragraphs 14.1 and 14.2 of this Section, approval of sales and transfers of ESSM Block 2 E&MD Phase Foreground Information, cooperatively acquired ESSM Block 2 E&MD Phase Equipment, or any item produced wholly or in part from ESSM Block 2 E&MD Phase Foreground Information will be subject to foreign policy and national security considerations, and to national laws, regulations, and policies. The Contributing Participants will not refuse approval of such a sale or transfer to a Third Party when they would be willing to sell or transfer such equipment or ESSM Block 2 E&MD Phase Information to the same Third Party.
- 14.6 With respect to summary-level ESSM Block 2 E&MD Phase Foreground Information or ESSM Block 2 E&MD Phase Background Information received that was not already in the possession of a Non-contributing Participant by other means, Non-contributing Participants will not sell, transfer title to, disclose, or transfer possession of such Information or any item produced wholly or in part from it to any Third Party. If a Non-contributing Participant requests ESSM Block 2 E&MD Phase Foreground Information, cooperatively acquired ESSM Block 2 E&MD Phase Equipment, or any item produced wholly or in part from ESSM Block 2 E&MD Phase Foreground Information and the Non-contributing Participant does not wish to become a Contributing Participant, the Contributing Participants will favorably review the request in determining whether to provide their required written approval. The conditions for such transfer will be mutually determined by the Contributing Participants on a case-by-case basis.

SECTION 15. LIABILITY AND CLAIMS

- 15.1 For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution of the ESSM Block 2 E&MD Phase, the provisions set forth below will apply.
- 15.2 Where relevant multilateral or bilateral agreements or arrangements exist between two or more of the Participants regarding liabilities for claims, those agreements or arrangements will apply to this MOU.
- 15.3 Where no relevant multilateral or bilateral agreements or arrangements exist between two or more of the Participants, the following provisions will apply:
- 15.3.1 With the exception of claims for loss or damage to ESSM Block 2 E&MD Phase Equipment, which are addressed in Section 9 (ESSM Block 2 E&MD Phase Equipment) of this MOU, each Participant waives all claims against the other Participants in respect of injury to or death of its military or civilian personnel and for damage to or loss of its property (including its interest in cooperatively acquired ESSM Block 2 E&MD Phase Equipment) caused by such personnel of the other Participants. However, if the Participants mutually determine that such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence (which may or may not amount to a criminal standard of negligence) of a Participant's military or civilian personnel, the costs of any liability will be borne by that Participant alone.
- 15.3.2 Claims from any other persons for injury, death, damage, or loss of any kind caused by military or civilian personnel of a Participant will be processed by the most appropriate Participant, as mutually determined by the Participants. Generally, this will be the Participant in whose country the claim arose. Any costs determined to be owed the claimant will be borne by the Contributing Participants in the same ratio as their contributions under this MOU. However, if the Participants mutually determine that such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence (which may or may not amount to a criminal standard of negligence) of a Participant's military or civilian personnel, the cost of any liability will be borne by that Participant alone.
- 15.3.3 If a person or entity, other than the Participant's military or civilian personnel, damages cooperatively acquired ESSM Block 2 E&MD Phase Equipment, and the cost of making good such damage is not recoverable from such person or entity, such cost will be borne by the Contributing Participants in the same ratio as their contributions under this MOU.

15.3.4 Claims arising under any Contract awarded under this MOU will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against liability for claims by any other persons. However, in exceptional circumstances (e.g., involving unduly hazardous activity where the cost of insurance is excessively high), the Contributing Participants may mutually consider whether to indemnify Contractors against liability for claims by any other persons.

