

DEFENSE

Research and Development

**Agreement Between the
UNITED STATES OF AMERICA
and SPAIN**

Signed at Washington and Madrid
August 21 and September 25, 2015

with

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“. . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

SPAIN

Defense: Research and Development

*Agreement signed at Washington and Madrid
August 21 and September 25, 2015;
Entered into force September 25, 2015.
With annexes.*

AGREEMENT
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND THE
MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN
FOR
RESEARCH, DEVELOPMENT, TEST, EVALUATION, AND PROTOTYPING PROJECTS
(RDTE&P AGREEMENT)

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PREAMBLE

The Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defense of the Kingdom of Spain (Spanish MOD), hereinafter referred to as the “Parties”:

Having a common interest in defense;

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

Seeking to make the best use of their respective research and technology development capacities, eliminate unnecessary duplication of work, encourage interoperability, and obtain the most efficient and cost-effective results through cooperation in Research, Development, Test, Evaluation, and Prototyping Projects; and

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

Have reached the following agreement:

SECTION I
DEFINITIONS

The Parties have agreed upon the following definitions of terms used in this Research, Development, Test, Evaluation, and Prototyping Projects Agreement (RDTE&P Agreement), any of its Project Agreements (PAs), and any of its Equipment and Material Transfer Agreements (E&MTAs):

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 or technology.
Contract	Any mutually binding legal relationship under national laws that obligates a Contractor to furnish supplies or services, and obligates one or both of the Parties to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the governmental organizations of the Parties. Contracting includes a description (but not determination) 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 governmental organization of a Party that has authority to enter into, administer, or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Party who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Party's Contracting Agency.
Contractor Support Personnel	Persons specifically identified as providing administrative, managerial, scientific, or technical support services to a Party under a support Contract.
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. It could include Information that has been declassified, but remains controlled.

Cooperative Project Personnel (CPP)	Military members or civilian employees of a Parent Party assigned to a joint project office (JPO) or the other Party's facilities who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of a Project.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Party.
Designated Security Authority (DSA)	The security authority designated by national authorities to be responsible for the coordination and implementation of national security aspects of this RDTE&P Agreement.
Equipment and Material	Any material, equipment, end item, subsystem, component, special tooling, or test equipment jointly acquired or provided for use in the performance of a PA under this RDTE&P Agreement, or provided for use in an E&MTA under this RDTE&P Agreement.
Equipment and Material Transfer Agreements (E&MTAs)	Individually negotiated separate agreements concluded under this RDTE&P Agreement that specify the terms for a specific Equipment and Material transfer from one Party to the other Party for test and evaluation purposes.
Financial Costs	Project costs met with monetary contributions.
Host Party	The Party whose nation serves as the location of the JPO or to whose facilities CPP are assigned.
Information	Knowledge that can be communicated by any means, regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, computer software, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to Intellectual Property rights.

Intellectual Property	In accordance with the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights of April 15, 1994, all copyright and related rights, all rights in relation to inventions (including Patent rights), all rights in registered and unregistered trademarks (including service marks), registered and unregistered designs, undisclosed Information (including trade secrets and know-how), layout designs of integrated circuits, and geographical indications, and any other rights resulting from creative activity in the industrial, scientific, literary, and artistic fields.
Non-financial Costs	Project costs met with non-monetary contributions.
Parent Party	The Party that sends its CPP to the JPO located in the nation of the other Party or to the other Party's facilities.
Party	A signatory to this RDTE&P Agreement, or in the case of PAs or E&MTAs, a signatory to a PA or E&MTA under this RDTE&P Agreement, represented by its military or civilian personnel. Contractors and Contractor Support Personnel shall not be representatives of a Party under this RDTE&P Agreement or PAs or E&MTAs under this RDTE&P Agreement.
Patent	Grant by any Government or a regional office acting for more than one Government of the right to exclude others from making, using, importing, selling, or offering to sell an invention. The term refers to any and all patents including, but not limited to, patents of implementation, improvement, or addition, petty patents, utility models, appearance design patents, registered designs, and inventor certificates or like statutory protections, as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Project	Collaborative activity done under a PA concluded pursuant to this RDTE&P Agreement.
Project Agreement (PA)	An individually negotiated agreement concluded under this RDTE&P Agreement that specifically details the terms of collaboration on a specific Project.
Project Background Information	Information not generated in the performance of a Project.
Project Foreground Information	Information generated in the performance of a Project.
Project Information	Any Information provided to, generated in, or used in a Project.

Project Invention	Any invention in any field of technology, provided it is new, involves an inventive step, is capable of industrial application, and is formulated or made (conceived or “first actually reduced to practice”) in the course of work performed under a Project. The term “first actually reduced to practice” means the first demonstration sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Prospective Contractor	Any entity that seeks to enter into a Contract to be awarded by a Party’s Contracting Agency and that, in the case of a solicitation involving the release of export-controlled Information, is eligible to receive such Information.
Third Party	A government other than the Government of a Party and any person or other entity whose government is not the Government of a Party.

SECTION II

OBJECTIVE

2.1. The objective of this RDTE&P Agreement is to define and establish the general terms and conditions that shall apply to the initiation, conduct, and management of research, development, test, evaluation, and prototyping activities detailed in separate Project Agreements (PAs) or Equipment and Material Transfer Agreements (E&MTAs) between representatives authorized in accordance with national procedures of the Parties. These PAs and E&MTAs shall be entered into pursuant to this RDTE&P Agreement and shall incorporate by reference the terms of this RDTE&P Agreement. Additionally, this RDTE&P Agreement shall allow the exchange of Information for the purpose of harmonizing the Parties' military requirements to assist in better defining potential future cooperative efforts under this RDTE&P Agreement.

2.2. Detailed terms and conditions of each individual PA and E&MTA shall be consistent with this RDTE&P Agreement. Each PA shall include specific provisions concerning the objectives, scope of work, sharing of work, management structure, financial agreements, and security classification for the applicable PA in accordance with the format set forth in Annex A (Model Project Agreement (PA)) to this RDTE&P Agreement, to the extent applicable and practical. Each E&MTA shall contain provisions consistent with the format set forth in Annex B (Model Equipment and Material Transfer Agreement (E&MTA)) to this RDTE&P Agreement, to the extent applicable and practical.

SECTION III

SCOPE OF WORK

3.1 The scope of work for this RDTE&P Agreement shall encompass collaboration in research, development, test, evaluation, and prototyping that could potentially lead to new or improved military capability. PAs may encompass one or more of the following activities: basic research; applied research; advanced technology development; advanced component development and prototypes; concept of operation studies and analysis; advanced concept technology demonstrations; system prototypes; system development and demonstration (engineering and manufacturing development); operational system development; loan of materials, supplies, or equipment for the purposes of research, development, test, evaluation, or prototyping; developmental test and evaluation of system and subsystem efforts; and evolutionary acquisition or spiral development efforts associated with low rate initial production or production programs. The Parties also recognize that it may be necessary to transfer Equipment and Material from one Party to the other Party for the purpose of test and evaluation of the transferred Equipment and Material, but not for the purposes of a specific PA. In such cases, the Parties shall execute an E&MTA using the format as set forth in Annex B (Model Equipment and Material Transfer Agreement (E&MTA)) of this RDTE&P Agreement, to the extent applicable and practical.

3.2. Information may be exchanged for the purpose of harmonizing the Parties' military requirements and for formulating, developing, and negotiating PAs and E&MTAs under this RDTE&P Agreement. Information exchanged shall take place on an equitable basis, but need not necessarily coincide in time, technical field, or form of the information. If Information is exchanged but no PA or E&MTA is signed, or before a PA or E&MTA is signed, the receiving Party shall use such exchanged Information only for information and evaluation purposes and shall not disclose or transfer such exchanged Information to a Third Party. The receiving Party shall not disclose such Information to Contractors or any other persons, other than its Contractor Support Personnel, without the specific prior written consent of the furnishing Party.

3.3. Working Groups (WGs) may be established to attempt to harmonize the Parties' research, development, test, evaluation, and prototyping requirements. WGs normally shall be limited in scope to a well-defined area and shall endeavor to assess issues based on Information provided by both Parties in such a way as to arrive at a jointly determined position within a set time period. WGs shall have their own written terms of reference (TOR), using the format set out in Annex C (Model Working Group (WG) Terms of Reference (TOR)) of this RDTE&P Agreement. The Information exchanged in WGs shall be subject to the disclosure and use limitations on Information that are described in paragraph 3.2. of this Section.

3.4. This RDTE&P Agreement does not preclude the Parties from entering into any other agreement in the area of research, development, test, evaluation, and prototyping.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. The Director, International Cooperation, in the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (or successor in the event of reorganization), is designated as the U.S. Agreement Director (U.S. AD). The Deputy Director General of International Relations of the Directorate General of Armament and Material (or successor in the event of reorganization) is designated as the Spanish Agreement Director (Spanish AD). The Agreement Directors (ADs) shall be responsible for:

- 4.1.1. Monitoring implementation of this RDTE&P Agreement and exercising executive-level oversight;
- 4.1.2. Monitoring the overall use and effectiveness of the RDTE&P Agreement;
- 4.1.3. Recommending amendments to this RDTE&P Agreement to the Parties; and
- 4.1.4. Resolving issues brought forth by the Management Agents (MAs).

