

MEMORANDUM OF UNDERSTANDING

AMONG
THE DEPARTMENT OF NATIONAL DEFENCE OF CANADA
AND
THE MINISTER OF DEFENSE OF THE FRENCH REPUBLIC
AND
THE FEDERAL MINISTRY OF DEFENSE OF
THE FEDERAL REPUBLIC OF GERMANY
AND
THE MINISTRY OF DEFENSE OF THE ITALIAN REPUBLIC
AND
THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN
AND
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
IN-SERVICE SUPPORT PHASE
OF THE NATO IMPROVED LINK ELEVEN PROJECT
(SHORT TITLE: NILE ISS MOU)

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INTRODUCTION

The Department of National Defence of Canada;
The Minister of Defense of the French Republic;
The Federal Ministry of Defense of the Federal Republic of Germany;
The Ministry of Defense of the Italian Republic;
The Ministry of Defense of the Kingdom of Spain;
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 for the United States of America,

hereinafter referred to as the "Participants":

Having a common interest in defense;

Desiring to further the agreed objectives of the North Atlantic Treaty, dated 4 April 1949;

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

Recognizing the benefits to be obtained from co-operative programs, and the advantages of combining their national capabilities to support systems and equipments in their armed forces;

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

Having a mutual need for the NATO Improved Link Eleven (NILE) Project to satisfy their operational requirements;

Recognizing the successful completion of the NILE Phases covered by the Memoranda of Understanding concerning: The Project Definition Phase of the NATO Improved Link 11 Project, dated 11 November 1987; The Sub-Phase One of the Design and Development Phase of the NATO Link 11 Project, dated 31 July 1992 (Sub-Phase One MOU); and The Sub-Phase Two of the Design and Development Phase of the NATO Link 11 Project, dated 2 July 1996 (Sub-Phase Two MOU);"

Desiring to enter into a MOU related to the In-Service Support Phase of the NILE Project in order to provide for the mutual support of the NILE system;

Have reached the following understandings:

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SECTION I

ABBREVIATIONS AND DEFINITIONS

The Participants have jointly decided upon the following abbreviations and definitions for terms used in this MOU:

ABBREVIATIONS

CCB	Configuration Control Board
CG	Classification Guide
CMP	Configuration Management Plan
CPP	Cooperative Project Personnel
DSA	Designated Security Authority
EU	European Union
FMPD	Financial Management Procedures Document
INFOSEC	Information Security
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NILE	NATO Improved Link Eleven
NITT	NILE Interoperability Test Tool
NRS	NILE Reference System
NSA	National Security Authority
NSR	NATO Staff Requirement
PM	Project Manager
PMO	Project Management Office
PMP	Project Management Plan
PSI	Project Security Instruction
RFP	Request for Proposals
SC	Steering Committee
SNC	System Network Controller
STANAG	NATO Standardization Agreement
US DON	US Department of the Navy

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DEFINITIONS

Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic, or documentary form or in the form of equipment, materiel or technology.
Configuration Management Plan	A document which defines the procedures and resources required to accomplish the configuration control and configuration management efforts under this MOU.
Contract	Any mutually binding legal relationship which obligates a Contractor to furnish supplies or services, and obligates one or more Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not requirements decision) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Participant, which has authority to enter into, administer, and/or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, and/or terminate Contracts.
Contractor Support Personnel	Persons specifically identified as providing administrative, managerial, scientific, or technical support services to a Participant under a support Contract.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.
Controlled Unclassified Information	Unclassified information, including Project Information and business or financial information, to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this MOU, the information will be marked to identify its "in confidence" nature. It could include information which has been declassified, but remains controlled.
Cost Ceiling	The maximum amount to which the Cost Target may move without the prior written approval of the Participants.
Cost Target	The accepted planning figure of the total common funded cost of the In-Service Support Phase of the NILE Project.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of any Participant. This includes sales and transfers to Third Parties subject to Section XII (Third Party Sales and Transfers) of this

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Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Financial Costs	Any Project costs that, due to their nature, will be paid using monetary contributions from the Participants.
Host Participant	The Participant in whose nation the Project Management Office (PMO) is located.
Information Security (INFOSEC)	The sum of all measures taken to provide information security in the areas of Communications Security (COMSEC), Network Security (NETSEC), Transmission Security (TRANSEC) and Computer Security (COMPUSEC).
Link 22	A secure tactical data link which uses the NILE Communications Equipment (consisting of a data link processing interface, a system network controller, a link level COMSEC subsystem, appropriate signal processor controllers and any radio equipment) and the protocols, conventions, and message formats defined by STANAG 5522.
National Security Authority (NSA)	The participating government entity responsible for national security policy guidance.
NILE Cooperative Project Personnel	Military members or civilian employees of Participants other than the Host Participant assigned to the NILE Project Management Office who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning or other functions in furtherance of the Project.
NILE Interoperability Test Tool	An interoperability tester capable of evaluating the degree of interoperability between two NILE systems.
NILE Project	Those activities carried out collaboratively by the Participants under the PD Phase, D&D Subphase One, D&D Subphase Two, and In-Service Support Phase to fulfill the objectives stated in Section II of this MOU.
NILE Purposes	The design, development, procurement, manufacture, use, operation, modification, repair, maintenance, and support of NILE systems (hardware and software) by or for the Participants either nationally or collaboratively.
NILE Reference System (NRS)	The Link 22 compatibility tester which will be capable of confirming that the components of a NILE system are fully compatible.
Non-financial Costs	Any Project costs that, due to their nature, will be met using non-monetary contributions from the Participants.
Participant	A signatory to this MOU represented by its military and civilian personnel. Contractors and Contractor Support Personnel will not be

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	NILE ISS MOU with A1 through A5 Incorporated representatives of a Participant under this MOU.
Patent	Legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all Patents as defined by national laws or regulations.
Project	The NILE In-Service Support Phase efforts described in this MOU.
Project Background Information	Information not generated in the performance of the Project.
Prospective Contractor	Any entity that seeks to enter into a Contract to be awarded by a Participant's Contracting Agency and that, in the case of a solicitation involving the release of export-controlled information, is eligible to receive such information.

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Project Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment provided or jointly acquired for use in the Project.
Project Foreground Information	Project Information generated in the performance of the Project.
Project Information	Any information provided to, generated in, or used in this Project, regardless of form or type, of a scientific or technical nature, including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, computer software, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, Patent, or other legal protection.
Project Invention	Any invention or discovery formulated or made in the course of work performed under a Project.
Project Management Plan	A document that defines the integrated tasks and resources required to accomplish the objectives of this MOU. It is the principal management document for the Project Management Office (PMO).
Request for Proposals	A Request for Proposal is the first formal, official communication between the government and industry in the contracting process. It is the medium by which potential sources are advised of technical goals, scope of work, and special contracting considerations of the procurement and of the general criteria to be used to evaluate the proposals. It comprises, inter alia, a Statement of Work, specifications and a list of deliverables.
Special Tooling	Jigs, dies, fixtures, molds, patterns, tapes, gauges, other equipment and manufacturing aids, and all components of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services and excluding material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling) general or special machine tools or similar capital items.
Third Party	Any person or other entity whose government, or entity thereof, is not a Participant to this MOU.

