

## DEFENSE

### Research and Development

**Memorandum of Understanding  
Between the  
UNITED STATES OF AMERICA  
and the NETHERLANDS**

Signed at Washington May 14, 1998

with

Annex

*and*

Agreement Amending the  
Memorandum of Understanding

Signed at The Hague and Washington  
August 21 and September 26, 2007



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.”

## NETHERLANDS

### Defense: Research and Development

*Memorandum of understanding signed  
at Washington May 14, 1998;*

*Entered into force May 14, 1998.*

*With annex.*

*And agreement amending the  
memorandum of understanding.*

*Signed at The Hague and Washington  
August 21 and September 26, 2007;*

*Entered into force September 26, 2007.*

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

SECRETARY OF DEFENSE

ON BEHALF OF THE DEPARTMENT OF DEFENSE

OF THE UNITED STATES OF AMERICA AND THE

MINISTER OF DEFENCE

OF THE KINGDOM OF THE NETHERLANDS

CONCERNING

TECHNOLOGY RESEARCH AND DEVELOPMENT PROJECTS

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## PREAMBLE

The Secretary of Defense of the United States of America and the Minister of Defence of the Kingdom of the Netherlands (hereinafter referred to as the "Participants"):

Having a common interest in defense;

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

Seeking to make the best use of their respective research and development capacities, eliminate unnecessary duplication of work and obtain the most efficient and cost-effective results through cooperation in Technology Research and Development Projects; and

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

Have agreed as follows:

## ARTICLE I

### DEFINITION OF TERMS AND ABBREVIATIONS

For the purposes of this Technology Research and Development Projects (TRDP) Memorandum of Understanding (MOU), the following definitions will apply:

|                                     |  |
|-------------------------------------|--|
| 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.  |
| Contract                            | Any mutually binding legal relationship which obligates a Contractor to furnish supplies or services, and obligates one or both of the Participants to pay for them.   |
| Contracting                         | The obtaining of supplies or services by Contract from sources outside the 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, which has authority to enter into, administer, and/or terminate Contracts.   |
| Contracting Officer                 | A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, and/or terminate Contracts.   |
| Contractor                          | Any entity awarded a Contract under a Project by a Participant's Contracting Agency.   |
| Controlled Unclassified Information | Unclassified information to which access or distribution limitations have been applied in accordance with national laws and regulations, and which will be marked and handled in compliance with this TRDP MOU. This information will be treated in confidence.  |
| Defense Purposes                    | Manufacture or other use in any part of the world by or for the armed forces of either Participant. This does not include sales or transfers to Third Parties.   |

|   |  |
|---|--|
| Designated<br>Security<br>Authority (DSA) | The security office approved by national authorities to be responsible for the security aspects of this TRDP MOU.  |
| Material                                  | Any item or substance from which information can be derived.   |
| Patent                                    | Legal protection of the right to exclude others from making, using, or selling 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. |
| PO  | Project Officer.   |
| Project                                   | Specific collaborative activity to research and develop basic, exploratory or advanced technologies that are described in a Project Agreement to this TRDP MOU.  |
| Project<br>Agreement<br>(PA)              | An implementing Agreement, added after the TRDP MOU has been in force, which specifically details the terms of collaboration on a specific Project.  |
| Project<br>Background<br>Information      | Information not generated in the performance of a Project.   |
| Project<br>Equipment                      | Any material, equipment, end item, subsystem, component, special tooling or test equipment used in a Project   |
| Project<br>Foreground<br>Information      | Project Information generated in the performance of a Project.   |
| Project<br>Information                    | Any data, knowledge, fact, or information provided, generated, or used in a Project regardless of form or type, including that of a scientific, technical, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques,  |



inventions, drawings, technical writings, sound recordings, pictorial representations, semiconductor topography, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, patent, or other legal protection.

Project  
Invention

Any invention or discovery formulated, made (conceived or first actually reduced to practice) in the course of work performed under a Project.

Third  
Party

Any person or other entity whose government or whose governing authority is not a Participant to this MOU.

## ARTICLE II

### OBJECTIVE

1. The objective of this Memorandum of Understanding is to define and establish the general terms and conditions which will apply to the initiation, conduct, and management of Projects detailed in separate Project Agreements (PA) between representatives authorized in accordance with national procedures of the Participants. These Project Agreements will be entered into pursuant to this MOU and will incorporate by reference the terms of this MOU.

