

11 (1978) Nr. 4

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1995 Nr. 39

A. TITEL

*Memorandum van overeenstemming tussen het Koninkrijk der
Nederlanden en de Verenigde Staten van Amerika over samenwerking
inzake defensiematerieel;
Washington/s-Gravenhage, 25 juli/24 augustus 1978*

B. TEKST

De tekst van het Memorandum van overeenstemming is geplaatst in *Trb.* 1978, 121.

D. PARLEMENT

Zie *Trb.* 1979, 72 en *Trb.* 1982, 91.

De hieronder in rubriek J afgedrukte, op 27 november 1990 te Washington tot stand gekomen Overeenkomst tot wijziging van het onderhavige Memorandum van overeenstemming behoefde ingevolge artikel 91, juncto additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet en juncto artikel 62, eerste lid, onderdeel b, van de Grondwet naar de tekst van 1972, niet de goedkeuring der Staten-Generaal.

De in rubriek J van *Trb.* 1982, 91 afgedrukte en op 9 april 1982 te Washington tot stand gekomen Bijlage IV is in overeenstemming met artikel 60, tweede lid, van de Grondwet naar de tekst van 1972 medegedeeld aan de Eerste en de Tweede Kamer der Staten-Generaal bij brieven van 19 augustus 1982.

De hieronder in rubriek J afgedrukte, op 9 april 1982 te Washington tot stand gekomen bijlage V behoefde ingevolge artikel 62, eerste lid, onderdeel b, van de Grondwet naar de tekst van 1972 niet de goedkeuring der Staten-Generaal.

De hieronder in rubriek J afgedrukte nieuwe bijlagen VI tot en met VIII behoeften ingevolge artikel 91, juncto additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet en juncto 62, eerste lid, onderdeel b, van de Grondwet naar de tekst van 1972, niet de goedkeuring der Staten-Generaal.

G. INWERKINGTREDING

Zie *Trb.* 1978, 121.

Ingevolge de in rubriek J hieronder afgedrukte Overeenkomst van 27 november 1990 is het Memorandum verlengd voor een tijdvak van vijf jaar en zal vervolgens telkens voor tijdvakken van vijf jaar worden verlengd, tenzij de Regeringen anders overeenkomen.

J. GEGEVENS

Zie *Trb.* 1978, 121, *Trb.* 1979, 72 en *Trb.* 1982, 91.

Wijziging van het Memorandum

In overeenstemming met artikel VII, eerste lid, van het Memorandum van overeenstemming is op 27 november 1990 te Washington een Overeenkomst tot wijziging van het Memorandum van overeenstemming tot stand gekomen. De tekst van de Overeenkomst luidt als volgt:

**Agreement to Amend the Memorandum of Understanding between
the Government of the Kingdom of the Netherlands and the
Government of the United States of America concerning the
Principles Governing Cooperation in the Research and Develop-
ment, Production and Procurement of Defense Equipment**

The Government of the United States of America and the Government of the Kingdom of the Netherlands agree that the Memorandum of Understanding (MOU) between them, signed August 24, 1978, (heretofore extended to October 31, 1990) and all annexes, is extended for a period of five years, and will thereafter be extended for successive five-year periods unless the Governments agree otherwise.

The Governments intend to exchange information and to discuss the extent to which equitable opportunities are provided for procurements subject to the MOU, i.e., coverage of similar classes of goods and services.

The Governments intend to discuss measures to limit any adverse effects of offsets and other regulations on the industrial base of each country.

Annexes to this MOU may be signed by officials subordinate to the undersigned. Subject to the above amendment, the MOU shall continue in all other respects with full force and effect.

This amendment will enter into force upon signature, and is effective as of November 1, 1990.

For the Government of the Kingdom of the Netherlands

(sd.) B. J. M. VAN VOORST TOT VOORST
The State Secretary of Defense

Date: 27-11-90

For the Government of the United States

(sd.) D. J. ATWOOD
The Deputy Secretary of Defense

Date: 11-27-90

De wijziging is op 27 november 1990 in werking getreden met terugwerkende kracht tot 1 november 1990.

Bijlagen bij het Memorandum

In overeenstemming met artikel VI van het Memorandum van overeenstemming is op 9 april 1982 te Washington Bijlage V behorende bij het onderhavige Memorandum van overeenstemming tot stand gekomen.

De tekst van deze Bijlage luidt als volgt:

Annex V

to Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, signed at The Hague on 24 August 1978.

Protection of information

The Security Procedures For Industrial Operations Between the Ministry of Defense of the Netherlands and the Department of Defense of the United States of America, developed to implement the provisions of the U.S./Netherlands General Security of Information Agreement, dated April 6, 1981, apply to the safeguarding of classified military information exchanged under this Memorandum of Understanding.

Such procedures are applicable in those cases in which contracts, sub-contracts, precontract negotiations, or other government approved arrangements, involving classified military information of either or both governments, are placed or entered into by or on behalf of one government with industry in the country of the other government.

For the Government of the Kingdom of the Netherlands

(sd.) J. HENSEN
Lt. General

Date 9 april 1982

For the Government of the United States of America

(sd.) RICHARD DELAUER

Date 9 April 1982

SECURITY PROCEDURES FOR INDUSTRIAL OPERATIONS
BETWEEN THE MINISTRY OF DEFENSE OF THE NETHER-
LANDS AND THE DEPARTMENT OF DEFENSE OF THE UNITED
STATES (SECURITY PROTOCOL)¹⁾

1. Purpose

A. The following procedures have been developed to implement the provisions of the General Security of Information Agreement between the Government of the United States and the Government of the Netherlands, entered into on August 18th, 1960, as amended April 6th, 1981. The agreement provides for the safeguarding of all classified information exchanged between the Governments. These procedures will apply to those cases in which contracts, subcontracts, precontract negotiations or other government approved arrangements involving classified information of either or both countries, hereinafter referred to as classified contracts, are placed or entered into by or on behalf of the Ministry of Defense of the Netherlands in the United States (U.S.) or by or on behalf of the Department of Defense of the United States in the Netherlands.

B. These procedures will not apply in the case of contracts that will involve access to cryptographic information, or to other information that would not be releasable under applicable national disclosure policies. Firms which are under the ownership, control or influence (FOCI)²⁾ of a third party country are not eligible to be awarded classified contracts.

¹⁾ These industrial operations may follow for example from the implementation of the Memorandum of Understanding concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment.

²⁾ FOCI (foreign ownership, control or influence) is defined in DoD Industrial Security Regulation No. 5220.22-R.

Requests for exception to this requirement may be considered on a case-by-case basis by the releasing government. Such requests should identify the source, the amount and other pertinent particulars of the foreign ownership, control or influence.

C. For the purpose of these procedures classified information is that official information which has been determined to require, in the interests of National Security of the owning or releasing government, protection against unauthorized disclosure and which has so been designated by appropriate security authority. This embraces classified information in any form, be it oral, visual or in the form of material. Material may be any document, product or substance on, or in which, information may be recorded or embodied. Material shall encompass everything regardless of its physical character or makeup including documents, writing, hardware, equipment, machinery, apparatus, devices, models, photographs, recordings, reproductions, notes, sketches, plans, prototypes, designs, configurations, maps and letters, as well as all other products, substances or materials from which information can be derived.

2. General

Upon receipt of classified information furnished under these procedures the receiving government¹⁾ shall undertake to afford the information with substantially the same degree of security protection as afforded it by the releasing government. The receiving government shall be responsible for information so received while it is within its territorial jurisdiction and while it possessed by or furnished to persons authorized to visit abroad pursuant to these procedures. The United States Defense Investigative Service (DIS) and the cognizant military intelligence service in the Netherlands will assume responsibility for administering security measures for a classified contract awarded to industry for performance in their respective countries under the same standards and requirements as govern the protection of their own classified contracts.

a) Inspection. The designated government agency shall insure that necessary industrial security inspections are made of each contractor facility²⁾ engaged in the performance of, or in negotiations for, a classified contract.

b) Security Costs. Costs incurred in conducting security investigations or inspections shall be borne by the government rendering the service. Costs incurred by either of the two Governments through implementation of other security measures, including costs incurred through the use of the diplomatic courier service or any other authorized official cou-

¹⁾ Whenever "government" is used in these procedures the Ministry of Defense of the Netherlands or the Department of Defense of the United States is meant unless otherwise specifically indicated.

