

## SECTION V

### FINANCIAL PROVISIONS

- 5.1 Each Participant will contribute its equitable share of the full Financial Costs and Non-financial Costs of the Program, including overhead costs, administrative costs, and the costs of claims, and each Participant will receive an equitable share of the results of the Program.
- 5.2 The US dollar will be the reference currency for the Program and the Program fiscal year will be the US fiscal year.
- 5.3 This MOU creates no financial or non-financial arrangements regarding individual PAs. Detailed descriptions of the financial and non-financial arrangements for a specific PA, including each Participant's cost share, will be contained in that PA.
- 5.4 The Participants recognize that it may become necessary for one Participant to incur contractual or other responsibilities for the benefit of the other Participant prior to the receipt of the other Participant's funds. In the event that one Participant incurs such responsibilities, the other Participant will make such funds available in such amounts and at such times as may be required by the Contract or other responsibility and to pay any damages and costs that may accrue from the performance or cancellation of the Contract or other responsibility in advance of the time such payments, damages, or costs are due.
- 5.5 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:
  - 5.5.1 Costs associated with national representation at meetings.
  - 5.5.2 Costs associated with any unique national requirements identified by a Participant.
  - 5.5.3 Any other costs not expressly stated as shared costs or any costs that are outside the scope of this MOU.
- 5.6 The CPM will be responsible for establishing the detailed financial management procedures under which the Program will operate. These procedures must be in accordance with the national accounting and auditing requirements of the Participants and subject to the approval of the SC.
- 5.7 The responsibilities of the Participants will be subject to the availability of appropriated funds for such purposes. A Participant will promptly notify the other Participant if available funds are not adequate to fulfill its responsibilities

under this MOU and any resultant PAs. If a Participant notifies another Participant that it is terminating or reducing its funding, both Participants will immediately consult with a view toward continuation on a changed or a reduced basis.

- 5.8 The Participant contracting on behalf of the other Participant or both Participants will be responsible for the audit of the procurement activities for which it is responsible under a PA in accordance with its national practices. The Participant conducting such audits will be responsible for reporting on administration of the other Participant's funds in accordance with its national practices. Audit reports of such funds will be promptly made available to the other Participant.

## SECTION VI

### CONTRACTING PROVISIONS

- 6.1 If either Participant determines that Contracting is necessary to fulfill that Participant's responsibilities under Section III (Scope of Work) of this MOU, that Participant will contract in accordance with its respective national laws, regulations, and procedures. Sources from both Participants' industries will be allowed to compete on an equal basis for such Contracts.
- 6.2 When one Participant individually contracts to perform a task, it 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 prior written consent.
- 6.3 For all Contracting activities performed by either Participant, the CPM will, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure they are consistent with the provisions of this MOU.
- 6.4 The CPO may make use of a Participant's Contracting Agency in the event that Contracting on behalf of the other Participant or both Participants is required to implement a PA. The Contracting Agency so used will place Contracts in accordance with its respective national laws, regulations, and procedures with such waivers and deviations its procedures permit and as deemed necessary to implement the provisions of this MOU. Sources from both Participants' industries will be allowed to compete on an equal basis for such Contracts. The Contracting Participant's Contracting Officer will be the exclusive source for providing contractual direction and instruction to the Contractors.
- 6.5 Each Participant's Contracting Agency will insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU including, Section IX (Disclosure and Use of Program Information), Section X (Controlled Unclassified Information), Section XIII (Security) and Section XIV (Third Party Sales and Transfers) of this MOU. Each Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Program Information required by Section IX (Disclosure and Use of Program Information). During the Contracting process, each Participant will also advise prospective Contractors of their obligation to immediately notify their respective Participant's Contracting Agency, before Contract award, if they are subject to any license or arrangement that will restrict their government's freedom to disclose information or permit its use, and to employ their best efforts not to enter into any new arrangement that will result in restrictions.

