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**AGREEMENT**

**BETWEEN**

**THE DEPARTMENT OF DEFENSE OF  
THE UNITED STATES OF AMERICA**

**AND THE**

**MINISTRY OF DEFENSE OF  
THE KINGDOM OF DENMARK**

**CONCERNING**

**BALLISTIC MISSILE DEFENSE TECHNOLOGY**

**(SHORT TITLE – U.S./Denmark BMDT Agreement)**

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**PREAMBLE**

Recognizing the General Security of Military Information Agreement Between the Government of the United States of America and the Government of the Kingdom of Denmark of February 27, 1981;

Recognizing the Memorandum of Understanding Between the Government of the Kingdom of Denmark and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement, and Logistic Support of Defense Equipment of January 30, 1980, as amended May 27, 1994;

Recognizing the applicability of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces (NATO SOFA), dated June 19, 1951;

Recognizing the Declaration of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry Between the United States Department of Defense and the Royal Danish Ministry of Defence (MoD) of May 17, 2005;

Recognizing the decision of the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague on November 21, 2002, to examine options for addressing the increasing missile threat to Alliance territory, forces and population centers in an effective and efficient way through an appropriate mix of political and defense efforts, along with deterrence, and to initiate a new NATO missile defense feasibility study to examine options for protecting Alliance territory, forces and population centers against the full range of missile threats;

Recognizing the letter of the Minister for Foreign Affairs of the Kingdom of Denmark to the Secretary of State of the United States of America (U.S.) on May 28, 2004, that favorably responds to the request for permission for the U.S. to upgrade the Thule Early Warning Radar, as described in the Secretary of State's letter dated December 17, 2002, to provide tracking information to the missile defense system; and

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Recognizing the Agreement between the Government of the United States of America and the Government of the Kingdom of Denmark, Including the Home Rule Government of Greenland, to Amend and Supplement the Agreement of 27 April 1951 Pursuant to the North Atlantic Treaty between the Government of the United States of America and the Government of the Kingdom of Denmark Concerning the Defense of Greenland (Defense Agreement) Including Relevant Subsequent Agreements Related Thereto, of August 6, 2004.

The Department of Defense of the United States of America and the Ministry of Defense of the Kingdom of Denmark, hereinafter referred to as the Parties:

Having a common interest in defense;

Recognizing the dangers resulting from the proliferation of weapons of mass destruction and ballistic missile delivery systems;

Having a mutual need to counter the proliferation of weapons of mass destruction and their delivery means;

Recognizing the U.S. Government's decision to develop and deploy a set of missile defense capabilities; and

Recognizing that missile defense is one of several measures to counter the proliferation of ballistic missile technology;

HAVE AGREED as follows:

**ARTICLE I  
PURPOSE**

The United States has begun deploying an initial set of missile defense capabilities for defense against ballistic missiles of all ranges in all phases of their flight for the protection of its territory, friends and allies, and deployed forces. These capabilities shall serve as a starting point for fielding improved and expanded missile defense capabilities later. The U.S. Ballistic Missile Defense System (BMDS) Program is the program to develop and deploy the U.S. BMDS. The government of the Kingdom of Denmark has welcomed assurances that the

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United States is prepared to extend coverage and make missile defense capabilities available to the Kingdom of Denmark, as the evolution of the U.S. BMDS permits, should the Kingdom of Denmark so desire, and subject to determination of political and financial arrangements.

A valuable contribution to the U.S. BMDS is the Kingdom of Denmark's favorable response to the U.S. request for permission to upgrade the Early Warning Radar at the Thule Air Base in Greenland as described in the U.S. Secretary of State's letter, dated December 17, 2002.

This Agreement between the Parties is made for the purpose of exploring the possibilities and modalities for, and, if agreement is reached, engaging in cooperative research, development, design, testing, industry-to-industry cooperation, including mutual sharing of technology, production, deployment, and support of agreed aspects of an integrated defense against ballistic missiles launched at the territories or armed forces of the Parties or those of their allies. This Agreement shall provide a framework for the closest possible involvement and provide insight to the Kingdom of Denmark, both government and industry, into the U.S. BMDS Program to the mutual benefit of the Parties. This Agreement shall also promote and facilitate fair opportunities for the Kingdom of Denmark and U.S. industries to participate in the U.S. BMDS Program.

