

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE MINISTRY OF NATIONAL DEFENSE OF THE REPUBLIC OF
KOREA
AND**

THE DEPARTMENT OF DEFENCE OF AUSTRALIA

REGARDING

COOPERATION RELATED TO MISSING KOREAN WAR PERSONNEL

The Ministry of National Defense of the Republic of Korea (ROK MND) and the Department of Defence of Australia (ADOD), hereinafter, collectively, the Participants:

Desiring to further promote mutually beneficial relations concerning the location, recovery and identification of missing Korean War personnel;

Recognising the desire of families of personnel who remain missing in action from the Korean War for Republic of Korea and Australian authorities to fully cooperate in order to locate, recover and identify human remains as expeditiously as possible

Have reached the following understanding:

**SECTION 1
DEFINITIONS**

- 1.1 The Participants have mutually determined that the following definitions will be used for to this Memorandum of Understanding (MOU):
 - 1.1.1 **‘Classified Information’** means any Information (namely, knowledge that can be communicated) or material, regardless of the form, that requires protection against unauthorised disclosure or compromise in the interests of national security and is so designated by the application of a security classification or marking.
 - 1.1.2 **‘Information’** means recorded or unrecorded information and material, regardless of form or characteristics and includes, but is not restricted to, documents, equipment, computer software and other items in any form or any experimental and test data, specifications, mathematical formulae, algorithms, designs, circuit layouts, processes, inventions, whether patentable or not, know-how, technical writings, sound recordings, pictorial reproductions, drawings, and other graphic reproductions, computer software, magnetic tape,

computer memory printouts or data retained in computer memory; regardless of whether it is transmitted verbally, visually, in writing, or through the handing over of material or in any other form or manner and include any information which may or may not be subject to Intellectual Property Rights.

1.1.3 **‘Intellectual Property Rights’ (IPR)** means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, trade secrets and know-how, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields.

1.1.4 **‘Third Party’** means a government, other than the Government of a Participant, and any person or entity whose Government is not the government of a Participant.

SECTION 2 OBJECTIVES

2.1 The objectives of this Memorandum of Understanding (MOU) are to facilitate cooperation between ROK MND and the ADOD in order to:

2.1.1 Foster closer relations between the Participants.

2.1.2 Advance common interests in relation to the location, recovery and identification of missing Korean War personnel; and

2.1.3 Continue the long-standing working relationship between the Participants on a better defined and more formal basis.

SECTION 3 PURPOSE AND SCOPE

3.1 The purpose of this MOU is to recognise the collaborative bilateral relationship between ROK MND and the ADOD to locate, recover and identify personnel from the Republic of Korea and Australia who remain missing from the Korean War.

3.2 The activities that may be carried out under this MOU include:

3.2.1 Specific areas of cooperation to be carried out by both the ADOD and ROK MND, as documented in Annex A to this MOU;

3.2.2 Specific activities that ROK MND may carry out at the request of the ADOD, as documented in Annex B to this MOU; and

- 3.2.3 Other areas of cooperation related to the location, recovery and identification of Korean War casualties, as mutually determined by the Participants in writing.
- 3.3 This MOU is not intended to create binding legal relations under domestic or international law for either Participant. The MOU is subject to the respective national laws, regulations and policies of the Participants, and applicable international agreements and arrangements between the Participants or their Governments.

SECTION 4 IMPLEMENTING ORGANISATIONS

- 4.1 Within the ADOD, each Service has responsibility for finding, identifying and appropriately commemorating its missing personnel. Unrecovered War Casualties – Army (UWC-A) within the Australia Army will be the primary ADOD organisation responsible for the ADOD implementation of this MOU, and for accounting for unrecovered war dead of the Australian Army. The History and Heritage Branch of Air Force Headquarters within the Royal Australian Air Force (RAAF) and the Sea Power Centre within the Royal Australian Navy (RAN) perform similar roles in respect of missing RAAF and RAN members and may act as secondary implementing organisations where required.
- 4.2 The Participants acknowledge that the Australian Department of Veterans' Affairs may also have some responsibilities in relation to the recovery of Australian war dead. As may be necessary, the ADOD will be responsible for consulting and engaging with the Australian Department of Veterans' Affairs.
- 4.3 The Ministry of National Defense Agency for KIA Recovery and Identification will be the primary ROK MND organization responsible for the implementation of this MOU.