**SECTION 16. CUSTOMS DUTIES, IMPORT AND EXPORT TAXES,
AND SIMILAR CHARGES**

- 16.1 Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable customs duties, import and export taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under the ESSM Block 2 E&MD Phase.
- 16.2 Each Participant will endeavor to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work of the ESSM Block 2 E&MD Phase. If any such customs duties, import and export taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs over and above that Participant's share of the Total Cost Target. If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these will be met by the EU member end recipient. To this end, parts or components of the equipment coming from outside the EU will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The duties will be paid as a cost over and above that EU Participant's share of the Total Cost Target.

SECTION 17. ACCESSION OF NON-CONTRIBUTING PARTICIPANTS

- 17.1 Upon its request, a Non-contributing Participant will be permitted to accede to Contributing Participant status. The Contributing Participants recognize that Non-contributing Participant involvement in ESSM Block 2 risk reduction efforts will be accounted for, notwithstanding whether a Non-contributing Participant accedes to this MOU as a Contributing Participant. In consultation with the Non-contributing Participant, the Contributing Participants will jointly negotiate the provisions under which the Non-contributing Participant may accede to Contributing Participant status. The accession of a Non-contributing Participant to the status of a Contributing Participant will require an amendment to this MOU with revisions of the financial tables in Section 5 (Financial Provisions) of this MOU, including recognition of contributions of that Participant to the ESSM Block 2 risk reduction efforts.

SECTION 18. ACCESSION OF POTENTIAL PARTICIPANTS

- 18.1 It is recognized that potential participants may wish to join the ESSM Block 2 E&MD Phase.
- 18.2 Unanimous approval by the Participants will be required to conduct formal discussions with a potential participant. The Contributing Participants will discuss the arrangements under which a potential participant might join, including the furnishing of releasable ESSM Block 2 E&MD Phase Information for evaluation, prior to joining. If the disclosure of ESSM Block 2 E&MD Phase Information is necessary to conduct discussions, such disclosure will be in accordance with provisions of this MOU.
- 18.3 The Contributing Participants will jointly formulate the provisions under which that potential participant may join. The accession of potential participants to this MOU will require an amendment to this MOU.

SECTION 19. SETTLEMENT OF DISPUTES

- 19.1 Disputes among the Participants arising under or relating to this MOU will be resolved only by consultation among the Participants and will not be referred to a national or international court or tribunal, or any other person or entity for settlement.

SECTION 20. AMENDMENTS

- 20.1 This MOU may be changed by written amendment. The amendment will enter into effect when signed by all the Participants. However, in the event that one or more Non-contributing Participants has not signed the amendment by the time all Contributing Participants have signed, the amendment will then enter into effect for all Participants that have signed. The amendment will enter into effect for each of the remaining Non-contributing Participants upon their signature.
- 20.1.1 As to any Non-contributing Participant that signs the amendment after it has entered into effect, the Participants who have previously signed the amendment will have no responsibilities under the amendment with regard to that Non-contributing Participant, and the Non-contributing Participant will have no responsibilities or benefits under the amendment, until such time as the Non-contributing Participant has signed the amendment.
- 20.2 Annex A (ESSM Block 2 E&MD Phase Plan) and Annex B (NSPO ESSM Block 2 E&MD Phase Staffing Requirements) to this MOU and the documents referred to therein may be amended by the written approval of the NSPSC.