²⁾ The term "facility" as used in these procedures refers to a corporation or firm which has entered or intends to enter into a contract requiring access to classified information.

rier service, will not be reimbursed. There shall be provisions in classified contracts for security costs to be incurred under the contract, such as special costs for packing, transport and the like, which shall be borne by the party for whom the service is required under the contract. If, subsequent to the date of contract, the security classification or security requirements under the contract are changed, and the security costs or time required for delivery under the contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provisions of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Such equitable adjustments shall be accomplished under the appropriate provisions in the contract governing changes.

c) Security Clearances. Clearances of contractor facilities and individuals which will possess or be authorized access to classified information shall be processed according to the pertinent regulations of the country having responsibility for administering security measures for the classified contract.

d) Orientation. The designated government agency shall insure that contractors or subcontractors having access to the classified information are furnished instructions setting forth their responsibility to protect the information in accordance with applicable laws and regulations.

e) Transmission. Transmission of classified information and material shall be made only through representatives designated by each of the governments. This procedure is commonly known as transmission through government-to-government channels for which the standard routing is given in Appendix D.

(1) For each classified contract, the contractor shall be informed of the channels of transmission to be used.

(2) Material shall be prepared for transmission in accordance with the regulation of the country from which the material is to be dispatched.

f) Public Release of Information. Public release by a contractor or subcontractor of information pertaining to a classified contract shall be governed by the Department of Defense Industrial Security Manual (DoDISM), DoD 5220.22-M, or by the "Algemeen Beveiligingsvoorschrift voor Defensie-Opdrachten (A.B.D.O.) 1965" as appropriate. In the case of a Netherlands contractor facility with a U.S. classified contract, initial prior review and approval shall be governed by the A.B.D.O. 1965 issued by the Minister of Defense of the Netherlands with final approval by a U.S. authority in accordance with the DoDISM. In the case of a U.S. contractor facility with a Netherlands classified contract, initial prior review and approval shall be governed by the DoDISM with final approval by the designated Netherlands military intelligence service.

g) Marking. The responsible agency of the sending government shall mark classified information with its appropriate classification marking and the name of the country of origin prior to transmittal to the receiving government. Upon receipt, the information shall be assigned and

equivalent classification and so marked by the recipient government agency as follows:

Table of Equivalent Security Classification Categories

The Netherlands Classification	U.S. Classification
ZEER GEHEIM	TOP SECRET
GEHEIM	SECRET
CONFIDENTIEEL OR VERTROUWELIJK	CONFIDENTIAL
DIENSTGEHEIM (Restricted equivalent)	No equivalent ¹⁾

¹⁾ 1. Netherlands documents or material bearing the classification "DIENST-GEHEIM" shall not be marked with any U.S. security classification marking but shall be marked or stamped in English "Netherlands RESTRICTED". In addition, the following notation shall be entered: "To be safeguarded in accordance with Department of Defense Industrial Security Manual (DoDISM), DoD 5220.22-M or Department of Defense Information Security Program Regulation, DoD 5200. I-R, as appropriate". Documents or material so marked shall be stored in locked filing cabinets, desks, or similar closed spaces or areas that will prevent access by unauthorized personnel.

2. Documents or material on hand and marked "To be treated as CONFIDENTIAL" or "Modified Handling Authorized" will have these U.S. markings obliterated or excised as they are withdrawn from files for use. They shall be remarked and safeguarded as in 1, above.

3. Netherlands RESTRICTED documents shall be handled in a manner that will preclude open publication, access or use for other than official Government purposes of the United States or the releasing country.

4. Documents and material containing Netherlands RESTRICTED information shall be released only to contractors which have been cleared to the level of CONFIDENTIAL by the U.S. Government and to individuals who have been security cleared to the CONFIDENTIAL level by either the U.S. Government or a U.S. contractor. Both contractor facilities and individuals must also have a need for the information in the course of official business.

5. Netherlands RESTRICTED documents shall be transmitted by first-class mail within the United States. They shall be transmitted in two secure covers, the inner cover marked "Netherlands RESTRICTED". Transmission outside the United States shall be by one of the means authorized for United States classified information.

6. Unclassified U.S. documents originated by a U.S. Government agency which contain information that the Netherlands has classified RESTRICTED shall bear on the cover and the first page the marking "Netherlands RESTRICTED". In addition, the following notation shall be entered: "To be safeguarded in accordance with Department of Defense Industrial Security Manual (DoDISM), DoD 5220.22-M or Department of Defense Information Security Program Regulation, DoD 5200, I-R, as appropriate. "The Netherlands RESTRICTED information shall be identified in the documents.

Classified information produced or reproduced in the receiving country in connection with classified contracts shall be marked with the assigned classification markings of both countries as provided above. The markings shall be applied in the manner prescribed in the regulations of the country in which the information is produced or reproduced.

h) Security Requirements Clause. The responsible agency of the government in the process of negotiating a classified contract to be performed within the other country, and every contractor in receipt of a government classified defense contract in the process of negotiating a classified subcontract to be performed within the other country shall incorporate in the contract, request for proposal, or subcontract document an appropriate security requirements clause¹⁾. A copy of the contract, request for proposal or subcontract, including the security requirements clause shall be furnished promptly through the appropriate channels to the government agency designated to furnish security supervision over the contract.

i) Security Classification Guidance. The appropriate activity of the contracting government shall furnish the designated agency of the government responsible for security administrative measures concerning the contract and shall furnish the contractor or subcontractor with the security classification guidance pertaining to each classified element related to the contract. In the case of the U.S., this guidance shall be set forth in a Contract Security Classification Specification (DD Form 254). For the Netherlands it shall be in some form suitable for providing similar detailed instructions. The guidance must identify that classified information which is furnished by the contracting country in connection with the contract or which is generated pursuant to the classified contract and assign to such information a proper security classification. A reproducible copy of the written security classification guidance, a copy of the applicable classified contract, or request for proposal, or subcontract containing the security requirements clause will be submitted to the designated agency of the government which is responsible for administering security measures. The addresses of the designated agencies are:

The Netherlands

Ministry of Defense
Att. Director of Naval Intelligence/
Chief Industrial Security Section
P.O. Box 20702
2500 ES 's-Gravenhage

¹⁾ a. The security requirements clause attached at Appendix A or an appropriate equivalent clause may be used for contracts awarded to U.S. contractors.

b. The security requirements clause attached at Appendix B or an appropriate equivalent clause may be used for contracts awarded to Netherlands contractors.

Ministry of Defense
Att. Director of Army Intelligence/
Chief Industrial Security Section
P.O. Box 96904
2509 JH 's-Gravenhage
The Netherlands

Ministry of Defense
Att. Director of Air Force Intelligence/
Chief Industrial Security Section
P.O. Box 5953
2280 HZ Rijswijk
The Netherlands

United States

Defense Investigative Service
Attn: Director for Industrial Security
Department of Defense
1900 Half Street, S.W.
Washington, D.C. 20324

j) Loss, Compromise or Possible Compromise of Classified Information. Loss, compromise or possible compromise of classified information furnished by either government under these operating procedures, while such information is under the protection of the receiving government, shall be investigated by the receiving government. The recipient government shall have investigated by its responsible agencies all cases in which classified information from the originating country for the protection of which it is responsible, has been lost or disclosed to unauthorized persons, or may possibly have been disclosed to unauthorized persons. The responsible government agency of the originating country will without delay be advised of such occurrences. Subsequently, the responsible government agency will be informed of the final findings and of corrective action taken to preclude recurrence. The responsible government agency of the originating country will discharge the responsible government agency of the receiving country from further accountability for the lost information according to the circumstances of the case.

k) Subcontracts. Unless specifically prohibited in the classified contract, a contractor may subcontract within his own country in accordance with the security procedures prescribed in his country for classified subcontracts, and within the country of the contracting government in accordance with these procedures for placing a classified prime contract in that country.

l) Visits. Visits which involve the exchange of classified information require the prior approval of both governments. Approval for such visits shall be granted only to persons possessing valid clearances. Authoriza-

tion for visitors to have access to classified information will be limited to those necessary for official purposes in connection with the classified contract. When requested, the authority to visit the facility of the prime contractor shall include authorization to have access to or to disclose classified information at the facility of a subcontractor engaged in performance of work in connection with the same prime contract.

(1) Requests for approval of a visit shall include the following information:

- a) Name and address of the contractor facility or government activity to be visited.
- b) Name and title of the person(s) to be visited, if known.
- c) Name of the proposed visitors, his date and place of birth, and current citizenship.
- d) Official title of the visitor, to include contractor facility or government activity he is representing.
- e) Current clearance status of the visitor.
- f) Purpose of visit in detail and identification of contract, if any.
- g) Date(s) of visit or period during which the visit authorization will be valid. Requests for approval of visits will be submitted in the manner prescribed in paragraphs 3. and 4., below.

