

## SECTION VII - FINANCIAL PROVISIONS

7.1. Each Participant's entire contribution represents an equitable share of the MTDS Project, and each Participant will receive the same, equitable share of the results of the MTDS Project.

7.2. It is estimated that the Participants' financial responsibilities under this MOU will not exceed \$15 M (31 December 2003 U.S. dollars):

US	\$2.2 M
UK	£1.1 M
Canada	C\$5.5 M
Netherlands	2.5 M€
Germany	1.0 M€
France	1.0 M€
Italy	0.7 M€

7.3. The Participants will use their best efforts to perform, or to have performed, the work specified in Section III (Scope) and fulfill all the responsibilities under this MOU within the cost specified in paragraph 7.2.

7.4. There will be no transfer of funds and no cost sharing between Participants under this MOU. Each Participant will bear the full costs it incurs for performing, managing, and administering its activities under this MOU.

7.5. Costs associated with any unique national requirements will be borne entirely by the Participant incurring them.

7.6. Cooperative efforts of the Participants over and above the jointly determined work set out in Section III (Scope) will be subject to an Amendment to this MOU.

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

## SECTION VIII – DISCLOSURE AND USE OF INFORMATION

8.1. The Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out the MTDS Project. The Participants intend to acquire and exchange sufficient Information and rights to use such Information to accomplish the objectives of the MTDS Project and evaluate its results. The nature and amount of Information to be acquired will be consistent with Section II (Objective) and Section III (Scope) of this MOU.

8.2. Ownership of Foreground Information generated by a Participant or Contractor will reside with this Participant or Contractor, in accordance with the laws and regulations of the Participant concerned.

### 8.3. Government Foreground Information

8.3.1. Disclosure: Foreground Information generated by a Participant will be disclosed without charge to all Participants.

8.3.2. Use: Each Participant may use, or have used, all Government Foreground Information without charge for Defence Purposes. The Participant generating Government Foreground Information will retain all its rights thereto. If a Participant intends to sell or transfer any Government Foreground Information to a Third Party, the provisions of Section XI (Third Party Sales and Transfers) and Section XIII (Security) of this MOU will also apply.

### 8.4. Government Background Information

8.4.1. Disclosure: Each Participant, upon request, will disclose without charge to the other Participants any of its relevant Government Background Information, provided that:

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

8.4.1.2. such Government Background Information may be made available without incurring liability to holders of proprietary or other rights; and

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

8.4.2. Use: Each Participant may use, or have used, Government Background Information disclosed by one Participant to the other Participants without charge for MTDS Project purposes only. The furnishing Participant will, however, retain all its rights with respect to such Government Background Information. If a Participant intends to sell or transfer any Government Background Information to a Third Party, the provisions of Section XI (Third Party Sales and Transfers) and Section XIII (Security) of this MOU will also apply.

### 8.5. Contractor Foreground Information

8.5.1. Disclosure: Foreground Information generated and delivered by Contractors will be disclosed without charge to all Participants.

8.5.2. Use: Each Participant may use, or have used, without charge for Defence Purposes all Contractor Foreground Information. The furnishing Participant will retain rights of use thereto in accordance with the applicable contract(s). If a Participant intends to sell or transfer any Contractor Foreground Information to a Third Party, the provisions of Section XI (Third Party Sales and Transfers) and Section XIII (Security) of this MOU will also apply.

#### 8.6. Contractor Background Information

8.6.1. Disclosure: Any relevant Contractor Background Information generated and delivered by Contractors, including Information subject to proprietary rights, will be made available to the other Participants without charge provided the following provisions are met:

8.6.1.1. such Contractor Background Information is necessary to or useful in the MTDS Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the MTDS Project;

8.6.1.2. such Contractor Background Information may be made available without incurring liability to holders of proprietary or other rights; and

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

8.6.2. Use: Each Participant may use, or have used, Contractor Background Information furnished by one Participant and disclosed to the other Participants without charge for MTDS Project purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant will retain all its rights with respect to such Background Information. If a Participant intends to sell or transfer any Contractor Background Information to a Third Party, the provisions of Section XI (Third Party Sales and Transfers) and Section XIII (Security) of this MOU will also apply.

#### 8.7. Alternative Uses of Information

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

8.7.2. The prior written consent of each Participant will be required for the use of Foreground Information for purposes other than Defence Purposes.

#### 8.8. Proprietary Project Information

8.8.1. All Project Information subject to proprietary rights will be identified and marked, and it will be handled as Controlled Unclassified Information or as Classified Information depending on its security classification.

