

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2012 Nr. 227

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A. TITEL

*Verdrag tussen de regering van het Koninkrijk der Nederlanden en de regering van de Verenigde Staten van Amerika inzake samenwerking op het gebied van wetenschap en technologie betreffende binnenlandse en burgerlijke veiligheidsaangelegenheden;  
(met bijlagen)  
Washington, 29 november 2012*

B. TEKST

**Agreement between the Government of the Kingdom of the Netherlands and the Government of the United States of America on cooperation in science and technology concerning homeland and civil security matters**

The Government of the Kingdom of the Netherlands  
and  
the Government of the United States of America  
(hereinafter referred to as “the Parties”),

Having a mutual interest in research and development relating to homeland and civil security matters, in particular giving attention to the development of innovative solutions to increase people’s security without limiting their freedom;

Desiring to increase the exchanges of information and personnel in areas pertinent to the identification of homeland and civil security threats and countermeasures and the development of technical standards, operational procedures, and supporting methodologies that govern the use of relevant innovative solutions, in addition to and, if appropriate, in connection with, relevant cooperation in the European Union context;

Stressing that physical and cyber-based critical infrastructure/key resources and other homeland/civil security capabilities, both governmental and private, are essential to the operation and security of the Parties' respective economies, societies, and governments;

Noting that the Parties' economies are increasingly interdependent, and that infrastructure protection and homeland/civil security are of paramount concern to the Parties' respective governments;

Being aware of research, development, testing, evaluation, development of technical standards and operations in both countries in chemical, biological, radiological, nuclear and explosive countermeasures, and in other areas that could enhance homeland/civil security;

Recognizing a common desire to

- improve the understanding of threats;
- expand the homeland/civil security technology capabilities of each

Party;

- minimize unnecessary duplication of work;
- obtain more efficient and cost-effective results; and
- adapt more flexibly to the dynamic threat environment

through cooperative activity that is mutually beneficial and that relates to the application of state-of-the-art and emerging security technologies and science-based knowledge, making best use of the Parties' respective science, research, development, and testing and evaluation capacities;

Affirming a common interest in enhancing the longstanding collaborative efforts of the Parties' respective agencies, private sector and governmental organizations, and academic institutions in generating scientific and technological solutions to counter threats, reduce vulnerabilities, and respond to and recover from incidents and emergencies in those areas having the potential for causing significant security, economic, and/or social impacts;

Desiring to set forth a vehicle for the conduct of cooperative scientific and technological research including social and behavioral sciences and humanities, development, testing and evaluation in the field of homeland/civil security,

Have agreed as follows:

## Article 1

### *Definitions*

For purposes of this Agreement the following definitions shall apply:

Business Confidential Information	Has the meaning given to it in Section IV of Annex I to this Agreement.
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Classified Information	Any information that requires protection and is so designated by the application of the appropriate security classification markings in accordance with the national laws, regulations, policies, or directives of either Party. It may be stored in any form or medium whatsoever, including, but not limited to, oral, visual, magnetic, electronic, or documentary form, or in the form of Equipment and Material or technology.
Contract	Any mutually binding legal relationship under the laws of either Party that obligates a Contractor to furnish supplies or services in relation to a Project Arrangement.
Contractor	Any entity awarded a Contract by, or entering into a Contract with, a Party in relation to a Project Arrangement.
Controlled Unclassified Information	Information that is not deemed to be Classified Information in the United States nor in the Netherlands, but to which access or distribution limitations have been applied in accordance with national laws, regulations, policies, or directives of either Party. Whether the information is provided or generated under this Agreement, it will be marked to identify its sensitive character. This definition includes, but is not limited to, information marked in the United States as “Sensitive Homeland Security Information,” “Sensitive Security Information,” “For Official Use Only,” “Law Enforcement Sensitive Information,” “Protected Critical Infrastructure Information,” “Restricted,” “Sensitive But Unclassified (SBU),” and may include Business Confidential Information.

Cooperative Activity	Any activity described in Article 7 of this Agreement on which the Parties agree to cooperate to achieve the objectives of this Agreement. Such activity will normally take the form of a Project.
Critical Infrastructure/ Key Resources	Governmental and/or private activities or sectors that are identified by each Party in its laws, executive orders, directives or policies as “Critical Infrastructure” or “Key Resources.”
Designated Security Authority (DSA)	The government authority responsible for the development of policies and procedures governing security of Classified or Controlled Unclassified Information covered by this Agreement.
Equipment and Material	Any document, product or substance on or in which information may be recorded or embodied. Material shall encompass everything regardless of its physical character for 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 material from which information can be derived.
Intellectual Property	Has the meaning given in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967, as amended September 28, 1979, and may include other subject matter as agreed upon by the Parties.
Need-to-Know	An objective condition which justifies the access of an individual to specific information related to the activities referred to in this Agreement, based on the individual’s official duties or legal responsibilities.