SECTION 5 FINANCIAL PROVISIONS

This MOU is not intended to create any financial commitments on either ROK MND or the ADOD. Unless otherwise determined in writing, ROK MND and the ADOD will each be responsible for their own costs in relation to activities carried out in accordance with this MOU..

SECTION 6 DISCLOSURE AND USE OF INFORMATION

- 6.1 The Participants recognise that successful cooperation depends on full and prompt provision of Information necessary to carry out such cooperation.

- 6.2 Disclosure: The providing Participant will disclose Information, without charge, to the other Participant provided that:
- 6.2.1 such Information is necessary to or useful in the activities under the MOU, with the providing Participant determining whether it is "necessary to" or "useful in" the activity;
 - 6.2.2 such Information may be made available only if the rights of holders of IPR are not infringed; and
 - 6.2.3 disclosure of such Information is also consistent with national disclosure laws, regulations and policies of the providing Participant.
- 6.3 Use: Unless the providing Participant gives prior consent in writing, Information provided under this MOU will be used only for the purposes for which it was provided. The receiving Participant will not disclose such Information to any other persons (unless otherwise specified by the providing Participant) or use the Information in any other way without the specific prior written consent of the providing Participant. The ADOD may disclose such Information provided by ROK MND under this MOU to the Australian Department of Veteran Affairs.
- 6.4 No transfer of ownership of Information will take place between the Participants under this MOU.
- 6.5 Any Information exchanged or disclosed pursuant to this MOU will be clearly labelled by the providing Participant with the following: the country of origin; any protective markings or any other limitations on its use or disclosure; if applicable, the markings required by paragraph 6.6 of this Section; and that the Information was exchanged or disclosed pursuant to this MOU.
- 6.6 For Information that is subject to disclosure and use restrictions with respect to IPR, the Information will also be marked by the providing Participant with a restrictive legend that sets forth that the Information is proprietary, any limitations on its use or disclosure, including the stated use to which the Information can be put, and to identify the owner of the Information.
- 6.7 In the case of Information, which by its character cannot be labelled or marked, the originating Participant will identify the subject Information and will provide the receiving Participant a written statement indicating the same Information that would have been included in paragraphs 6.5 and 6.6.
- 6.8 Where a Participant receives from the other Participant Information which is not marked as aforesaid but has been provided under this MOU, then the Participants will consult as to the status of the Information before dealing with it. Neither Participant will alter or delete Information provided by the other Participant without the prior written consent of the providing Participant.

- 6.9 The Participants will mutually ensure, by appropriate means available to them, the protection of Information that is subject to IPR and is provided under this MOU.
- 6.10 The Participants will investigate all cases in which it is known or suspected that misuse or loss of Information has occurred and will promptly inform the other Participant of the details of any such occurrence, and of the final results of the investigation and of the corrective action taken to preclude recurrences.
- 6.11 Each Participant will take all appropriate lawful steps available to it to keep Information exchanged or disclosed under this MOU free from disclosure to a third party. In the event that it becomes probable that such Information may have to be disclosed, to anyone other than a Participant or an employee of either the Government of Australia or the Government of the Republic of South Korea, immediate notification in writing will be given to the originating Participant.
- 6.12 A Participant will not disclose, allow access to, transfer or otherwise provide any Information exchanged or disclosed under this MOU, to a Third Party without the prior written approval of the Participant who provided the Information, unless the same Information has been previously received from another source without similar limitations, or the same Information is in the public domain prior to the date when the Information is passed to the Third Party. Such approval will not be given unless the Third Party consents in writing with the Participants that it will:
- 6.12.1 not retransfer, or permit the further retransfer of any Information provided; and
- 6.12.2 use, or permit the use of, Information provided only for the purposes of conducting activities under this MOU, unless otherwise specified in writing by the providing Participant.

SECTION 7 SECURITY

- 7.1 It is the intent of the Participants that activities under this MOU will be carried out at the UNCLASSIFIED level. Unless specifically authorised by a separate written agreement or arrangement, no Classified Information or classified material will be provided or generated under this MOU.

SECTION 8 VISITS

- 8.1 The Participants may mutually determine that visits to its Government establishments, agencies, and laboratories by employees of the other Participant are necessary to carry out the activities under this MOU. Such visits will require authorisation by both Participants and the visiting

employees will have both any necessary and appropriate security clearances and a need-to-know.

- 8.2 All visiting personnel will be required to comply with the security regulations of the hosting Participant. Any Information disclosed or made available to visiting personnel will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.
- 8.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform to the established visit procedures of the host country.