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SECTION II

OBJECTIVES

2.1. The overall objectives of the NILE Project are:

- 2.1.1. To design a NILE system consisting of computer to computer digital data link among Tactical Data Systems (TDS) equipped ships, submarines, aircraft and shore sites which will meet the requirements of the NATO Staff Requirement (NSR) Reference NILE D/02 Rev 1 dated 9 March 1990 with the aim of increasing the timeliness of the tactical information transfer and transmission of high priority warning and force orders even in a dense and hostile communications threat environment;
- 2.1.2. To develop appropriate common specifications of the NILE system and acquire sufficient Project Information and rights of use to permit the Participants, nationally or collaboratively, to implement appropriate Link 22 equipment; and
- 2.1.3. To provide in-service support for the NILE system.

2.2. The objectives of this MOU are to:

- 2.2.1. Provide in-service support for, maintain commonality of, and pursue improvements to the products of the NILE Project including the System Network Controller (SNC), NILE Reference System (NRS), NILE Interoperability Test Tool (NITT) and associated baseline product specifications; and
- 2.2.2. Support interoperability between Link 22 systems in a multi-link environment.

SECTION III

SCOPE OF WORK

3.1. The overall work to be carried out under this MOU includes the following efforts to achieve the objectives set out in paragraph 2.2. of Section II (Objectives):

- 3.1.1. Configuration control and configuration management of the products of the NILE Project, including the SNC, NRS, NITT and associated baseline product specifications;
- 3.1.2. Maintenance of SNC software and NRS and NITT software and hardware;
- 3.1.3. Modification of SNC software and NRS and NITT software and hardware to mitigate obsolescence and maintain interoperability;
- 3.1.4. Investigation and development of improvements of the products of the NILE Project, including the SNC, the NRS, and the NITT, and the modification of NILE Project system specifications to support communication improvements such as new waveforms.;
- 3.1.5. Network design support;
- 3.1.6. Maintenance of the NILE system library, which consists of a compilation of information provided to, generated in or used in the NILE Project;
- 3.1.7. Performance of necessary activities to support Link 22 interoperability in a multi-link environment;
- 3.1.8. Investigation of deficiencies in the NILE system;
- 3.1.9. Provision of software and hardware engineering services for problems which are common to all Participants relating to the products of the NILE Project;
- 3.1.10. Support and replacement, if necessary, of jointly acquired support equipment from any phase of the NILE Project;
- 3.1.11. Joint acquisition of project equipment, if necessary; and
- 3.1.12. Provision of items and services intended for the individual Participants' support requirements for their national NILE systems provided such items or services do not adversely impact NILE Project products or compatibility or interoperability among the NILE systems of the Participants.

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3.2. In order to validate the performance of their national systems and/or assist with national development activities, all Participants will be allowed, on a non-interference basis with Project Management Office (PMO) activities, equal use of the NRS and NITT.

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SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. This Project will be carried out by an organization consisting of the NILE Project Steering Committee (SC), and a NILE Project Management Office (PMO) headed by a Project Manager (PM). The SC will have overall authority and responsibility for direction of the Project in accordance with this MOU. The PM, on behalf of the PMO and accountable to the SC, will have day-to-day responsibility for the effective implementation and efficient management of the Project in accordance with this MOU.

4.2. The SC will consist of a representative appointed by each of the Participants. The SC will meet at least annually with additional meetings held at the request of any member. The Chairman of the SC will be selected by the SC from among its members. The Participant providing the Chairman will be allowed to have a replacement member on the SC.

4.3. Each member of the SC will have one vote. In the event that a replacement on the SC has been designated for the Chairman, the Chairman will not have a vote. Decisions of the SC will be made unanimously. If the SC is unable to reach a timely decision on an issue, SC members will refer the issue to their higher authorities for resolution.

4.4. Decisions of the SC will be recorded in writing, serially numbered, and with the required distribution specified. At the end of each SC meeting a copy of the decisions made by the SC will be provided to each member. The PMO will keep a record copy of the decisions and the summary records of the meetings.

4.5. The SC will be responsible, inter alia, for:

- 4.5.1. Exercising executive-level oversight of the Project;
- 4.5.2. Evaluating Project plans and status reports presented by the PM and signifying approval or identifying corrective action to be taken;
- 4.5.3. Approving budgetary or other financial proposals provided by the PM to ensure compliance with the provisions of Section V (Financial Provisions);
- 4.5.4. Resolving issues raised by the PM;
- 4.5.5. Reviewing and forwarding to the Participants for approval recommended amendments to this MOU in accordance with Section XIX (Amendment, Withdrawal, Termination, Entry Into Effect, and Duration);

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- 4.5.6. Approving plans to manage and control the transfer of Project Equipment provided by any Participant to support the execution of the Project in accordance with Section VII (Project Equipment);
- 4.5.7. Approving plans for the disposal of jointly acquired Project Equipment under this MOU in accordance with Section VII (Project Equipment);
- 4.5.8. Maintaining oversight of the security aspects of the Project in accordance with Section XI (Security), including reviewing and obtaining approval of the Project Security Instruction (PSI) and the Classification Guide (CG);
- 4.5.9. Providing recommendations to the Participants for the addition of new Participants in accordance with Section XIV (Addition of New Participants);
- 4.5.10. Monitoring Third Party sales and transfers authorized in accordance with Section XII (Third Party Sales and Transfers);
- 4.5.11. Approving the Project Management Plan (PMP), the Configuration Management Plan (CMP), any other documents required by the SC and changes thereto;
- 4.5.12. Convening, as is considered necessary, working groups comprised of experts of the Participants to address specific areas of concern to the Project;
- 4.5.13. Approving Contracting strategies, reviewing and endorsing Requests for Proposals (RFPs) prior to release, and, prior to the award of any Contract for the Project, reviewing and endorsing the proposed Contract. The SC may waive the requirement to review and endorse an RFP or a Contract;
- 4.5.14. Endorsing amendments to Contracts for the Project which impact on work performance, cost or schedule and which meet any other criteria specified by the SC and reflected in the PMP;
- 4.5.15. Endorsing the PM as designated by the Host Participant and approving his/her terms of reference;
- 4.5.16. Employing its best efforts to resolve, in consultation with the export control authorities of the Participants concerned, any export control issues raised by the PM on behalf of the PMO in accordance with subparagraph 4.10.14. of this Section or raised by a Participant's SC representative in accordance with subparagraph 8.1.2.4. of Section VIII (Disclosure and Use of Project Information) of this MOU; and
- 4.5.17. Approving amendments to Annex B (NILE In-Service Support Phase Allocation of Cost Ceiling) and Annex C (Personnel Assignments).

