

SECTION XIII

THIRD PARTY SALES AND TRANSFERS AND ALTERNATIVE USES

13.1 Information Exchange: The provisions which govern the sales and transfers of Information exchanged under the CBR Information exchange efforts authorized in Section III (Scope of Work), paragraph 3.7.1 are as follows.

13.1.1 A Participant will not sell, transfer title to, disclose, or transfer possession of Background Information provided by the other Participant(s) through Information exchange efforts under this MOU to any Third Party without the prior written consent of the Participant which provided such Information.

13.1.2 The providing Participant will be solely responsible for authorizing such transfers, and, as applicable, specifying the method and conditions for implementing any such transfers.

13.2 Other CBR Activities: Participants in specific CBR Activities authorized by Section III (Scope of Work), paragraphs 3.7.2, 3.7.3 and 3.7.4 will address Third Party sales and transfers matters arising during the course of such CBR Activities in accordance with the following provisions.

13.2.1 Except to the extent permitted in paragraph 13.2.2. Participants will not sell, transfer title to, disclose, or transfer possession of Jointly Generated Foreground Information or jointly acquired or produced Equipment and Material to any Third Party without the prior written consent of the Contributing Participants. Furthermore, no Participant will permit any such sale, disclosure, or transfer, including by the owner, without the prior written consent of the Contributing Participants. Such consent will not be given unless the government of the intended recipient agrees in writing with the Contributing Participants that it will:

13.2.1.1 not retransfer, or permit the further retransfer of, any Jointly Generated Foreground Information or jointly acquired Equipment and Material provided; and

13.2.1.2 use, or permit the use of, the Jointly Generated Foreground Information or jointly acquired Equipment and Material provided only for the purpose specified by the Contributing Participants.

13.2.2 Each Contributing Participant will retain the right to use, sell, transfer title, disclose, or transfer possession of Foreground Information:

13.2.2.1 which is generated solely by either that Contributing Participant or that Contributing Participant's Contractors in the performance of that Participant's work allocation under a CBR Activity; and

13.2.2.2 whose generation, use, test, or evaluation has not relied and does not rely, in any way, on the Foreground Information, Background Information, or Equipment and Material generated solely or provided by the other Participants.

13.2.3 In the event questions arise as to whether the Information or Equipment or Material (or any item produced either wholly or in part from the Project 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 13.2.2, the matter will be brought to the immediate attention of the other Contributing Participants. The Contributing Participants will resolve the matter prior to any sale or other transfer of such Information or Equipment and Material (or any items produced wholly or in part from the Project Foreground Information) to a Third Party.

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

13.2.5 Sales and other transfers of equipment developed under this MOU and Foreground Information generated in a CBR Activity may attract a levy to be shared between the Contributing Participants. Prior to any such sales or transfer, the amounts of any levy and the procedures for assessing and distributing such levy will be mutually determined by the Contributing Participants consistent with the laws and regulations of each Contributing Participant. Any Contributing Participant may reduce the assessment of its share of levy.

SECTION XIV

LIABILITY AND CLAIMS

14.1 Claims against any Participant or their personnel will 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 Participants assigned to duty within their government's Defense Department or Ministry will be deemed for the purpose of Article VIII of the NATO SOFA to be members of a civilian component within the meaning of Article I of the NATO SOFA while present in the territory of another Participant for the purposes of this MOU. Claims of loss or damage to Equipment and Material transferred under Section VIII (Equipment and Material Transfers and Disposal) will be dealt with in accordance with Section VIII (Equipment and Material Transfers and Disposal), paragraph 8.2. Employees and agents of Contractors will not be considered to be civilian personnel employed by a Participant for the purpose of 14.1.

14.2 Claims not covered by Article VIII of NATO SOFA or elsewhere in this MOU will be processed by the most appropriate Contributing Participant, as determined by, and in consultation with, the other Contributing Participant(s). The cost incurred in satisfying such claims will be borne equally by the Contributing Participant(s) where there is no CBR PA, or where a CBR PA exists, according to the cost sharing arrangement in that CBR PA. If, however, such liability results from the reckless acts or reckless omissions, willful misconduct or gross negligence of a Contributing Participant, its personnel or agents (excluding Contractors), the costs of any liability will be borne by that Participant alone.

14.2.1 Each Contributing Participant waives all claims against any other Contributing Participant in respect of damage caused to its personnel and or its property by personnel or agents of another Contributing Participant arising out of or in connection with CBR Activities under this MOU. If however, such damage results from the reckless acts or reckless omissions, willful misconduct or gross negligence of a Contributing Participant, its personnel or agents (excluding Contractors), the costs of any liability will be borne by that Participant alone.