(2) A list will be developed to indicate those individuals who have been authorized by both governments to visit the specified government activities or contractor facilities for extended periods of time (not to exceed one year) in connection with a specific contract. This authorization may be renewed for additional periods of up to one year as may be necessary in the performance of the contract. Requests for individuals who are on the approved list to visit in connection with the contract will be submitted in advance of such visit direct to the government activity or contractor facility which is to be visited.

m) Reciprocal Government Security Visits. Each government will permit security experts of the other government to make periodic reciprocal visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified information furnished to it by the other government. Each government will assist such experts in determining whether classified information provided by their government to the other government is being adequately protected.

3. Operating procedures involving United States classified contracts in The Netherlands.

a) General. The Netherlands military intelligence services each have the responsibility for arranging facility clearance and approval of visits of U.S. personnel when it is desired to carry on precontract negotiations leading to the possible award of a classified contract in the Netherlands. This responsibility is restricted to the facilities, assigned to or to be assigned to the relevant military intelligence service. Initial point of con-

tact for the placement of prime contracts and subcontracts will be the Industrial Security Section of the Royal Netherlands Air Force. U.S. departments or agencies (in case of prime contracts) and U.S. contractors (in case of subcontracts) shall make their request direct to:

Ministry of Defense
Att. Director of Air Force Intelligence/
Chief Industrial Security Section
P.O. Box 5953
2280 HZ Rijswijk
The Netherlands

The U.S. Defense Investigative Service (the Director for Industrial Security) shall be notified of the referral of any such matters to another military intelligence service in the Netherlands.

b) Precontract Procedures. Prior to disclosing classified information to a Netherlands contractor or prospective contractor, the responsible agency of the Government of the United States will communicate with the cognizant military intelligence service in the Netherlands to:

(1) Obtain information as to the present security clearance status of the contractor facility in order to carry on the classified discussion;

(2) Obtain information as to the security clearance status of the contractor's personnel with whom they desire to talk;

(3) Determine the ability of the contractor facility to store classified information properly.

c) Visits. Requests for approval of individual visits or to establish an approved list for continuing visits will be submitted by the U.S. department or agency concerned to the cognizant military intelligence service in the Netherlands.

4. Operating procedures involving Netherlands classified contracts in the United States.

a) General. The initial point of contact for the placement of a classified contract in the U.S. will be the Defense Investigative Service, Attn: Director for Industrial Security. That office will designate the cognizant security office which will administer security measures for the precontract negotiations and the performance of the contract or subcontract. Notice of designation shall be furnished to the cognizant military intelligence in the Netherlands.

b) Precontract Procedures. Prior to the disclosing of classified information to a U.S. contractor or prospective contractor, the responsible agency of the Government of the Netherlands will communicate with the DIS to:

(1) Obtain information as to the present security clearance status of the contractor facility in order to carry on the classified discussion;

(2) Obtain information as to the security clearance status of the contractor's personnel with whom they desire to talk;

(3) Determine the ability of the contractor facility to store classified information properly.

c) Visits. Requests for approval of individual visits or to establish an approved list for continuing visits will be submitted as may be appropriate by the responsible agency of the Government of the Netherlands to:

Department of the Army
Assistant Chief of Staff for Intelligence
Attn: Foreign Liaison Directorate (DAMI-FLS)
Washington, D.C. 20310

Department of the Navy
Foreign Disclosure and Policy Control Branch
Office of the Chief of Naval Operations (OP 622E)
Washington, D.C. 20350

Department of the Air Force
International Affairs Division
Information Branch (CVAII)
Office of the Vice Chief of Staff
Washington, D.C. 20330

Defense Intelligence Agency
Foreign Liaison Branch (DI-4A)
Washington, D.C. 20301

For the Government of the Kingdom of the Netherlands

(sd.) J. HENSEN
Lieutenant General
Director General Materiel,
Ministry of Defense

Date 9 April 1982

For the United States Government

(sd.) RICHARD G. STILWELL
General, USA (Ret.)
Deputy Under Secretary of
Defense for Policy

Date 9 April 1982

Appendices:

A - Security Requirements Clause - Netherlands Contracts
B - Security Requirements Clause - U.S. Contracts

C - Reciprocal Industrial Security Arrangements
D - Transmission of Classified Material

Appendix A

to Security Procedures for Industrial Operations between the Ministry of Defense of the Netherlands and the Department of Defense of the United States (Security Protocol)

Security requirements clause for inclusion in the Netherlands classified contracts administered by the United States

1. The provisions of this clause are based upon an agreement between the Government of the Netherlands and the Government of the United States and shall apply to the extent that this contract involves access to or possession of information to which a security classification has been assigned by the Government of the Netherlands.

2. The Government of the Netherlands shall assign a security classification to each of the elements of classified information which is furnished, or which is to be developed, under this contract and shall advise the Defense Investigative Service, Attn: Director for Industrial Security, of such elements and their security classification. If the Government of the Netherlands discloses classified information to a contractor orally pursuant to a visit, the contractor shall be informed of its security classification. The Defense Investigative Service (DIS) shall insure that appropriate classification guidance is obtained for each element of classified information which is furnished, or which is to be developed, under the contract and that such information is assigned an equivalent United States (U.S.) security classification. The Government of the Netherlands shall keep current all security classifications. Each classified element of this contract shall be safeguarded by the contractor as U.S. classified information of an equivalent security classification category as set forth in the table of equivalent security classification categories of paragraph 2.g. of the Security Protocol. Such information shall be subject to the provisions of U.S. laws and regulations. Classified information produced or reproduced in the U.S. in connection with classified contracts shall be marked with the assigned classification markings of both countries as provided. The markings shall be applied in the manner prescribed in the regulations of the country in which the information is produced or reproduced.

3. The U.S. contractor shall make no use of any U.S. classified information in connection with this contract, except with the expressed written authorization of the User Agency responsible for the U.S. classified information.

4. Netherlands classified information furnished or developed in the performance of this contract shall not be used for any other purpose without the expressed written authorization of the Netherlands User Agency responsible.

5. To the extent that elements of this contract have been or may be assigned a security classification as provided in the aforementioned table of equivalent security classification categories, the U.S. contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of:

a) The Department of Defense Security Agreement (DD Form 441) between the contractor and the Government of the United States, including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adopting the Manual to the contractor's business;

b) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the contractor by the Cognizant Security Office.

6. Representatives of the Cognizant Security Office shall be authorized to inspect at reasonable intervals the procedures, methods, and facilities utilized by the U.S. contractor in complying with the security requirements under this contract at locations within the U.S. Should the government of the United States determine that the U.S. contractor is not complying with the security requirements of this contract, the U.S. contractor shall be informed in writing through the Cognizant Security Office of the proper action to be taken in order to effect compliance with such requirements.

7. If subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government of the Netherlands or by the Government of the United States and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs.

8. The U.S. contractor agrees to insert security provisions which shall conform substantially to the language of this clause, including this paragraph in all subcontracts awarded to the U.S. contractors hereunder which involve access to classified information. In the event the U.S. contractor proposes to award a subcontract to other than a U.S. or a Netherlands contractor, prior permission must be obtained from the Government of the Netherlands, which, if it approves of such a contract, will provide an appropriate security requirements clause.

9. The U.S. contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the U.S. contractor's custody has:

a) If located in the U.S., a current U.S. Department of Defense facility security clearance at the appropriate level, and has the ability to safeguard classified properly prior to being afforded access to such classified information;

b) If located in any other country, been approved by the Government of the Netherlands to have access to its classified information, prior to being afforded such access.

Appendix B

to Security Procedures for Industrial Operations between the Ministry of Defense of the Netherlands and the Department of Defense of the United States (Security Protocol)

Security requirements clause for inclusion in U.S. classified contracts administered by the Netherlands.

1. The provisions of this clause are based upon an agreement between the Government of the Netherlands and the Government of the United States and shall apply to the extent that this contract involves access to or possession of information to which a security classification has been assigned by the Government of the United States.

2. The Government of the United States shall assign a security classification to each of the elements of classified information which is furnished or which is to be developed under this contract and shall advise the cognizant military intelligence service of such elements and their security classification. If classified information is disclosed orally pursuant to a visit to the contractor by or on behalf of the Government of the United States, the contractor shall be informed of such security classification. The cognizant military intelligence service shall insure that appropriate classification guidance is obtained for each element of classified information which is furnished, or which is to be developed under the contract, and that such information is assigned an equivalent Netherlands security classification. The Government of the United States shall keep current all security classifications, and inform the cognizant military intelligence service of any changes thereto. Each classified element of this contract shall be safeguarded by the contractor as Netherlands classified information of an equivalent security classification category as set forth in the table of equivalent security classification categories of paragraph 2.g. of the Security Protocol. Such information shall be subject to the provisions of Netherlands laws and regulations. Classified information produced or reproduced in the Netherlands in connection with classified contracts shall be marked with the assigned

classification markings of both countries as provided. The markings shall be applied in the manner prescribed in the regulations of the country in which the information is produced or reproduced.