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4.6. The PMO will be established in the United States of America. The Host Participant has designated the United States Department of the Navy (US DON) to act on its behalf. The US DON will appoint a PM dedicated as head of the PMO.

4.7. In addition to the PM, Participant personnel (other than Host Participant personnel) will be assigned to the PMO in accordance with Annex C (Personnel Assignments). The SC may adjust the chart in paragraph 1 of Annex C (Personnel Assignments) from time to time as necessary to execute the Project. Each of the Participants (other than the Host Participant) will provide personnel to satisfy at least two hundred and forty person-months. PMO personnel must be either civilian or military representatives of the Participants.

4.8. The Host Participant recognizes that the military and civilian employees of a Participant, assigned to duty with its Defense Department or Ministry for the purposes of working under this MOU, while present in the territory of the Host Participant, will, to the extent that they are so qualified, be members of a “Force” and “civilian component” respectively within the meaning of Article I of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (NATO SOFA), signed 19 June 1951, including the supplement thereto. Employees and agents of Contractors cannot constitute a civilian component and NATO SOFA will not apply to them.

4.9. As determined by the SC, the PMO may also arrange, at the request of a Participant, to contract for the services that would have otherwise been provided by personnel of a Participant pursuant to paragraph 4.7.

4.10. The PM, on behalf of the PMO, will be responsible for:

- 4.10.1. Managing the cost, schedule, performance requirements, technical, security, and financial aspects of the Project described in this MOU;
- 4.10.2. Preparing and submitting a PMP and a CMP to the SC for approval within 90 days after entry into effect of this MOU;
- 4.10.3. Executing the approved PMP and exercising configuration management in accordance with the approved CMP;
- 4.10.4. Developing and submitting any required changes to the approved PMP and CMP to the SC for approval;
- 4.10.5. Developing and submitting the Financial Management Procedures Document (FMPD) to the SC for approval, and reviewing at least annually the FMPD and proposing updates to the SC for approval;
- 4.10.6. Executing the financial aspects of the Project in accordance with Section V (Financial Provisions) and the FMPD;

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- 4.10.7. Referring issues to the SC that cannot be resolved by the PM;
 - 4.10.8. Recommending amendments to this MOU and its Annexes to the SC;
 - 4.10.9. Developing and submitting, for SC approval, plans to manage and control the transfer of Project Equipment provided by any Participant in accordance with Section VII (Project Equipment) and implementing SC approved plans;
 - 4.10.10. Developing and submitting, for SC approval, plans for the disposal of jointly acquired Project Equipment under this MOU in accordance with Section VII (Project Equipment) and implementing SC approved plans;
 - 4.10.11. Developing and forwarding to the SC a PSI and a CG for the Project within 90 days of MOU signature, and implementing them upon final approval;
 - 4.10.12. Providing status and other reports as directed by the SC;
 - 4.10.13. Appointing a Project Security Officer: and
 - 4.10.14. Monitoring export control arrangements required to implement this MOU and, if applicable, referring immediately to the SC any export control issues that could adversely affect the implementation of this MOU.
- 4.11. The configuration control function will be exercised, on behalf of the SC, by a Configuration Control Board (CCB). The CCB will be composed of a representative of each Participant, with a right of vote, and chaired by the PM having no voting rights. All decisions will require unanimity. In case of disagreement the matter will be brought to the SC for resolution. The CCB working procedures will be in accordance with the CMP.
- 4.12. Provisions for the general conduct of personnel assigned to the PMO are stated in Annex A (Personnel in the Project Management Office).

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SECTION V

FINANCIAL PROVISIONS

5.1. Each Participant will contribute its equitable share of the full costs of the Project, including overhead costs, administrative costs, and, in accordance with Section XIII (Liability and Claims), costs of claims, and will receive its equitable share of the results of the Project, in accordance with the provisions of this MOU. Administrative costs include, but are not limited to, the costs incurred by the PMO related to the facilities and equipment necessary for the performance of tasks by personnel assigned to the PMO, and the costs of travel by such personnel in support of Project efforts.

5.2. Participation in this Project will involve contribution to both Financial and Non-Financial Costs.

- 5.2.1. The Participants estimate that the Financial Costs of the Project will not exceed a Cost Ceiling of U.S. \$67,382,982 (then-year dollars). In recognition of its post-design and development phase re-entry into the NILE Project and the costs borne by the other Participants in the design and development phase of the NILE Project, the Spanish Participant's share of the Cost Ceiling will be U.S. \$13,071,852 (then-year dollars). The other Participants' shares will be U.S. \$9,051,855 (then-year dollars) each. The Cost Ceiling may be changed only upon the written consent of the Participants. The annual allocation of costs for the Cost Ceiling for each Participant is depicted in Annex B (NILE In-Service Support Phase Allocation of Cost Ceiling); the annual allocation of costs for each Participant may be changed only upon the unanimous written consent of the SC. The total allocation of the costs for each Participant in Annex B (NILE In-Service Support Phase Allocation of Cost Ceiling) may not exceed that Participant's share of the Cost Ceiling as reflected in this paragraph. The Participants will endeavor to perform, or to have performed, the work specified in Section III (Scope of Work) and fulfill all of the responsibilities under this MOU within a Cost Target established in the FMPD. The difference between the Cost Ceiling and the Cost Target will be managed by the SC. If at any time the PMO has reason to believe that the Cost Target of the Project will be exceeded, the SC will be notified promptly and the PM will submit a new estimate of the Cost Target of the Project with supporting documentation for SC approval. The SC will direct the PM as to what action should be taken.
- 5.2.2. The Non-Financial Costs of the Project include the costs of providing personnel to the PMO. The US Participant will bear the costs of providing the PM in accordance with paragraph 5.4. The other Participants will bear, in accordance with paragraph 5.4, the costs of providing their personnel to the PMO under paragraph 4.7; if a Participant does not provide personnel, the costs of

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Contracting for services under paragraph 4.9 in lieu of providing personnel will be borne entirely by that Participant as a cost under paragraph 5.3.

- 5.2.3. The U.S. dollar will be the reference currency for the Project, and the Project fiscal year will be the U.S. fiscal year (1 October – 30 September).

5.3. The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:

- 5.3.1. Costs associated with national representation at meetings by non-PMO members;
- 5.3.2. Costs associated with any unique national requirements identified by a Participant, including the costs of items and services intended for an individual Participant's support of its national NILE system;
- 5.3.3. Costs of contracting for services under paragraph 4.9 in lieu of a Participant's providing personnel to the PMO; and
- 5.3.4. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this MOU.

