

# Defence Innovation Hub – Innovation Contract Contract Framework



**Australian Government**  
**Department of Defence**

**Contract No** [Insert]

### Item No and item

**1. The Project** [Insert high-level description of Project.]

### Parties

<p><b>2. COMMONWEALTH OF AUSTRALIA</b> represented by the Department of Defence ABN 68 706 814 312 (Defence)</p>	<p>[Insert name of Participant] ABN [insert ABN] (Participant)</p>
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### Details

**3. Standard Terms version** [Insert current version number of, and web link for, the Standard Terms]

**4. What this contract comprises**

This contract comprises:

- this Contract Framework;
- the CPS(s) and any documents incorporated by reference into a CPS;
- the version of the Standard Terms referred to in item 3 of this Contract Framework; and
- the Annexures.

**5. Term**

5.1 This contract commences on the date the last party executes it.  
5.2 This contract ends in accordance with item 6.5b unless terminated earlier.

**6. Continuation of work**

6.1 The parties may agree to amend this contract to include a new CPS to change Phases.

6.2 The Participant may provide a proposal for a new CPS for a new Phase to continue development of the Technology. Defence may also request that the Participant provide such a proposal.

6.3 The proposal must be in the form of a draft new CPS, including details of the further development of the Technology, a proposed project execution plan and pricing. The parties may negotiate the terms of the proposed CPS. If the parties agree on a new CPS, they will enter into a deed, substantially in the form of Annexure A, to update this contract to incorporate the new CPS.

6.4 In making its decision on whether to agree to a new CPS, Defence may consider the assessment criteria against which the Participant's proposal was originally assessed and, amongst other things:

- the maturity of the Technology;
- Defence's then current priorities, policies and strategy;
- whether the Participant has performed satisfactorily under this contract to date;
- the capability potential of the Technology; and
- the terms of the Participant's proposal.

6.5 Without limiting any other termination rights, if the parties have not executed a deed to include a new CPS:

[Defence to insert security classification]

- a. by the date that is 6 months after the date Defence approved the Final Report under the current CPS - either party may terminate this contract by notice to the other party; or
  - b. by the date that is 12 months after the date Defence approved the Final Report under the current CPS - this contract ends unless otherwise agreed by the parties.
- 6.6 The parties may agree for work to commence under a new CPS prior to all Milestones being achieved under the existing CPS. In this case, during that period all references in this contract to 'CPS' are references to both CPSs.
- 6.7 A CPS may be amended in accordance with clause 38.1 of the Standard Terms.
- 6.8 The parties' rights and obligations under an existing CPS are not extinguished by including a new CPS.

**7. Governing law**

[Insert relevant Australian State or Territory]

[Relevant considerations for determining which Australian State or Territory is appropriate for the Project include the Participant's location and the location where the majority of the work is to be carried out. Foreign countries must not be specified.]

**Signed as an agreement**

for and on behalf of the **Commonwealth of Australia** as represented by the **Department of Defence** by

by [Insert name of Participant] in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors: [Participant may provide alternative execution block for approval by Defence if section 127 execution does not apply or is impracticable]

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Signature

-----  
Signature of director

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Print name and position (block letters)

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Print name of director (block letters)

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Date

-----  
Date

in the presence of

-----  
(signature)

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Signature of director / company secretary (delete whichever is not applicable)

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Print name and position (block letters)

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Print name of director / company secretary (delete whichever is not applicable) (block letters)

-----  
Date

-----  
Date

## Innovation Contract No: Insert – Contract Phase Statement (CPS)

### Information for Respondents:

The CPS includes all the critical information for the project. The Innovation Contract will initially have one CPS attached to it for the first Phase. If a project moves to a new Phase, a new CPS will be agreed and added to the Innovation Contract.

There are a number of key inputs that must be agreed when developing an Innovation Contract. These decision points are contained in the items of the CPS set out below. The content of the CPS will be agreed during the RFP and contract negotiation process.

**1. Phase**

Phase 1 – Technology / Concept exploration\*

Phase 2 – Technology demonstrator\*

Phase 3 – Prototype system\*

Phase 4 – Integrated capability demonstration\*

\*delete whichever does not apply

**2. Effective Date**

[Insert]

**3. Phase Objectives**

[Details of the objectives for this Phase (including the point to which the Technology will be developed)]

**Information for Respondents:**

Defence has provided Respondents with a predefined set of objectives according to the proposed contract phase, but will also work collaboratively with Respondents during contract negotiations to develop a set of agreed, realistic and tangible objectives for the Phase specific to the proposed Technology.

**4. Technology**

[Insert description of Technology including key characteristics. The description must be detailed enough to underpin the obligations of the Participant under this contract]

**5. Price (excluding GST)**

[This will be the total of all Milestone Payments for this Phase – see item 19]

**6. Aggregate Price**

[Insert]

**Information for Respondents:** this is not applicable for the first CPS entered into for a Hub proposal

\*insert aggregate of all amounts payable under this CPS and paid under any prior CPS

**7. Intellectual Property**

a. Ownership of Innovation IP: (clause 18.1 of the Standard Terms)	Owner	Details of Innovation IP
	Participant* Defence* named Key Subcontractor* *delete whichever does not apply [If Key Subcontractor, specify name]	[Insert details of Innovation IP ownership. If there is only 1 owner of Innovation IP, insert "All Innovation IP".] [This contract does not permit multiple persons to own the same item of Innovation IP (i.e. joint ownership), so this field must detail how the parties will

		determine who owns each particular item of Innovation IP.]
	Participant* Defence* named Key Subcontractor* *delete whichever does not apply [If Key Subcontractor, specify name]	
	Participant* Defence* named Key Subcontractor* *delete whichever does not apply [If Key Subcontractor, specify name]	
<b>b. Additional purposes for the licence of Innovation IP and Background IP:</b> (clause 18.2a and 18.2b.ii of the Standard Terms)	[Insert]	
<b>c. Restrictions on Defence's rights to sublicense Innovation IP or Background IP:</b> (clause 18.2b of the Standard Terms)	[Insert] <b>Information for Respondents:</b> Defence will not accept amendments that, in effect, eliminate its sublicensing rights in clause 18.2b. The scope of Defence's licence to undertake Capability Development Activities under the Innovation Contract cannot be restricted. Any proposed restriction should be consistent with the Defence Innovation Hub IP Strategy and Defence's need to sublicense Innovation IP and Background IP in the limited circumstances specified in clause 18.2. Proposed restrictions on Defence's rights to sublicense will be taken into account in Defence's consideration of value for money.	
<b>d. Additional purposes for the licence of Defence IP:</b> (clause 18.5b of the Standard Terms)	[Insert]	
<b>e. Restrictions on the Participant's rights to Innovation IP or Defence IP:</b> (clause 18.5 and 18.7 of the Standard Terms)	[Insert]	

8. **Defence Representative** [Insert name / title]  
[Insert address]  
[Insert email address]
9. **Participant Representative** [Insert name / title]  
[Insert address]  
[Insert email address]
10. **Confidential provisions** [Insert items of the CPS or Annexures that the parties agree to keep confidential.]

**Information for Respondents:**  
 Defence will only agree to keep confidential a specific CPS or Annexure item where the item meets the Commonwealth's policy on the identification of Confidential Information, including the 'Confidentiality Test' contained on the Department of Finance (DoF) website at <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>.  
 The following four criteria comprise the 'Confidentiality Test', and must all be met for a Participant's commercial information to be Confidential Information:  
 a. Criterion 1: The information to be protected must be specifically identified;  
 b. Criterion 2: The information must be commercially sensitive;  
 c. Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party; and  
 d. Criterion 4: The information was provided with an express or implied understanding that it would remain confidential.  
 The period of confidentiality must be specified for each item (e.g., for the period of the contract, a period specified in the contract). It should not be for an unlimited period.  
 Pricing provisions must only be listed if they meet the Confidentiality Test.  
 You do not need to specify any submission documents (e.g. draft PEP) or deliverables here. Submission documents are treated as confidential under the terms of the Call for Submissions/Request for Proposal (as applicable) and Confidential Information in any deliverable will be kept confidential in whole or in part in accordance with clause 19 of the Standard Terms.

**11. Security classification (if any)**

Security classification: (clause 35.2)	[Insert classification] [This will be completed by Defence after it assesses the proposal]	
DISP membership required: (clause 35.2a)	<input type="checkbox"/> Yes / <input type="checkbox"/> No	
Personnel security clearance: (clause 35.2c)	[Insert classification]	
Facility/ICT accreditation: (clause 35.2d)	<input type="checkbox"/> Facility accreditation required <input type="checkbox"/> ICT system accreditation required [insert required (eg document storage / equipment / COMSEC etc)] up to and including [Insert classification / business impact level]. <input type="checkbox"/> Classified assets [Insert business impact level]	
Security Classification and Categorisation Guide included: (clause 35.3)	<input type="checkbox"/> Yes / <input type="checkbox"/> No	
COMSEC material: (clause 35.7)	<input type="checkbox"/> Yes / <input type="checkbox"/> No If Yes:	
	<input type="checkbox"/> transmitted in Australia	<input type="checkbox"/> transmitted overseas

**12. Liability and Insurance**

<b>Limitation Amount (clause 30.1)</b>	[To be inserted by Defence based on the assessment of risks including potential loss or damage to Defence under the contract]
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<b>Insurance policies (clause 28.1)</b>	
<b>Policy</b>	<b>Insurance Policy Limit</b>
Public liability	[Respondent to insert]

Professional indemnity	[Respondent to insert, if applicable] [relevant where the Participant is providing Defence with professional advice or services e.g. engineering services]
Products liability	[Respondent to insert, if applicable] [relevant where the Participant will manufacture, deliver, alter or install a prototype or other product for demonstration, testing or systems integration]
Other	[Respondent to insert any other insurance which may be applicable. This may include cyber risk or motor vehicle insurance.]

13. Optional terms

Term	Applies*	Details
Clause 50 (Access to Defence Premises)	Y/N	[Insert][If 'Y' is selected, detail the Defence Premises which will be made available]
Clause 51 (Third party funding)	Y/N	[Insert][If 'Y' is selected, detail the funding amount, the third party and timing for payment, and how the Respondent intends to notify Defence of receipt of funds from the third party]
Clause 52 (IP Deed)	Y/N [Insert 'Y' where a Key Subcontractor is involved or a third party owns the Background IP]	[Insert]
Clause 53 (Systems integration)	Y/N [Insert 'Y' where access to Defence's systems or ICT environment is required to perform this contract]	[Insert][If 'Y' is selected, detail the Defence systems or equipment required for integration. Greater detail about the nature of integration, risks of integration and any modification or remediation work which may be needed to Defence systems or ICT environment etc should be provided at CPS 15 and in the PEP in order to ensure that access to Defence Items and systems can be fully considered by relevant Defence stakeholders.]
Clause 54 (Indigenous Procurement Policy)	Y/N	n/a
Clause 55 (Late Payment)	Y/N [Insert 'Y' if the contract value specified in item 5 is not more than A\$1 million (GST inclusive)]	n/a

[Defence to insert security classification]

Clause 56 (Change of Control)	Y/N	n/a
Clause 57 (Delivery requirements)	Y/N [Insert 'Y' if any physical Deliverables are specified in item 18]	[Insert] [If 'Y' is selected, detail the physical deliverables to be delivered under this contract including number of physical deliverables, storage and packaging requirements etc]
Clause 58 (Indemnity)	Y/N	n/a

\*Delete as applicable

**Item 14 – Key Subcontractors**

No.	Name (and ABN/ACN) of Key Subcontractor	Key Subcontractor's role in the Project	Background IP contributed by Key Subcontractor	Subcontract value (\$)
[Insert]	[Insert subcontractors that qualify as 'Key Subcontractors' under clause 22.1 of the Standard Terms. Other subcontractors should be detailed in the PEP]	[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]	[Insert]	[Insert]

**Item 15 – Defence Items**

No	Description of item	Permitted use and modifications	Restrictions on use and IP rights (if applicable)	Date and place to be provided	Date and place to be returned (if applicable)	Additional requirements
1	[Insert] [See also PEP Requirements. Additional detail regarding any Defence Items will need to be included in the PEP]	[Insert]	[Insert]	[Insert]	[Insert]	[e.g. rectify Defence Item to full working state where damage may occur during testing]
2	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]
3	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]
4	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]
5	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]

**Item 16 – Key Persons**

Name	Role / Work to be performed
[Insert Respondent personnel only]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]



### Item 17 - Project Execution Plan (PEP)

#### **Information for Respondents:**

As part of the RFP process, Respondents will be asked to develop a draft Project Execution Plan (PEP). Once agreed with Defence, the PEP will be inserted into the contract at item 17, or included as Attachment 1 to this contract if substantial in size, and will form the first Milestone under the contract.

The PEP can be in your own format, however Respondents are encouraged to refer to the PEP Requirements document for guidance. The PEP should specify your overall approach to managing the project, the resources you intend to use to develop the Technology, maturing your innovation and complying with the requirements of this contract.

The content for a PEP will vary depending upon the Phase and type of innovation proposed. Defence will work with you during the RFP process to develop an appropriate level of project planning.

**Item 18 – Deliverables and Deliverable requirements**

**Information for Respondents:**

Defence recognises that each Innovation Contract will be unique and the Deliverables that may be required for a Project will differ. Defence has proposed some deliverables in the table below to which you may propose changes. Defence will collaborate with Respondents during the contract negotiation process to agree a set of realistic and meaningful Deliverables specific to the proposed innovation or Technology.

The purpose of the Deliverables is to provide evidence for the design decisions undertaken in relation to the Project. It is intended that the Deliverables will also provide sufficient confidence that the activities proposed can be undertaken without endangering the safety of people, harming the environment or adversely affecting the operational effectiveness of Defence capabilities. It is not intended that the Deliverables developed for a Phase will provide all of the evidence required to support a Defence acquisition process.

**18.1 Deliverables**

18.1.1 [The Deliverables for Phase 1 are set out in the following Table.]

No	Name and description	Conforming to...	Version	Approval / Review?	Delivery Date	Delivery, format
1	[Insert Deliverable Name]	[Insert relevant clause]	[Insert Version Type]	[Insert type]	[Insert delivery date]	[Insert deliverable recipient and format]

**18.2 Deliverable requirements**

[Insert – this section will include the requirements for the applicable Deliverables.]

**Item 19 – Milestones, Milestone requirements and Milestone Payments**

**Information for Respondents:**

A Milestone within an Innovation Contract may be made up of one or more Deliverables identified at Item 18. Defence will collaborate with Respondents during the contract negotiation process to agree a schedule of achievable Milestones over the life of the Innovation Contract. The Milestone schedule will be designed to achieve value for money for Defence by ensuring that Defence can demonstrate that each Milestone Payment reflects the value of the Deliverables received by Defence prior to the Milestone Payment being due, and which balances the Respondent’s cash flow requirements with incentivising performance throughout the life of the contract. Advance payments or ‘front-loading’ of payments is not acceptable.

**19.1 Milestones and Milestone Payments**

19.1.1 [The Milestones and Milestone Payments for Phase 1 are set out in the following Table.]

No	Milestone	Criteria for achievement	Milestone Date	Milestone Payment
1	[Insert Milestone Description]	[Insert criteria for achievement of Milestone]	[Insert the date by which the Milestone must be achieved. This should generally be a period from contract commencement, rather than a fixed date – e.g. ‘Effective Date + 30 days’.]	[Insert Milestone payment]

**19.2 Milestones Requirements**

19.2.1 [Insert – this section will include the requirements of achieving the applicable Milestones]

# Innovation Contract - Standard Terms

## Version 2

### The work

#### 1. Participant to develop Technology

- 1.1 The Participant must:
- deploy the resources and carry out the activities described in the PEP and any approved Plan;
  - use its best endeavours to develop the Technology and ensure that the Technology meets the requirements in the CPS; and
  - achieve the Phase Objectives.

