

Implementing Arrangement Pursuant to the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation

Bureau of Political-Military Affairs
Washington, DC
March 14, 2008

The Government of the United States of America (hereinafter “the United States Government”) and the Government of Australia (hereinafter “the Government of Australia”) (hereinafter “the Participants”):

Having entered into the Treaty between the Government of the United States of America and the Government of Australia concerning Defense Trade Cooperation, done at Sydney September 5, 2007 (hereinafter “the Treaty”);

Recalling that Article 14(1) of the Treaty requires the Participants to conclude implementing arrangements for the Treaty;

Recognizing that this Implementing Arrangement is a means by which the Participants will implement the legally binding obligations of the Treaty;

Recognizing that pursuant to Article 13(2) of the Treaty, any conduct falling outside the terms of the Treaty, including this Implementing Arrangement, and any regulations promulgated to implement the effect of such terms on existing law remains subject to applicable licensing requirements and implementing regulations, including any criminal, civil, and administrative penalties or sanctions contained therein;

Recognizing the principles established under the Security Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information of June 25, 2002, as may be amended, and implementing arrangements thereto (hereinafter “the GSA”); and

Recognizing the principles established under the Memorandum of Agreement between the Government of Australia and the Government of the United States concerning Reciprocal Defense Procurement of April 19, 1995;

Have mutually determined the following understandings:

Section 1

Definitions

(1) Terms used in this Implementing Arrangement that are defined in the Treaty will have the same definition as in the Treaty. In addition, the following definitions will apply to this Implementing Arrangement:

Australian Defence Articles	Defense Articles the initial movement of which is from the Territory of Australia to the United States, as defined in Article 8(7).
Delivery	The movement of Defense Articles to a member of the Australian Community pursuant to a Foreign Military Sales program Letter of Offer and Acceptance where such Defense Articles are outside of the customs jurisdiction of the United States of America and are subject to the control of the Government of Australia in accordance with Foreign Military Sales program shipping practices.
Management Board	The board established pursuant to Section 12(3).
Management Plan	The plan related to the Treaty and this Implementing Arrangement identified in Section 12(3)(f).
Principals	The persons designated by each Participant pursuant to Section 12(1).
Project	(i) Specific acquisition efforts by the Government of Australia mutually determined pursuant to Section 2(3) to research, develop, test, evaluate, produce, support, or sustain Defense Articles for worldwide use by Australian defense and security organizations, or (ii) specific defense or security operations mutually determined pursuant to Section 2(3).

(2) Reference to government departments or agencies, including individual posts or officials therein, will be deemed to be to their successors in the event of reorganization.

(3) References to numbered Articles refer to Articles of the Treaty, unless otherwise indicated.

(4) Terms capitalized in this Implementing Arrangement, and their variants, will have the meaning established in this Section.

Section 2

Operations, Programs, and Projects

(1) In furtherance of Article 3(1)(a), the Participants will develop, establish and maintain information concerning combined military and counter-terrorism operations including, but not limited to exercises and training, which includes the publication of lists of such operations, using the following procedures:

(a) The United States Department of Defense (hereinafter “U.S. DoD”) and the Australian Department of Defence (hereinafter “ADOD”) will develop and maintain a list of combined

military operations, and revisions thereto, based on the criteria used by the U.S. DoD and the ADOD to establish and document such operations; and

(b) The U.S. DoD and the ADOD will also consult with their respective government's authorities responsible for counter-terrorism operations to develop and maintain a list of combined counter-terrorism operations based on the criteria used by the Participants to establish and document such operations.

(2) In furtherance of Article 3(1)(b), the Participants will develop, establish and maintain information concerning mutually determined cooperative security and defense research, development, production, and support programs, including the publication of lists of such programs, using the following criteria:

(a) Such programs must fall under one or more valid United States cooperative program legal authorities confirmed by the United States Government and accepted by the Government of Australia;

(b) There must be a valid cooperative program international agreement or arrangement documented and in force or effect between the United States Government and the Government of Australia, which includes agreements or arrangements between their subordinate organizations;

(c) All bilateral United States - Australian cooperative program relationships within the overall context of a multilateral cooperative program must be documented in a United States - Australian bilateral international agreement or arrangement to fall within the scope of the Treaty;

(d) The cooperative program international agreement or arrangement must involve Defense Articles that fall within the scope of the Treaty; and

(e) Cooperative program international agreements or arrangements that focus on the research, development, production, and support of Defense Articles exempt from the scope of the Treaty will be excluded, unless otherwise mutually determined for any program that also involves Defense Articles not exempt from the scope of the Treaty.

(3) In furtherance of Article 3(1)(c), the Participants will develop, establish and maintain information concerning mutually determined specific security and defense Projects, including the publication of lists of such Projects where the Government of Australia is the end-user, based on the following criteria:

(a) The purpose of the Project must be focused on meeting the needs of the Government of Australia, rather than on security and defense exports to third parties;

(b) The Project must involve Defense Articles that fall within the scope of the Treaty; and

(c) Projects that focus on the research, development, production, and support of Defense Articles exempt from the scope of the Treaty will be excluded, unless otherwise mutually determined for any Project that also involves Defense Articles not exempt from the scope of the Treaty.

(4) The lists of operations, programs and Projects referred to in this Section, which have been mutually determined by the ADOD and United States DoD, will be subject to approval by the U.S. Department of State and the ADOD. Procedures will be developed in the Management Plan to address urgent requirements for changes to the lists.

