

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

AGREEMENT TO AMEND THE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF AUSTRALIA

CONCERNING ACQUISITION AND CROSS-SERVICING

(Canberra 9 December 1998)

Not yet in force

[2009] ATNIF 19

**AGREEMENT TO AMEND THE AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING ACQUISITION AND CROSS-SERVICING**

The Government of Australia and the Government of the United States of America (the Parties) agree to amend Article VIII of the *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing*, done at Canberra on December 9, 1998, and which entered into force September 22, 1999, to read as follows:

“This Agreement, which consists of a Preamble, Articles I-IX, and Annexes A and B, enters into force on an exchange of notes confirming that each Party has completed its requirements for entry into force of this Agreement and shall remain in force until September 22, 2010 unless terminated by either Party giving not less than 180 days notice in writing to the other Party.”

This Agreement to Amend the Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing, done at Canberra on 9 December 1998, shall enter into force on the date of the latest note of an exchange of notes confirming that each Party has completed its requirements for entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their governments, have signed this amendment.

DONE, in duplicate, at Washington this thirtieth day of July 2009.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

.....
Air Vice-Marshal Kym Osley AM CSC
Head of Australian Defence Staff
Washington DC

.....
Lieutenant General Kathleen M. Gainey
Director for Logistics
J4 The Joint Staff
United States Army

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

**Agreement between the Government of Australia and the Government of the
United States of America concerning Acquisition and Cross-Servicing**

(Canberra, 9 December 1998)

Entry into force: 22 September 1999

AUSTRALIAN TREATY SERIES

1999 No. 18

© Commonwealth of Australia 2000

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING
ACQUISITION AND CROSS-SERVICING**

Preamble

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA (hereinafter referred to as the Parties);

HAVING REGARD to the tradition of close and friendly relations between them;

DESIRING to facilitate the provision of reciprocal logistics support, supplies and
services between the Parties;

RECOGNIZING that Article VII of the Agreement between the Government of
Australia and the Government of the United States of America concerning
Cooperation in Defense Logistic Support done at Sydney on 4 November 1989
(CDLSA),[\[1\]](#) provides that the Parties shall seek to enter into an appropriate cross-
servicing agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

Article I

Purpose

This Agreement is entered into for the purpose of establishing basic terms, conditions,
and procedures to facilitate the reciprocal provision of logistic support, supplies and
services as that term is defined in Article III of this Agreement.

Article II

Applicability

1. This Agreement is designed to facilitate reciprocal logistic support, supplies and
services between the Parties to be used primarily during combined exercises, training,

deployments, operations, or other cooperative efforts and for unforeseen circumstances or exigencies.

2. This Agreement applies to the provision of logistic support, supplies and services to the military forces of one Party by the other Party in return for either cash payment or the reciprocal provision of logistic support, supplies and services to the military forces of the other Party.

3. It is understood between the Parties that acquisitions and transfers under this Agreement and any implementing arrangements executed hereunder are made subject to the availability of appropriations, and acquisition and transfer limitations established by the law and regulations of either or both Parties.

4. The Parties agree that the following items are not eligible for transfer under this Agreement and are specifically excluded from its coverage:

a. weapons systems;

b. major end items of equipment (except for the lease or loan of general purpose vehicles and other items of nonlethal military equipment not designated as part of the United States Munitions List);

c. initial quantities of replacement and spare parts associated with the initial order quantity of major items of organizational equipment covered in tables of allowances and distribution, tables of organization and equipment, and equivalent documents.

5. Also excluded from transfer by either Party under this Agreement are any items the transfer of which are prohibited by its laws or regulations. In so far as they are specifically excluded from transfer by United States law and regulation the following items are excluded from transfer under this Agreement:

a. guided missiles;

b. naval mines and torpedoes;

c. nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition;

d. cartridge and air crew escape propulsion system (AEPS) components;

e. chaff and chaff dispensers;

f. guidance kits for bombs or other ammunition;

g. chemical ammunition (other than riot control agents);

h. source, byproduct, or special nuclear materials or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (title 42, United States Code, section 2011, *et seq.*).

Article III

Definitions

1. As used in this Agreement and in any Implementing Arrangements which provide specific procedures, the following definitions apply:

a. *Logistics support, supplies and services.* Food, water, billeting, transportation, petroleum, oils, lubricants, clothing, communication services, medical/health services, ammunition, base operations support (and construction incident thereto), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and airport and seaport services. Such term also includes the temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List.

b. *Implementing Arrangement.* A written supplementary arrangement related to the specific acquisition and/or transfer of logistic support, supplies and services, which sets forth additional details, terms and conditions which further define and carry out this Agreement.

c. *Order.* An order, when in its proper form and signed by an authorized official (see Article IV, paragraph 6 below), is a request for the provision of specific logistic support, supplies and services pursuant to this Agreement and any applicable Implementing Arrangement.

d. *Invoice.* A document from the supplying Party which requests reimbursement or payment for specific logistic support, supplies and services rendered pursuant to this Agreement and any applicable Implementing Arrangement.