**ARTICLE II  
SCOPE**

The scope of this Agreement encompasses exchange of information that relates to the U.S. BMDS Program and is necessary to fulfill the purpose of this Agreement and the establishment of Annexes to this Agreement. The overall work to be performed under this Agreement may include work concerning cooperative research, development, design, testing, industry-to-industry cooperation, including mutual sharing of technology, production, deployment and support of agreed aspects of an integrated BMDS by the Parties. Specific cooperative activities, both government and industry, shall be set forth in Annexes to this Agreement or through other instruments. Such Annexes could include, for example, a joint technical program of cooperative Research, Development, Testing & Evaluation (RDT&E) and other activities relating to the U.S. BMDS Program.

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Each Annex shall include specific provisions concerning the objectives, scope of work, sharing of tasks, management structure, financial arrangements, disclosure and use of information, third party transfers, and, where required, provisions concerning contractual and personnel arrangements, security classification, and other matters as required.

This Agreement provides no authority for placing contracts in connection with any cooperative activities under this Agreement. Such authority shall be derived specifically from any Annexes to this Agreement that may be concluded separately by the Parties. No requirement shall be imposed by either Party for work sharing or other industrial or commercial compensation in connection with this Agreement.

**ARTICLE III  
MANAGEMENT**

Notwithstanding other provisions herein, the Director, Missile Defense Agency (MDA), U.S. DoD, is solely responsible for managing the cost, schedule, performance, and technical aspects of the U.S. BMDS Program.

An Executive Steering Committee (ESC) shall be established to oversee all activities under this Agreement. The ESC consists of Director, MDA, and the Danish National Armaments Director, or their designees. The hosting member shall chair meetings of the ESC. Decisions of the ESC shall be made by consensus. The ESC shall meet at least annually, and may also be convened at the request of one of the Parties. The ESC shall resolve issues affecting both Parties that arise during execution of this Agreement that are not resolved at lower levels.

In exercising direction and oversight of all activities under this Agreement, the ESC is responsible for identifying mutually beneficial cooperative activities; authorizing exchanges of information consistent with the national disclosure policies and regulations of the furnishing Party; approving security procedures and financial management procedures; reviewing and approving third party transfers; reviewing and approving plans for work; and concluding Annexes under this Agreement. The ESC shall resolve issues affecting both Parties that arise during execution of any of the activities detailed in this Agreement that are not resolved at lower levels.

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The organization of the Danish National Armaments Director is the primary interface between the Danish Government and the MDA and shall operate according to an agenda approved by the ESC. Together, the MDA and the organization of the Danish National Armaments Director shall manage all missile defense related efforts under this Agreement. Industry-to-industry interaction shall also be encouraged and facilitated via the interface between the MDA and the organization of the Danish National Armaments Director.

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**ARTICLE IV  
FINANCIAL PROVISIONS**

Except for those costs associated with national representation at meetings and visits under this Agreement, this framework Agreement does not in itself entail any financial costs. According to Article II, each Annex under this Agreement shall include specific provisions concerning financial arrangements, including the equitable share of financial and non-financial costs related to the activities conducted under each Annex.

The Parties shall bear entirely the costs associated with any unique national requirements that they identify to satisfy their own needs. They shall also pay costs associated with national representation at meetings. A Party shall promptly notify the other Party if available funds are not adequate to fulfill its obligations under future Annexes to this Agreement. In such instances, the Parties shall immediately consult with a view toward continuation on a changed or reduced basis.

**ARTICLE V  
DISCLOSURE AND USE OF INFORMATION**

Both Parties recognize that successful cooperation depends on full and prompt exchange of information. MDA and the Danish MoD shall control all government-to-government and government-to-industry information exchanged under this Agreement, subject to the first paragraph of Article XIII (General Provisions). Both Parties shall provide sufficient insight into arrangements that ensure shared information is protected.

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Except as provided for below, information may be exchanged pursuant to this Agreement, and a Party (including its contractor support personnel, who are individuals whose services are provided, under contract, by non-governmental sources to support the Party's government officials directly by providing scientific, engineering, or technical advice and assistance and who are legally bound by contract not to use the information received in the course of their duties for purposes other than their direct government support role) may use the information exchanged under this Agreement solely for information and evaluation purposes.

No information furnished pursuant to this Agreement shall be used by the receiving Party or its contractor support personnel for any purpose other than the purpose for which it was furnished without the specific prior written consent of the furnishing Party, specifying the authorized use of the information. Notwithstanding any other provision in this Agreement, the receiving Party shall not disclose information exchanged or generated under this Agreement to contractors or any other persons, other than its contractor support personnel, without the specific prior written consent of the furnishing Party. Information that is exchanged under this Agreement shall only be disclosed to third parties by the receiving Party in accordance with Article IX (Third Party Transfers). For purposes of this Agreement, a "third party" is a government other than the government of a Party and any person or other entity whose government is not the government of a Party.

