

DEFENSE

Research and Development

Agreement Between the
UNITED STATES OF AMERICA
and **INDIA**

Amending the
Memorandum of Agreement of
January 9, 2006

Signed at New Delhi January 22, 2015

with

Annex



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.”

INDIA

Defense: Research and Development

*Agreement amending memorandum of
agreement of January 9, 2006.
Signed at New Delhi January 22, 2015;
Entered into force January 22, 2015.
With annex.*

AMENDMENT ONE
TO
THE MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF DEFENSE
OF
THE UNITED STATES OF AMERICA
AND
THE MINISTRY OF DEFENCE
OF
THE REPUBLIC OF INDIA
FOR
RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION PROJECTS

ARTICLE ONE INTRODUCTION

Whereas the Department of Defense of the United States of America and the Ministry of Defence of the Republic of India, hereinafter referred to as the "Parties," entered into the Memorandum of Agreement between the Department of Defense of the United States of America and the Ministry of Defence of the Republic of India for Research, Development, Testing, and Evaluation Projects, hereinafter referred to as the "RDT&E Agreement," which entered into force on January 9, 2006, desire to amend the RDT&E Agreement to add export control text, extend its duration, and revise Annex A (Model Project Agreement);

The Parties agree to amend the RDT&E Agreement in accordance with Article XVII (Amendment, Termination, Entry into Force, and Duration), as follows:

1.1. Amend Article I (Definitions) by inserting the following definition:

"Prospective Contractor: Any entity that seeks to enter into a Contract to be awarded by a Party's Contracting Agency and that, in the case of a solicitation involving the release of export-controlled information, is eligible to receive such information."

1.2. Amend subparagraph 4.3.8. in Article IV (Management (Organization and Responsibility)) by deleting "and" at the end of the sentence.

1.3. Amend subparagraph 4.3.9. in Article IV (Management (Organization and Responsibility)) by deleting "." at the end of the sentence and inserting "; and".

1.4. Amend paragraph 4.3. Article IV (Management (Organization and Responsibility)) by adding the following new subparagraph:

"4.3.10. Employing its best efforts to resolve, in consultation with the export control authorities of the Party concerned, any export control issues raised by the POs in accordance with paragraph 4.4. of this Article or raised by a Party's SC representative in accordance with subparagraph 8.1.3.4. of Article VIII (Disclosure and Use of Project Information) of this Agreement."

1.5. Amend paragraph 4.4. Article IV (Management (Organization and Responsibility)) by deleting "The POs shall also maintain a list of all Project Equipment transferred by either of the Parties." and inserting "The POs shall maintain a list of all Project Equipment transferred by either of the Parties. The POs shall also monitor export control arrangements required to implement each PA and, if applicable, shall immediately refer to the SC (or the MAs if there is no SC) any export control issues that could adversely affect the implementation of the PA."

1.6. Amend Article VI (Contractual Provisions) by inserting the following new paragraphs:

"6.10. Each Party shall legally bind its Contractors to a requirement that the Contractor shall not retransfer or otherwise use export-controlled information furnished by the other Party for any purpose other than the purposes authorized under this Agreement or PAs under this Agreement. The Contractor shall 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 Agreement or PAs under this Agreement. Export-controlled information furnished by one Party under this Agreement or PAs under this Agreement may only be retransferred by the other Party to its Contractors if the legal arrangements required by this paragraph have been established.

6.11. Each Party shall legally bind its Prospective Contractors to a requirement that the Prospective Contractor shall not retransfer or otherwise use export-controlled information furnished by the other Party for any purpose other than responding to a solicitation issued in furtherance of the purposes authorized under this Agreement or a PA under this Agreement. Prospective Contractors shall not be authorized use for any other purpose if they are not awarded a Contract. The Prospective Contractors shall 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 Party under this Agreement or a PA under this Agreement may only be retransferred by the other Party to its Prospective Contractors if the legal arrangements required by this paragraph have been established. Upon request by the furnishing Party, the receiving Party shall identify its Prospective Contractors and prospective subcontractors receiving such export-controlled information."

1.7. Amend Article VIII (Disclosure and Use of Project Information) by adding the following subparagraph:

"8.1.3. The following export control provisions shall apply to the transfer of Project Information:

8.1.3.1. Transfer of Project Information shall be consistent with furnishing Party's applicable export control laws and regulations.