(5) The approved lists of operations, programs and Projects that may be publicly identified will be published in accordance with Sections 12 and 13.

(6) The approved lists of operations, programs and Projects that may not be publicly identified will be maintained for reference via secure channels.

(7) Exports of Defense Articles from the United States Community in support of the operations, programs and Projects identified in the approved lists that may not be publicly identified may be carried out by the Australian Embassy in Washington in accordance with procedures developed between the Australian Embassy and the Directorate of Defense Trade Controls of the U.S. Department of State and documented in the Management Plan.

Section 3

United States Government End-Use

In furtherance of Article 3(1)(d), the Participants will employ the following procedures concerning Defense Articles required for United States Government end-use:

(1) United States Government end-use requirements that fall within the scope of the Treaty will be based on the following criteria:

(a) Only those United States Government end-use requirements identified pursuant to a United States Government solicitation or contract will be considered to fall within the scope of Article 3(1)(d);

(b) Only United States Government solicitations or contracts open to foreign participation, including participation from Australian Community members, will be considered to fall within the scope of Article 3(1)(d), subject to Article 3(2). Such solicitations or contracts will specifically provide that Australian Approved Community members are permitted to respond or participate using the procedures established pursuant to the terms of the Treaty;

(c) United States Government solicitations or contracts will specifically provide that only Defense Articles that are not exempt from the scope of the Treaty may be Exported or Transferred in support of the solicitation or contract; and

(d) United States Government solicitations or contracts that relate to the research, development, production, and support of Defense Articles exempt from the scope of the Treaty will be excluded, unless otherwise mutually determined for any solicitation or contract that also involves Defense Articles not exempt from the scope of the Treaty.

(2) In addition to the criteria described in paragraph (1) of this Section, Approved Community members responding to United States Government solicitations will be subject to the following requirements:

(a) Prior to contract award, Approved Community members, in responding to a United States Government solicitation, may only Export or Transfer Defense Articles that specifically respond to the stated requirements of that solicitation. Once under contract, Approved Community members may Export or Transfer Defense Articles that specifically respond to the stated requirements of the contract;

(b) Approved Community members will maintain records, including all relevant commercial documents in any medium relating to the movement of Defense Articles as referenced in Article 12(1) and the movement of Australian Defence Articles, for a period of at least 5 years; and

(c) With regard to a United States Government solicitation, Approved Community members will agree in writing prior to the Export or Transfer of a Defense Article:

(i) To mark, identify, transmit, store, and handle any Defense Articles provided for the purpose of responding to such solicitations, as well as any Defense Articles provided with or developed pursuant to their responses to such solicitations, in accordance with the Treaty, this Implementing Arrangement, and related United States Government and Government of Australia regulations;

(ii) To comply with the Re-transfer or Re-export provisions of the Treaty, this Implementing Arrangement and related United States Government and Government of Australia regulations; and

(iii) To acknowledge that they are subject to administrative, civil, and criminal action and penalties pursuant to United States or Australian law if any Defense Articles are Re-transferred or Re-exported in violation of the procedures established pursuant to the terms of the Treaty, including any Re-transfer or Re-export to a prospective subcontractor that is not an Approved Community member.

(3) Approved Community members may obtain information regarding United States Government solicitations for United States Government end-use requirements that meet the criteria specified in paragraph (1) of this Section as follows:

(a) Publicly available U.S. DoD solicitations may be found on United States Government website www.fedbizopps.gov (or successor in the event of website changes); and

(b) A list of other publicly available United States Government solicitations will be published in accordance with the Sections 12 and 13.

(4) Approved Community members may obtain information regarding contracts for United States Government end-use requirements that meet the criteria specified in paragraph (1) of this

Section through the United States Government contracting officer(s) responsible for contract management and administration of the applicable contract(s).

(5) Solicitations or contracts for United States Government end-use requirements that meet the criteria specified in paragraph (1) of this Section that may not be publicly identified will be maintained by the Participants for reference via secure channels in accordance with the Sections 12 and 13.

(6) Exports of Defense Articles from the United States Community in support of United States Government end-use requirements that may not be publicly identified may be carried out by the Australian Embassy in accordance with procedures developed and approved by the Australian Embassy and United States Department of State, Directorate of Defense Trade Controls.

Section 4

Defense Articles Exempt from Scope of Treaty

(1) In furtherance of Article 3(2), the Participants will develop, maintain, and publish information concerning Defense Articles that are exempt from the scope of the Treaty.

(2) The ADOD will develop and maintain a list of Australian Defence Articles to be exempted from the scope of the Treaty. The Government of Australia's list will be updated as needed.

(3) The U.S. DoD will develop and maintain, and the United States Department of State will approve, a list of Defense Articles to be exempted from the scope of the Treaty. The United States Government list will be updated as needed.

(4) The lists referred to in paragraphs (2) and (3) of this Section will be combined to constitute the list of Defense Articles exempt from the scope of the Treaty. The Management Board will consult prior to the combination of the lists and any proposed changes based on procedures established in the Management Plan.

(5) The list of Defense Articles exempt from the scope of the Treaty that may be publicly identified, will be published periodically in accordance with Section 13.

(6) Information concerning the list of Defense Articles exempt from the scope of the Treaty that may not be publicly identified, will be maintained by the Participants, and shared via secure channels, as appropriate.