Notwithstanding any other provision in this Article, information shall be exchanged only where it may be done without incurring liability to holders of proprietary rights and where disclosure is consistent with national disclosure policies and regulations, including export control regulations, of the furnishing Party. The Parties shall use their best efforts to facilitate disclosure of information under this Agreement consistent with national disclosure policies. Any specific disclosure limitations shall be described in Annexes to this Agreement.

No transfer of ownership of information shall take place under this Agreement. Information shall remain the property of the originating Party or its contractors.

The Parties shall specify in each Annex to this Agreement provisions concerning the types of information that may be exchanged under that Annex and the permissible uses of such information.

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All unclassified information subject to proprietary interests shall be identified and marked, and it shall be handled in accordance with Article VI (Controlled Unclassified Information). All classified information subject to proprietary rights shall be so identified and marked, and it shall be handled in accordance with Article VIII (Security).

**ARTICLE VI  
CONTROLLED UNCLASSIFIED INFORMATION**

Except as otherwise provided in this Agreement or authorized in writing by the originating Party, controlled unclassified information (which is unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations, and is appropriately marked to identify its "in confidence" nature) received under this Agreement shall be controlled as follows:

Such information shall be used only for the purposes authorized for use of information as specified in Article V (Disclosure and Use of Information).

Access to such information shall be limited to personnel whose access is necessary for the above permitted use, and shall be subject to the provisions of Article IX (Third Party Transfers).

Each Party shall 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 the preceding paragraph, unless the originating Party 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 shall be given to the originating Party prior to such disclosure.

To assist in providing the appropriate controls, the originating Party shall ensure that information is appropriately marked to indicate its "in confidence" nature. The Parties shall decide in advance and in writing on the markings to be

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placed on controlled unclassified information. Controlled unclassified information received under this Agreement shall be handled in a manner that ensures control as provided for above.

Prior to authorizing the release of controlled unclassified information to contractors, the Parties shall ensure that the contractors are legally bound to control such information in accordance with the provisions of this Article.

U.S. export controlled information shall be marked as "U.S. ITAR Controlled Information."

**ARTICLE VII  
VISITS TO ESTABLISHMENTS**

Each Party shall permit visits to its relevant establishments by personnel (including non-government personnel) of the other Party, provided that the visit is authorized by both Parties and visiting personnel have appropriate security clearances and a need-to-know.

All such visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

Requests for visits by personnel of one Party to relevant establishments of the other Party shall be coordinated through established official channels, shall conform with the recognized visit procedures of the host country, and shall cite this Agreement. Lists of personnel of each Party required to visit on a continuing basis shall be submitted through official channels in accordance with recurring international visit procedures.

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**ARTICLE VIII  
SECURITY**

Any classified information that may be transferred between the Parties under this Agreement shall be furnished in accordance with the General Security of Military Information Agreement Between the Government of the United States of America and the Government of the Kingdom of Denmark of February 27, 1981.

Classified information and material shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

Each Party shall take all lawful steps available to it to ensure that information received under this Agreement is protected from further disclosure, unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

Except as authorized under this Agreement, the recipient shall not release the classified information to any government, national, organization, or other entity of a third party without the prior written consent of the originating Party in accordance with the procedures set forth in Article IX (Third Party Transfers);

The recipient shall not use the classified information for other than the purposes provided for in this Agreement; and

The recipient shall comply with any distribution and access restrictions on information provided under this Agreement.

The recipient Party shall investigate all cases in which it is known or where there are grounds for suspecting that classified information or material received under this Agreement has been lost or disclosed to unauthorized persons. The recipient Party shall also, in accordance with its national law, promptly and fully inform the providing Party of the details of any such occurrences, the final results of the investigation, and the corrective action taken to preclude recurrences.

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For any facility wherein classified information or material is to be used, the responsible Party shall approve the appointment of a person or persons of sufficient rank to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this Agreement. These officials shall be responsible for limiting access to classified information or material involved in this Agreement to those persons who have been properly approved for access and have the requisite need-to-know.

Each Party shall 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 information.

Classified information may be exchanged in accordance with this Agreement up to the SECRET level. The existence of this Agreement is UNCLASSIFIED and the contents are FOR OFFICIAL USE ONLY.

**ARTICLE IX  
THIRD PARTY TRANSFERS**

A Party shall not sell, transfer title to, transfer possession of, or otherwise disclose information exchanged, but not generated under, this Agreement to any third party without the prior written consent of the Party that provided such information. The providing Party shall be solely responsible for authorizing any transfers and, as applicable, specifying the method and conditions for implementing any transfers.