14.3 Claims arising under or related to any Contract awarded pursuant to Section VII, (Contracting Provisions) will be resolved in accordance with the provisions of the Contract, including provisions for the indemnification by a Contractor of one or more of the Participants.

SECTION XV

PARTICIPATION OF ADDITIONAL NATIONS

15.1 It is recognized that other national defense organizations may wish to join this MOU.

15.2 Mutual consent of the Participants will be required to conduct discussions with potential additional Participants. The Participants 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 IX (Disclosure and Use of Information), Section X (Controlled Unclassified Information), Section XII (Security) and Section XIII (Third Party Sales and Transfers and Alternative Uses).

15.3 The Participants will jointly formulate the provisions under which additional Participants might join. The addition of new Participants to this MOU will require amendment of this MOU by the Participants.

SECTION XVI

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

16.1 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, the Participants will 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 a CBR Activity.

16.2 Each Participant will 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 customs duties, export taxes, or similar charges are levied during a CBR Activity, the Participant in whose country they are levied will bear such costs over and above that Participant's share of its costs under this MOU.

SECTION XVII

SETTLEMENT OF DISPUTES

17.1 Disputes among the Participants arising under or relating to this MOU will be resolved only by consultation among the appropriate Participants and will not be referred to a national court, to an international tribunal, or to any other person or entity for settlement.

SECTION XVIII

AMENDMENT, TERMINATION, WITHDRAWAL, ENTRY INTO EFFECT AND DURATION

18.1 All activities of the Participants under this MOU and its CBR PAs will be carried out in accordance with their national laws.

18.2 In the event of a conflict between the provisions of this MOU and any CBR Activity, this MOU will take precedence.

18.3 This MOU, including its Appendices, may be amended only upon the unanimous written consent of the Participants. A CBR PA under this MOU may be amended only upon the written consent of the SC of the Contributing Participants in accordance with national procedures.

18.4 This MOU may be terminated at any time upon the unanimous written consent of the Participants. In the event of MOU termination, all CBR Activities will also be automatically terminated. An individual CBR PA may be unanimously terminated at any time upon the written consent of the SC members of the Contributing Participants in accordance with national procedures. Other CBR Activities may be unanimously terminated in writing by the POs. In the event the Participants decide to terminate this MOU or a CBR Activity, they will consult at the appropriate level prior to the date of its termination. When any Contract is terminated by unanimous consent of the Participants, the Contract termination costs, if any, will be shared in proportion to the Participants' share of the cost of the Contract.

18.5 In the event that any one Participant wishes to withdraw, that Participant will give written notice to the other Participants as follows:

18.5.1 from this MOU, 180 days;

18.5.2 from any CBR PA, 90 days;

18.5.3 from other CBR Activities not otherwise provided for, 45 days.

18.5.4 Such notification will be the subject of immediate consultation by the other Participants to decide whether to proceed on a changed or reduced basis. In the event of such a withdrawal, the following will apply:

18.5.4.1 the withdrawing Participant will continue participation, financial or otherwise, up to the effective date of its withdrawal;

18.5.4.2 Subject to the provisions of 18.5.4.3, each Participant will pay the

costs it incurs as a result of withdrawal.

18.5.4.3 The withdrawing Participant will pay all Contract modifications or termination costs arising from the terms of the Contract itself, that would not otherwise have been incurred but for the decision to withdraw. However, the total contribution of the withdrawing Participant, including termination costs, will in no event exceed the amount the withdrawing Participant would have contributed had it not withdrawn.

18.5.4.4 All Information and rights therein received under the provisions of this MOU prior to the withdrawal of a Participant will be retained by the withdrawing Participant subject to the provisions of this MOU.

18.5.4.5 The remaining Participant(s) will make available to the withdrawing Participant the Foreground Information to which the withdrawing Participant is entitled by virtue of its participation, up to and including the effective date of withdrawal in the CBR Activity from which it has withdrawn. No further rights will accrue to the withdrawing Participant.

18.5.4.6 If requested by the other Participants, the withdrawing Participant may continue to administer CBR Project Contracts which it awarded on behalf of all the Participants in accordance with national laws and procedures.

18.6 The respective rights and responsibilities of the Participants regarding Section VIII (Equipment and Material Transfers and Disposal), Section IX (Disclosure and Use of Information), Section X (Controlled Unclassified Information), Section XII (Security), Section XIII (Third Party Sales and Transfers and Alternative Uses), and Section XIV (Liability and Claims), will continue notwithstanding termination, withdrawal, or expiration of this MOU or any CBR Activity.