2. Detailed terms and conditions of each individual PA will be consistent with this TRDP MOU. Each PA will include specific provisions concerning the objectives, scope of work, sharing of work, management structure, financial arrangements and classification for the applicable PA in accordance with the format set forth in Annex A to the maximum extent practical.

3. All obligations of the Participants under this TRDP MOU and its PAs are subject to national laws, regulations, and the availability of appropriated funds for such purposes.

4. In the event of a conflict between the terms of this TRDP MOU and any PAs, the TRDP MOU will govern.

## ARTICLE III

### SCOPE OF WORK

1. The scope of work for this TRDP MOU will encompass research and development collaboration on basic, exploratory and advanced technologies. The maturation of these technologies may lead to the development of technologically superior conventional weapon systems in the mid-1990s and beyond. PAs may range from conceptual studies to technology demonstrations.
2. This TRDP MOU does not preclude entering into any other agreement in the area of research and development on basic, exploratory and advanced technologies.
3. System prototypes, full-scale development or production programs which may evolve from collaboration under one or more PAs to this TRDP MOU are outside the scope of this TRDP MOU and require conclusion of separate agreements.

## ARTICLE IV

### MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

1. The Deputy Under Secretary of Defense (International and Commercial Programs) is designated US TRDP MOU Director (US TRDP/AD). The Director of Defence Research and Development (DWO) is designated NL TRDP MOU Director (NL TRDP/AD). The TRDP/ADs will be primarily responsible for:

- a. implementing this TRDP MOU and exercising executive-level oversight;
- b. monitoring overall use and effectiveness of the TRDP MOU; and
- c. recommending amendments to this TRDP MOU to the Participants.

2. The appropriate US Service Acquisition Executive or Defense Agency Director, or their designees are designated US TRDP Executive Agent (US TRDP/EA) for those projects within their respective Military Service or Defense Agency. The Chief Scientist Central MOD (HWO-CO), or his designee is designated NL TRDP Executive Agent (NL TRDP/EA). The TRDP/EAs will be primarily responsible for:

- a. entering into appropriate PAs in accordance with national procedures;
- b. establishing an appropriate management structure for each PA considering its scope and the requirement for a Steering Committee (SC);
- c. appointing SC members when deemed necessary, and Project Officers (POs); and
- d. giving administrative direction to appropriate SCs, if established, or POs appointed to their projects.

3. The SC, if established, will be primarily responsible for:

- a. providing policy and management direction to the POs during PA execution;
- b. monitoring overall PA implementation, including technical, cost, and schedule performance against requirements; and

c. reporting status and activity of assigned PAs on an annual basis to the TRDP/EAs and TRDP/ADs.

4. The POs will have primary responsibilities for effective implementation, efficient management and direction of their assigned PA including technical, cost and schedule performance against requirements. Additionally, the POs will be responsible for paragraph 3.c above when no SC is established for their assigned PA.

5. The TRDP/EAs, SCs and POs will meet as required, on a regular basis, alternatively in the United States and The Netherlands. The Chairman for each meeting will be the senior official of the host nation. During such meetings, all decisions will be made unanimously.

## ARTICLE V

### SHARING OF TASKS AND FINANCIAL ARRANGEMENTS

1. Each Participant will contribute its equitable share of the full financial and nonfinancial costs incurred in performing its responsibilities and activities under this MOU and each TRDP PA, including overhead costs, administrative costs, and costs of claims, and each Participant will receive an equitable share of the results. This equitable sharing of costs and tasks will be detailed in each PA.
2. Each Participant will perform, or have performed, its tasks and will use its best efforts to perform it within the costs specified in each PA.
3. The following costs will be borne entirely by the Participant incurring the costs:
  - a. costs associated with any unique national requirements identified by a Participant; and
  - b. any other costs outside the scope of this TRDP MOU and its PAs.
4. A Participant will promptly notify the other Participant if available funds are not adequate to fulfill the undertakings and obligations contained in this TRDP MOU or a PA. If a Participant notifies the other Participant that it is terminating or reducing its funding for a Project, both Participants will immediately consult with a view toward continuation on a changed or reduced basis.
5. Detailed descriptions of the financial arrangements for a specific Project, including the total cost of the Project and each Participant's share of the total cost will be included in the corresponding PA.