5.4. The costs of personnel in the PMO will be borne as follows:

- 5.4.1. The Host Participant will be responsible for all pay and allowances of Host Participant personnel in the PMO.
- 5.4.2. Each CPP's Participant will be responsible for the following costs of that CPP:
- 5.4.2.1. All pay and allowances.
- 5.4.2.2. Transportation of the CPP and their personal property to the place of assignment in the Host Participant's nation prior to the CPP's commencement of a tour of duty in the PMO, and return transportation of the foregoing from the place of assignment in the Host Participant's nation upon completion or termination of the tour of duty. The foregoing will apply to the CPP's dependents and their personal property to the extent permitted under the laws and regulations of the government of the CPP's Participant.
- 5.4.2.3. Compensation for the loss of, or damage to, the personal property of the CPP or the CPP's dependents, subject to the laws and regulations of the government of the CPP's Participant.

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5.4.2.4. Preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents, subject to the laws and regulations of the government of the CPP's Participant.

5.5. The PM will be responsible for preparing the detailed financial management procedures under which the Project will operate. These procedures, which must accord with the national accounting and audit requirements of the Participants, will be detailed in an FMPD prepared by the PMO and subject to the approval of the SC. The FMPD will include an estimated schedule for contributions, which will be consistent with the funding requirements of paragraph 5.6.

5.6. Subject to the provisions of this MOU, the Participants recognize that in Contracting for the work in paragraphs 3.1.1. through 3.1.11. in Section III (Scope of Work) and for the procurement requests authorized and submitted by a Participant for items and services to be provided under paragraph 3.1.12. of Section III (Scope of Work), it may become necessary for the Host Participant to incur contractual or other obligations on behalf of the other Participants prior to receiving the other Participants' funds. If the Host Participant incurs any such obligations, the other Participants will pay their equitable share of such obligations and will make such funds available in such amounts and at such times as required by the Contracts or other obligations and will pay any damages and costs that may accrue from the performance of or cancellation of the Contracts or other obligations in advance of the time such payments, damages, or costs are due.

5.7. The Host Participant will be responsible for the audit of the procurement activities for which it is responsible under the Project in accordance with its national practices. The Host Participant will be responsible for the internal audit regarding administration of the other Participants' Project funds in accordance with its national practices. All audit reports of such funds will be promptly made available by the Host Participant to the other Participants without restrictions. Where auditors of a non-Host Participant or its government need to obtain or to inspect specific Project financial data to fulfill its national obligations, the Host Participant will grant access to such specific financial data at mutually determined times and locations.

5.8. 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, all Participants will immediately consult with a view toward continuation on a modified basis. In the event the Participants conclude, following consultation, that such continuation is not practicable, the termination provisions of Section XIX (Amendment, Withdrawal, Termination, Entry into Effect and Duration) will apply.

SECTION VI

CONTRACTING PROVISIONS

6.1. The Host Participant (acting through the US DON) will be responsible for Contracting for this Project in accordance with U.S. Contracting laws, regulations and procedures. The Contracting Officer will, when it facilitates satisfying the objectives of this MOU, seek waivers of national regulations, procurement procedures, and practices. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors. Only industries of the Participants' nations will be eligible for award of Contracts and first-level subcontracts for this Project. Contractors will be encouraged to offer opportunities for subcontracting to industries or entities of all the Participants' nations.

6.2. The responsibilities of the SC regarding Contracting will be in accordance with paragraphs 4.5.13. and 4.5.14. The PM will be responsible for the coordination of activities relating to the Project, and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The PMO will review statements of work prior to the development of solicitations to ensure that they are in accordance with this MOU. In addition, the Contracting Officer will keep the PM advised of all financial arrangements with the prime Contractor, and the PM will provide information concerning the financial arrangements to the other PMO personnel subject to any restrictions placed upon the financial information by the prime Contractor. The Contracting Officer will consult with the PM to ensure that those arrangements are consistent with the funding reflected in Annex B (NILE In-Service Support Phase Allocation of Cost Ceiling).

6.3. The Contracting Officer will negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), Section XII (Third Party Sales and Transfers) and Section XVIII (General Provisions) of this MOU, including the export control provisions in accordance with this MOU, in particular, paragraphs 6.4. and 6.5. of this Section.. During the Contracting process, the Contracting Officer will advise prospective Contractors of their responsibility to notify the Contracting Agency immediately, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Project Information or permit its use.

6.4. Each Participant will legally bind its Contractors to a requirement that the Contractor will not retransfer or otherwise use export-controlled information furnished by another Participant for any purpose other than the purposes authorized under this MOU. The Contractor will also be legally bound not to retransfer the export-controlled information to another Contractor or subcontractor unless that Contractor or subcontractor has been legally bound to limit use of the information to the purposes authorized under this MOU. Export-controlled information

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furnished by one Participant under this MOU may only be retransferred by another Participant to its Contractors if the legal arrangements required by this paragraph have been established.

6.5. Each Participant will legally bind its Prospective Contractors to a requirement that the Prospective Contractor will not retransfer or otherwise use export-controlled information furnished by another Participant for any purpose other than responding to a solicitation issued in furtherance of the purposes authorized under this MOU. Prospective Contractors will not be authorized use for any other purpose if they are not awarded a Contract. The Prospective Contractors will also be legally bound not to retransfer the export-controlled information to a prospective subcontractor unless that prospective subcontractor has been legally bound to limit use of the export-controlled information for the purpose of responding to the solicitation. Export-controlled information furnished by one Participant under this MOU may only be retransferred by another Participant to its Prospective Contractors if the legal arrangements required by this paragraph have been established. Upon request by the furnishing Participant, the receiving Participant will identify its Prospective Contractors and prospective subcontractors receiving such export-controlled information.

6.6. Prior to making a decision to enter into a contract or terminate any contract awarded pursuant to this MOU, the Contracting Officer will consult with the SC and will take into consideration the interests of all the Participants in making such a decision.

6.7. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Section VIII (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of such Information, the matter will be referred promptly to the SC for resolution.

6.8. The Contracting Officer will immediately advise the PMO of any cost growth, schedule change, or performance problems that occur under a Contract placed by the Contracting Agency in connection with this Project.

6.9. Should price or cost investigation be required, such services will be obtained through the responsible national authorities of the Participant within whose territory the performing Contractor or subcontractor is located, consistent with the existing arrangements between the Participants in that regard.

6.10. The Host Participant will not secure rights for itself in Contracts for the Project beyond those which it secures for the other Participants, if this results in additional costs to the other Participants or any reduction of their rights.

SECTION VII

PROJECT EQUIPMENT

7.1. Each Participant may provide Project Equipment identified as being necessary for executing the MOU to another Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another Participant will be developed and maintained by the PM, with the assistance of the other PMO personnel, approved by the SC, and incorporated into the PMP in accordance with Section IV (Management) prior to such transfers.