Non-Disclosure Agreement (NDA)	A legal agreement between a Party and one or more Participants that creates an obligation of the Participant not to disclose certain information and to restrict use of such information.
Party	Either the Government of the United States of America and its federal departments, agencies, and officials; or the Government of the Kingdom of the Netherlands and its departments, agencies, and officials.
Participant	Any non-Party person or entity, including but not limited to a private sector organization, academic institution, laboratory (or subsidiary thereof), or State or Local governments, entities, or officials engaged in a Cooperative Activity, including those under Contract to a Party.
Project	A specific form of Cooperative Activity described in Article 7 (Projects).
Project Arrangement	The instrument setting out the scope of any Project to be carried out by the Parties described in Article 7 (Projects).
Project Background Information	Any information furnished to a Project regardless of form or type, including that of a scientific, technical, business, or financial nature, and including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, software, source code, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations; whether in magnetic or electronic media, computer memory, or any other form and whether or not subject to intellectual property protections.

Project Foreground Information	Any information created in a Project, regardless of form or type, including that of a scientific, technical, business, or financial nature, and including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, software, source code, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations; whether in magnetic or electronic media, computer memory, or any other form and whether or not subject to intellectual property protections.
Receiving Party	The Party to which Classified Information or Controlled Unclassified Information is transferred.
Sending Party	The Party that originates and/or transfers Classified Information or Controlled Unclassified Information to the Receiving Party.
Technology Management Plan	A specific component of the Project Arrangement jointly developed by the Parties in which they agree on how Project Background and Foreground Information will be handled, and which will discuss among other things, the rights of the Parties and their Contractors and Participants concerning Intellectual Property created under this Agreement, including how any royalties shall be shared, where such Intellectual Property shall be protected, and who shall be responsible for obtaining that protection and granting licenses.
Third Party	Any entity or person who is neither a Party to this Agreement nor a Participant in any of the Agreement's Cooperative Activities.

## Transport Security

Includes aviation, maritime, surface transport, offshore oil and gas and supply chain security measures that contribute to attaining and maintaining a more secure transport sector against the threat of terrorism and other unlawful acts.

## Article 2

*Objective*

The Agreement shall establish a framework to develop and facilitate bilateral Cooperative Activity in the field of science and technology that contributes to innovation of and to the homeland/civil security capabilities of both Parties in:

- a) cyber security;
- b) chemical biological and nuclear/radiological security;
- c) explosives;
- d) innovative transportation screening technology;
- e) objective ranking and similarity judgement for the protection of critical infrastructure;
- f) crisis response, consequence management, and mitigation for high-consequence events; and
- g) other terrorism- and homeland security-related activities determined by the Parties.

This will also contribute to the development of educational opportunities and scientific and technological capabilities of both Parties in these areas.

Particular attention is given to the development of solutions to increase people's security without limiting their freedom and/or any of their other fundamental rights.

## Article 3

*Means of Achieving Objectives*

1. The Parties shall seek to achieve the objectives set out in Article 2 (Objective) by means which may include, but are not limited to:

- a) facilitating an exchange of technologies, personnel, and information, both public and controlled;
- b) promoting coordinated and joint research and development Projects;
- c) collaborating to develop technologies and prototype systems that assist in countering present and anticipated terrorist actions in their respective territories, and other homeland/civil threats such as natural disasters and major accidents;

- d) promoting the integration of homeland/civil security technologies of each Party to save development costs;
- e) conducting evaluation and testing of prototype homeland/civil security technologies;
- f) developing an approach to identify common priorities and capability gaps, including areas of research for Cooperative Activity;
- g) promoting measures of effectiveness by development of appropriate standards and test protocols and methodologies;
- h) promoting the involvement of relevant public and private sector organizations involved in research and development;
- i) facilitating opportunities to engage in Cooperative Activity, with shared responsibilities and contributions, which are commensurate with the Parties' or the Participants' respective resources;
- j) facilitating visits of researchers and experts in order to exchange information and Equipment and Material;
- k) facilitating exchange of information and Equipment and Material, related to Cooperative Activity, consistent with applicable laws, regulations, policies, and directives; and/or
- l) utilizing and applying Project Foreground Information derived from Cooperative Activity to benefit both Parties and the Participants. The right to ownership and exploitation of Project Foreground Information are to be governed by the Articles of this Agreement and established in the Technology Management Plan of the applicable Project Arrangement, taking into account, among other things, the Parties' or Participants' respective contributions to the Project.

2. The Parties may select or facilitate whatever available mechanisms are appropriate to accomplish the Cooperative Activities. Such mechanisms include but are not limited to grants, Project Arrangements, or other Contracts with public or private entities such as governmental organizations of the federal, state or local level, businesses (including small businesses and socially and economically disadvantaged small businesses), government-funded research and development centers and organizations, and universities.