4.2. The appropriate U.S. military department acquisition executive or defense agency director (or designee) is designated the U.S. MA for those Projects within the respective military department or defense agency. The Spanish MOD shall designate the Spanish MA on a case-by-case basis. The MAs shall be responsible for:

- 4.2.1. Establishing PAs and E&MTAs in accordance with this RDTE&P Agreement and national policies and procedures;
- 4.2.2. Establishing a management structure for each PA considering its scope and the requirement for a Steering Committee (SC);
- 4.2.3. Appointing Project Officers (POs), and, as appropriate, SC members;
- 4.2.4. Providing administrative direction to SCs, if established, or POs, if there is no SC;
- 4.2.5. Designating a point of contact for exchange of Information to harmonize requirements for the formulation, development and negotiation of potential PAs and E&MTAs, in accordance with paragraph 3.2. of Section III (Scope of Work) of this RDTE&P Agreement;
- 4.2.6. Approving and signing TORs for WGs in accordance with paragraph 3.3. of Section III (Scope of Work) of this RDTE&P Agreement subject to any applicable national requirements for authorization of TOR signature;

- 4.2.7. Approving plans for disposal of jointly acquired Equipment and Material if no SC is established; and
- 4.2.8. Resolving issues brought forth by the SC or, if no SC is established, by the POs. If the issue cannot be resolved by the MAs, then the MAs are responsible for bringing the issue to the attention of the ADs.

4.3. In the event that a Party contracts on behalf of the other Party or on behalf of both Parties for tasks under a PA, an SC shall be established, composed of members from each of the Parties. An SC also may be established for any Project as mutually determined by the Parties. If an SC is established under a particular PA, it shall be responsible for:

- 4.3.1. Providing policy and management direction to the POs during PA execution;
- 4.3.2. Monitoring overall PA implementation, including technical, cost, and schedule performance against requirements;
- 4.3.3. Approving plans to manage and control the transfer of Equipment and Material provided by either Party, or for the disposal of jointly acquired Equipment and Material, in accordance with Section VII (Equipment and Material) and Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement;
- 4.3.4. Resolving issues brought forth by the POs, or raising the issues to the MA;
- 4.3.5. Maintaining oversight of the security aspects of a Project;
- 4.3.6. Approving assignment of CPP working on a Project at a JPO or at the other Party's facilities in accordance with the provisions set out in Appendix 1 (Assignment of Cooperative Project Personnel (CPP)) to Annex A (Model Project Agreement (PA)) to this RDTE&P Agreement;
- 4.3.7. Appointing a Project security officer;
- 4.3.8. Establishing the detailed financial procedures of a PA in the event that one Party Contracts on behalf of the other Party or on behalf of both Parties;
- 4.3.9. Employing its best efforts to resolve, in consultation with the export control authorities of the Party concerned, any export control issues raised by the POs in accordance with paragraph 4.4. of this Section or raised by a Party's SC representative in accordance with subparagraph 8.1.2. of Section VIII (Disclosure and Use of Project Information) of this RDTE&P Agreement;
- 4.3.10. Monitoring Third Party sales and transfers authorized in accordance with Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement; and

4.3.11. Reporting status and activity of assigned PAs on an annual basis to the MAs and ADs.

4.4. In accordance with the terms of each PA, the POs shall have primary responsibility for effective implementation, efficient management, and direction of their assigned PA including managing technical, cost, and schedule performance against requirements. The POs shall monitor export control arrangements required to implement each PA and, if applicable, shall immediately refer to the SC (or the MAs if there is no SC) any export control issues that could adversely affect the implementation of the PA. Additionally, the POs shall have the obligations under paragraph 4.3. of this Section if no SC is established for their PA, except that the MAs shall be responsible for resolving issues brought forth by the POs and for approving plans for the disposal of jointly acquired Equipment and Material. The POs shall also maintain a list of all Equipment and Material transferred by either of the Parties.

4.5. In accordance with the terms of a PA concluded under this RDTE&P Agreement that includes the provisions set out in Appendix 1 (Assignment of Cooperative Project Personnel (CPP)) to Annex A (Model Project Agreement (PA)) to this RDTE&P Agreement, a Party may assign CPP to the JPO or to the other Party's facilities to assist in the implementation of the PA.

4.6. The MAs, SCs, and POs shall meet as required, alternately in the United States and Spain. The Chairman for each meeting shall be the senior official of the Party hosting the meeting. During such meetings, all decisions shall be made unanimously with each Party having one vote. In the event that the Parties are unable to reach a timely decision on an issue, each Party shall refer the issue to its higher authority for resolution. In the meantime, the applicable PA shall continue to be implemented without interruption under the direction of the POs while the issue is being resolved by higher authority.

SECTION V

FINANCIAL PROVISIONS

5.1. Each Party shall contribute its equitable share of the full Financial Costs and Non-financial Costs of each PA, including overhead costs, administrative costs, and costs of claims, and shall receive an equitable share of the results of each PA.

5.2. The financial provisions for a PA, including the total cost of the PA and each Party's share of the total cost, shall be included in the PA in accordance with Annex A (Model Project Agreement (PA)) of this RDTE&P Agreement.

5.3. Both Parties shall perform, or have performed, their tasks and shall use their best efforts to perform the tasks within the cost estimates specified in each PA. Both Parties shall bear the full Financial Costs and Non-financial Costs they incur for performing, managing, and administering their own activities under this RDTE&P Agreement and participation in each PA, including their share of the costs of any Contracts under paragraph 5.11. of this Section.

5.4. The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred and shall not be considered to be part of the total cost of a PA:

5.4.1. Costs associated with any unique national requirements identified by a Party; and

5.4.2. Any other costs not expressly stated as shared costs or any other costs outside the scope of this RDTE&P Agreement and its PAs.

5.5. For PAs with shared costs that involve the establishment of a JPO with CPP assignments, the PA shall address the financial and non-financial contributions required for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of Project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.6. In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.5. of this Section, the cost of personnel in the JPO or assigned to the other Party's facilities shall be borne as follows:

5.6.1. The Host Party shall bear the costs of all pay and allowances of Host Party personnel assigned to the JPO.

5.6.2. The Parent Party shall bear the following CPP-related costs:

5.6.2.1. All pay and allowances of CPP assigned to the JPO or to the other Party's facilities.

- 5.6.2.2. Transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the Host Party's nation prior to the CPP's commencement of a tour of duty in the JPO or the Host Party's facilities, and return transportation of the foregoing from the place of assignment in the Host Party's nation upon completion or termination of the CPP assignment.
- 5.6.2.3. Compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the laws and regulations of the Parent Party's Government.

5.7. For PAs without shared costs that involve the assignment of one Party's CPP to the facilities of the other Party, the Parties shall bear the costs as set forth in paragraph 5.6. of this Section, except that the Host Party shall also bear the assignment-related administrative and support costs such as CPP costs of travel incurred in support of a PA, CPP-related training, office space, security services, information technology services, communications services, and supplies.

5.8. Each Party shall promptly notify the other Party if available funds will not be adequate to fulfill its obligations as agreed under a PA. If a Party notifies the other Party that it is terminating or reducing its funding for a Project, the Parties shall immediately consult with a view toward continuation on a modified basis.

5.9. For each PA, the POs shall be responsible for establishing the financial management procedures under which the Project shall operate. In the event that a Party contracts on behalf of the other Party or on behalf of both Parties, those financial management procedures, which must accord with the national accounting and auditing requirements of the Parties, shall be detailed in a Financial Management Procedures Document (FMPD) prepared by the POs and subject to the approval of the SC.

5.10. If one Party Contracts on behalf of the other Party or on behalf of both Parties for a Project, each Party shall provide its funds for the applicable Contracts in accordance with the estimated schedule of financial contributions contained in the FMPD, which shall be consistent with paragraph 5.11. of this Section.

5.11. The Parties recognize that it may become necessary for one Party to incur contractual or other obligations for the benefit of the other Party or both of the Parties prior to receipt of the other Party's funds. In the event that one Party incurs such contractual or other obligations, the other Party shall pay its equitable share of the Contract or other obligation, and shall make such funds available in such amounts and at such times as may be required by the Contract or other obligation and shall pay its equitable share of any damages and costs that may accrue from the performance of or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

SECTION VI

CONTRACTING PROVISIONS

6.1. If either Party determines that Contracting is necessary to fulfill that Party's obligations under the scope of work of a PA, that Party shall Contract in accordance with its respective national laws, regulations, and procedures.

6.2. When one Party individually Contracts to carry out a task under a PA, it shall be solely responsible for its own Contracting, and the other Party shall not be subject to any liability arising from such Contracts without its prior written consent.

6.3. For all Contracting activities performed by either Party for the benefit of the other Party or both Parties, the POs shall, upon request, be provided a copy of all statements of work prior to the issuance of solicitations to ensure that they are consistent with the provisions of this RDTE&P Agreement and the applicable PA. The Contracting Officer shall keep the POs advised of all significant developments associated with award and performance of Project Contracts awarded for the other Party or both Parties, and shall keep the POs advised of all financial arrangements with the prime Contractor.

6.4. The POs may make use of a Party's Contracting Agency in the event that Contracting on behalf of the other Party or both Parties is required to implement the PA. The Contracting Agency so used shall place Contracts in accordance with its respective national laws, regulations, and procedures with such waivers and deviations from those regulations and procedures as its procedures permit and as deemed necessary to implement the PA. The Contracting Party's Contracting Officer shall be the exclusive source for providing contractual direction and instructions to the Contractors for Contracts awarded by that Party.

6.5. For all Contracting activities performed by either Party, each Party's Contracting Agency shall insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable conditions to satisfy the requirements of this RDTE&P Agreement, 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 (Amendment, Termination, Entry Into Force, and Duration), and including export control provisions in accordance with this RDTE&P Agreement, in particular paragraphs 6.7. and 6.8. of this Section. Each Party's Contracting Officer shall negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information) of this RDTE&P Agreement. During the Contracting process, each Party's Contracting Officer shall advise Prospective Contractors of their responsibility to notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Information or permit its use. The Contracting Officer shall also advise Prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.6. In the event a Party's Contracting Agency 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 Prospective Contractors of any restrictions on the disclosure and use of Project Information, that Party's PO shall notify the other Party's PO of the restriction(s), and the POs shall submit the matter to the SC (or the MAs if no SC is established) for resolution.

6.7. Each Party shall legally bind its Contractors to a requirement that the Contractor shall not retransfer or otherwise use export-controlled Information furnished by the other Party for any purpose other than the purposes authorized under this RDTE&P Agreement or PAs or E&MTAs under this RDTE&P Agreement. The Contractor shall 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 RDTE&P Agreement or PAs or E&MTAs under this RDTE&P Agreement. Export-controlled Information furnished by one Party under this RDTE&P Agreement or PAs or E&MTAs under this RDTE&P Agreement may only be retransferred by the other Party to its Contractors if the legal agreements required by this paragraph have been established.