SECTION 9 RESOLUTION OF DIFFERENCES

- 9.1 Any differences regarding the interpretation or application of this MOU will be resolved by consultation between the Participants and will not be referred to any national or international tribunal or court, or to any other third party for settlement.

SECTION 10 DATE OF EFFECT, AMENDMENT AND TERMINATION

- 10.1 This MOU will come into effect on the date of last signature and will remain in effect for a period of five (5) years and thereafter will automatically be extended for subsequent periods of five (5) years unless it is terminated.
- 10.2 The Participants may amend this MOU, including its Annexes, at any time by mutual determination in writing.
- 10.3 The Participants may mutually determine in writing to terminate this MOU at any time.
- 10.4 Either Participant may terminate this MOU by providing the other Participant a notice in writing of its intention to terminate, in which case the MOU will terminate 90 calendar days after the date of receiving such notice. If such notice is provided, the Participants will consult to mutually determine how best to conclude any activities that are in the process of being carried out under the MOU.
- 10.5 The responsibilities of the Participants in relation to Section 5 (Financial Provisions), Section 6 (Disclosure and Use of Information), Section 7 (Security), and Section 9 (Resolution of Differences) continue to have effect notwithstanding termination of the this MOU.

SECTION 11

GENERAL PROVISIONS

11.1 The MOU is not legally binding and does not create any legal rights and obligations under domestic or international law. All activities under this MOU will be carried out in accordance with the respective laws and regulations of the Participants and subject to the availability of appropriated funds and personnel of the Participants.

11.2 Any claims arising under this MOU will be handled in accordance with any applicable respective laws and regulations of the Participants and agreements between the Participants. Where no such agreements apply, claims will be handled as provided under Section 9 of the Memorandum of Understanding between the Ministry of National Defense of the Republic of Korea and the Department of Defence of Australia in the field of Defence Cooperation which came into effect on 14 December 2011.

11.3 If a Participant receives notice of a claim, it will inform the other Participant as soon as practicable. To the extent permitted by their domestic laws and regulations, the Participants will assist each other in the collection of evidence in such cases.

Signed in duplicate, in English and Korean languages on the 10th of December 2019, in Sydney, both texts being equally valid.

For the Department of
Defence of Australia

For the Ministry of National Defense
of the Republic of Korea

Senator LINDA REYNOLDS
Minister for Defence

JEONG, KYEONGDOO
Minister of National Defense

Annexes

- Annex A. Areas in which ROK MND and the ADOD may cooperate
- Annex B. Areas in which the ADOD may seek ROK MND's assistance

Annex A - Areas in which ROK MND and the ADOD may cooperate

1. Exchanges of Information relating to missing personnel and war casualties, with a particular focus on Korean War unidentified personnel, including recovery locations, records of interment (ROI), dental and medical records, x-rays, physical characteristics and other ante or post mortem information that may be available.
2. Exchanges of Information and techniques related to methods of identifying remains, including improvements in DNA sampling and testing techniques.
3. Sharing of DNA and other Information to facilitate identification of remains.
4. Cooperative participation in appropriate field activities and attendance at appropriate training opportunities, the specifics of which will be set out in separate instruments mutually determined between ROK MND and the ADOD.
5. Potential exchanges of personnel, the specifics of which may be set out in separate arrangements concluded between ROK MND and the ADOD.
6. Facilitation of teleconferences as required, but not less than annually, to develop further opportunities for collaboration between ROK MND and the ADOD.

Annex B – Areas in which the ADOD may seek ROK MND’s assistance

1. In the event that there is a high possibility that a recovered remain belongs to the Australian participant, provision of Information relating to potential Australian Korean War remains, including the recovery location of remains and relevant records (ROIs, dental and medical records, x-rays, physical characteristics etc).
2. The acceptance of Australian family reference samples (FRS) for inclusion in appropriate FRS databases and comparison against ROK MND’s recovered remains DNA data.
3. The establishment of procedures to deal with notification of possible DNA matches and any privacy issues regarding FRS.
4. In the event that relations between Republic of Korea and the Democratic People's Republic of Korea (DPRK) allow the Republic of Korea and/or Australia access to the Demilitarized Zone and/or access to the DPRK is allowed for the purposes of searching for missing Korean War personnel, the Participants will discuss the means to carry out Joint Investigation and Recovery operations for both Korean and Australian missing Korean War personnel.