- 1.2 Defence accepts that it may become apparent during the Term that, despite the Participant using its best endeavours, it is not possible in the circumstances to develop the Technology as envisaged by this contract. If this is the case, and the Participant has otherwise performed its obligations under this contract, the Participant will not be in breach of clause 1.1 (or clauses 2.1 or 3.1 if the Participant cannot achieve a Milestone or deliver a Deliverable as a result), provided it follows the procedure in clauses 7 and 9.

#### 2. Milestones

- 2.1 The Participant must achieve each Milestone by the relevant Milestone Date.
- 2.2 The Participant only achieves a Milestone if the criteria in item 19 of the CPS for that Milestone are met.
- 2.3 The Participant must notify Defence if it considers that a Milestone has been achieved and, if requested, must give Defence evidence that the criteria have been met. Within 15 Working Days (or such other time as agreed by the parties) after the Participant gives Defence notice, Defence must notify the Participant:
- confirming that the Milestone has been achieved; or
  - advising that the Milestone has not been achieved, in which case Defence must identify which criteria for the Milestone were not met or why the evidence was not satisfactory.
- 2.4 If Defence advises that a Milestone has not been achieved, the Participant must rectify the issues identified by Defence and give evidence to Defence that the issues have been rectified. If Defence confirms the Milestone has been achieved on submission of this evidence, the Participant is taken to have satisfied clause 2.1 for that Milestone.

- 2.5 A Deliverable that requires approval under item 18 of the CPS is not taken to be delivered for the purposes of achieving the Milestone criteria until Defence has approved that Deliverable.

#### 3. Deliverables

- 3.1 The Participant must:
- deliver each Deliverable by its date for delivery in item 18 of the CPS;
  - deliver each Deliverable in accordance with the delivery requirements (including as to format and location) identified in item 18 of the CPS (or as otherwise notified by Defence); and
  - ensure that each Deliverable meets the Deliverable's description and requirements set out in item 18 of the CPS, to Defence's reasonable satisfaction.
- 3.2 For Deliverables that are to be approved under item 18 of the CPS, Defence must, within 15 Working Days (or such other time as agreed by the parties) after submission of the relevant item(s) for approval:
- approve the Deliverable where all requirements have been met; or
  - reject the Deliverable, in which case Defence must notify the Participant of the defects that causes the rejection.
- 3.3 If Defence rejects a Deliverable, the Participant must rectify the deficiencies or omissions identified by Defence and resubmit the Deliverable within the period specified by Defence in the rejection notice. If Defence approves the Deliverable on resubmission, the Participant is taken to have satisfied clause 3.1 for that Deliverable.

#### *Ownership and risk*

- 3.4 Unless otherwise stated in the PEP or otherwise agreed by the parties, title to each Deliverable transfers to Defence on delivery. If title is not transferred to Defence on delivery, Defence has no obligation to maintain any Deliverable or to take any care of any Deliverable in its care, custody and control.
- 3.5 Defence may elect to return a Deliverable to the Participant (including for disposal) at any time up to 1 year after the expiry or termination of this contract if the PEP so specifies – in which case title transfers on delivery to the Participant.
- 3.6 The Participant bears the risk of loss of, or damage to, a Deliverable until its delivery to Defence, and at any other time it is in the Participant's care, custody and control.
- #### 4. Technical Data
- 4.1 The Participant must regularly update the TD Schedule and must ensure that the TD Schedule identifies the Technical Data

- described in clause 4.2, including any Technical Data in existence at the Contract Start Date and as updated or created under this contract. A copy of the TD Schedule must be provided to Defence promptly on request and may be approved by Defence.
- 4.2 The Participant must provide to Defence all Technical Data required:
- a. to enable the assessment, analysis, testing and evaluation of the Technology by Defence;
  - b. to enable the evaluation of the maturity of the Technology and the potential development and application of the Technology (including potential installation or integration of the Technology into other systems);
  - c. to enable the verification of the results, outcomes and recommendations in the Deliverables;
  - d. to undertake Capability Development Activities; and
  - e. by the PEP or a Deliverable.
- 4.3 The Participant must provide the Technical Data described in clause 4.2 at the times and in the manner specified in the PEP, or otherwise promptly following a request from Defence.
- 4.4 Defence may provide Technical Data to a third party in accordance with its IP rights set out in clause 18.
- 4.5 Defence must act reasonably in exercising its rights under this clause 4.
- 5. Standard of work**
- 5.1 The Participant must carry out work under this contract in accordance with the standards specified in this contract, all applicable laws and otherwise in accordance with good industry practice.
- 5.2 For the purposes of clause 5.1, "good industry practice" means practices, methods and standards that would reasonably be expected from professional and experienced contractors in the relevant industry undertaking the same type of work as the Participant in the same or similar circumstances.
- 6. Location of work**
- 6.1 The Participant must ensure that the work under this contract is substantially carried out in Australia unless otherwise specified in the PEP or otherwise agreed by the parties.
- Problem Solving**
- 7. Participant to notify Defence**
- 7.1 If the Participant becomes aware that it may not be able to:
- a. develop the Technology;
  - b. comply with the PEP;
  - c. deliver a Deliverable; or
  - d. achieve a Milestone,
- the Participant must promptly give a notice to Defence.
- 8. Defence to notify Participant**
- 8.1 Subject to any security, confidentiality or other restrictions on Defence, Defence will endeavour to inform the Participant if the Defence Representative becomes aware of:
- a. any material obstacles to the use of the Technology; or
  - b. any competing technology which could materially affect the commercial viability of the Technology or the success of the Project.
- .
- 9. Parties may request information and resolution plan**
- 9.1 If:
- a. the Participant gives a notice under clause 7.1;
  - b. Defence gives a notice under clause 8.1; or
  - c. Defence gives notice to the Participant that it considers that the Participant may be unable to do the things referred to in clause 7.1a to 7.1d,
- the parties must meet promptly, and in any event within 20 Working Days, of the notice.
- 9.2 The purpose of the meeting is to provide a forum within which the Participant and Defence can agree the next steps, which may include one or more of the following:
- a. the development by the Participant of a written report:
    - i. identifying the obstacles to meeting the requirements of this contract;
    - ii. identifying what would be required to overcome those obstacles (if this is possible);
    - iii. identifying any potential uses of the Technology even if it cannot be developed as envisaged by this contract;
    - iv. detailing the resources that the Participant has deployed to date in the performance of its obligations under the PEP; and
    - v. addressing any other matters required by Defence; or

- b. the amendment of the CPS to adjust the work required under this contract;
  - c. obtaining the assistance of any specified third party;
  - d. appointing an independent third party to help the parties resolve the issues relevant to performance of this contract; or
  - e. agreement to terminate this contract – in which case the parties must agree a termination date and any conditions of termination (which could include provision by the Participant of a report satisfactory to Defence addressing the matters set out in clause 9.2a and the payment of reasonable costs in accordance with clause 32.4).
- 9.3 If the parties cannot agree to the next steps, Defence may require the Participant to provide a detailed written report satisfactory to Defence (which may address the matters set out in clause 9.2a).
- 9.4 Defence may terminate this contract by notice if the parties have not agreed the next steps under clause 9.2 within 2 months of meeting under clause 9.1. Defence may exercise its right under this clause 9.4 in addition to its right under clause 9.3.
- 9.5 Each of Defence and the Participant must act reasonably and in good faith in exercising its rights under this clause 9.
- 9.6 Clause 7 and this clause 9 do not limit Defence's termination rights.

### ***Collaboration and cooperation***

#### **10. Agreement to work together**

- 10.1 The parties agree to work together cooperatively and collaboratively to achieve the Phase Objectives, including:
- a. by informing each other in a timely way of matters that may affect the Project and performance of this contract;
  - b. as applicable, by Defence Personnel and Participant Personnel working together (in accordance with the PEP);
  - c. by sharing relevant documents, information and opinions reasonably required for performance of the contract;
  - d. by working co-operatively to minimise and mitigate Project risks;
  - e. by striving to resolve differences between them quickly; and
  - f. by dealing with each other frankly and openly, on a "best for project" basis.

- 10.2 The parties agree that nothing done in collaborating, cooperating or working together as required by clause 10.1 will have the effect of:

- a. amending the express provisions of this contract;
- b. waiving a right in connection with this contract; or
- c. releasing an obligation under this contract.

#### **11. Defence's role**

- 11.1 The Participant acknowledges and agrees that:

- a. the Participant cannot rely on any representations made by Defence about the use of the Technology after its development under this contract;
- b. even if the Technology meets the requirements of this contract, it may not be suitable for use by Defence;
- c. further development of the Technology may be required in addition to activities under this contract to develop the Technology into a working state suitable for a subsequent Defence procurement or certification; and
- d. Defence is under no obligation to procure the Technology under a subsequent contract.

- 11.2 Defence's approval of any Plan or any test readiness review or the provision of a test readiness review certificate is for Defence's benefit only and cannot be relied on by the Participant. Defence makes no representation by giving such approval or certificate.

### ***Payment***

#### **12. Payment of Milestone Payment**

- 12.1 Defence must pay the Participant each Milestone Payment within 30 days after receiving a correctly rendered invoice for the payment, if:
- a. Defence has confirmed under clause 2.3 or 2.4 that the Milestone for the relevant Milestone Payment has been achieved; and
  - b. the Participant has provided any supporting documentation or evidence reasonably required by Defence to substantiate the Participant's entitlement to the payment.
- 12.2 The Participant may only submit an invoice to Defence if Defence has confirmed under clause 2.3 or 2.4 that the Milestone for the relevant Milestone Payment has been achieved.
- 12.3 An invoice is correctly rendered if:

- a. it includes the amount of the Milestone Payment and the amount of GST payable;
  - b. it is correctly addressed and calculated in accordance with this contract;
  - c. it includes the contract number, and the name and phone number of Defence's Representative; and
  - d. it is a valid tax invoice under the GST Act.
- 12.4 Payment of an invoice must be made by electronic funds transfer to the credit of the account notified to Defence by the Participant.
- 12.5 Payment of an invoice is not evidence that the obligations under this contract have been performed, or of the value of the obligations performed, or an admission of liability.
- 12.6 On receipt of an invoice from the Participant, Defence may reject the invoice where:
- a. the Participant is not entitled to payment under this contract (including where the requirements of clause 12.1 have not been met); or
  - b. the invoice is not correctly rendered.
- 12.7 If Defence rejects the invoice under clause 12.6, Defence must notify the Participant within 10 Working Days of receipt of the invoice, providing reasons for rejection and any action to be taken by the Participant for the invoice to be payable.
- 12.8 Upon receipt of a notice issued under clause 12.7 the Participant must promptly take all necessary steps to make the invoice for payment conform to the requirements of this contract and must submit a revised invoice to Defence when such action is complete. The resubmitted invoice will be subject to the same conditions in this clause 12, as if it was the original invoice.
- 13. Taxes included**
- 13.1 The parties agree that the Price includes all applicable Australian and overseas taxes, duties and government charges, excluding GST.
- 13.2 Defence must, in addition to the Price, pay the amount of GST imposed on taxable supplies made by the Participant under this contract and the value of the taxable supply will be taken to be amount of the Price attributable to the taxable supply.
- 13.3 If Defence makes, or is assessed by the Commissioner of Taxation as having made, a taxable supply to the Participant under or in connection with this contract, Defence will be entitled to recover from the Participant upon presentation of a valid tax invoice, the amount of GST paid

or payable by Defence. An amount of GST to be paid by the Participant under this clause is a debt recoverable by Defence.

**14. Defence may set off**

- 14.1 Defence may set off against (deduct from) amounts that it owes to the Participant under this contract, any amounts that the Participant owes to Defence in connection with this contract.

***Defence Items***

**15. Defence Items**

- 15.1 Subject to clause 15.3, Defence must provide the Defence Items to the Participant as set out in item 15 of the CPS.
- 15.2 The Participant must:
- a. use the Defence Items only for the purposes set out in item 15 of the CPS;
  - b. not modify a Defence Item except as set out in item 15 of the CPS;
  - c. take reasonable care of the Defence Items, including by providing suitable facilities to store and handle and protect the items;
  - d. ensure that any restrictions on the use of a Defence Item that are set out in item 15 of the CPS, or which are otherwise notified to the Participant, are complied with;
  - e. return all Defence Items (other than consumables) to Defence at the time and place specified in item 15 of the CPS, or as otherwise directed by Defence; and
  - f. comply with any additional requirements specified in item 15 of the CPS.
- 15.3 A delay in the Participant meeting its obligations under this contract may result in Defence not being able to provide a Defence Item at the required time or place.
- 15.4 If Defence is not able to make available a Defence Item in the way set out in item 15 of the CPS, Defence must notify the Participant and the parties must seek to agree appropriate next steps.
- 15.5 The Participant must notify Defence within 5 Working Days after becoming aware of any loss of or damage to, or a defect in, a Defence Item.
- 15.6 For the purposes of clauses 15.7, 15.8 and 15.10, a delay in delivering a Defence Item includes any delay caused by a Defence Item being delivered that is not fit for the purpose specified in item 15 of the CPS.
- 15.7 If there is a delay in delivering a Defence Item:
- a. except to the extent that the delay was caused by the Participant not meeting its obligations under this

- contract, the Participant will be entitled to a schedule adjustment in accordance with clause 17; and
- b. if the delay significantly and adversely affects the ability of the Participant to provide a Deliverable – the Participant may, within 3 months after the delay arising, terminate this contract by notice to Defence.
- 15.8 Defence may terminate this contract by notice to the Participant if:
- a. Defence is delayed in delivering a Defence Item as result of the Participant not meeting its obligations under this contract;
  - b. it is not practicable (taking into account costs, logistics and other competing Defence requirements) for Defence to supply the Defence Item (or replacement item) to the Participant within a reasonable period; and
  - c. without the relevant Defence Item, the Participant is unable to perform some or all of its obligations under this contract.
- 15.9 Defence gives no warranty, and makes no representations, about the suitability or fitness for purpose of any Defence Item.
- 15.10 Defence has no liability and the Participant has no entitlement resulting from a delay in a Defence Item being delivered, other than under clause 15.7 and 32.4.
- 15.11 The Participant is liable for any Loss incurred by Defence in connection with any loss of, or damage to, a Defence Item that arises while the Defence Item is in the care, custody or control of the Participant or the Participant's Personnel, except:
- a. any loss or damage that arises as a result of modification expressly contemplated by item 15 of the CPS;
  - b. fair wear and tear;
  - c. to the extent Defence or Defence Personnel's Default or wilful misconduct contributed to that loss or damage; or
  - d. to the extent that the loss or damage arose from an Excepted Risk.
- 15.12 The Participant must not:
- a. use Defence Items otherwise than for the purposes of its work on the Project;
  - b. transfer possession or control of a Defence Item to anyone else (except to a Key Subcontractor or with Defence's prior consent);
  - c. create a security interest in respect of a Defence Item, or allow one to be created; or
- d. act contrary to any IP rights applicable to the Defence Items notified in the CPS or as notified by Defence.
- 15.13 Nothing in this clause 15 affects the ownership of a Defence Item.

### Adjusting the schedule

#### **16. Participant to minimise delays**

- 16.1 The Participant must take all reasonable steps to prevent and minimise delay and to mitigate both parties' Loss due to delay.