3. Nothing in paragraph 1 or 2 of this Article shall preclude the Parties from facilitating other forms of Cooperative Activity or means of achieving the objectives of such Cooperative Activity that they may agree upon, nor shall Cooperative Activity pursuant to this Agreement be interpreted in such a manner as to interfere with any other arrangements between the relevant actors of the Parties.



## Article 4

*Executive Agents*

1. The Under Secretary of Science and Technology of the United States Department of Homeland Security is the primary official within the Government of the United States of America with responsibility for executive oversight of Cooperative Activity, as defined in this Agreement, within the United States and is hereby designated as the “U.S. Executive Agent” responsible for the administration of this Agreement. The duties of the U.S. Executive Agent may be delegated to other officials within the Department of Homeland Security.

2. The Minister of Security & Justice of the Netherlands is the primary official within the Netherlands with responsibility for executive oversight of Cooperative Activity within the Netherlands and is hereby designated as the “Netherlands Executive Agent” responsible for the administration of this Agreement. The duties of the Netherlands Executive Agent may be delegated to other officials of the Ministry of Security & Justice.

3. Where, because of changes in the administrative arrangements for either Party, responsibility for the oversight of this Agreement is no longer held by those currently designated as “U.S. Executive Agent” or “Netherlands Executive Agent”, the relevant Party shall provide the other Party in writing with the details of its new Executive Agent without requiring amendment to this Agreement.

## Article 5

*Management*

1. The Executive Agents shall appoint an Agreement Manager who shall coordinate the day-to-day management of this Agreement and its Cooperative Activity. In addition, the Agreement Managers shall:

- a) promote Cooperative Activity under this Agreement;
- b) exercise oversight for activities carried out under this Agreement;
- c) serving as a repository for any and all documentation which is generated pursuant to this Agreement including Project Arrangements and any annexes thereto;
- d) monitor the overall use and effectiveness of this Agreement;
- e) coordinate amendments to this Agreement to the Parties;
- f) assist in resolving issues arising under this Agreement;
- g) authorize involvement by Participants in Cooperative Activity pursuant to this Agreement;
- h) maintain the applicable security laws and regulations and the agreed upon guidelines, including but not limited to procedures related

to exchange, storage, and transmission of Classified Information and Controlled Unclassified Information, and equivalent security markings to be applied to exchanged information in accordance with Article 11.

2. The Agreement Managers shall review the overall implementation of the Agreement at such time as they consider appropriate.

#### Article 6

##### *Cooperative Activity*

1. Prior to undertaking a Project or other Cooperative Activity of comparable importance under this Agreement, the Parties shall mutually decide in writing upon the nature, scope, and duration of the Cooperative Activity.

2. Cooperative Activities under this Agreement may include those described in Annex II to this Agreement.

3. The Parties shall ensure that Projects and other Cooperative Activities of comparable importance are supported by Contracts where necessary or appropriate.

#### Article 7

##### *Projects*

1. Cooperative Activity under this Agreement shall normally be implemented in the form of Projects to be conducted pursuant to Project Arrangements as concluded by the Parties and their Participants, where appropriate, at the commencement of each Project.

2. Project Arrangements shall ordinarily contain the following terms and conditions for each Project:

- a) its objective;
- b) its scope;
- c) its duration;
- d) deliverables or anticipated outcomes;
- e) the manner in which it will be funded;
- f) specific details of any transfer of Equipment and Material and the identity of personnel and/or organizations, if any, to be committed to the Project;
- g) description of Project Background Information to be used in the Project, including Business Confidential Information;
- h) whether the use of Classified Information or Controlled Unclassified Information will be required, and the procedures for handling such materials;

- i) any safety measures to be followed, including, where appropriate, specific procedures for dealing with hazardous or dangerous material;
- j) any specific provisions for terminating Participant involvement;
- k) the dispute resolution process;
- l) any applicable cost sharing provisions;
- m) any applicable cost ceiling;
- n) currency variation terms;
- o) any necessary technical annexes;
- p) a Technology Management Plan;
- q) provisions addressing the national law which shall apply to Contracts made in relation to the Project Arrangement; and
- r) any other consistent terms and conditions necessary to ensure the required development of the Project.

3. The terms and conditions of this Agreement shall be incorporated in the Project Arrangements. In the case of any inconsistency, the terms and conditions of this Agreement shall prevail.

## Article 8

### *Participants*

1. Subject to the provisions of this Article, a Party normally involves Participants to carry out Cooperative Activity.

2. The involvement of any Participant in the implementation of any Project or other Cooperative Activity of comparable importance shall require the prior review and written approval of both Parties.

3. Before involving a Participant in a Project, a Party must enter into a legal relationship, which includes a Non-Disclosure Agreement, with that Participant unless an equivalent legal obligation already exists.