(7) With respect to Defense Articles added to the list of Defense Articles exempt from the scope of the Treaty, the Participants will establish policies and procedures to require members of the Approved Community that have Exported, Transferred or received such Defense Articles pursuant to the Treaty to immediately, or as soon as reasonably practicable, notify the Participants and apply to the appropriate Participant for an export license or other appropriate authorization for such Defense Articles. Upon such notification and, where appropriate, application, the appropriate Participant will, on an expedited basis, either issue a license or other

authorization for such Defense Articles or provide other written guidance and direction regarding the disposition of such Defense Articles. Except as otherwise provided in this Section, the Treaty will apply until a license or other authorization or other written guidance and direction is issued. Pending such action, the Participants will require any member of the Approved Community in possession of such Defense Articles Exported or Transferred pursuant to the Treaty to not Transfer such Defense Articles without an appropriate license or other authorization, and to continue to abide by its obligations as a member of the Approved Community.

Section 5

United States Foreign Military Sales

(1) Defense Articles acquired by the Government of Australia via the United States Foreign Military Sales (FMS) Program and transferred to the Government of Australia pursuant to Letters of Offer and Acceptance (LOAs), or equivalent agreements or arrangements, may be treated as if they were Exported pursuant to the Treaty once Delivery to the Government of Australia occurs. Defense Articles exempt from the scope of the Treaty at the time an LOA is executed should be contained in separate lines in the LOA and identified with an appropriate special note in the LOA terms and conditions.

(2) Prior to any initial Transfer of Defense Articles the following requirements will apply:

(a) The Government of Australia must determine that the Transfer falls within the scope of Article 3(1) and that, at the time of the Transfer, such Defense Articles are not exempt from the scope of the Treaty; and

(b) The Defense Articles will be marked or otherwise identified in accordance with the Treaty and this Implementing Arrangement.

(3) Upon Transfer, such Defense Articles will be marked, identified, transmitted, stored and handled in accordance with the Treaty and this Implementing Arrangement.

(4) The Government of Australia will maintain a register of FMS items that are subsequently Transferred under the Treaty within the Approved Community.

(5) Terms of the FMS LOA will govern except for those provisions related to the implementation of the Treaty. Procedures for transition of Defense Articles acquired and Delivered under the FMS Program that fall within the scope of the Treaty will be established in the Management Plan, as appropriate, based on the principles outlined in this Section.

Section 6

Approved Community

Government Members of the Australian Community

(1) In furtherance of Article 4(1)(a), the ADOD will maintain a list of Government of Australia authorities with facilities that are both accredited by the Government of Australia pursuant to the GSA and related to the scope of the Treaty. This list will be made available to the United States Government.

(2) The Participants will develop a process for notifying additions to and deletions from the list. This process will be administered by the ADOD and the U.S. DoD.

Nongovernmental Members of the Australian Community

(3) In furtherance of Article 4(1)(c), the Participants will implement a process to establish and maintain a list of nongovernmental Australian entities and facilities that will be included in the Australian Community. The process will be administered by the ADOD and the United States Department of State, based on the eligibility criteria and the processes identified below.

(4) The following are the criteria that the nongovernmental Australian Community entities and facilities will be assessed against, for inclusion on the List referred to in Article 4(1)(c):

(a) That the entity or facility must be on the Government of Australia's list of approved facilities for handling of classified information and material;

(b) Foreign ownership, control or influence;

(c) Previous convictions or current indictment for violations of United States or Australian export control laws or regulations;

(d) The United States export licensing history of the entity or facility; and

(e) National security risks, including interactions with countries identified or proscribed by Australian or United States laws or regulations.

(5) A nongovernmental Australian entity or facility may apply to the ADOD for inclusion in the Australian Community.

(6) Where a nongovernmental Australian entity applies for inclusion in the Australian Community, the ADOD will conduct an initial eligibility review and the ADOD and the United States Department of State will then mutually determine the inclusion of that entity in the Australian Community based on the criteria described in paragraph (4) of this Section. For this purpose, the Participants will share as much information as possible.

(7) The Australian Community list, including revisions thereto, will be published by the ADOD and the United States Department of State periodically in accordance with Section 13.

(8) The ADOD will inform nongovernmental Australian entities and facilities of the results of their application.

(9) If one Participant considers that urgent removal of a nongovernmental Australian entity or facility from the Australian Community may be in its national interest:

(a) It will advise the other Participant, providing as much information as possible, and that Participant will have 24 hours to provide mitigating information concerning the entity or facility.

(b) At the end of 24 hours, unless decided otherwise, the Participant will formally notify the other Participant of its desire that the entity or facility be removed from the Australian Community list. Upon such notification, the entity or facility will be suspended, requiring it to operate under United States and Australian export licenses and not under the Treaty pending a final decision on removal from the Australian Community by the Participants.

(c) The Participants will consult within 30 calendar days of notification regarding removal of an entity or facility. Consultation may include measures to be applied during the suspension period and any remedial measures to be imposed in lieu of removal.

(d) If after such consultation either Participant believes that such entity or facility should be removed from the Australian Community list, it will be removed. Otherwise any suspension will be rescinded, although such rescission may be conditional upon compliance with remedial measures.

(10) The Government of Australia will require nongovernmental Australian entities or facilities applying for inclusion in the Australian Community to acknowledge in writing the blanket authorization conditions identified in Section 11.