## ARTICLE VI

### CONTRACTUAL ARRANGEMENTS

1. If either Participant determines that Contracting is necessary to fulfill that Participant's obligations under the scope of work of a PA of this TRDP MOU, that Participant will contract in accordance with its national laws, regulations, policies and procedures. When applicable, contract administrative services will be performed in accordance with the Memorandum of Understanding between the Government of the United States of America and the Government of the Kingdom of the Netherlands Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment of 24 August 1978 as amended and extended November 1, 1990.

2. When one Participant individually contracts to undertake a task under a PA to this TRDP MOU, that Participant will be solely responsible for its own Contracting, and the other Participant will not be subject to any liability arising from such Contracts without its written consent.

3. If the Participants determine that Contracting is necessary to fulfill their obligations under a TRDP PA of this MOU, one Participant may contract for both Participants in accordance with its respective national laws, regulations and procedures. Such contractual arrangements will be detailed in that particular TRDP PA.

4. For all Contracting activities performed by either Participant, the POs will be provided a copy of all Statements of Work prior to the development of solicitations to ensure that they are consistent with the provisions of this TRDP MOU and the applicable PA.

5. Each Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Project Information required by Article VII (Disclosure and Use of Project Information). Each Participant's Contracting Agency will insert into its Contracts (and require its subcontractors to insert in subcontracts) suitable provisions to satisfy the requirements of Article VII (Disclosure and Use of Project Information), Article VIII (Controlled Unclassified Information), Article X (Security) and Article XII (Third Participant Sales and Transfers) of this TRDP MOU. During the Contracting process, each Participant's Contracting Officer will advise prospective Contractors of their

obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Participant's freedom to disclose information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions. In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Article VII (Disclosure and Use of Project Information), or is notified of any restrictions on the disclosure and use of information, that Participant's PO will notify the other Participant's PO of the restrictions.

6. Each Participant's PO will promptly advise the other Participant's PO of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

7. No requirement will be imposed by either Participant for worksharing or other industrial or commercial compensation with this MOU, or its associated PAs, that is not in accordance with this MOU or its associated PAs.



## ARTICLE VII

### DISCLOSURE AND USE OF PROJECT INFORMATION

#### 1. General

Both Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out each PA. The Participants intend to acquire sufficient Project Information and rights to use such information to enable the collaboration on basic, exploratory and advanced technologies. The maturation of these technologies may lead to the development of technologically superior conventional weapon systems in the mid-1990s and beyond. The nature and amount of Project Information to be acquired will be consistent with the objectives and operational requirements stated in the PAs to this TRDP MOU.

#### 2. Government Project Foreground Information

- a. Disclosure: Project Foreground Information generated by government organizations or quasi-government organizations will be made available to both Participants without charge.
- b. Use: Each Participant may use or have used this Project Foreground Information without charge for its Defense Purposes; however if a Participant intends to use or have used such Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Article XII (Third Party Sales and Transfers) of this TRDP MOU will apply.

#### 3. Government Project Background Information

- a. Disclosure: Each Participant, upon request, will disclose for the purpose of a PA any relevant Project Background Information in its possession provided that:
  - (1) the Project Background Information is necessary to or useful in the Project or for the use of Project Foreground Information. The Participant in possession of the information will determine, following consultation with the other Participant, whether such Project Background Information is

"necessary to" or "useful in" the Project or "necessary" for the use of Project Foreground Information;

- (2) the Project Background Information may be made available without incurring liability to holders of proprietary rights to include exclusive user rights; and
  - (3) disclosure is consistent with national disclosure regulations of the furnishing Participant.
- b. Use: Project Background Information disclosed by one Participant to the other may be used without charge by the other Participant for Project purposes only. However, subject to proprietary rights held by other than the Participants, such Project Background Information furnished by a Participant may be used for Defense Purposes by the other Participant, without charge, when the use of such information is necessary for the use of Project Foreground Information. If a Participant intends to use or have used the Project Background Information disclosed to it by the other Participant in a sale or other transfer to a Third Party, the provisions of Article XII (Third Party Sales and Transfers) of this TRDP MOU will apply.

