

DEFENSE

Test and Evaluation

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

Signed December 18, 2006 and
January 17, 2007

with

Annex

and

Side Letter



NOTE BY THE DEPARTMENT OF STATE

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

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

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

Defense: Test and Evaluation

*Memorandum of understanding signed
December 18, 2006 and January 17, 2007;
Entered into force January 17, 2007.
With annex and side letter.*

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE SECRETARY OF DEFENSE ON BEHALF OF

THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA

AND

THE SECRETARY OF STATE FOR DEFENCE OF

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

CONCERNING

COOPERATIVE INITIAL OPERATIONAL TEST AND EVALUATION

OF THE JOINT STRIKE FIGHTER

(Short Title - JSF IOT&E MOU)

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INTRODUCTION

The Secretary of Defense on behalf of the Department of Defense of the United States of America (U.S. DoD) and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (U.K. MOD), hereinafter referred to as the "Participants":

Having a common interest in defense;

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

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

Recognizing the Participants' cooperation under the Memorandum of Understanding (MOU) among the Department of Defence of Australia and the Minister of National Defence of Canada and the Ministry of Defence of Denmark and the Ministry of Defence of the Republic of Italy and the State Secretary of Defence of the Kingdom of the Netherlands and the Ministry of Defence of the Kingdom of Norway and the Undersecretariat for Defense Industries on behalf of the Ministry of National Defense of the Government of the Republic of Turkey and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland and the Secretary of Defense on behalf of the Department of Defense of the United States of America concerning the Cooperative Framework for System Development and Demonstration of the Joint Strike Fighter (JSF SDD Framework MOU) of January 17, 2001, as amended, and the U.S. DoD-U.K. MOD Supplement thereto;

Having a mutual need for the Initial Operational Test and Evaluation of the Joint Strike Fighter (JSF) Air System to satisfy common operational requirements; and

Recognizing the benefits of continued cooperation in the JSF Program, and seeking to capitalize on the lessons learned from their previous experience in that program and other international cooperative programs;

Have reached the following understandings:

SECTION I

DEFINITIONS

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

Accident Investigation	Any type of investigation of an aircraft accident other than a Safety Investigation.
Air Vehicle	The Air Vehicle includes the three variants of the JSF aircraft and the propulsion systems, as well as the on-board hardware, the ancillary mission equipment necessary to employ the JSF Air System, and the software necessary to perform assigned missions, autonomous operation and communication with off-board systems.
Autonomic Logistics	An integrated, knowledge-based system that encompasses JSF maintenance planning, manpower and personnel, supply support, support equipment, training, technical data, computer resource support, facilities, packaging, handling, storage and transportation, prognostics and health management, and design interface while coordinating with mission planning, engineering, safety, command and control functions, within a respective logistics infrastructure to support mission execution.
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, material 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 of the Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the Government organization of a Participant that has authority to enter into, administer, or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.
Contractor Support Personnel	Persons specifically identified as providing administrative, managerial, scientific, or technical support services to a Participant under a support Contract.
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. It includes Information that has been declassified but remains controlled.

Cooperative Project Personnel (CPP)	Military members or civilian employees of a Participant assigned to the Initial Operational Test and Evaluation (IOT&E) JSF Operational Test Team (JOTT) who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of the Project.
Dedicated Operational Test and Evaluation (OT&E)	Efforts conducted to evaluate independently the operational effectiveness and operational suitability and survivability of the JSF Air System using production- and fleet-representative systems demonstrating stabilized performance in an operationally realistic environment.
Financial Costs	Project costs met with monetary contributions.
Financial Cost Ceiling	The maximum amount of shared Financial Costs that will be dedicated to the Project.
Follow-on Operational Test & Evaluation (FOT&E)	Operational test and evaluation efforts conducted after the JSF Air System has entered into full-rate production.
Host Participant	The Participant whose nation serves as the location of the IOT&E JOTT.
Information	Knowledge that can be communicated by any means, regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, computer software, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to Intellectual Property rights.

Intellectual Property	In accordance with the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights of April 15, 1994, all copyright and related rights, all rights in relation to inventions (including Patent rights), all rights in registered and unregistered trademarks (including service marks), registered and unregistered designs, undisclosed Information (including trade secrets and know-how), layout designs of integrated circuits, and geographical indications, and any other rights resulting from creative activity in the industrial, scientific, literary, and artistic fields.
Jointly Acquired Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment that is obtained and jointly funded by the Participants under this MOU.
JSF Air System	The JSF Air System consists of two inter-related elements: Air Vehicle and Autonomic Logistics that operate within the context of external interfaces and environments.
JSF Initial Operational Test & Evaluation (IOT&E)	The efforts performed under this MOU to evaluate, in an operationally representative environment, the effectiveness and suitability of the JSF Air System. JSF IOT&E includes Operational Assessments and Dedicated OT&E.
JSF Program	Efforts to achieve a three variant family of the JSF Air System, consisting of JSF concept demonstration, system development and demonstration, production, sustainment, and follow-on development.
JSF Purposes	Performance of Project activities pursuant to the JSF IOT&E MOU; and future efforts by a Participant (collaboratively, nationally, or under U.S. DoD Foreign Military Sales arrangements) for the design, development, manufacture, operation and support of any of the three variants of the JSF Air System.

National Security Authority/Designated Security Authority (NSA/DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Non-financial Costs	Project costs met with non-monetary contributions.
Operational Assessment (OA)	Efforts to assess potential operational effectiveness, suitability, and operational impact assessment areas of the JSF Air System. OAs assess mission capabilities, systems and subsystems, including those that may be other-than-production or operationally representative.
Parent Participant	The Participant that sends its CPP to the IOT&E JOTT located in the nation of the Host Participant.
Participant	A signatory to this MOU represented by its military or civilian personnel. Contractors and Contractor Support Personnel will not be representatives of a Participant under this MOU.
Patent	Grant by any government or a regional office acting for more than one government of the right to exclude others from making, using, importing, selling, or offering to sell an invention. The term refers to any and all patents including, but not limited to, patents of implementation, improvement, or addition, petty patents, utility models, appearance design patents, registered designs, and inventor certificates or like statutory protection, as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Privileged Safety Information	Information regarding safety matters that is marked and handled as Controlled Unclassified Information and provided to the Participants' civilian and military employees and Contractors who have a need to know such Information to improve safety as determined by each Participant's national

safety authorities.