Access

(11) Pursuant to Articles 4(1)(b) and 4(1)(d), the Government of Australia will ensure that all personnel within the Australian Community requiring access to Defense Articles pursuant to the Treaty will be:

(a) Cleared to at least the level of a Government of Australia RESTRICTED security clearance, which includes indicators such as identity, nationality, and police record; and

(b) Undergo an additional check for indicators of significant ties.

(12) Where this additional check gives rise to concerns of there being significant ties to a country proscribed under section 126.1 of the International Traffic in Arms Regulations of the United States, then the Government of Australia will conduct a dedicated assessment for significant ties at the same standard for that of a Government of Australia SECRET security clearance.

(13) When considering whether to grant an individual access to Defense Articles, the Participants will consult where national security considerations, including significant ties to countries or entities of concern, to either Participant arise. Such access will not be granted until mutually determined by the Participants. The Management Board representatives will promulgate such considerations within their respective organizations as required for the operation of the Treaty.

(14) The Participants acknowledge that no nationals of third countries who are not also Australian citizens will be permitted access to Defense Articles pursuant to the Treaty without the prior authorization of both the Government of Australia and the United States Government, unless otherwise detailed in the Management Plan.

Section 7

Transition from License or Other Authorizations

(1) Members of the United States Community wishing to make a transition from the requirements of a United States Government export license or other authorization to the processes established under the Treaty and this Implementing Arrangement will notify the United States Department of State, Directorate of Defense Trade Controls, of their intentions and surrender the existing license or other authorization. The Australian Community members affected by the transition and the Government of Australia will be notified in accordance with procedures detailed in the Management Plan.

(2) Members of the Australian Community wishing to make a transition from the requirements of a United States Government export license or other authorization to the processes established under the Treaty and this Implementing Arrangement will obtain authorization, from the United States Department of State, Directorate of Defense Trade Controls, either directly or through the original United States exporter, using procedures established by the Participants before the items may be considered as Defense Articles Exported under the Treaty. The Government of Australia will be notified in accordance with procedures detailed in the Management Plan.

Section 8

Australian Community Exports and Transfers

(1) The Government of Australia will allow Australian Defence Articles to be exported from the Australian Community to the United States Community without requiring the relevant member of the Australian Community to seek individual export licences for each export. To this end, the Government of Australia will issue blanket authorizations to members of the Australian Community.

(2) The Government of Australia will require the relevant member of the Australian Community, where required by the Australian Customs Service, to make an export declaration in the Customs Integrated Cargo System quoting the blanket authorization, and notify the Government of Australia of all exports of Australian Defence Articles effected by it.

(3) The Government of Australia will require relevant members of the Australian Community to mark all Australian Defence Articles to be exported to the United States Community with the standard marking “//AUSTRALIAN UNCLASSIFIED USML //REL AUS and USA Treaty Community//” unless a revision to this standard identifier is determined by the Management Board. For exports and transfers of classified Australian Defence Articles, the standard marking or identification will include the relevant Australian national security classification level and

read “//AUSTRALIAN CLASSIFICATION LEVEL USML//REL AUS and USA Treaty Community//” unless a revision to this standard identifier is determined by the Management Board.

(4) The Government of Australia will require relevant members of the Australian Community to maintain records of all of their exports of all Australian Defence Articles and Transfers of all Defense Articles pursuant to the Treaty.

(5) The Government of Australia will require the relevant member of the Australian Community to satisfy itself that the recipient of an Australian Defence Article to be exported by the Australian Community, or a Defense Article to be Transferred by the Australian Community, is a member of the United States Community before the export or Transfer occurs by seeking written confirmation from the relevant member of the United States Community. The Government of Australia will further require the relevant member of the Australian Community to seek from the relevant member of the United States Community:

(a) The name under which the United States Community member is registered with the United States Department of State, Directorate of Defense Trade Controls; and

(b) Confirmation that the United States Community member will immediately advise of any change in its registration, eligibility, or status in the United States Community.

(6) The Government of Australia will require the relevant member of the Australian Community to liaise with the Australian Management Board representative before exporting Australian Defence Articles or Transferring Defense Articles, if the relevant member of the Australian Community is not satisfied with the information provided by the relevant member of the United States Community. The Participants acknowledge that the Australian Management Board representative may then liaise with his United States counterpart to verify the status of the relevant member of the United States Community.

(7) The Participants acknowledge that all Defense Articles Exported pursuant to the Treaty may be Transferred without members of the Approved Community needing to seek approval from either of the Participants, unless those Defense Articles are classified for purposes other than the Treaty, in which case the Defense Articles will be treated in accordance with the provisions of the GSA, and applicable provisions of Section 10.

(8) For Australian Defence Articles imported into the United States, the United States Government will require that such Australian Defence Articles be tracked and controlled in the United States as defense articles as defined under the United States International Traffic in Arms Regulations, even when such Australian Defence Articles are incorporated into other defense articles.

(9) For classified Australian Defence Articles exported to the United States Community, the Participants will provide advice and training to members of their respective Communities on handling requirements applicable to classified Australian Defence Articles, as contained in the Treaty, the GSA and Australian Department of Defence security and export policies.

(10) For Australian Defence Articles exported from the United States Community, the United States Government will:

(a) Maintain export control and brokering regulations, including civil and criminal penalties for any violation of those export control and brokering regulations by a member of the United States Community. The United States Community will be permitted to export Australian Defence Articles outside the Approved Community only in accordance with the United States Government's existing procedures for the export of Defense Articles.