4. The Party involving a Participant shall ensure that this Participant agrees to report to that Party's Agreement Manager.

5. The Parties' Agreement Managers shall jointly determine the frequency and scope of the reporting requirement referred to in paragraph 4 of this Article.

6. In the event that a question arises with respect to a Participant and/or its activities under this Agreement, the Agreement Managers shall consult to consider the Participant's role in Cooperative Activity. If either Party objects to a Participant's continued participation and requests its termination, the Party that involved that Participant shall give the request due consideration, including as to the consequences of terminating the Participant's participation.

7. Nothing in this Agreement or any Project Arrangement precludes a Party who has involved a Participant from suspending that Participant's activities or replacing the Participant in one or more Projects.

## Article 9

### *Contracting*

1. Project Arrangements will be supported by Contracts where necessary or appropriate. The Contracts may be formed between the Parties and their Participants, or the Contracts may be formed amongst the Participants, where appropriate.

2. Contracts made pursuant to Project Arrangements shall include terms and conditions equivalent to the provisions of this Agreement, the relevant Project Arrangements, and their associated Technology Management Plans in order to facilitate the use and disclosure of Project Foreground Information as specified in Article 12 and to obtain the rights contained in Article 13 unless the other Party agrees in writing that they are unnecessary in a particular case. Each Party shall insert into its Contracts, and require its contractors and subcontractors to insert in subcontracts, suitable provisions to satisfy the requirements of Articles 10 (Finance), 11 (Information Security), 12 (Intellectual Property Management and Use of Information), 13 (Publication of Research Results), 16 (Third Party Sales and Transfers), and Annex I.

## Article 10

### *Finance*

1. Subject to the availability of funds and to the provisions of this Article, each Party shall bear its own costs of discharging its responsibilities under this Agreement and for associated Projects.

2. Except as provided in paragraph 1 of this Article, this Agreement creates no standing financial commitments.

3. The Parties or, where appropriate, the Participants, may agree to share costs for Cooperative Activity. Detailed descriptions of the financial provisions for Cooperative Activity, including the total cost of the activity and each Party's or Participant's cost share, shall be agreed in accordance with paragraph 4 of this Article.

4. The Project Arrangement shall specify in advance the equitable share of the total costs, including, where appropriate, overhead costs and administrative costs, a cost ceiling, and the apportionment of potential

liability to be borne by each Party or Participant in the Project. In determining the equitable share of total costs, the Parties or Participants may take into account:

- a) funds provided for work under this Agreement (“financial contributions”);
- b) material, personnel, use of Equipment and Material and facilities provided for the performance of work under this Agreement (“non-financial contributions”) to directly support Project efforts. Prior work can constitute a non-financial contribution; and
- c) the ownership of Project Background Information utilized in the Project.

5. The following costs shall be borne entirely by the Party or Participant incurring the costs and are not included in the cost target, cost ceiling, or overall costs:

- a) costs associated with any unique national requirements and/or
- b) any costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.

6. A Party or Participant shall promptly notify the other Party or Participant if available funds are not adequate to undertake activities arising as a result of this Agreement. If a Party or Participant notifies the other that it is terminating or reducing its funding for a Project, both Parties or the Participants shall immediately consult with a view toward continuation on a changed or reduced basis. If the discussion that leads to a decision that is not acceptable to both Parties or the Participants, the respective rights and responsibilities of the Parties and Participants under Articles 11 (Information Security), 12 (Intellectual Property Management and Use of Information), 13 (Publication of Research Results), 16 (Third Party Sales and Transfers), and Annex I shall continue notwithstanding the termination or expiration of the Project.

7. Each Party shall be responsible for any audit of its activities in support of Cooperative Activity, including the activities of any of its Participants. Each Party’s audits shall be in accordance with its own national practices. Where funds are transferred from one Party to the other Party, the receiving Party shall be responsible for the internal audit regarding administration of the sending Party’s funds in accordance with national practices. Audit reports of such funds shall be promptly made available by the receiving Party to the other.

## Article 11

### *Information Security*

1. All exchanges of information and Equipment and Material, including Classified Information or Controlled Unclassified Information, be-

tween the Parties and between Parties and Participants, shall be carried out in accordance with the applicable laws and regulations of the Parties, including those relating to the unauthorized transfer or re-transfer of such information and Equipment and Material. All Classified Information and Controlled Unclassified Information provided or generated pursuant to this Agreement and any of its Project Arrangements shall be stored, handled, transmitted, and safeguarded in accordance with this Agreement.

The transfer of technical data for the purpose of discharging the Parties' obligations with regard to interface, integration, and safety shall normally be made without restriction, except as required by national laws and regulations relating to export control or the control of classified data. If design, manufacturing, and processing data, and associated software, which is business confidential but not export controlled, is necessary for interface, integration, or safety purposes, the transfer shall be made and the data and associated software shall be appropriately marked.