Project	The cooperative JSF IOT&E efforts of the Participants under this MOU to achieve the objectives in Section II (Objectives) and accomplish the work in Section III (Scope of Work).
Project Background Information	Information not generated in the performance of the Project.
Project Equipment	Any material, equipment, end item, subsystem, component, special tooling, or test equipment provided by one Participant to another Participant for use in the Project.
Project Foreground Information	Information generated in the performance of the Project.
Project Information	Any Information provided to, generated in, or used in this Project.
Project Invention	Any invention in any field of technology, provided it is new, involves an inventive step, is capable of industrial application, and is formulated or made (conceived or "first actually reduced to practice") in the course of work performed under the Project. The term "first actually reduced to practice", means the first demonstration, sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Prospective Contractor	Any entity that seeks to enter into a Contract to be awarded by a Participant's Contracting Agency and that, in the case of a solicitation involving the release of export-controlled Information, is eligible to receive such Information.
Safety Investigation	An investigation that is conducted solely to determine the cause of an aircraft accident and to obtain information that may prevent the occurrence of similar accidents.

Test and Evaluation Document that identifies the high-level Master Plan (TEMP) requirements and defines the objectives and overall structure of the Test and Evaluation (T&E) for the JSF Air System.

Then Year (TY) U.S. Dollars U.S. Dollars that reflect purchasing power at the time expenditures are actually made. Future costs stated in Then Year U.S. Dollars are projected actual amounts to be paid.

Third Party A government other than the Government of a Participant and any person or other entity whose government is not the Government of a Participant.

SECTION II

OBJECTIVES

2.1. The overall objective of the JSF IOT&E MOU is the cooperative Initial Operational Test and Evaluation (IOT&E) of the JSF Air System. Whilst the U.S. DoD and the U.K. MOD will initially enter into this MOU, it is envisioned that other signatories of the JSF SDD Framework MOU will participate in this Project, and hence, this MOU is intended to be the vehicle for such multilateral cooperation.

2.2. The Participants recognize that they must possess a government capability to perform IOT&E. Key aspects of this include:

- 2.2.1. Cooperation and participation in all relevant aspects of planning and real-time execution of JSF Initial Operational Test and Evaluation (IOT&E).
- 2.2.2. A mutual understanding of JSF Air System safety hazards and fault tree analysis.
- 2.2.3. Sufficient visibility to satisfy national safety related requirements.

2.3. The specific objectives to be accomplished are to:

- 2.3.1. Evaluate, in an operationally representative environment, the mission capability of the three JSF Air System variants (i.e., Conventional Take-Off and Landing (CTOL) variant; catapult-launched, arrested-landing Carrier Variant (CV); and shipboard capable Short Take-Off and Vertical Landing (STOVL) variant) developed under the JSF SDD Framework MOU.
- 2.3.2. Maximize affordability by eliminating redundant test and evaluation costs.
- 2.3.3. Optimize the use of available test resources, and maximize the benefits gained from commonality and interoperability among the Participants.

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- 2.3.4. Deliver test reports to support the Participants' production and fielding decisions, and recommend corrections of identified deficiencies in low-rate initial production aircraft.

SECTION III

SCOPE OF WORK

3.1. The overall work to be carried out under this MOU includes the planning, execution, and reporting of multiple Operational Assessments (OAs) and Dedicated Operational Test and Evaluation (OT&E), as specified in the operational test and evaluation provisions (excluding Follow-on Operational Test and Evaluation (FOT&E)) of the Test and Evaluation Master Plan (TEMP) of October [xx], 2006, and any amendments thereto. FOT&E is outside the scope of work of this MOU and is intended to be the subject of separate written arrangements. Participation by personnel of the Participants in specific activities under this MOU will be subject to national disclosure policies. This Project will include the following efforts:

- 3.1.1. Plan, execute, and report OAs set forth in the TEMP. Through the OAs, the Participants will perform independent assessments of the potential mission capability, effectiveness, interoperability, and suitability of the JSF Air System as it is developed, and will assess programmatic voids, ability to support operational testing, program documentation, and special interest items from the IOT&E EC or the DoD Director, Operational Test and Evaluation.
- 3.1.2. Monitor and assess SDD developmental efforts in order to gain a better understanding of the JSF Air System for testing purposes, gather data for OAs, plan for Dedicated OT&E, and provide input into the development of the JSF Air System to ensure its operational effectiveness and suitability.
- 3.1.3. Plan, execute, and report Dedicated OT&E of the JSF Air System in accordance with the TEMP, including, but not limited to, testing and reporting on the Participants' national interfaces with the JSF Air System.
- 3.1.4. Develop and implement streamlined management and control processes to promote efficiency, effectiveness, and best value in the conduct of JSF IOT&E.

3.2. The cooperative efforts under this MOU will also include the exchange of notifications of safety-related events, including but not limited to exchange of Privileged Safety Information in accordance with the procedures contained in the project security instruction (PSI), among the Participants in those cases in which an event related to the JSF Air System has resulted in, or may result in, an unsafe condition. Such notifications may be by government message, electronic mail, or other written means as soon as possible.

3.3. The U.S. DoD will be responsible for conducting Safety Investigations and Accident Investigations of accidents occurring during this Project that involve any aircraft used in, or provided for use in, the Project. Non-U.S. DoD Participants may participate as observers and technical advisors on Safety or Accident Investigation boards consistent with U.S. DoD regulations for the conduct of such investigations.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. This Project will be directed and administered on behalf of the Participants by an organization consisting of an IOT&E Executive Committee (EC), and a IOT&E JSF Operational Test Team (IOT&E JOTT) headed by a Combined Test Director (CTD). The IOT&E EC will have overall authority over the CTD, in accordance with this MOU. The CTD will have primary responsibility for effective implementation, efficient management, and direction of the Project in accordance with this MOU.