#### 4. Contractor Project Foreground Information

- a. Disclosure: Project Foreground Information generated and delivered by Contractors of one Participant, will be made available to the other Participant without charge.
- b. Use: Each Participant may use or have used this Project Foreground Information without charge for its Defense Purposes; however if it intends to use or have used such Project Foreground Information from the other Participant in a sale or other transfer to a Third Party, the provisions of Article XII (Third Party Sales and Transfers) of this TRDP MOU will apply. Additionally, the Participants may acquire, at fair and reasonable terms, the legal rights to use Contractor Project Foreground Information for other than Defense Purposes.

#### 5. Contractor Project Background Information

- a. Disclosure: Project Background Information generated by Contractors and delivered under Contracts will be made available to the Participants provided the following conditions are met:

- (1) the Project Background Information is necessary to or useful in the Project or for the use of Project Foreground Information. The Participant in possession of the information will determine, following consultation with the other Participant, whether such Project Background Information is "necessary to" or "useful in" the Project or "necessary" for the use of Project Foreground Information;
  - (2) The Project Background Information may be made available without incurring liability to holders of proprietary rights to include exclusive user rights; and
  - (3) Disclosure is consistent with national disclosure regulations of the furnishing Participant.
- b. Use: Project Background Information furnished by Contractors and disclosed to the Participants may be used by both Participants, without charge, for Project purposes only. However, subject to proprietary rights held by other than the Participants, such Project Background Information furnished by a Participant may be used for Defense Purposes by the other Participant, at fair and reasonable terms, when the use of such information is necessary for the use of Project Foreground Information. If a Participant intends to use or have used the Project Background Information disclosed to it by the other Participant in a sale or other transfer to a Third Party, the provisions of Article XII (Third Party Sales and Transfers) of this TRDP MOU will apply.

## 6. Proprietary Project Information

- a. All proprietary Project Information will be identified and marked.
- b. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done in Brussels on 19 October 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 1 January 1971, will apply to proprietary Project Information related to this TRDP MOU.

## 7. Patents

- a. Where a Participant has or can secure the right to file a Patent application with regard to a Project Invention, that Participant will consult with the other Participant regarding the filing of such Patent application. The Participant having such rights will in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding such rights, or its contractors, as appropriate, Patents application covering any such Project Invention. If Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution.
- b. Each Participant will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- c. Each Participant will acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Participant, throughout the world for Defense Purposes, any Project Invention.
- d. Patent applications which contain Classified Information to be filed under this TRDP MOU, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, signed on 21 September 1960, and its Implementing Procedures.
- e. Insofar as possible, each Participant will extend to the other Participant any relief from Patent infringement claims arising in the course of work performed under a Project that it may be able to claim on its own behalf. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under a Project of any invention covered by a Patent issued by their respective countries. Each Participant is responsible for handling all Patent infringement claims made in its territory and to inform the other Participant of such claims and to consult with the other Participant during the handling, and prior to any settlement of such claims.

## ARTICLE VIII

### CONTROLLED UNCLASSIFIED INFORMATION

1. Except as otherwise provided in this TRDP MOU or authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this TRDP MOU and its PAs will be controlled as follows:
  - a. such information will be used only for the purposes authorized for use of Project Information as specified in Article VII (Disclosure and Use of Project Information);
  - b. access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph (1a) above, and will be subject to the provisions of Article XII (Third Party Sales and Transfers); and
  - c. 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 public access provisions), except as provided in subparagraph (1b) above, 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 disclosed to a third party or a judicial body under any legislative provision, immediate notification will be given to the originating Participant.
2. To assist in providing the appropriate controls, the Participant must agree in advance on the markings to be placed on the Controlled Unclassified Information.
3. Controlled Unclassified Information provided or generated pursuant to this TRDP MOU and any of its PAs will be stored, handled and transmitted in a manner that ensures control as provided for above. 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 Article.

## ARTICLE IX

### VISITS TO ESTABLISHMENTS

1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have appropriate security clearances and a need-to-know.
2. All visiting personnel will be required to comply with security regulations of the host 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 TRDP MOU.
3. Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will cite this TRDP MOU and the appropriate PA as the basis for the requests.
4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with Recurring International Visit Procedures.