Article IV

Terms and conditions

1. Each Party shall make its best efforts, consistent with national priorities, to satisfy requests from the other Party under this Agreement for logistic support, supplies and services, during peacetime and during periods of national emergency, international tension or active hostilities. When an Implementing Arrangement contains a stricter standard for satisfying such requests, it shall apply over this paragraph.

2. The Parties agree that the transfer of logistic support, supplies and services between the Parties shall be accomplished by Orders issued and accepted under this Agreement and any applicable Implementing Arrangement.

3. An Order may be issued against this Agreement alone without an Implementing Arrangement only in those cases set forth in Annex A.

4. An Implementing Arrangement may be negotiated on the part of the United States by the USCINCPAC Component Commands or their designated Subordinate Commands when operations are conducted within Pacific Command (PACOM) or with PACOM units. When operations are conducted outside PACOM, Implementing

Arrangements may be negotiated on the part of the United States by authorized U.S. Headquarters in coordination with USCINCPAC. An Implementing Arrangement may be negotiated on the part of the United States by either HQ USCINCPAC, or the individual U.S. Military Services. On the part of Australia, Australian Defence Headquarters or its Component Headquarters, or HQ Australian Theatre (HQ AST) or its Component Headquarters shall have the authority to negotiate an Implementing Arrangement.

5. Whether the transfer is accomplished by an Order under this Agreement alone or in conjunction with an Implementing Arrangement, the documents taken together must set forth all necessary details, terms, and conditions to carry out the transfer including the data elements in Annex B.

6. The Parties shall endeavor to adopt a standard Order form. An Implementing Arrangement shall generally identify those personnel authorized to issue and accept Orders under that Implementing Arrangement. The Parties shall notify each other of specific authorizations or limitations on those personnel able to issue or accept Orders directly under this Agreement or under an Implementing Arrangement when the Implementing Arrangement does not state this information. In the case of the United States, these notifications shall go directly to the Component Command concerned. In the case of Australia, these notifications shall go to the Component Headquarters concerned.

7. In all transactions involving the transfer of logistic support, supplies and services, the receiving Party agrees that such logistic support, supplies and services shall not be retransferred, either temporarily or permanently, by any means to other than the forces of the receiving Party without prior written consent of the supplying Party.

Article V

Reimbursement

1. For any logistic support, supplies and services transactions, the Parties shall negotiate for payment either in cash in the currency specified by the supplying Party (a "reimbursable transaction") or in equal value to be defined in monetary terms only (an "exchange transaction"). The receiving Party shall pay the supplying Party under the conditions set out in either 1a or 1b of this Article.

a. *Reimbursable Transaction.* The supplying Party shall submit Invoices to the receiving Party after delivery or performance of the logistic support, supplies and services. Both Parties shall maintain records of all transactions, and each Party shall provide for the reconciliation of accounts not less frequently than every twelve months. Bills prepared by the supplying party shall be accompanied by necessary support documentation and paid within 30 days from the date prepared. In pricing a reimbursable transaction, the Parties agree the following principles shall apply:

(1) In the case of specific acquisition by the supplying Party from its contractors for a receiving Party, the price shall be no less favorable than the price charged the armed forces by the contractor of the supplying Party for identical items or services, less any amounts excluded by Article VI of this Agreement. The price charged may take into

account differentials due to delivery schedules, points of delivery, and other similar considerations.

(2) In the case of transfer from the supplying Party's own resources, the supplying Party shall charge the same price it charges its own forces for identical logistic support, supplies and services, as of the date the Order is accepted, less any amounts excluded by Article VI of this Agreement. In any case where a price has not been established or charges are not made for one's own forces, the Parties shall agree on a price in advance, excluding charges that are precluded under these reciprocal pricing principles.

b. *Exchange Transaction.* Both Parties shall maintain records of all transactions. The receiving Party shall pay by transferring to the supplying Party logistic support, supplies and services that are agreed between the Parties to be of equal monetary value to the logistic support, supplies and services delivered or performed by the supplying Party. If the receiving Party does not complete the exchange within the terms of a replacement schedule agreed to or in effect at the time of the original transaction, within time frames which may not exceed one (1) year from the date of the original transaction, the transaction shall be deemed reimbursable and governed by paragraph 1a above, except that the price shall be established using actual or estimated prices in effect on the date payment would otherwise have been due.

2. When a definitive price for the Order is not agreed upon in advance, the Order, pending agreement on final price, shall set forth a maximum limitation of liability for the Party ordering the logistic support, supplies and services. The Parties shall then promptly enter into negotiation to establish the final price.

3. The invoice shall contain an identification of the applicable Implementing Arrangement or in the absence thereof, refer to this Agreement and shall be in the format set forth by the supplying organization. The Invoice shall be accompanied by evidence of receipt by the Party receiving the logistic support, supplies and services.

4. The Parties agree to grant each other access to documentation and information sufficient to verify, when applicable, that reciprocal pricing principles have been followed and prices do not include waived or excluded costs. Points of contact, who can validate expenses or research charges, shall be identified in each Implementing Arrangement as required.