4.2. The IOT&E EC will consist of three U.S. DoD representatives and one U.K. MOD representative. Two of the U.S. DoD IOT&E EC representatives will be the Commander, U.S. Air Force Operational Test and Evaluation Center (AFOTEC), and the Commander, Operational Test and Evaluation Force (COMOPTEVFOR), or their successors in the event of reorganization. The third U.S. IOT&E EC representative, the U.S. DoD Director, Operational Test and Evaluation (or successor in the event of reorganization), will be a non-voting member in an advisory capacity of the IOT&E EC. The U.K. MOD IOT&E EC representative will be the Commandant of the Air Warfare Centre (or successor in the event of reorganization). The IOT&E EC will meet annually with additional meetings held at the request of any representative. The Commander, AFOTEC, will chair the IOT&E EC. In the event that the IOT&E EC is unable to reach a timely decision on an issue, the Project will continue to be implemented without interruption under the direction of the CTD while the issue is being resolved.

4.3. The IOT&E EC will be responsible for exercising executive-level oversight of the Project, specifically:

- 4.3.1. Reviewing progress towards accomplishing Section II (Objectives) and Section III (Scope of Work).
- 4.3.2. Reviewing progress in meeting IOT&E requirements as specified in the TEMP.
- 4.3.3. Reviewing any CTD-recommended changes to the TEMP pertaining to the Participants' IOT&E testing requirements.

- 4.3.4. Providing financial oversight of the Project to ensure compliance with the provisions of Section V (Financial Provisions).
- 4.3.5. Approving the CTD-recommended Project Financial Management Procedures Document (FMPD), and any changes thereto, in accordance with Section V (Financial Provisions).
- 4.3.6. Resolving issues brought forth by the CTD.
- 4.3.7. Reviewing and forwarding to the Participants for approval CTD-recommended amendments to this MOU in accordance with Section XVIII (Amendment, Withdrawal, Termination, Entry Into Effect, and Duration).
- 4.3.8. Approving CTD-recommended plans to manage and control the transfer and storage of Project Equipment provided by a Participant to support the execution of the Project in accordance with Section VII (Project Equipment and Jointly Acquired Equipment).
- 4.3.9. Approving CTD-recommended plans for the disposal of Jointly Acquired Equipment under this MOU in accordance with Section VII (Project Equipment and Jointly Acquired Equipment).
- 4.3.10. Maintaining oversight of the security aspects of the Project, including reviewing and obtaining approval from the appropriate National Security Authority (NSA)/Designated Security Authority (DSA) of a PSI and a Classification Guide (CG) prior to the transfer of Classified Information or Controlled Unclassified Information.
- 4.3.11. Providing recommendations to the Participants for the addition of new Participants in accordance with Section XIV (Participation of Additional Nations).
- 4.3.12. Monitoring Third Party sales and transfers authorized in accordance with Section XII (Third Party Sales and Transfers).

- 4.3.13. Reviewing the annual progress report provided by the CTD.
 - 4.3.14. Approving the CTD-recommended IOT&E Cooperative Project Personnel (CPP) Position Description Documents (PDD) described in subparagraph 4.5.15. of this Section.
 - 4.3.15. Employing its best efforts to resolve, in consultations with the export control authorities of the Participants concerned, any export control issues raised by the CTD in accordance with subparagraph 4.5.17. of this Section or raised by a Participant's IOT&E EC representative in accordance with subparagraph 8.1.3. of Section VIII (Disclosure and Use of Project Information).
- 4.4. The IOT&E JOTT will be established in the United States to manage the Project. The AFOTEC JSF Test Director (or successor in the event of reorganization) will be the CTD, who, as head of the IOT&E JOTT, will be responsible for implementing this MOU and for day-to-day management of the Project. The COMOPTEVFOR JSF Operational Test Coordinator (or successor in the event of reorganization) will be the Deputy CTD (DCTD). The DCTD's responsibilities will be to assist the CTD in his responsibilities.
- 4.5. The CTD will be responsible for:
- 4.5.1. Monitoring progress towards accomplishing Section II (Objectives) and Section III (Scope of Work).
 - 4.5.2. Managing the cost, schedule, performance requirements, technical, security, and financial aspects of the Project described in this MOU.
 - 4.5.3. Managing the execution of the IOT&E requirements set forth in the TEMP and recommending to the IOT&E EC any changes to the TEMP pertaining to the Participants' IOT&E testing requirements.
 - 4.5.4. Executing the financial aspects of the Project in accordance with Section V (Financial Provisions).
 - 4.5.5. Recommending for IOT&E EC approval the FMPD and any changes thereto in accordance with Section V

(Financial Provisions) and implementing the IOT&E EC-approved FMPD.

- 4.5.6. Referring issues to the IOT&E EC that cannot be resolved by the CTD.
- 4.5.7. Developing and implementing a management plan, to be submitted to the IOT&E EC for approval within 120 days of the entry into effect of this MOU.
- 4.5.8. Developing and implementing IOT&E EC-approved plans to manage and control the transfer of Project Equipment provided by a Participant in accordance with Section VII (Project Equipment and Jointly Acquired Equipment).
- 4.5.9. Developing and implementing IOT&E EC-approved plans for the disposal of Jointly Acquired Equipment under this MOU in accordance with Section VII (Project Equipment and Jointly Acquired Equipment).
- 4.5.10. Implementing the PSI and CG approved by the NSAs/DSAs of the Participants for this Project.
- 4.5.11. Forwarding recommendations to the IOT&E EC for the addition of new Participants in accordance with Section XIV (Participation of Additional Nations).
- 4.5.12. Recommending to the IOT&E EC amendments to this MOU in accordance with Section XVIII (Amendment, Withdrawal, Termination, Entry Into Effect, and Duration).
- 4.5.13. Providing an annual status report to the IOT&E EC.
- 4.5.14. Developing a mishap plan for incorporation in the TEMP.
- 4.5.15. Appointing a Project security officer.
- 4.5.16. In consultation with the National Deputies, preparing and submitting to the IOT&E EC for approval the IOT&E CPP PDDs.

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

4.6. Each non-U.S. DoD Participant will provide a National Deputy and other JSF IOT&E CPP, who will be assigned to the IOT&E JOTT. Each National Deputy's primary responsibility will be to serve as the national representative of the respective Participant. Specific responsibilities of the CPP, including the National Deputies, will be identified in the JSF IOT&E CPP PDD. Additional National Deputy responsibilities are identified in paragraph 4.7. below.