18.7 This MOU, which consists of the Introduction, eighteen Sections and three Appendices, will enter into effect upon the signature of all Participants and will remain in effect for 25 years. This MOU may be extended by written consent of the Participants.

The foregoing represents the understanding reached between the Department of National Defence of Canada, the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, and the Secretary of Defense on behalf of the Department of Defense of the United States of America.

SIGNED in triplicate.

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

Delores M. Etter
Signature

Delores M. Etter
Name

Dep. Director of Defense Research
& Engineering
Title

1 June 2000
Date

Washington
Location

FOR THE
DEPARTMENT OF
NATIONAL DEFENCE OF CANADA:

P. J. Leggat
Signature

L. J. Leggat
Name

ADM (S&T)
Title

6 April 2000
Date

Washington
Location

FOR THE SECRETARY OF STATE
FOR DEFENCE OF THE UNITED
KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND:

G. H. B. Jordan
Signature

G. H. B. JORDAN
Name

DUS (S&T)
Title

10th April 2000
Date

Washington
Location

CBR EQUIPMENT AND MATERIAL TRANSFER FORM

TO THE
CA-UK-US
MEMORANDUM OF UNDERSTANDING
FOR THE

RESEARCH, DEVELOPMENT AND ACQUISITION OF CHEMICAL,
BIOLOGICAL AND RADIOLOGICAL DEFENSE MATERIEL

DATED MM/DD/YR

CHEMICAL, BIOLOGICAL AND RADIOLOGICAL
EQUIPMENT AND MATERIAL TRANSFER NO. (insert no. to be assigned by Providing
Participant)

between

(insert titles of the providing and receiving Participant Organizations of the transfer)

Note: A single Equipment and Material Transfer Form may be used to document transfers among Participants, even if the proposed transfer will entail Multiple Equipment and Material items being transferred among multiple Participants. For multiple item transfers among multiple Participants, ensure that paragraph 1.1 of this CBR E&MT Form contains a complete description of all proposed transfers. This transfer form is a guide, which may require adaptation to comply with national procedures provided that all modifications are consistent with the provisions of this MOU.

INTRODUCTION

This Equipment and Material Transfer (E&MT) is entered into pursuant to the Memorandum of Understanding (MOU) among the Department of National Defence of Canada, the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, and the Secretary of Defense on behalf of the Department of Defense of the United States of America concerning the Research, Development and Acquisition of Chemical, Biological and Radiological Defense Materiel (CBR MOU) of (insert effective date of CBR MOU). This CBR E&MT Form is being executed by authorized representatives of the providing and receiving Participants pursuant to Section VIII (Equipment and Material Transfers and Disposal) of the CBR MOU.

**SECTION I
DESCRIPTION AND QUANTITY**

1.1 The following Equipment and Material will be transferred by the providing Participant(s) to the receiving Participant(s):

<u>Providing Participant(s)</u>	<u>Receiving Participant(s)</u>	<u>Quantity</u>	<u>Description</u>	<u>Part/ Stock</u>	<u>Approx Value</u>	<u>Classification of Item</u>
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(fill in as appropriate)

1.2 (Choose one of the following alternatives, or use both if both situations apply.)

Alternative A -- Use when return of Equipment and Material is planned.

“None of the Equipment and Material identified in paragraph 1.1 is intended to be consumed or expended during the course of the CBR Activity described in paragraph 2.1.1.”

Alternative B -- Use when return of Equipment and Material is not planned due to its consumption during the activity.

“The Equipment and Material (specify as appropriate by highlighting in paragraph 1.1) described in paragraph 1.1 is intended to be consumed or expended during the course of the CBR Activity described in paragraph 2.1.1.”

**SECTION II
PURPOSE**

2.1 The purpose of this Equipment and Material transfer is to support the following CBR Activity.

2.1.1 (fill in as appropriate)

SECTION III
MANAGEMENT AND RESPONSIBILITIES

3.1 Each Participant will establish a point of contact who will be responsible for implementing this Equipment and Material transfer

3.1.1 For the providing Participant(s) the point(s) of contact is/are _____*

3.1.2 For the receiving Participant(s) the point(s) of contact is/are _____*

* **Insert the appropriate names, titles/office symbols, addresses, and telephone numbers of the individuals assigned to implement this Equipment and Material transfer.**

3.2 Responsibilities of the Providing Participant(s)

3.2.1 Transfer of the Equipment and Material - The providing Participant(s) will transfer the Equipment and Material listed above for the duration of the transfer period specified in paragraph 5.4 unless extended by mutual written consent.