## ARTICLE X

### SECURITY

1. Classified Information or material provided or generated pursuant to this TRDP MOU and any of its PAs will be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between the Kingdom of the Netherlands and the United States of America, dated 18 August 1960, as amended, and including the Industrial Security Annex thereto, of 9 April 1982.

2. Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such information and material will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this TRDP MOU and the applicable PA.

3. Each Participant will take all lawful steps available to it to ensure that information provided or generated pursuant to this TRDP MOU and any of its PAs is protected from further disclosure except as provided by paragraph 8, below, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

- a. the recipient will not release the Classified Information to any Third Party without the prior written consent of the originating Participant except in accordance with the procedures set forth in Article XII (Third Party Sales and Transfers); and
- b. the recipient will not use the Classified Information for other than the purposes cited in this TRDP MOU.

4. The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this TRDP MOU and any of its PAs has been lost or disclosed to unauthorized persons. Each Participant will promptly and fully inform the other Participant of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

5. The POs will prepare a Project Security Instruction and a Classification Guide for each PA involving the transfer of Classified Information. The Project Security Instructions and the Classification Guides will describe the methods by which

Project Information and material will be classified, marked, used, transmitted, and safeguarded. The appropriate Instruction and Guide will be developed by the POs within three months after signature of a PA. They will be reviewed and forwarded to the appropriate DSAs, and will be applicable to all government and Contractor personnel participating in the Project. Each Classification Guide will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instructions and the Classification Guides will be approved by the appropriate DSAs prior to the transfer of any Classified or Controlled Unclassified Information.

6. 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 TRDP MOU and any of its PAs only when enforceable measures are in effect to ensure that nationals of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

7. For any facility wherein Classified Information or material 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 or material pertaining to this TRDP MOU and any of its PAs. These officials will be responsible for limiting access to Classified Information or material involved in this TRDP MOU and any of its PAs to those persons who have been properly approved for access and have a need-to-know.

8. Information or material provided or generated pursuant to this TRDP MOU and any of its PAs may be classified as high as Secret. Each Participant will ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in a PA.

9. The existence of this TRDP MOU is Unclassified and the contents are Unclassified. The classification of the existence of any PA and its contents will be stated in that PA.



## ARTICLE XI

### LOAN OF MATERIALS, SUPPLIES, AND EQUIPMENT

1. For the purpose of carrying out a PA, each Participant may loan without charge to the other Participant such materials, supplies, and equipment identified in a PA as being necessary for the corresponding Project. While such loans will be based on the principle of reciprocity, exact item for item exchanges are not required.

2. Materials, supplies, and equipment loaned will be used by the receiving Participant only for the purposes set out in this TRDP MOU and applicable Project Agreements. In addition, the receiving Participant will agree to maintain materials, supplies, and equipment in good order, repair, and operable condition and to return the items in operable condition and in as good condition as received, normal wear and tear excepted, unless the providing Participant has agreed that the loaned materials, supplies, or equipment may be expended or otherwise consumed in connection with the Project without reimbursement to the providing Participant.

3. Each PA will list the materials, supplies or equipment to be loaned, if any, and will provide detailed terms and conditions for the loan.

4. Materials, supplies, and equipment loaned under a PA will remain the property of the providing Participant and will be returned as set out in the PA. However, it is recognized that the success of a Project may require the expenditure or consumption of loaned materials, supplies, or equipment. In such cases, the PA will state that the materials, supplies, or equipment are to be expended or consumed and not returned to the providing Participant.

5. The Participants will not assert a claim against the other for injury, loss, or damage to themselves, their property, or third parties resulting from the use of the materials, supplies, or equipment loaned by the other Participant.

6. The Participants will make every effort to ensure that the materials, supplies, and equipment are furnished in a serviceable and usable condition according to its intended purpose. However, the Participants make no warranty or guarantee of fitness of the equipment for a particular purpose or use, and make no commitment to alter, improve, or adapt the material, supplies, and equipment or any part thereof.

7. Project Equipment provided under a PA by either Participant will remain the property of the providing Participant.

## ARTICLE XII

### THIRD PARTY SALES AND TRANSFERS

1. Except to the extent permitted in paragraph 2 below, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground to any Third Party without the prior written consent of the other Participant. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participant. Such consent will not be given unless the government of the intended recipient agrees in writing with the Participant that it will:

- a. not retransfer, or permit the further retransfer of, any equipment or information provided; and
- b. use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.