#### **17. Entitlement to schedule adjustment**

- 17.1 The Participant is entitled to postponement of a Milestone Date or to a Delivery Date:
- a. to the extent that the Participant is delayed by an event or circumstance that is beyond the reasonable control of the Participant and its Subcontractors; and
  - b. provided the Participant has taken all reasonable steps to prevent and minimise delay and to mitigate both parties' Loss due to delay.
- 17.2 If the Participant makes a claim for postponement of a Milestone Date or to a Delivery Date:
- a. Defence must, to the extent it considers that the Participant is entitled to postponement of a Milestone Date or Delivery Date under clause 17.1, agree to grant the postponement; and
  - b. the Defence Representative and Participant Representative may agree to update the dates in item 19 or 18 of the CPS to implement the agreed postponement without entering a deed in accordance with clause 38.1.
- 17.3 The Participant is not entitled to postponement of a Milestone Date or Delivery Date and must instead follow the procedures set out in clauses 7 and 9 where the Participant becomes aware that it is unable to achieve a Milestone Date or a Delivery Date because:
- a. it is unable, despite using its best endeavours, to develop the Technology;
  - b. it is unable to comply with the PEP; or
  - c. because the resources allocated to the development of the Technology, as set out in the PEP, are insufficient.
- 17.4 Without limiting clause 1.2, the Participant is not entitled to postponement of a Milestone Date or Delivery Date to the extent the delay resulted from a Default of the Participant or any Subcontractor.



## Intellectual Property and Confidential Information

### 18. Intellectual property

- 18.1 Ownership of Innovation IP will vest, immediately on creation of that IP, in the person identified in item 7a of the CPS. For clarity, separately identifiable items of Innovation IP may be owned by different persons identified in item 7a, however, Innovation IP does not vest in two or more persons under this contract.
- 18.2 The Participant grants to Defence (and must ensure that its Key Subcontractors and other third parties grant to Defence) a royalty-free, irrevocable, world-wide, non-transferable, perpetual and non-exclusive licence (including a right to sublicense) of all Innovation IP (other than Defence IP) and Background IP on the following basis:
- a. Defence and Defence Personnel may use, reproduce, adapt, modify and disclose (but not to any other person) the IP for the purpose of undertaking Capability Development Activities and for any additional purposes listed at item 7b of the CPS;
  - b. subject to any restrictions identified in item 7c of the CPS, Defence may sublicense the IP to any person for any or all of the following purposes:
    - i. the purpose of completing the development of the Technology if Defence terminates this contract under clause 9.4 or 32.1;
    - ii. any additional purpose listed at item 7b of the CPS; and
    - iii. any other purpose where the Participant has provided its prior written consent;
  - c. without limiting clause 18.2b, Defence may sublicense the IP in Technical Data relating to form, fit and function, external interface or test data for the Technology to any person in connection with the installation or integration of the Technology into a Defence system or the integration of third party technology into a Defence system relevant to the Technology; and
  - d. Defence will be entitled to use, reproduce, adapt, modify and disclose the IP (and sublicense the IP to any person) for any Defence Purposes if an Insolvency Event occurs in respect of the Participant.
- 18.3 If the Defence Representative becomes aware of any significant improvements in the Technology created by Defence (or any of its sublicensees) during the Term of this contract as a result of the exercise of the IP rights granted under clause 18.2, Defence must (subject to any security, confidentiality or other restrictions on Defence) use its best endeavours to notify the Participant and the Participant may request that Defence grant a licence (or ensure a licence is granted) of the IP relating to the improvements under clause 18.6.
- 18.4 If the Participant does not intend to undertake any further development, testing or production of the Technology, or Defence considers (acting reasonably) that the Participant does not (taking into account further funding that may be available from Defence to further develop the Technology) have sufficient resources, financial capacity or technical capability to undertake such development, testing or production, the parties agree to negotiate in good faith the commercial terms on which:
- a. the Participant may grant to Defence (or ensure Defence is granted) a licence of that IP for Defence Purposes; or
  - b. the Innovation IP and Background IP (other than Defence IP) may be assigned to Defence (or its nominee).
- 18.5 Defence grants to the Participant a royalty-free, world-wide, non-transferable and non-exclusive licence of all Defence IP to use, reproduce, adapt, modify and disclose the Defence IP (subject to any restrictions identified in item 7e of the CPS or as otherwise notified by Defence under clause 18.8) for:
- a. the purpose of performing its obligations under this contract; and
  - b. any additional purpose listed at item 7d of the CPS.
- The licence in this clause 18.5 includes the right to sublicense the Defence IP to the extent necessary to enable the Participant to perform its obligations under this contract and subject to the restrictions identified in item 7e of the CPS or as otherwise notified by Defence under clause 18.8.
- 18.6 The Participant may, at any time, request that Defence grant a licence to use, reproduce, adapt, modify and disclose the Defence IP or any other IP developed by Defence in relation to the Technology for the purpose of proposed development, testing or production of the Technology. The request must set out the commercial terms proposed by the Participant in relation to the licence. Defence agrees to consider any request under this clause 18.6, but Defence will not be obliged to grant any such licence.
- 18.7 The Participant must comply, and must ensure that the Participant Personnel and any person to whom the Participant

- provides Innovation IP or Defence IP complies, with any restrictions on the use, reproduction, adaptation, modification or disclosure of Innovation IP or Defence IP identified at item 7e of the CPS or in the IP Schedule, or as otherwise notified by Defence under clause 18.8.
- 18.8 Despite any other provision of this contract, Defence may notify the Participant of restrictions on the use or disclosure of Innovation IP or Defence IP for national security, government-to-government or Export Approval reasons.
- 18.9 If Defence makes available Innovation IP or Background IP (other than Defence IP) to a third party, Defence must obtain and provide to the Participant an IP confidentiality deed poll substantially in the form of Annexure B signed by the third party restricting the disclosure and use of information in connection with that IP.
- 18.10 If the Participant makes available any Defence IP to a third party, the Participant must obtain and provide to Defence an IP confidentiality deed poll in the form of Annexure B signed by the third party restricting the disclosure and use of information in connection with that IP.
- 18.11 The Participant grants to Defence (or must ensure Defence is granted a licence of all Other Supplier IP on the best available commercial terms available to the Participant, except that the licence must not (unless agreed by Defence in writing) include:
- a. any indemnity or warranty to be given by Defence; or
  - b. require the payment by Defence of any royalty or other amount.
- 18.12 The Participant must regularly update the IP Schedule and must ensure that it identifies all Innovation IP, Background IP, Other Supplier IP (including identifying the owner of each item of IP) and, where applicable, Defence IP. A copy of the IP Schedule must be provided to Defence promptly on request and may be approved by Defence. Defence must act reasonably in exercising its rights under this clause 18.12.
- 18.13 The Participant warrants that Defence will not, in exercising its IP rights granted under or in connection with this contract, infringe the IP or any Moral Rights of any person.
- 19. Confidential Information**
- 19.1 Each party agrees not to disclose:
- a. Confidential Information provided to it by the other party; or
  - b. the contents of the Confidential Provisions;
- except:
- c. with the consent of the other party;
- d. in the case of Defence, to Defence Personnel;
  - e. in the case of the Participant, to its officers, members and employees, to the extent necessary for them to perform their roles in connection with this contract;
  - f. to its agents, Subcontractors, legal and other advisers and auditors to the extent necessary for them to perform their roles in connection with this contract;
  - g. as required or authorised by law;
  - h. in the case of Defence - as required to comply with statutory or portfolio duties, or for public accountability reasons, including to comply with a request by Parliament, a parliamentary committee or a Minister;
  - i. in the case of the Participant - to a Related Body Corporate for internal group management purposes; or
  - j. as necessary for the proper conduct of legal proceedings arising in connection with this contract.
- 19.2 For the purpose of clause 19.1 and the definition of Confidential Information, to the extent that Defence is identified in item 7a of the CPS as an owner of Innovation IP, that Innovation IP, and any information related to that Innovation IP, that is commercially sensitive and is created by the Participant or Participant Personnel in the performance of this contract will be taken to have been provided to the Participant by Defence.
- 19.3 The Participant acknowledges and agrees that:
- a. nothing in clause 19.1 prevents Defence from exercising its IP rights under this contract (including its rights under clauses 18.2 to 18.4) or its rights with respect to Defence IP (including where that involves a disclosure of Confidential Information); and
  - b. Defence may disclose any Confidential Information (including in Technical Data, Deliverables or other material containing IP owned by the Participant or a Key Subcontractor or any other third party) to the extent necessary for Defence to exercise its IP rights under clause 18.2 or 18.4.
- 19.4 The Participant must not disclose information under clause 19.1f or 19.1i unless the recipient is obliged to act consistently with this clause 19. Any disclosure by a recipient that would be a breach of this clause is taken to be a breach by that party.

- 19.5 Defence must not disclose Confidential Information to any Defence Service Provider under clause 19.1d unless the recipient is obliged to act consistently with this clause 19.

*Public Announcements*

- 19.6 The Participant must not publicly disclose, or make any public announcement or announcement to the media about, the Project (including any results of the Project) or this contract (including by the publication of research papers or other publications) without Defence's prior written approval, which must not be unreasonably withheld. This does not prevent announcements that the Participant is required to make to comply with a written law (including applicable rules of a stock exchange).

*No exclusion of law or equity*

- 19.7 This contract does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

**Governance**

**20. The Representatives**

- 20.1 The Defence Representative administers this contract for Defence.  
 20.2 The Participant Representative administers this contract for the Participant.

**21. Notices**

- 21.1 To be effective, a notice or communication (including a waiver, approval, acceptance, consent or agreement) under this contract must be:
- a. in writing (which includes email);
  - b. signed by the sender's Representative; and
  - c. addressed to the other party's Representative.
- 21.2 A notice or communication sent by email in accordance with the requirements of clause 21.1 will be taken to be signed by the named sender.
- 21.3 A notice or communication that meets the requirements of clause 21.1 and is sent to other party's address (physical or email) in this contract (or the replacement address most recently notified by the other party) is effectively delivered at the earlier of the following times:
- a. when it is actually received at the address;
  - b. if sent as an email - when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee,

but notices or communications delivered after 1700 on a Working Day are taken to be delivered at 0900 on the next Working Day.

**Subcontracting**

**22. Key Subcontractors**

- 22.1 The Participant must not subcontract any work under this contract to a person who is not a Key Subcontractor if the proposed Subcontractor will, under or in connection with the Subcontract:
- a. use Defence Items on an ongoing basis or require ongoing access to Defence Premises;
  - b. provide goods or services that will form a significant part of the work under this contract; or
  - c. create any IP, or provide IP that is or is likely to be, significant for the development, testing, production, installation, integration or use of the Technology.
- 22.2 The Participant may request that Defence approve an additional Subcontractor to be included as a Key Subcontractor in item 14 of the CPS. Defence must act reasonably in deciding whether to approve proposed Key Subcontractors and must make a decision and notify the Participant as soon as practicable. The Defence Representative and Participant Representative may agree to update the item 14 of the CPS to include the additional Subcontractor without entering a deed in accordance with clause 38.1.
- 22.3 The Participant will not, by subcontracting any part of the work under this contract, be relieved of its obligations and the Participant will be responsible for all Subcontractors.
- 22.4 The Participant must not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

**Participant Personnel**

**23. Key Personnel**

- 23.1 The Participant must ensure that each Key Person is appointed to the roles or positions described for that Key Person in item 16 of the CPS.
- 23.2 The Participant must not replace a Key Person without Defence's prior approval. The Defence Representative and the Participant Representative may update item 16 of the CPS to reflect any approved changes to Key Persons without entering into a deed in accordance with clause 38.1.
- 23.3 If the Participant becomes aware that a Key Person is unable, or may be unable, to perform their role, the Participant must:

- a. promptly notify Defence; and
  - b. as soon as practicable, appoint another person, approved by Defence, to perform that role.
- 23.4 Defence must act reasonably in deciding whether to approve the proposed appointment of any Key Person and notify the Participant as soon as practicable.
- 23.5 The Participant must promptly remove a Key Person from their role performing work under this contract and nominate a replacement if Defence gives it a notice, including reasons, that in Defence's opinion the Key Person is:
- a. unable to perform their work due to incapacity or incompetence; or
  - b. not appropriate for their role for reasons relating to work health and safety, security, equity and diversity, workplace gender equality, probity or the relationship between Defence and the Participant.
- d. promptly notify Defence of any refusal to grant, revocation or qualification of an Authorisation required for performance of the work under this contract (including provision of the Deliverables).
- 24.4 The Participant must comply with Defence policies listed on the Defence Innovation Hub website <https://innovation.defence.gov.au> and as otherwise notified by Defence.

**25. Work Health and Safety**

- 25.1 Without limiting clause 24.2, the Participant must:
- a. not perform work under this contract in a manner that results in Defence or Defence Personnel contravening WHS Legislation or any applicable standards or Defence policy relating to WHS; and
  - b. promptly provide any information or copies of documentation requested by Defence to enable Defence to comply with its obligations under WHS Legislation.

**Law and Commonwealth policies**

**24. Law and policies**

- 24.1 The law in force in the State or Territory of Australia specified in item 7 of the Contract Framework governs this contract and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this contract.
- 24.2 The Participant must comply with, and must ensure any Subcontractor complies with, all applicable laws in connection with work being performed under this contract. "Applicable laws" include:
- a. the WHS Legislation;
  - b. the *Defence Trade Controls Act 2012*;
  - c. the *Customs Act 1901* and regulations made under that Act;
  - d. the *Workplace Gender Equality Act 2012*; and
  - e. the *Privacy Act 1988*.
- 24.3 The Participant must:
- a. ensure that it, and all Participant Personnel, hold and obtain all Authorisations (including Export Approvals) necessary to perform the work under this contract including the provision of all Deliverables;
  - b. ensure that all work under this contract is performed, and all Deliverables and other items provided under this contract are provided, in accordance with all Authorisations;
  - c. provide a copy of any Authorisation to Defence within 10 Working Days of a request; and

**26. WHS Notifiable Incidents**

- 26.1 If, in connection with work under this contract, a Notifiable Incident occurs:
- a. on Defence Premises; or
  - b. which involves Defence Personnel, Participant Personnel or Subcontractors,
- the Participant must:
- c. immediately report the incident to Defence;
  - d. promptly give Defence copies of any notices or other documents provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
  - e. give Defence any other information as may be required by Defence to facilitate the notification to, or investigation by, the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation; and
  - f. provide other reasonable assistance required by Defence to undertake mandatory incident reporting.

**Records and access to records and premises**

**27. Maintain records and provide access**

- 27.1 The Participant must:
- a. maintain records, in sufficient detail, which are complete and accurate and which fully reflect all work done, expenditure incurred and results achieved in the

- performance of this contract (the **Project Records**); and
- b. on any reasonable request by Defence, give Defence (and any person authorised by Defence) timely and sufficient access to its premises, hardware, software, records (including the Project Records) and accounts for any purpose related to this contract and Defence may copy and retain any such records or accounts;
- and must ensure that each Key Subcontractor does the same.
- 27.2 The Participant must co-operate with the Auditor-General (including by providing access to personnel, records and accounts) conducting reviews under the *Auditor-General Act 1997* in relation to the Project (and must ensure that each Key Subcontractor does the same).
- 27.3 Defence must comply with any reasonable safety and security requirements or codes of behaviour applicable to the Participant's, Key Subcontractor's or Subcontractor's premises when accessing the relevant premises.