(b) Consult with the Government of Australia on a list of countries with which the Government of Australia has significant national security and foreign policy concerns for the purpose of this paragraph. The list may include, but need not be limited to, countries with respect to which the Government of Australia:

(i) Has imposed bilateral sanctions;

(ii) May not export to because of foreign policy constraints; and

(iii) Has significant regional or international security issues.

(c) Obtain Government of Australia approval prior to export of classified Australian Defence Articles in accordance with the GSA.

Section 9

Re-transfers and Re-exports

(1) Except as provided in this Section, Defense Articles Exported under the Treaty may not be Re-transferred or Re-exported without the prior authorization of both the United States Government and the Government of Australia, and compliance with the process for seeking such authorizations. Members of the Australian Community may seek such authorizations from the United States Department of State, Directorate of Defense Trade Controls, directly or through the original United States exporter.

(2) The following processes apply to seeking authorization from the Government of Australia for the Re-transfer and Re-export of Defense Articles:

(a) The Government of Australia will require the relevant member of the Australian Community to notify it that a proposed Re-export or Re-transfer contains previously Exported Defense Articles, by making a declaration in the required form.

(b) The Government of Australia will require evidence of the approval of the United States Government before the Re-export or Re-transfer may be effected. This evidence may be either the conditions set out on the export's United States export license or by separate written notification; and

(c) If the relevant member of the Australian Community does not have written evidence that the United States Government approves the proposed Re-export or Re-transfer, the Government of Australia will not approve the application until such written evidence is obtained.

(3) In the event of authorization from the Government of Australia, the proposed Re-transfer or Re-export may take place. The Defense Articles thereafter will be considered to fall outside of the scope of the Treaty and will be governed by the applicable terms of any license or authorization granted by the United States Government and, as appropriate, the Government of Australia, in place of the terms of the Treaty.

(4) Any reincorporation or redevelopment of a Defense Article does not eliminate the requirement to obtain Government of Australia authorization for a proposed Re-transfer or Re-export of such Defense Article, under the processes described above.

(5) Re-transfer or Re-export of Defense Articles without the approval of the Government of Australia will be considered by the Participants to be a breach by the Approved Community member of the procedures established pursuant to the terms of the Treaty.

(6) Where Defense Articles are Re-transferred or Re-exported, markings and classifications arising solely from the Treaty will be withdrawn.

(7) Further to paragraph (1) of this Section, the following exceptions to the Re-transfer and Re-export provision of the Treaty and this Implementing Arrangement will apply pursuant to Article 9(1):

(a) Re-exports of Defense Articles from nongovernmental entities of the Australian Community to ADOD elements deployed outside the Territory of Australia conducting operations, including training, as mutually determined and listed pursuant to Sections 2(1) and 2(3), via ADOD transmission channels, or other transmission channels approved by the Principals or Management Board as described in Section 10; and

(b) Re-exports of Defense Articles from nongovernmental entities of the Australian Community to Approved Community members operating in direct support of ADOD elements deployed outside the Territory of Australia conducting operations, including training, as mutually determined and listed pursuant to Sections 2(1) and 2(3), via ADOD transmission channels, or other transmission channels approved by the Principals or Management Board.

(8) The Participants have mutually determined that the following exceptions to the Export and Transfer provisions of the Treaty, including this Implementing Arrangement, will apply:

(a) Exports or Transfers of Defense Articles from nongovernmental entities of the United States Community to ADOD elements deployed outside the Territory of Australia conducting operations, including training, as mutually determined and listed pursuant to Sections 2(1) and 2(3) via ADOD transmission channels, or other transmission channels approved by the Principals or Management Board; and

(b) Exports or Transfers of Defense Articles from nongovernmental entities of the United States Community to Approved Community members operating in direct support of ADOD elements deployed outside the Territory of Australia conducting operations, including training as mutually determined and listed pursuant to Sections 2(1) and 2(3) via ADOD transmission channels, or other transmission channels approved by the Principals or Management Board.

(9) In this Section, “ADOD transmission channels” includes electronic transmission of a Defense Article and transmission of a Defense Article by an ADOD contracted carrier or freight forwarder that merely transports or arranges transport for the Defense Article in this instance.

(10) Regardless of location, Approved Community members will ensure that Defense Articles provided pursuant to paragraphs (7) and (8) of this Section will be marked, identified, transmitted, stored and handled in accordance with the Treaty, including this Implementing Arrangement.

Section 10

Marking and Classification

(1) The Participants will mutually determine policies and procedures necessary to implement Article 6 and Article 11 in accordance with the GSA. These policies and procedures will be reflected in the Participants’ regulations and guidance. Such policies and procedures issued by the Participants will require that all Defense Articles Exported or Transferred under the scope of the Treaty be marked, identified, transmitted, stored and handled as provided below:

(a) All Defense Articles Exported or Transferred will be marked or identified prior to such movement, as follows: For Exports and Transfers of Defense Articles, the standard marking or identification will read “//RESTRICTED USML //REL AUS and USA Treaty Community//” unless a revision to this standard identifier is determined by the Management Board. For Exports and Transfers of classified Defense Articles, the standard marking or identification will read “//*CLASSIFICATION LEVEL* USML//REL AUS and USA Treaty Community//” unless a revision to this standard identifier is determined by the Management Board;