2. a. Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information or equipment which is:

- (1) generated solely by either that Participant or that Participant's contractors in the performance of that Participant's work allocation under Article III (Scope of Work); and
- (2) which does not include any Project Background Information of the other Participant.

b. In the event questions arise whether the Project Foreground Information that a Participant intends to sell, transfer title to, disclose, or transfer to a Third Party is within the scope of 2.a above, the matter will be brought to the immediate attention of the other Participant's PO. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information to a Third Party.

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

## ARTICLE XIII

### LIABILITY AND CLAIMS

1. For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution and for the benefit of the Project, the following provisions will apply.
2.
  - a. Each Participant waives all claims against the other Participant with respect to injury caused to its military or civilian personnel or damage caused to its property by personnel (which do not include Contractors) of that other Participant.
  - b. If, however, such damage results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant's personnel, the cost of any liability will be borne by that Participant alone.
3.
  - a. Claims by any other person or legal entity for damage of any kind caused by one of the Participants' personnel will be processed by the most appropriate Participant, as determined by the Participants. The cost incurred in satisfying such claims will be borne by the Participants in the same proportions as the costs of the Project are shared as set forth in Article V (Sharing of Tasks and Financial Arrangements).
  - b. If, however, such liability results from the reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant's personnel, the cost of any liability will be borne by that Participant alone.
4. In case of damage caused to or by common property of the Participants, where the cost of making good such damage is not recoverable from any other person or legal entity, such cost will be borne by the Participants in the same proportions as the costs are shared as set forth in Article V (Sharing of Tasks and Financial Arrangements).
5. Claims arising under any Contract awarded pursuant to Article VI (Contractual Arrangements) will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against liability claims by any other persons or legal entity. However, in exceptional circumstances (e.g. involving certain nuclear activity or other

unduly hazardous activity where the cost of insurance is excessively high), the Participants may consider whether to indemnify Contractors against liability claims by any other persons or legal entity.

6. For the purpose of this MOU, employees of the Netherlands Organization for Applied Science Research (TNO) working on behalf of the MOD, will be considered as civilian employees of the Netherlands Ministry of Defense.

## ARTICLE XIV

### CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

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, and to the extent required by applicable international agreements, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative restrictions on imports and exports, are not imposed in connection with work carried out under each Project.

2. Each Participant will use its best efforts to administer customs duties, import and export taxes, and similar charges in a manner favorable to the efficient and economical conduct of the work.

## ARTICLE XV

### SETTLEMENT OF DISPUTES

1. Disputes arising under or relating to this TRDP MOU and any of its PAs will be resolved only by consultation between the Participants.

## ARTICLE XVI

### AMENDMENT AND TERMINATION

1. This TRDP MOU may be amended by written agreement of the Participants.
2. This TRDP MOU may be terminated at any time by the written agreement of the Participants. In the event both Participants decide to terminate, the Participants will consult prior to termination to ensure termination on the most economical and equitable terms.
3. This TRDP MOU and any of its PAs may be terminated by either Participant upon 90 days written notice to the other Participant. Such notice will be the subject of immediate consultation by the TRDP/ADs to decide upon the appropriate course of action. In the event of such termination, the following rules apply:
  - a. The terminating Participant will continue participation, financial or otherwise, in all Projects subject to the notice of termination, until the effective date of termination.
  - b. Each Participant will pay any costs it incurs as a result of termination.
  - c. All Project Information and rights therein received under the provisions of this TRDP MOU and any PAs prior to the termination will be retained by the Participants, subject to the provisions of this TRDP MOU.
4. The respective rights and responsibilities of the Participants regarding Article VII (Disclosure and Use of Project Information), Article VIII (Controlled Unclassified Information), Article IX (Visits to Establishments), Article X (Security), Article XII (Third Party Sales and Transfers), Article XIII (Liability and Claims), and Article XV (Disputes) will continue notwithstanding termination or expiration of this TRDP MOU and any of its PAs.