4.7. In addition to assigned responsibilities under the JSF IOT&E CPP PDD, each National Deputy will be responsible for:

4.7.1. Supporting the CTD in the day-to-day administrative management of this MOU, including oversight of the IOT&E MOU CPP of the cognizant Participant.

4.7.2. Providing day-to-day representation of the National Deputy's respective Participant within the IOT&E JOTT on all matters related to the Project.

4.7.3. Assisting the CTD in developing the FMPD, PSI, CG, and IOT&E CPP PDD.

4.7.4. Performing other tasks as may be assigned by the CTD.

4.8. Annex A (Cooperative Project Personnel) establishes provisions for the general conduct of all personnel who will serve as JSF IOT&E CPP.

SECTION V

FINANCIAL PROVISIONS

5.1. The Participants estimate that the performance of the responsibilities under this MOU will not cost more than a Financial Cost Ceiling of 395.67 million (M) Then Year (TY) U.S. Dollars. The U.S. Dollar will be the reference currency for the Project and the Project fiscal year will be the U.S. fiscal year. The Financial Cost Ceiling may be changed only upon the mutual written consent of the Participants.

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

5.2.1. The U.S. DoD share of the Financial Cost Ceiling is 359.7M TY U.S. Dollars. The U.S. DoD Non-financial Cost contribution includes, but is not limited to munitions, use of eighteen (18) JSF Air Systems, and the services of trained personnel for IOT&E efforts.

5.2.2. The U.K. MOD share of the Financial Cost Ceiling is 35.97M TY U.S. Dollars. The U.K. MOD Non-financial Cost contribution includes, but is not limited to, munitions, use of two (2) JSF Air Systems, and the services of trained personnel for IOT&E efforts.

5.3. Participation in the Project will also include a Non-financial Cost contribution of the Participants' personnel assigned to the IOT&E JOTT. In addition to the Non-financial Cost contribution identified in subparagraph 5.2.1., the U.S. DoD Non-financial Cost contribution includes the CTD. In addition to the Non-financial Cost contribution identified in subparagraph 5.2.2., the U.K. MOD Non-financial Cost contribution includes the U.K. MOD National Deputy and other CPP assigned to the IOT&E JOTT.

5.4. In addition to the shared costs of Project administration referenced in paragraph 5.2., the cost of personnel in the IOT&E JOTT will be borne as follows:

5.4.1. The Host Participant will bear the costs of all pay and allowances of the CTD.

5.4.2. Each Parent Participant will bear the following CPP-related costs:

5.4.2.1. All pay and allowances of CPP assigned to the IOT&E JOTT.

5.4.2.2. Transportation of CPP, CPP dependents, and their personal property to the IOT&E JOTT location prior to commencement of the CPP assignment in the IOT&E JOTT, and return transportation of the foregoing from the IOT&E JOTT location upon completion or termination of the CPP assignment.

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

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

5.5.1. Costs associated with national representation at meetings by non-IOT&E JOTT members.

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

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

5.6. The CTD will be responsible for establishing the detailed financial management procedures under which the Project will operate. These procedures, which must accord with the national accounting and audit requirements of the Participants, will be detailed in an FMPD prepared by the CTD and subject to the approval of the IOT&E EC. Each Participant will fund the Project in accordance with the estimated schedule of financial contributions contained in the FMPD, which will be consistent with paragraph 5.7.

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

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

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

5.10. In the event external audits concerning the Project are conducted by the national audit institutions of the Participants' nations, such reports will be provided by the applicable Participant to the IOT&E EC representatives of the other Participants. The CTD and the National Deputies will apprise each other as soon as possible of external audits concerning the Project by the national audit institutions of the Participants' nations.

SECTION VI

CONTRACTING PROVISIONS

6.1. The U.S. DoD will be primarily responsible for Contracting for this Project in accordance with U.S. Contracting laws, regulations, and procedures. However, the CTD may request that a Participant other than the U.S. DoD enter into Contracts for the Project in accordance with that Participant's national Contracting laws, regulations, and procedures. The Contracting Officer for each Contract is the exclusive source for providing contractual direction and instructions to Contractors. The Contracting Officer will, when it facilitates satisfying the objectives of this MOU, seek waivers of national procurement regulations, procedures, and practices.

6.2. The CTD will be responsible for the coordination of activities relating to the Project, and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The CTD will review statements of work prior to the development of solicitations to ensure that they are in accordance with this MOU. In addition, the Contracting Officer will keep the CTD advised of all financial arrangements with the prime Contractor.

6.3. Contracting Officers will negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information). During the Contracting process, the Contracting Officer will advise prospective Contractors of their responsibility to notify the Contracting Agency immediately, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

6.4. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Section VIII (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of Information, the matter will be referred to the IOT&E EC for resolution.

6.5. Each Participant's Contracting Agency will insert into prospective Contracts (and require its Contractors to insert in subcontracts) provisions to satisfy the requirements of this MOU, including Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), and Section XII (Third Party Sales and Transfers), and Section XVIII (Amendment, Withdrawal, Termination, Entry Into Effect, and Duration), including the export control provisions in accordance with this MOU, in particular paragraphs 6.6. and 6.7. of this Section.

6.6. Each Participant will legally bind its Contractors to a requirement that the Contractor will not retransfer or otherwise use export-controlled Information furnished by another Participant for any purpose other than the purposes authorized under this MOU. The Contractor also will 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.

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

6.8. The Contracting Officer will immediately advise the CTD of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible.

6.9. Upon mutual consent, consistent with Section II (Objectives), a Participant may contract for the unique national requirements of another Participant.

SECTION VII

PROJECT EQUIPMENT AND JOINTLY ACQUIRED EQUIPMENT

7.1. Each Participant may provide Project Equipment identified as being necessary for executing the MOU to another Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another Participant will be developed and maintained by the IOT&E JOTT.