(b) Where Defense Articles are returned to the United States Community, any Defense Articles classified as “//RESTRICTED USML//Rel AUS and USA Treaty Community//” for the purposes of the Treaty will be handled by the United States Community in accordance with existing procedures for controlled unclassified information. Defense Articles with other classifications must continue to be protected in accordance with the GSA; and

(c) The standard marking and identification requirements for Defense Articles described herein will be implemented in each Participant’s policies and procedures based on the following guidance:

(i) Tangible Defense Articles (including hardware, equipment, and software) will be individually marked as indicated in paragraph 1(a) of this Section, and, where such marking is impractical, will be accompanied by documentation (such as contracts, invoices, shipping bills, or bills of

lading) clearly identifying the Defense Articles as Treaty controlled using the marking as detailed in paragraph 1(a) of this Section;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral or electronic) will be individually marked as indicated in paragraph 1(a) of this Section or, where such marking is impractical, will be accompanied by documentation (such as contracts, invoices, shipping bills, or bills of lading) that will identify the Defense Articles as Treaty controlled using the marking in paragraph 1(a) of this Section. For oral communication, a verbal notification clearly associating the Defense Articles with the appropriate markings as detailed in paragraph 1(a) of this Section will be given; and

(iii) Other intangible Defense Articles, including defence services, will be accompanied by documentation (such as contracts, invoices, shipping bills, or bills of lading) clearly identifying the Defense Articles and their appropriate markings as detailed in paragraph 1(a) of this Section. For oral communication, a verbal notification clearly associating the Defense Articles with the appropriate markings as detailed in paragraph 1(a) of this Section will be given.

(2) The Participants will each promulgate regulations to reflect that any conduct falling outside the terms of the Treaty and the procedures established pursuant to the terms of the Treaty, including Re-transfers and Re-exports of Defense Articles without the prior approval of the relevant Participant will be a violation of the laws of Australia or the United States (or both). For the United States, these laws include the United States Arms Export Control Act and International Traffic in Arms Regulations, a violation of which may attract criminal, civil, and administrative penalties or sanctions of these and other applicable laws and regulations.

(3) The Government of Australia will modify relevant regulations and guidance to detail the requirements for the handling of Defense Articles Exported to the Australian Community under the Treaty, including requiring that:

(a) On receipt of Defense Articles that have been Exported to the Australian Community under the Treaty, the recipient is to ensure that the appropriate standard markings detailed above have been applied by the United States Community member. In the event that irregularities are found, the Government of Australia will require the recipient to correct the marking and to notify the irregularity and action taken to the ADOD. The ADOD will report such notifications to the United States Government in order that corrective action can be taken with the United States exporter, in accordance with Article 17 of the GSA;

(b) All Defense Articles Exported to the Australian Community under the Treaty, will be marked, identified, transmitted, stored and handled in accordance with the Treaty;

(c) Defense Articles that are located within the Territory of Australia, having been previously exported under a license or other export authorization, that are transitioned pursuant to Section 7, will be marked, identified, transmitted, stored and handled in accordance with the Treaty, by the holding Australian Community entity;

(d) Australian Community members comply with additional record keeping and handling requirements for Defense Articles, including:

(i) Recording dates of receipt and details of the United States exporter;

(ii) Recording the location, incorporation, Transfer, Re-export, Re-transfer or destruction of the Defense Articles, to enable a full audit trail to be established regarding the handling of the Defense Articles;

(iii) Applying and maintaining appropriate markings or other identification and ensuring that these requirements are passed to any future recipient of the Defense Articles within the Approved Community;

(iv) Establishing and carrying out a self-audit regime to monitor the effectiveness of the application of relevant controls on the Defense Articles; and

(v) Maintaining such records for a minimum of 5 years and providing such records on request to the Government of Australia, which may be provided to the United States Government in accordance with the provisions described in Section 11;

(e) There are access controls appropriate to the level of classification of the Defense Articles and their status under the Treaty, including password protection for electronically held Defense Articles and that information systems containing such Defense Articles have been accredited in accordance with the Government of Australia standards and guidelines appropriate to the classification of the Defense Articles; and

(f) Any material violations of the procedures established pursuant to the terms of the Treaty must be reported immediately, and all other violations must be reported as soon as reasonably practicable, to the Government of Australia which will notify the United States Government as appropriate.

Section 11

Cooperation and Enforcement Measures

(1) The Participants will, subject to their respective laws and regulations, cooperate in the enforcement of the operation of the Treaty, including this Implementing Arrangement and applicable laws and regulations.

Mechanisms for Cooperation

(2) The Participants will cooperate based on the following instruments that promote mutual cooperation and assistance:

- (a) The Treaty on Extradition between the Government of Australia and the Government of the United States of America signed at Washington on May 14, 1974, as amended by the Protocol signed at Seoul on September 4, 1990 ('Extradition Treaty');
- (b) The Memorandum of Understanding between the Government of Australia and the Government of the United States of America regarding Mutual Assistance between their Customs Services, signed at Brussels on June 23, 1992 ('Customs MOU');
- (c) The Memorandum of Understanding between Australia and the United States concerning Cooperation in the Exchange of Financial Intelligence, signed at Paris on January 31, 1996;
- (d) The Treaty between the Government of Australia and the Government of the United States of America on Mutual Assistance in Criminal Matters done at Washington on April 30, 1997 ('MLAT');
- (e) The GSA; and
- (f) Any further cooperation agreements or arrangements between the Participants.