ARTICLE XVII

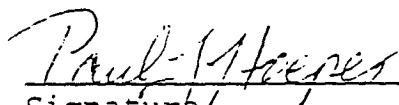
ENTRY INTO FORCE AND DURATION

This TRDP MOU which consists of the Preamble and seventeen (17) Articles will enter into force upon the date of last signature by both Participants, and will remain in force for 10 years unless terminated by either Participant. It may be extended by written agreement of the Participants. All PAs will terminate upon the termination or expiration of this TRDP MOU.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this MOU.

DONE, in duplicate, in the English language.

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

  
\_\_\_\_\_  
Signature

Paul J. Hooper

Name

Deputy Under Secretary of Defense  
International & Commercial Programs

Title

May 14, 1998

Date

Washington, DC

Location

FOR THE MINISTER OF DEFENCE  
OF THE KINGDOM OF THE  
NETHERLANDS:

  
\_\_\_\_\_  
Signature

Dr. V. J. Fledderus

Name

National Armaments Director  
(Netherlands)

Title

May 14, 1998

Date

Washington, DC

Location

ANNEX A

to

THE US-NETHERLANDS TECHNOLOGY RESEARCH AND DEVELOPMENT PROJECTS  
MOU dated MM/DD/YY

\*\*\* [SAMPLE PROJECT AGREEMENT] \*\*\*

PROJECT AGREEMENT NO. \*

between

THE SECRETARY OF DEFENSE  
OF THE UNITED STATES OF AMERICA and the  
MINISTER OF DEFENCE

OF THE KINGDOM OF THE NETHERLANDS

concerning

(FULL DESIGNATION OF THE PROJECT)

\* The Project Agreement Numbers will be structured as follows:  
XX-NN-nnnn where XX is a U.S. Military Service or Defense Agency  
designator such as N for Navy, A for Army, AF for Air Force, AR  
for ARPA, etc; NN is the calendar year, and nnnn is a sequential  
number.

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## INTRODUCTION

This Project Agreement (PA) is entered into pursuant to the MOU between the Secretary of Defense of the United States of America and the Minister of Defence of the Kingdom of the Netherlands concerning Technology Research and Development Projects of ( date ) .

## DEFINITION OF TERMS AND ABBREVIATIONS

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

## OBJECTIVES

The objectives of this Project are:

- a. the development of
- b. the improvement of

## SCOPE OF WORK

The following work will be undertaken under this PA.

- a. Develop
- b. Evaluate
- c. Design, fabricate and test

## SHARING OF TASKS

The sharing of tasks will be as follows:

- a. The DOD will
- b. The MOD will
- c. DOD and MOD will jointly

## BREAK DOWN AND SCHEDULE OF TASKS

(OPTIONAL)

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

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

| Phase 1   | Start    | End      |
|---|----------|----------|
| Description of Phase 1                                  | MM/DD/YY | MM/DD/YY |
| (Milestone 1) (e. g. Transmittal of Feasibility Report) |          |          |

| Phase 2  | Start    | End      |
|--|----------|----------|
| Description of Phase 2                               | MM/DD/YY | MM/DD/YY |
| (Milestone 2) (e. g. Decision to proceed to phase 3) |          |          |

| Phase 3   | Start    | End      |
|---|----------|----------|
| Description of Phase 3                                | MM/DD/YY | MM/DD/YY |
| (Milestone 3) (e. g. Evaluation, analysis of results) |          |          |

(Add as many phases as necessary)

The final report must be transmitted to the TRDP/EAs six months

before the termination date for this PA.

## MANAGEMENT

### 1. Steering Committee:

(It is anticipated that most Projects will not need the establishment of a Steering Committee; however, for such instances where a SC is deemed to be required, the following provides for the designation of SC members)

|                |                |
|----------------|----------------|
| US Co-Chairman | Title/Position |
|                | Organization   |
|                | Address        |

|                |                |
|----------------|----------------|
| NL Co-Chairman | Title/Position |
|                | Organization   |
|                | Address        |

### 2. Project Officers:

|       |                |
|-------|----------------|
| US PO | Title/Position |
|       | Organization   |
|       | Address        |

|       |                |
|-------|----------------|
| NL PO | Title/Position |
|       | Organization   |
|       | Address        |

### 3. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under Article IV of the TRDP MOU).

## FINANCIAL ARRANGEMENTS

The Participants agree that the cost of performance of the tasks under this PA will not exceed US\$ X + DG Y.