All information, Equipment and Material subject to export controls shall not be transferred pursuant to this Agreement unless such transfers are compliant with the originating Party's export control laws, regulations, and policies.

2. Classified Information:

a) All Classified Information provided or generated pursuant to this Agreement and any of its Project Arrangements shall be stored, handled, transmitted, and safeguarded in accordance with applicable laws, regulations and appropriate agreements between the Parties. The Parties shall agree on any implementing security arrangements that are deemed necessary for handling. Prior to the sharing of Classified Information, the providing Party will ensure that the information is properly marked and the receiving Party is aware of the pending transfer.

b) The Parties shall each appoint a Designated Security Authority to establish implementing security arrangements and procedures consistent with this Agreement.

c) Each Party shall ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific Need-to-Know in order to participate in Cooperative Activity established pursuant to this Agreement.

d) Each Party shall ensure that it incorporates the provisions of this Article into Project Arrangements. In addition, if either Party deems it necessary, Project Arrangements shall include:

(i) detailed provisions dealing with the prevention of unauthorized transfer or re-transfer of information and Equipment and Material; and/or

(ii) detailed distribution and access restrictions on information and Equipment and Material.

e) Each Party shall take all steps subject to applicable laws and regulations to ensure that Classified Information provided or generated pur-

suant to this Agreement is protected from further disclosure, unless the other Party consents to such disclosure.

f) Classified Information shall be transferred only through official government-to-government channels or through channels approved by both Parties. Such Classified Information shall be given the equivalent level of classification in the country of receipt as it was given in the country of origin and shall be marked with a legend containing the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

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

h) Unless both Parties agree in writing that it is unnecessary in a particular case, Contractors, prospective Contractors, subcontractors, or private sector Participants that are determined by either Party to be under financial, administrative, policy or management control of nationals or entities of any country which is not a Party to this Agreement may only participate in a Contract or subcontract requiring access to Classified Information that has been classified on grounds of national security if enforceable measures are in effect to ensure that the nationals or entities of that country do not have access to such Classified Information.

i) Information or Equipment and material provided or generated pursuant to this Agreement may not be classified any higher than TOP SECRET.

3. Controlled Unclassified Information: The nature and amount of the Controlled Unclassified Information to be acquired and disseminated pursuant to this Agreement shall be consistent with the objectives of this Agreement and the following guidelines and procedures:

a) Controlled Unclassified Information shall be used by the Receiving Party only for the purposes directly related to Cooperative Activity conducted pursuant to this Agreement;

b) access to Controlled Unclassified Information shall be limited to those personnel of the Receiving Party whose access is necessary for the permitted use under this Agreement;

c) all steps subject to applicable laws and regulations shall be taken to keep Controlled Unclassified Information free from unauthorized disclosure;

d) Controlled Unclassified Information provided under this Agreement is to be marked by the Party providing it with a legend containing the country of origin, the conditions of release, the fact that it relates to this Agreement and a statement to the effect that access to the information is controlled;

e) Controlled Unclassified Information provided or generated pursuant to this Agreement shall be stored, handled, and transmitted in a manner that ensures proper control. Prior to authorizing the release of Controlled Unclassified Information to any Participant, the authorizing Party shall ensure the Participant is legally required to control such information in accordance with the provisions of this Article;

f) Controlled Unclassified Information will not be used in any legal, judicial or administrative proceeding or process, or for any other process, that can result in public disclosure, nor will such information be provided to foreign governments or international organizations.

4. Business Confidential Information:

a) Each Party shall safeguard and protect identified Business Confidential Information that is furnished or is created pursuant to this Agreement in accordance with Annex I to this Agreement. The receiving Party shall maintain security over such items, and they shall not be retransferred without the authority of the government that provided such items.

b) The Parties shall ensure that any Participants are legally required to control and safeguard Business Confidential Information in accordance with this Agreement.

5. Privacy: Personal data will only be exchanged if the Parties decide to do so in support of a Project Arrangement pursuant to this Agreement.

## Article 12

### *Intellectual Property Management and Use of Information*

1. General: Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out Projects. The nature and amount of Project Background Information to be acquired and disclosed shall be consistent with this Agreement and the terms of the Technology Management Plans contained in the individual Project Arrangements, whereby the Parties intend to make available sufficient Project Background Information and/or rights to use such information to enable the development of technologies, prototype equipment, and other activities included in a Project.

2. Exploitation: Issues related to the management of Project Background Information and Project Foreground Information, including the allocation of any benefits (including royalties) derived from the creation and exploitation of Intellectual Property in Project Foreground Information in respect to Projects under this Agreement shall be governed by the Articles of this Agreement, including the provisions of Annex I, and any Technology Management Plans (TMP) associated with a Project.