3. The Netherlands contractor shall make no use of any Netherlands classified information in connection with this contract, except with the expressed written authorization of the agency responsible for the Netherlands classified information.

4. United States (U.S.) classified information furnished or developed in the performance of this contract shall not be used for any other purpose without the expressed written authorization of the U.S. User Agency responsible.

5. To the extent that elements of this contract have been or may be assigned a security classification as provided in the aforementioned table of equivalent security classification categories, the Netherlands contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls, within his own organization in accordance with the requirements of:

a) The agreement between the contractor and the Government of the Netherlands, including „Algemeen Beveiligingsvoorschrift voor Defensie Opdrachten (A.B.D.O.) 1965” (The General Security Regulations for Defense Contracts 1965) and any modifications thereto for the purpose of adopting the A.B.D.O. 1965 to the contractor’s business.

b) Any amendments to the A.B.D.O. 1965 made after the date of this contract, notice of which has been furnished to the contractor by the cognizant military intelligence service.

6. Representatives of the cognizant military intelligence service shall be authorized to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Netherlands contractor in complying with the security requirements under this contract at locations within the Netherlands. Should the Government of the Netherlands determine that the Netherlands contractor is not complying with the security requirements of this contract, the Netherlands contractor shall be informed in writing by the cognizant military intelligence service of the proper action to be taken in order to effect compliance with such requirements.

7. If subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government of the Netherlands or by the Government of the United States and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs.

8. The Netherlands contractor agrees to insert provisions which shall conform substantially to the language of this clause including this paragraph in all subcontracts awarded to the Netherlands contractors hereunder which involve access to classified information. In the event the Netherlands contractor proposes to award a subcontract to other than a

Netherlands or U.S. contractor, prior permission must be obtained from the Government of the United States, which, if it approves of such a contract, will provide an appropriate security requirements clause.

9. The Netherlands contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Netherlands contractor's custody, has:

- a) If located in the Netherlands, a current facility clearance of the appropriate level furnished by the cognizant military intelligence service and has the ability to store classified information properly, prior to being afforded access to such classified information;
- b) If located in any other country, has been approved by the Government of the United States to have access to its classified information prior to being afforded such access.

Appendix C

to Security Procedures for Industrial Operations between the Ministry of Defense of the Netherlands and the Department of Defense of the United States (Security Protocol)

Reciprocal industrial security arrangements

1. Purpose

This Appendix establishes arrangements whereby:

- a) A contractor facility in the Netherlands which is under the ownership, control or influence¹⁾ of a United States (U.S.) entity, may be declared eligible for access to Netherlands classified information;
- b) A contractor facility in the U.S. which is under the ownership, control or influence¹⁾ of a Netherlands entity, may be declared eligible for access to U.S. classified information;
- c) A Netherlands national may be granted a personnel security clearance to work on classified contracts in the U.S., or in connection with the granting of a U.S. facility clearance²⁾.
- d) A U.S. national may be granted a personnel security clearance to work on classified contracts in the Netherlands, or in connection with the granting of a Netherlands facility clearance³⁾.

¹⁾ See footnote 2 on page 4.

²⁾ These procedures apply only to citizens of the Netherlands who are working in the U.S. The procedures will not apply to citizens of the Netherlands who have been admitted to the U.S. under an immigration visa for permanent residence and are cleared in the status of an immigrant alien under the U.S. Defense Industrial Security Program. In such cases a personnel security clearance may be granted by appropriate U.S. authorities.

³⁾ Except for U.S. citizens who reside in the Netherlands, this excludes individuals whose permanent residence is outside the U.S., Puerto Rico, Panama Canal Zone or a U.S. possession or trust territory.

2. Application and Scope

a) This Appendix applies to contractor facilities and individuals in the Netherlands and in the U.S. engaged in contracts involving classified information.

b) This Appendix does not apply to RESTRICTED DATA as defined in the U.S. Atomic Energy Act of 1954, as amended, to FORMERLY RESTRICTED DATA removed from the RESTRICTED DATA category pursuant to Section 142 (d) of the U.S. Atomic Energy Act of 1954, as amended, to communications security information, to information for which foreign dissemination has been prohibited in whole or in part, to information for which a special access authorization is required and to information which is not authorized for release under the applicable national disclosure policies of either government.

c) The provision for a security assurance for Netherlands or U.S. nationals shall not apply to an individual who, within the last fifteen years or since age sixteen, has resided in a country where neither the Netherlands nor the U.S. has investigative resources, or where it may reasonably be expected that the governmental authorities of that country would not cooperate in the investigation or in providing information.

3. General Responsibilities

a) The responsible Netherlands agency for carrying out the terms of this arrangement is the cognizant military intelligence service; the responsible U.S. agency is the Defense Investigative Service (DIS). These agencies are designated as the government channels for exchanging facility clearance information, issuing security assurances, and granting Reciprocal Industrial Security Clearances.

b) Each agency is responsible for ascertaining the clearance status of a contractor facility within its country when requested by the other agency, and for furnishing a written determination as to whether the contractor facility has the requisite facility security clearance in accordance with its security clearance requirements. Each agency is also responsible for ascertaining the clearance status of its nationals when requested by the other agency, and for providing a written determination to the other agency as to whether the individual has the requisite security clearance in accordance with its investigative and clearance requirements. A favorable determination in either instance is hereafter referred to as a "security assurance".

c) The cognizant military intelligence service and DIS will ensure that each contractor facility has notified all of its employees who are granted a clearance based upon a security assurance, of their responsibilities for safeguarding classified information, regardless of which country classified the information. The notification will include indoctrination and periodic security briefings as to:

(1) The need for protecting classified information and the adverse effects resulting from compromise.

(2) The principles, criteria, and procedures for classification, down-

grading, declassification, and marking information according to the respective governmental regulations.

(3) The specific security requirements of the particular position.

(4) The techniques employed by foreign intelligence operatives in attempting to obtain classified information and the responsibility for reporting such attempts.

(5) The prohibition against disclosing classified information, by any means, to unauthorized persons or discussing or handling classified information in a manner that would make it accessible to unauthorized persons.

(6) The penalties that may be imposed for unauthorized disclosure or other security breaches.

4. Security Assurances for Contractors Facilities

a) When a Netherlands contractor facility in the Netherlands requires access to Netherlands classified information, but is under the ownership, control or influence of a U.S. entity, the Netherlands may request the U.S. to provide a security assurance. Similarly, when a U.S. contractor facility in the U.S. requires access to U.S. information, but is under the ownership, control or influence of a Netherlands entity, the U.S. may request the Netherlands to provide a security assurance. Each agency agrees to accept the security assurance of the other.

b) Each designated government agency will ascertain the clearance status of its contractor facility, and furnish a security assurance if it meets the requisite standards. If the contractor facility does not have a facility clearance, or has a facility clearance for a classification category lower than that requested, it will notify the other agency that the security assurance cannot be issued immediately, but that action is being taken to process the request. If a favorable determination is made following completion of the investigation, a security assurance will be provided. The requesting agency will then issue a Reciprocal Industrial Security Facility Clearance.

c) A contractor facility which is under the ownership, control or influence of a third country interest is not eligible for a security assurance. In each case when a security is issued, it shall contain a statement that the contractor facility in question is not under ownership, control or influence of a third country interest. Requests for exceptions to this requirement may be considered on a case-by-case basis in situations where the foreign ownership, control or influence involves a third country with which Reciprocal Industrial Security Agreements exist. The request for exception should identify the source, the amount, and other pertinent particulars of the foreign ownership, control or influence.

d) Whenever information develops about a contractor facility which raises a question regarding its continued eligibility for access to classified information, the government receiving the assurance shall be promptly notified about the derogatory information, and any planned or

completed action to investigate, or to suspend or revoke the facility clearance.

e) Each designated agency reserves the right to request the other to review the security assurance issued in behalf of a contractor facility, provided the requesting agency states the reasons for the review. Upon completing the review, the requesting agency will be notified as to whether the assurance is reaffirmed or withdrawn, and facts supporting the decision.

