

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW ZEALAND DEFENCE FORCE
AND
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
CONCERNING
THE NAVSTAR GLOBAL POSITIONING SYSTEM**

ARTICLE 1: INTRODUCTION

1.1 The Department of Defense (DoD) of the United States of America (U.S.) is in the process of developing and deploying the Navstar Global Positioning System (GPS). The GPS provides two levels of accuracy through a Precise Positioning Service (PPS) and a Standard Positioning Service (SPS). PPS provides the greatest degree of accuracy. Access to PPS is controlled through the use of cryptography. SPS provides a lesser degree of accuracy and is available to all users. SPS accuracy levels will be set consistent with U.S. national security interests. Therefore, the U.S. DoD and the New Zealand Defence Force (NZDF), hereinafter referred to as the Parties, agree to cooperate to enable the NZDF to become a military user of the U.S. DoD GPS-PPS. The NZDF will be authorized to acquire GPS-PPS Security Module (SM) user equipment, in accordance with Annex A, for various NZDF military uses.

1.2 All activities of each Party under this Memorandum of Agreement (MOA) shall be carried out in accordance with its national laws and obligations of each Party are subject to the availability of appropriated funds for this purpose.

ARTICLE 2: SCOPE

Subject to the terms and conditions set forth herein, the NZDF may acquire GPS-PPS SM user equipment and become a military user of the U.S. DoD GPS-PPS. This MOA covers terms and conditions, security, visits, and the provisions pursuant to which the NZDF may acquire the GPS-PPS SM user equipment. It also covers the operational trials phase, and the follow-on acquisition and integration phase of the program. No production of GPS-PPS user equipment is authorized under this MOA. NZDF request for production shall be considered by the U.S. DoD and, if approved, shall be the subject of an amendment to this MOA or a separate agreement.

ARTICLE 3: TERMS AND CONDITIONS

3.1 The product or service envisioned by the term GPS-PPS includes cryptography to secure the precise positioning data. The NZDF is not permitted access to U.S. cryptography except as contained in a security module built by a U.S. -

approved manufacturer and purchased under the U.S. Foreign Military Sales (FMS) program. This device is referred to as the security module or the Precise Positioning Service Security Module (PPS SM). Keying material shall be obtained in accordance with the arrangements referred to in paragraph 4.2.

3.2 In order to support NZDF test and evaluation of the GPS-PPS and enable the NZDF to become a military user of the GPS-PPS, the U.S. DoD shall sell under FMS procedures releasable GPS-PPS program information, technical data (excluding cryptographic design information, and cryptographic software and hardware technology), planning data, test results and reports for information, evaluation, operations, and maintenance. No transfer of design, development, manufacturing or production technical data is authorized under this MOA. In accordance with Article 2, the U.S. DoD shall recommend the sale and export to the NZDF (subject to review and approval in accordance with the US Arms Export Control Act) of U.S. developed GPS-PPS SM user equipment (including the SM, related keying material, the Auxiliary Output Chip (AOC), the Controlled Reception Pattern Antenna, the Fixed Reception Pattern Antenna, and the Control and Display Unit). The AOC and PPS SM shall be purchased through FMS procedures. NZDF test results shall be used by the NZDF to help formulate planning for acquisition and integration of GPS-PPS SM user equipment into NZDF military vehicles and equipment. In case of any inconsistency between this MOA and an FMS Letter of Offer and Acceptance (LOA), the terms of the LOA shall prevail.

3.3 The NZDF shall provide to the U.S. DoD access to GPS Program information, technical data, planning data, test results and reports, GPS applications, integration designs, differential applications, and any system improvements.

3.4 The NZDF shall furnish or cause to be furnished the following technical data to the U.S. DoD at no cost to the U.S. DoD other than the cost of reproduction, preparation, and handling:

- a. All technical data pertaining to changes, modifications, and improvements in the design of the GPS user equipment made in the course of development, evaluation, operation, and maintenance of the system.
- b. All technical data pertaining to manufacturing processes employed in the production of the item if production is authorized by U.S. DoD.
- c. Technical data pertaining to changes proposed in the design of the system but not adopted.
- d. Notwithstanding a., b., and c. above, if the NZDF incorporates an existing commercial item without modification of either the item or the system and if (i) the item is not based in whole or in part on U.S. technical data or on U.S. design; and (ii) the item is not in whole or in part funded or financed by New Zealand directly or indirectly; and (iii) there is no development contract or subcontract between New Zealand and the supplier, then the NZDF shall only be required, to the extent

that it has the right to do so without incurring liability to others, to provide to the U.S. DoD sufficient information for the U.S. DoD to evaluate the item, to procure it, to incorporate it into the system, and to operate, maintain, repair, overhaul, and modify it.