### **Insurance**

#### **28. Insurance requirements**

- 28.1 The Participant must maintain:
- a. all insurance and registrations required by law;
  - b. any insurance identified in item 12 of the CPS with at least the limits of indemnity specified in that item; and
  - c. such other insurance, with such limits of indemnity, as a prudent Participant undertaking similar work would maintain.
- 28.2 The insurance must, unless otherwise agreed:
- a. be effected before the Participant commences work under the CPS; and
  - b. be maintained until the expiry or termination of this contract, except in the case of professional indemnity insurance which must be maintained for 7 years after the expiry or termination of this contract.
- 28.3 The Participant must use its best endeavours to ensure that all its Key Subcontractors are covered by insurance that is appropriate (in terms of risks covered, and limits of cover) to their work in connection with this contract.

#### *Public liability cover*

- 28.4 Any public liability insurance must be written on an occurrence basis with the specified limit of indemnity each and every occurrence, and must cover the

Participant and Participant Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under this contract by the Participant or Participant Personnel.

#### *Professional Indemnity cover*

- 28.5 Any professional indemnity insurance must:
- a. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Participant or Participant Personnel under this contract;
  - b. have the specified limit of indemnity per claim and in the aggregate for all claims in any 12 month policy period; and
  - c. cover claims arising up to 7 years after this contract terminates or expires.
- 28.6 In addition to clause 28.5, any professional indemnity insurance should cover:
- a. claims related to software and IT risks, unless the Participant has insured against these risks in a separate policy and demonstrates such to Defence's satisfaction; and
  - b. claims for unintentional breaches of IP rights.

#### *Products liability cover*

- 28.7 Any products liability insurance must be written on an occurrence basis with the specified limit of indemnity per claim and in the aggregate for all claims in any 12 month policy period, and must cover the Participant and Participant Personnel for their respective liabilities caused by, arising out of, or in connection with, the negligent manufacture, processing, alteration, repair or installation of any product.
- 28.8 Except for insurances required by law, each insurance required by this contract must be with an insurer with a financial security rating of "A" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or with an insurer approved by Defence, acting reasonably.

#### *Evidence of cover*

- 28.9 The Participant must, on request, produce evidence satisfactory to Defence, acting reasonably, of compliance with this clause.

### **Indemnities and limitation of liability**

#### **29. Indemnities**

- 29.1 The Participant indemnifies Defence against any Loss arising from any Injury

- to, or death of any officer or employee of the Participant or a Subcontractor in connection with this contract.
- 29.2 The amount that the Participant is to pay under the indemnity in clause 29.1 is reduced to the extent that the Participant demonstrates that the Loss arose out of or as a consequence of a Default or wilful misconduct by Defence or Defence Personnel.
- 30. Limitation of liability**
- 30.1 The liability of the Participant to Defence under or in connection with this contract (including at general law, in negligence or in equity) is limited (in aggregate) to the Limitation Amount listed at item 12 in the CPS.
- 30.2 The limitation in clause 30.1 does not apply to a liability of the Participant in respect of:
- a. death, personal injury, disease or illness of any person;
  - b. loss of or damage to any property (other than Defence property);
  - c. infringement of IP rights (including Moral Rights);
  - d. breach of confidentiality, privacy or security obligations; or
  - e. fraud, wilful misconduct or a criminal offence.

### ***Asset Disposal***

#### **31. Asset Disposal**

- 31.1 The Participant must promptly notify Defence as soon as practicable after it becomes aware that an Asset Disposal is likely to occur and seek Defence approval of the Asset Disposal.
- 31.2 Defence must act reasonably in deciding whether to approve a proposed Asset Disposal and notify the Participant of its decision including any conditions to approval as soon as practicable.

### ***Termination***

#### **32. Termination rights**

##### *Specific termination rights*

- 32.1 Without limiting its rights at law or under this contract, Defence may terminate this contract by notice to the Participant if:
- a. the Participant breaches this contract and the breach is not capable of remedy;
  - b. the Participant does not, within 20 Working Days after receiving notice from Defence, remedy a breach of this contract which is capable of remedy;
  - c. an Insolvency Event occurs in respect of the Participant;
  - d. a termination right arises under clause 56;

- e. an Asset Disposal of the Participant occurs without Defence's approval;
- f. the Participant fails to notify Defence of a conflict of interest or risk of such a conflict of interest in accordance with clause 36 or is unable or unwilling to resolve the conflict of interest as required, or in the opinion of Defence, the conflict cannot be satisfactorily resolved or managed; or
- g. the Participant would have, except for the operation of the limitation in clause 30.1, been liable to Defence, under or in connection with this contract, for an amount greater than the Limitation Amount listed at item 12 in the CPS.

32.2 This contract will terminate if the parties agree to terminate as contemplated under clause 9.2e or if a termination right is enforced under clause 9.4, 15.7b or 15.8 (or 50.4c, if applicable) or item 6.5a of the Contract Framework.

##### *Termination for any reason*

32.3 In addition to any other rights it has under this contract, Defence may at any time terminate this contract by notice to the Participant.

##### *Termination costs*

32.4 If this contract is terminated under clause 15.7b or 32.3 or the parties agree that reasonable costs are payable as a condition of termination as contemplated by clause 9.2e:

- a. the Participant must stop work under this contract in accordance with the notice and mitigate all Loss (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected Key Subcontractors; and
- b. provided the Participant has complied with all of its obligations under this contract, the Participant is entitled to reimbursement of any reasonable costs incurred by the Participant in performance of its obligations under the CPS that are directly attributable to the termination, if the Participant substantiates these amounts to the satisfaction of Defence and provided the total amount paid by Defence to the Participant under this contract (including the reimbursement) is not more than the Aggregate Price set out in item 6 of the CPS.

#### **33. Timing of termination**

33.1 Termination takes effect on the date of a notice of termination or, in the case of

- termination by Defence, if the notice of termination specifies a later date, the later date.
- 33.2 A termination under clause 9.2e will take effect on the date agreed by the parties.
- 34. What happens on termination or expiry**
- 34.1 On termination or expiry of this contract:
- a. the Participant must comply with any directions given by Defence (including in connection with the delivery of documents, return of Defence Items and ceasing use of any Defence IP);
  - b. except as provided for in clause 32.4b, Defence will not have any liability to the Participant other than for Milestones achieved before the effective date of termination; and
  - c. the Participant will not be entitled to revenue or profit anticipated on any part of this contract terminated.

### **Defence security**

#### **35. Defence Security**

- 35.1 The Participant must:
- a. ensure that Participant Personnel undertake any security checks, clearances or accreditations as required by Defence;
  - b. notify Defence of any changes to circumstances which may affect the Participant's capacity to perform this contract in accordance with Defence's security requirements; and
  - c. provide written undertakings in respect of security or access to Defence place, area or facility in the form required by Defence.
- 35.2 The security classification of the Technology will be up to and including the level specified in item 11 of the CPS. The Participant must:
- a. if required in item 11 of the CPS, obtain and maintain membership of DISP in accordance with Principle 16 of the DSPF;
  - b. if not required to be a member of the DISP, comply with the classification and protection of official information requirements of Principle 10 of the DSPF;
  - c. ensure that all required personnel (if any) possess a personnel security clearance specified in item 11 of the CPS, and comply with the requirements and procedures of Principle 40 of the DSPF; and
  - d. possess the facility accreditation (if any) and ICT system accreditation (if any) specified in item 11 of the CPS and comply with the requirements and procedures of Principle 73 of the DSPF.

- 35.3 The Participant must classify all information in its possession relating to the performance of this contract according to the Security Classification and Categorisation Guide at Annexure E, or as otherwise agreed by the Commonwealth, and must ensure that such information is safeguarded and protected according to its level of security classification.
- 35.4 The Participant must ensure that no security classified information furnished or generated under this contract is released to a third party, including a representative of another country, without prior written approval of the originator through the Defence Representative.
- 35.5 The Participant must promptly report to the Defence Representative any instance in which it is known or suspected that security classified information furnished or generated under this contract has been lost or disclosed to unauthorised parties, including a representative of another country.
- 35.6 The Participant must ensure that all security classified information transmitted between the parties or a party and a Key Subcontractor, in Australia, whether generated in Australia or overseas, are subject to the terms of Principle 71 of the DSPF.
- 35.7 The Participant must ensure that:
- a. without limiting clause 35.6, all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia must be subject to the terms of Principle 13 of the DSPF; and
  - b. all security classified information transmitted between the parties or a party and a Subcontractor located overseas, whether generated in Australia or by another country, are subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
- 35.8 The Participant must ensure the requirements of this clause 35 are included in all contracts with Key Subcontractors and Subcontractors where the Key Subcontractor or Subcontractor requires access to any Defence place, area or facility, or to security classified information, in order to perform its obligations under that contract.

### **Conflict of Interest**

#### **36. Conflict of Interest**

- 36.1 The Participant:
- a. warrants that, to the best of its knowledge after making diligent inquiry, no conflict of interest exists

- at the Contract Start Date, or is likely to arise in the performance of its obligations under this contract by itself or any Participant Personnel; and
- b. must promptly notify Defence if such a conflict or risk of such a conflict of interest arises.
- 36.2 Within 5 Working Days after giving notice under clause 36.1, the Participant must notify Defence of the steps the Participant will take to resolve the issue. If Defence considers those steps are inadequate, it may direct the Participant to resolve the issue in a manner proposed by Defence.
- 36.3 The Participant must ensure that all Key Subcontracts contain equivalent provisions to those set out in this clause 36.
- d. any information provided by the Participant concerning any significant effect that withholding approval will have on the person's employment or remuneration opportunities or the performance of this contract; and
- e. the requirements set out in Defence's post separation employment policy, as applicable.

### **Post Defence Separation Employment**

#### **37. Post Defence Separation Employment**

- 37.1 Except with the prior written approval of the Defence Representative, the Participant must not allow (and must ensure that each Key Subcontractor does not allow) any Defence Personnel who, at any time during the preceding 6 month period was engaged or involved in:
- a. the preparation or management of this contract;
- b. the assessment or selection of the Participant; or
- c. the planning or performance of any activity relevant or related to this contract,
- to perform, contribute to or advise on the performance of this contract (or Key Subcontract).
- 37.2 For clarity, the 6 month period referred to in clause 37.1 applies from the date which is 6 months before the date on which the Participant proposes that the person start performing or contributing to the performance of this contract (or Key Subcontract).
- 37.3 The Defence Representative must not unreasonably withhold approval of a person under clause 37.1 and, in making a decision, must consider:
- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 6 month period;
- b. any information provided by the Participant about the character and duration of the services proposed to be performed by the person under this contract (or Key Subcontract);
- c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of this contract (or

### **Miscellaneous provisions**

#### **38. Amendments to this contract**

- 38.1 Except as specifically provided for in this contract, this contract may be changed (including the CPS), but only by a deed between the parties in the form of Annexure A.
- 38.2 The Defence Representative and the Participant Representative may agree in writing to update the PEP, IP Schedule and TD Schedule to reflect any agreed changes without entering into a deed in accordance with clause 38.1.

#### **39. Survival**

A provision of this contract that expressly or by implication is intended to survive the termination or expiration of this contract, and any rights arising on termination or expiration, will survive.

*Examples:* provisions relating to indemnities, confidential information, privacy, IP, the right of Defence to recover money and defence security.

#### **40. Preservation of rights and remedies**

- 40.1 Failure by either party to enforce a right of this contract does not affect the enforceability of that or any other right.
- 40.2 The rights and remedies provided under this contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.
- 40.3 Subject to the terms of this contract, the rights and obligations of the parties under this deed are in addition to and not in derogation of any other right or obligation between the parties under any other contract to which they are parties.

#### **41. No assignment**

A party may not assign or otherwise deal with its rights under this contract without the written consent of the other party.

#### **42. Severability**

If any part of this contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The



- remainder of this contract, and the operation of this contract outside that jurisdiction, are not affected.
- 43. Entire agreement**  
To the extent permitted by law, this contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 44. No agency**  
44.1 The Participant and Participant Personnel are not, merely because of this contract, employees, partners or agents of Defence, and the Participant must not represent itself, and must ensure that Participant Personnel do not represent themselves, as being an employee, partner or agent of Defence.
- 45. Discretion in exercising rights**  
45.1 Unless expressly stated otherwise, each party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this contract, in its absolute discretion (including by imposing conditions).
- 46. Counterparts**  
46.1 This contract may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document.
- 47. Interpretation**  
47.1 In this contract, unless the contrary intention appears:
- a. headings do not form part of this contract;
  - b. the singular includes the plural and vice-versa;
  - c. a reference to a person includes a body politic, body corporate or a partnership;
  - d. if the last day of a period prescribed for the doing of an action falls on a day which is not a Working Day, the action must be done no later than the end of the next Working Day;
  - e. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
  - f. a reference to a "dollar", "\$", "\$A" or "AUD" means the Australian dollar;
  - g. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or
- document, as amended or brought into existence from time to time;
- h. the word "includes" in any form is not a word of limitation;
  - i. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this contract; and
  - j. a reference to liquidation or insolvency includes official management, judicial management, receivership, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- 47.2 To the extent there is any inconsistency between the provisions of this contract, a descending order of precedence will be given to:
- a. the Contract Framework;
  - b. the CPS (excluding item 17);
  - c. these Standard Terms;
  - d. item 17 of the CPS;
  - e. Annexures C, E and F; and
  - f. Annexures A and D,
- and the provision in the higher ranked document will prevail.
- 47.3 To the extent this contract provides for the Participant to be liable for any Loss, if Defence elects to recover an amount from the Participant in respect of that Loss, it may give the Participant a notice of the existence of a debt recoverable which must be paid by the Participant within 30 days of receipt of notice.
- 48. Glossary**  
48.1 In this contract:
- Authorisation**  
a licence, permit, Export Approval or other authority required by law that:
- a. a person needs to do work under this contract; or
  - b. is needed for a Deliverable or any other item to be provided or used by Defence for its intended purpose.
- Asset Disposal**  
occurs where the Participant transfers or otherwise disposes of its ownership of or any rights to:
- a. the Innovation IP; or

- b. any tangible asset owned or licensed by the Participant that is, or is likely to be, necessary for the development, testing, production or installation or integration of the Technology, or the proper performance of this contract.

#### Background IP

IP in respect of the Technology or a Contract Deliverable that is:

- a. in existence at the Contract Start Date; or
- b. subsequently created other than as a result of the performance of this contract or a Key Subcontract,

but does not include Other Supplier IP or Defence IP.

For clarity, Background IP includes IP that is owned by a person other than the Participant or Key Subcontractor where that IP is or is likely to be, significant for the development, testing, production, installation, integration or use of the Technology.

#### Capability Development Activities

activities relating to:

- a. scientific, technical or applied research and development activities;
- b. studies, analyses and investigation in relation to current and future technology and capability (including the Technology developed under this contract);
- c. the assessment, investigation and development of options to meet Defence's capability needs and operational requirements; or
- d. the development and definition of functional and performance requirements to support the procurement of technology or capability,

for Defence Purposes, but does not include Commercialisation.

#### Change of Control

occurs where a person obtains, or ceases to have:

- a. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the votes that may be cast at a general meeting of the Participant;
- b. the ability to dispose or exercise control over the disposal of more than 50% of the shares in the Participant;
- c. the ability to appoint or remove a majority of the directors of the Participant;
- d. the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the

board of directors of the Participant; or

- e. other means, direct or indirect, of controlling the decision making and financial and operating policies of the Participant.

#### Commercialisation

exploitation of IP in return for the receipt of a royalty or a commercial return.

#### COMSEC

means communication security.