5. Security Assurances for Individuals

a) When a Netherlands national requires a personnel security clearance to work on a classified contract in the U.S., or in connection with the granting of a facility clearance, the U.S. may request the Netherlands to provide a security assurance. Similarly, when a U.S. national requires a personnel security clearance to work on a classified contract in the Netherlands, or in connection with the granting of a facility clearance, the U.S. may be requested to provide a security assurance. If the national does not have a security clearance, or if his security clearance is for a classification category lower than requested, the government receiving the request shall conduct the necessary investigation and security evaluation.

b) If a Netherlands national has resided in the U.S. for any significant period of his adult life, the cognizant military intelligence service may request DIS to investigate his activities during that period. In all cases, DIS will ensure that as a minimum a U.S. National Agency Check is conducted, and that the complete results of the investigation are forwarded to the cognizant military intelligence service. If a U.S. national has resided in the Netherlands for any significant period of his adult life, DIS may request the Director of Army Intelligence/Industrial Security Section to investigate his activities during that period, and forward the complete results of the investigation to DIS.

c) Upon receiving a security assurance from the designated agency that the foreign national meets the security standards of his government, a Reciprocal Industrial Security Personnel Clearance will be issued.

d) If either government learns of derogatory information about an individual for whom a security assurance has been given, it shall notify promptly the other government of the nature of the information and the action it intends to take, or has taken. Also each government may request a review of the security assurance furnished by the other government, provided that the requesting government states its reason for making the request. The government conducting the review will notify the requesting government of the results, and the reason for its decision.

e) If either government suspends or takes action to revoke the clearance of an individual concerning whom it furnished a security assurance, or suspends or takes action to revoke access which it granted to a national of the other government based upon a security assurance, the

other government will be notified as to the action taken and the reasons underlying the action.

Appendix D

to Security Procedures for Industrial Operations between the Ministry of Defense of the Netherlands and the Department of Defense of the United States (Security Protocol)

Transmission of classified material

Paragraph 2.e. of the Security Procedures for Industrial Operations Between the Ministry of Defense of the Netherlands and the Department of Defense of the United States (Security Protocol) provides that transmission of classified information shall be made only through representatives designated by each of the governments. This procedure is commonly known as transmission through government-to-government channels. The following information should be considered when implementing this requirement.

The method of shipment and the channels to be employed in transmitting classified material between each government should, whenever possible, be specified in the Security Requirements Clause of the basic contract, subcontract, or precontract solicitation. The attached routing sheet for the transmittal of classified documents is provided as guidance to assist in the identification of acceptable channels for incorporation into the Security Requirements Clause. This routing may also be used as a procedural guideline when the need arises to transmit documents in those instances where the pertinent aspects of the Security Requirements Clause are unclear or not specifically addressed. The channels described therein should not be considered as the preferred mode in all instances. The availability and physical location of appropriate government representatives and the classification level and size of the material involved are all factors which must be considered.

Classified material shall be prepared for shipment (packaged) and transmitted consistent with the applicable procedures and receipting requirements of each signatory government to this Security Protocol.

Mailing addresses of the government activities identified in the attached routing sheet are as follows:

U.S. Cognizant Security Office

To be designated by the Defense Investigative Service

Cognizant U.S. Military Department Contracting Activity

To be designated by the Defense Investigative Service

HQ Defense Investigative Service

Defense Investigative Service

Attn: Industrial Security Directorate
1900 Half Street, S.W.
Washington, D.C. 20324

Cognizant Royal Netherlands Military Department
Ministry of Defense
Att. Director of Air Force Intelligence/
Chief Industrial Security Section
P.O. Box 5953
2280 HZ Rijswijk
The Netherlands

Ministry of Defense
Att. director of Army Intelligence/
Chief Industrial Security Section
P.O. Box 96904
2509 JH 's-Gravenhage
The Netherlands

Ministry of Defense
Att. Director of Naval Intelligence/
Chief Industrial Security Section
P.O. Box 20702
2500 ES 's-Gravenhage
The Netherlands

Attachment:
Routing of Classified Documents between the United States of America
and the Netherlands

ATTACHMENT to APPENDIX D

Routing of classified documents between the United States of America and the Netherlands

A. Routing of Documents, Containing Netherlands' Classified Information, To and From U.S. Industry.¹⁾

Netherlands Industry	Cognizant Royal Netherlands Military Department	Royal Netherlands Embassy in Washington DC c/o Defense Attache or c/o Attache Defense Cooperation (Materiel)	Request Routing Instructions For Appropriate U.S. Government Channels From: HQ Defense Investigative Service, Industrial Security Directorate (Department of Defense)	U.S. Industry
U.S. Industry	Request Routing Instructions From: U.S. Cognizant Security Office	Royal Netherlands Embassy in Washington DC c/o Defense Attache or c/o Attache Defense Cooperation (Materiel)	Cognizant Royal Netherlands Military Department	Netherlands Industry

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¹⁾ Reads left to right.

B. Routing of Documents, Containing United States' Classified Information, To and From Netherlands Industry¹⁾

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U.S. Industry	Request Routing Instructions From: Cognizant U.S. Military Department Contracting Activity or U.S. Cognizant Security Office ²⁾	United States Embassy in The Hague c/o Office of Defense Cooperation (ODC) or Other Appropriate U.S. Government Controlled Installation in the Netherlands	Cognizant Royal Netherlands Military Department	Netherlands Industry
Netherlands Industry	Cognizant Royal Netherlands Military Department	United States Embassy in The Hague c/o Office of Defense Cooperation (ODC) or Other Appropriate U.S. Government Controlled Installation in the Netherlands (as verified by U.S. ODC)	Request Routing Instructions From or Transmit To: HQ Defense Investigative Service, Industrial Security Directorate (Department of Defense)	

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¹⁾ Reads left to right.

²⁾ The U.S. Cognizant Security Office is prohibited from arranging government-to-government transmission of U.S. classified information unless presented with appropriate evidence that the information involved has been authorized for release to the Government of The Netherlands under the U.S. National Disclosure Policy.

In overeenstemming met artikel VI van het Memorandum van overeenstemming is op 14 januari/6 februari 1991 te Washington/'s-Gravenhage Bijlage VI behorende bij het onderhavige Memorandum van Overeenstemming tot stand gekomen.

De tekst van deze Bijlage luidt als volgt:

Annex VI

to Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, signed at The Hague on 24 August 1978

Principles governing defense contract audit services

I. Introduction

This annex supersedes Annex VI entered into between the governments of the Kingdom of the Netherlands and the United States, dated April 18, 1985, concerning Principles Governing Defense Contract Audit Services and sets forth the terms, conditions and procedures under which the participating governments will provide one another with defense contract audit services upon request in support of defense contracts, subcontracts, and Foreign Military Sales (FMS) Letters of Offer and Acceptance contemplated or executed under the Memorandum of Understanding (MOU).

II. General Principles

The objective of this annex is to improve the effectiveness and efficiency of audit services available to the participating governments. Either government may request audit services from the other government. Both governments agree to perform the audits requested by the other government or otherwise required by this audit annex. In the event conflicts arise between any aspect of this annex and the laws of either participating government, the laws shall prevail. With notice to the other participating government, the purchasing government may elect to perform a specific audit in unusual circumstances, such as when the performing government can not satisfy an unusually short due date for an audit report.

Contract audit reports shall be advisory. The purchasing government shall retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors. Purchases by the Netherlands under the FMS Program will be handled under the U.S. FMS procedures in existence at the time of acceptance of the FMS agreement.

When performing an audit for the U.S., the Netherlands agrees to use current U.S. cost principles and applicable cost accounting standards. The Netherlands also agrees that the U.S. will use its own cost principles when performing an audit for the Netherlands. All audit reports will be written in English. Consistent with U.S. cost principles and applicable cost accounting standards, the performing government may use the same audit methods it customarily uses for its own contracts, and shall determine the organizations and personnel to be involved.

Neither participating government shall duplicate or review the work of the other. The governments shall hold periodic discussions to evaluate the operational effectiveness of the reciprocal agreement. In addition, each government agrees that compliance with this audit annex will be evaluated at least once every three years by its own appropriate review and oversight organization. A copy of the results of such reviews shall be provided to the other government.

Solicitations, contracts, and subcontracts shall contain suitable provisions to enable the participating governments to act for and on behalf of one another under this annex and shall authorize access to contractor facilities and records as necessary. Nothing in this annex is to be construed to limit a purchasing government's rights or remedies, including access to contractors records, as may be authorized by contract or the laws of the purchasing government.

III. Scope of Audit Annex

This annex encompasses audits in support of contracts and subcontracts for defense equipment and services contemplated or executed under the MOU and FMS letters of offer and acceptance. It does not cover audits for architecture and engineering, construction, base support, operation and maintenance, or banking services, nor does it cover audits of universities, and contractors solely in the business of supporting the U.S. presence in the Netherlands. For purposes of this annex, defense contract audit services shall include the following types of audits:

Forward Pricing Audits: Review of proposals submitted in contemplation of a contract award or a contract modification, to determine the allowability, allocability, and reasonableness of each proposed cost element.