- 6.6 In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Program Information as required by Section IX (Disclosure and Use of Program Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of Program Information, that Participant's Contracting Agency will refer the matter to the CPM who will submit it to the SC for resolution.
- 6.7 The CPM will promptly advise the SC of any anticipated or actual cost growth, *schedule changes, delay, or performance problems of any Contractor* for which its Contracting Agency is responsible.
- 6.8 For unique national requirements outside the scope of this MOU, the Participants will be responsible for Contracting on their own behalf in accordance with their respective Contracting procedures. Upon reaching an understanding/arrangement, a Participant may contract for the unique national requirements of the other Participant.

## SECTION VII

### WORK SHARING

- 7.1 No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this MOU and any subsequently established PAs under this MOU that is not in accordance with this MOU.

## SECTION VIII

### PROGRAM EQUIPMENT

- 8.1 Each Participant may provide Program Equipment identified as being necessary for executing the MOU to the other Participant. Program Equipment will remain the property of the providing Participant. A list of all Program Equipment provided by one Participant to another Participant will be developed and maintained by the CPO, approved by the SC, and incorporated into Annex B (Inventory of Program Equipment Exchanges) to this MOU.
- 8.2 The receiving Participant will maintain any such Program Equipment in good order, repair, and operable condition and return the items in as good condition as received, normal wear and tear excepted, unless the providing Participant has authorized the Program Equipment to be expended or otherwise consumed in connection with the Program without reimbursement to the providing Participant. The receiving Participant will pay the cost of damage (other than normal wear and tear) to or loss of Program Equipment.
- 8.3 The providing Participant will deliver Program Equipment to the receiving Participant at a mutually approved location. Possession of the Program Equipment will pass from the providing Participant to the receiving Participant at the time of receipt of the Program Equipment. Any further transportation is the responsibility of the receiving Participant.
- 8.4 All Program Equipment that is transferred will be used by the receiving Participant only for the purposes of carrying out this MOU, unless otherwise consented to in writing by the providing Participant. In addition, in accordance with Section XIV (Third Party Sales and Transfers), Program Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.
- 8.5 Program Equipment transferred to one Participant under this MOU will be returned to the providing Participant prior to the termination or expiration of this MOU.
- 8.6 Any Program Equipment which is jointly acquired on behalf of both Participants for use under this MOU will be disposed as arranged by the SC.
- 8.7 Disposal of jointly acquired equipment may include a transfer of the interest of one Participant in such Program Equipment to the other Participant, or the sale of such equipment to a Third Party in accordance with Section XIV (Third Party Sales and Transfers) of this MOU. The SC will determine how the Participants will share the consideration from jointly acquired Program Equipment transferred or sold to a Third Party.

## SECTION IX

### DISCLOSURE AND USE OF PROGRAM INFORMATION

#### 9.1 General

The Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Program. The Participants intend to acquire sufficient Program Information and rights to use such Information to achieve cooperation on the improvement, operation and support of the AH. The nature and amount of Program Information to be acquired will be consistent with the objectives stated in Sections II (Objectives) and III (Scope of Work). Unless otherwise specified under any subsequently established PAs under this MOU, the disclosure and use of information provisions which govern cooperative activities under this MOU are as follows in this Section.

#### 9.2 Information Exchanges

The Participants may exchange information under this MOU for the specific purposes of identifying areas of potential AH cooperation and the formulation, development and negotiation of PAs in accordance with Section II (Objectives) of this MOU. The furnishing Participant will clearly indicate to the receiving Participant when it is furnishing information for the purposes of paragraph 9.2. A Participant may use the information exchanged for information evaluation purposes only. The specific prior written consent of the originating Participant is required for any other use or disclosure, including to Contractors.

#### 9.3 Government Program Foreground Information

9.3.1 Disclosure: Foreground Information generated in whole or in part by a Participant's military or civilian employees will be disclosed without charge to the other Participant.