7.2. The receiving Participant(s) 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(s) 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(s) 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 PMP, 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(s) will issue a certificate of loss to the providing Participant and pay the replacement value specified in the PMP.

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

7.4. All Project Equipment that is transferred will be used by the receiving Participant(s) 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 XII (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

7.5. Project Equipment transferred to one or more Participants under this MOU will be returned to the providing Participant prior to the termination or expiration of this MOU.

7.6. Any Project Equipment which is jointly acquired on behalf of the Participants for use under this MOU will be disposed of during the Project or when the Project ceases, as determined by the SC. The Participants will share the proceeds from any jointly acquired Project Equipment transferred or sold in the same ratio as Financial Costs are shared under this MOU.

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

- 8.1.1 All Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out this Project. The Participants intend to acquire sufficient Project Information and rights to use such Information to accomplish the work detailed in Section III (Scope of Work) and to enable the Participants to achieve the overall objectives of the NILE Project stated in paragraph 2.1. and the specific objectives of the In-Service Support Phase stated in paragraph 2.2. of Section II (Objectives). Accordingly, the Participants will endeavor to identify the Project Information that will be required for the above mentioned uses and, within the limits of their national laws and regulations, to secure such Information and appropriate rights of use to such Information, and appropriate Patent rights.
- 8.1.2 The following export control provisions will apply to the transfer of Project Information:
 - 8.1.2.1 Transfer of Project Information will be consistent with the furnishing Participant's applicable export control laws and regulations.
 - 8.1.2.2 Unless otherwise restricted by duly authorized officials of the furnishing Participant at the time of transfer to another Participant, all export-controlled information furnished by one Participant to another Participant may be retransferred to the other Participant's Contractors, subcontractors, Prospective Contractors, and prospective subcontractors, subject to the requirements of paragraphs 6.4. and 6.5. of Section VI (Contracting Provisions) of this MOU.
 - 8.1.2.3 Export-controlled information may be furnished by Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of one Participant's nation to the Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of the other Participant's nation pursuant to this MOU subject to the conditions established in licenses or other approvals issued by the Government of the former Participant in accordance with its applicable export control laws and regulations.
 - 8.1.2.4 If a Participant finds it necessary to exercise a restriction on the retransfer of export-controlled information as set out in subparagraph 8.1.2.2. of this

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Section, it will promptly inform the other Participants. If a restriction is then exercised and the affected Participant objects, that Participant's SC representative will promptly notify the other Participants' SC representatives and they will immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

8.1.2.5. Notwithstanding the provisions of the MOU that relate to the protection of information, particularly Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), and Section XII (Third Party Sales and Transfers), the specific export control provisions set out in Section VI (Contracting Provisions) and this Section will not apply to transfers of information amongst non-U.S. Participants where such exchanges do not include U.S. export-controlled information.

8.2. Government Project Foreground Information

- 8.2.1. Disclosure: Project Foreground Information generated in whole or in part by a Participant's military personnel or civilian employees will be disclosed without charge to all Participants.
- 8.2.2. Use: Each Participant may use, or have used, all Government Project Foreground Information without charge for Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. If a Participant intends to use any Government Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of Section XII (Third Party Sales and Transfers) of this MOU will also apply.

8.3. Government Project Background Information

- 8.3.1. Disclosure: Each Participant, upon request, will disclose to the other Participants without charge any relevant Government Project Background Information generated by its military personnel or civilian employees outside the scope of this MOU, provided that:
 - 8.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining, after consultation with the other Participants, whether it is "necessary to" or "useful in" the Project;
 - 8.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

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- 8.3.1.3. disclosure is consistent with national disclosure policies, rules and regulations (as applicable) of the furnishing Participant.
- 8.3.2. Use: Government Project Background Information disclosed by one Participant to other Participants may be used without charge by, or on behalf of, the other Participants for NILE Purposes. However subject to proprietary rights held by other than the Participants and subject to the provisions of paragraph 12.2. of Section XII (Third Party Sales and Transfers) of this MOU, such Project Background Information furnished by a Participant may be used for Defense Purposes other than NILE, by the other Participants, without charge, when the use of such information is necessary for the use of the Project Foreground Information. The furnishing Participant, in consultation with the other Participants, will determine whether the use of such information is necessary. The furnishing Participant will retain all its rights with respect to such Project Background Information.

8.4. Contractor Project Foreground Information

- 8.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, will be disclosed without charge to all Participants. Project Foreground Information generated by a Contractor, but not delivered, will be made available by the Contractor, upon request of the Participants, for the costs related to its delivery in accordance with the Contract.
- 8.4.2. Use: Each Participant may use, or have used, without charge for Defense Purposes this Contractor Project Foreground Information. Each furnishing Participant will also retain its rights of use thereto in accordance with the applicable Contract. If a Participant intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Section XII (Third Party Sales and Transfers) of this MOU will also apply.

8.5. Contractor Project Background Information

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

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- 8.5.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and
- 8.5.1.3. disclosure is consistent with national disclosure policies, rules and regulations (as applicable) of the furnishing Participant.
- 8.5.2. Use: Project Background Information delivered by Contractors under Contracts awarded in accordance with this MOU may be used by, or on behalf of, the Participants for NILE Purposes without charge, and for other Defense Purposes in accordance with such fair and reasonable terms as are arranged with the Contractor. Any other Contractor generated Project Background Information furnished by one Participant and disclosed to the other Participants may be used without charge by, or on behalf of, the other Participants for NILE Purposes only, and may be subject to further restrictions by holders of proprietary rights, and for other Defense Purposes in accordance with such fair and reasonable terms as are arranged with the Contractor. However, the furnishing Participant will retain all its rights with respect to such Project Background Information.

8.6. Alternative Uses of Project Information

- 8.6.1. Any Project 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.
- 8.6.2. The prior written consent of each Participant will be required for the use of Project Foreground Information for purposes other than those provided for in this MOU.

8.7. Proprietary Project Information

- 8.7.1. 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.
- 8.7.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defense Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defense Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Project Information related to this MOU.