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

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

7.4. All Project Equipment that is transferred will be used by the receiving Participant only for the purposes of carrying out this MOU, unless otherwise consented to in writing by the providing Participant. In addition, in accordance with Section XII (Third Party Sales and Transfers), Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

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

7.6. Either during or upon cessation of the Project, the U.S. DoD may, after consultation with the other Participants, dispose of or retain any Jointly Acquired Equipment. Disposal by the U.S. DoD may include the transfer of such equipment to another Participant. If the U.S. DoD's disposal of any Jointly Acquired Equipment is by sale to a Third Party in accordance with Section XII (Third Party Sales and Transfers) of this MOU, the Participants will share the consideration from such sale in the same ratios as specified for their financial contributions in this MOU.

7.7. If the U.S. DoD does not exercise its benefits under paragraph 7.6., any Jointly Acquired Equipment under this MOU may be disposed of during the Project or when the Project ceases as decided by the IOT&E EC. Disposal of Jointly Acquired Equipment may include a transfer of the interest of one Participant in such project equipment to another Participant, or the sale of such equipment to a Third Party in accordance with Section XII (Third Party Sales and Transfers) of this MOU. The Participants will share the consideration from Jointly Acquired Equipment transferred or sold to a Third Party in the same ratios as specified for their financial contributions in this MOU.

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

- 8.1.1. The Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out this Project. The Participants intend to acquire sufficient Project Information and rights to use such Information to enable the IOT&E of the JSF Air System. The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Section II (Objectives), Section III (Scope of Work), and Section VI (Contracting Provisions).
- 8.1.2. Transfer of Project Information will be consistent with the furnishing Participant's applicable export control laws and regulations. Unless otherwise restricted by duly authorized officials of the furnishing Participant at the time of transfer to another Participant, all export-controlled Information furnished by that 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 6.6. and 6.7. of Section VI (Contracting Provisions). Export-controlled Information may be furnished by Contractors, subcontractors, or Prospective Contractors, and prospective subcontractors of one Participant's nation to the Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of another Participant's nation pursuant to this MOU subject to the conditions established in licenses or other approvals issued by the Government of the former Participant in accordance with its applicable export control laws and regulations.
- 8.1.3. If a Participant finds it necessary to exercise a restriction on the retransfer of export-controlled Information as set out in subparagraph

8.1.2. of this Section, it will promptly inform the other Participants. If a restriction is then exercised and an affected Participant objects, that Participant's IOT&E EC representative will promptly notify the other Participants' IOT&E EC representatives and they will immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

8.1.4. Notwithstanding the provisions of this MOU that relate to the protection of Information, particularly Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), and Section XII (Third Party Sales and Transfers), the specific export control provisions set out in Section VI (Contracting Provisions) and this Section will not apply to transfers of Information amongst non-U.S. DoD Participants where such exchanges do not include U.S. export-controlled Information.

8.1.5. Notwithstanding any other provision in this Section, disclosure of Project Information will only be in accordance with the Participants' respective national disclosure policies. The Participants will use their best efforts to maximize disclosure of Project Information under this MOU within national disclosure policies.

8.1.6. Notwithstanding any other provision in this Section, Privileged Safety Information furnished by one Participant to another Participant may be used by or for the receiving Participant only for the purpose of mishap prevention.

8.2. Government Project Foreground Information

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

8.2.2. Use: The Participants may use or have used all Government Project Foreground Information without charge for JSF Purposes. The Participant

generating Government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.3. Government Project Background Information

8.3.1. Disclosure: Each Participant, upon request, will disclose promptly and without charge to the requesting Participant any relevant Government Project Background Information generated by its military or civilian employees, provided that:

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

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

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

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

8.3.2. Use: Government Project Background Information furnished by one Participant to the requesting Participant may be used without charge by or for the requesting Participant for Project Purposes. However, subject to Intellectual Property rights held by entities other than the Participants, such Government Project Background Information may be used for JSF Purposes by the requesting Participant, without charge, when such Information is necessary for the use of Project Foreground Information. The furnishing

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

8.4. Contractor Project Foreground Information

8.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors (hereinafter referred to as "Contractor Project Foreground Information"), will be disclosed promptly and without charge to the Participants. Project Foreground Information generated by a Contractor, but not delivered, will be made available upon the request of the Participants at the cost of the Information's conversion into the prescribed form and the cost of reproduction and delivery in accordance with the terms of the applicable Contract.

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

8.5. Contractor Project Background Information

8.5.1. Disclosure: A Contracting Participant will make available to the other Participants promptly and without charge all Project Background Information generated by Contractors that is delivered under Contracts awarded in accordance with this MOU. Any other Project Background Information that is generated and delivered by Contractors and that is in the possession of one Participant will be made available to another Participant, upon its

request, provided the following provisions are met:

- 8.5.1.1. such Contractor Project Background Information is necessary to or useful in the Project, with the Participant in possession of the Information determining whether it is "necessary to" or "useful in" the Project;
 - 8.5.1.2. such Contractor Project Background Information may be made available only if the rights of holders of Intellectual Property rights are not infringed;
 - 8.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and
 - 8.5.1.4. any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.
- 8.5.2. Use: All Project Background Information delivered by Contractors under Contracts awarded in accordance with this MOU may be used by or for the receiving Participants, without charge, for JSF Purposes, subject to any restrictions by holders of Intellectual Property rights other than the Participants. Any other Project Background Information furnished by one Participant's Contractors and disclosed to a requesting Participant may be used without charge by the requesting Participant for Project Purposes, subject to any restrictions by holders of Intellectual Property rights other than the Participants; also, when necessary for the use of Project Foreground Information, such other Contractor Project Background Information may be used by the requesting Participant for JSF Purposes, subject to such fair and reasonable terms as may be necessary to be arranged with the Contractor. The furnishing Participant, in consultation with the requesting Participant, will determine whether such other Contractor Project Background Information is necessary for

the use of Project Foreground Information. The furnishing Participant will retain all its rights with respect to such Project Background Information.

8.6. Alternative Uses of Project Information

8.6.1. The prior written consent of the U.S. Government will be required for the use of Project Foreground Information by the other Participants for purposes other than those provided for in subparagraphs 8.2.2. and 8.4.2. of this Section.

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

8.7. Proprietary Project Information

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

8.7.2. For NATO member Participants, the provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on October 19, 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on January 1, 1971 (or any successor agreement and procedures), will apply to Project Information that is subject to Intellectual Property rights.