#### Confidential Information

information that is commercially sensitive (not generally known or ascertainable and disclosure would cause unreasonable detriment to the owner of the information) and was provided with an express or implied understanding that it would remain confidential), but not information that:

- a. is or becomes public knowledge otherwise than by breach of this contract or any other confidentiality obligation;
- b. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- c. was independently developed or acquired by the receiving party.

#### Confidential Provisions

the provisions of this contract identified in item 10 of the CPS.

#### Contract Deliverable

anything that, under this contract, must be delivered to Defence (whether under this Phase or any previous Phase) and includes each Deliverable listed in item 18 of the CPS or any previous CPS for this contract.

#### Contract Framework

the document entitled 'Contract Framework' executed by both parties.

#### Contract Phase Statement or CPS

subject to item 6.6 of the Contract Framework, the most recent of:

- a. the document included in this contract at Contract Start Date entitled Contract Phase Statement (CPS); and
- b. any new document entitled Contract Phase Statement (CPS) included in this contract in accordance with item 6.3 of the Contract Framework.

#### Contract Start Date

the date this contract commenced under item 5.1 of the Contract Framework.

#### Default

a breach of:

- a. an express or implied obligation or warranty in this contract or an associated contract;

- b. a general law duty that applies in relation to this contract or an associated contract; or
- c. an applicable written law in relation to the performance of this contract or an associated contract.

In this definition, 'associated contract' includes Subcontract or another contract entered into in connection with this contract.

**Defence IP**

IP that is:

- a. Innovation IP owned by Defence; or
- d. IP in data, software or other items, provided by Defence to a Participant, for the purposes of this contract.

**Defence Item**

an item identified in item 15 of the CPS.

**Defence Personnel**

any Defence Service Provider and each of the following:

- a. an officer or agent of the Commonwealth;
- b. an employee in the Department of Defence; or
- c. a member of the Australian Defence Force (including a reservist),

and their equivalents from other organisations on exchange to Defence.

**Defence Premises**

means property owned by, leased or licensed to, or otherwise occupied by, the Commonwealth and administered by Defence.

**Defence Purposes**

purposes within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peace-keeping and emergency aid to the civil community, and purposes that are necessary or incidental to any of those purposes.

**Defence Representative**

the person identified as the Defence Representative in item 8 of the CPS or as otherwise notified by Defence.

**Defence Service Provider**

means a person engaged to perform a function, or discharge a duty, of Defence, including a person engaged to provide:

- a. professional, administrative, contract management or project management services to Defence; or
- b. technical management or assurance services, including in relation to verification and

validation, safety, certification, security, or capability development.

**Deliverable**

each Deliverable listed in item 18 of the CPS.

**Delivery Date**

the date identified for each Deliverable in item 18 of the CPS.

**DISP**

means Defence Industry Security Program.

**DSPF**

means Defence Security Principles Framework, as amended from time to time.

**Excepted Risk**

means an event or circumstance that is any of the following:

- a. an act of God, including a natural disaster, such as a bushfire, an earthquake, a flood, a landslide or a cyclone;
- b. war, invasion, acts of foreign enemies, hostilities between nations, a terrorist act as defined in section 100.1 of the Criminal Code, civil insurrection or militarily usurped power;
- c. confiscation by governments or public authorities; and
- d. ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels.

**Export Approval**

an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of the Deliverables or any other item provided under this contract.

**Final Report**

the 'Final Report' listed as a Deliverable in item 18 of the CPS.

**GST Act**

the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**ICT**

means information and communications technology.

**Injury**

any injury, disease or illness.

**Innovation IP**

IP in respect of the Technology or a Contract Deliverable or any other item which is created under this contract or a Key Subcontract.

### **Insolvency Event**

being in liquidation or provisional liquidation or under administration; having a controller (as defined in the *Corporations Act 2001* (Cth)), a receiver as defined in the *Receiverships Act 1993* (NZ) or analogous person appointed to it or any of its property; being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand; being unable to pay its debts (or presumed to be unable to pay its debts under the *Companies Act 1993* (NZ)); being or presumed to be insolvent, dead, bankrupt, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason; taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)); being declared at risk pursuant to the *Corporations (Investigation and Management) Act 1989* (NZ); having a statutory manager appointed or a recommendation for such an appointment to be made; entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or any analogous event under the laws of any jurisdiction.

### **Intellectual Property or IP**

all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

### **IP Schedule**

means

- a. the IP Schedule at Annexure C;
- b. any IP Schedule approved by Defence as part of a Deliverable; or
- c. any version of the IP Schedule provided to Defence in accordance with clause 18.12, which Defence approves.

### **Key Person**

a person identified in item 16 of the CPS.

### **Key Subcontract**

a Subcontract entered into with a Key Subcontractor.

### **Key Subcontractor**

a Subcontractor that will under or in connection with the Subcontract:

- a. use Defence Items on an ongoing basis or require ongoing access to Defence Premises;

- b. provide goods or services that will form a significant part of the work under this contract; or
- c. create any IP, or provide IP that is or is likely to be, significant for the development, testing, production, installation, integration or use of the Technology,

and which is identified as a 'Key Subcontractor' in item 14 of the CPS, as updated from time to time.

### **Loss**

any liability, loss, damage, costs, compensation or expense (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis).

### **Milestone**

each milestone identified in item 19 of the CPS.

### **Milestone Date**

the date by which a Milestone must be achieved, as specified in item 19 of the CPS.

### **Milestone Payment**

the price identified for a Milestone in item 19 of the CPS.

### **Moral Right**

- a. the right of attribution of authorship;
- b. the right not to have authorship falsely attributed; or
- c. the right of integrity of authorship.

### **Notifiable Incident**

has the meaning given in sections 35 to 37 of the WHS Legislation.

### **Other Supplier IP**

IP in respect of the Technology or a Contract Deliverable that:

- a. is owned by a person other than Defence, the Participant or a Key Subcontractor; and
- b. is not, and is not likely to be, significant for the development, testing, production, installation, integration or use of the Technology.

Examples: commercial-of-the-shelf software and associated manuals.

### **Participant Personnel**

each of the following:

- a. a Key Subcontractor;
- b. an officer, employee or agent of the Participant; or
- c. an officer or employee, or person appointed as an agent in connection with the activities performed under this contract, of the Key Subcontractor.

### **Participant Representative**

the person identified as the Participant Representative in item 9 of the CPS or as otherwise notified by the Participant.

### **PEP**

the Project Execution Plan attached at item 17 of the CPS.

### **Phase**

a phase of this contract under a CPS.

### **Price**

the amount referred to in item 5 of the CPS.

### **Plan**

a Deliverable in the form of a plan.

### **Project**

the project being undertaken by the Participant under this contract, including the development of the Technology.

### **Phase Objectives**

the objectives so described in item 3 of the CPS.

### **Related Body Corporate**

as defined by section 9 of the Corporations Act.

### **Reporting Period**

for any Progress Report – the period since the date of the last Progress Report or Final Report for any prior CPS; and  
for any Final Report – the current Phase.

### **Representative**

in relation to a party, the person identified in item 8 or 9 of the CPS as its representative, unless otherwise notified.

### **Standard Terms**

this document entitled 'Standard Terms'.

### **Subcontractor**

Any person that, in connection with the Technology or this contract, provides goods or services directly, or indirectly through another person, to the Participant, and includes Key Subcontractors.

"**Subcontract**" has a corresponding meaning.

### **Technology**

the Technology described in item 4 of the CPS.

### **TD or Technical Data**

technical or scientific data, know-how or other information produced, acquired or used in relation to the Contract Deliverables or the Technology reduced to a material form (whether stored electronically or otherwise).

Examples: manuals, handbooks, specifications, design documentation, reports, models, plans, drawings, calculations, simulations, training materials and test results, source code.

### **TD Schedule**

means

- a. the TD Schedule at Annexure F;
- b. any TD Schedule approved by Defence as part of a Deliverable; or
- c. any version of the TD Schedule provided to Defence in accordance with clause 4.1, which Defence approves.

### **Technical Performance Measures or TPMs**

the metrics described in the PEP that allow the Participant and Defence to monitor how well a system is satisfying its requirements (especially program critical requirements) or meeting its goals.

### **Term**

the term as specified in item 5 of the Contract Framework.

### **WHS Legislation**

- a. the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- b. any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

### **Working Day**

in relation to the doing of an action in a place, means any day in that place except:

- a. a Saturday or Sunday or a public holiday; or
- b. a day within the 2 week period starting on the first Saturday before Christmas Day or, if Christmas Day is on a Saturday, starting on Christmas Day.

**49. Additional terms**

49.1 Clauses 50 to 58 apply to the extent specified in item 13 of the CPS.

**50. Access to Defence Premises**

50.1 Defence may, in its absolute discretion, during the Term, provide the Participant with access to Defence Premises as necessary for the Participant's performance of this contract.

50.2 Unless otherwise agreed, the Participant must seek written permission from the Defence Representative, at least 5 Working Days prior to entry being required, for each person the Participant wishes to have access to Defence Premises.

50.3 The Defence Representative may, by notice to the Participant, withdraw access rights to any Defence Premises at any time for any period.

50.4 If Defence needs to withdraw access rights to a Defence Premises or is not able to make available a Defence Premises it has agreed to provide in accordance with 50.1:

- a. Defence must notify the Participant and the parties must seek to agree appropriate next steps;
- b. the Participant will be entitled to a schedule adjustment in accordance with clause 17; and
- c. if the Participant's ability to provide a Deliverable is significantly and adversely affected as a result, the Participant may, within 3 months after the withdrawal or notice that Defence is unable to give access, terminate this contract by notice to Defence.

50.5 The Participant must comply with, and require persons afforded access (including all Participant Personnel) under this clause 50 comply with, any relevant Defence safety and security requirements (including those contained in the DSPF), regulations, standing orders, or codes of behaviour for the Defence place, area or facility.

50.6 The Participant must not, without the prior written approval of Defence:

- a. use the Defence Premises other than for the purposes of this contract;
- b. modify the Defence Premises;
- c. transfer possession or control of the Defence Premises to any other party; or
- d. create, or allow to be created, any security interest over any Defence Premises.

50.7 If at any time the Participant's requirement for the timing of access to Defence Premises changes because of a delay by the Participant in meeting its obligations under this contract Defence:

- a. must use reasonable endeavours to accommodate changes to the

Participant's requirements for access to the Defence Premises; and

- b. is only required to provide access to the Defence Premises at the time it becomes available for use for the purposes of this contract.

50.8 For clarity, clause 50.7 does not require Defence to remove Defence Premises from operational requirements, or to provide Defence Premises allocated to, or available for, other contracts.

50.9 The Participant is liable for any Loss incurred by Defence in connection with any damage to Defence Premises caused by the Participant or any Participant Personnel, except:

- a. damage arising from fair wear and tear;
- b. to the extent Defence or Defence Personnel's Default or wilful misconduct contributed to that loss or damage; or
- c. to the extent that the damage arose from an Excepted Risk.

50.10 The Participant acknowledges that Defence does not give any warranty or representation about the suitability or fitness of the Defence Premises for any particular use or application.

50.11 If the Participant requires access to a Defence Premises, Defence may require the Participant enter into a licence agreement satisfactory to Defence.

**51. Third party funding**

51.1 The Participant must procure the payment by a third party in the amount and at the time specified in item 13 of the CPS.

**52. IP Deed**

52.1 Unless otherwise agreed, the Participant must ensure that, before a Key Subcontractor undertakes any work under this contract, the Key Subcontractor executes and delivers to Defence an IP deed substantially in the form of Annexure D.

52.2 Unless otherwise agreed, the Participant must ensure that, within 10 Working Days after the Contract Start Date, any person that owns Background IP (other than the Participant or Key Subcontractor) executes and delivers to Defence an IP deed substantially in the form of Annexure D.

**53. Systems integration**

53.1 The Participant must use reasonable endeavours, in accordance with industry best practice, to ensure that no Harmful Code is included or introduced into Defence's systems or information technology environment in connection with the Participant's access to Defence's systems or information technology environment in connection with this contract.

53.2 If the Participant becomes aware that any Harmful Code has been introduced into

- Defence's systems or information technology environment, the Participant must immediately report that to Defence and provide reasonable assistance to resolve the issues as requested by Defence.
- 53.3 The Participant must take all reasonable action requested by Defence to contain and eliminate Harmful Code if it is introduced into Defence's systems or information technology environment in connection with this contract.
- 53.4 In this clause 53, **Harmful Code** means any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code.
- 54. Indigenous Procurement Policy**
- 54.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information.)
- 54.2 The Participant must use its reasonable endeavours to increase its:
- a. purchasing from Indigenous enterprises; and
  - b. employment of Indigenous Australians,
- in the performance of its obligations under this contract.
- 54.3 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Participant's supply chain.
- 54.4 The Participant must provide written reports and evidence of its compliance with this clause 54 every year during the Term.
- 54.5 If during the Term the value of this contract exceeds \$7.5 million, then this contract will become a "High Value Contract" for the purposes of the Indigenous Procurement Policy, in which case the Participant must (unless otherwise agreed):
- a. within 20 Working Days after the \$7.5 million value is reached, develop an Indigenous Participation Plan that addresses:
    - i. how the Participant intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
    - ii. the Participant's current rate of Indigenous employment and supplier use;
    - iii. the Participant's commitment to Indigenous participation;
    - iv. if any part of this contract is being or will be delivered in a Remote Area, how the Participant will ensure this contract will provide significant
- Indigenous employment or supplier use outcomes in that Remote Area; and
- b. submit the draft Indigenous Participation Plan to Defence for its review and, if appropriate, approval.
- 54.6 Following approval of the draft Indigenous Participation Plan under clause 54.5b, the Participant must:
- a. comply with the Indigenous Participation Plan;
  - b. report against its compliance with the Indigenous Participation Plan quarterly during the Term; and
  - c. comply with any reasonable directions issued by the Defence Representative in relation to the Participant's implementation of the Indigenous Participation Plan.
- 54.7 In this clause 54:
- a. "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business; and
  - b. "Indigenous Procurement Policy" means the policy of that name (available at [www.dpmpc.gov.au/ipp](http://www.dpmpc.gov.au/ipp)).
- 55. Late Payment**
- 55.1 This clause 55 applies where the amount of the interest payable exceeds A\$100.
- 55.2 If payment of a correctly rendered invoice is made late, interest is payable to the Participant by Defence in accordance with the formula at clause 55.3.
- 55.3 For the purposes of this clause 55, an interest payment will be calculated in accordance with the following formula:
- $$\frac{I\% \times P \times n}{365}$$
- where:
- 'I%' for late payments = the Australian Taxation Office sourced General Interest Charge rate current at the due date of payment expressed as a percentage
- P = the amount of the late payment
- n = the number of days after the due date for payment that the payment is made
- 55.4 If the interest payment is not offset or paid as part of the subject invoice, Defence must adjust the next approved payment under this contract. If there are no further payments, Defence must pay the interest payment within 30 days of being provided with notice in the form of a correctly rendered invoice.
- 56. Change of Control**
- 56.1 Subject to clause 56.2, the Participant must seek the Defence Representative's prior

written consent to any proposed Change of Control by providing notice to Defence at least 15 Working Days before the proposed Change of Control is to occur.