8.8. Patents

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- 8.8.1. The Contracting Participant will include in its Contracts a provision governing the disposition of rights in regard to Project Inventions and Patent rights relating thereto, which either:
 - 8.8.1.1. provides that the Participant will hold title to all Project Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor; or
 - 8.8.1.2. provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make Patent applications for the same, while securing for the Participants a license for the Project Inventions, and any Patents therefor, on terms in compliance with the provisions of paragraph 8.8.2. below.
- 8.8.2. In the event that a Contractor holds title (or elects to retain title) for a Project Invention, the Contracting Participant will secure for all Participants non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.
- 8.8.3. The following provisions will apply in regard to Patent rights for all Project Inventions made by any Participant's military personnel or civilian employees, including those within Government-owned facilities, and for all Project Inventions made by Contractors for which the contracting Participant holds title or is entitled to acquire title:
 - 8.8.3.1. 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 has the right to receive, 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 or maintenance of a Patent granted thereon, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution or maintenance of a Patent granted thereon;
 - 8.8.3.2. The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions; and

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- 8.8.3.3. The other Participants will acquire non-exclusive, irrevocable, royalty-free licenses to practice or have practiced, by or on behalf of the Participants, throughout the world for Defense Purposes, any Project Invention for which a Participant holds a Patent.
- 8.8.4. Patent applications which contain Classified Information, to be filed under this MOU, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.
- 8.8.5. Insofar as possible, each Participant will extend to the other Participants any relief from Patent infringement claims arising in the course of work performed under the Project that it may be able to claim on its own behalf. 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 Project. Insofar as possible, the other Participants will provide information available to them that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory against a Participant or Participants, and will consult with the other Participants 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 full Financial Costs of the Project. 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 Project of any invention covered by a Patent issued by their respective countries.
- 8.9. Upon the entry into effect of this MOU, the Spanish Participant will be provided with all Contract data deliverables delivered under Contracts for the Sub-Phase One MOU and the Sub-Phase Two MOU, as well as any information, specifically requested by the Spanish Participant, which was generated under those MOU's and provided to the other Participants. The Spanish Participant's rights of use in that information will be in accordance with the provisions of the disclosure and use provisions of the MOU under which the information was generated or provided. The Spanish Participant's storage, handling, control, transmittal, and safeguarding of that information and the Spanish Participant's sale or transfer of that information to a Third Party will be in accordance with Section IX (Controlled Unclassified Information), Section XI (Security), and paragraphs 12.1 through 12.3 of Section XII (Third Party Sales and Transfers) of this MOU for the In-Service Support Phase as if it were information generated or provided under this MOU.

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SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1. 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:

- 9.1.1. Such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project 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 XII (Third Party Sales and Transfers); and
- 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 in subparagraph 9.1.2., 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.

9.2. To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked to ensure its “in-confidence” nature. The Participants’ export-controlled information will be marked in accordance with the applicable Participant’s export control markings as documented in the Project Security Instruction. The Participants, through the SC, will also decide, in advance and in writing, on the markings to be placed on any other types of Controlled Unclassified Information and will describe such markings in the Project Security Instruction.

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 Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

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SECTION X

VISITS TO ESTABLISHMENTS

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor facilities by employees of the other Participants or by employees of the other Participants' Contractors, provided that the visit is authorized by the Participants that are involved in the visit and the employees 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 sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3. Requests for visits by personnel of one Participant to a facility of another 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 Project.

10.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participants will be submitted through official channels in accordance with Recurring International Visit Procedures as reflected in the Project Security Instruction.

SECTION XI

SECURITY

11.1. All Classified Information provided or generated pursuant to this MOU will be used, stored, handled, transmitted, and safeguarded in accordance with the Participants' national security laws and regulations, to the extent that they provide a degree of protection no less stringent than that provided for NATO Classified Information as set out in the document "Security Within the North Atlantic Treaty Organization," CM(55)15(Final), of 15 October 1997, and its subsequent amendments.

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

11.3. Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 11.8. unless the other Participants consent to such disclosure. Accordingly, each Participant will ensure that:

- 11.3.1. The recipients will 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 Participant in accordance with the procedures set out in Section XII (Third Party Sales and Transfers);
- 11.3.2. The recipients will not use the Classified Information for other than the purposes provided for in this MOU; and
- 11.3.3. The recipients will comply with any distribution and access restrictions on information that is provided under this MOU.

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

11.5. The PM is responsible for preparing a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide will describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded, and the Project Security Instruction will require that markings for

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all export-controlled Classified Information will include the applicable export control markings in accordance with paragraph 9.2. of Section IX (Controlled Unclassified Information) of this MOU. The Instruction and Guide will be developed by the PMO within three months after the MOU enters into effect. They will be reviewed and forwarded by the SC to the appropriate DSAs or NSA, and upon approval will be applicable to all government and Contractor personnel participating in the Project. The Classification Guide will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide will be approved by the appropriate NSA or DSAs. Pending approval of the In-Service Support Phase Project Security Instruction and Classification Guide, the D&D Subphase Two Project Security Instruction and Classification Guide will continue to apply.

11.6. The NSA or DSA of a Participant that awards a classified Contract under this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information in accordance with its laws and regulations. Prior to the release to any Contractors or subcontractors, or prospective Contractors or subcontractors, of any Classified Information received under this MOU, the NSA or DSA will:

- 11.6.1. Ensure that such Contractors or subcontractors, or prospective Contractors or subcontractors, and their facilities have the capability to protect the Classified Information adequately;
- 11.6.2. Grant a security clearance to the facilities, if appropriate;
- 11.6.3. Grant a security clearance for all personnel whose duties require access to the Classified Information, if appropriate;
- 11.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and the provisions of this MOU;
- 11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and
- 11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Project.

11.7. Contractors, prospective Contractors, subcontractors or prospective subcontractors which are determined by NSA/DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this 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. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the Participants will be consulted for approval prior to permitting such access.

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11.8. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this MOU. These officials will be responsible for limiting access to Classified Information involved in this MOU to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Participant will ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project.

11.10. Information or 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.

11.11. On behalf of, and in consultation with, the INFOSEC authorities of the other Participants, the Host Participant INFOSEC authority will coordinate INFOSEC aspects of the In-Service Support Phase, including as required, the transfer, sale, exchange, use, or disposal of INFOSEC information or material consistent with this MOU. The Host Participant will endeavor to ensure that INFOSEC information to the level necessary for the In-Service Support Phase will be made available to the PMO in a timely manner. To the extent that separate arrangements may be required for use under this MOU of INFOSEC information or material, such arrangements will be the subject of written arrangements between the INFOSEC authorities of the Host Participant and each other Participant. The Participants will use their best efforts to conclude such arrangements in a time frame consistent with the activities of this MOU.

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1. The Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired or produced Project Equipment, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the other Participants. Furthermore, no Participant will permit any such sale, disclosure, or transfer by others, including by the owner of the item, without the prior written consent of the other Participants. Such consent will not be given unless the government of each intended recipient consents in writing that it will:

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

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

12.3. Consent for Third Party sales and transfers of Project Foreground Information or jointly acquired Project Equipment will not be withheld except for reasons of foreign policy, national security, or national laws. No Participant will refuse approval of a sale or transfer to a Third Party when it would be willing to sell or transfer such equipment or information to the same Third Party.

12.4. Sales or any other transfers to Third Parties of Project Foreground Information or any equipment embodying such Information may attract a levy to be shared among the Participants. Prior to any such sale or other transfer, the amount of the levy and the procedures for assessing and distributing such levy will be mutually determined by all Participants, taking into account their respective national laws, regulations, and procedures. Each Participant may reduce or waive its portion of the levy, but no Participant will be denied its prerogative to impose its portion of the levy.

