



Treaty Series No. 23 (2005)

Agreement

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for Co-operation in Research and Development of Weapons Detection and Protection-Related Technologies

Washington, 3 July 2002

[The Agreement entered into force on 3 July 2002]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 2005*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR
CO-OPERATION IN RESEARCH AND DEVELOPMENT OF WEAPONS
DETECTION AND PROTECTION-RELATED TECHNOLOGIES**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, hereinafter referred to as the "Parties"

Having independently conducted research and development of the applications of various weapons detection-related technologies, and recognizing the benefits of co-operation in the mutual exchange of related research information;

Seeking to make the best use of their respective research and technology development capabilities, to eliminate unnecessary duplication of work and to obtain the most efficient and cost-effective results through co-operation in joint research activities; and

Desiring to support national security interests of mutual concern, through the development, testing, and evaluation of specialized technology applications;

Have agreed as follows:

Article 1

Scope and Objective

1. The objective of this Agreement is to establish a framework for co-operation between the Parties in the area of research, technology development and testing of weapons detection and related technologies.
2. Joint activities under this Agreement shall be conducted on the basis of equality, reciprocity and mutual benefit.

Article 2

Executive Agents

To implement this Agreement, the Parties' Executive Agents are: for the Government of the United States of America, the Department of Energy of the United States of America; for the Government of the United Kingdom of Great Britain and Northern Ireland, the Secretary of State for Defence.

Article 3

Areas of Cooperation

Cooperation under this Agreement may be undertaken in the following areas related to chemical and biological weapons detection-related research and development: systematic and comprehensive studies of a theoretical and experimental nature; the practical application of engineering and scientific knowledge to detection and protection objectives and the development of ideas, procedures and experimental hardware with a detection and protection application, including the planning and realisation of simulation, scientific processes and technology demonstration.

Article 4

Forms of Cooperation

The forms of co-operation under this Agreement may include, but are not limited to, the following:

1. Exchange of technical information and data on scientific and technical activities and methods and results of research and development;
2. Joint research;
3. Conduct of joint trials/experiments;
4. Short-term visits by specialist teams or individual staff of one Party to the facilities of the other Party, subject to a prior written arrangement on each occasion;
5. Assignment of staff, which includes scientists, engineers, and other specialists for agreed periods of time for co-operative training, participation in experiments, analysis, design and other research, development and demonstration activities at scientific centers, academic institutions, laboratories and other facilities of the Parties, or of contractors of the Parties;
6. Exchange or loan of samples, materials and equipment, for experiments, testing and evaluation;
7. The use by One Party of facilities owned or operated by the other Party. Such use of facilities shall be the subject of a separate written arrangement between the Executive Agents.
8. Organization of, and participation in, technological demonstrations and seminars, scientific conferences and other meetings; and

9. Training and enhancing the skills of scientists and technical experts.

Article 5

Additional Organizations

The Parties shall encourage and facilitate, where appropriate, the development of direct contacts and co-operation between government agencies, universities, science and research centers, private sector firms and other institutions of the two Parties, and institutions of third countries or international organizations.

Article 6

Management

1. The Executive Agents shall establish a Joint Co-ordinating Committee (JCC), consisting of an equal number of representatives of each Executive Agent, to co-ordinate and review co-operative activities under this Agreement. The activities of the JCC shall be governed by procedures approved by the Executive Agents.
2. The responsibilities of the JCC shall include the review of implementation of this Agreement and resolution of issues that may arise in the course of its implementation, and such further functions as are agreed upon in writing by the Executive Agents.
3. Decisions of the JCC shall be taken by consensus.
4. Meetings of the JCC shall be convened periodically upon agreement of the co-chairmen of the JCC, alternately in the United States and in the United Kingdom or as otherwise decided by the JCC.

Article 7

Implementing Arrangements

1. To carry out the mutually agreed upon activities under this Agreement, the Parties or the governmental agencies of the Parties shall conclude implementing arrangements, which shall set forth details, procedures, and management of the specific co-operative activities.
2. In case of any inconsistency between this Agreement and implementing arrangements, the provisions of this Agreement shall prevail.

Article 8

Classified information, Materials and Equipment

1. Classified information, materials and equipment communicated or transferred pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the General Security of Information of Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America dated April 14, 1961, as amended, including the Industrial Security Annex thereto of April 18, 1984, as amended.
2. Classified information, communicated or exchanged, and any materials or equipment transferred, pursuant to this Agreement shall not be communicated, exchanged or transferred by the recipient Party or persons under its jurisdiction to any unauthorised persons, or, except with the authorization of the other Party and only to the extent permitted by security of information agreements and agreements between the transferring Party and the intended recipient.
3. Implementing arrangements concluded in accordance with Article 7 shall include appropriate provisions for the handling, safeguarding, and use of classified information.

