

**GUIDELINES ON THE PREPARATION OF MEMORANDA OF  
UNDERSTANDING FOR OCCAR PROGRAMMES**

INTRODUCTION

1. In this document, the term “Memorandum of Understanding” (MoU) is to be understood as a generic term and may be replaced by other terms such as "administrative arrangement", "co-operation arrangement", or similar terms.
2. These non binding guidelines provide assistance to Programme MoU negotiators on the specific requirements of MoUs for programmes to be managed by the Organisation for Joint Armaments Co-operation, OCCAR; these MoUs will be referred to as "OCCAR Programme MoUs" in the rest of the text. The guidelines provide guidance that should be followed for all OCCAR-Programme-MoUs whenever it is intended to assign a Programme to OCCAR.
3. The OCCAR Board of Supervisors (BoS) acknowledges that the use of these guidelines will ensure consistency with Programme Decisions and eliminate unnecessary duplications. Negotiators are encouraged to ensure that OCCAR Programme MoUs are drawn up in close co-operation with OCCAR-EA and staffed in parallel with other relevant OCCAR documents (e.g. the Programme Decision).  
A table of topics to be covered by the OCCAR Programme MoU on the one hand and by the Programme Decision on the other hand is attached as annex A.
4. The Programme Decision sets out the legally binding commitments between the Participating States and OCCAR, defines the detailed way the Programme will be managed by OCCAR, and outlines the rules and principles that will be applied by OCCAR. The OCCAR Programme MoU concentrates on the commitments of the Participating States towards each other. These guidelines examine each OCCAR Programme MoU section individually and, where appropriate, provide an explanation as to why certain provisions normally seen in a non-OCCAR managed Programme MoU (hereinafter referred to as the Standard MoU) are not included in OCCAR Programme MoUs.
5. These guidelines are not intended to be exhaustive, nor is it essential for an OCCAR programme MoU to follow the precise order of the provisions set out below. It is also possible that the content of the various provisions could change from Programme to Programme. However, it is recognised that some provisions, in particular those dealing with liabilities, settlement of disputes and security are supposed not to conflict with the Programme Decision. Further advice on the application of these guidelines can be sought from OCCAR-EA.

GUIDELINES FOR MOU PROVISIONS FOR AN OCCAR MANAGED  
PROGRAMME

Title Page and Table of Contents

6. There is no need for special treatment or special provisions. Standard MoU texts should be used.

Introduction and Reference to Previous Documents and Agreements

7. This too should follow the Standard MoU format, however, the OCCAR Convention, which was signed in September 1998 and which entered into force on 28 January 2001, should normally be referenced. There is no requirement to refer to other specific OCCAR documents and agreements here, as such documents will be covered within the relevant Programme Decision.

Definition of Terms and Abbreviations.

8. Negotiators should strive to create no more definitions than are strictly needed for the OCCAR Programme MoU and as far as possible should strive to rely on definition of terms and abbreviations as advised by OCCAR.

Programme Phasing

9. Standard MoU text should be used. This section will describe the structure of the Programme and will define the phase(s) to be covered by the OCCAR Programme MoU.

Scope (including off take, if applicable)

10. Standard MoU text should be used. This section will define the work to be carried out under the OCCAR Programme MoU to fulfil the requirements of the Participants including each Participant's "off-takes" where applicable.

Organisation and Management

11. The OCCAR Programme MoU (or an amendment to an existing MoU) will include a provision indicating the Participants' intention to entrust the management of the programme to OCCAR in accordance with its rules regulations and procedures. All of OCCAR's organisation and management processes are outlined in the relevant OMPs and will be defined in the Programme Decision. The detailed organisation and management should not be included in the MoU. Where there are interfaces with other programmes, which may or may not be managed by OCCAR, it may be necessary to include additional provisions on Organisation and Management in the OCCAR Programme MoU.

As far as the decision making process is concerned the general criteria may be defined in the OCCAR Programme MoU and then the detailed process included in the Programme Decision if the two documents are not staffed in parallel.

#### Contractual Processes

12. Contractual processes for OCCAR-managed programmes should not be covered in the MoU. All of OCCAR's contractual processes are outlined in OCCAR's OMPs, and they will be tailored in the Programme Decision.

#### Pricing and Cost Forecasting

13. Pricing and Cost Forecasting should not be covered in the OCCAR Programme MoU but in the Programme Decision.

#### Allocation of Work

14. Historically, collaborative programmes have included rigid work-sharing arrangements designed to ensure that the amount of work placed with the industry of participating states was proportional to their programme cost share (which, in turn, was proportional to their projected off-take from the programme). OCCAR's founding principles include the renunciation of such work sharing arrangements in favour of the concept of "Global Balance", in which work will be balanced between nations over a number of programmes and over a number of years. The Programme Decision will include a reference to "OCCAR Procurement Policy Global Balance" paper dated 13 September 2001, and the OCCAR Management Procedures covering contractual processes. The OCCAR Programme MoU should not therefore include any stipulation on the placement of work. Nevertheless, as this is a fundamental shift from traditional arrangements for collaborative programmes, the OCCAR Programme MoU should include a statement to confirm the Participants' acceptance of the OCCAR Global Balancing arrangements for the programme. It should also set out Participants' agreement not to seek work-sharing, offset, or other work compensation arrangements that are inconsistent with OCCAR rules and procedures.