3. Project Background Information furnished by the Parties:



a) Disclosure: Unless provided otherwise, each Party shall disclose to the other Party Project Background Information in its possession or control related to each Project, provided that:

(i) the Project Background Information is necessary to or useful in the implementation of a proposed or existing Project established pursuant to this Agreement. The Party in possession or control of the information shall determine whether it is “necessary to” or “useful in” establishing new Projects or implementing existing ones;

(ii) the Project Background Information shall be made available without affecting the rights of holders of Intellectual Property or Business Confidential Information; and

(iii) disclosure is consistent with national disclosure policies, laws, and regulations applicable to the furnishing Party.

b) Use: Unless provided otherwise, Project Background Information furnished by the Parties disclosed by one Party to the other may be used without charge by the other Party for Project purposes only; and the furnishing Party shall retain all its rights with respect to such Project Background Information. Where the use of Project Background Information furnished by the Parties is necessary to enable the use of Project Foreground Information, such Project Background Information furnished by the Parties may be used by the receiving Party for homeland/civil security purposes, upon written agreement of the Parties and in accordance with applicable laws.

#### 4. Participant-Furnished Project Background Information:

a) Disclosure: Unless provided otherwise, Project Background Information furnished by a Participant involved by one Party shall be made available to the other Party and/or Participant provided the following conditions are met:

(i) the Project Background Information is necessary to or useful to the Project. The Party and/or Participant in possession or having control of the information shall determine whether it is “necessary to” or “useful in” a Project;

(ii) the Project Background Information can be made available without affecting the rights of holders of Business Confidential Information or Intellectual Property; and

(iii) disclosure is consistent with national disclosure policies, laws, and regulations applicable to the furnishing Participant.

b) Use: Project Background Information furnished by Participants may be subject to restrictions by holders of Intellectual Property. In the event that it is not subject to restrictions preventing its use, it may only be used for Project purposes. If a Party wants to use Participant-Furnished Project Background Information for purposes other than Project purposes, (which other purposes shall include, without limitation,

sales and licenses to Third Parties), then the requesting Party and/or Participant must obtain any required permissions from the owner or owners of the rights to that information.

**5. Project Foreground Information:**

Project Foreground Information may be protected and commercialized where appropriate, in which case benefits derived from the utilization and application of such information shall be distributed as determined in the Technology Management Plan of the applicable Project Arrangement taking into account the relative contributions of the Parties and/or Participants to the Project, the cost of commercialization, and the degree of commitment of the Parties and/or Participants to obtaining legal protection of Intellectual Property.

Wherever appropriate, the Parties will negotiate with the Participants to obtain rights to use and disclose Project Foreground Information.

Each of the Parties and/or Participants may own its Intellectual Property in Project Foreground Information in its own jurisdiction and in the jurisdiction of the other Party and/or Participant and may derive benefits from its exploitation and commercialization in those jurisdictions, with a mechanism for their establishment in the Technology Management Plan of the applicable Project Arrangement.

Article 13

*Publication of Research Results*

1. The Parties agree that the provisions of paragraph A of Section III of Annex I to this Agreement shall apply to the publication of any research results created under this Agreement. Publication and information sharing shall be in accordance with the Parties' applicable laws and regulations including export controls.

2. Publication Review: The Parties agree that publication of the results may be one of the goals of this Agreement to stimulate further research in the public or private sector. In order to protect the rights of the Parties, including to avoid prejudice to the holders of Intellectual Property and Business Confidential Information, each Party shall transmit to the other for its review any material containing such results and intended for publication, or other disclosure, at least sixty (60) working days before such material is submitted to any editor, publisher, referee or meeting organizer, or is otherwise disclosed. In the absence of an objection by the other Party within that sixty-day period the publication or other disclosure may proceed. If either Party raises an objection to the public release of publications arising from this Agreement, public release will not occur unless and until there is agreement between the Parties as to the conditions for public release. It is the responsibility of each

Party to coordinate with its Participants to determine whether all potential Intellectual Property or Business Confidential Information interests have been properly considered.

3. **Affiliation:** The involvement and/or financial support of the Parties for Cooperative Activity shall not be used in any public statement of a promotional nature or used for commercial purposes without the express written permission of both Parties. Such permission shall not be unreasonably withheld.

4. **Publicity and Acknowledgements:** All publications relating to the results of the Projects established pursuant to this Agreement shall include, as applicable, a notice indicating that the underlying Project received financial support from the Government of the United States of America and/or the Kingdom of the Netherlands. Two copies of such publications shall be sent to the Agreement Managers by the individual or entity that authored the publications.