Article 9

Treatment of Information; Intellectual Property

1. Unless otherwise agreed by the Parties or their designees in writing, the treatment of intellectual property created or furnished in the course of co-operative activities under this Agreement shall be governed by the Annex on Intellectual Property Rights agreed to by the Parties by an exchange of notes dated November 29, 1995¹. The text of this Annex on Intellectual Property Rights is attached to this Agreement as the Preamble and Sections I through III of Annex I and forms an integral part hereof.
2. The protection of any invention or discovery employing classified information communicated or exchanged under this Agreement shall be governed by Section IV of Annex I.
3. Sensitive information shall be handled in accordance with the laws and regulations of the Party receiving the information, and shall not be disclosed or transmitted to a third party not participating in the implementation of this Agreement without the written consent of the Party transmitting the information. According to the Laws and regulations of the United States, such information shall be treated as foreign government information provided in confidence and shall be protected accordingly. According to the laws and regulations of the United

¹ Treaty Series No. 89 (1996) Cm 3435

Kingdom, such information shall be treated as national security information and shall be protected accordingly.

4. Scientific and technological information of a non-business confidential nature resulting from co-operation under this Agreement, other than information which is not disclosed for national security, commercial or industrial reasons, shall be made publicly available to the world scientific community through customary channels and in accordance with the normal procedures of the participating agencies and entities.

Article 10

Costs

Unless otherwise agreed in writing, each Party shall bear the cost of its participation in co-operative activities carried out under this Agreement, subject to the availability of nationally appropriated funds.

Article 11

Implementation

Each Party shall conduct the activities provided for in this Agreement consistent with its applicable laws.

Article 12

Settlement of Disputes

Any dispute regarding the interpretation or application of this Agreement shall be resolved by consultation between the Parties and shall not be referred to any national or international tribunal or any other third party for settlement.

Article 13

Claims and Liabilities

Each Party agrees, subject to its laws, not to assert claims against the other Party for loss or damage to their respective property or for injury or death of their respective personnel arising out of joint operations conducted under this Agreement. The Parties will cooperate, as appropriate, in the settlement or other disposition of any claims of a third party for property loss or damage, personal injury, or death arising out of joint operations under this Agreement.

Article 14

General Provisions

1. To the extent permitted by its national laws and regulations, each Party shall
 - a) facilitate entry into and exit from its territory of appropriate personnel and equipment of the other Party used in projects and programs under this Agreement; and
 - b) facilitate the entry of materials and equipment required for joint activities under this Agreement, without the imposition of duties or taxes.

2. Technologies needed by the United Kingdom, its agents or contractors may involve defence articles or defence services, or other items, subject to United States export controls, including individual licensing requirements of the Department of Commerce. Technologies needed by the United States, its agents or contractors may involve defence articles or defence services, or other items, subject to United Kingdom export controls, including individual licensing requirements of the Department of Trade and Industry.

Article 15

Definitions

For purposes of this Agreement

"Classified information" means official information that requires protection in the interests of national security and is so designated by the application of a security classification marking.

"Information" means any information, knowledge or data, regardless of form or characteristics including but not limited to that of a scientific or technical nature, experimental and test data, designs, improvements, photographs, software (including source code), reports, manuals, specifications, processes, techniques, inventions (whether patented or not), technical writings, sound recordings, semiconductor topography, pictorial reproductions, drawings and other graphical representations, whether on magnetic tape, in computer memory, or in whatever form presented, and whether or not subject to copyright or other legal protection. To the extent defence articles and defence services subject to United States defence export controls are involved, the controlling definitions concerning information related thereto shall be those found in applicable United States law and regulations.

"Invention" means any invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under this Agreement or its implementing arrangements. The term "first actually reduced to practice" means the first demonstration, sufficient to establish to one skilled in the

art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.

Article 16

Duration, Modification, and Termination

1. This Agreement shall enter into force upon signature by both Parties and shall remain in force for five (5) years. This Agreement shall be automatically renewed for further 5-year periods unless either Party notifies the other Party in writing at least 6 months prior to the expiration of the first 5-year period or any succeeding 5-year period of its intent to terminate the Agreement.
2. This Agreement may be amended by written agreement of the Parties.
3. Either Party may terminate this Agreement at any time by giving six (6) months' written notice to the other Party.
4. Termination of this Agreement shall not affect the implementation of any co-operative activity carried out under this Agreement and not completed upon termination of this Agreement.
5. The respective rights and responsibilities of the Parties regarding Article 8 (Classified Information), Article 12 (Settlement of Disputes), and Article 13 (Claims and Liabilities) shall continue notwithstanding termination or expiry of this Agreement and any implementing arrangements.

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

DONE at Washington, in duplicate, this third day of July, 2002.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of the
United States of America:

CHRISTOPHER MEYER

JOHN GORDON

ANNEX I

Annex on Intellectual Property Rights

Preamble

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties shall ensure that the relevant entities participating in activities under this Agreement (hereinafter "co-operating entities") which may include the Parties themselves, agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this annex.