9.3.2 Use: Each Participant may use all Government Program Foreground Information without charge for Defense Purposes. The Participant generating Government Program Foreground Information will also retain its rights of use thereto. Any sale or transfer to a Third Party will be subject to the provisions of Section XIV (Third Party Sales and Transfers) of this MOU.

#### 9.4 Government Program Background Information

9.4.1 Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant Government Program Background Information generated by its military or civilian employees outside the scope of this MOU, provided that:

- 9.4.1.1 such Background Information is necessary to or useful in the Program, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Program;
- 9.4.1.2 such Background Information may be made available without incurring liability to holders of proprietary rights; and
- 9.4.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

9.4.2 Use: Government Program Background Information disclosed by one Participant to the other may be used without charge by the other Participant for Program purposes only; however, the furnishing Participant will retain all its rights with respect to such Background Information.

#### 9.5 Contractor Program Foreground Information

- 9.5.1 Disclosure: Foreground Information generated and delivered by Contractors, will be disclosed without charge to both Participants.
- 9.5.2 Use: Each Participant may use without charge for Defense Purposes all Contractor Program Foreground Information generated and delivered by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Program Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Program Foreground Information will be subject to the provisions of Section XIV (Third Party Sales or Transfers) of this MOU.

#### 9.6 Contractor Program Background Information.

- 9.6.1 Disclosure: Any relevant Program Background Information, (including Information subject to proprietary rights) generated and delivered by Contractors or other entities under Contracts awarded by a Participant outside the scope of this MOU, will be made available to the other Participant provided the following provisions are met:
  - 9.6.1.1 such Background Information is necessary to or useful in the Program, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Program;

9.6.1.2 such Background Information may be made available without incurring liability to holders of proprietary rights; and

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

9.6.2 Use: Background Information furnished by one Participant's Contractors and disclosed to the other Participant may be used without charge by the other Participant for Program 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.

#### 9.7. Alternative Uses of Program Information

9.7.1 The prior written consent of each Participant will be required for the use of Program Foreground Information for purposes other than those provided for in this MOU.

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

#### 9.8 Proprietary Information

9.8.1 All Program Information subject to proprietary interests will be identified and marked, and it will be handled as Controlled Unclassified Information.

9.8.2 The provisions of the NATO Agreement on the Communication of Program Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Program Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Program Information related to this MOU.

#### 9.9 Patents

9.9.1 Where a Participant owns title to a Program Invention, or has the right to receive title to a Program Invention, that Participant will consult with the other Participant regarding the filing of a Patent application for such Program Invention. The Participant which has or receives title to such Program 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 Program Invention. If a Participant having

filed or caused to be filed a Patent application decides to stop prosecution of the application or maintenance of a patent granted thereon, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution or maintenance.

- 9.9.2 The other Participant will be furnished with copies of Patent applications filed and Patents granted with regard to Program Inventions.
- 9.9.3 The other 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 Program Invention.
- 9.9.4 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.
- 9.9.5 Each Participant will notify the other Participant of any Patent infringement claims made in its territory arising in the course of work performed under the Program. Insofar as possible, the other Participant 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, 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 Program of any invention covered by a Patent issued by their respective countries.

## SECTION X

### CONTROLLED UNCLASSIFIED INFORMATION

- 10.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:
  - 10.1.1 Such Information will be used only for the purposes authorized for use of Program Information as specified in Section IX (Disclosure and Use of Program Information).
  - 10.1.2 Access to such Information will be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1 and will be subject to the provisions of Section XIV (Third Party Sales and Transfers).
  - 10.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such Information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2., unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the Information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.
- 10.2 To assist in providing the appropriate controls, the originating Participant will ensure that 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 Program Security Instruction.
- 10.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 10.1.
- 10.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such Information in accordance with the provisions of this Section.

## SECTION XI

### VISITS TO ESTABLISHMENTS

- 11.1 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 any necessary and appropriate security clearances and a need-to-know.
- 11.2 All visiting personnel will be required to comply with security regulations of the Host Participant and the establishment to be visited. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.
- 11.3 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 bear the name of the Program.
- 11.4 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.