#### Article 14

##### *Entry of Personnel and Equipment and Material*

1. With respect to Cooperative Activity under this Agreement, each Party, in accordance with its applicable laws and regulations including export control laws, and as appropriate, shall facilitate:

a) efficient entry into and exit from its territory of appropriate Equipment and Material, to especially include instrumentation, test equipment and Project Background and Foreground Information;

b) efficient entry into and exit from its territory, and domestic travel and work of, persons participating on behalf of the Parties or Participants in the implementation of this Agreement;

c) efficient access, as appropriate, to relevant geographical areas, information, Equipment and Material and institutions, for persons participating on behalf of the Parties, or Participants, in the implementation of this Agreement; and

d) mutual logistic support.

2. Insofar as applicable laws and regulations permit, each Party shall use their best efforts to ensure that directly applicable duties, taxes, and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with Projects carried out under this Agreement.

## Article 15

*Research Safety*

1. The Parties and Participants shall establish and implement policies and practices to ensure and provide for the safety of their employees, the public, and the environment during the conduct of Projects, subject to applicable laws and regulations. If any Cooperative Activity involves the use of dangerous or hazardous materials, the Parties and Participants shall establish and implement an appropriate safety plan.

2. Without prejudice to any existing arrangements under the Parties' applicable laws, the Parties and Participants shall take appropriate steps to protect the welfare of any persons participating or involved in Projects. Such steps may include the provision of medical treatment and, where appropriate, financial relief.

## Article 16

*Third Party Sales and Transfers*

Neither Party shall:

- a) sell, transfer title to, disclose, or transfer possession of Project Foreground Information, or equipment incorporating Project Foreground Information, to a Third Party without the prior written consent of the other Party; or
- b) permit any such sale, disclosure, or transfer by others, including by the owner of the item, without the prior written consent of the other Party. Such sales and transfers shall be consistent with Article 12.

## Article 17

*Dispute Resolution*

1. Except for disputes concerning Intellectual Property and those procedures set forth in Article 13 (Publication of Research Results), all questions or disputes between the Parties that cannot be resolved by the Agreement Managers arising under or relating to this Agreement shall be submitted to the Executive Agents. Such questions and disputes shall be resolved only by consultation between the Parties.

2. Disputes between the Parties concerning Intellectual Property shall be resolved as provided for in paragraph D of Section II of Annex I.

## Article 18

*Status of the Annexes*

Annex I and Annex II, which regulate respectively the Intellectual Property Rights as referred in Article 12 and the Cooperative Activities as referred in Article 6 of this Agreement, form an integral part of this Agreement and, unless expressly stated otherwise, a reference to this Agreement includes a reference to the Annexes.

## Article 19

*Amendments*

1. This Agreement and its Annexes may be amended in writing by mutual consent of the Parties.
2. Any amendments to the Agreement shall enter into force in accordance with the procedure laid down in paragraph 1 of Article 20.
3. Any amendments to the Annexes shall enter into force on a date to be determined by the Parties.

## Article 20

*Entry into Force and Termination*

1. This Agreement shall enter into force on the first day of the second month after the date on which the Kingdom of the Netherlands notifies the Government of the United States of America that the applicable constitutional requirements have been fulfilled.
2. Pending such entry into force, the terms of this Agreement shall be applied provisionally upon signature by both Parties.
3. As far as the Kingdom of the Netherlands is concerned this Agreement shall apply to the European part of the Netherlands.
4. This Agreement shall remain in force until terminated in writing by either Party, with such termination taking effect six months from the date of written notice of termination. This Agreement may also be terminated at any time by the mutual written agreement of the Parties.
5. Unless otherwise agreed, termination of this Agreement shall not affect the validity or duration of any Cooperative Activity not fully completed at the time of termination.

6. The respective rights and responsibilities of the Parties and Participants under Articles 11 (Information Security), 12 (Intellectual Property Management and Use of Information), 13 (Publication of Research Results), 16 (Third Party Sales and Transfers), and Annex I shall continue notwithstanding the termination of this Agreement. In particular, all Classified Information exchanged or generated under this Agreement shall continue to be protected in the event of the termination of the Agreement.

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

DONE at Washington, this day of November 29th 2012, in duplicate in the English language.

*For the Government of the Kingdom of the Netherlands,*

R. BEKINK

*For the Government of the United States of America,*

JANET NAPOLITANO

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## Annex I

### Intellectual Property Rights

#### I. General Obligation

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. Rights to such intellectual property shall be allocated as provided in this Annex.

#### II. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Agreement, “intellectual property” shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967, and may include other subject matter as agreed by the Parties.

C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain

the rights to intellectual property allocated in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Except as otherwise provided in this Agreement, disputes concerning intellectual property arising under this Agreement shall be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

### III. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in paragraph III.A above, shall be allocated as follows:

1) Visiting researchers shall receive rights, awards, bonuses and royalties in accordance with the policies of the host institution.