8.8. Patents

8.8.1. Each Participant will include in all its Contracts for the Project a provision governing the disposition of rights in regard to Project

Inventions and Patent rights relating thereto,
which either:

- 8.8.1.1. Provides that the Participant will hold title to all such Project Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor concerned; or
- 8.8.1.2. Provides that the Contractor will hold title (or may elect to retain title) for such Project Inventions together with the right to make Patent applications for the same, while securing for the Participants a license for the Project Inventions, and any Patents thereto, on terms in compliance with the provisions of subparagraph 8.8.2. below.
- 8.8.2. In the event that a Contractor owns title (or elects to retain title) to any Project Invention, the Contracting Participant will secure for the other Participants non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Project Invention throughout the world for JSF Purposes.
- 8.8.3. The provisions of subparagraphs 8.8.4. through 8.8.7. below will apply in regard to Patent rights for all Project Inventions made by the Participants' military or civilian employees, including those within Government-owned facilities, and for all Project Inventions made by Contractors for which the Contracting Participant holds title or is entitled to acquire title.
- 8.8.4. Where a Participant has or can secure the right to file a Patent application with regard to a Project Invention, that Participant will consult with the other Participants regarding the filing of such Patent application. The Participant that has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file on behalf of the Participant

holding title, Patent applications covering that Project Invention. A Participant will immediately notify the other Participants that a Patent application has been filed. If a Participant, having filed or caused to be filed a Patent application, abandons prosecution of the application or ceases maintaining the Patent granted or issued on the application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution or maintain the Patent as the case may be.

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

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

8.8.7. 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).

8.9. Intellectual Property Infringement Claims

8.9.1. Each Participant will notify the other Participants of any Intellectual Property infringement claims brought against that Participant arising in the course of work performed under the Project on behalf of one or more of the other Participants. Insofar as possible, the other applicable Participants will provide Information available to them that may

assist in defending such claims. Each Participant will be responsible for handling all Intellectual Property infringement claims brought against it, and will consult with the other Participants during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Intellectual Property infringement claims in proportion to their financial contributions for that work specified in Section V, Financial Provisions.

8.10. Authorization and Consent

- 8.10.1. The Participants will, as permitted by their national laws, regulations, and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by Patent, or as determined to be necessary for work under the Project, authorization and consent for non-commercial copyright, granted or otherwise provided by their respective countries.

SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1. Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

- 9.1.1. Such Information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information).
- 9.1.2. Access to such Information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1. of this Section, and will be subject to the provisions of Section XII (Third Party Sales and Transfers).
- 9.1.3. Each Participant will take all 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 9.1.2. 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.

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

9.3. Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1. of this Section.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such Information in accordance with the provisions of this Section.

SECTION X

VISITS TO ESTABLISHMENTS

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of another Participant or by employees of another Participant's 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.

10.2. 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.

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

10.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participants will be submitted through official channels in accordance with recurring international visit procedures.

SECTION XI

SECURITY

11.1. All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the security agreements between the Government of the United States of America and the Government of each of the other Participants.

11.2. 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, denote the country of origin, the provisions of release, and the fact that the Information relates to this MOU.

11.3. Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 11.8. of this Section, unless the other Participants consent to such disclosure. Accordingly, each Participant will ensure that:

- 11.3.1. The recipient will not release the Classified Information to any Government, national, organization, or other entity of a Third Party except as permitted under the procedures set forth in Section XII (Third Party Sales and Transfers).
- 11.3.2. The recipient will not use the Classified Information for other than the purposes provided for in this MOU.
- 11.3.3. The recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.

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

the investigation and of the corrective action taken to preclude recurrences.

11.5. The CTD will prepare a PSI and a CG for the Project. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded and will require that markings for all export-controlled Classified Information also include the applicable export control markings identified in the PSI in accordance with paragraph 9.2. of Section IX (Controlled Unclassified Information). The PSI and CG will be developed by the CTD within three months after this MOU enters into effect. They will be reviewed and forwarded to the Participants' NSAs/DSAs for approval and will be applicable to all Government and Contractor personnel participating in the Project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate NSAs/DSAs prior to the transfer of any Classified Information or Controlled Unclassified Information.

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

- 11.6.1. Ensure that such Contractor, prospective Contractor or subcontractor and their facility(ies) have the capability to protect the Classified Information adequately.
- 11.6.2. Grant a security clearance to the facility(ies), if appropriate.
- 11.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.
- 11.6.4. 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 provisions of this MOU.

- 11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
- 11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU.
- 11.7. Contractors, prospective Contractors or subcontractors, which 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 Participants will be consulted for approval prior to permitting such access.
- 11.8. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the 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.
- 11.9. Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project.
- 11.10. Information provided or generated pursuant to this MOU may be classified as high as TOP SECRET. Classified Information developed or exchanged pursuant to the Project will be maintained within an appropriate and applicable Access Management Control Plan (AMCP) that will be signed by the Participants. The U.S. DoD may enter into bilateral classified MOU Supplements with the other Participants, as necessary, in order to address necessary security measures and other bilateral issues. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED.

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1. The U.S. DoD will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information, Jointly Acquired Equipment, or any item produced either wholly or in part from Project Foreground Information to Third Parties.

12.2. The non-U.S. DoD Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, Jointly Acquired Equipment, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the U.S. Government. Furthermore, the non-U.S. DoD Participants will not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written consent of the U.S. Government. The non-U.S. DoD Participants recognize that such sales, disclosures, or other transfers will not be authorized by the U.S. Government unless the government of the intended recipient confirms in writing with the U.S. DoD that it will:

12.2.1. not retransfer, or permit the further retransfer of, any equipment or Information provided; and

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

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

12.4. Consent for Third Party sales and transfers of Project Foreground Information, Jointly Acquired Equipment, or any item produced either wholly or in part from Project Foreground Information will be subject to foreign policy, national security considerations, and national laws, regulations, and policies. The U.S. Government approval of the non-U.S. DoD Participant

Government's proposed sale or transfer to a Third Party will take into account its willingness to sell or transfer such equipment or Information to the same Third Party.