3.5 The NZDF shall grant or cause to be granted to the U.S. DoD a non-exclusive, irrevocable, royalty-free license to use and have used for U.S. defense purposes, including security assistance, the technical data defined in paragraphs 3.4 b. and c. above and any inventions (whether or not patentable) made in the course of activities covered by this MOA. Additionally, the NZDF shall use its best efforts to obtain licenses on fair and reasonable terms to authorize the U.S. DoD to use and have used the technical data defined in paragraph 3.4 d. above, and potential inventions depicted in such technical data, for U.S. defense purposes, including security assistance.

3.6 The NZDF shall include suitable provisions in all pertinent program contracts, including a requirement to include those same provisions in all subcontracts, to meet the requirements of this Article and Article 4.

3.7 This agreement does not include provision for the transfer of GPS-PPS cryptographic hardware or software technology and design or manufacturing information. The U.S. designed SM as well as the AOC must be acquired only from approved U.S. companies through FMS channels.

3.8 If the NZDF decides to acquire and integrate GPS-PPS SM user equipment into NZDF military vehicles and equipment, this acquisition shall be accomplished in accordance with Annex A which is an integral part of this MOA. The NZDF has the responsibility to provide accountability by quantity for AOCs and security modules purchased via FMS. If the NZDF decides to abandon the GPS-PPS project, this MOA shall terminate and the SMs and AOCs shall be returned to the U.S. DoD. SMs and AOCs purchased by NZDF are exclusively for use on the GPS-PPS program.

3.9 The NZDF shall not transfer title to, or possession of, any GPS-PPS SM user equipment, related technical data or computer software, or components thereof, furnished in connection with this project, to anyone not an officer or employee of the NZDF and not to use or permit the use of any such GPS-PPS SM user equipment, related technical data or computer software, or components thereof for purposes other than those specified in the U.S. - New Zealand Mutual Defense Assistance Agreement of June 19, 1952, without the prior written consent of the U.S. DoD. The NZDF shall not use or permit the use of any such GPS-PPS SM user equipment, related technical data or computer software, or components thereof, in any complete rocket system (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned air vehicle system (including cruise missile systems, target drones and reconnaissance drones) capable of delivering a 500 kg payload to a range of 300 km, without the prior written consent of the U.S. DoD. The NZDF shall not use or permit the use of the GPS-PPS SM user equipment and technical data for manufacture of GPS-PPS SM user equipment without the prior written consent of the U.S. DoD.

3.10 The NZDF shall provide for protection of the AOCs and SMs from theft or tampering.

3.11 The NZDF shall bear the costs of its own activities and participation in the GPS-PPS program.

3.12 The U.S. DoD shall provide, to the extent technically feasible and consistent with U.S. national security interests, continuous GPS signal availability at all times, including in times of crisis and war, from the full operational constellation.

3.13 The U.S. will not be held liable for any loss, damage or injury of any kind, including economic loss or other consequential damages, which the NZDF may incur incident to its use of GPS.

ARTICLE 4: SECURITY

4.1 Classified information and materials exchanged between the Parties or generated by the Parties in furtherance of this MOA shall be safeguarded by each Party in accordance with the U.S./New Zealand General Security of Information Agreement, of November 17, 1961, as amended March 5, 1982.

4.2 The Communication Security (COMSEC) authorities of the U.S. and New Zealand shall arrange all aspects of COMSEC support, including, but not limited to, keying material, to be undertaken in furtherance of the GPS-PPS program.

4.3 Classified information and material shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOA. The DSA for the U.S. is the Deputy Under Secretary of Defense for Security Policy. The DSA for NZDF is the Assistant Chief (Operations).

4.4 Each Party shall take all lawful steps available to it to ensure that information provided or generated pursuant to this MOA is protected from further disclosure except as provided by paragraph 4.9, unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

- a. The recipient shall not release the classified information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Party.
- b. The recipient shall not use the classified information for other than the purposes provided for in this MOA.