2) a) Any intellectual property created by persons employed or sponsored by one Party under cooperative activities other than those covered by paragraph III.B(1) shall be owned by that Party. Intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties. In addition, each creator shall be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.

b) Unless otherwise agreed in an implementing or other arrangement, each Party shall have within its territory a right to exploit or license intellectual property created in the course of the cooperative activities.

c) The rights of a Party outside its territory shall be determined by mutual agreement considering the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property and such other factors deemed appropriate.

d) Notwithstanding paragraphs III.B(2)(a) and (b) above, if either Party believes that a particular project is likely to lead to or has led to the creation of intellectual property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the intellectual property. If an agreement cannot be reached within three months of the date of the initiation of the discussions, cooperation on the project in question shall be terminated at the request of either Party. Creators of intellectual property shall nonetheless be entitled to awards, bonuses and royalties as provided in paragraph III.B(2)(a).

e) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor(s) shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

#### IV. Business Confidential Information

In the event that information identified in a timely fashion as business confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as “business confidential” if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

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## Annex II

### Forms of Cooperative Activity

Cooperative Activities may include the following:

a) research and development of innovative technologies, solutions, and systems to meet user requirements or capability gaps of the Parties and the Participants;



- b) development and implementation of all-hazards threat, vulnerability, and consequence assessments, interdependency analyses, and methodologies related to potential threats to homeland/civil security scenarios;
  - c) assessment of prior operational experiences and evaluation for the purposes of articulating operational deficiencies into definable technical requirements and appropriate standards and supporting methodologies;
  - d) task forces to examine emergent homeland/civil security challenges;
  - e) studies and scientific or technical demonstrations;
  - f) organization of pilots and demonstration projects, scientific seminars, conferences, symposia, and workshops;
  - g) joint use of laboratory facilities and Equipment and Material, for conducting scientific and technological activities including research, development, testing and evaluation;
  - h) use and optimization of existing technologies for defense against terrorism, natural disasters, and other homeland/civil security threats;
  - i) testing and evaluation of specific prototype systems for homeland/civil security applications in both laboratory environments and real or simulated operational settings. This includes technologies associated with enhanced detection and monitoring of potential terrorist activities and those associated with recovery and reconstitution of damaged or compromised systems;
  - j) preparation of detailed final test reports to allow either Party or their Participants to evaluate follow-on efforts individually or to allow the transition of successful prototypes into operational deployments;
  - k) system protection (including protection of automated infrastructure control systems) and information assurance (including protecting the integrity of data and information in control systems);
  - l) analysis of and cooperation in educational programming for the purpose of enhancing and encouraging the Parties' scientific and technical capability as it relates to homeland/civil security;
  - m) access to the education and training programs of the Parties;
  - n) visits and exchanges of scientists, researchers, engineers, or other appropriate personnel;
  - o) exchanges or sharing of Equipment and Material;
  - p) development and exchange of information on laws, regulations, best practices, standards, methods, guidelines, and programs relevant to cooperation under this Agreement; and
  - q) commercialization and other exploitation of Project Foreground Information and any resulting Equipment and Material developed through Cooperative Activity to achieve the effective transition of technology from the research and development environment to the operational environment.
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D. PARLEMENT

Het Verdrag, met bijlagen, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met bijlagen, kan worden gebonden.

F. VOORLOPIGE TOEPASSING

Het Verdrag, met bijlagen, wordt ingevolge artikel 20, tweede lid, vanaf 29 november 2012 voorlopig toegepast.

Wat betreft het Koninkrijk der Nederlanden, geldt de voorlopige toepassing ingevolge artikel 20, derde lid, alleen voor Nederland (het Europese deel).

G. INWERKINGTREDING

De bepalingen van het Verdrag, met bijlagen, zullen ingevolge artikel 20, eerste lid, in werking treden op de eerste dag van de tweede maand na de datum waarop het Koninkrijk der Nederlanden aan de regering van de Verenigde Staten van Amerika heeft meegedeeld dat aan de toepasselijke constitutionele vereisten is voldaan.

J. VERWIJZINGEN

Titel	: Verdrag tot oprichting van de Wereldorganisatie voor de Intellectuele Eigendom (OMPI/WIPO), zoals gewijzigd op 28 september 1979; Stockholm, 14 juli 1967
Tekst	: <i>Trb.</i> 1969, 145 (Frans en Engels) <i>Trb.</i> 1970, 188 (vertaling)
Laatste <i>Trb.</i>	: <i>Trb.</i> 2006, 156
Titel	: Verdrag betreffende de Europese Unie; Maastricht, 7 februari 1992
Tekst	: <i>Trb.</i> 2008, 53 (Nederlands, geconsolideerd)
Laatste <i>Trb.</i>	: <i>Trb.</i> 2012, 182

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In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse

Zaken bepaald dat het Verdrag zal zijn bekendgemaakt in Nederland (het Europese deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *elfde* december 2012.

*De Minister van Buitenlandse Zaken,*

F. C. G. M. TIMMERMANS