SECTION XIII

LIABILITY AND CLAIMS

13.1. Subject to multilateral and bilateral treaties and agreements of the Participants concerning liability for claims, when applicable, the following provisions will apply regarding liability arising out of, or in connection with activities carried out in the performance of official duty in the execution of this MOU:

13.1.1. With the exception of claims for loss of or damage to Project Equipment, which are addressed in Section VIII (Project Equipment and Jointly Acquired Equipment), each Participant waives all claims against the other Participants for injury to or death of its military or civilian personnel (which do not include Project Contractors) and for damage to or loss of its property (including its interest in Jointly Acquired Equipment) caused by such personnel of another Participant. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant's personnel, the costs of any liability will be borne by that Participant alone.

13.1.2. Claims from any other persons for injury, death, damage or loss of any kind caused by one of the Participants' personnel will be processed by the most appropriate Participant, as determined by the Participants. Any costs determined to be owed the claimant will be borne by the Participants in proportion to their financial contributions, as specified in Section V (Financial Provisions). If, however, such liability results from the reckless acts or reckless omissions, willful misconduct, or gross negligence of a Participant's personnel, the costs of any liability will be borne by that Participant alone.

13.2. If a person or entity, other than the Participants (including their personnel), damages Jointly Acquired Equipment, and the cost of making good such damage is not recoverable from

such person or entity, such cost will be borne by the Participants in proportion to their financial contributions, as specified in Section V (Financial Provisions).

13.3. Claims arising under any Contract awarded under this MOU will be resolved in accordance with the provisions of that Contract.

SECTION XIV

PARTICIPATION OF ADDITIONAL NATIONS

14.1. It is recognized that other signatories of the JSF SDD Framework MOU may wish to join the Project.

14.2. Mutual consent of the Participants will be required to conduct discussions with these potential additional Participants. The Participants will discuss the arrangements under which another Participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), and Section XII (Third Party Sales and Transfers).

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

SECTION XV

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

15.1. Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes, and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this Project.

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

15.3. 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 of the 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 levied as a cost over and above that Participant's shared costs of the Project.

SECTION XVI

SETTLEMENT OF DISPUTES

16.1. 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 an individual, to a national court, to an international tribunal, or to any other person or entity for settlement.

SECTION XVII

LANGUAGE

17.1. The working language for the Project will be the English language.

17.2. All Project Information generated under this MOU and its implementing Contracts and provided by one Participant to the other Participants will be furnished in the English language.

SECTION XVIII

AMENDMENT, WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT, AND DURATION

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

18.2. No requirement will be imposed by any Participant for worksharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

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

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

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

18.6. Any Participant may withdraw from this MOU upon ninety (90) days written notification of its intent to withdraw to the other Participants. Such notice will be the subject of immediate consultation by the IOT&E EC to decide upon the appropriate course of action. In the event of such withdrawal, the following rules apply:

18.6.1. The withdrawing Participant will continue participation, financial or otherwise, up to the effective date of withdrawal.

18.6.2. Except as to Contracts awarded on behalf of the Participants, each Participant will be responsible for its own Project-related costs associated with withdrawal from the Project. For Contracts awarded on behalf of the Participants, the withdrawing Participant will pay all Contract modification or termination costs that would not

otherwise have been incurred but for the decision to withdraw; in no event, however, will a withdrawing Participant's total financial contribution, including Contract termination costs, exceed that Participant's Total Cost Ceiling for financial contributions as established in Section V (Financial Provisions).

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

18.7. In the event a Participant withdraws from the JSF SDD Framework MOU, such action will constitute automatic withdrawal from the JSF IOT&E MOU, effective 90 days after the Participant's written notification to withdraw from the JSF SDD Framework MOU. The terms applicable to voluntary withdrawal from this MOU by one Participant, detailed in paragraph 18.6. of this Section, will apply to an automatic withdrawal.

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

18.9. This MOU, which consists of eighteen (18) Sections and an Annex, will enter into effect upon signature by the U.S. DoD and the U.K. MOD and will remain in effect for nine (9) years. It may be extended by written concurrence of the Participants.

The foregoing represents the understandings reached between the Secretary of Defense of the United States of America and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

Signed in duplicate, in the English language, by authorized representatives.

FOR THE SECRETARY OF DEFENSE
ON BEHALF OF THE DEPARTMENT OF
DEFENSE OF THE UNITED STATES
OF AMERICA

Charles E. McQueary
Signature

Dr. Charles E. McQueary

Name

Director, Operational Test and
Evaluation

Title

18 December 2006

Date

Pentagon, Washington D.C.
Location

FOR THE SECRETARY OF STATE
FOR DEFENCE OF THE UNITED
KINGDOM AND NORTHERN IRELAND

Clive Leach
Signature

Sir Clive Leach
Name

DCIC, STC
Title

17 January 2007
Date

Strike Command
Location

ANNEX A

COOPERATIVE PROJECT PERSONNEL

1.0. Purpose and Scope

- 1.1. This Annex establishes the provisions that will govern the conduct of Cooperative Project Personnel (CPP). Each Parent Participant will assign military members or civilian employees to the IOT&E JOTT in accordance with Section IV (Management (Organization and Responsibility)) and this Annex. CPP must be able to perform all the responsibilities assigned to them under this MOU. Commencement of assignments will be subject to any requirements that may be imposed by the Host Participant or its Government regarding acceptance of CPP, such as, but not limited to, visas and visit request documentation. The IOT&E EC will determine the length of tour for the positions at the time of initial assignment.
- 1.2. CPP will be assigned to the IOT&E JOTT for Project work and will report to their designated IOT&E JOTT supervisor regarding that work. The CTD will be responsible for the creation of a document describing the duties of each CPP position, which will be subject to approval by the IOT&E EC. CPP will not act as liaison officers on behalf of the Parent Participant. CPP may act from time to time on behalf of their respective IOT&E EC member if the latter so authorizes in writing.
- 1.3. CPP will not be assigned to command or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Participant's Government.

2.0. Security

- 2.1. The IOT&E EC will establish the maximum level of security clearance required, if any, to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the PSI and CG. Access

to Classified Information and facilities in which Classified Information is used will be consistent with, and limited by, Section II (Objectives) and Section III (Scope of Work) of this MOU and will be kept to the minimum required to accomplish the work assignments.