#### Programme Funding (including Cost Sharing)

15. This section will define ceiling programme costs (both Operational and Administrative Budgets) for each Participant and any phase-related costs that are applicable. It will specify the economic conditions noting any relevant constraints. As this section is fundamental to the operation of the Programme, the provision will be included in the OCCAR Programme MoU and in the related Programme Decision.

#### Financial Processes

16. Financial processes to be used in the Programme should not be covered in the OCCAR Programme MoU.

### Audit

17. The OCCAR Convention sets out the audit requirements for OCCAR programmes. Audit arrangements (for both external and internal audit) will be defined in the Programme Decision. Some nations Supreme Audit Institutions will require the audit arrangements to be repeated in the OCCAR Programme MoU. Care will be necessary to ensure that there is no conflict between the OCCAR Programme MoU audit provisions and OCCAR's audit arrangements (especially those requirements established under the Convention). The OCCAR Programme MoU audit provisions must, therefore, be drawn up in close consultation with OCCAR-EA.

### Taxes and Customs Duties

18. The MoU will record the intention of the Participants to make their best efforts in order to enable the Programme to benefit from the most favourable conditions in terms of taxes and custom duties and similar charges. OCCAR-EA will need to be aware of the details that have been agreed between the programme Participants. The provisions will, therefore, need to be referred to in the Programme Decision.

### Disclosure and use of Technical Information

19. The OCCAR Programme MoU will include a section on the overall treatment of the disclosure and use of Technical Information by the Programme Participants. The treatment of the disclosure and use of Technical Information between the Contractor and/or OCCAR and the Participants will be covered in the Programme Decision.

### Government Quality Assurance (GQA)

20. Government provided Quality Assurance services will be covered by the Programme Decision.

### Sales and Transfers to Third Parties

21. This provision should define the rights of the Programme Participants, separately or jointly, to make sales, disposals or transfer (including of Technical Information), noting any restrictions and any requirements for prior consultation between Participants. These rights should be consistent with the export control procedures envisaged under the LOI Framework Agreement dated 27 July 2000, recognising that other arrangements may be agreed for non-signatories of the LOI Framework Agreement. This OCCAR Programme MoU provision will be referred to in the Programme Decision.

### Levies

22. The OCCAR Programme MoU establishes the principles under which levies, if any, are charged to a Contractor in relation to sales to a Third Party. The OCCAR Programme

MoU should not define the level of levies; this will be dealt with during the contract negotiations. However matters such as the sharing of payments amongst the Participants may be covered in the OCCAR Programme MoU. As this will have a direct bearing on OCCAR's management of the programme the Programme Decision should refer to the relevant OCCAR Programme MoU provision.

#### Special Tooling

23. The conditions under which programme Participants will manage and dispose of special tooling, if any, relating to common programme elements will be defined in the OCCAR Programme MoU. As this will have a direct bearing on OCCAR's management of the programme, the Programme Decision should refer to this OCCAR Programme MoU provision when this is used.

#### Security

24. The OCCAR Programme MoU should address the security aspects between Participants of the Programme (e.g. the classification of the Programme and the procedures for handling classified information by the Participants). OCCAR has its own security provisions and these will be referred to separately in the Programme Decision.

#### Government Furnished Equipment/Services/Facilities/Information (GFX)

25. The conditions for the provision of GFX, if any, will be detailed in the OCCAR Programme MoU. As the provision of GFX will have a direct bearing on OCCAR's management of the programme, the Programme Decision will need to cover fully this issue and be consistent with the OCCAR Programme MoU provision.

#### Changes in Requirement, Withdrawal and Termination

26. The withdrawal from or the termination of an OCCAR Programme involves the withdrawal from or the termination of both the Programme Decision and the OCCAR Programme MoU. Standard MoU text should be used to cover the procedures for withdrawing from or terminating the OCCAR Programme MoU. The conditions to withdraw from or terminate the Programme Decision will only be defined in the relevant Programme Decision. Changes in requirement (including off-take, specification and schedule) will be covered in the same manner.

#### Settlement of Disputes

27. The OCCAR Programme MoU will include provisions for dealing with disputes between the Participants concerning the application and interpretation of the OCCAR Programme MoU. These provisions will make clear that any dispute regarding the interpretation or application of the OCCAR Programme MoU will be resolved through consultation between the Participants concerned, but will not prevent the implementation

of the provisions of the Programme Decision relating to disputes concerning the Programme Decision. Disputes concerning the application or interpretation of the Programme Decision may be made the subject of arbitration under the terms of the OCCAR Convention. The Programme Decision will include a suitable text to cover this aspect.