SECTION 21. GENERAL PROVISIONS, WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT, AND DURATION

- 21.1 All activities of the Participants under this MOU will be carried out in accordance with their respective national laws and regulations, including their respective import and export control laws and regulations. The responsibilities of the Participants will be subject to the availability of funds for such purposes.
- 21.2 In the event of a conflict between a Section of this MOU and any Annex to this MOU, the Section of the MOU will prevail.
- 21.3 The working language of this MOU will be the English language.
- 21.4 This MOU may be terminated at any time upon the unanimous written approval of the Contributing Participants. In the event the Contributing Participants mutually determine to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable terms.
- 21.5 Any Participant may withdraw from this MOU upon one (1) year's written notification to the other Participants. Such notice will be the subject of immediate consultation by the NSPSC to decide upon the appropriate course of action for the continuation and completion of the work described in Section 3 (Scope of Work) of this MOU to the mutual satisfaction of the remaining Contributing Participants. In the event of such withdrawal, the following will apply:
- 21.5.1 The withdrawing Participant will continue participation, financial or otherwise, up to the effective date of withdrawal.
- 21.5.2 Unless otherwise mutually determined by the remaining Contributing Participants, the work allocated to the Participant withdrawing and associated cooperatively acquired ESSM Block 2 E&MD Phase Equipment may be transferred to the other Participants.
- 21.5.3 Except as to Contracts awarded on behalf of the Contributing Participants, each Participant will be responsible for its own ESSM Block 2 E&MD Phase-related costs associated with withdrawing from this MOU. For Contracts awarded on behalf of the Contributing Participants, the Participant withdrawing from this MOU will pay all Contract modification or termination costs that would not otherwise have been incurred. However, in no event will a withdrawing Participant's total contribution, including Contract termination costs, exceed that Participant's total share of the Total Cost Ceiling for contributions as established in Section 5 (Financial Provisions) of this MOU. The NSPSC will determine, in consultation with the withdrawing Participant, the most economical arrangements in the event of a withdrawal.

- 21.5.4 All ESSM Block 2 E&MD Phase Information and related rights provided by the withdrawing Participant under the provisions of this MOU prior to the withdrawal will be retained by the remaining Participants, in accordance with the provisions of this MOU. All ESSM Block 2 E&MD Phase Information received by the withdrawing Participant prior to the withdrawal may be retained by that Participant in accordance with the provisions of this MOU.
- 21.5.5 If requested by the remaining Participants, the withdrawing Participant may continue to administer, on a reimbursable basis, ESSM Block 2 E&MD Phase Contract(s) which it awarded on behalf of the remaining Participants or will take steps to transfer administration of these Contracts to another Contributing Participant.
- 21.6 The respective rights and responsibilities of the Participants regarding Section 9 (ESSM Block 2 E&MD Phase Equipment), Section 10 (Disclosure and Use of ESSM Block 2 E&MD Phase Information), Section 13 (Security), Section 14 (Sales and Transfers), Section 15 (Liability and Claims), Section 19 (Settlement of Disputes), and this Section of this MOU will continue notwithstanding termination of, withdrawal from, or expiration of this MOU.
- 21.6.1 Contributing Participants will be responsible for any payments, and entitled to any credits, outstanding up to the point of withdrawal from, expiration, or termination of this MOU until settled, notwithstanding withdrawal from, expiration, or termination of this MOU.
- 21.7 This MOU will enter into effect when signed by all the Participants (which, for the MoND of Turkiye, will be after parliamentary approval has been issued). However, in the event that one or more Non-contributing Participants has not signed this MOU by the time all the Contributing Participants have signed, this MOU will then enter into effect for all the Participants that have signed. This MOU will enter into effect for each of the remaining Non-contributing Participants upon their signature.
- 21.7.1 As to any Non-contributing Participant that signs this MOU after it has entered into effect (referred to as the “subsequent Participant”), the Participants who have previously signed this MOU will have no responsibilities with regard to that subsequent Participant, and that subsequent Participant will have no responsibilities or benefits under this MOU, until such time as the subsequent Participant has signed this MOU.
- 21.8 This MOU will remain in effect until December 31, 2023, unless terminated under the provisions of paragraph 21.4 above. This MOU may be extended by amendment in accordance with Section 20 (Amendments) of this MOU.