- 56.2 If a Change of Control occurs as a result of a transfer of shares or other interests listed on a recognised stock exchange and the consent of the Defence Representative could not have been obtained in accordance with clause 56.1, the Participant must seek that consent by providing notice to Defence within 5 Working Days after the Change of Control.
- 56.3 In any notice given to Defence seeking consent to a Change of Control, the Participant must include the following details:
- a. the ownership and management arrangements of the Participant that were in place immediately before the change or, if the change has yet to occur, the arrangements that were in place at the time the Participant became aware of the prospective change;
  - b. the ownership and management arrangements of the Participant that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Participant reasonably expects to be put in place if the change occurs;
  - c. the impact (if any) that the change has had on the Participant's ability to meet its obligations under this contract or, if the change has yet to occur, that the Participant reasonably expects the change to have on that ability; and
  - d. the steps the Participant has taken, or proposes to take, to minimise the impact of the change or prospective change.
- 56.4 If there is a Change of Control and the Defence Representative does not consent to the Change of Control, then Defence may:
- a. terminate this contract by notice; or
  - b. agree not to terminate this contract, subject to the Participant providing further information, giving specified undertakings, or executing further agreements, as may be required by Defence.
- 56.5 Nothing in this clause 56 requires the Participant to act in a manner inconsistent

with its obligations under the *Corporations Act 2001* (Cth) or equivalent laws and regulations in a foreign jurisdiction.

## **57. Delivery requirements**

- 57.1 The Participant must ensure that all Deliverables that are not documents are appropriately packaged and have appropriate package marking, consignment documentation and documentation language standards, including to comply with applicable regulatory requirements (including WHS Legislation).
- 57.2 The Participant must ensure that secure and legible documentation is affixed to the outside of any package delivered to Defence, with duplicate copies inside at the top of each package, which includes the following information at a minimum:
- a. the relevant Project identifier (Project name);
  - b. the relevant contract number;
  - c. the item name;
  - d. the item quantity;
  - e. the name of the supply source;
  - f. the consignment delivery point; and
  - g. the date of dispatch.
- 57.3 The Participant must ensure that all Deliverables delivered to Defence are accompanied by a 'certification of conformance' signed by the Participant to meet regulatory requirements.
- ## **58. Indemnity**
- 58.1 The Participant must indemnify Defence and Defence Personnel in respect of any Loss in connection with a claim by a third party in respect of loss of or damage to any property arising out of or as a consequence of a Default or wilful misconduct of the Participant or any Participant Personnel.
- 58.2 The amount that the Participant is to pay under the indemnity in clause 58.1 is exempted or reduced to the extent that the Participant demonstrates that the Loss arose out of or as a consequence of a Default or wilful misconduct by Defence or Defence Personnel.



## Annexure A – Form of Amending Deed

Date [Insert date that this deed is executed] Contract No [Insert Contract No]  
(Innovation Contract)

### Parties

**COMMONWEALTH OF AUSTRALIA**  
represented by the Department of Defence  
ABN 68 706 814 312  
(Defence)

[Insert name of Participant]  
ABN [insert ABN/NZBN]  
(Participant)

### Terms

#### 1 Recitals

- 1.1 The parties have entered into the Innovation Contract.
- 1.2 The parties have agreed to amend the Innovation Contract as set out in this deed.

#### 2 Definitions

- 2.1 Words and expressions have the meanings that they have in the Innovation Contract.
- 2.2 Clauses 24.1, 45, 46 of the Innovation Contract apply to this deed as if references to the Standard Terms were references to this deed.

#### 3 Amendments

- 3.1 As from the date on which this deed is signed by the parties (or if signed on different days, the date of the last signature),  
[Option 1: the Innovation Contract is amended by adding the additional CPS in Attachment A.]  
[Option 2: the CPS in the Innovation Contract is amended as set out in the marked up copy of the CPS attached as Attachment A.]  
[Option 3: the Innovation Contract is amended as set out in the marked up copy of the contract attached as Attachment A.]

#### 4 Confirmation and acknowledgement

- 4.1 Each party confirms that, except as provided for in clause 3, no other amendments are to be made to the Innovation Contract.
- 4.2 If there is a conflict between this deed and the Innovation Contract (before the amendment under this deed), the terms of this deed prevail.
- 4.3 The parties' accrued rights and obligations under the Innovation Contract are not affected by the amendment of the Innovation Contract under this deed.

[Note to drafters: If a new CPS being incorporated into the contract under this amending deed involves a change in the ownership of the Innovation IP, an assignment of

the Innovation IP will be required. The assignment may be incorporated into this amending deed or may be effected under a separate assignment deed. Drafters should give careful consideration to the consequences of changing ownership of Innovation IP including whether stamp duty is payable. Specialist legal advice should be obtained for an appropriate assignment clause.]

**EXECUTED** as a deed.

**Signed, sealed and delivered** by  
a person duly authorised by the  
**COMMONWEALTH OF AUSTRALIA:**

**Executed** in accordance with section 127(1) of  
the *Corporations Act 2001* by authority of its  
directors: **[Participant may provide alternative  
execution block for approval by Defence if  
section 127 execution does not apply or is  
impracticable, noting the execution  
requirements that apply to deeds.]**

-----  
Signature

-----  
Signature of director

-----  
Print name and position

-----  
Print name of director (block letters)

-----  
Date

-----  
Date

in the presence of

-----  
Signature

-----  
Signature of director / company secretary (delete  
whichever is not applicable)

-----  
Print name and position

-----  
Print name of director / company secretary (delete  
whichever is not applicable) (block letters)

-----  
Date

-----  
Date

## Annexure B – IP Confidentiality Deed Poll

### Details

<b>Date</b>	[Insert date that this deed poll is executed]	<b>Innovation Contract</b>	[Insert Contract No and date] <i>(Innovation Contract)</i>
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#### Deed poll made by

[Insert name of Confidant]  
ABN [insert ABN/NZBN]  
*(Confidant)*

#### in favour of

**COMMONWEALTH OF AUSTRALIA**  
represented by the Department of Defence  
ABN 68 706 814 312  
*(Defence)*

#### and

[Insert name of Participant]  
ABN [insert ABN/NZBN]  
*(Participant)*

**Information Owner** *Defence/Participant\**  
\*Delete whichever is not applicable.  
If the Deed is required by:  

- clause 18.9 of the Innovation Contract, insert 'Participant'
- clause 18.10 of the Innovation Contract, insert 'Defence'.

**Defence's Representative**  
[Insert name / title]  
[Insert address]  
[insert email address]

**Participant's Representative**  
[Insert name / title]  
[Insert address]  
[insert email address]

**Confidant's Representative**  
[Insert name / title]  
[Insert address]  
[insert email address]

**Governing law** [insert relevant Australian state or territory consistent with Innovation Contract]

## Terms

### 1 Recitals

- 1.1 Defence and the Participant have entered into the Innovation Contract.
- 1.2 Confidential Information may be disclosed to the Confidant in connection with, and on the terms of, the Innovation Contract, including information relating to intellectual property.
- 1.3 The Confidant agrees to keep the Confidential Information confidential and otherwise comply with the terms of this deed poll.

### 2 Acknowledgment

- 2.1 The Confidant acknowledges and agrees that improper use or disclosure of Confidential Information would be detrimental to the Information Owner and could cause harm to any third parties with an interest in the Confidential Information.

### 3 Confidentiality Undertakings

- 3.1 The Confidant must not use Confidential Information except for the purpose of performing its obligations in relation to the Innovation Contract.
- 3.2 The Confidant must not disclose Confidential Information except:
  - a. with the consent of the Information Owner;
  - b. to Defence Personnel;
  - c. to an officer, employee, agent or subcontractor of the Confidant, who:
    - (i) has a need to know the Confidential Information for the Confidant to carry out its obligations in relation to the Innovation Contract; and
    - (ii) if required by the Information Owner, has executed a similar undertaking to this deed poll in favour of the Information Owner;
  - d. to the Participant or an officer, employee, agent or subcontractor (in connection with the Innovation Contract) of the Participant, who:
    - (i) has a need to know the Confidential Information for the Participant to perform its obligations under the Innovation Contract; and
    - (ii) if required by the Information Owner, has executed a similar undertaking to this deed poll in favour of the Information Owner; or
  - e. as required or authorised by law.

### 4 Confidant's representatives

- 4.1 The Confidant must ensure that its officers, employees and other personnel (whether or not still employed or engaged) do not do or

omit to do anything that, if done or omitted to be done by the Confidant, would be a breach of the Confidant's obligations under this deed poll.

- 4.2 The Confidant must give the Information Owner all assistance it reasonably requires to take any action or bring any proceedings for breach of clause 3.

### 5 Return of Confidential Information

- 5.1 The Confidant must, on demand by the Information Owner, deliver to the Information Owner, all Documents in its possession, power or control that contain or relate to the Confidential Information.
- 5.2 If the Information Owner makes a demand under clause 5.1, and the Confidant is aware that a Document containing the Confidential Information is beyond its possession or control, the Confidant must provide full particulars of the whereabouts of the Document to the Information Owner, and the identity of the person in whose custody or control it is.
- 5.3 The Confidant must, when directed by the Information Owner, destroy any Document in its possession, power or control that contains or relates to any Confidential Information.
- 5.4 Return or destruction of a Document as required by this clause 5 does not release the Confidant from its other obligations under this deed poll.

### 6 Survival

- 6.1 This deed poll survives the termination or expiry of the Innovation Contract and any other related contract.

### 7 Conflict of interest

- 7.1 The Confidant warrants that before entering into this deed poll, it disclosed to the Information Owner all the past, current and anticipated interests of the Confidant that may conflict with or restrict the Confidant in performing the obligations under this deed poll for the Information Owner fairly and independently.
- 7.2 The Confidant must not engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in performing its obligations under this deed poll fairly and independently.

### 8 Indemnity

- 8.1 The Confidant indemnifies the Information Owner, its officers, employees and agents against all liability or loss (including loss of profits) arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:
  - a. any breach by the Confidant of this deed poll; or
  - b. any act or omission by any of the Confidant's officers, employees,

agents, advisers or independent contractors which, if done or omitted by the Confidant, would breach the Confidant's obligations under this deed poll.

## 9 Injunctive relief

- 9.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Information Owner for a breach of this deed poll and that, in addition to any other remedies available at law or in equity, the Information Owner is entitled to injunctive relief for a breach or suspected or threatened breach by the Confidant.

## 10 No exclusion of law or equity

- 10.1 This deed poll does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

## 11 Waiver

- 11.1 Failure by Defence or the Participant to enforce a provision of this deed poll does not affect the enforceability of that provision or this deed poll as a whole.

## 12 Remedies cumulative

- 12.1 The rights and remedies provided under this deed poll are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

## 13 Amendments

- 13.1 This deed poll may be amended, but only;
- with the consent of the Participant and Defence; and
  - by the Confidant entering into a further deed poll giving effect to the amendments.

## 14 Applicable law

- 14.1 The law in force in the State or Territory of Australia specified in the Details governs this deed poll and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this deed poll.

## 15 Notices

- 15.1 To be effective, a notice or communication (including a waiver, approval, acceptance, consent, direction or agreement) under this deed poll must be:
- in writing (which includes email);
  - signed by the sender's Representative; and
  - addressed to the recipient's Representative.
- 15.2 A notice or communication sent by email in accordance with the requirements of clause 15.1 will be taken to be signed by the named sender.
- 15.3 A notice or communication that meets the requirements of clause 15.1 and is sent to the recipient's Representative's address (physical or email) in the Details (or the

replacement address most recently notified by that Representative) is effectively delivered at the earlier of the following times:

- when it is actually received at the address;
- if sent as an email - when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee,

but notices or communications delivered after 1700 on a Working Day are taken to be delivered at 0900 on the next Working Day.

## 16 Definitions

- 16.1 In this deed poll, unless the contrary intention appears:

### Confidential Information

information that is described in Attachment A but not information that:

- is or becomes public knowledge otherwise than by breach of a confidentiality obligation;
- was in the possession of the Confidant without restriction in relation to disclosure before the date it was provided to the Confidant by Defence or the Participant; or
- was independently developed or acquired by the Confidant.

### Defence Personnel

any Defence Service Provider and each of the following:

- an officer or agent of the Commonwealth;
- an employee in the Department of Defence; or
- a member of the Australian Defence Force (including a reservist),

and their equivalents from other organisations on exchange to Defence.

### Defence Service Provider

means a person engaged to perform a function, or discharge a duty, of Defence, including a person engaged to provide:

- professional, administrative, contract management or project management services to Defence; or
- technical management or assurance services, including in relation to verification and validation, safety, certification, security, or capability development.

### Document

includes:

- any paper or other materials on which there are writing, marks, figures, symbols or perforations having

meaning for persons qualified to interpret them; and

- b. any article or material from which sound, images or writings are capable of being reproduced with or without the aid of any other article or device.

**Working Day**

in relation to the doing of an action in a place, means any day in that place except:

- a. a Saturday or Sunday or a public holiday; or
- b. a day in the 2 weeks starting on the Saturday before Christmas Day or, if Christmas Day is on a Saturday, starting on Christmas Day.

**Representative**

in relation to Defence, the Participant or the Confidant, the person identified in the Details as its representative, unless otherwise notified.

16.2 In this deed poll, unless the contrary intention appears:

- a. headings are for convenient reference only and do not form part of this deed poll;
- b. the singular includes the plural and vice versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a reference to a body politic, body corporate or a partnership;
- e. a reference to a clause includes a reference to a subclause of that clause;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as in force for the time being, and includes a reference to any subordinate legislation made under the Act as so in force;
- g. the word “includes” in any form is not a word of limitation; and
- h. a reference to a person includes a reference to its administrators and successors.

**EXECUTED** as a deed poll.

**Executed by [Confidant]** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors: **[The Confidant may provide alternative execution block for approval by Defence if section 127 execution does not apply or is impracticable, noting the execution requirements that apply to deeds.]**

-----

Signature of director

-----

Print name of director (block letters)

-----

Date

-----

Signature of director / company secretary (delete whichever is not applicable)

-----

Print name of director / company secretary (delete whichever is not applicable) (block letters)

-----

Date

## Annexure C – IP Schedule

[IP Schedule developed by the Participant at the RFP stage to be included. At the Effective Date, this Annexure is likely to include only Background IP. This Annexure must be updated by the Participant as the work under the contract is undertaken and Innovation IP is created and TD is produced.]

The Defence Representative and the Participant Representative may agree in writing to update the IP Schedule without entering into a deed in accordance with clause 38.1.

### Innovation IP / Background IP

Description	Innovation IP / Background IP	IP Owner	Form of IP (e.g. copyright, patents, designs etc)
<i>E.g. System design methodology</i>	<i>Background IP</i>	<i>Participant</i>	<i>Copyright</i>
<i>E.g. Concept design document for 'X' communication system</i>	<i>Innovation IP</i>	<i>Participant</i>	<i>Copyright</i>
[Insert]	[Insert]	[Insert]	[Insert]

### Other Supplier IP

Description	IP Owner	Form of IP (e.g. copyright, patents, designs etc)	Licence Terms
<i>E.g. System design software</i>	<i>Software Developer PL</i>	<i>Copyright</i>	<i>Defence is granted an irrevocable, perpetual, non-exclusive, world-wide and free licence to exercise the Other Supplier IP for Capability Development Activities.</i>
[Insert]	[Insert]	[Insert]	[Insert]

### Defence IP

[To be included and maintained by the Participant where Defence IP (which would also include any Defence owned Innovation IP under a previous CPS) is to be provided under the contract.]

Description	Form of IP (e.g. copyright, patents, designs etc)	Licence Terms
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]



## ANNEXURE D - IP DEED

### Note to Drafters:

Part 1 of this Annexure includes a template IP deed to be entered into with Key Subcontractors if required by clause 52.1.