6.8. Each Party shall legally bind its Prospective Contractors to a requirement that the Prospective Contractor shall not retransfer or otherwise use export-controlled Information furnished by the other Party for any purpose other than responding to a solicitation issued in furtherance of the purposes authorized under this RDTE&P Agreement or a PA or E&MTA under this RDTE&P Agreement. Prospective Contractors shall not be authorized to use such Information for any other purpose if they are not awarded a Contract. The Prospective Contractors shall 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 Party under this RDTE&P Agreement or a PA or E&MTA under this RDTE&P Agreement may only be retransferred by the other Party to its Prospective Contractors if the legal arrangements required by this paragraph have been established. Upon request by the furnishing Party, the receiving Party shall identify its Prospective Contractors and prospective subcontractors receiving such export-controlled Information.

6.9. Each Party's PO shall promptly advise the other Party's PO of any anticipated or actual cost growth, schedule changes, delay, or performance problems under any Contract for which its Contracting Agency is responsible.

6.10. No requirement shall be imposed by either Party for worksharing or other industrial or commercial compensation in connection with this RDTE&P Agreement that is not in accordance with this RDTE&P Agreement or its PAs.

SECTION VII

EQUIPMENT AND MATERIAL

7.1. Each Party may provide Equipment and Material identified as being necessary for executing a specific PA to the other Party. Such Equipment and Material shall remain the property of the providing Party. A list of all Equipment and Material provided by one Party to another Party shall be developed and maintained by the POs and approved by the SC (if an SC is established). In addition, and following the format of Annex B (Model Equipment and Material Transfer Agreement (E&MTA)) to this RDTE&P Agreement, Equipment and Material may be transferred from one Party to the other Party for test and evaluation purposes. Under an E&MTA, the receiving Party shall provide the providing Party a final report, as reflected in Annex B (Model Equipment and Material Transfer Agreement (E&MTA)) to this RDTE&P Agreement.

7.2. The receiving Party shall maintain any such Equipment and Material in good order, repair, and operable condition. Unless the providing Party has authorized the Equipment and Material to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the Equipment and Material to the providing Party in as good condition as received, normal wear and tear excepted, or return the Equipment and Material and pay the cost to restore it. If the Equipment and Material is damaged beyond economical repair, the receiving Party shall return the Equipment and Material to the providing Party (unless otherwise specified in writing by the providing Party) and pay its replacement value, which shall be computed pursuant to the providing Party's national laws and regulations. If the Equipment and Material is lost while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value as computed pursuant to the providing Party's national laws and regulations. If known at the time of entry into force, the replacement value of the Equipment and Material shall be specified in the PA or E&MTA.

7.3. The providing Party shall deliver Equipment and Material to the receiving Party at a mutually agreed location. Possession of the Equipment and Material shall pass from the providing Party to the receiving Party at the time of receipt of the Equipment and Material. Any further transportation is the responsibility of the receiving Party unless otherwise specified in the applicable PA or E&MTA.

7.4. All Equipment and Material that is transferred shall be used by the receiving Party only for the purposes of carrying out a PA or E&TMA, unless otherwise agreed to in writing by the providing Party. In addition, in accordance with Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement, Equipment and Material shall not be re-transferred or sold to a Third Party without the prior written consent of the providing Party.

7.5. Equipment and Material transferred to one Party under a PA or E&MTA shall be returned to the providing Party prior to the termination or expiration of that PA or E&MTA.

7.6. Any Equipment and Material that is jointly acquired on behalf of both Parties for use under a PA shall be disposed of during the PA or when the PA ceases, as determined by the SC or, if no SC is established, the MAs.

7.7. Disposal of jointly acquired Equipment and Material may include a transfer of the interest of one Party in such Equipment and Material to the other Party, or the sale of such Equipment and Material to a Third Party in accordance with Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement. The Parties shall share the consideration from jointly acquired Equipment and Material transferred or sold to a Third Party in the same ratio as costs are shared under the applicable PA.

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

- 8.1.1. Both Parties recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out each PA. The Parties intend to acquire sufficient Information and rights to use such Information to enable collaboration on basic, exploratory, and advanced technologies, the maturation of which may lead to the development of technologically superior systems. The nature and amount of Information to be acquired shall be consistent with the objectives stated in the sections concerning the objectives and scope of work in the applicable PA.
- 8.1.2. The following export control provisions shall apply to the transfer of Project Information and Information furnished or generated under an E&MTA:
- 8.1.2.1. Transfer of Project Information and Information furnished or generated under an E&MTA shall be consistent with the furnishing Party's applicable export control laws and regulations.
- 8.1.2.2. Unless otherwise restricted by duly authorized officials of the furnishing Party at the time of transfer to the other Party, all export-controlled Information furnished by one Party to the other Party may be retransferred to the other Party's Contractors, subcontractors, Prospective Contractors, and prospective subcontractors, subject to the requirements of paragraphs 6.7. and 6.8. of Section VI (Contracting Provisions) of this RDTE&P Agreement.
- 8.1.2.3. Export-controlled Information may be furnished by Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of one Party's nation to the Contractors, subcontractors, Prospective Contractors, and prospective subcontractors of the other Party's nation pursuant to a PA or E&MTA under this RDTE&P Agreement, subject to the conditions established in licenses or other approvals issued by the Government of the former Party in accordance with its applicable export control laws and regulations.
- 8.1.2.4. If a Party 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 Section, it shall promptly inform the other Party. If a restriction is then exercised and the affected Party objects, that Party's SC

representative (or PO, if no SC is established under a PA, or point of contact in the case of an E&MTA) shall promptly notify the other Party's SC representative (or PO, if no SC is established, or point of contact in the case of an E&MTA), and they shall immediately consult in order to discuss ways to resolve such issues or mitigate any adverse effects.

- 8.1.3. Pursuant to paragraphs 3.2. and 3.3. of Section III (Scope of Work) of this RDTE&P Agreement, the Parties may exchange Information under this RDTE&P Agreement for the objectives of harmonizing the Parties' requirements and formulating, developing, and negotiating potential PAs and E&MTAs. The Party furnishing such Information shall clearly indicate to the receiving Party that it is furnishing such Information for such objectives. Until a PA is signed, or if no PA is signed, a Party may use Information received pursuant to paragraphs 3.2. and 3.3. of Section III (Scope of Work) only for information and evaluation purposes and shall not disclose or transfer such Information to a Third Party. The receiving Party shall not disclose Information to Contractors or any other persons, other than its Contractor Support Personnel, without the specific prior written consent of the furnishing Party.
- 8.1.4. The following provisions shall apply to E&MTAs:
- 8.1.4.1. Under each E&MTA, the Party transferring Equipment and Material to the receiving Party shall provide, without charge, to the receiving Party such operation and maintenance Information as is necessary to conduct the test and evaluation of the Equipment and Material. The receiving Party may use the Information only for the operation and maintenance of the transferred Equipment and Material, unless otherwise provided in the E&MTA.
- 8.1.4.2. Under each E&MTA, the Party receiving the transferred Equipment and Material from the other Party shall provide, without charge, a test report concerning the test and evaluation of the Equipment and Material to the other Party, which may use, or have used, the test report, for Defense Purposes. The Party receiving the transferred Equipment and Material may use, or have used, the test report and other Information generated in the test and evaluation of the Equipment and Material for Defense Purposes.
- 8.1.4.3. Export-controlled Information furnished by one Party to the other Party shall be marked with the appropriate export control markings of the furnishing Party.

8.2. Government Project Foreground Information

8.2.1. Disclosure: All Project Foreground Information generated by a Party's military or civilian employees (hereinafter referred to as "Government Project Foreground Information") shall be disclosed promptly and without charge to the Parties.

8.2.2. Use: Each Party may use or have used all Government Project Foreground Information without charge for Defense Purposes. The Party generating Government Project Foreground Information shall also retain all its rights of use thereto. Any sale or other transfer to a Third Party shall be subject to the conditions of Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement.

8.3. Government Project Background Information

8.3.1. Disclosure: Each Party, upon request, shall disclose promptly and without charge to the other Party any relevant Government Project Background Information generated by its military or civilian employees, provided that:

8.3.1.1. Such Government Project Background Information is necessary to or useful in a specific PA, with the Party in possession of the Information determining, after consulting with the requesting Party, whether it is "necessary to" or "useful in" the specific PA;

8.3.1.2. Such Government Project Background Information may be made available only if the rights of holders of Intellectual Property rights are not infringed;

8.3.1.3. Disclosure of such Government Project Background Information is consistent with national disclosure policies and regulations of the furnishing Party; and

8.3.1.4. Any disclosure or transfer of such Government Project Background Information to Contractors is consistent with the furnishing Party's export control laws and regulations.

8.3.2. Use: Government Project Background Information furnished by one Party to the requesting Party may be used without charge by or for the requesting Party for Project purposes of a specific PA. However, subject to Intellectual Property rights held by entities other than the Parties, such Government Project Background Information may be used for Defense Purposes by the requesting Party, without charge, when such Information is necessary for the use of Project Foreground Information. The furnishing Party, in consultation with the other Party, shall determine whether the Government Project Background Information is necessary for the use of Project Foreground Information. The furnishing Party

shall retain all its rights with respect to such Government Project Background Information.

8.4. Contractor Project Foreground Information

8.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors (hereinafter referred to as “Contractor Project Foreground Information”) shall be disclosed promptly and without charge to both Parties.

8.4.2. Use: Each Party may use or have used without charge for Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the Parties. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall retain all its rights of use thereto in accordance with the applicable Contracts. Any sale or other transfer to a Third Party of Contractor Project Foreground Information shall be subject to the conditions of Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement.