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE MINISTER FOR DEFENCE ON BEHALF OF
THE DEPARTMENT OF DEFENCE OF AUSTRALIA



Signature

Commodore P.M. Quinn CSC, RAN

Name

Director General Navy Capability Transition and Sustainment

Title

22 July 2014

Date

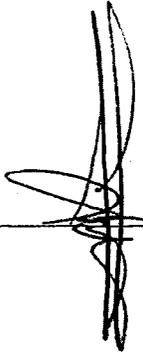
Canberra, Australia

Location

MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2

FOR THE MINISTER OF DEFENCE OF THE
KINGDOM OF BELGIUM

Signature



Name

Vincent HAP

Title

CAPTAIN (N) - DGMK Sup - N
SC member for BELGIUM

Date

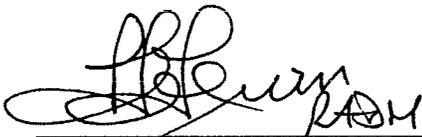
28th October 2013

Location

BRUSSELS (EVERE)

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE DEPARTMENT OF NATIONAL DEFENCE
OF CANADA



RAM

Signature

 John M. Turner

Name

Assistant Deputy Minister (Materiel)

Title

12 November 2014

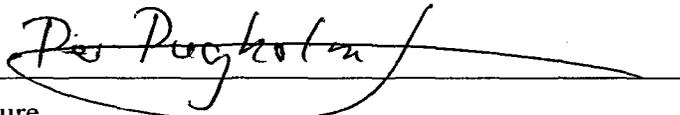
Date

Ottawa, Ontario, Canada

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF DENMARK



Signature

Per Pugholm Olsen
Generallejtnant
Chef for Forsvarets Materieltjeneste

Name

Lt. Gen/Commanding General D ALO

Title

2014-09-19

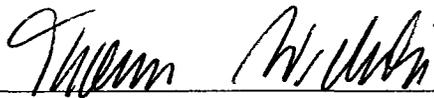
Date

(Copenhagen)

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE FEDERAL MINISTRY OF DEFENCE OF
THE FEDERAL REPUBLIC OF GERMANY



Signature

Name

Vizepräsident beim
Bundesamt für Ausrüstung,
Informationstechnik

Title

und Nutzung der Bundeswehr
Dipl.-Ing. Thomas Wardecki

15.01.2014

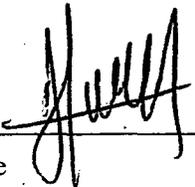
Date

Robbeuz

Location

MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2

FOR THE MINISTRY OF NATIONAL DEFENCE OF
THE HELLENIC REPUBLIC



Signature

Captain Panagiotis Chatzakis HN



INGS/C3 Director - NSPSC Member for Greece

16-04-2014

Athens

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF THE NETHERLANDS



Signature

A.G.J. van de Geijn

Name

Director for Procurement
Defence Materiel Organisation

Title

December 5, 2013

Date

The Hague

Location

MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF NORWAY



Signature

ARNE WANGSHOLM

Name

CAPTAIN, THE NORWEGIAN DEFENCE LOGISTICS
ORGANISATION

Title

2014-07-30

Date

BERGEN, NORWAY

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE MINISTER OF DEFENCE OF PORTUGAL



Signature

PAULO SOARES

Name

CAPTAIN, PRT NAVY

Title

9 JAN 2014

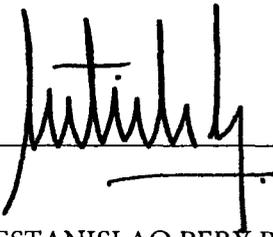
Date

LISBON

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE MINISTRY OF DEFENCE OF
THE KINGDOM OF SPAIN

Signature 
ESTANISLAO PERY PAREDES

Name
ADMIRAL CHIEF OF LOGISTIC SUPPORT

Title
1 April, 2014

Date
Madrid, Spain

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE MINISTRY OF NATIONAL DEFENCE OF
TURKIYE



Signature

Önder KARA

Name

Captain, Turkish Navy

Electronic and Weapon Systems Department Head

Title

27 May 2014

Date

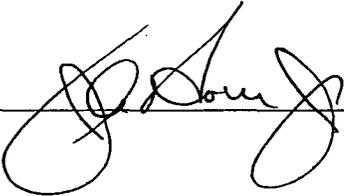
Ankara, Türkiye

Location

**MEMORANDUM OF UNDERSTANDING FOR THE COOPERATIVE
ENGINEERING AND MANUFACTURING DEVELOPMENT OF
THE EVOLVED SEASPARROW MISSILE BLOCK 2**

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA

Signature



RADM J. A. Horn, Jr.