12.5. In recognition of the Minister of Defence of the Kingdom of the Netherlands' benefits under the Sub-phase One MOU and the Sub-Phase Two MOU to collect levies on sales or transfers of information generated under those MOU's or any equipment embodying such information, the Spanish Participant will remunerate the Minister of Defence of the Kingdom of the Netherlands for a levy in the amount of \$666,549.

SECTION XIII

LIABILITY AND CLAIMS

13.1. Subject to multilateral and bilateral treaties and agreements of the governments of the Participants concerning liability for claims, when applicable, the following provisions will apply regarding liability arising out of, or in connection with activities carried out in the performance of official duty in the execution of this MOU:

- 13.1.1. With the exception of loss of or damage to Project Equipment provided by one Participant to another, which is addressed under Section VII (Project Equipment), each Participant waives all claims against the other Participants for injury or death to its military or civilian personnel, and for damage to or loss of its property, or jointly acquired property, arising from the performance of official duties under this MOU.
 - 13.1.2. In the event of claims from any other persons or entities for injury or death to persons or damage to or loss of property arising from the performance of official duties under this MOU, the Participants will share the costs of resolving the claims in the same percentage as they share the Financial Costs of the Project. Such claims will be processed by the appropriate Participant as decided by the Participants.
 - 13.1.3. As to 13.1.1. and 13.1.2. above, if the Participants decide that the damage, loss, injury, or death is caused by reckless acts, reckless omission, willful misconduct, or gross negligence, the cost of any liability will be borne entirely by the Participant of the culpable person.
 - 13.1.4. If a person or entity, other than the Participants (including their personnel), damages jointly acquired property, and the cost of making good such damage is not recoverable from such person or entity, such cost will be borne by the Participants in the same percentage as they share the Financial Costs of the Project.
- 13.2. Claims arising under any Contract awarded pursuant to Section VI (Contractual Arrangements) will be resolved in accordance with the provisions of the Contract. The Participants will not indemnify Contractors against liability claims by any other persons. However, in exceptional circumstances (e.g., involving nuclear activity or any other unduly hazardous activity where the cost of insurance is excessively high), the Participants may consider whether to indemnify Contractors against liability claims by any other persons.
- 13.3. Patent infringement claims will be settled in accordance with paragraph 8.8.5. of Section VIII (Disclosure and Use of Project Information).

SECTION XIV

ADDITION OF NEW PARTICIPANTS

14.1. The Participants recognize that other national defense organizations may wish to join the Project and, in principle, would favor the addition of new participants.

14.2. Unanimous 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 Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security) and Section XII (Third Party Sales and Transfers).

14.3. The Participants will jointly formulate the provisions, including financial provisions, under which additional participants might join. The addition of a new participant will require the unanimous written consent of the Participants, which will be reflected in an amendment to this MOU.

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 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 this Project.

15.2. Each Participant will endeavor 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 charges are levied, the Participant in whose country they are levied will bear such costs as a cost over and above that Participant's shared cost of the Project.

15.3. Each European Union (EU) recipient Participant will settle any customs duties or similar charges which may become due to the EU in order to comply with EU legislation in respect of parts, components, and equipment needed for the Project and for which the Participant will be the final consignee. Any such charges will be borne by the EU recipient Participant as a cost over and above that Participant's shared cost of the Project.

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SECTION XVI

SETTLEMENT OF DISPUTES

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

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SECTION XVII

LANGUAGE

17.1. The working language for the Project will be the English language; however, working discussions may be conducted in any convenient language.

17.2. All data and information generated under this MOU and its implementing Contracts and provided by one Participant to the other Participants will be furnished in the English language, unless otherwise directed by the SC.

17.3. At the request of any SC Member, SC official decision sheets and meeting records will be issued in French as well as English.

SECTION XVIII

GENERAL PROVISIONS

18.1. All activities of the Participants under this MOU will be carried out in accordance with their respective national laws and regulations, including their respective export control laws and regulations. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

18.2. No requirement will be imposed by any Participant for worksharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

18.3. In the event of a conflict between a Section of this MOU and any Annex to this MOU, the Section will take precedence.

SECTION XIX

AMENDMENT, WITHDRAWAL, TERMINATION, ENTRY INTO EFFECT AND DURATION

19.1. This MOU may be amended only by the unanimous written consent of the Participants, except that Annex B (NILE In-Service Support Phase Allocation of Cost Ceiling) and Annex C (Personnel Assignments) may be amended by the SC.

19.2. This MOU may be terminated at any time upon the unanimous written consent of the Participants. In the event the Participants consent to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable provisions.

19.3. Any Participant may withdraw from this MOU upon 120 days written notification to the other Participants. Such notice will be the subject of immediate consultation by the SC to decide upon the appropriate course of action. In the event of such withdrawal, the following rules apply:

- 19.3.1. The withdrawing Participant will continue participation, financial and otherwise, up to the effective date of withdrawal;
- 19.3.2. The withdrawing Participant will pay any Contract modification or termination costs incurred under Contracts for this Project that would otherwise not have been incurred but for the decision to withdraw from this MOU. However, the total financial contribution by any withdrawing Participant, including Contract modification or termination costs, will in no event exceed the amount the withdrawing Participant would have contributed had it remained in the ISS Phase;
- 19.3.3. All Project Information and rights therein received under the provisions of this MOU prior to the withdrawal will be retained by the Participants, subject to the provisions of this MOU; and
- 19.3.4. The remaining Participants may request that the withdrawing Participant continue to make available to the remaining Participants, under separate written arrangements, any Project Equipment that it had provided to the other Participant(s). In addition, the withdrawing Participant will deliver to the remaining Participants any jointly acquired Project Equipment in its possession. Upon disposal of Project Equipment jointly acquired prior to its withdrawal, the withdrawing Participant will receive its share of the proceeds, in accordance with Sections 7.6 and 19.4.

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19.4. The respective rights and responsibilities of the Participants regarding Section VII (Project Equipment), Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), Section XII (Third Party Sales and Transfers), Section XIII (Liability and Claims) and Section XVI (Settlement of Disputes), will continue notwithstanding termination of, withdrawal from, or expiration of this MOU.

19.5. This MOU, which consists of the Introduction, nineteen (19) Sections and three (3) Annexes, will enter into effect upon signature by all Participants and will remain in effect until January 1, 2030. It may be extended by the unanimous written consent of the Participants.