#### Claims and Liabilities

28. The OCCAR Programme MoU will define the procedure for dealing with claims and liabilities that could arise between Participants, but only those that fall within the scope of the OCCAR Programme MoU. Claims and liabilities between Participants and Third Parties will also be addressed in the OCCAR Programme MoU. It should be noted that the Programme Decision will include provisions for dealing with claims and liabilities relating to OCCAR's management of the Programme (i.e. claims and liabilities that arise between OCCAR and/or a Contractor and the Participants, or between OCCAR and a Third Party). The Programme Decision will be written in a way to exonerate any OCCAR Member States that are not Participants of the Programme.

#### Admission of Additional Participants to a Programme

29. The OCCAR Programme MoU will make provision for the conditions for the possible admission of additional Participants to the Programme. Additional participation will require an amendment to the OCCAR Programme MoU that should define the procedure for admission, address the impact upon the Programme, and set out the terms and conditions for admission. It is important also to ensure (especially in the case of non-Member States) that any new Participant fully accepts OCCAR's management of the programme (including the application of OCCAR rules, principles and procedures). There will be no similar provision in the OCCAR Programme Decision. However, it should be noted that any new Participant will need to become a party to the Programme Decision amended as appropriate after the appropriate modification of the BoS Integration Decision.

#### Amendments, Effective date, Duration, Language and Signature

30. This section should follow standard MoU provisions (i.e. it should define the official language(s) as agreed by the Participants, the effective date and duration, the number of official copies, and the signatories).

#### WHAT TO DO IN CASES OF EXISTING MOUS

31. Where an MoU has been signed to launch a programme outside of OCCAR management and a decision is taken subsequently to integrate the Programme into OCCAR, an amendment to the MoU will be necessary to make it compatible with an OCCAR managed programme. These guidelines apply equally to the amendment of an existing MoU.

PROGRAMMES INVOLVING OCCAR MEMBER AND NON-MEMBER STATES

32. OCCAR Programme MoUs involving Member States and non-Member States should also take into account the paragraph 2.2, paragraph 4 and Annex D of OMP 2. Particular care will be necessary to ensure that the non-Member State(s) accepts OCCAR's management of the Programme and understands the rules and procedures that will be applied and that there is a commitment to follow them.

MoU Guidelines, issue 2  
As noted by the OCCAR Board of Supervisors on 19 May 2005

**ANNEX A**

Note : **As a general reference document for the demarcation between MoUs and Programme Decision** see OMP 2 “Programme Integration Procedures”

Issue	Include in MOU	Include in Programme Decision (PD)	Reference Documents to be used for specific issues
1. Scope (including off-take, if applicable)	Yes	Yes	
2. Organisation and management	No	Yes	OMP 1 “Principle Programme Management Procedure”
3. Contractual processes	No	Yes	OMP 5 “Contract placement Procedure”
4. Pricing and Cost forecasting	No	Yes	
5. Allocation of work	Yes	Yes	Global Balance policy paper; OMP 5 “Contract placement Procedure”
6. Programme Funding (including cost sharing)	Yes	Yes	Global Balance policy paper
7. Financial process	No	Yes	OMP 10 (4.5.1.3) “Financial Rules and Procedures”;
8. Audit	Yes	Yes	OCCAR Convention  BoA ToR
9. Taxes and customs duties	Yes	Yes	
10. Disclosure and use of Technical Information (between participants)	Yes	No	OMP 4 “Legal Aspects”
11. Disclosure and use of Technical Information (between nations and OCCAR)	No	Yes	OMP 4 “Legal Aspects”



MoU Guidelines, issue 2  
As noted by the OCCAR Board of Supervisors on 19 May 2005

Issue	Include in MOU	Include in Programme Decision ( PD)	Reference Documents to be used
12. Government Quality Assurance	No	Yes	GQA Agreement/OMP 7 “Government Quality Assurance Policy”
13. Sales and transfers to third parties	Yes	No	
14. Levies	Yes	Yes	OMP 4 “Legal Aspects”
15. Special tooling	Yes	Yes	
16. Security	Yes	Yes	Security Agreement and OMP 11 “Security Regulations”
17. Government Furnished Equipment/Services/Facilities/Information (GFX)	Yes	Yes	
18. Changes in Requirement, Withdrawal and Termination	Yes (MoU related)	Yes (PD related)	
19. Settlement of disputes	Yes (MoU related)	Yes (PD related)	OMP 4 “Legal Aspects”
20. Claims and liabilities	Yes (MoU related)	Yes (PD related)	OMP 4 “Legal Aspects”.
21. Admission of Additional Participants to a Programme	Yes	No	
22. HLO for OCCAR	No	Yes	OMP 1 “Principle Programme Management Procedure”
23. Programme reporting	No	Yes	