Name

Program Executive Officer, Integrated Warfare Systems

Title

10 April 2014

Date

Washington, D. C. U.S.A.

Location

ANNEX A
ESSM BLOCK 2 E&MD PHASE PLAN

The acquisition baseline for the ESSM Block 2 E&MD Phase is defined by:

- a. The ESSM Block 2 Requirements Document
- b. The ESSM Block 2 Missile Performance Specification
- c. The ESSM Block 2 E&MD Project Manager's Cost Estimate
- d. The ESSM Block 2 E&MD Program Structure
- e. The ESSM Block 2 Test & Evaluation Strategy

These documents collectively comprise the ESSM Block 2 E&MD Phase Plan.

The NSPSC may amend this Annex in accordance with subparagraph 4.2.3 of Section 4 (Management (Organization and Responsibility)) and paragraph 20.2 of Section 20 (Amendments) of this MOU.

ANNEX B
NSPO ESSM BLOCK 2 E&MD PHASE STAFFING REQUIREMENTS

<u>Direct Project Manning</u>	<u>Division</u>
Missile Development Division Director	N-50
ESSM Block 2 Lead Systems Engineer	N-50
ESSM Block 2 International Integration Manager	N-50
ESSM Block 2 Systems Engineer	N-50
ESSM Block 2 Project Manager/Engineer	N-50
<u>Matrix Project Manning (Existing Positions)</u>	
ESSM Block 2 Security Officer	N-00
ESSM Block 2 Financial Manager	N-10
ESSM Block 2 International Funds Manager/Work Share	N-10/N-30
Combat Systems Integration Manager/Engineer	N-20
ESSM Block 2 Contracts/Business Analyst	N-30
ESSM Block 2 Transition to Production Manager	N-40
ESSM Block 2 Logistician	N-40
ESSM Block 2 Test & Evaluation Lead	N-60

The NSPSC may amend this Annex in accordance with subparagraph 4.2.16 of Section 4 (Management (Organization and Responsibility)) and paragraph 20.2 of Section 20 (Amendments) of this MOU.

ANNEX C
COOPERATIVE PROJECT PERSONNEL (CPP)

1.0 Introduction

- 1.1 CPP will be assigned to the NSPO in accordance with Section 4 (Management (Organization and Responsibility)) and Section 5 (Financial Provisions) of this MOU. CPP will be able to perform all the responsibilities assigned to them under this MOU. Commencement of assignments will be subject to requirements that may be imposed by the Host Participant or its Government regarding acceptance of CPP. The NSPO PM and the Parent Participant will mutually determine the length of assignment for the full-time CPP positions at the time of initial assignment. Since National Deputies are not full-time CPP, the assignments and the length of assignments of the National Deputies will be determined by the Parent Participant.
- 1.2 Full-time CPP will be assigned to the NSPO for ESSM Block 2 E&MD Phase work and will report to their designated NSPO supervisor regarding that work. The NSPO PM will be responsible for the creation of a document describing the duties of each CPP position. Full-time CPP will not act as liaison officers on behalf of the Parent Participant. Upon request from their respective NSPSC member, full-time CPP may act from time to time on behalf of their Parent Participant if the NSPO PM so authorizes.
- 1.3 CPP will not be assigned to command positions or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Participant's Government.