Section I - Scope

- A. This annex is applicable to all co-operative activities undertaken by the co-operating entities pursuant to this Agreement, except as otherwise specifically agreed by the co-operating entities.
- B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967¹.
- C. This annex addresses the allocation of rights, interests, and royalties between the co-operating entities. Each co-operating entity shall ensure that the other co-operating entity can obtain the rights to intellectual property allocated in accordance with this annex. Subject to this, the allocation between a Party and its co-operating entities, which shall be determined by the Party's practices and national laws, shall not be altered or prejudiced by application of this annex.
- D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the relevant co-operating entities or, if necessary, the Parties. 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 UNCITRAL shall govern.
- E. Termination or expiration of this Agreement shall not affect the rights or obligations created by this annex.

Section II - Allocation of Rights

- A. Each co-operating entity, subject to the restrictions of Section III of this annex, shall be entitled to a nonexclusive, irrevocable, royalty-free right in all countries to translate, reproduce, and publicly distribute scientific and technical

¹ Treaty Series No. 52 (1970) Cmnd 4408

journal articles, reports and books containing non-proprietary information directly arising from co-operation 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. Each co-operating entity shall have the right to review a translation prior to public distribution.

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

1. Visiting researchers not involved in joint research which is subject to a technology management plan made pursuant to paragraph II-B-2 below, such as scientists visiting primarily in the furtherance of their education, shall receive rights to any intellectual property resulting from their visit and work under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host country with regard to awards, bonuses, benefits, or any other rewards.

2(a) For intellectual property created during joint research, the co-operating entities shall jointly develop a technology management plan. The technology management plan shall consider the relative contributions of the co-operating entities, the benefits of licensing by territory or for fields of use, requirements imposed by the Parties' domestic laws, and other factors deemed appropriate. The initial research co-operation arrangement may include the technology management plan for that specific co-operation. The technology management plan shall address at least the following issues:

- i. ownership of any intellectual property created during the joint research;
- ii. the scope of any licenses to use the intellectual property;
- iii. allocation of responsibilities for protecting and enforcing rights in the intellectual property;
- iv. arrangements for commercialising the intellectual property, including rights to revenues derived therefrom.

2(b) If the co-operating entities cannot reach agreement on a joint technology management plan within a reasonable time not to exceed six months from the time a co-operating entity became aware of the creation of the intellectual property in question, the Parties shall resolve the matter in accordance with the provisions of paragraph I.D. Pending resolution of the matter, such intellectual property shall be owned jointly by the co-operating entities, but shall be commercially exploited (including product development) only by mutual agreement.

2(c) A specific programme of research will be regarded as joint research for purposes of allocating rights to intellectual property only when it is designated as such in writing by the co-operating entities; otherwise, the allocation of rights to intellectual property will be in accordance with paragraph II.B.I.

2(d) In the event that a Party believes that a particular joint research project under this Agreement will lead, or has led, to the creation or furnishing of intellectual property of a type not protected by the applicable laws of one of the Parties, the Parties shall immediately hold discussions to determine the allocation of the rights to the said intellectual property; the joint activities in question will be suspended during the discussions, unless otherwise agreed by the Parties. If no agreement can be reached within a three month period from the date of the request for discussions, the co-operating entities shall cease their co-operation in the project in question. Notwithstanding paragraphs II.B.2.a and II.B.2.b, rights to any intellectual property which has been created will be resolved between the Parties in accordance with the provisions of paragraph 1.D.

Section III - Business-Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each co-operating entity shall protect such information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as business-confidential information 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; 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. Without prior written consent, the receiving co-operating entity may not disclose any business-confidential information provided to it by another co-operating entity except to appropriate employees and government personnel. If expressly agreed between the co-operating entities, business-confidential information may be disclosed by the receiving co-operating entity to prime and subcontractors. Such disclosures shall be for use only within the scope of their contracts with their co-operating entities relating to co-operation under this Agreement. The co-operating entities shall impose, or shall have imposed, an obligation on those receiving such information to keep it confidential. If one of the co-operating entities becomes aware that, under the laws or regulations applicable to it, it will be, or may reasonably expected to become, unable to meet the non-disclosure provisions, it shall immediately inform the other co-operating entity. The co-operating entities shall thereafter agree on an appropriate course of action.

Section IV. Inventions or Discoveries Employing Classified Information

A. No patent application with respect to any classified invention or discovery employing classified information which has been communicated or exchanged pursuant to this Agreement may be filed:

1. by either Party or any person in the country of the other Party except in accordance with agreed conditions and procedures; or
 2. in any country not a party to this Agreement except as may be agreed and subject to paragraphs 8.1 through 8.4 of this Agreement.
- B. Appropriate secrecy or prohibition orders shall be issued for the purpose of giving effect to this Section IV.



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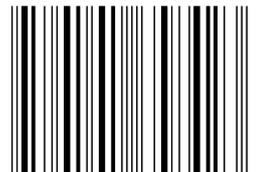
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