Memorandum of Understanding
between
The Islamic Republic of Afghanistan and the United States of America
On
Afghanization of Special Operations on Afghan Soil

The Government of the Islamic Republic of Afghanistan (hereinafter "Afghanistan") and the Government of the United States of America (hereinafter "United States"), hereinafter known collectively as "Participants" and represented respectively by the Minister of Defense of the Islamic Republic of Afghanistan and the Commander, U.S. Forces--Afghanistan;

Recognizing the principles and provisions of the Constitution of the Islamic Republic of Afghanistan;

Recognizing the progress already made in their partnership aimed at combating international terrorism and extremism and stabilizing Afghanistan;

Building on the progress of the ongoing Transition of lead responsibility in the security sector to the Afghan National Security Forces (ANSF) in accordance with the principles of the Lisbon Declaration;

Highlighting the United States' full respect for Afghanistan's sovereignty;

Recalling the recommendations of the November 2011 Traditional Loya Jirga, with particular focus on the recommendation that "night operations conducted by the American forces must be Afghanized as soon as possible";

Taking note of the progress that has already been made on the Afghanization of special operations;

Have reached the following understandings:

Section One

Definitions

1. For the purpose of this Memorandum of Understanding (MoU), special operations are operations approved by the Afghan Operational Coordination Group (OCG) and conducted by Afghan Forces with support from U.S. Forces in accordance with Afghan laws.

2. The Khasa Amalyati Qeta/Qeta-e-Khas-e-Amalyati, or Afghan Special Operations Unit, hereinafter referred to as the KAQ/QKA, is comprised of Afghan National Army, Afghan

National Police, and National Directorate of Security personnel. The KAQ/QKA leads special operations with support from U.S. Forces to provide security and stability in Afghanistan.

3. The OCG is an Afghan entity manned by Afghan personnel from security and law enforcement agencies. Among its responsibilities, the OCG reviews and approves special operations missions, participates in intelligence fusion, monitors mission execution, makes notifications to Provincial Governors, and makes reports to senior Afghan command authorities. Regional OCGs are being established and are expected to have responsibilities similar to the headquarters OCG.

4. In the context of special operations temporary holding means the holding of a person by Afghan authorities for such time as is consistent with Afghan laws, including Additional Protocol II of 1977 to the Geneva Conventions of 1949 (AP II), to determine if the person meets the criteria for prosecution or detention consistent with international humanitarian law.

Section Two

Terms of Afghanization of Special Operations

5. The Participants affirm their intent to ensure that special operations are conducted within the framework of the Constitution of Afghanistan, including in particular articles 4, 5, 7, 38 and 57 of the Constitution. To that end, the Participants affirm their intent as follows:

a. special operations that are expected to result in detention or the search of a residential house or private compound are to be authorized in accordance with Afghan laws;

b. residential houses are to be searched only if necessary, and as part of the conduct of special operations, only Afghan Forces should search residential houses and private compounds;

c. the KAQ/QKA can enter private compounds, residential houses, and other areas for the purposes of search and arrest, in accordance with Afghan laws, with support from U.S. Forces only as required or requested; and

d. Afghan Forces are to protect any women, children, or culturally sensitive places.

6. Afghanistan affirms that it is to put into place the necessary arrangements and capacities to ensure that special operations are conducted within the framework of the Constitution of Afghanistan, in order to permit the Participants to fulfill their intent under paragraph 5 above. This is to include, but not be limited to:

a. establishing judicial, prosecution, and investigative mechanisms capable of issuing timely and operationally secure judicial authorizations to conduct special operations missions against persons who are reasonably suspected of meeting the criteria for prosecution or detention under Afghan laws, including AP II; and

b. assigning vetted and cleared personnel within the OCG to facilitate the application and issuance of the above described authorizations.

7. In support of the full Afghanization of special operations, and in order to develop an enduring and capable special operations force for Afghanistan, the United States affirms that it is to continue to assist in:

a. increasing the size of KAQ/QKA squads and developing the capacity of the squads to continue to take the lead in special operations missions;

b. developing platoon-sized KAQ/QKA strike forces with key Afghan enablers in order to reduce the number of U.S. strike forces;

c. providing technical assistance as requested by Afghan authorities during temporary holding; and

d. developing the full range of Afghan capabilities required to conduct special operations.

8. U.S. Forces are expected to continue to support such operations and the relevant Afghan participating institutions with the full range of support necessary for those operations and institutions to be successful. This may include but is not limited to providing intelligence and intelligence analysis to the KAQ/QKA in order to give them full operational capability, as well as helicopter and fixed wing lift, fires support, MEDEVAC, and security.

Section Three

Final Provisions

9. Any Afghan nationals detained by U.S. Forces outside special operations are to be released or transferred to Afghan authorities to be prosecuted or held in accordance with Afghan laws, including AP II.

10. The Participants, upon signing this MoU, are to establish a Bilateral Committee on Special Operations. Co-chaired by the Minister of Defense and the Commander, U.S. Forces--Afghanistan, or their designees, the Committee is to be responsible for the following tasks, among others:

a. overseeing the full Afghanization of special operations;

b. resolving any issues that arise from the coordination and conduct of special operations as described in this MoU; and

c. coordinating cooperation between the Participants in the development of Afghanistan's capacities as described in this MoU.

11. The understandings of the Participants reflected in this MoU are without prejudice to existing arrangements and understandings on issues outside the scope of this MoU.

12. All cooperation under this MoU is to be consistent with the Participants' respective rights, obligations, and commitments under international law, and subject to applicable laws and regulations of the Participants.

13. This MoU is intended to commence upon signature.

14. Any disputes with respect to cooperation under this MoU are to be resolved, in the first instance, in the Bilateral Committee on Special Operations established in paragraph 10 above, and may be settled through diplomatic consultations if not so resolved.

15. This MoU was signed on the 8th of April 2012 in the city of Kabul. The English, Pashto, and Dari versions carry equal weight.

For the Islamic Republic of Afghanistan

General Abdul Rahim Wardak
Minister of Defense

For the United States of America

General John R. Allen
Commander, U.S. Forces--Afghanistan