5. No provision in this Agreement shall serve as a basis for an increased charge for logistic support, supplies and services, if such logistic support, supplies and services would be available without charge or for a lesser charge under the terms of another agreement.

Article VI

Waived or excluded costs

The provisions of any tax and customs relief agreements applicable to the acquisition of materials, services, supplies and equipment by the receiving Party shall apply to logistic support, supplies and services transferred under this Agreement. The Parties

shall cooperate to provide proper documentation to maximize tax relief. In the case where taxes or customs duties for which a receiving Party would ordinarily have an exemption have already been paid by the supplying Party and cannot be recovered, the supplying Party shall advise the receiving Party prior to agreeing to the transaction. In such a case the receiving Party may, if practicable, replace the supplies as an exchange transaction in lieu of reimbursement for the supplies. If exchange is not practicable, the price paid by the receiving Party shall include only those taxes or customs duties not recoverable by the supplying Party.

Article VII

Interpretation and revision

1. Any disagreements regarding the interpretation or application of this Agreement or any implementing arrangements executed hereunder shall be resolved through consultation between the Parties and shall not be referred to any international tribunal or third party for settlement.
2. Either Party may, at any time, request revision of this Agreement by giving the other Party 90 days advance written notice. In the event such a request is made, the two Parties shall promptly enter into negotiations. This Agreement may only be amended by written agreement between the Parties.
3. Classified information and material provided or generated pursuant to this Agreement shall be protected in compliance with the Australia/United States General Security of Information Agreement of 2 May 1962, as amended and the Australia/United States Industrial Security Agreement of 15 August 1966.

Article VIII

Effective date and termination

This Agreement, which consists of a Preamble, Articles I-IX, and Annexes A and B, enters into force on an exchange of notes confirming that each party has completed its requirements for entry into force of this Agreement^[2] and shall remain in force for a period of ten years unless terminated by either Party giving not less than 180 days notice in writing to the other Party.

Article IX

Succession

1. The Acquisition and Cross-Servicing Agreement between the Government of Australia and the Government of the United States of America signed on 30 August 1990, as amended by the Amending Agreement signed at Honolulu on 17 January 1991 ("1990 ACSA") shall terminate on the date that the Agreement enters into force.
2. Notwithstanding paragraph 1, Implementing Arrangements made pursuant to the CDLSA and the 1990 ACSA which are in effect on the date the Agreement enters into

force shall remain in effect for their full duration as if the 1990 ACSA had not been terminated by the Agreement, unless otherwise mutually determined in writing by the Parties.

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

DONE, in duplicate, in the English language, at Canberra this ninth day of December, 1998.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

AUSTRALIA: THE UNITED STATES OF AMERICA:

[Signed:] [Signed:]

C A BARRIE JOSEPH W PRUEHER

Admiral Christopher A. Barrie, AO, RAN Admiral Joseph W. Prueher, USN

Chief of the Defence Force Commander-in-Chief,

United States Pacific Command

ANNEX A

Pursuant to Article IV, paragraph 3, Orders or support requests may be issued against this Agreement alone in the following circumstances:

- a. Orders for logistic support, supplies and services placed during times of active hostilities; and
- b. Orders for logistics support, supplies and services urgently required and not covered by an Implementing Arrangement, provided the Parties to the transaction (or their designated representatives) agree.

ANNEX B

MINIMUM ESSENTIAL DATA ELEMENTS

- (1) Implementing Arrangements or Support Agreement if no Implementing Arrangement
- (2) Date of Order
- (3) Designation and address of office to be billed
- (4) Numerical listing of stock numbers of items, if any
- (5) Quantity and description of material/services requested

- (6) Quantity furnished
 - (7) Unit of measurement
 - (8) Unit price in currency of billing country
 - (9) Quantity furnished (6) multiplied by unit price (8)
 - (10) Currency of billing country
 - (11) Total Order amount expressed in currency of billing country
 - (12) Name (typed or printed), signature, and title of authorized Ordering or requisitioning representative
 - (13) Payee to be designated on remittance
 - (14) Designation and address of office to receive remittance
 - (15) Recipient's signature acknowledging service or supplies received on the Order or requisition or a separate supplementary document
 - (16) Document number of Order or requisition
 - (17) Receiving organization
 - (18) Issuing organization
 - (19) Transaction type
 - (20) Fund citation or certification of availability of funds when applicable under Parties' procedures
 - (21) Date and place of original transfer; in the case of an exchange transaction, a replacement schedule including time and place of replacement transfer
 - (22) Name, signature and title of authorized acceptance official
 - (23) Additional special requirements, if any, such as transportation, packaging, etc
 - (24) Limitation of government liability
 - (25) Name, signature, date and title of supplying Party official who actually issues supplies or services
-

[\[1\]](#) ATS 1989 No. 28.

[\[2\]](#) Notes to this effect were exchanged at Canberra 13 July-22 September 1999. The Agreement entered into force 22