Accounting System Audits: Review of contractor accounting records, procedures, and systems to determine their accuracy, currency, completeness, and compliance with contract requirements.

Estimating System Audit: Evaluation of cost estimating systems.

Post Award Audits: Verify after contract award the currency, accuracy, and completeness of cost or pricing data submitted to the purchasing government as of the completion of negotiations. Post award audits shall be automatically performed; that is, without a request, by both governments whenever a contract or contract modification has been awarded that exceeds the then current U.S. threshold for mandatory post award

audits (the current threshold is \$ 50,000,000) and the purchasing government relied upon certified cost or pricing data submitted by a contractor. For contract awards less than this threshold, in which the purchasing government relied upon certified cost or pricing data submitted by a contractor, post award audits will be performed based upon a sampling approach devised by the performing government or whenever there are indications that a post award audit is appropriate based on prior experience with a contractor. In addition, other post award audits will be performed upon request of the purchasing government.

Reimbursement Vouchers Audits: Verify payment vouchers submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g. material reimbursement) and recommend cost disallowances when appropriate.

Audits of Disclosed Accounting Practices: Verify contractor compliance with disclosed accounting practices and contractual accounting requirements.

Overhead Cost Audits: Evaluate overhead cost records prior to overhead settlements.

Termination Audits: Evaluate proposed termination costs and contract cost records prior to termination settlements.

Final Pricing Audits: Review and verify actual costs incurred in the performance of cost reimbursement and fixed price incentive contracts for purposes of establishing the final cost or price.

Other: Audit services considered necessary and requested by contracting country.

IV. Procedures

Requests for contract audit services in the Netherlands shall be sent with a copy of the contractor's proposal (if applicable) by air mail to: Defense Contract Management Command, International Brussels/D
APO New York, NY 09667-6207

A copy of each audit request shall be forwarded directly by air mail to:
The Ministry of Defense
Director Audit Agency
Postbus 20701
2500 ES The Hague
The Netherlands

All requests for audits in the Netherlands will also be sent by telephonic facsimile to the following:
DCMR, International – Brussels/D

Facsimile Telephone Number: 32 2 6487401
Ministry of Defense, Director Audit Agency
Facsimile Telephone Number: 31 70 3187596

Requests for contract audit services in the United States shall be sent by telephonic facsimile, followed by written request with a copy of the proposal (if applicable) sent by air mail, to:
Defense Contract Management Area Office, New York
DoD Central Control Point
201 Varick St.
New York, NY 10014-4811
USA
Facsimile Telephone Number (212) 807-3343

Requests for audits shall specify the type of audit services needed, the contractor, the contractor's address, the subcontractor and address (if applicable), the proposal (if one is to be audited), any items requiring special review, the calendar date (not the number days after receipt of audit request) that the audit is needed by, a point of contact, telephone number, and facsimile telephone number. Acceptance of requests shall be acknowledged by telephonic facsimile by the performing government and a point of contact, telephone number, and facsimile number shall be provided.

Each government agrees to establish a liaison person for this audit annex. The liaison office, liaison person, and telephone number shall be identified in each audit report. The liaison person shall assist in obtaining clarifications of audit requests or audit reports whenever necessary. The liaison person shall also assist in resolving problems with the timeliness, content, or quality of audit reports. If unable to resolve such problems, the issue will be escalated to successive managers (up to, in the Netherlands, the Director, Material Acquisition, Ministry of Defense, or, in the U.S., the Director, Foreign Contracting, Office of the Secretary of Defense).

Each government agrees to provide audit reports in a timely manner. Audit reports submitted in accordance with the requested due dates, which for forward pricing audits is generally 45 days after receipt of request for audit, are timely. If the due date specified by the requesting government cannot be met, the performing government shall contact the point of contact identified in the audit request to explain the reasons for the delay. If the failure to meet the requested due date is caused by external factors, not within the control of the government performing the audit (such as not obtaining necessary cost data from a contractor), the purchasing government shall attempt to assist in resolving the problem and grant reasonable extensions as appropriate. If the inability to meet the requested due date is caused by action or inaction of the performing government, the issue will be escalated to the attention of the audit annex liaison person and to successive managers.

The participating governments shall provide each other with access to all available information concerning contractor cost estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. It is expected that contracts requiring the disclosure of accounting practices shall normally authorize contractors to file such disclosures with their own governments. In the United States, the files shall be maintained by the office administering the contract. In the Netherlands, the files shall be maintained by the Director of the Audit Agency.

In order that the equity of this annex may be periodically appraised, information copies of all requests for audit by both countries will be sent to Defense Contract Audit Agency, European Branch office, Lindsey Air Station, APO New York 09633. To facilitate these periodic reviews, both governments agree to maintain a list of all audits performed for each other and the specific office that requested the audit shall be identified in such list.

VI. Content of Audit Reports

All audit reports shall describe the type, scope, depth of the evaluation performed, and a point of contact with a telephone number. The audit reports shall describe what was reviewed or evaluated, the methodology used to perform the review, findings of the review, recommendations of the auditor, and the basis for the recommendations. The audit report shall address any areas that were specifically requested for review. Each audit report shall state that the proposal was audited for unallowable costs and identify any unallowable costs. While audits requested pursuant to this agreement will not encompass investigations, audits shall be performed in a manner that will provide reasonable assurance of detecting errors, irregularities, abuse, or illegal acts that: (1) could have a direct (or indirect) and material effect on contractor financial representations or the results of financial related audits; or (2) significantly affect the audit objectives. The audit report should identify the extent to which issues raised by the auditor were discussed with the contractor. Supporting evaluations by technical and other specialists shall be included in the reports as appropriate. The purchasing government may request additional clarifications or supporting data if necessary, and shall have the final authority to determine when the information provided is adequate for its purposes.

For forward pricing audits, the reports shall, for each element of proposed cost, identify the offeror's proposed cost, the basis for the proposed cost, how the auditor evaluated it, any recommended exceptions (questioned costs), and rationale supporting the recommended exceptions (questioned costs). The information supplied in the audit report should be sufficiently detailed to permit the purchasing government to develop and justify negotiation position.

VII. Protection of Information

Information obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as it would normally receive under the laws and rules of the participating government which possesses it.

VIII. Charges

Services will be provided under this annex without charge for all defense contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If after such joint review either government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, FMS procedures then in effect will apply.

IX. Duration

This annex will remain in effect for a period as set forth in Article VII of the MOU and may be terminated under the conditions as set forth in that article.

For the Government of the Kingdom of The Netherlands

(sd.) B. J. M. VAN VOORST TOT VOORST
State Secretary of Defense

Place: The Hague

Date: 6.2.91

For the Government of the United States of America

(sd.) D. J. ATWOOD
Deputy Secretary of Defense

Place: Washington, DC

Date: 14 JAN 1991

In overeenstemming met artikel VI van het Memorandum van overeenstemming is op 27 november 1990 te Washington Bijlage VII behorende bij het onderhavige Memorandum van overeenstemming tot stand gekomen.

De tekst van deze Bijlage luidt als volgt:

Annex VII

to the Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Cooperation in the Research and Development, Production and Procurement of Defense Equipment

1. Each Government will publish or have published in a generally available periodical, a notice of proposed purchases in accordance with national rules and departmental/ministerial provisions on publication thresholds. The Governments will notify one another any time threshold levels change. The notice will contain:

- a) Subject matter of the procurement;
- b) Time limits set for the submission of offers or an application for solicitation; and
- c) Addresses from which solicitation documents and related data may be requested.

2. The Governments shall provide on request copies of solicitations for proposed purchases. A solicitation shall constitute an invitation to participate in the competition and shall contain the following information:

- a) The nature and quantity of the products or services to be supplied;
- b) Whether the procedure is by sealed bids or negotiation;
- c) The basis on which the award is to be made, such as by lowest bid price or otherwise;
- d) Any delivery date;
- e) The address and final date for submitting offers as well as the language or languages in which they must be submitted;
- f) The address of the agency awarding the contract and providing any information required by suppliers;
- g) Any economic and technical requirements, financial guarantees, and information required from suppliers;
- h) The amount and terms of payment of any sum payable for solicitation documentation.

3. Any conditions for participation in procurements shall be published in adequate time to enable interested suppliers to meet the conditions, and solicitations shall allow adequate time for response, consistent with user needs.

4. Competing suppliers shall be promptly notified as to the successful offeror.

5. Upon request, suppliers shall promptly be provided pertinent information concerning the reasons why they were not allowed to participate in a procurement or were not awarded a contract.