8.1.3.2. Unless otherwise restricted by duly authorized officials of the furnishing Party at the time of transfer to the other Party, all export-controlled information furnished by one Party to the other Party may be retransferred to the other Party's Contractors, subcontractors, prospective Contractors, and prospective subcontractors, subject to the requirements of paragraphs 6.10. and 6.11. of Article VI (Contractual Provisions) of this Agreement.

8.1.3.3. Export-controlled information may be furnished by Contractors, subcontractors, prospective Contractors, and prospective subcontractors of one Party's nation to the Contractors, subcontractors, prospective Contractors, and prospective subcontractors of the other Party's nation pursuant to a PA under this Agreement, subject to the conditions established in licenses or other approvals issued by the Government of the former Party in accordance with its applicable export control laws and regulations.

8.1.3.4. If a Party finds it necessary to exercise a restriction on the retransfer of export-controlled information as set out in subparagraph 8.1.3.2. of this Article, it shall promptly inform the other Party. If a restriction is then exercised and the affected Party objects, that Party's SC representative (or PO, if no SC is established under a PA) shall promptly notify the other Party's SC representative (or PO, if no SC is established), and they shall immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects."

1.8. Amend Article IX (Controlled Unclassified Information) by deleting paragraph 9.2. and inserting:

"9.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked to ensure its "in confidence" nature. The Parties' export-controlled information shall be marked in accordance with the applicable Party's export control markings as documented in the Project Security Instruction for the applicable PA. The Parties shall 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 Project Security Instruction."

1.9. Amend Article XVII (Amendment, Termination, Entry into Force, and Duration), paragraph 17.8., by deleting "10 years" and inserting "twenty-five (25) years".

1.10 Amend Annex A (Model Project Agreement) by replacing in its entirety with the revised Annex A (pages 5-15)

ANNEX A

MODEL PROJECT AGREEMENT

PROJECT AGREEMENT NO. _____ *

TO THE

MEMORANDUM OF AGREEMENT

BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

THE MINISTRY OF DEFENCE OF THE REPUBLIC OF INDIA FOR
RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION PROJECTS

DATED JANUARY 9, 2006

CONCERNING

(FULL DESIGNATION OF THE PROJECT)

(Short Title: [Insert] Project Agreement (PA))

* **The Project Agreement Numbers shall be structured as follows:**

XX-NN-nnnn where XX is a U.S. Military Department or Defense Agency designator such as N for Navy, A for Army, AF for Air Force, AR for DARPA, etc.; NN is the calendar year, and nnnn is a sequential number.

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(If additional topics need to be addressed, articles, annexes, or special provisions should be included as necessary and appropriate.)

ARTICLE I

INTRODUCTION

This Project Agreement (PA) is entered into pursuant to the Memorandum of Agreement between the Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defence of the Republic of India (IN MOD) concerning Research, Development, Testing, and Evaluation Projects, which entered into force January 9, 2006 (RDT&E Agreement).

ARTICLE II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the RDT&E Agreement.)

ARTICLE III

OBJECTIVES

3.1. The objectives of this _____ PA are:

3.1.1. The development of _____
_____.

3.1.2. The improvement of _____
_____.

ARTICLE IV

SCOPE OF WORK

4.1. The following work shall be undertaken under this PA.

4.1.1. Develop _____
_____.

4.1.2. Evaluate _____
_____.

4.1.3. Design, fabricate and test _____
_____.

ARTICLE V

SHARING OF TASKS

5.1. The sharing of tasks shall be as follows:

5.1.1. The U.S. DoD shall _____
_____.

5.1.2. The IN MOD shall _____
_____.

5.1.3. The U.S. DoD and IN MOD shall jointly _____
_____.

ARTICLE VI

BREAKDOWN AND SCHEDULE OF TASKS (OPTIONAL)

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

6.1. The Project shall proceed according to the following phases and schedule:

<u>Phase 1</u>	<u>Start</u>	<u>End</u>
Description of Phase 1	MM/DD/YY	MM/DD/YY

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

<u>Phase 2</u>	<u>Start</u>	<u>End</u>
Description of Phase 2	MM/DD/YY	MM/DD/YY

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

<u>Phase 3</u>	<u>Start</u>	<u>End</u>
Description of Phase 3	MM/DD/YY	MM/DD/YY

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

(Add as many phases as necessary.)

(Use the following alternative paragraph 6.1. when the Project will proceed according to a Project Plan.)

6.1. The Project shall proceed according to the schedule developed and approved by the Project Officers in the Project Plan.