19.6. This MOU is written in the English and French languages, each text being equally authentic.

The foregoing represents the understandings reached among the Participants on the matters referred to herein. Signed by the authorized representatives of the Participants:

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NILE ISS MOU with A1 through A5 Incorporated

FOR THE MINISTER OF
NATIONAL DEFENCE OF
CANADA:

Signature

Name

Title

Date

Location

FOR THE MINISTER OF DEFENSE AND
WAR VETERANS OF THE FRENCH
REPUBLIC:

Signature

Name

Title

Date

Location

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FOR THE FEDERAL MINISTRY OF
DEFENSE OF THE FEDERAL
REPUBLIC OF GERMANY:

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF DEFENSE OF THE
ITALIAN REPUBLIC:

Signature

Name

Title

Date

Location

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

Signature

Name

Title

Date

Location

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

Signature

Name

Title

Date

Location

Annex A

PERSONNEL IN THE PROJECT MANAGEMENT OFFICE

1.0. Purpose and Scope.

- 1.1. This Annex establishes the provisions for personnel assigned to work in the PMO in accordance with Section IV (Management (Organization and Responsibility)). The PM and NILE Cooperative Project Personnel (CPP) will be assigned in accordance with paragraphs 4.6 and 4.7 respectively. The PM's responsibilities are specified in paragraph 4.10. The PM will be responsible for the creation of a document describing the duties for each CPP position, which will be subject to the approval of the SC. Commencement of assignments of CPP will be subject to the requirements of the Host Participant or its Government pertaining to immigration and visit requests. The SC will determine the length of tour for the CPP prior to assignment.
- 1.2. The PM and CPP will be assigned to the PMO for Project work. The PM will report to the SC and the CPP will report to the PM regarding that work. CPP may act as liaison officers on non-Project work on a case-by-case basis, if authorized by the Host Participant upon the request of the CPP's Participant. Such personnel may act from time to time on behalf of their respective SC member if the latter so authorizes in writing.
- 1.3. CPP will not be assigned to positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Participant's government.

2.0. Security.

- 2.1. The SC will establish the level of security clearance required to permit personnel to have access to Classified Information and facilities in which Classified Information is used in accordance with the Program Security Instruction (PSI) and Classification Guide (CG). Access to Classified Information and facilities in which Classified Information is used will be consistent with, and limited by, Section II (Objectives) and Section III (Scope of Work) and will be kept to the minimum required to accomplish the work assignments.
- 2.2. The CPP's Participants will file visit requests through their respective embassies in Washington in compliance with established Host Participant's procedures.

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- 2.3. The Participants will use their best efforts to ensure that the personnel of all Participants assigned to the PMO are briefed in accordance with the provisions of the PSI, and understand and comply with the applicable laws and regulations pertaining to Controlled Unclassified Information and Classified Information as well as the requirements of Section IX (Controlled Unclassified Information), Section X (Visits to Establishments), Section XI (Security), and paragraph 19.4 of Section XIX (Amendment, Withdrawal, Termination, Entry into Effect, and Duration) and the PSI and CG. Prior to commencing assigned duties, the PM and CPP will, as required by the laws, regulations, policies, or procedures of the Host Participant's government, sign certifications concerning their respective conditions and responsibilities. Such certifications will be included as an appendix to the PSI following the provisions of paragraphs 4.5.8 and 4.10.11.
- 2.4. Upon or shortly after a CPP's arrival, the PM will be responsible for informing CPP about applicable laws, orders, regulations, and customs and the need to comply with them. Personnel assigned to the PMO will at all times be required to comply with the security and export control laws, regulations and procedures of the Host Participant's government. Any violation of security procedures by such personnel during their assignment will be reported to their respective Participant for appropriate action. Such personnel committing significant violations of security and export control laws, regulations, or procedures during their assignments will be withdrawn from the Project. Each Participant will determine the applicability of appropriate administrative or disciplinary actions to its own personnel according to its own laws, regulations and procedures.
- 2.5. All Classified Information made available to personnel assigned to the PMO will be considered as Classified Information furnished to their respective Participant and will be subject to all of the provisions and safeguards provided for in Section XI (Security) and the PSI and the CG.
- 2.6. CPP will not have personal custody of Classified Information or Controlled Unclassified Information, unless approved by the PM and as authorized by their respective Participant on a case-by-case basis. They will be granted access to such Information in accordance with Section IX (Controlled Unclassified Information) and Section XI (Security) and the provisions of the PSI during normal duty hours or when access is necessary to perform Project work.
- 2.7. Personnel assigned to the PMO will not serve as a conduit between Participants for requests for and/or transmission of Classified Information or Controlled Unclassified Information other than as specifically authorized in the PSI.

3.0. Administrative Matters.

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- 3.1. Subject to applicable multilateral and bilateral treaties and agreements of the governments of the Participants, CPP and their authorized dependents will be accorded:
 - 3.1.1. Exemption from any taxes of the Host Participant's government upon income received from their respective Participant; and
 - 3.1.2. Exemption from any customs and import duties or similar charges of the Host Participant's government levied on items entering the country for their official or personal use, including their baggage, household effects, and private motor vehicles, and export duties levied on those same items when they leave the country.
- 3.2. CPP will be provided with briefings arranged by the PM regarding applicable entitlements, privileges, and obligations such as:
 - 3.2.1. Any medical and dental care that may be provided to CPP and their dependents at Host Participant medical facilities, subject to applicable laws, regulations, treaties and arrangements of the Host Participant's government, including those relating to any reimbursement requirements;
 - 3.2.2. Purchasing and patronage privileges at military commissaries, exchanges, theaters and clubs for CPP and their dependents, subject to applicable laws and regulations; and
 - 3.2.3. Responsibility of CPP and those dependents accompanying them to obtain motor vehicle liability insurance coverage in accordance with laws and regulations applicable in the area where they are residing. In case of claims involving the use of private motor vehicles by CPP and their dependents, the recourse will be against such insurance.
- 3.3. The PM will, in consultation with the CPP, prepare and issue standard operating procedures in the following areas:
 - 3.3.1. Working hours, including holiday schedules,
 - 3.3.2. Leave authorization, consistent to the extent possible with the military or civilian personnel regulations and practices of the Host Participant and the respective Participant;
 - 3.3.3. Dress regulations, consistent to the extent possible with the military or civilian personnel regulations and practices of the Host Participant and the respective Participant; and

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- 3.3.4. Performance evaluations, recognizing that such evaluations must be rendered in accordance with the respective Participant's military or civilian personnel regulations and practices.
- 3.4. Personnel assigned to the PMO committing an offense under the laws of either the Host Participant's government or the applicable CPP's government may be withdrawn from this Project. The personnel's respective Participant will determine the applicability of administrative or disciplinary actions according to its own laws, regulations, and procedures. Disciplinary action will not be taken by the Host Participant against CPP, nor will CPP exercise disciplinary authority over Host Participant personnel. In accordance with laws, regulations, and procedures of the Host Participant's government, the Host Participant will assist the respective Participant, if so requested, in carrying out investigations of offenses involving CPP.

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