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

4.6 The DSA of a Party that awards a classified Contract under this agreement shall assume responsibility for administering, within its territory, security measures for the protection of the classified information or material, in accordance with its laws and regulations. Prior to the release to any contractors, prospective contractors, or subcontractors of any classified information provided or generated under this MOA, the recipient Party shall:

- a. Ensure that such contractors, prospective contractors, or subcontractors and their facilities have the capability to protect the information adequately.
- b. Grant a security clearance to the facilities, if appropriate.
- c. Grant a security clearance for all personnel whose duties require access to the information, if appropriate.
- d. Ensure that all persons having access to the information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and the provisions of this MOA.
- e. Carry out periodic security inspections of cleared facilities to ensure that the information is properly protected.
- f. Ensure that access to the information is limited to those persons who have a need-to-know for purposes of the Project.

4.7 Contractors, prospective contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy, or management control of nationals or entities of a Third Party may participate in a contract or subcontract requiring access to classified information provided or generated pursuant to this MOA only when enforceable measures are in effect to ensure that nationals or entities of a Third Party shall not have access to classified information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

4.8 For any facility wherein classified information or material is to be used, the responsible Party or contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOA. These officials shall be responsible for limiting access to classified information or material involved in this MOA to those persons who have been properly approved for access and have a need-to-know.

4.9 Each Party shall ensure that access to classified information is limited to those persons who possess the requisite security clearance and have a specific need for access to the classified information in order to participate in the Project.

4.10 Information or material provided or generated pursuant to this MOA may be classified as high as SECRET. The existence of this MOA is UNCLASSIFIED and its contents are UNCLASSIFIED.

ARTICLE 5: VISITS TO ESTABLISHMENTS

5.1 Each Party shall permit visits to its Government establishments agencies and laboratories, and contractor industrial facilities by employees of the other Party or by employees of the other Party's contractor(s), providing the visit is authorized by both Parties and the employees have appropriate security clearances and need-to-know.

5.2 All visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this MOA.

5.3 Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host country. Requests for visits shall bear the name of the Project.

5.4 The U.S. National Security Agency (NSA) and NZDF must approve in advance any visit to facilities actually producing components related to the cryptography used to secure precise positioning data.

ARTICLE 6: ENTRY INTO FORCE, DURATION AND AMENDMENT

This MOA shall enter into force upon signature by the U.S. DoD and the NZDF and shall remain in force until December 31, 2010, provided that New Zealand continues to participate in the ANZAC Frigate Program and/or operate ANZAC Frigates. GPS-PPS use by the NZDF is not, however, limited solely to the ANZAC Frigate. This MOA shall terminate automatically if the NZDF withdraws from the ANZAC Frigate Program. Any notice to terminate or amend this MOA will be subject to immediate consultation between the Parties. In case of termination of the MOA, LOAs will be amended or terminated in accordance with the terms of such LOAs. The respective rights and responsibilities of the Parties regarding security, liability, use and disclosure of information and third party sales and transfers shall continue notwithstanding termination or expiration of this MOA.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this agreement.

DONE, in duplicate, in the English language.

FOR THE NEW ZEALAND
DEFENCE FORCE

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA

SIGNATURE

SIGNATURE

Captain Peter M. McHaffie

Emmett Paige, Jr.

NAME

NAME

Director, Joint Command,
Control, Communications and
Information Systems

Assistant Secretary of
Defense (Command, Control,
Communications and
Intelligence)

TITLE

TITLE

September 22, 1994
Washington, DC

September 22, 1994
Washington, DC

DATE AND PLACE

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CONFIGURATION OF GPS-PPS SM USER EQUIPMENT

1. Major items of the GPS-PPS SM user equipment are listed below.
2. Options for acquisition of components or subcomponents, by New Zealand, are authorized as provided below. Licensed procurement will take place in accordance with the terms and conditions of USG approved export licenses for commercial sales and FMS procurement will be in accordance with terms and conditions specified in the Letters of Offer and Acceptance.

	<u>FMS</u>	<u>Commercial*</u>
a. Fixed Reception Pattern Antenna/Antenna Electronics	X	X
b. Controlled Reception Pattern Antenna/Antenna Electronics	X	X
c. Receiver		
i. Basic PPS-capable receiver (w/o SM or AOC)	X	X
ii. Basic receiver with SM	X	
iii. Basic receiver with SM and AOC	X	
iv. SM alone	X	
v. AOC alone	X	
d. Control and Display Unit	X	X

* as available