6. There shall be published procedures for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the greatest extent possible, disputes arising under procurements covered by this agreement will be equitable and expeditiously resolved between the offeror and the procuring Government.

For the Government of the Kingdom of the Netherlands

(sd.) B. J. M. VAN VOORST TOT VOORST
The State Secretary of Defense

Date: 27-11-90

For the Government of the United States

(sd.) D. J. ATWOOD
The Deputy Secretary of Defense

Date: 11/27/90

In overeenstemming met artikel VI van het Memorandum van overeenstemming is op 2 december 1992/6 januari 1993 te Washington/'s-Gravenhage Bijlage VIII behorende bij het onderhavige Memorandum van overeenstemming tot stand gekomen.

De tekst van deze Bijlage luidt als volgt:

Annex VIII

Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, and Procurement of Defense Equipment, signed 24 August 1978

Principles governing a scientist and engineer exchange program

I. Introduction

This Annex sets forth the terms, conditions and procedures which shall govern a scientist and engineer exchange program ("the Exchange Program") between The Ministry of Defense of the Kingdom of The

Netherlands (“NL MOD”) and the Department of Defense of the United States (“US DOD”), hereafter referred to as “The Parties”. Professional knowledge of both Parties shall be shared for maximum mutual benefits to the extent authorized by the policies, laws and regulations of the United States and The Netherlands.

II. General Principles

In order to implement the Exchange Program, the Parties agree to provide on-site working assignments to selected scientists and engineers from the other Party (hereafter referred to as “the Exchange Personnel”) in US DOD and NL MOD research, development and logistics facilities. The work assignments shall provide Exchange Personnel with knowledge of the organization and management of Host Party research and development activities related to conventional military systems. This Exchange Program shall not include technical training nor is it to be used as a mechanism for obtaining technical data related to the design, development and manufacture of military systems. Exchange of scientists and engineers under this Annex shall be conducted on a reciprocal basis so that value to each Party shall be essentially equal.

The Exchange Program shall be administered by Executive Agents. The Executive Agent for the US DOD is the Department of the Army; for the NL MOD, the Executive Agent is the Netherlands Organization for Applied Scientific Research (TNO). The program shall be administered in compliance with Appendix A.

III. Selection and Assignment of Candidates

Participation in the Exchange Program is restricted to military officers and civilian employees of the US DOD and the NL MOD and to employees of the Netherlands Organization For Applied Scientific Research TNO and National Aerospace Laboratory (NLR) and the Maritime Research Institute of the Netherlands (MARIN) working on behalf of the MOD.

The placement of each candidate nominated under this program is conditional upon the ability of the Host Party to provide work assignments commensurate with the purpose and scope of the program for a mutually agreed period.

Candidates should hold at least a baccalaureate degree in a scientific field and should have at least two years practical experience in the technical area related to the position to which they are assigned. Some exchanges, however, may require higher academic qualifications.

To assist in the evaluation and selection of candidates, the NL MOD and the US DOD shall provide background resumes, areas of interest, and assignment objectives for each candidate, following the format of Attachment 1 of Appendix A, at least 12 months prior to the desired date of assignment. It shall be the responsibility of the Host Party Executive

Agent to provide, within 6 months of the desired date of assignment, a position description for available positions. The position description shall follow the outline at Attachment 2 of Appendix A. Final selection of candidates, and their assignment to a position nominated by the Host Party, shall be by mutual agreement between the NL MOD and the US DOD.

Exchange Personnel shall not act in a liaison capacity or otherwise act as representatives of their respective Party or government while assigned to an exchange position, nor shall they act as representatives of the Host Party or Host Government or the facility to which they are assigned. They shall perform functions only as described in the position description of the position to which assigned.

IV. Costs

Costs incurred as a result of the participation of Exchange Personnel under this Annex shall be borne by the Party providing the Exchange Personnel (the "Parent Party"), to the extent authorized by the governing laws and regulations of the Parent Party, or by the Exchange Personnel themselves. Except as provided below, the Host Party shall not be responsible under this Annex for any of the expenses or costs of Exchange Personnel from the other Party.

Travel and per diem costs associated with travel performed in connection with assigned duties within the Host Country shall be paid by the Party requesting or directing such travel.

V. Security

During the selection process, each Party shall inform the other of the level of security clearance required, if any, to permit candidates access to classified information. Access to classified information shall be kept to the minimum required to accomplish the work assignment as determined by the Host Party based on the position description.

Each Party shall be required to file, through The Netherlands Embassy in Washington, D.C., in the case of the NL MOD, and through the U.S. Embassy in The Hague, in the case of US DOD, the appropriate security assurances for each selected candidate. The security assurances shall be prepared and forwarded through prescribed channels in compliance with established Host Government and Host Party visit and accreditation procedures.

Exchange Personnel shall at all times be required to comply with security laws, regulations and procedures of the Host Government and Host Party. Any violation of security procedures by exchange personnel during his/her assignment shall be reported to the Party of origin for appropriate action.

All classified items, plans, specifications, or other information to which personnel participating in this program may have access shall be subject to all provisions and safeguards provided for under the U.S./Netherlands General Security of Information Agreement, dated 18 August 1960 as amended 6 April 1981, and including the Industrial Security Annex thereto.

The Host Party and Parent Party shall ensure that all assigned Exchange Personnel are fully cognizant of applicable security laws and regulations concerning the protection of proprietary information (such as patents, copyrights, and trade secrets), classified information and other information to be disclosed under this program, both during and after termination of a participant's assignment.

The data and information to be exchanged under this Exchange Program, as well as access to facilities, equipment and sites shall not extend to the release of RESTRICTED DATA or FORMERLY RESTRICTED DATA as defined in the U.S. Atomic Energy Act of 1954 as amended; to communications security information; to information for which foreign dissemination has been prohibited in whole or in part; to information for which a special access authorization is required; or to information which has not been specifically authorized for release to the Parent Government of the Exchange Personnel under applicable disclosure policies of the Host Government and Host Party.

To ensure the protection of proprietary, classified, and other information disclosed under this program, both during and after termination of a participant's assignment, all Exchange Personnel shall be advised of applicable security regulations and statutes and shall be required, prior to arrival in the Host Country, to sign the applicable agreements at Appendices B and C.

VI. Technical and Administrative Matters

To the extent authorized by its governing laws and regulations, the Host Party shall provide to Exchange Personnel, such administrative support as is deemed necessary for the efficient performance of their assigned tasks.

To the extent authorized by the Host Party's governing laws and regulations, Exchange Personnel shall be subject to the same restrictions, conditions and privileges as Host Party NL MOD/US DOD personnel of comparable rank in the area of assignment. Further, to the extent authorized by the governing laws and regulations of the Host Party and applicable international agreements between the Parties, Exchange Personnel and their authorized dependents shall be accorded on a reciprocal basis:

- a) Exemption from any tax by the Host Party's government upon income received from the Parent Party's government.
- b) Exemption from any customs and import duties or similar charges levied on articles entering the Host country for their official or personal use, including, inter alia, their baggage, household effects, and private

motor vehicles. The foregoing does not in any way limit privileges set forth elsewhere in this Annex, or other privileges granted by the laws and regulations of the Host Government or Host Party.

Exchange Personnel and their authorized dependents shall be briefed regarding their specific entitlements, privileges, and obligations prior to or immediately following their arrival in the Host country. The briefing shall include the subjects described at Attachment 3 to Appendix A.

As a general rule, except for religious holidays, Exchange Personnel shall observe holidays of the Host government rather than their own national holidays. Exceptions to this rule may be made by the facility to which the Exchange Personnel are assigned.

All Exchange Personnel shall work under the guidance and control of a Host Party supervisor who shall, after three months and upon completion of a participant's tour of duty, submit an evaluation report through the Executive Agent to the participant's Parent Party.

Supervisors will ensure daily observation of each participant's performance in order to provide a basis for counselling and reporting.

The status of Exchange Personnel while in the Host country shall be governed by the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (NATO SOFA) signed June 19, 1951, and related bilateral agreements between the Parties.

Where applicable, claims against either Party or their personnel shall be handled in accordance with Article VIII of the NATO SOFA.

VII. Inventions and Technical Information

The respective rights of the Exchange Personnel and the two Parties to inventions (whether patentable or non-patentable) made (either conceived or reduced to practice) and to technical information developed by an exchange scientist or engineer during the period of and as a result of his/her participation in the program shall be governed by the laws and regulations of the respective parent government of exchange personnel.