3.2.2 Equipment and Material Delivery - The providing Participant(s) will make available the Equipment and Material (**specify arrangements**). Custody of the Equipment and Material will pass from the providing Participant(s) to the receiving Participant(s) at the time of receipt of the Equipment and Material. Any further transportation is the responsibility of the receiving Participant(s) unless otherwise specified in this paragraph.

3.3 Responsibilities of the Receiving Participant(s)

3.3.1 Inspection and Inventory - The receiving Participant(s) will inspect and inventory the Equipment and Material upon receipt. The receiving Participant(s) will also inspect and inventory the Equipment and Material prior to its return to the providing Participant(s) unless the Equipment and Material is consumed in accordance with paragraph 3.3.2.

3.3.2 (Choose one of the following alternatives, or use both if both situations apply.)

Alternative A -- Use when return of Equipment and Material is planned.

"Return of Equipment and Material - Upon expiration or termination of the transfer period specified in paragraph 5.4 (taking into account any approved extension by the providing Participant(s)), the receiving Participant(s) will return the Equipment and Material to the providing Participant (**specify arrangements**). If the Equipment and Material is lost, unintentionally destroyed, or damaged beyond repair, while in the custody of the receiving Participant(s), the receiving Participant(s) will issue a certificate of loss/destruction/irreparable damage to the providing Participant(s)."

Alternative B -- Use when return of Equipment and Material is not planned due to its consumption during the Activity.

"Consumption of Equipment and Material - It is intended that the receiving Participant(s) will consume the Equipment and Material specified in paragraph 1.1 during the course of the Activity described in paragraph 2.1.1. If this does occur, the receiving Participant(s) will provide written notice of its consumption to the providing Participant(s). In the event consumption does not occur prior to the end of the transfer period specified in paragraph 5.4, the receiving Participant(s) will return the Equipment and Material to the providing Participant (**specify arrangements**) or will destroy the Equipment and Material (**specify arrangements**). If the Equipment and Material is lost, unintentionally destroyed, or damaged beyond repair prior to its intended consumption while in the custody of the receiving Participant(s), the receiving Participant(s) will issue a certificate of loss/destruction/irreparable damage to the providing Participant(s)."

3.3.3 If required by national procedures, insert the following:

"A test report will be provided free of charge by the receiving Participant to the providing Participant within ___ days after the completion of the loan period."

3.4 This CBR E&MT Form provides only for transfer of Equipment and Material associated with the activity described in paragraph 2.1.1. Signature of this CBR E&MT Form does not imply any commitment by a Participant to participate in any activities beyond the E&MT described herein.

**SECTION IV
CLASSIFICATION**

4.1 The classification of all Equipment and Material transferred under this CBR E&MT form is specified in Section 1.1. The highest level of classified Equipment and Material listed in Section 1.1 is (**insert highest classification**).

SECTION V
MODIFICATION, TERMINATION, AND TRANSFER PERIOD

5.1 The provisions of this E&MT Form may be modified or extended by written mutual consent of authorized representatives of the Participants in accordance with Section VIII (Equipment and Material Transfers and Disposal) of the CBR MOU.

5.2 The Equipment and Material transfer described in this CBR E&MT Form may be terminated at any time in accordance with the following provisions.

5.2.1 Through the mutual written consent of the authorized representatives of the Participants.

5.2.2 Unilaterally by the receiving Participant(s) on 60 days written notice to the providing Participant(s).

5.2.3 Unilaterally by the providing Participant(s) at any time.

5.3 Responsibilities regarding security and protection against unauthorized use, disclosure, or transfer that accrued prior to termination or expiration of the transfer period will continue to apply without limit of time in accordance with Section XVIII (Amendment, Termination, Withdrawal, Entry into Effect, and Duration) of the CBR MOU.

5.4 The transfer period for the Equipment and Material described herein begins on the date of the last signature below, and unless terminated or extended, and will continue until (**enter date or amount or time**).

(Delete extra signature block(s) if fewer than three CBR MOU Participants are Participants in this Equipment and Material Transfer).

Signature

Name

Title

Date

Location

Signature

Name

Title

Date

Location

Signature

Name

Title

Date

Location

(Signature of the EMT Form will be by the PO's of the Providing and Receiving Participants unless otherwise delegated by the PO.)