8.5. Contractor Project Background Information

8.5.1. Disclosure: A Contracting Party shall make available to the other Party promptly and without charge all Contractor Project Background Information generated by Contractors that is delivered under Contracts awarded in accordance with a specific PA. Any other Project Background Information that is generated by Contractors and that is in the possession of one Party shall be made available promptly and without charge to the other Party, upon its request, provided the following conditions are met:

8.5.1.1. Such Contractor Project Background Information is necessary to or useful in a specific PA, with the Party in possession of the Information determining, after consultation with the requesting Party, whether it is "necessary to" or "useful in" the PA;

8.5.1.2. Such Contractor Project Background Information may be made available only if the rights of holders of Intellectual Property rights are not infringed;

8.5.1.3. Disclosure of such Contractor Project Background Information is consistent with national disclosure policies and regulations of the furnishing Party.

8.5.1.4. Any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the furnishing Party's export control laws and regulations.

8.5.2. Use: All Contractor Project Background Information delivered by Contractors under Contracts awarded in accordance with a specific PA may be used by or for the receiving Party, without charge, for Project purposes, subject to any restrictions by holders of Intellectual Property rights other than the Parties. Any other Contractor Project Background Information furnished by one Party's Contractors and disclosed to a requesting Party may be used without charge by the requesting Party for Project purposes for the specific PA, subject to any restrictions by holders of Intellectual Property rights other than the Parties; also, when necessary for the use of Project Foreground Information, such other Contractor Project Background Information may be used by the requesting Party for Project purposes, subject to such fair and reasonable terms as may be necessary to be arranged with the Contractor. The furnishing Party, in consultation with the requesting Party, shall determine whether such other Contractor Project Background Information is necessary for the use of Project Foreground Information. The furnishing Party shall retain all its rights with respect to Contractor Project Background Information.

8.6. Alternative Uses of Project Information

8.6.1. Any Project Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this RDTE&P Agreement or any PA under this RDTE&P Agreement, unless otherwise consented to in writing by the providing Party.

8.6.2. The prior written consent of each Party shall be required for the use of Project Foreground Information for purposes other than those provided for in this RDTE&P Agreement or any PA under this RDTE&P Agreement.

8.7. Proprietary Project Information

8.7.1. All Project Information that is subject to disclosure and use restrictions with respect to Intellectual Property rights shall be identified and marked, and it shall 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 Defence Purposes, done at Brussels on October 19, 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on January 1, 1971, (or any successor agreement and procedures) shall apply to Project Information subject to Intellectual Property rights.

8.8. Patents

- 8.8.1. Each Party shall include in all its Contracts for a Project a provision governing the disposition of rights in regard to Project Inventions and Patent rights relating thereto, that either:
- 8.8.1.1. Provides that the Party shall hold title to all such Project Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor concerned; or
 - 8.8.1.2. Provides that the Contractor shall hold title (or may elect to retain title) for such Project Inventions together with the right to make Patent applications for the same, while securing for the Parties a license for the Project Inventions, and any Patents thereto, on terms in compliance with the conditions of subparagraph 8.8.2. of this Section.
- 8.8.2. In the event that a Contractor owns title (or elects to retain title) to any Project Invention, the Contracting Party shall secure for the other Party non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Project Invention throughout the world for Defense Purposes.
- 8.8.3. The conditions of subparagraphs 8.8.4. through 8.8.7. of this Section shall apply in regard to Patent rights for all Project Inventions made by the Parties' military or civilian employees, including those within Government-owned facilities, and for all Project Inventions made by Contractors for which the Contracting Party holds title or is entitled to acquire title.
- 8.8.4. Where a Party has or can secure the right to file a Patent application with regard to a Project Invention, that Party shall consult with the other Party regarding the filing of such Patent application. The Party that has or receives title to such Project Invention shall, in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, Patent applications covering that Project Invention. A Party shall immediately notify the other Party that a Patent application has been filed. If a Party, having filed or caused to be filed a Patent application, abandons prosecution of the application or ceases maintaining the Patent granted or issued on the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution or maintain the Patent as the case may be.
- 8.8.5. Each Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 8.8.6. Each Party shall grant to the other Party a non-exclusive, irrevocable, royalty-free license under its Patents for Project Inventions, to practice or have practiced the Project Invention throughout the world for Defense Purposes.

8.8.7. Patent applications to be filed, or assertions of other Intellectual Property rights, under this RDTE&P Agreement that contain Classified Information shall be protected and safeguarded in a manner no less stringent than the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for Which Applications for Patents Have Been Made, done in Paris on September 21, 1960, and its Implementing Procedures (or any successor agreement and procedures).

8.9. Each Party shall notify the other Party of any Intellectual Property infringement claims brought against that Party arising in the course of work performed under a Project on behalf of the other Party. Insofar as possible, the other applicable Party shall provide Information available to it that may assist in defending such claims. Each Party shall be responsible for handling such Intellectual Property infringement claims brought against it, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving such Intellectual Property infringement claims in proportion to their financial contributions for that work specified in the section concerning financial provisions in the applicable PA.

8.10. The Parties shall, as permitted by their national laws, regulations, and practices, give their authorization and consent for all use and manufacture in the course of work performed under a Project of any invention covered by Patent, or as determined to be necessary for work under the Project, authorization and consent for non-commercial copyright, granted or otherwise provided by their respective countries.

SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1. Except as otherwise provided in this RDTE&P Agreement or as authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this RDTE&P Agreement and any of its PAs or E&MTAs shall be controlled as follows:

- 9.1.1. Such Information shall be used only for the purposes authorized for use of Information as specified in Section VIII (Disclosure and Use of Project Information) of this RDTE&P Agreement.
- 9.1.2. Access to such Information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1. of this Section, and shall be subject to the provisions of Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement.
- 9.1.3. Each Party shall take all lawful steps available to it, including national classification, to keep such Information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2. of this Section, unless the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the Information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

9.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked to ensure its “in-confidence” nature. The Parties’ export-controlled Information shall be marked in accordance with the applicable Party’s export control markings as documented in the Project Security Instruction (PSI) or, if no PSI is required, other appropriate Project documentation, such as a Project plan, for the applicable PA. The Parties shall also decide, in advance and in writing, on the markings to be placed on any other types of Controlled Unclassified Information and describe such markings in the PSI or, if no PSI is required, other appropriate Project documentation, such as a Project plan.

9.3. Controlled Unclassified Information provided or generated pursuant to this RDTE&P Agreement and any of its PAs and E&MTAs shall be handled in a manner that ensures control as provided for in paragraph 9.1. of this Section.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure that the Contractors are legally bound to control such Information in accordance with the conditions of this Section.

SECTION X

VISITS TO ESTABLISHMENTS

10.1. Each Party shall permit visits to its Government establishments, agencies, and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractors, provided that the visit is authorized by both Parties and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel shall be required to comply with security regulations of the hosting Party. Any Information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this RDTE&P Agreement.

10.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform to the established visit procedures of the hosting Party. Requests for visits shall bear the name of this RDTE&P Agreement and the appropriate PA or E&MTA.

10.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with recurring international visit procedures.

SECTION XI

SECURITY

11.1. All Classified Information provided or generated pursuant to this RDTE&P Agreement and any of its PAs or E&MTAs shall be stored, handled, transmitted, and safeguarded in accordance with the General Security of Military Information Agreement between the United States of America and Spain, dated March 12, 1984, and including the Industrial Security Protocol thereto, of March 12, 1984.

11.2. Classified Information shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such Classified Information shall bear the level of classification and denote the country of origin, the conditions of release, and the fact that the Information relates to this RDTE&P Agreement and the applicable PA or E&MTA.

11.3. Each Party shall take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this RDTE&P Agreement and its PAs and E&MTAs is protected from further disclosure, except as permitted by this Section, unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that the recipient:

11.3.1. Shall not release the Classified Information to any government, national, organization, or other entity of a Third Party except as permitted under the procedures set forth in Section XII (Third Party Sales and Transfers) of this RDTE&P Agreement.

11.3.2. Shall not use the Classified Information for other than the purposes provided for in this RDTE&P Agreement and any of its PAs or E&MTAs.

11.3.3. Shall comply with any distribution and access restrictions on Classified Information that are provided under this RDTE&P Agreement and its PAs or E&MTAs.

11.4. The Parties shall investigate all cases in which it is known or when there are grounds for suspecting that Classified Information provided or generated pursuant to this RDTE&P Agreement and its PAs or E&MTAs has been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Party of the details of any such occurrence, and of the final results of the investigation and of the corrective action taken to preclude recurrence.

11.5. For Projects that require the exchange of classified information, the POs shall prepare a PSI and a Classification Guide (CG) for the Project under a PA. The PSI and the CG shall describe the methods by which Project Information shall be classified, marked, used, transmitted, and safeguarded, and shall require that markings for all export-controlled Classified Information shall include the applicable export control markings identified in the PSI in accordance with paragraph

9.2. of Section IX (Controlled Unclassified Information) of this RDTE&P Agreement. The PSI and CG shall be developed by the POs within three months after the PA enters into force. They shall be reviewed and forwarded to the Parties' DSAs for approval and shall be applicable to all Government and Contractor personnel participating in the Project. The CG shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and CG shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6. The DSA of the Party that awards a classified Contract shall 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 a Contractor, Prospective Contractor, or subcontractor of any Classified Information received under this RDTE&P Agreement and its PAs or E&MTAs, the DSAs or their designees shall:

- 11.6.1. Ensure that such Contractor, Prospective Contractor, or subcontractor (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 with duties that require access to Classified Information, if appropriate.
- 11.6.4. Ensure that all persons having access to the Classified Information are informed of their obligations to protect the Classified Information in accordance with national security laws and regulations and the conditions of this RDTE&P Agreement.
- 11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
- 11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of this RDTE&P Agreement and its PAs or E&MTAs.

11.7. Contractors, Prospective Contractors, or subcontractors that are determined by 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 RDTE&P Agreement and its PAs or E&MTAs only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall 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 other Party shall be consulted for approval prior to permitting such access.