The Parties shall not sell, transfer title to, transfer possession of or otherwise disclose information generated under this Agreement, exclusive of its Annexes or other related instruments, to a third party without the prior written consent of the other Party. In the event of such a transfer, the transferring Party shall be required to obtain written assurances from the third party not to transfer or permit retransfer of any of the information provided, and shall use such information only for the purposes for which it was provided.

The Parties shall establish specific provisions in each Annex to this Agreement that govern third party transfers, which may take precedence over this Article of the Agreement. However, no Annex shall change the definition of third

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party as provided for in this Agreement. Those provisions shall take into account the extent of financial or other contributions of each Party and the potential impact on the U.S. BMDS Program.

**ARTICLE X  
LIABILITY AND CLAIMS**

Claims against either Party or its personnel shall be dealt with in accordance with the terms of Article VIII of the NATO Status of Forces Agreement (NATO SOFA), dated June 19, 1951. Civilian employees of the Parties assigned to duty within their government's Defense Department or Ministry shall be deemed for the purpose of Article VIII of NATO SOFA to be members of a civilian component within the meaning of Article I of NATO SOFA while present in the territory of the other Party for the purpose of this Agreement.

Claims arising under or related to any contract awarded pursuant to this Agreement shall be resolved in accordance with the provisions of the contract.

Employees and agents of contractors shall not be considered to be civilian personnel employed by a Party under the NATO SOFA for the purpose of this Article.

**ARTICLE XI  
CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES**

Customs duties, import and export taxes, and similar charges shall be administered in accordance with each Party's respective laws and regulations. Insofar as existing national laws and regulations permit, the Parties shall 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 Agreement.

Each Party shall 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 changes are levied, the Party in whose country they are levied shall bear such costs.

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If it is necessary to levy duties in order to comply with European Union (EU) laws, regulations, or policies, then these duties shall be met by the recipient. To this end, equipment and parts or components of the equipment coming from outside the EU shall proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The duties shall be levied as a cost over and above the EU member's shared cost of the cooperative activity

**ARTICLE XII  
SETTLEMENT OF DISPUTES**

Disputes between the Parties arising under or relating to this Agreement shall be resolved only by consultations between Parties, and not be referred to any individual, any national court or any international tribunal, or any other forum for resolution or settlement.

**ARTICLE XIII  
GENERAL PROVISIONS**

All activities of the Parties under this Agreement and any Annex shall be carried out in accordance with their national laws and regulations, including their export control laws and regulations. Such activities shall be subject to the availability of appropriated funds. In the case of inconsistencies regarding the provisions, or their application or interpretation, between this Agreement and its Annexes, the Agreement shall govern.

Except as otherwise provided, this Agreement may be amended by the written consent of the Parties.

The Agreement may be terminated at any time by the mutual written consent of both Parties. In that event, the ESC shall consult prior to the date of termination to ensure termination on the most economical and equitable terms, subject to the provisions of this Agreement.

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A Party may terminate this Agreement upon 180 days written notification to the other Party. Such notification shall be the subject of immediate consultation by the ESC to decide upon the appropriate course of action to terminate the Agreement. The terminating Party shall minimize the impact upon the other Party by continuing its participation, financial or otherwise, to the effective date of termination. In any case, the cost to the terminating Party shall not exceed its total financial commitment for jointly approved activities, taking into account the amounts already contributed by the terminating Parties.

The rights and obligations of the Parties regarding disclosure and use of information, controlled unclassified information, classified information/materials, security, third party transfers, settlement of disputes, and liabilities and claims set forth in this Agreement shall continue notwithstanding the termination or expiration of this Agreement or any of its Annexes or other instruments.

This Agreement, which consists of thirteen (13) Articles and its future Annexes, which are an integral part thereof, shall enter into force from the date of the signature of both Parties and remain in force for twenty-five (25) years. The Parties shall consult no later than five (5) years prior to the expiration of this Agreement to decide whether or not to extend its duration. This Agreement may be extended by mutual written consent of the Parties. This Agreement does not preclude entering into any other agreement or arrangement in the area of missile defense cooperation.

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

DONE, in duplicate, in the English language at WASHINGTON, DC this 26<sup>TH</sup> day of OCTOBER, 2005.

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

MINISTER OF DEFENCE ON BEHALF  
OF THE MINISTRY OF DEFENCE OF  
THE KINGDOM OF DENMARK

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