2.2. Each Parent Participant will cause security assurances to be filed, through its embassy, specifying the security clearances for the JSF CPP being assigned. The security assurances will be prepared and forwarded through prescribed channels in compliance with established Host Participant procedures.

2.3. The Host Participant and Parent Participants will use their best efforts to ensure that CPP assigned to the IOT&E JOTT are aware of, and comply with, applicable laws and regulations as well as the requirements of Section IX (Controlled Unclassified Information), Section X (Visits to Establishments), Section XI (Security), and paragraph 18.8. of Section XVIII (Amendment, 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, if required by the Host Participant's Government laws, regulations, policies, or procedures, sign a certification concerning the conditions and responsibilities of CPP.

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

2.5. All Classified Information made available to CPP will be considered as Classified Information furnished to the Parent Participant, and will be

subject to all provisions and safeguards provided for in Section XI (Security), the PSI, and the CG.

- 2.6. CPP will not have personal custody of Classified Information or Controlled Unclassified Information unless approved by the Host Participant and as authorized by the Parent Participant. They will be granted access to such Information in accordance with Section IX (Controlled Unclassified Information), Section XI (Security), and the PSI during normal duty hours and when access is necessary to perform Project work.
- 2.7. CPP assigned to the IOT&E JOTT will not serve as a conduit between the Host Participant and Parent Participant for requests and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized by the PSI.

3.0. Technical and Administrative Matters

- 3.1. Consistent with Host Participant's Government laws and regulations, CPP will be subject to the same restrictions, conditions, and privileges as Host Participant personnel of comparable rank and in comparable assignments. Further, to the extent authorized by Host Participant's Government laws and regulations, CPP and their authorized dependents will be accorded:
 - 3.1.1. Exemption from any Host Participant's government tax upon income received from the Parent Participant.
 - 3.1.2. Exemption from any Host Participant's Government customs and import duties or similar charges levied on items entering the country for their official or personal use, including their baggage, household effects, and private motor vehicles.
- 3.2. Upon or shortly after arrival, CPP and their dependents will be provided briefings arranged by the Host Participant about applicable laws,

orders, regulations, and customs and the need to comply with them. CPP will also be provided briefings arranged by the Host Participant regarding entitlements, privileges, and obligations such as:

- 3.2.1. Any medical and dental care that may be provided to CPP and their dependents at Host Participant medical facilities, subject to the requirements of applicable laws and regulations, including reimbursement requirements.
- 3.2.2. Purchasing and patronage privileges at military commissaries, exchanges, theaters, and clubs for CPP and their dependents, subject to the requirements of applicable laws and regulations.
- 3.2.3. The Host Participant will provide, if available, housing and messing facilities for CPP and their dependents on the same basis and priority as for its own personnel. CPP will pay messing and housing charges to the same extent as Host Participant personnel. At locations where facilities are not provided by the Host Participant for its own personnel, the Parent Participant will make suitable arrangements for its CPP.
- 3.2.4. Responsibility of CPP and their accompanying dependents to obtain motor vehicle liability insurance coverage in accordance with the laws and regulations applicable in the area where they are residing. In case of claims involving the use of private motor vehicles by CPP, the recourse will be against such insurance.
- 3.3. The CTD, through the IOT&E JOTT, will, in consultation with the CPP, establish standard operating procedures for CPP in the following areas:
 - 3.3.1. Working hours, including holiday schedules.

- 3.3.2. Leave authorization, consistent to the extent possible with the military and civilian personnel regulations and practices of the Host Participant and Parent Participant.
- 3.3.3. Dress regulations, consistent to the extent possible with the military and civilian personnel regulations and practices of the Host Participant and Parent Participant.
- 3.3.4. Performance evaluations, recognizing that such evaluations will be rendered in accordance with the Parent Participant's military or civilian personnel regulations and practices.
- 3.4. CPP committing an offense under the laws of the Government of the Host Participant or Parent Participant may be withdrawn from this Project with a view toward further administrative or disciplinary action by the Parent Participant. Disciplinary action, however, will not be taken by the Host Participant against CPP, nor will the CPP exercise disciplinary powers over the Host Participant's personnel. In accordance with Host Participant's Government laws and regulations, the Host Participant will assist the Parent Participant in carrying out investigations of offenses involving CPP.
- 3.5. The Participants whose countries are NATO member countries recognize the following: the military 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), signed on June 19, 1951. Employees and agents of Contractors do not constitute a civilian component, and NATO SOFA will not apply to them.

**SIDE LETTER FOR THE UNDERSTANDINGS BETWEEN THE SECRETARY OF
DEFENSE OF THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF
AMERICA AND THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING
THE PROVISIONS OF THE COOPERATIVE INITIAL OPERATIONAL TEST AND
EVALUATION OF THE JOINT STRIKE FIGHTER MEMORANDUM OF
UNDERSTANDING
(JSF IOT&E MOU)**

The Secretary of Defense of the Department of Defense of the United States of America (Secretary of Defense) and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (Secretary of State for Defence) acknowledge the following mutual understandings in regard to the JSF IOT&E MOU:

The Secretary of Defense and the Secretary of State for Defence have decided that the Agreement Concerning Defense Cooperation Arrangements of May 27, 1993, signed by the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, will apply to the JSF IOT&E MOU and any supplement thereto between the Secretary of Defense of the United States of America and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland. Claims arising under the MOU will be dealt with under paragraph 1 of the Agreement Concerning Defense Cooperation Arrangements. The cost sharing arrangements under paragraph 1(b)(ii) of the Agreement Concerning Defense Cooperation Arrangements will be shared as detailed in paragraph 13.1.2. of Section XIII (Liability and Claims) of the JSF IOT&E MOU.

FOR THE SECRETARY OF
DEFENSE ON BEHALF OF THE
DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF
AMERICA

Signature

Charles E. McQuary

Name

Director, DOT&E

Title

18 December 2006

Date

Pentagon, Washington, D.C.

Location

FOR THE SECRETARY OF STATE
FOR DEFENCE OF THE UNITED
KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

Signature

Sir Clive Leach

Name

DCIC, HQ STC

Title

17 January 2007

Date

Stoke Newington

Location