2.0 Security

- 2.1 The NSPO PM will establish the level of security clearance required to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the PSI and CG. Access to Classified Information and facilities in which Classified Information is used will be consistent with, and limited by, Section 2 (Objectives), Section 3 (Scope of Work), Section 12 (Visits to Establishments), and Section 13 (Security) of this MOU and will be kept to the minimum required to accomplish the work assignments.
- 2.2 The Parent Participant will file visit requests for the CPP through prescribed channels in compliance with the Host Participant's procedures. As part of the visit request procedures, the Parent Participant will provide security assurances through their embassy or military attaché and specify the security clearances for the CPP being assigned.

- 2.3 The Host Participant and Parent Participant will use their best efforts to ensure that CPP assigned to the NSPO are aware of, and comply with, applicable laws and regulations as well as the requirements of Section 11 (Controlled Unclassified Information), Section 12 (Visits to Establishments), Section 13 (Security), and paragraph 21.6 of Section 21 (General Provisions, Withdrawal, Termination, Entry into Effect, and Duration) of this MOU and the provisions of the PSI and CG. Prior to commencing assigned duties, CPP will, as required by the Host Participant Government's laws, regulations, policies, or procedures, sign a certification concerning the conditions and responsibilities of CPP.
- 2.4 CPP will at all times be required to comply with the security and export control laws, regulations, and procedures of the Host Participant's Government. Any violation of security procedures by CPP during their assignment will be reported to the Parent Participant for appropriate action. CPP committing significant violations of security or export control laws, regulations, or procedures during their assignments will be withdrawn with a view toward appropriate administrative or disciplinary action by their Parent Participant.
- 2.5 CPP will not serve as conduits between the Host Participant and Parent Participant for requests and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized by the NSPO PM and the Parent Participant. An exception is made for National Deputies performing additional duties related to NSPO assigned by the Parent Participant; they may transfer Information to the Parent Participant in accordance with the applicable disclosure statements and security procedures set out in the PSI.
- 3.0 Administrative Matters
- 3.1 On arrival, CPP will be provided briefings arranged by the NSPO about applicable laws, orders, regulations, customs, and NSPO standard operating procedures and the need to comply with them. CPP will also be provided information regarding entitlements, privileges, and obligations.
- 3.2 The tax treatment of income received by CPP from the Parent Participant will be determined by reference to the tax legislation of the Government of the Host Participant and the Government of the Parent Participant, subject to the terms of any double taxation agreement in force between the Government of the Host Participant and the Government of the Parent Participant, or by the terms of any applicable status of forces agreement.
- 3.3 CPP committing an offense under the laws of the Government of the Host Participant or Parent Participant may be withdrawn with a view toward further administrative or disciplinary action by the Parent Participant. Disciplinary action, however, will not be taken by the Host Participant against CPP, nor will the CPP exercise disciplinary powers

over another Participant's personnel. In accordance with the laws and regulations of the Host Participant's Government, the Host Participant will assist the Parent Participant in carrying out investigations of offenses involving CPP.

- 3.4 The Participants whose countries are NATO member countries recognize the following: the military members and civilian employees of a Participant whose country is a NATO member country, assigned to duty with its Defense Department or Ministry for the purpose of working under this MOU, while present in the territory of another Participant whose country is a NATO member country, will, to the extent that they are so qualified, be members of a "force" and "civilian component", respectively, within the meaning of Article I of the NATO Status of Forces Agreement (NATO SOFA), which entered into force on June 19, 1951. Employees and agents of Contractors do not constitute a "civilian component", and the NATO SOFA will not apply to them. The Participants whose countries are NATO member countries consider the provisions of this MOU concerning military members and civilian employees to be consistent with the provisions of the NATO SOFA, and they recognize that the provisions of the NATO SOFA would govern if there were to be a conflict between the provisions of the NATO SOFA and the provisions of this MOU.
- 3.5 The Department of Defense of the United States of America and the Department of Defence of Australia invoke the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defence Commitments, which entered into force on December 1, 1995, as amended (Chapeau Agreement). This MOU is subject to the Chapeau Agreement for the matters set out in the Chapeau Agreement.