6.2. The final report shall be transmitted to the Management Agents (MAs) six months before the termination date for this PA.

ARTICLE VII

MANAGEMENT

(If a PA does not require a Steering Committee, use the following format to set forth how the PA will be managed.)

Alternative 1

7.1. This PA shall be directed and administered on behalf of the Parties by one Project Officer (PO) from each Party. The POs are:

7.1.1. U.S. DoD PO Title/Position _____

Organization _____

Address _____

7.1.2. IN MOD PO Title/Position _____

Organization _____

Address _____

7.2. Project Offices shall be established in _____ (name of U.S. location) and in _____ (name of India location). The POs are responsible for management of those tasks listed as national responsibilities in Article V (Sharing of Tasks) of this PA.

7.3. Particular Management Procedures:

(Mention only those other additional management responsibilities not covered under Article IV (Management (Organization and Responsibility)) of the RDT&E Agreement.)

(If a Project requires the establishment of a Steering Committee, use the following format to set forth how the Project will be managed.)

Alternative 2

7.1. This PA shall be directed and administered on behalf of the Parties by an organization consisting of a Steering Committee (SC) and one Project Officer (PO) from each Party. The SC members are:

7.1.1. U.S. DoD Co-Chairman Title/Position _____
Organization _____
Address _____

7.1.2. IN MOD Co-Chairman Title/Position _____
Organization _____
Address _____

7.2. The POs are:

7.2.1. U.S. DoD PO Title/Position _____
Organization _____
Address _____

7.2.2. IN MOD PO Title/Position _____
Organization _____
Address _____

7.3. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under Article IV (Management (Organization and Responsibility)) of the RDT&E Agreement. For instance, if a PA involving a complex scope of work and significant financial and non-financial contributions will be administered by one joint program office staffed by members from each Party (Cooperative Project Personnel (CPP)), add the following paragraph:

7.X. Either Party may assign CPP to the JPO to assist in administering a PA. The Host Party shall provide office space and administrative support to personnel of the other Party in accordance with the host Party's normal practice. A Party's assigned personnel shall be subject to the normal procedures and regulations of the Host Party. Provisions for the personnel provided are described in Appendix A (Assignment of (Insert Name of Project) Cooperative Project Personnel) of this PA.)

ARTICLE VIII
FINANCIAL PROVISIONS

- 8.1. The Parties estimate that the cost of performance of the tasks under this PA shall not exceed ____ U.S. dollars or ____ Indian rupees.

(If a PA will involve the assignment of CPP, the PA shall include a provision that refers to paragraphs 5.6., 5.7., and 5.8. of the RDT&E Agreement, identifies which Party is sending or hosting CPP, and specifies the number of CPP to be assigned. In addition, the PA shall include the amount of financial and non-financial contributions related to CPP in one of the two alternatives below in this Article.)

(If a PA will not involve one Party contracting for the other or both Parties, and no funds will be exchanged between the Parties, use the following format for the Financial Provisions. Both financial and non-financial contributions should be included in the total U.S. DoD and IN MOD costs.)

Alternative 1

- 8.1.1. The U.S. DoD tasks shall not cost more than: _____ U.S. dollars.

- 8.1.2. The IN MOD tasks shall not cost more than: _____ Indian rupees.

Or:

(If a PA will involve one Party contracting for the other Party or both Parties, or the Parties will transfer or exchange funds between them, use the following format for the Financial Provisions.)

Alternative 2

(Cost of performance includes Financial and Non-financial Costs.)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
IN MOD (Indian rupees)						
U.S. DoD (U.S. dollars)						

(Using the above table and whatever description is necessary, explain and demonstrate how the PA will be funded. Include the rate of exchange. Identify both financial (funds) and non-financial (range time, use of equipment, etc.) contributions and identify the amount of funds to be transferred between the Parties.)

(The Financial Management Procedures Document (FMPD) should be developed by the POs and submitted to the SC (if appropriate) for approval. The FMPD should include at a minimum schedule, handling, funding levels by year, and auditing procedures for monetary contributions anticipated for this PA.)

- 8.2. Cooperative efforts of the Parties over and above the jointly agreed tasks set forth in Article IV (Scope of Work), Article V (Sharing of Tasks), and Article VIII (Financial Provisions) of this PA shall be subject to amendment to this PA or signature of a new PA.