11.8. For any facility wherein Classified Information is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the

obligations for safeguarding at such facility the Information pertaining to this RDTE&P Agreement and its PAs or E&MTAs. These officials shall be responsible for limiting access to Classified Information involved in this RDTE&P Agreement and its PAs or E&MTAs to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in this RDTE&P Agreement and its PAs or E&MTAs.

11.10. Information provided or generated pursuant to this RDTE&P Agreement and its PAs or E&MTAs may be classified as high as SECRET or RESERVADO. The existence of this RDTE&P Agreement is unclassified and the contents are unclassified. The classification of the existence of a PA or E&MTA and its contents shall be stated in the PA or E&MTA.

SECTION XII

THIRD PARTY SALES AND TRANSFERS

12.1. Except to the extent permitted in paragraph 12.2. of this Section, the Parties shall not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, any item produced either wholly or in part from Project Foreground Information, jointly acquired or produced Equipment and Material, or Information generated under an E&MTA to any Third Party without the prior written consent of the Government of the other Party. Furthermore, neither Party shall permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the Government of the other Party. Such consent shall not be given unless the government of the intended recipient confirms in writing with the Parties that it shall:

- 12.1.1. Not retransfer, or permit the further retransfer of, any Equipment and Material or Information provided; and
- 12.1.2. Use, or permit the use of, the Equipment and Material or Information provided only for the purposes specified by the Parties.

12.2. Each Party shall retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information or any item produced either wholly or in part from Project Foreground Information:

- 12.2.1. That is generated solely by either that Party or that Party's Contractors in the performance of that Party's work allocation under a PA; and
- 12.2.2. That does not include any Project Foreground Information or Project Background Information of the other Party and whose generation, test, or evaluation has not relied on the use of Equipment and Material of the other Party.

12.3. In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Party intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 12.2. of this Section, the matter shall be brought to the immediate attention of the other Party's PO. The Parties shall resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

12.4. A Party shall not sell, transfer title to, disclose, or transfer possession of Equipment and Material or Project Background Information provided by the other Party to any Third Party without the prior written consent of the Government of the Party that provided such Equipment and Material or Information. Furthermore, a Party shall not sell, transfer title to, disclose, or transfer possession of any Information provided by the other Party under an E&MTA that was not

generated under that E&MTA without the prior written consent of the Government of the other Party that provided such Information. The providing Party's Government shall be solely responsible for authorizing the transfers described in this paragraph and, as applicable, specifying the method and conditions for implementing such transfers.

SECTION XIII

LIABILITY AND CLAIMS

13.1. Except as provided in paragraph 13.5. of this Section, for liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution of this RDTE&P Agreement, the following conditions shall apply:

- 13.1.1. Claims against a Party or its military or civilian personnel shall be dealt with in accordance with the terms of applicable multilateral or bilateral treaties and agreements of the Parties.
- 13.1.2. For those claims for which multilateral or bilateral treaties or agreements do not apply, the following conditions shall apply:
 - 13.1.2.1. With the exception of claims for loss of or damage to Equipment and Material, which are addressed in Section VII (Equipment and Material) of this RDTE&P Agreement, each Party waives all claims against the other Party in respect to injury to or death of its military or civilian personnel and for damage to or loss of its property (including its interest in jointly acquired Equipment and Material) caused by such personnel of the other Party. However, if, after consultation, the Parties determine that such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Party's military or civilian personnel, the costs of any liability shall be borne by that Party alone.
 - 13.1.2.2. Claims from any other persons for injury, death, damage, or loss of any kind caused by one of the Parties' military or civilian personnel shall be processed by the most appropriate Party, as determined by the Parties. Any costs determined to be owed the claimant shall be borne by the Parties in the same ratios as their financial and non-financial contributions specified in the PA under this RDTE&P Agreement. However, if, after consultation, the Parties determine that such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Party's military or civilian personnel, the costs of any liability shall be borne by that Party alone.

13.2. If a person or entity, other than the Party's military or civilian personnel, damages jointly acquired Equipment and Material, and the cost of making good such damage is not recoverable from such person or entity, such cost shall be borne by the Parties in the same ratios as their financial and non-financial contributions specified in the PA under this RDTE&P Agreement.

13.3. Claims arising under any Contract awarded under this RDTE&P Agreement shall be resolved in accordance with the conditions of the Contract.

13.4. Employees and agents of Contractors are not considered civilian personnel of a Party for the purposes of this Section.

13.5. For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution of an E&MTA under this Agreement, the following conditions shall apply:

- 13.5.1. With the exception of claims for loss of or damage to Equipment and Material transferred under the E&MTA, which are addressed in Section VII (Equipment and Material) of this Agreement, each Party waives all claims against the other Party for any injury to or death of its military or civilian personnel and for damage to or loss of its property that may arise out of the use of the Equipment and Material.
- 13.5.2. Each Party shall not seek indemnification from the other Party for claims from any other person for injury, death, damage, or loss of any kind that may arise out of the use of the Equipment and Material.

SECTION XIV

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

14.1. Customs duties, import and export taxes, and similar charges shall be administered in accordance with each Party's respective laws and regulations. Insofar as existing national laws and regulations permit, the Parties shall endeavor to ensure that such readily identifiable customs duties, import and export 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 each PA or E&MTA under this RDTE&P Agreement.

14.2. Each Party shall use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work carried out under each PA or E&MTA. If any such duties, taxes, or similar charges are levied in connection with a Project, the Party in whose country they are levied shall bear such costs over and above that Party's shared costs of the Project.

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

SECTION XV

SETTLEMENT OF DISPUTES

15.1. Disputes between the Parties arising under or relating to this RDTE&P Agreement and any of its PAs or E&MTAs shall be resolved only by consultation between the Parties and shall not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

SECTION XVI

LANGUAGE

16.1. The working language for this RDTE&P Agreement and its PAs and E&MTAs shall be the English language.

16.2. All Information generated under this RDTE&P Agreement, the PAs or E&MTAs under this RDTE&P Agreement, and the implementing Contracts for PAs and provided by one Party to the other Party shall be furnished in the English language.

SECTION XVII

GENERAL PROVISIONS

17.1. All activities of the Parties under this RDTE&P Agreement and the PAs and E&MTAs under this RDTE&P Agreement shall be carried out in accordance with their respective national laws and regulations, including their respective export control laws and regulations. The obligations of the Parties under this RDTE&P Agreement and its PAs and E&MTAs shall be subject to the availability of funds for such purposes.

17.2. In the event of a conflict between a Section of this RDTE&P Agreement and any Annex to this RDTE&P Agreement, or any PA or E&MTA under this RDTE&P Agreement, the Section of the RDTE&P Agreement shall govern.

17.3. No requirement shall be imposed by either Party for work sharing or other industrial or commercial compensation in connection with this RDTE&P Agreement or its PAs and E&MTAs that is not in accordance with this RDTE&P Agreement or its PAs and E&MTAs.

SECTION XVIII

AMENDMENT, TERMINATION, ENTRY INTO FORCE, AND DURATION

18.1. This RDTE&P Agreement or any of its PAs or E&MTAs may be amended by the mutual written consent of the Parties.

18.2. This RDTE&P Agreement or any of its PAs or E&MTAs may be terminated at any time by the written mutual consent of the Parties. In the event both Parties consent to terminate this RDTE&P Agreement, or decide to terminate any PA or E&MTA, the Parties shall consult prior to the date of termination to ensure termination in the most economical and equitable manner. Termination or expiration of this RDTE&P Agreement shall result in the termination of all RDTE&P Agreement activities, including all PAs, E&MTAs, and WGs under this RDTE&P Agreement.

18.3. Either Party may terminate this RDTE&P Agreement or any of its PAs or E&MTAs upon 90 days written notification to the other Party of its intent to terminate. In the case of termination of this RDTE&P Agreement, such notice shall be the subject of immediate consultation by the ADs to decide upon the appropriate course of action to conclude the activities under this RDTE&P Agreement. In the case of termination of any PAs or E&MTAs, such notice shall be the subject of immediate consultation by the corresponding SC (or the MAs if no SC is established) to discuss how to conclude any terminated PAs or E&MTAs. In the event of such termination, the following rules apply:

18.3.1. The Party terminating the RDTE&P Agreement or any of its PAs or E&MTAs shall continue participation, financial or otherwise, in the RDTE&P Agreement or the PAs affected by the notification of termination, up to the effective date of termination.

18.3.2. Except as to Contracts awarded on behalf of both Parties, each Party shall be responsible for its own Project-related costs associated with termination of the Project under a PA. For Contracts awarded on behalf of both Parties, the Party responsible for terminating the Project shall pay all Contract modification or termination costs that would not otherwise have been incurred but for the decision to terminate; in no event, however, shall a terminating Party's total financial contribution, including Contract termination costs, exceed that Party's total financial contribution for the PA being terminated.

18.3.3. All Information and rights therein received under the provisions of this RDTE&P Agreement or its PAs or E&MTAs prior to termination of the RDTE&P Agreement or its PAs or E&MTAs shall be retained by the Parties, subject to the provisions of this RDTE&P Agreement and its PAs and E&MTAs.

18.3.4. If requested by the other Party, the terminating Party may continue to administer the Project Contract(s) that it awarded on behalf of the other Party on a reimbursable basis.

18.4. The respective rights and obligations of the Parties regarding Section VII (Equipment and Material), 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), Section XV (Settlement of Disputes), Section XVII (General Provisions), and this Section XVIII (Amendment, Termination, Entry Into Force, and Duration) of this RDTE&P Agreement shall continue to apply, notwithstanding termination or expiration of this RDTE&P Agreement and any of its PAs or E&MTAs.