Part 2 of this Annexure includes a template IP deed to be entered into with a third party who is contributing Background IP if required by clause 52.2.

### PART 1 – IP DEED FOR KEY SUBCONTRACTORS

Date

[Insert date that this deed is executed]

### Parties

<p><b>COMMONWEALTH OF AUSTRALIA</b>                  represented by the Department of Defence                  ABN 68 706 814 312                  (<i>Defence</i>)</p>
<p>[Insert name of Key Subcontractor]                  ABN [insert ABN]                  (<i>Key Subcontractor</i>)</p>

### Details

1 Intellectual Property

a. Ownership of Innovation IP:	Owner	Details of Innovation IP
	Participant*/Defence*/Key Subcontractor* *delete whichever does not apply	[Insert details of Innovation IP owned. If there is only 1 owner of Innovation IP, insert "All Innovation IP".]  [The Innovation Contract does not permit multiple persons to own the same item of Innovation IP (ie joint ownership), so this field must detail how the parties will determine who owns each particular item of Innovation IP.]
	Participant*/Defence*/Key Subcontractor* *delete whichever does not apply	
	Participant*/Defence*/Key Subcontractor* *delete whichever does not apply	
<b>b. Additional purposes for the licence of Innovation IP and</b>	[Insert]	

	<p><b>Background IP</b> (clause 3.2(a) and 3.2(b)(ii))</p>	
	<p><b>c. Restrictions on Defence’s rights to sublicense Innovation IP or Background IP:</b> (clause 3.2(b))</p>	[Insert]
	<p><b>d. Restrictions on the Key Subcontractor’s use of Innovation IP or Defence IP:</b> (clause 3.3)</p>	[Insert]
<b>2</b>	<b>Innovation Contract</b>	[Insert contract number, contract date, full name of the Participant and its ABN/ NZBN and a brief description of the contract]
<b>3</b>	<b>Technology</b>	[Insert brief description of Technology]
<b>4</b>	<b>Key Subcontract</b>	[Insert contract title, date, full name of the parties to the Key Subcontract and their ABN/ NZBN and a brief description of the contract]
<b>5</b>	<b>Defence Representative</b>	[Insert name / title] [Insert address] [insert email address]
<b>6</b>	<b>Key Subcontractor Representative</b>	[Insert name / title] [Insert address] [insert email address]
<b>7</b>	<b>Governing law</b>	[insert relevant Australian state or territory consistent with Innovation Contract]

**1 Recitals**

- 1.1 Defence and the participant referred to in item 2 of the Details (the **Participant**) have entered into the Innovation Contract.
- 1.2 In accordance with the Innovation Contract, the Participant is required to ensure that the Key Subcontractor enters into this deed.
- 1.3 The Participant and the Key Subcontractor have entered into the Key Subcontract referred to in item 4 of the Details.
- 1.4 The parties intend that Innovation IP vests in accordance with this deed and that the Innovation IP and Background IP be licensed to Defence on the terms of this deed.

**2 Survival**

- 2.1 The rights and obligations created under or in connection with this deed survive the termination or expiry of the Innovation Contract and the Key Subcontract.

**3 Intellectual Property**

- 3.1 Ownership of Innovation IP will vest, immediately on creation of that IP, in the person identified at item 1a of the Details. For clarity, separately identifiable items of Innovation IP may be owned by different persons identified in item 1a, however, Innovation IP does not vest in two or more persons under this deed.
- 3.2 The Key Subcontractor grants to Defence a royalty-free, irrevocable, world-wide, non-transferable, perpetual and non-exclusive licence (including a right to sublicense) of all Innovation IP that is owned by the Key Subcontractor and all Background IP on the following basis:
  - a. Defence and Defence Personnel may use, reproduce, adapt, modify and disclose (but not to any other person) the IP for the purpose of undertaking Capability Development Activities and any additional purposes listed at item 1b of the Details;
  - b. subject to any restrictions identified in item 1c of the Details, Defence may sublicense the IP to any person for any or all of the following purposes:
    - i. the purpose of completing the development of the Technology if Defence terminates the Innovation Contract;
    - ii. any additional purposes listed at item 1b of the Details; and
    - iii. any other purpose where the Key Subcontractor has provided its prior written consent;
  - c. without limiting clause 3.2b, Defence may sublicense the IP in TD relating to form, fit and function, external interface or test data for the

Technology to any person in connection with the installation or integration of the Technology into a Defence system or the integration of third party technology into a Defence system relevant to the Technology; and

- d. Defence will be entitled to use, reproduce, adapt, modify and disclose the IP (and sublicense the IP to any person) for any Defence Purpose if an Insolvency Event occurs in respect of the Key Subcontractor.

- 3.3 The Key Subcontractor must comply, and must ensure that its Personnel and any person to whom the Key Subcontractor provides Innovation IP or Defence IP complies, with any restrictions on the use, reproduction, adaptation, modification or disclosure of Innovation IP or Defence IP identified at item 1d of the Details or as otherwise notified by Defence under clause 3.4 or by the Participant under the Key Subcontract.
- 3.4 Despite any other provision of this deed, Defence may notify the Key Subcontractor of restrictions on the use or disclosure of Innovation IP or Defence IP for national security, government-to-government or Export Approval reasons.
- 3.5 If Defence makes available Innovation IP or Background IP owned by the Key Subcontractor to a third party, Defence must obtain and provide to the Participant (and to the Key Subcontractor if requested) a confidentiality deed poll substantially in the form of Schedule 1 signed by the third party restricting the disclosure and use of information in connection with that IP.
- 3.6 If the Key Subcontractor makes available any Defence IP to a third party, the Key Subcontractor must obtain and provide to the Participant (and to Defence if requested) a confidentiality deed poll substantially in the form of Schedule 1 signed by the third party restricting the disclosure and use of information in connection with that IP.
- 3.7 The Key Subcontractor warrants that Defence will not, in exercising its IP rights granted under or in connection with this deed, infringe the IP or any Moral Rights of any person.
- 3.8 The Key Subcontractor must provide to the Participant all information in relation to Innovation IP or Background IP necessary for the Participant to comply with its obligations in relation to an IP Schedule under the Innovation Contract.

**4 Technical Data**

- 4.1 The Key Subcontractor must, promptly on request by Defence, provide to Defence all TD required:

- a. to enable the assessment, analysis, testing and evaluation of the Technology by Defence;
- b. to enable the evaluation of the maturity of the Technology and the potential development and application of the Technology (including potential installation or integration of the Technology into other systems);
- c. to enable the verification of the results, outcomes and recommendations in the Contract Deliverables;
- d. to undertake Capability Development Activities;
- e. in connection with a Contract Deliverable; or
- f. to facilitate the Participant's compliance with an obligation it has under the Innovation Contract.

### Miscellaneous

#### 5 Goods and Services Tax

- 5.1 In this clause, "GST" means a tax imposed by the GST Act and the expressions "adjustment event", "taxable supply" and "tax invoice" have the meaning as in that Act.
- 5.2 If a party to this deed (the "Supplier") makes a taxable supply under or in connection with this deed or in connection with any matter or thing occurring under this deed to another party to this deed (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 5.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment must be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient must pay the deficiency to the Supplier.
- 5.4 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.

#### 6 Failure to enforce does not affect enforceability

Failure by either party to enforce a right of this deed does not affect the enforceability of that or any other right.

#### 7 Remedies

7.1 The rights and remedies provided under this deed are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

7.2 Subject to the terms of this deed, the rights and obligations of the parties under this deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

#### 8 Amendment

8.1 This deed may be amended, but only by another deed of the parties.

8.2 The parties acknowledge that item 1 of the Details may require amendment to reflect any amendment made to corresponding provisions in the Innovation Contract from time to time.

#### 9 Applicable Law

9.1 The law in force in the State or Territory of Australia specified in the Details govern this deed and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this deed.

#### 10 Notices

10.1 To be effective, a notice or communication (including a waiver, approval, acceptance, consent or agreement) under this deed must be:

- a. in writing (which includes email);
- b. signed by the sender's Representative; and
- c. addressed to the other party's Representative.

10.2 A notice or communication sent by email in accordance with the requirements of clause 10.1 will be taken to be signed by the named sender.

10.3 A notice or communication that meets the requirements of clause 10.1 and is sent to other party's address (physical or email) in this deed (or the replacement address most recently notified by the other party) is effectively delivered at the earlier of the following times:

- a. when it is actually received at the address;
- b. if sent as an email - when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee,

but notices or communications delivered after 1700 on a Working Day are taken to be delivered at 0900 on the next Working Day.

#### 11 Counterparts

This deed may consist of a number of copies, each signed by 1 or more parties to

it. If so, the signed copies are treated as making up a single document.

## 12 Glossary

12.1 In this deed, unless the contrary intention appears:

### Background IP

IP in respect of the Technology or a Contract Deliverable that is owned by or licensed to the Key Subcontractor and is:

- a. in existence at the date of the Key Subcontract; or
- b. subsequently created other than as a result of the performance of the Key Subcontract,

but does not include IP that is owned by the Participant and licensed to Defence under the Innovation Contract or IP owned by Defence.

### Capability Development Activities

activities relating to:

- a. scientific, technical or applied research and development activities;
- b. studies, analyses and investigation in relation to current and future technology and capability (including the Technology developed under the Innovation Contract or the Key Subcontract);
- c. the assessment, investigation and development of options to meet Defence's capability needs and operational requirements; or
- d. the development and definition of functional and performance requirements to support the procurement of technology or capability,

for Defence Purposes, but does not include exploitation of IP in return for the receipt of a royalty or a commercial return.

### Contract Deliverable

anything that, under the Key Subcontract, must be delivered to the Participant or Defence.

### Defence IP

IP that is:

- a. Innovation IP owned by Defence; or
- b. IP in data, software or other items, provided by Defence to a Participant for the purposes of the Innovation Contract.

### Defence Personnel

any Defence Service Provider and each of the following:

- a. an officer or agent of the Commonwealth;
- b. an employee in the Department of Defence; or

- c. a member of the Australian Defence Force (including a reservist), and their equivalents from other organisations on exchange to Defence.

### Defence Purposes

purposes within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peace-keeping and emergency aid to the civil community, and purposes that are necessary or incidental to any of those purposes.

### Defence Service Provider

a person engaged to perform a function, or discharge a duty, of Defence, including a person engaged to provide:

- a. professional, administrative, contract management or project management services to Defence; or
- b. technical management or assurance services, including in relation to verification and validation, safety, certification, security, or capability development.

### Details

the section of this deed headed "Details".

### Export Approval

an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of the Contract Deliverables or any other item provided under the Key Subcontract or the Innovation Contract.

### Innovation IP

IP in respect of the Technology or a Contract Deliverable or any other item which is created under the Key Subcontract.

### Insolvency Event

for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act 2001 (Cth)), a receiver as defined in the Receiverships Act 1993 (NZ) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act 2001 (Cth) to have failed to comply with a statutory demand, being unable to pay its debts (or presumed to be unable to pay its debts under the Companies Act 1993 (NZ), being or presumed to be insolvent, dead, bankrupt, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001 (Cth)), being declared at risk pursuant to the Corporations (Investigation and Management) Act 1989

(NZ), having a statutory manager appointed or a recommendation for such an appointment to be made, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the laws of any jurisdiction.

#### **Intellectual Property or IP**

all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literacy and artistic fields recognised in domestic law anywhere in the world.

#### **Key Subcontract**

the contract referred to in item 4 of the Details.

#### **Moral Right**

- a. a right of attribution of authorship;
- b. a right not to have authorship falsely attributed; or
- c. a right of integrity of authorship.

#### **Personnel**

each of the following:

- a. an officer, employee or agent of the Key Subcontractor; or
- b. an officer or employee, or person appointed as an agent in connection with the activities performed under the Key Subcontract.

#### **Representative**

in relation to a party, the person identified in the Details as its representative, unless otherwise notified.

#### **Technology**

the 'Technology' described at item 3 of the Details.

#### **TD or Technical Data**

technical or scientific data, know-how or other information produced, acquired or used by the Key Subcontractor in relation to the Technology or the Contract Deliverables reduced to a material form (whether stored electronically or otherwise).

Examples: manuals, handbooks, specifications, design documentation, reports, models, plans, drawings, calculations, simulations, training materials and test results, source code.

#### **Working Day**

in relation to the doing of an action in a place, means any day in that place except:

- a. a Saturday or Sunday or a public holiday; or
- b. a day in the 2 weeks starting on the Saturday before Christmas Day or, if Christmas Day is on a Saturday, starting on Christmas Day.

12.2 In this deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this deed;
- b. the singular includes the plural and vice versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action must be done no later than the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. the word "includes" in any form is not a word of limitation; and
- i. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract.

**EXECUTED** as a deed.

**Signed, sealed and delivered** by  
a person duly authorised by the  
**COMMONWEALTH OF AUSTRALIA:**

Executed by [insert name of Key Subcontractor] in  
accordance with section 127(1) of the *Corporations  
Act 2001* by authority of its directors: **[The Key  
Subcontractor may provide alternative  
execution block for approval by Defence if  
section 127 execution does not apply or is  
impracticable, noting the execution  
requirements that apply to deeds.]**

-----  
Signature

-----  
Signature of director

-----  
Print name and position

-----  
Print name of director (block letters)

-----  
Date

-----  
Date

in the presence of

-----  
Signature

-----  
Signature of director / company secretary (delete  
whichever is not applicable)

-----  
Print name and position

-----  
Print name of director / company secretary (delete  
whichever is not applicable) (block letters)

-----  
Date

-----  
Date

## Schedule 1

Refer to IP Deed Poll at Annexure B



## PART 2 – IP DEED FOR THIRD PARTIES

Date

[Insert date that this deed is executed]

### Parties

<b>COMMONWEALTH OF AUSTRALIA</b> represented by the Department of Defence ABN 68 706 814 312 <i>(Defence)</i>
[Insert name of third party] ABN [insert ABN] <i>(Licensor)</i>

### Details

<b>1 Intellectual Property</b>	<b>a. Additional purposes for the licence of Background IP</b>  (clause 3.1(a) and 3.1(b)(ii))	[Insert]
	<b>b. Restrictions on Defence's rights to sublicense Background IP: (clause 3.1(b) and 3.3)</b>	[Insert]
<b>2 Innovation Contract</b>	[Insert contract number, contract date, full name of the Participant and its ABN/ NZBN and a brief description of the contract]	
<b>3 Technology</b>	[Insert brief description of Technology]	
<b>4 Licensor Arrangement</b>	[Insert contract title, date, full name of parties to the arrangement and their registered company number – and a brief description of the contract]	
<b>5 Defence Representative</b>	[Insert name / title] [Insert address] [insert email address]	
<b>6 Licensor Representative</b>	[Insert name / title] [Insert address] [insert email address]	

**7 Governing law**

[insert relevant Australian state or territory consistent with Innovation Contract]