ARTICLE IX

CLASSIFICATION

9.1. The existence of this PA and its contents are Unclassified.

Only one of the two following possibilities must be selected:

9.1.1. No Classified Information shall be exchanged under this PA.

(or)

9.1.1. The highest level of Classified Information exchanged under this PA is: [other than unclassified (specify)].

ARTICLE X

PRINCIPAL ORGANIZATIONS INVOLVED

(List government laboratories, research centers, and other organizations for both the United States and India.)

10.1. U.S. DoD: The principal U.S. DoD organizations involved in this PA are [names/locations].

10.2. IN MOD: The principal IN MOD organizations involved in this PA are [names/locations].

ARTICLE XI

PROJECT EQUIPMENT (OPTIONAL)

(In the event that the collaborative efforts under the PA require the provision of Project Equipment to either Party, then a list of such Project Equipment must be developed in general accordance with the following table. (See also Annex C (Inventory of Project Equipment Exchanges) to the RDT&E Agreement.)

11.1. The loan of the following Project Equipment is necessary for executing this PA.

<u>Providing Party</u>	<u>Receiving Party</u>	<u>Qty</u>	<u>Description</u>	<u>Part Stock#</u>	<u>Consumable/ Non- Consumable</u>	<u>Approx Value</u>	<u>Loan Period</u>

(Fill in as appropriate)

Alternate Paragraph 11.1

(In the event that the collaborative efforts under the PA could require the provision of Project Equipment to either Party, but there are no definite plans to make such loans when the PA enters into force, use the following alternative language. See also Annex C (Inventory of Project Equipment Exchanges) to the RDT&E Agreement.)

11.1. Project Equipment to be loaned shall be documented in a list approved and maintained by the SC* (* replace "SC" with "POs" if no SC is established) in the following format:

<u>Providing Party</u>	<u>Receiving Party</u>	<u>Qty</u>	<u>Description</u>	<u>Part Stock#</u>	<u>Consumable/ Non- Consumable</u>	<u>Approx Value</u>	<u>Loan Period</u>

The list will be prepared by the POs for signature by the SC after appropriate national approvals are obtained.* (*If no SC is established, replace this sentence with the following: "The list shall be prepared and approved by the POs after appropriate national approvals are obtained.")

11.2. The providing Party shall loan the Project Equipment for the loan period identified in paragraph 11.1 of this Article.**

****If Alternative paragraph 11.1. is used, change paragraph 11.2. as follows: The providing Party shall loan the Project Equipment for the loan period identified in the list described in paragraph 11.1 of this Article.**

ARTICLE XII

SPECIAL PROVISIONS

12.1. All activities of the Parties under this PA shall be carried out in accordance with their national laws and regulations, including their export control laws and regulations.

ARTICLE XIII

ENTRY INTO FORCE, DURATION, AND TERMINATION

This _____ (Use short title identified on title page of PA), a Project under the Memorandum of Agreement between the Department of Defense of the United States of America and the Ministry of Defence of the Republic of India for Research, Development, Testing, and Evaluation Projects, which entered into force January 9, 2006, shall enter into force upon signature by the RDT&E Agreement Management Agents, and shall remain in force for _____ (Use both word and digit for identifying duration, e.g., "five (5)" years) unless terminated by either Party. It may be extended by written agreement of the Parties.

DONE, in two originals, in the English language.

FOR THE DEPARTMENT OF
DEFENSE OF THE UNITED
STATES OF AMERICA:

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF
DEFENCE OF THE REPUBLIC OF
INDIA:

Signature

Name

Title

Date

Location

1.1.1. All other provisions of the RDT&E Agreement remain unchanged.

ARTICLE TWO

ENTRY INTO FORCE AND SIGNATURE

This Amendment One to the RDT&E Agreement shall enter into force on the date on which the last signature is affixed below.

Done, in two originals, in the English language.

FOR THE DEPARTMENT OF
DEFENSE OF THE UNITED STATES
OF AMERICA



Signature

Frank Kendall

Name

Under Secretary of Defense for
Acquisition, Technology and Logistics

Title

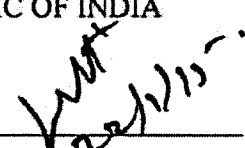
22 January 2015

Date

New Delhi, india

Location

FOR THE MINISTRY OF DEFENSE
OF THE REPUBLIC OF INDIA



Signature

R K Mathur

Name

Defence Secretary

Title

22 January 2015

Date

New Delhi, India

Location