Notification of Nongovernmental United States Entity

- (3) The Government of Australia will consult with the United States Government in a timely manner about any concerns with a nongovernmental United States entity about its ability to protect Australian Defence Articles pursuant to Article 8(6).
- (4) Following such consultations, the Government of Australia may issue directions to the Australian Community concerning future dealings with that nongovernmental United States entity.
- (5) The Government of Australia may issue further directions to the Australian Community, as necessary, following further consultations with the United States Government.

Promotion of Compliance Measures

- (6) The Government of Australia will require each non-governmental entity or facility applying to be included in the Australian Community to acknowledge the following standards in writing:
 - (a) Information and statements provided by that non-governmental entity to the Government of Australia regarding Defense Articles Exported, Transferred, Re-transferred, or Re-exported under the terms of the Treaty may be provided to the United States Government;
 - (b) Defense Articles may not be Re-transferred or Re-exported without prior approval;
 - (c) The Re-transfer or the Re-export of Defense Articles without prior approval constitutes a violation of Australian law as well as the United States International Traffic in Arms Regulations, Arms Export Control Act, and related laws and regulations;

- (d) The non-governmental entity will maintain records with respect to all Defense Articles Exported, Transferred, Re-transferred, or Re-exported for a period of at least 5 years, including records regarding intangible items or technical data;
- (e) The non-governmental entity must, within 5 working days of the event, provide written notification to the Government of Australia of any material change in that non-governmental entity. A material change may include a change in the senior officers; the establishment, acquisition or divestment of a subsidiary or foreign affiliate; a merger; a take-over; or a change of location. The non-governmental entity must provide the Government of Australia with written notification of any intended sale or transfer to a foreign person of ownership or control of that non-governmental entity at least 60 calendar days before the sale or transfer, or as soon as reasonably practicable, prior to such sale or transfer;
- (f) Any material violations of the procedures established pursuant to the terms of the Treaty will be reported immediately, and all other violations must be reported as soon as reasonably practicable, to the Government of Australia;
- (g) Any additional information relating to compliance with the terms of the Treaty requested by the Government of Australia, will be provided upon request. If the Government of Australia requests the non-governmental entity to provide information which is held by a foreign subsidiary, parent or affiliated company wherever located and related to compliance with the terms of the Treaty, that non-governmental entity will use its best endeavors to fulfil that request;
- (h) The non-governmental entity will be subject to inspection and audit of records, premises and Defense Articles by the Government of Australia in accordance with Australian laws and regulations;
- (i) In the case of removal from the Australian Community, the non-governmental entity will continue to abide by the same standards as the Australian Community until such time as other appropriate United States licenses or arrangements are in place; and
- (j) The non-governmental entity will inform their employees and personnel who may be handling Defense Articles of these requirements.
- (7) The Participants further determine that any failure by a member of the Approved Community to produce records as required will be subject to penalties or consequences under the laws, regulations and policies of the responsible Participant.
- (8) Either Participant may request from the other Participant copies of records.
- (9) Each Participant will use its best endeavors to respond promptly to the request of the other Participant within 30 calendar days.
- (10) Each Participant will report on the status of requests received in the past 12 months during the annual consultations under Article 17.

(11) The requesting Participant accepts that the copies of Records provided under this paragraph will only be used for the purposes of Articles 12 and 13 and government use, including investigation, enforcement action, prosecution, civil or administrative proceeding. Such copies may not be disclosed for other purposes by the Participants without prior written permission, unless compelled to do so under the orders of the requesting Participant's courts, tribunals or legislature.

Cooperation Measures

(12) The Participants will cooperate in audits, inspections, and end-use verifications to ensure compliance with the procedures established pursuant to the Treaty. In this respect, the Participants will cooperate and assist one another following a request, or on their own initiative, utilizing the most expeditious mechanisms available, subject to the Participants' national laws and regulations and not inconsistent with any treaties or arrangements between the Participants. Such cooperation measures may include the following:

- (a) Sharing information, documents, records and evidence pertaining to Defense Articles;
- (b) Conducting verifications, site visits, and examinations of Defense Articles that are Exported, Transferred, Re-transferred, or Re-exported under the Treaty, including permitting, where appropriate, mechanisms to conduct post-shipment verifications and end-use or end-users monitoring of Defense Articles;
- (c) Conducting interviews and taking the testimony or statements of persons, including permitting, where appropriate, the other Participant's representatives to participate;
- (d) Locating and identifying persons or entities;
- (e) Promptly notifying the other Participant when a material violation of the procedures established pursuant to the Treaty is suspected, detected, or reported;
- (f) Identifying, tracing, freezing, or executing requests for searches and seizures of Defense Articles that are suspected to have been, or will be, Exported, Re-exported, Transferred, or Re-transferred in violation of the procedures established pursuant to the Treaty;
- (g) Identifying, tracing, freezing, executing requests for searches and seizures of, or forfeiting, proceeds and instrumentalities related to suspected violations of the procedures established pursuant to the Treaty; and
- (h) Discussing any forfeiture proceedings prior to the forfeiture.

Coordination of Investigations and Prosecutions

(13) The overall objective of this part of Section 11 is, in each case, for the appropriate authorities of each Participant, in accordance with the relevant instruments and mechanisms for

cooperation noted in paragraph (2) of Section 11, to coordinate investigations and any proceedings that may follow.