8.8.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, signed 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 MOU.

#### 8.9. Patents

8.9.1. Where a Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that Participant will consult with the other Participants regarding the filing of a Patent application for such Project Invention. The Participant which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.

8.9.2. The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.

8.9.3. The other Participants 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 Defence Purposes, any Project Invention.

8.9.4. Patent applications to be filed under this MOU which contain Classified Information, 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, done in Paris on 21 September 1960, and its Implementing Procedures. Each Participant will notify the other Participants of any Patent infringement claims made in its territory arising in the course of work performed under the MTDS Project. Insofar as possible, the other Participants will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in the same percentage as they share the costs of the Project or mutually consent to alternative language. 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 the MTDS Project of any invention covered by a Patent issued by their respective countries.

**SECTION IX - CONTROLLED UNCLASSIFIED INFORMATION.**

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

9.1.1. Such information will be used only for the purposes authorized for use of Information as specified in Section VIII (Disclosure and Use of Information).

9.1.2. Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1 and will be subject to the provisions of Section XI (Third Party Sales and Transfers).

9.1.3. Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure, (including requests under any legislative provisions), except as provided for in subparagraph 9.1.2 unless the originating Participant or Contractor consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant or Contractor.

9.2. To assist in providing the appropriate controls, the originating Participant or Contractor will ensure that its Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the PSI.

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

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the concerned Participant(s) will ensure that the receiving Contractor(s) are legally bound to control such Information in accordance with the provisions of this Section.

**SECTION X - VISITS TO ESTABLISHMENTS**

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participants or by employees of the other Participants' Contractors, provided that the visit is related to the MTDS Project. Such visits will be authorized by the Participants involved and the employees will have any necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel will be required to comply with security regulations of the host Participant. Any Information disclosed or made available to visitors will be treated as if supplied to the Participant(s) sponsoring the visiting personnel.

10.3. Requests for visits by personnel of one Participant to a facility of another Participant will conform to the established visit procedures of the host Participant and will be submitted in accordance with international visit request procedures.

10.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participants will conform to the established visit procedures of the host Participant and will be submitted in accordance with international visit request procedures for recurring visits.

## SECTION XI - THIRD PARTY SALES AND TRANSFERS

11.1. The Participants will not sell, transfer title to, disclose, or transfer possession of Foreground Information or any item produced either wholly or in part from Foreground Information to any Third Party without the prior written consent of the other Participants or Participants' governments, in accordance with national authority. Furthermore, a Participant will not permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participants or Participants' governments, in accordance with national authority. Such consent will not be given unless the government of the intended Third Party recipient confirms in writing with the Participants that it will:

11.1.1. not retransfer, or permit the further retransfer of, any Project Equipment or Information provided; and

11.1.2. use, or permit the use of, the Project Equipment or Information provided only for the purposes specified by the Participants.

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

11.3. In the event questions arise as to whether the Information or Project Equipment (or any item produced either wholly or in part from the Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of, to a Third Party is within the scope of paragraph 11.1, the matter will be brought to the immediate attention of the other Participants. The Participants will resolve the matter prior to any sale or other transfer of such Information or Project Equipment (or any items produced wholly or in part from the Foreground Information) to a Third Party.

**SECTION XII - ADDITIONAL PARTICIPANTS**

12.1. *It is recognized that other Participants may wish to join this MOU.*

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

12.3. The Steering Group will jointly formulate the provisions under which additional Participants might join and will make the appropriate recommendations to the Participants. The addition of new Participants to this MOU will require amendment of this MOU by the Participants.

## SECTION XIII - SECURITY

13.1. All Classified Information and material provided or generated in connection with this MOU will be stored, handled, transmitted and safeguarded in accordance with the Participants' national security laws, regulations and existing Security agreements/arrangements, to the extent that they provide a degree of protection no less stringent than that provided for NATO classified information as detailed in the document "Security Within the North Atlantic Treaty Organization" C-M(2002)49 dated 17 June 2002 and its subsequent amendments.

13.2. Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the DSA/NSA of the Participants, in accordance with existing Security agreements/arrangements among the Participants. Such Classified Information and material will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the Information/material relates to this MOU.