18.5. This RDTE&P Agreement, which consists of eighteen (18) Sections and three Annexes, shall enter into force upon signature by both Parties and shall remain in force for twenty (20) years. It may be extended by written agreement of the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Parties, have signed this RDTE&P Agreement.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA:



Signature

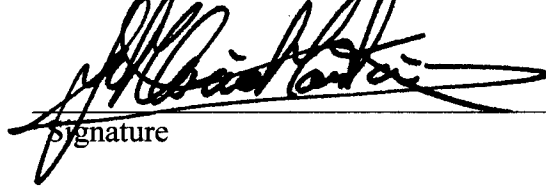
Frank Kendall
Name

USD(AT&L)
Title

AUG 21 2015
Date

Washington, DC
Location

FOR THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN:



Signature

Juan Manuel Garcia Montaño
Name

National Armaments Director
Army Lieutenant General
Spanish Ministry of Defence
Title

25th September 2015
Date

Madrid, Spain
Location

ANNEX A

MODEL PROJECT AGREEMENT (PA)

TO THE

AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN FOR RESEARCH, DEVELOPMENT, TEST, EVALUATION, AND PROTOTYPING PROJECTS (RDTE&P AGREEMENT)

DATED

PROJECT AGREEMENT NO. _____*

BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN

CONCERNING

(FULL DESIGNATION OF THE PROJECT)

* **The Project Agreement Numbers shall be structured as follows:**

XX-NN-nnnn where XX is a U.S. Military Department or Defense Agency designator such as N for Navy, A for Army, AF for Air Force, DA for DARPA, etc.; NN is the calendar year, and nnnn is a sequential number.

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PREAMBLE

Pursuant to the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Kingdom of Spain for Research, Development, Test, Evaluation, and Prototyping Projects (hereinafter referred to as the "RDTE&P Agreement"), which entered into force on (date), the following Project Agreement is hereby entered into between the Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defense of the Kingdom of Spain (Spanish MOD), hereinafter referred to as the "Parties."

SECTION I

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the RDTE&P Agreement.)

SECTION II

OBJECTIVES

2.1. The objectives of this _____ PA are:

(For example:

2.1.1. the development of _____
_____.

2.1.2. the improvement of _____
_____.)

SECTION III

SCOPE OF WORK

3.1. The following work shall be undertaken under this PA.

(For example:

3.1.1. Develop _____
_____.

3.1.2. Evaluate _____
_____.

3.1.3. Design, fabricate, and test _____

_____.)

SECTION IV

SHARING OF TASKS

4.1. The sharing of tasks shall be as follows:

(For example:

4.1.1. The U.S. DoD shall _____
_____.

4.1.2. The Spanish MOD shall _____
_____.

4.1.3. U.S. DoD and Spanish MOD shall jointly _____
_____.

4.1.3.x. Prepare a final report.)

4.2. The final report shall be transmitted to the Management Agents (MAs) six months before the expiration date of this PA.

SECTION V

BREAK DOWN AND SCHEDULE OF TASKS
(OPTIONAL)

(Use this format when the tasks covered under this Project may be performed using multiple phases, requiring milestones or decision points.)

5.1. The Project shall proceed according to the following phases and schedule:

<u>Phase 1</u>	<u>Start</u>	<u>End</u>
Description of Phase 1	MM/DD/YY	MM/DD/YY

(Milestone 1) (e.g., Transmittal of Feasibility Report)

<u>Phase 2</u>	<u>Start</u>	<u>End</u>
Description of Phase 2	MM/DD/YY	MM/DD/YY

(Milestone 2) (e.g., Decision to proceed to Phase 3)

<u>Phase 3</u>	<u>Start</u>	<u>End</u>
Description of Phase 3	MM/DD/YY	MM/DD/YY

(Milestone 3) (e.g., Evaluation, analysis of results)

(Add as many phases as necessary.)

SECTION VI

MANAGEMENT

(If a PA does not require a Steering Committee, use the following format to set forth how the PA shall be managed.)

Alternative 1

6.1. This PA shall be directed and administered on behalf of the Parties by one Project Officer (PO) from each Party. The POs are:

U.S. DoD PO	Title/Position	_____
	Organization	_____
	Address	_____

Spanish MOD PO	Title/Position	_____
	Organization	_____
	Address	_____

6.2. Project Offices shall be established in _____ (name of U.S. location) and in _____ (name of Spanish location). The POs are responsible for management of those tasks listed as national obligations in Section IV (Sharing of Tasks) in this PA.

6.3. Particular Management Procedures:

(Mention only those additional management obligations not covered under Section IV (Management (Organization and Responsibility)) of the RDTE&P Agreement.)

(If a Project requires the establishment of a Steering Committee, use the following format to set forth how the Project shall be managed. Note: If it is intended that one Party will contract on behalf of the

(Mention only those additional management obligations not covered under Section IV (Management (Organization and Responsibility)) of the RDTE&P Agreement. For example, if Cooperative Project Personnel (CPP) are to be provided by a Parent Party, the number of CPP and location(s) of assignment for those CPP should be noted in this Section. In this regard, if a PA will be administered by a joint project office (JPO) that will include CPP, the following paragraph may be added:

“6.X. A Parent Party may assign (fill in number) Cooperative Project Personnel (CCP) to the joint project office (JPO) to assist in administering the PA. The Host Party shall provide office space and administrative support to those CPP of the other Party in accordance with the Host Party’s normal practice. The conduct of the CPP shall be subject to the provisions of Appendix 1 (Assignment of Cooperative Project Personnel (CPP)) of this PA.”

SECTION VII

FINANCIAL PROVISIONS

7.1. The Parties estimate that the cost of performance of the tasks under this PA shall not exceed ___ U.S. Dollars (\$) plus ___ Euro (€).

7.2. Cooperative efforts of the Parties over and above the jointly agreed tasks set forth in Section III (Scope of Work), Section IV (Sharing of Tasks), and Section VII (Financial Provisions) of this PA shall be subject to amendment of this PA or entry into force of a new PA.

(If a PA will involve the assignment of CPP, the PA shall include a provision that refers to paragraphs 5.5. - 5.7. of Section V (Financial Provisions) of the RDTE&P Agreement, identifies which Party is sending or hosting CPP, and specifies the number of CPP to be assigned. In addition, the PA shall include the amount of financial and non-financial contributions related to CPP in one of the two alternatives below in this Section.)

(If a PA will not involve one Party Contracting for the other or both Parties, and no funds will be exchanged between the Parties, use the following format for the Financial Provisions. Both financial and non-financial contributions should be included in the total U.S. DoD and Spanish MOD costs.)

Alternative 1

7.3. The U.S. DoD tasks shall not cost more than: _____ U.S. Dollars \$.

7.4. The Spanish MOD tasks shall not cost more than: _____ Euros €.

Or:

(If a PA will involve one Party Contracting for the other Party or both Parties, or the Parties will transfer or exchange funds between them, use the following format for the Financial Provisions.)

Alternative 2

(Cost of performance includes Financial and Non-financial Costs.)

	Financial Cost	Non-financial Cost	Total
U.S. DoD			
Spanish MOD			

(Using the above table and whatever description is necessary, explain and demonstrate how the PA shall be funded. Identify both financial (monetary) and non-financial (range time, use of Equipment and Material, etc.) contributions and identify the amount of funds to be transferred between the Parties.)

(The Financial Management Procedures Document (FMPD) should be developed by the POs and submitted to the SC for approval. The FMPD should include, as a minimum, a schedule of contributions, procedures for handling of funds, funding levels by year, and auditing procedures for monetary contributions anticipated for this PA.)

SECTION VIII

CLASSIFICATION

8.1. The existence of the PA and its contents are unclassified.

Only one of the three following possibilities shall be selected:

8.1.1. No Classified Information shall be exchanged under this PA;

8.1.1. The highest level of Classified Information exchanged under this PA is: Confidential; or

8.1.1. The highest level of Classified Information exchanged under this PA is: Secret.

SECTION IX

EQUIPMENT AND MATERIAL

In accordance with paragraph 7.1. of Section VII (Equipment and Material) of the RDTE&P Agreement, in the event that the cooperative efforts under the PA require the provision of

Equipment and Material to either Party, the POs shall develop a list of such Equipment and Material in accordance with the following table.

Providing Party	Receiving Party	QTY	Description	Part/ Stock #	Consumables\ Non-Consumables	Replacement Value

SECTION X

SPECIAL PROVISIONS

10.1. All activities of the Parties under this PA shall be carried out in accordance with their respective national laws and regulations, including their respective export control laws and regulations.

(Identify any provisions necessary for the implementation of the Project that are particular to the circumstances of the specific PA and are not otherwise addressed in other PA Sections.)

SECTION XI

ENTRY INTO FORCE, DURATION, AND TERMINATION

This _____ PA, a Project under the Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Kingdom of Spain for Research, Development, Test, Evaluation, and Prototyping Projects, which entered into force (date), shall enter into force upon signature by the Parties, and shall remain in force for _____ years unless terminated by either Party. It may be extended by written agreement of the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Parties, have signed this Project Agreement.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA:

FOR THE MINISTRY OF DEFENSE OF
THE KINGDOM OF SPAIN:

Signature

Signature

Name

Name

Title

Title

Date

Date

Location

Location

APPENDIX 1

ASSIGNMENT OF COOPERATIVE PROJECT PERSONNEL (CPP)

1.0. Purpose and Scope.

- 1.1. This Appendix to the Project Agreement (PA) establishes the provisions that shall govern the conduct of Cooperative Project Personnel (CPP) assigned for work in accordance with Section VI (Management) of this PA. CPP must be able to perform all the obligations for the positions assigned to them under this PA. Commencement of assignments shall be subject to any requirements that may be imposed by the Host Party or its Government regarding acceptance of CPP, such as, but not limited to, visas and visit request documentation. The SC, or in the event no SC is established, the POs, shall determine the length of tour for the positions at the time of initial assignment.
- 1.2. CPP shall be assigned to the joint project office (JPO) or to other U.S. DoD or Spanish MOD facilities for Project work and shall report to their designated supervisor within those organizations regarding that work. The Host Party PO shall be responsible for the creation of a document describing the duties of each CPP position, which shall be subject to approval by the SC or, in the event no SC is established, the POs. CPP shall not act as liaison officers for the Parent Party. CPP may act from time to time on behalf of their respective SC representative (or PO as applicable), if the latter so authorizes in writing.
- 1.3. CPP shall not be assigned to command or other positions that would require them to exercise obligations that are reserved by law or regulation to an officer or employee of the Host Party's Government.