(14) If a Participant suspects a violation of the procedures established under the Treaty, that Participant will:

- (a) Investigate the alleged violation with a view to take appropriate action; and
- (b) Notify the other Participant of the results of investigations where such investigations disclose a material violation as soon as practicable.

(15) Each Participant will cooperate with the other Participant with respect to investigations of suspected material violations of the procedures established pursuant to the Treaty conducted by an investigating Participant. Subject to the Participants' national laws and regulations, and not inconsistent with any treaties or arrangements between the Participants, the Participants accept the following guiding principles:

- (a) That they will closely consult at the outset, and at all other appropriate times, where a violation of either Participant's laws concerning activities under the Treaty and related violations are suspected, to arrive at an investigative plan;
- (b) That the nationality of a particular suspect, person, or company of interest will not bar cooperation in a request, investigation, and prosecution;
- (c) That if an individual is suspected of violating the procedures established pursuant to the Treaty, such suspected violation may be of United States law, Australian law, or both, and may give rise to a request from one of the Participants to the other under the Extradition Treaty;
- (d) The Participants will consult on possible prosecutions and keep each other informed of the progress of any prosecutions related to the Treaty. This may include consultation on:
 - (i) The venue of any prosecution and case-related factors such as the location of the suspects and the availability of witnesses and evidence;
 - (ii) The consequences for the other jurisdiction of commencing any proceedings on national security, further investigation, intelligence operations, or prosecutions; and
 - (iii) How best to preserve the options of prosecutors in both jurisdictions;
- (e) That where sufficient evidence is obtained, and prosecution is the best option given the factors cited above, the appropriate authorities will cooperate to ensure the availability of witnesses and the availability and admissibility of evidence to be used. Where beneficial, the appropriate authorities will consider coordinating the timing of the related legal proceedings against different persons in their respective jurisdictions;

(f) That the Participants reserve the right to pursue criminal and civil actions, consistent with national laws and regulations; and

(g) That each Participant acknowledges that the decision to take action as a result of an investigation rests with each Participant pursuant to Article 13.

(16) The Participants acknowledge the independent role of prosecutors who may exercise their discretion in any individual case.

(17) The Participants will consult each other on any questions on the operation, implementation and administration of these Implementing Arrangements. The Participants will review the progress of any investigations arising from the provisions of the Treaty during routine consultations, and the consultations pursuant to Article 17.

Section 12

Management

(1) Each Participant will designate one Principal to exercise executive-level guidance and oversight of the activities under the Treaty and this Implementing Arrangement. The United States Government Principal will be the Under Secretary for Arms Control and International Security, United States Department of State and the Government of Australia Principal will be Deputy Secretary Strategy, Coordination and Governance, ADOD.

(2) The Principals will meet at least annually. Additional meetings may be held at an appropriate level as mutually determined by the Principals.

(3) A Management Board consisting of one designated representative from each Participant will be established to exercise executive level authority and day-to-day management of all activities under the Treaty and this Implementing Arrangement for their respective Governments. The United States Government representative will be a Deputy Assistant Secretary for Political-Military Affairs, United States Department of State and the Government of Australia representative will be the Head Strategic Policy Division, ADOD. Other personnel of the Participants, as appropriate, may attend Management Board meetings, however, decisions will be made by the designated representatives of the United States Government and the Government of Australia. The functions, duties and responsibilities of the Management Board will include, but are not limited to:

(a) Advising the Principals on any matters that affect the operation of the Treaty, including this Implementing Arrangement;

(b) Reviewing and forwarding to the Principals for approval any proposed amendments to this Implementing Arrangement;

(c) Reviewing the operation of the Treaty, including this Implementing Arrangement and providing guidance to the agencies of the Participants;

(d) Providing reports of activities under the Treaty and this Implementing Arrangement to the Principals, as necessary;

(e) Approving publication of all lists referenced in this Implementing Arrangement;

(f) Promptly approving a Management Plan that describes Treaty-related implementation efforts, to include identification of relevant points of contact and setting out executive level procedures for the day-to-day management of the Treaty and this Implementing Arrangement; and

(g) Acting as their respective Participant's primary contact point and establishing sources of information for Approved Community members concerning the operation of the Treaty and Implementing Arrangement.

Section 13

Publication

(1) The Participants will establish, maintain, publish, and provide information, for the purposes of the Treaty and this Implementing Arrangement.

(2) For matters involving information that may be publicly identified, the Participants will coordinate efforts to establish and maintain websites available to the public including, but not limited to, the establishment of technical points of contact for website-related matters in order to achieve consistent, timely and accurate publication of information to the Approved Community.

(3) For matters involving information that may not be publicly identified, the Participants will establish mechanisms at the appropriate security levels to promote timely responses to inquiries from the Approved Community.

Section 14

Dispute Resolution

Any disputes arising out of or in connection with this Implementing Arrangement will be resolved through consultations between the Participants and will not be referred to any court, tribunal, or third party.

Section 15

Amendments

This Implementing Arrangement will only be amended by the written mutual determination of the Participants.

Section 16

Duration and Withdrawal

This Implementing Arrangement will come into effect on the date of entry into force of the Treaty and will remain in effect for as long as the Treaty remains in force.

SIGNED in two originals at Washington on March 14, 2008.