The DOD tasks will not cost more than US\$:

The MOD tasks will not cost more than DG:

Cooperative efforts of the Participants over and above the jointly agreed tasks set forth in the SCOPE OF WORK and SHARING OF WORK and FINANCIAL ARRANGEMENTS sections will be subject to amendment to this PA or signature of a new PA.

## CONTRACTING

(OPTIONAL)

## CLASSIFICATION

Only one of the three following possibilities must be selected:

- a. No Classified Information will be exchanged under this PA;
- b. The highest level of Classified Information exchanged under this PA is: Confidential; or
- c. The highest level of Classified Information exchanged under this PA is: Secret.

## PRINCIPAL ORGANIZATIONS INVOLVED

(List government laboratories, universities, industry and other organizations for both the US and The Netherlands).

## LOAN OF MATERIALS, SUPPLIES, AND EQUIPMENT

(OPTIONAL)



ENTRY INTO FORCE, DURATION AND TERMINATION

This PA, a Project under the TRDP MOU between the Secretary of Defense of the United States of America and the Minister of Defence of the Kingdom of the Netherlands, will enter into force upon signature by the TRDP MOU Executive Agents, and will remain in force for \_\_\_\_ years unless terminated by either Participant. It may be extended by written agreement by the TRDP MOU Executive Agents.

DONE in duplicate, in the English language.

For the US TRDP/EA

For the NL TRDP/EA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Location

\_\_\_\_\_  
Location



**AMENDMENT ONE**

**TO THE**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**SECRETARY OF DEFENSE**

**ON BEHALF OF THE DEPARTMENT OF DEFENSE**

**OF THE UNITED STATES OF AMERICA AND THE**

**MINISTER OF DEFENCE**

**OF THE KINGDOM OF THE NETHERLANDS**

**CONCERNING**

**TECHNOLOGY RESEARCH AND DEVELOPMENT PROJECTS**

In accordance with their responsibilities in Article XVI (Amendment and Termination), the United States and the Kingdom of the Netherlands have mutually agreed to amend the Memorandum of Understanding Between the Secretary of Defense on Behalf of the Department of Defense of the United States of America and the Minister of Defence of the Kingdom of the Netherlands Concerning Technology Research and Development Projects (TRDP MOU), dated May 14, 1998, as follows:

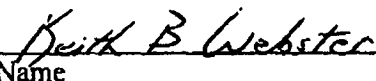
1.1 Article XVII (Entry into Force and Duration) of the TRDP MOU is hereby amended to read:

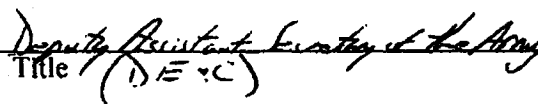
This TRDP MOU, which consists of the Preamble and seventeen (17) Articles, will enter into force upon the date of last of signature by both Participants, and will remain in force for fifteen (15) years unless terminated by either Participant. It may be extended by written agreement of the Participants. All PAs will terminate upon the termination or expiration of this TRDP MOU.


1.2 All other provisions of the TRDP MOU remain unchanged.

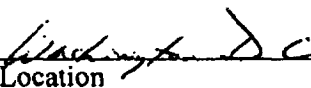
FOR THE SECRETARY OF DEFENSE  
OF THE UNITED STATES OF  
AMERICA:

  
Signature

  
Name

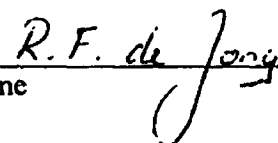
  
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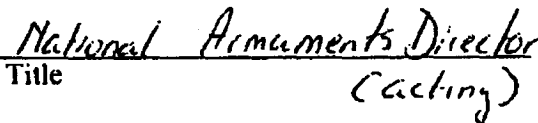
  
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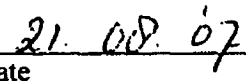
  
Location

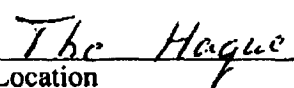
FOR THE MINISTER OF DEFENCE OF  
THE KINGDOM OF THE  
NETHERLANDS:

  
Signature

  
Name

  
Title

  
Date

  
Location