2.0. Security.

- 2.1. The SC (or POs as applicable) shall establish the maximum level of security clearance required, if any, to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the Project Security Instruction (PSI) and Classification Guide (CG). Access to Classified Information and facilities in which Classified Information is used shall be consistent with, and limited by, Section II (Objectives) and Section III (Scope of Work) of this PA, and shall be kept to the minimum required to accomplish the work assignments.
- 2.2. The Parent Party shall file visit requests for the CPP through prescribed channels in compliance with the Host Party's procedures. As part of the visit request

procedures, the Parent Party shall provide security assurances, through its embassy [identify location of the embassy in the Host Party's country], and specify the security clearances for the CPP being assigned.

- 2.3. The Host Party and the Parent Party shall use their best efforts to ensure that CPP assigned to the Host Party's facilities are aware of, and required to comply with, applicable laws and regulations as well as the requirements of Section IX (Controlled Unclassified Information), Section X (Visits to Establishments), Section XI (Security), and paragraph 18.4. of Section XVIII (Amendment, Termination, Entry into Force, and Duration) of the RDTE&P Agreement, and the corresponding provisions of this PA, the PSI, and the CG. Prior to commencing assigned duties, CPP shall, if required by the Host Party Government's laws, regulations, policies, or procedures, sign a certification concerning the conditions and obligations of CPP.
 - 2.4. CPP shall at all times be required to comply with the security and export-control laws, regulations, and procedures of the Host Party's Government. Any violation of security procedures by CPP during their assignment shall be reported to the Parent Party for appropriate action. CPP committing significant violations of security or export laws, regulations, or procedures during their assignments shall be withdrawn from the Project with a view toward appropriate administrative or disciplinary action by their Parent Party.
 - 2.5. All Classified Information made available to CPP shall be considered as Classified Information furnished to the Parent Party, and shall be subject to all of the provisions and safeguards provided for in Section XI (Security) of the RDTE&P Agreement.
 - 2.6. CPP shall not have personal custody of Classified Information or Controlled Unclassified Information, unless approved by the Host Party and as authorized by the Parent Party. They shall be granted access to such Information in accordance with Section IX (Controlled Unclassified Information) and Section XI (Security) of the RDTE&P Agreement during normal duty hours when access is necessary to perform Project work.
 - 2.7. CPP assigned to a Host Party's facility to conduct Project work shall not serve as a conduit between the Host Party and Parent Party for requests for and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized by the Parties.
- 3.0. Administrative Matters.
- 3.1. The tax treatment of income received by CPP from the Parent Party shall be determined by reference to the tax legislation of the Government of the Host Party and the Government of the Parent Party, subject to the terms of any double

taxation agreement in force between the Government of the Host Party and the Government of the Parent Party, or by the terms of the NATO Status of Forces Agreement of June 19, 1951.

- 3.2. Upon or shortly after arrival, CPP shall be informed by the Host Party's representatives about applicable laws, orders, regulations, and customs and the need to comply with them. CPP shall also be provided briefings arranged by the Host Party's representatives regarding applicable entitlements, privileges, and obligations such as:
 - 3.2.1. Any medical or dental care that may be provided to CPP and their dependents at the Host Party's medical facilities, subject to applicable laws and regulations, including reimbursement requirements.
 - 3.2.2. Purchasing and patronage privileges at military commissaries, exchanges, theaters, and clubs for CPP and their dependents, subject to the requirements of applicable laws and regulations.
 - 3.2.3. Responsibility of CPP and those accompanying dependents to obtain motor vehicle liability insurance coverage in accordance with laws and regulations applicable in the area where they are residing.
- 3.3. The POs, through the JPO or other Host Party facilities, shall, in consultation with the CPP, establish standard operating procedures for CPP 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 Party and the Parent Party.
 - 3.3.3. Dress regulations, consistent to the extent possible with the military or civilian personnel regulations and practices of the Host Party and the Parent Party.
 - 3.3.4. Performance evaluations, recognizing that such evaluations must be rendered in accordance with the Parent Party's military or civilian personnel regulations and practices.
- 3.4. CPP committing an offense under the laws of the Government of the Parent Party or the Host Party may be withdrawn from this Project with a view toward further administrative or disciplinary action by the Parent Party. Disciplinary action, however, shall not be taken by the Host Party against CPP, nor shall CPP exercise disciplinary authority over the Host Party's personnel. In accordance

with the laws and regulations of the Host Party's Government, the Host Party shall assist the Parent Party in carrying out investigations of offenses involving CPP.

- 3.5. The provisions of the NATO Status of Forces Agreement regarding the rights of a sending state's military personnel and civilian employees and their respective dependents shall apply to CPP.

ANNEX B

MODEL EQUIPMENT AND MATERIAL TRANSFER AGREEMENT (E&MTA)

TO THE

AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN FOR RESEARCH, DEVELOPMENT, TEST, EVALUATION, AND PROTOTYPING PROJECTS (RDTE&P AGREEMENT)

DATED

EQUIPMENT AND MATERIAL TRANSFER AGREEMENT NUMBER _____*

BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN

FOR THE

TRANSFER OF [**Identify Equipment and Material to be transferred**]_____

***The U.S. DoD shall assign the Equipment and Material Transfer Agreement number.**

PREAMBLE

Pursuant to the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Kingdom of Spain for Research, Development, Test, Evaluation, and Prototyping Projects (hereinafter referred to as the “RDTE&P Agreement”), which entered into force on (date), the following Equipment and Material Transfer Agreement (E&MTA) is hereby entered into between the Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defense of the Kingdom of Spain (Spanish MOD), hereinafter referred to as the “Parties.”

SECTION I

DESCRIPTION AND QUANTITY

1.1. The following Equipment and Material shall be transferred by the providing Party to the receiving Party:

Providing Party	Receiving Party	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Estimated Replacement Value

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. of this Section is intended to be consumed or expended during the course of the E&MTA activities described in subparagraph 2.1.2. of Section II (Objectives) of this E&MTA.

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

The Equipment and Material described in paragraph 1.1. of this Section is intended to be consumed or expended, without reimbursement to the providing Party, during the course of the E&MTA activities described in subparagraph 2.1.2. of Section II (Objectives) of this E&MTA.

SECTION II

OBJECTIVES

2.1. The overall objective of this E&MTA is to transfer the Equipment and Material described in paragraph 1.1. of Section I (Description and Quantity) of this E&MTA for test and evaluation purposes. The specific objectives of this E&MTA include:

- 2.1.1. Establishment of detailed agreements between the providing Party and receiving Party for the transfer of the Equipment and Material.
- 2.1.2. Test, evaluation, and analysis of the performance of the transferred Equipment and Material by the receiving Party.
- 2.1.3. Preparation of a report by the receiving Party and providing such report to the providing Party describing results of the test and evaluation effort conducted by the receiving Party.

SECTION III

MANAGEMENT AND RESPONSIBILITIES

3.1. Each Party shall establish a point of contact who shall be responsible for implementing this E&MTA.

3.1.1. For the providing Party the point of contact is *

3.1.2. For the receiving Party the point of contact is *

**** Insert the appropriate title/office symbols and addresses of the individuals assigned to implement the E&MTA.***

3.2. Responsibilities of the providing Party:

3.2.1. Transfer of the Equipment and Material: The providing Party shall transfer the Equipment and Material listed in paragraph 1.1. of Section I (Description and Quantity) of this E&MTA for the receiving Party's use until the testing and the evaluation of the data from the testing is complete, or the expiration or termination of the E&MTA, whichever occurs first.

3.2.2. Equipment and Material Delivery: The providing Party shall deliver the Equipment and Material without charge to (***specify location of delivery***). Possession of the Equipment and Material shall pass from the providing Party to the receiving Party at the time of receipt of the Equipment and Material. Any further transportation is the responsibility of the receiving Party, which shall bear such costs in accordance with paragraph 4.3. of Section IV (Financial Provisions) of this E&MTA.

3.2.3. Condition: The providing Party shall make its best efforts to ensure the Equipment and Material is furnished to the receiving Party in a serviceable condition suitable for its intended purpose. However, the providing Party makes no warranty or

guarantee of fitness of the Equipment and Material for a particular purpose or use, and the providing Party makes no commitment to alter, improve, adapt, or repair the Equipment and Material or any part thereof.

- 3.2.4. Information: The providing Party shall furnish the receiving Party such operation and maintenance Information as is necessary to conduct the test of the Equipment and Material.

3.3. Responsibilities of the Receiving Party

- 3.3.1. Inspection and Inventory: The receiving Party shall inspect and inventory the Equipment and Material upon receipt. The receiving Party shall also inspect and inventory the Equipment and Material prior to its return to the providing Party, unless the Equipment and Material is consumed.
- 3.3.2. Installation: The receiving Party shall be responsible for supplies and services required properly to install, align, and check out, and otherwise make the Equipment and Material ready for testing.
- 3.3.3. Training: The receiving Party shall be responsible for obtaining operation and maintenance training for those personnel assigned to operate and maintain the Equipment and Material.
- 3.3.4. Operation and Maintenance of the Equipment and Material: The receiving Party shall be responsible for all operation and maintenance required on the Equipment and Material while in its possession.
- 3.3.5. Changes or Alterations: The Receiving Party shall make no changes or alterations to the Equipment and Material except with the prior written approval of the providing Party.
- 3.3.6. Test Report: The receiving Party shall provide without charge a test report to the providing Party prior to the expiration of this E&MTA.

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

- 3.3.7. Return of Equipment and Material: Upon completion of the testing and evaluation of the Equipment and Material or expiration or termination of this E&MTA, whichever occurs first, the receiving Party shall return the Equipment and Material to the providing Party at (***specify location***) or at another mutually agreed site. If the Equipment and Material is lost, unintentionally destroyed, or damaged beyond economical repair while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss/destruction/irreparable damage to the providing Party.