13.3. Each Participant will ensure in a manner consistent with its laws and regulations that Classified Information and material provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 13.8 unless the other Participants consent to such disclosure. Accordingly, each Participant will ensure that:

13.3.1. The recipient will not release Classified Information and material to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section XI (Third Party Sales and Transfers);

13.3.2. The recipient will not use Classified Information and material for other than the purposes provided for in this MOU, unless otherwise approved by the DSA/NSA of the releasing Participant(s); and

13.3.3. The recipient will comply with any distribution and access restrictions on information that is provided under this MOU.

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

13.5. The PSI will describe the methods by which Project Information will be classified, declassified, marked, used, transmitted, and safeguarded. The PSI will be reviewed and forwarded to the Participants' DSA/NSA for approval and will be applicable to all government and Contractor personnel participating in the project. The PSI will be approved by the appropriate DSA/NSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

13.6. The DSA/NSA of the Participant in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information and material, in accordance with its laws and regulations. Prior to the release

to a Contractor, or prospective Contractor of any Classified Information and material received under this MOU, the DSA/NSA will:

- 13.6.1. ensure that such Contractor, or prospective Contractor and its facilities have the capability to protect the Classified Information and material adequately;
  - 13.6.2. grant a security clearance to the facilities, if appropriate;
  - 13.6.3. grant a security clearance for all personnel whose duties require access to Classified Information and material, if appropriate;
  - 13.6.4. ensure that all persons having access to the Classified Information and material are informed of their responsibilities to protect the Classified Information and material in accordance with national security laws and regulations, and the provisions of this MOU;
  - 13.6.5. carry out periodic security inspections of cleared facilities to ensure that the Classified Information and material is properly protected; and
  - 13.6.6. ensure that access to the Classified Information and material is limited to those persons who have a need-to-know for purposes of this MOU.
- 13.7. Contractors, or prospective Contractors which are determined by the DSA/NSA 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 and material provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or entities of a Third Party will not have access to Classified Information and material. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participants will be consulted for approval prior to permitting such access.
- 13.8. For any facility wherein Classified Information and material is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons of appropriate status to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU. These officials will be responsible for limiting access to Classified Information and material involved in this MOU to those persons who have been properly approved for access and have a need-to-know.
- 13.9. Each Participant will ensure that access to Classified Information and material is limited to those persons who possess the requisite security clearance and have a specific need for access to the Classified Information and material in order to participate in the Project.
- 13.10. Information and material provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED.

**SECTION XIV - PROJECT EQUIPMENT**

14.1. Each Participant may provide Project Equipment identified as being necessary for implementing this MOU to the other Participants. Such Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another Participant under this MOU will be developed and maintained by the relevant Task Team chairman and approved by the Steering Group. Also, the provision of such equipment may be subject to separate specific arrangements between the Participants concerned.

14.2. The receiving Participant will maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value specified in the equipment list, referenced in paragraph 14.1. above, which will be computed pursuant to the providing Participant's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value specified in the equipment list.

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

14.4. All Project Equipment that is transferred will be used by the receiving Participant(s) only for the purposes set out in this MOU. In addition, in accordance with the Section XI (Third Party Sales and Transfers), equipment and material will not be subsequently transferred to a Third Party without the prior written consent of the providing Participant.

14.5. Project Equipment transferred to one or more Participants under this MOU will be returned to the providing Participant when the Project Equipment and material is no longer needed for the MTDS Project or, in any event, prior to the Participant(s) withdrawal from the MOU, MOU termination or MOU expiration.

**SECTION XV - CUSTOMS DUTIES, TAXES AND SIMILAR CHARGES**

15.1. Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing laws and regulations permit, the Participants will endeavour to ensure that readily identifiable taxes, customs duties and similar charges or quantitative/qualitative restrictions on imports and exports are not imposed in connection with this MOU.

15.2. The Participants concerned will endeavour to ensure that such taxes, customs duties and similar charges from which relief is available as aforesaid do not enter into the prices of information or materials produced under this MOU. The Participants will administer such taxes, customs duties and similar charges in the manner most favourable to the satisfactory execution of the arrangements in this MOU.

15.3. If taxes, customs duties, or similar charges are levied, they will be borne by the Participant of the country in which they are levied as a cost to that Participant.

15.4. If, subject to the application of European Community (EC) regulations, it is necessary to levy duties, then these will be met by the EC member end recipient. To this end, parts or components of the equipment coming from outside the EC will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The method of apportionment of such duties between EC member participants will be decided by consultation.

**SECTION XVI - LIABILITY**

16.1. Claims against any Participant or its personnel will be dealt with in accordance with the terms of Article VIII of the NATO SOFA.