- 1 Recitals**
- 1.1 Defence and the participant referred to in item 2 of the Details (the **Participant**) have entered into the Innovation Contract.
- 1.2 In accordance with the Innovation Contract, the Participant is required to ensure that the Licensor enters into this deed.
- 1.3 The Participant and the Licensor have entered into the Licensor Arrangement referred to in item 4 of the Details.
- 1.4 The parties intend that Background IP be licensed to Defence on the terms of this deed.
- 2 Survival**
- 2.1 The rights and obligations created under or in connection with this deed survive the termination or expiry of the Innovation Contract.
- 3 Intellectual Property**
- 3.1 The Licensor grants to Defence a royalty-free, irrevocable, world-wide, non-transferable, perpetual and non-exclusive licence (including a right to sublicense) of all Background IP on the following basis:
- a. Defence and Defence Personnel may use, reproduce, adapt, modify and disclose (but not to any other person) the IP for the purpose of undertaking Capability Development Activities and any additional purposes listed at item 1a of the Details;
- b. subject to any restrictions identified in item 1b of the Details, Defence may sublicense the IP to any person for any or all of the following purposes:
- i. the purpose of completing the development of the Technology if Defence terminates the Innovation Contract;
- ii. any additional purpose listed at item 1a of the Details; and
- iii. any other purpose where the Licensor has provided its prior written consent;
- c. without limiting clause 3.1b, Defence may sublicense the IP in TD relating to form, fit and function, external interface or test data for the Technology to any person in connection with the installation or integration of the Technology into a Defence system or the integration of third party technology into a Defence system relevant to the Technology; and
- d. Defence will be entitled to use, reproduce, adapt, modify and disclose the IP (and sublicense the IP to any person) for any Defence Purpose if an Insolvency Event occurs in respect of the Licensor.
- 3.2 If Defence makes available Background IP to a third party, Defence must obtain and provide to the Licensor a confidentiality deed poll substantially in the form of Schedule 1 to this deed signed by the third party restricting the disclosure and use of information in connection with that IP.
- 3.3 The Licensor warrants that Defence will not, in exercising its IP rights granted under or in connection with this deed, infringe the IP or any Moral Rights of any person.
- 3.4 The Licensor must provide to the Participant all information in relation to the Background IP necessary for the Participant to comply with its obligations in relation to an IP Schedule under the Innovation Contract.
- 4 Goods and Services Tax**
- 4.1 In this clause, "GST" means a tax imposed by the GST Act and the expressions "adjustment event", "taxable supply" and "tax invoice" have the meaning as in that Act.
- 4.2 If a party to this deed (the "Supplier") makes a taxable supply under or in connection with this deed or in connection with any matter or thing occurring under this deed to another party to this deed (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 4.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment must be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient must pay the deficiency to the Supplier.
- 4.4 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.
- 5 Failure to enforce does not affect enforceability**
- 5.1 Failure by either party to enforce a right of this deed does not affect the enforceability of that or any other right.
- 6 Remedies**
- 6.1 The rights and remedies provided under this deed are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.
- 6.2 Subject to the terms of this deed, the rights and obligations of the parties under this deed are in addition to and not in derogation of any other right or obligation between the

parties under any other deed or agreement to which they are parties.

## **7 Amendment**

- 7.1 This deed may be amended, but only by another deed of the parties.
- 7.2 The parties acknowledge that item 1 of the Details may require amendment to reflect any amendment made to corresponding provisions in the Innovation Contract from time to time.

## **8 Applicable Law**

- 8.1 The law in force in the State or Territory of Australia specified in the Details govern this deed and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this deed.

## **9 Notices**

- 9.1 To be effective, a notice or communication (including a waiver, approval, acceptance, consent or agreement) under this deed must be:
- in writing (which includes email);
  - signed by the sender's Representative; and
  - addressed to the other party's Representative.
- 9.2 A notice or communication sent by email in accordance with the requirements of clause 9.1 will be taken to be signed by the named sender.
- 9.3 A notice or communication that meets the requirements of clause 9.1 and is sent to other party's address (physical or email) in this deed (or the replacement address most recently notified by the other party) is effectively delivered at the earlier of the following times:
- when it is actually received at the address;
  - if sent as an email - when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee,

but notices or communications delivered after 1700 on a Working Day are taken to be delivered at 0900 on the next Working Day.

## **10 Counterparts**

This deed may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document.

## **11 Glossary**

- 11.1 In this deed, unless the contrary intention appears:

### **Background IP**

IP in respect of the Technology that is owned by the Licensor.

## **Capability Development Activities**

activities relating to:

- scientific, technical or applied research and development activities;
- studies, analyses and investigation in relation to current and future technology and capability (including the Technology developed under the Innovation Contract);
- the assessment, investigation and development of options to meet Defence's capability needs and operational requirements; or
- the development and definition of functional and performance requirements to support the procurement of technology or capability,

for Defence Purposes, but does not include exploitation of IP in return for the receipt of a royalty or a commercial return.

### **Defence Personnel**

any Defence Service Provider and each of the following:

- an officer or agent of the Commonwealth;
- an employee in the Department of Defence; or
- a member of the Australian Defence Force (including a reservist),

and their equivalents from other organisations on exchange to Defence.

### **Defence Purposes**

purposes within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peace-keeping and emergency aid to the civil community, and purposes that are necessary or incidental to any of those purposes.

### **Defence Service Provider**

a person engaged to perform a function, or discharge a duty, of Defence, including a person engaged to provide:

- professional, administrative, contract management or project management services to Defence; or
- technical management or assurance services, including in relation to verification and validation, safety, certification, security, or capability development.

### **Details**

the section of this deed headed "Details".

### **Insolvency Event**

for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act 2001 (Cth)), a receiver as defined in the Receiverships

Act 1993 (NZ) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act 2001 (Cth) to have failed to comply with a statutory demand, being unable to pay its debts (or presumed to be unable to pay its debts under the Companies Act 1993 (NZ), being or presumed to be insolvent, dead, bankrupt, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001 (Cth)), being declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 (NZ), having a statutory manager appointed or a recommendation for such an appointment to be made, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the laws of any jurisdiction.

#### **Intellectual Property or IP**

all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

#### **Moral Right**

- a. a right of attribution of authorship;
- b. a right not to have authorship falsely attributed; or
- c. a right of integrity of authorship.

#### **Representative**

in relation to a party, the person identified in the Details as its representative, unless otherwise notified.

#### **Technology**

the 'Technology' described at item 3 of the Details.

#### **TD or Technical Data**

technical or scientific data, know-how or other information produced, acquired or used by the Licensor in relation to the Technology reduced to a material form (whether stored electronically or otherwise).

Examples: manuals, handbooks, specifications, design documentation, reports, models, plans, drawings, calculations, simulations, training materials and test results, source code.

#### **Working Day**

in relation to the doing of an action in a place, means any day in that place except:

- a. a Saturday or Sunday or a public holiday; or

- b. a day in the 2 weeks starting on the Saturday before Christmas Day or, if Christmas Day is on a Saturday, starting on Christmas Day.

11.2 In this deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this deed;
- b. the singular includes the plural and vice versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action must be done no later than the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. the word "includes" in any form is not a word of limitation; and
- i. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract.

**EXECUTED** as a deed.

**Signed, sealed and delivered** by a person duly authorised by the **COMMONWEALTH OF AUSTRALIA:**

**Executed** by [insert name of Licensor] in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors: **[The Licensor may provide alternative execution block for approval by Defence if section 127 execution does not apply or is impracticable, noting the execution requirements that apply to deeds.]**

-----  
Signature

-----  
Signature of director

-----  
Print name and position

-----  
Print name of director (block letters)

-----  
Date

-----  
Date

in the presence of

-----  
Signature

-----  
Signature of director / company secretary (delete whichever is not applicable)

-----  
Print name and position

-----  
Print name of director / company secretary (delete whichever is not applicable) (block letters)

-----  
Date

-----  
Date

## Schedule 1

Refer to IP Deed Poll at Annexure B

## Annexure E – Security Classification and Categorisation Guide

### 1. General Classification Guidelines

- 1.1 All innovation information and material is to be allocated a classification in accordance with *Guidelines for Classification*, and the *Defence Security Manual*.
- 1.2 It is the innovation project manager's responsibility to assign security classifications to Project information and material. Contractors are responsible for assigning classifications to information or material (sub-components) generated by them for the Commonwealth.
- 1.3 The project manager assigns a blanket classification (including any relevant caveats or foreign source indicators) to the various aspects related to each component. However, these classifications may not apply to all the sub-components.
- 1.4 When individual items of information or material (e.g specifications, drawings, circuit diagrams, sub-assemblies) are compiled, the overall compilation must be classified to at least the highest level of any individual element. However, consideration must be given to whether the compilation in its entirety reveals information which should be afforded a higher classification. If so, the compilation must be classified appropriately.

### 2. Guidelines for Classification

#### 2.1 Australian Government Security Classification System (AGSCS) Classifications

The AGSCS has four levels of security classification. These classifications reflect the consequences of the compromise of information, as follows:

#### 2.2 Protected

- 2.2.1 PROTECTED is used where compromise "could cause damage to the Australian Government, commercial entities or members of the public". For example, compromise could:
  - a. endanger individuals and private entities;
  - b. work substantially against national finances or economic and commercial interests;
  - c. substantially undermine the financial viability of major organisations;
  - d. impede the investigation or facilitate the commission of serious crime; or
  - e. seriously impede the development or operation of major government policies.

#### 2.3 Confidential

- 2.3.1 CONFIDENTIAL is used where compromise "could cause damage to national security". For example, compromise could:
  - a. damage diplomatic relations - in other words, cause formal protest or other sanction;
  - b. damage the operational effectiveness or security of Australian or allied forces;
  - c. damage the effectiveness of valuable security or intelligence operations;
  - d. disrupt significant national infrastructure; or
  - e. damage the internal stability of Australia or other countries.

- 2.3.2 Most national security information would be adequately protected by the procedures given to information marked CONFIDENTIAL or PROTECTED.

#### 2.4 Secret



- 2.4.1 SECRET is used where compromise “could cause serious damage to national security, the Australian Government, nationally important economic and commercial interests or threaten life”. For example, compromise could:
- a. raise international tension;
  - b. seriously damage relations with other governments;
  - c. seriously damage the operational effectiveness or security of Australian or allied forces;
  - d. seriously damage the continuing effectiveness of highly valuable security or intelligence operations;
  - e. threaten life directly;
  - f. seriously prejudice public order;
  - g. substantially damage national finances or economic and commercial interests;
  - h. shut down or substantially disrupt significant national infrastructure; or
  - i. seriously damage the internal stability of Australia or other countries.
- 2.4.2 This marking should only be used sparingly.

## 2.5 Top Secret

- 2.5.1 TOP SECRET requires the highest degree of protection as compromise “could cause exceptionally grave damage to national security”. For example, compromise could:
- a. threaten directly the internal stability of Australia or other countries;
  - b. lead directly to widespread loss of life;
  - c. cause exceptionally grave damage to the effectiveness or security of Australian or allied forces;
  - d. cause exceptionally grave damage to the effectiveness of extremely valuable security or intelligence operations;
  - e. cause exceptionally grave damage to relations with other governments; or
  - f. cause severe long-term damage to the Australian economy.
- 2.5.2 Very little information warrants this marking, and it should be used with the utmost restraint.

## 3. AGSCS Dissemination Limiting Markers

- 3.1.1 AGSCS DLM are protective markings that are assigned to information where disclosure may be limited or prohibited by legislation, or where the information may otherwise require special handling. DLM include:
- g. For Official Use Only (FOUO);
  - h. Sensitive;
  - i. Sensitive: Personal;
  - j. Sensitive: Legal; and
  - k. Sensitive: Cabinet.

## 4. Unclassified

- 4.1.1 Represents the bulk of official information which does not attract a higher classification. Disclosure of unclassified information must be authorised, even if it has no special safety, mission critical or financial implications. Unclassified documents can remain unlabelled, or be marked UNCLASSIFIED. Requests for access to unclassified information must be referred to

the Coordination and Public Affairs Division, who are responsible for clearing unclassified Defence information which is to be released to the public.

- 4.1.2 CAVEATS are applied to information which has special security requirements in addition to those indicated by its security classification.

## **5. Australian Government Access Only (AGAO)**

- 5.1.1 A security caveat that is used where it is necessary to ensure that particularly sensitive information is not disclosed outside Australian Government circles. Access to AGAO information is to be limited to appropriately cleared Australian nationals, Australian based permanent officers of the Australian Government, representatives of foreign governments from the United States (US) of America, United Kingdom (UK), Canada and New Zealand (NZ), on exchange or long-term posting/attachment (integrated) within the Australian Department of Defence, and approved Defence Industry personnel. AGAO access may also be granted to US, UK, Canadian and NZ nationals who are permanent employees of the Australian Defence Organisation (ADO), but who do not yet meet Australian citizenship requirements.

## **6. Australian Eyes Only (AUSTEO)**

- 6.1.1 A security caveat indicating that access to information so titled is limited to appropriately cleared Australian citizens, including officers of the Australian Government, on a need-to-know basis. AUSTEO information must not be released to foreign nationals under any circumstances.

## **7. AUS/(CAN/NZ/UK/US) Eyes Only or REL AUS/US**

- 7.1.1 A security caveat indicating that access to information so titled is limited to appropriately cleared Australian citizens and citizens of the country so designated by the releasability indicator on a need-to-know basis. Information with a releasability indicator MUST only be released to nationals of the countries included in that releasability indicator.

## **8. Foreign-Sourced Security Classified Information**

- 8.1.1 If information is provided by a foreign Government in accordance with an existing bilateral security instrument, then the Australian security classification which is applied MUST provide protection at least equivalent to that required by the foreign Government. Advice on equivalent security classifications can be provided by DSA APS.
- 8.1.2 If information is provided by a foreign Government with which Australia does not have a bilateral security agreement, then the Australian security classification which is applied MUST be determined on a case-by-case basis in consultation with DSA APS.
- 8.1.3 When foreign-sourced security classified information is reproduced in part or whole, documents must bear both the classification and the country of origin (eg UK SECRET, SECRET COVERING US CONFIDENTIAL).
- 8.1.4 Further information about the handling of foreign-sourced national security information can be found in the eDSM Pt 2:30.27, Foreign Markings or by contacting DSA Information Security Policy (ISP).

## **9. Guidelines for Public Domain Information**

- 9.1.1 Official information that is intended for public release is commonly referred to as Public Domain information. This is information that has been authorised for public access or circulation, such as for web sites and Agency publications. Defence's Coordination and Public Affairs Divisions is responsible for clearing unclassified Defence information which is to be released to the public. The person authorising the release of this information MUST annotate the source document accordingly (eg information intended for publication, such as newspaper articles, MUST have written authorisation prior to release).

## **10. Guidelines For COMSEC Information**

- 10.1.1 **Communication Security (COMSEC)** is the protection resulting from all measures designed to deny to unauthorised persons information of value that might be derived from the possession and study of telecommunications, or to ensure the authenticity of telecommunications.
- 10.1.2 **COMSEC Information** is all information or material (documents, publications, devices, equipment or apparatus) concerning Comsec. It includes but is not limited to TEMPEST and Cryptographic information and material. Comsec information must be handled in accordance with ACSI-53 Communications Security Handbook.
- 10.1.3 **Cryptographic Information** is information (including crypto-material) significantly descriptive of cryptographic techniques and processes or of cryptosystems and equipments or their functions and capabilities, the disclosure of which would assist the crypto-analytic solution of an encrypted test or a cryptosystem. Cryptographic information is always classified.

## Annexure F – TD Schedule

[TD Schedule developed by the Participant at the RFP stage to be included. At the Effective Date, this Annexure is likely to include only TD comprising Background IP. This Annexure must be updated by the Participant as the work under the contract is undertaken and new TD is produced.]

The Defence Representative and the Participant Representative may agree in writing to update the TD Schedule without entering into a deed in accordance with clause 38.1.

### Technical Data

Description	Form of Technical Data
<i>E.g. Test data produced in the Technology demonstration</i>	<i>Soft copy and hard copy spreadsheet</i>
<i>E.g. System design documentation</i>	<i>Soft copy and hard copy document</i>
[Insert]	[Insert]