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

- 3.3.7. Consumption of Equipment and Material: It is intended that the receiving Party shall consume the Equipment and Material specified in paragraph 1.1. of Section I (Description and Quantity) of this E&MTA during the course of the E&MTA activities described in subparagraph 2.1.2. of Section II (Objectives) of this E&MTA. If this does occur, the receiving Party shall provide written notice of its consumption to the providing Party. In the event consumption does not occur prior to the expiration or termination of this E&MTA, the receiving Party shall return the Equipment and Material to the providing Party at ***(specify location)*** or at another mutually agreed site. 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 Party, the receiving Party shall issue a certificate of loss/destruction/irreparable damage to the providing Party.
- 3.4 This E&MTA provides only for transfer of Equipment and Material associated with E&MTA activities described in subparagraphs 2.1.2. and 2.2.3. of Section II (Objectives) of this E&MTA. Participation in this E&MTA does not imply any commitment by either Party to participate in any activities beyond those described herein. Any other efforts shall be established through separate agreements.

SECTION IV

FINANCIAL PROVISIONS

- 4.1. There are no charges for the transfer of the above Equipment and Material or for the test report.
- 4.2. Each Party shall fully bear all costs it incurs for performing, managing, and administering its activities under this E&MTA.
- 4.3. The receiving Party is responsible for all costs of transportation after receipt of the Equipment and Material in accordance with subparagraph 3.2.2. of Section III (Management and Responsibilities) of this E&MTA and for applicable customs charges within its country.

SECTION V

SPECIAL PROVISIONS

(optional)

(Insert any special provisions as required.)

SECTION VI

CLASSIFICATION AND MARKINGS

(Insert only one of the two following paragraphs; note that one of these two options must be selected.)

6.1. No classified Equipment and Material or Information shall be transferred under this E&MTA.

or

6.1. The highest level of classified Equipment and Material or Classified Information transferred under this E&MTA is *(insert level of classification)*.

SECTION VII

AMENDMENT AND TERMINATION

7.1. This E&MTA may be amended by written mutual agreement of the Parties.

7.2. This E&MTA may be terminated as follows:

7.2.1. Through the mutual written agreement of the Parties at any time;

7.2.2. Unilaterally by the receiving Party on 60 days written notice to the providing Party;
or

7.2.3. Unilaterally by the providing Party at any time.

SECTION VIII

ENTRY INTO FORCE AND DURATION

This _____ E&MTA, an E&MTA under the Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Kingdom of Spain for Research, Development, Test, Evaluation, and Prototyping Projects, which entered into force (date), shall enter into force upon signature by both Parties, and shall remain in force for _____ years unless terminated by either Party. It may be extended by written agreement of the Parties.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

FOR THE MINISTRY OF DEFENSE OF
THE KINGDOM OF SPAIN

Signature

Signature

Name

Name

Title

Title

Date

Date

Location

Location

ANNEX C

MODEL WORKING GROUP (WG) TERMS OF REFERENCE (TOR)

(Insert name of WG) WORKING GROUP

UNDER THE AGREEMENT BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN

FOR RESEARCH, DEVELOPMENT, TEST, EVALUATION, AND PROTOTYPING PROJECTS

(DATE)

1. Authority. *Mandatory:* The Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Kingdom of Spain for Research, Development, Test, Evaluation, and Prototyping Projects (hereinafter referred to as the “RDTE&P Agreement”) fosters collaboration in research, development, test, evaluation, and prototyping potentially leading to new or improved military capability. The RDTE&P Agreement provides for the establishment of Working Groups (WGs). This Terms of Reference (TOR) establishes the *(insert name of WG)* Working Group.

2. Definitions and Acronyms.

Definitions. *Provide any required definitions.*

Acronyms. *Spell out any acronyms used:*

3. Purpose. *Provide a short paragraph identifying the purpose of the Working Group (WG). A WG will be established to explore, study, and report on specific research, development, test, or evaluation issue(s). The WG will be limited in scope to a single, well-defined study or project area and will endeavor to assess the research, development, test, or evaluation issue based on Information provided by both Parties in such a way as to arrive at a jointly-determined position. Examples follow:*

The *(insert name of WG)* will include activities covering the following areas:

The *(insert name of WG)* will evaluate...,

monitor...,

identify...,

initiate...,
investigate...,
facilitate...,
... activity beneficial to the Parties.
... and seek technological solutions to those ...

The establishment of (*insert name of WG*) will provide a forum for the exchange of Information, the identification of potential PAs and E&MTAs for (*name of specific weapon system, etc.*), and the harmonization of the Parties' requirements prior to the formal staffing of a potential PA or E&MTA.

The purpose of the (*insert name of WG*) is to review respective (*name specific weapon system, etc.*) programs in order to identify mutually beneficial research, development, test, or evaluation cooperative activities between the Parties.

Mandatory: Specific collaborative activities identified by the (*insert name of WG*) may only be carried out under future PAs or E&MTAs under the RDTE&P Agreement or under other agreements entered into by the Parties.

Mandatory: The (*insert name of WG*) is not intended to replace, duplicate, or inhibit activities under existing international agreements.

4. Objectives. *Provide details of the type of work to be accomplished under this TOR. Example follows:*

Information on research conducted by each Party in the area of (*name specific technology*) technology and its potential for (*identify potential benefit*) will be exchanged and the potential for a PA or E&MTA leading to application of the technology will be discussed.

5. Management Structure. *Examples follow:*

The (*insert name of WG*) consists of representatives from (*name organizations*) as principals and other representatives and supporting subject matter experts from (*name organizations*) as appropriate. (*Provide name of organization only. Do not name representatives.*)

Membership in the (*insert name of WG*) should be consistent with minimal turnover of personnel.

The importance of consultation with other agencies and organizations of the Parties' Governments is recognized. Representatives from specific technology areas may be invited to participate in technical discussions, but will not become members of the (*insert name of WG*). They may, however, become members of a sub-group established under this WG for a specific technology area or project.

Mandatory: *Identify how often the WG will meet, who will host and chair.*

Example: WG meetings will be held at intervals as mutually agreed by the members, but at least annually. The Parties will host and chair the meetings on a rotational basis. Minutes will be prepared and provided to *(insert name of WG)* members and to the applicable Management Agents (MAs) for the RDTE&P Agreement within *(specify time)* following the meetings. Administrative support for these meetings will be the responsibility of the host Party.

Mandatory: *Identify how decisions will be reached.*

Example: All decisions of the *(insert name of WG)* will be unanimous.

Mandatory: *Identify one U.S. DoD and one Spanish MOD WG Chairperson. Include name, mailing address, email address, and phone number.*

Mandatory: In accordance with subparagraph 4.2.6. of Section IV (Management (Organization and Responsibility)) of the RDTE&P Agreement, the MAs of both Parties must approve and sign this TOR. The Agreement Directors (ADs) may provide guidance on issues that relate to the RDTE&P Agreement objectives.

6. Exchange of Information.

Mandatory: The *(insert name of WG)*, along with its appropriate supporting subject matter experts, may exchange Information pertaining to (name area of discussion of the WG) activities in accordance with paragraphs 3.2. and 3.3. of Section III (Scope of Work) and subparagraph 8.1.3. of Section VIII (Disclosure and Use of Project Information) of the RDTE&P Agreement. Information will be furnished without charge and shall be used for Information and evaluation purposes only.

Mandatory if exchanging Classified Information or Controlled Unclassified Information: Pursuant to paragraph 11.2. of Section XI (Security) of the RDTE&P Agreement, Classified Information will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities of both Parties. The provisions of Section IX (Controlled Unclassified Information) and Section XI (Security) of the RDTE&P Agreement apply. No Equipment and Material may be transferred under the auspices of the *(insert name of WG)*.

Mandatory: The *(insert name of WG)* *(or its highest management level)* will ensure that any Information provided in accordance with this TOR is used only by the Parties and then only for the purpose for which it has been provided. Information shall not be disclosed or released to any Third Party, Contractors or their personnel (with the exception of Contractor Support Personnel), and will not be used for any other purpose without the prior written consent of the furnishing Party.

Mandatory: The Parties will produce and maintain a list of Information exchanged under this TOR. This list will include name of document, date of document, identity of the entity that created the document, security classification/release restrictions, country of origin, originating point of

contact, receiving point of contact, date provided, and any requirement to return the document to the originator. A current list will be submitted annually to the MAs of both Parties.

7. General. Mandatory: There will not be any transfer of funds between the Parties pursuant to this TOR. In those cases where a PA or E&MTA is determined to be required, the WG Chairpersons will make every effort to prepare the necessary documentation and secure the required approvals as expeditiously as possible.

The TOR will be drafted and approved in English, with copies signed by the MAs (or their designated representatives) of both Parties.

8. Legal Status. Mandatory: This TOR constitutes an administrative procedure to coordinate research, development, test, evaluation, and prototyping activities between the Parties. It is not the intent of the Parties that this TOR be considered legally binding under international law. This TOR does not create any authority to perform any work, award any Contract, exchange Information, transfer funds, or otherwise obligate in any way either Party to make or provide any financial or non-financial contribution to the other Party for any purpose. Any collaborative activities identified by the (*insert name of WG*) may only be carried out under future PAs or E&MTAs under the RDTE&P Agreement or under other agreements entered into by the Parties.

9. Effective Date. [Mandatory]: The TOR for the (*insert name of WG*) becomes effective upon signature of both MAs and remains in effect until (*day, month year*)[fill in before signature], unless terminated or extended. This TOR may be amended or extended by mutual written consent of the MAs. Either Party may terminate the (*insert name of WG*) upon 45 days written notification to the other Party. Such notice will be the subject of immediate consultation by the MAs to decide upon the appropriate course of action.

U.S. DoD Management Agent

Spanish MOD Management Agent

Signature

Signature

Name

Name

Title

Title

Date

Date

Location

Location