To the extent that the right, title, and/or interest to an invention and/or to technical information is assigned to the Parent Party under the provision of the preceding paragraph, the Parent Party grants free of charge of the Host Party for its own governmental purposes a non transferable, world-wide, irrevocable, non-exclusive, royalty-free license to practice (make, use and sell) such inventions and to have unlimited use and reproduction rights in such technical information. Additional rights to inventions and technical information, such as transfer of patents, may be negotiated between the Parties.

Notwithstanding the rights delineated in the paragraphs above, the Parent Party shall obtain from each exchange scientist and engineer, as a condition for participating in the program, a written commitment regarding inventions and technical information in the form prescribed in Appendix B and shall promptly deliver the signed originals to the Host

Party prior to the arrival of the exchange scientist or engineer in the Host Country.

The Parent Party of a scientist or engineer who makes an invention shall have first priority to prosecute or to have prosecuted on its behalf patent applications to secure rights granted under this section. The Parent Party shall, within a reasonable time, notify the Host Party of the countries in which it or the scientist or engineer inventor elects to file patent applications. To the extent consistent with other applicable international agreements for all other countries, the Host Government may prosecute or have prosecuted on its behalf patent applications to secure rights.

Any additional compensation or award under an incentive award program or similar program due to the participant scientist or engineer for the work performed under this program shall be the responsibility of the Parent Party.

VIII. Duration and Termination

This Annex shall enter into force upon signature and shall remain in force for a period as set forth in Article VII of the MOU and may be terminated under the conditions as set forth in that article.

For the Government of the Kingdom of the Netherlands

(sd.) J. FLEDDERUS

Date: 6 January 1993

Location: The Hague

For the Government of the United States of America

(sd.) DONALD J. YOCKEY

Date: 2 Dec 92

Appendix A

Procedures for Administering the Exchange of Scientists and Engineers

A.1 This Appendix to the Annex between the US DOD and the NL MOD regarding the Exchange of Scientists and Engineers provides the procedures for nominating and assigning Exchange Personnel from one country to DOD/MOD research and development facilities in the other country.

A.2 The Executive Agent shall be the single point of contact with the other Party for the administration of the Exchange Program.

A.3 Each Executive Agent shall obtain from its Government's defense components and submit to the other Executive Agent applications of individuals for consideration as Exchange Personnel. The personnel application shall include a resume in the format of Attachment 1. The selection and placement of five or more exchange personnel in one country during a calendar year period shall be administrated and coordinated on a group basis to facilitate administrative processing.

A.4 Candidate applications shall be submitted by the nominating Party to its Embassy for forwarding to the Executive Agent in the Host Party. The submission of the applications shall occur at least twelve months prior to the desired assignment start date.

A.5 The Host Party Executive Agent shall distribute the candidate resumes it receives to its defense components for review and placement selection.

A.6 After review and coordination of the resumes and identification of applicable assignments, the Host Party Executive Agent shall submit to the nominating Party through prescribed channels the proposed Position Description in the format of Attachment 2 at least six months prior to the expected assignment date.

A.7 Upon acceptance of the Position Description, the nominating Party shall submit appropriate documentation, to include accreditation requests, through its embassy channels to the Host Party at least 60 days in advance of the proposed date of assignment.

A.8 Upon receipt of the information specified in A.7, above, the Host Party Executive Agent shall notify the receiving defense component of the individual's arrival date(s). The receiving defense component shall, in turn, notify the participant's supervisor and encourage personal contact between the supervisor and the Exchange Personnel prior to arrival. A sponsor, usually the supervisor, shall be assigned to meet the Exchange Personnel on arrival and help make the necessary living arrangements for the Exchange Personnel and family.

A.9 The Host Party Executive Agent shall arrange for an in-briefing for all new Exchange Personnel, normally to be held at the participant's embassy. The embassy and sponsor or supervisor shall, as a minimum, brief the Exchange Personnel on the items contained in Attachment 3. The Host Party Executive Agent and security manager of the host

defense component shall provide the overall welcome to the program and emphasize security system requirements. The Host Party sponsor or Host Party supervisor shall familiarize the Exchange Personnel with the sponsoring organization's research and development mission, as well as the specific assignment location and duties.

A.10 The Host Party Executive Agent, along with Embassy point of contact, shall be the interface with all supervisors and/or Exchange Personnel in administering the program.

A.11 The Host Party Executive Agent shall arrange for a proper end-of-assignment ceremony and out briefing for Exchange Personnel. It is suggested that a prominent individual from the Host Party research and development community address the Exchange Personnel when there is a group departing. A Certificate of Completion may be presented to each foreign participant. The Host Party Executive Agent shall provide a security debrief and allow the individual a final opportunity to comment on his/her experience with the Exchange Program.

Appendix A

Attachment 1

Professional Background and Area of Interest

- I. Personal Data:
 - Name:
 - Rank or Title:
 - Scientific or Technical Specialty:
 - Passport No:
 - Marital Status: (if children, how many, ages and sex)
 - Address:
 - Office:
 - Telephone:
 - Home:
 - Telephone:
- II. Education:
 - Name of college/university
 - Degree received/subject
- III. Professional Employment:
 - (List military and civilian employment)
- IV. Name of Present Organization
- V. Language Proficiency:
 - a. Recent aptitude/proficiency scores, if applicable
 - b. Academic Language Training or Language Experience
 - c. Spouse's Proficiency.

VI. Career Areas of Interest

- A. Primary
 - 1.
 - 2.
 - 3.
- B. Secondary
 - 1.
 - 2.
 - 3.

Appendix A

Attachment 2

Position Description

1. Title of Position:
2. Position Location:
3. Qualifications/Skills Required for Position:
4. Description of Specific Duties:
5. General Categories of Information to Which Access Will be Required:
6. Supervisor:
 - Name
 - Title/Grade
 - Address

Appendix A

Attachment 3

Suggested Topics to be covered by Embassy during In-brief of Exchange Scientists or Engineers

- Peculiarities of status during stay in Host country
- Import and registration of private vehicle
- Driver's license and automobile insurance
- Treatment of Customs in bringing in goods for personal use (e.g., suitcases, household goods, etc.).
- Taxes
- Employee inventions
- Receipt of paychecks
- Opening a private bank account

- Necessary correspondence relative to personal affairs
- Passports and visas
- Holidays, annual leave, sick and emergency leave and home vacation privileges
- Authorizations for business travel (TDY)
- Visit requests (to visit installations other than place assigned)
- Procedures to book flights for TDY
- Returning to home country
- Regulations and allowances relative to moving costs (household goods, per diem, weight allowances, etc.)
- Instructions for obtaining assistance (financial, credit, verification of employment, etc.)
- Overseas employment compensation
- Housing rental allowance
- Procedure for settling travel vouchers
- School assistance
- End of assignment and periodic written reports
- Suggested books and literature about the Host country for background information
 - Provide list of important organizations, persons, addresses, telephone numbers (e.g., Embassy, Armed Forces Administratieve Office, etc.)
 - Security procedures and contacts

Appendix B

Agreement regarding Inventions made and Technical Information developed by visiting Scientists and Engineers

Assignment of Rights to Host Party

In consideration for being selected to participate in the US/The Netherlands Scientist and Engineer Exchange Program, I hereby grant to the (Host Party) a worldwide, nontransferable, irrevocable, non-exclusive, royalty-free license to practice (make, use or sell) Inventions (whether patentable or not patentable) and unlimited use and reproduction rights in technical information, which inventions are made (either conceived or reduced to practice) by me or which technical information is developed by me during my participation in the program.

Appendix C

Agreement Regarding Conditions and Responsibilities

I understand and acknowledge that I have been accepted for assignment to (name and location of organization to which assigned) pursuant to an agreement between The Netherlands Ministry of Defense and the United States Department of Defense ("the Parties"). In connection with this assignment, I further understand, acknowledge, and certify that I shall comply with the following conditions and responsibilities:

1. The purpose of the assignment is to gain knowledge of the organization and management of Host Party research and development activities related to conventional military systems. There shall be no access to technical data or other information except for that which is required to perform the duties of the position to which I am assigned.

2. I shall perform only functions as described in the Position Description for my work assignment, and shall not act in any other capacity on behalf of my government or Parent Party.

3. Access to information shall be limited to that information determined by my designated supervisor to be necessary to fulfill the functions described in the Position Description for my work assignment.

4. All information to which I may have access in the course of this assignment shall be treated as information provided to my government in confidence and shall not be further released or disclosed by me to any other person, firm, organization or government without the prior written authorization of the Host Party.

5. I have been briefed on, understand, and shall comply with all applicable security regulations of the Host Party and Host Government.

 _____ (Signature)
 _____ (Typed Name)
 _____ (Grade/Title)
 _____ (Date)

 Uitgegeven de *zevenentwintigste* januari 1995.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO