

ANNEX B

DRAFT PARTICIPANT DEED

Note to drafters: This template should be used to engage a single participant from Defence industry to attend and participate in the display and exhibition of autonomous and unmanned technology at Autonomous Warrior 2018 Industry Dynamic Exhibition. It is not suitable for any other purpose. When completing the template, do not delete any headings even if they are not applicable. Instead, delete clauses which are not applicable and insert 'not used' as the first clause under the relevant heading or Attachment, in order to maintain the clause numbering.

This Deed is made between

The Commonwealth of Australia represented by the Department of Defence A.B.N 68 706 814 312 ('Defence')

AND

[Insert Participant's details including full name, A.C.N, A.B.N and address] ('[insert short name for Participant]')

BACKGROUND

- A. Autonomous Warrior 2018 (AW18) is a multi-nation naval exercise to be held in Jervis Bay, New South Wales in November 2018.
- B. Defence intends to allow certain organisations to display and/or exhibit innovative, new or emerging autonomous and unmanned technologies (including in air, surface and sub-surface and land domains) as part of the AW18 Industry Dynamic Exhibition, which will be conducted separately to the naval exercises but for the information of persons who will be in Jervis Bay attending AW18 ('AW18 IDE' or the 'Exhibition').
- C. The Participant wishes to display and exhibit certain technology at the Exhibition and Defence has agreed to the Participant's participation in the Exhibition on the terms set out in this Deed.

THE PARTIES AGREE AS FOLLOWS

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1 INTERPRETATION

1.1 Definitions

1.1.1 In this Deed, unless the contrary intention appears:

“Approved Personnel” has the meaning given in clause 3.7.1.

“Arrival Date” means the time and date on which the Participant is required to arrive with the Technology at the Defence Location for the purposes of exhibition at AW18 IDE.

“Asbestos Containing Material” or “ACM” has the meaning given in sub-regulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

“Authorisation” means a licence, accreditation, permit, registration, regulatory approval or other documented authority (however described), required by law and necessary for carrying out the Authorised Activities.

“Authorised Activities” has the meaning given in Item 6 of Attachment A.

“AW18” means the multi-nation naval exercise to be held in Jervis Bay, New South Wales in November 2018, which comprises the Exhibition, the autonomous strategic challenge ‘The Wizard of Aus’ and exercise ‘Ocean Raider’.

“Confidential Information” means 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 breach of this Deed 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.

“Corporations Act” means the *Corporations Act 2001* (Cth).

“Deed” means this document and includes all attachments, schedules and annexes.

“Defence Location” has the meaning given in Item 2 of Attachment A.

“Defence Representative” means the person holding or performing the office identified in Item 3 of Attachment A or any other person appointed pursuant to this Deed as the Defence Representative from time to time.

“Effective Date” means the first day on which this Deed has been signed by both parties.

“Exhibition” has the meaning given in Recital B.

“Government Furnished Equipment and Infrastructure” or “GFEI” means any equipment, material or infrastructure owned by Defence or in Defence’s possession which is made available by Defence to the Participant in accordance with this Deed as GFE.

“Intellectual Property” means 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.

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

“Notifiable Incident” has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth).

“Personnel” means a party’s employees, officers, contractors, agents and representatives and includes the employees, officers, agents and representatives of contractors. For the Participant, “Personnel” includes the Approved Personnel.

[insert reference]

“Problematic Source” means a source of ionising or non-ionising radiation, from a material or apparatus, that is required to be licensed with the Australian Radiation Protection and Nuclear Safety Authority.

“Problematic Substances” means:

- a. any substance identified as having ozone depleting potential, or any gas identified as a Synthetic Greenhouse Gas, in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act;
- b. any dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (extant edition and as amended); or
- c. any hazardous chemicals as defined in sub-regulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

“Participant Representative” means the person holding or performing the office identified in Item 4 of Attachment A or any other person appointed pursuant to this Deed as the Participant Representative from time to time.

“Specific Requirements” means the requirements set out in Attachment C.

“Storage Facility” has the meaning given in clause 3.7.

“Technology” means the item or items described in Item 1 of Attachment A.

“WHS Legislation” means:

- 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 other than:

- a. a Saturday, Sunday or public holiday; or
- b. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or beginning on Christmas Day when it falls on a Saturday).

1.2 Interpretation

1.2.1 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 a person includes a body politic, body corporate or a partnership;
- d. 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 end of the next Working Day;
- e. a reference to an Act is a reference to an Act of the Commonwealth, a State or a 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 clause includes a reference to a subclause of that clause;
- g. a reference to a ‘dollar’, ‘\$’, ‘\$A’ or ‘AUD’ means the Australian dollar unless otherwise stated;
- h. a reference to a ‘day’ means a calendar day;
- i. a reference to a specification, publication, Defence policy or other document is a reference to that specification, publication, Defence policy or document, in effect on the Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties; and
- j. the word ‘includes’ in any form is not a word of limitation.

2 DEED IS EFFECTIVE

2.1 Effective Date

2.1.1 This Deed comes into effect on the Effective Date and, subject to clause 3.27, ends one day after the completion of the Exhibition.

3 EXHIBITION

3.1 Authorised Activities

- 3.1.1 Subject to this Deed, the Participant is permitted to:
- a. attend the Exhibition at the Defence Location; and
 - b. participate in the Exhibition with the Technology at the Defence Location by undertaking the Authorised Activities as part of the Exhibition on the terms and conditions of this Deed.
- 3.1.2 The Participant must:
- a. only carry out the Authorised Activities during, and as part of, the Exhibition and not undertake any activities which are not Authorised Activities in relation to the Technology;
 - b. not participate in the Exhibition with technology other than the Technology;
 - c. participate in the Exhibition in a co-operative and collaborative manner (including by co-operating with Defence and other participants) and in the best interests of the Exhibition;
 - d. comply with behavioural expectations and all reasonable directions given by Defence in relation to the Exhibition;
 - e. not participate in the Exhibition in a manner that, in Defence's reasonable opinion, brings, or is likely to bring, Defence into disrepute;
 - f. not undertake any action which does or may constitute an infringement of any person's Intellectual Property rights in respect of the Technology or the Exhibition or permit or authorise any person to do so;
 - g. participate in the Exhibition in a manner that ensures, so far as reasonably practicable, the health and safety of all persons and complies with this Deed and all applicable laws including the WHS Legislation;
 - h. ensure that the Technology at all times complies with the description of the Technology set out in Attachment A; and
 - i. ensure the Technology is transported, operated and secured in accordance with this Deed and all applicable laws.

3.2 Recordings, Reproductions and Representations

- 3.2.1 The Participant must not, and must ensure its Personnel do not, use any audio, visual or audio-visual recordings, reproductions or representations (collectively, "Recordings") of any technologies being exhibited by other participants which are made at the Exhibition, including a photograph, video, digital scan or drawing for the purposes of reproducing another participant's technology or exercising any Intellectual Property in that technology.
- 3.2.2 To avoid doubt, clause 3.2.1 does not prevent the Participant from making Recordings of the Exhibition generally, including photographs or videos which include incidental images of other participants' technologies, and using those Recordings in its own promotional materials.
- 3.2.3 The Participant acknowledges that AW18 IDE may involve the display or use of Defence or other participant assets and technologies in military trial scenarios which if Recorded or disclosed would create a material risk for Defence, as determined by Defence. In such circumstances, Defence reserves the right to direct the Participant to refrain from, or immediately cease, Recording an asset, technology or scenario being exhibited at AW18 and the Participant must comply, and ensure its Personnel comply, with any such direction including to destroy the Recording or photograph or video etc.
- 3.2.4 Defence is not responsible to the Participant for any Loss that results from other participants or any other person making or using Recordings of any technologies exhibited by the Participant at the Exhibition.
- 3.2.5 The Participant consents, and must ensure that its Personnel consent, to Defence, the media, other participants and the general public making Recordings of the Participant's technology and Participant's personnel as part of and during the Exhibition and using such Recordings for any commercial or non-commercial purposes, including replaying the recordings to attendees at the Exhibition.

[insert reference]

3.2.6 The Participant must not, and must ensure its Personnel do not, make physical contact or otherwise interfere with any technologies being exhibited by other participants at the Exhibition, except with the express, prior consent of those other participants.

3.2.7 The Participant must not, and must ensure its Personnel do not, remove, damage or interfere with any other participant's technology at the Exhibition.

3.3 Exhibition requirements

3.3.1 The Participant has informed Defence that it requires the GFEI set out and described in item 8 Attachment A for the purpose of the Exhibition.

3.3.2 Defence will use its best endeavours to ensure that the requirements for Exhibition set out in Attachment A are satisfied and the GFEI described in Attachment A is provided, however Defence accepts no responsibility if Defence forms the view, acting reasonably, that it is not practicable to provide the requirements or GFEI.

3.4 Arrival and departure

3.4.1 The Participant must not arrive at the Defence Location before:

- a. the Arrival Date; or
- b. before the time allocated or agreed by Defence to the Participant for accessing the Defence Location on any given day during AW18 IDE.

3.4.2 The Participant may only allow its Personnel who have obtained Exhibition access clearances and approvals from Defence prior to the Arrival Date to access the Defence Location.

3.4.3 The Participant must:

- a. provide photo ID for all its Personnel who require entry to the Defence Location on each occasion on which access is required;
- b. comply with, and require its Personnel to comply with, the behavioural expectations, all Defence safety and security requirements, regulations, standing orders and professional standards of behaviour for and at the Defence Location;
- c. unload the Technology, and all associated equipment and materials, at the Defence Location where directed by Defence; and
- d. provide copies of any Authorisations required for transporting the Technology to, or exhibiting the Technology at, the Exhibition to Defence prior to the Arrival Date.

3.4.4 If the Technology includes any:

- a. Problematic Substances and Problematic Sources, the Participant must unload, secure and manage the Technology in accordance with clause 3.14; or
- b. dangerous equipment or material (such as explosives), the Participant must deliver, secure and manage the Technology in accordance with clause 3.12.

3.4.5 The Participant must leave the Defence Location, taking the Technology and all rubbish and other items brought by the Participant, as soon as practicable after the completion of the Exhibition and in any event no later than the final day of the Exhibition unless Defence has agreed to a later date in writing.

3.4.6 The Participant must leave any part of the Defence Location allocated to the Participant for Authorised Activities in the same condition as it was in when entered by the Participant, excepting only fair wear and tear.

3.4.7 If the Participant fails to remove the Technology and any equipment or other items from the Defence Location by the date referenced in clause 3.4.5, Defence may, at Defence's election, remove or dispose of the Technology, equipment or other items and the Participant must pay the reasonable and substantiated costs of the removal or disposal upon receiving an invoice from Defence.

3.5 Event requirements

3.5.1 Defence will provide an indicative schedule for the Exhibition to the Participant as far in advance of the Exhibition as practicable. Defence may update the indicative schedule from time to time without notice.

[insert reference]

- 3.5.2 Participant Personnel must attend an entry briefing that will be conducted by Defence at the Defence Location at the time and date notified by Defence. The Participant and its Personnel must comply with any further safety and security requirements communicated at the entry briefing.

3.6 Specific Requirements

- 3.6.1 The Participant must comply with the Specific Requirements.

3.7 Storage Facility

- 3.7.1 Subject to clauses 3.4 and 3.7.4, Defence may provide access to a storage facility at the Defence Location on or after the Arrival Date to certain Participant personnel approved by Defence for the purposes of this clause 3.7 (Approved Personnel), as necessary for the Participant to perform this Deed, including storing the Technology (Storage Facility). The Storage Facility will be provided free of charge.
- 3.7.2 If Defence has agreed, at the Effective Date, to provide the Storage Facility, details of the allocated area may be set out in Attachment A. However this clause 3.7 applies regardless of whether or not the Storage Facility is listed in this Deed.
- 3.7.3 Unless otherwise agreed, the Participant must seek written approval from the Defence Representative at least 5 Working Days prior to access being required, for each person the Participant wishes to have access to the Storage Facility. Only Approved Personnel will be permitted to access the Storage Facility.
- 3.7.4 Defence may, with reasonable cause, by notice to the Participant or Approved Personnel, exclude the Participant and any or all Approved Personnel from the Storage Facility, or any part of it, at any time and for any period.
- 3.7.5 The Participant must use the Storage Facility only for the purposes of storing the Technology, equipment or other items for the purposes of carrying out Authorised Activities.
- 3.7.6 Defence does not warrant and, to the extent permitted by law, is not liable for the suitability of the Storage Facility for the purposes of storing the Technology, equipment or other items. The Participant must satisfy itself as to the suitability of the Storage Facility.
- 3.7.7 The Participant must comply with, and require its Personnel to comply with, any relevant Defence safety and security requirements, regulations, standing orders, or codes of behaviour applicable to the Storage Facility or the premises in which the Storage Facility is located. The Participant must at all times comply with the laws in force in the locality in which the Storage Facility is situated that relate to the use, occupation and possession of the area and must ensure that its Personnel do the same.
- 3.7.8 The Participant acknowledges and agrees that the Storage Facility is a shared facility and may be used by Defence and other persons authorised by Defence.
- 3.7.9 The Participant must:
- a. keep the portion of the Storage Facility allocated to the Participant and any communal areas or thoroughfares clean and tidy and unobstructed, including by keeping any leads or power cords safely secured;
 - b. not do anything that is, or may be, dangerous, annoying, or offensive, or that may interfere with Defence or other persons using the Storage Facility, the premises in which the Storage Facility is located or properties adjoining those premises; and
 - c. comply with Defence's requirements concerning the storage and removal of waste and debris.
- 3.7.10 The Participant acknowledges and agrees that it is solely liable and responsible for all losses, costs and expenses which it incurs arising out of or in connection with storing the Technology at the Storage Facility, including loss of or damage to the Technology or any other property or equipment, even if such loss or damage was due to Defence's negligence..

3.8 Government Furnished Equipment and Infrastructure

- 3.8.1 Subject to clauses 3.8.3 and 3.8.4, Defence may make available at no cost to the Participant such items of Government Furnished Equipment and Infrastructure (GFEI) on a short term, temporary basis during, and for the purposes of, the Exhibition as are agreed by Defence at the time and for the period agreed by Defence and the Participant.

[insert reference]

- 3.8.2 If Defence has agreed, at the Effective Date, to provide GFEI, details of that GFEI may be set out in Attachment A. However, this clause 3.8 applies to any GFEI, regardless of whether or not the GFEI is listed in this Deed.
- 3.8.3 The Participant acknowledges that Defence and other entities may require access to the GFEI. Defence makes no guarantee, and the Participant should not assume, that all or any of the GFEI which the Participant wishes to use will be available at the time the Participant wishes to use them.
- 3.8.4 As described in clause 3.8.3, Defence is under no obligation to provide the GFEI. Defence does not warrant and, to the extent permitted by law, is not liable for the suitability of the GFEI for the Authorised Activities or any purposes. The Participant must satisfy itself as to the suitability of the GFEI.
- 3.8.5 The Participant must use the GFEI only for the purposes for which it was provided by Defence and only in relation to performing this Deed.
- 3.8.6 The Participant must not remove the GFEI or allow the GFEI to be removed from the Defence Location unless with the prior, written consent of Defence.
- 3.8.7 The Recipient must, at all times operate or access the GFEI in accordance with:
- a. any guidelines, regulations or requirements issued by Defence;
 - b. all work, health and safety or other regulations which are applicable to the GFEI or its operation; and
 - c. the specifications or requirements of the manufacturer of the GFEI as provided with the GFEI or of which the Participant ought to be aware.
- 3.8.8 Without limiting clause 3.8.7, the Participant must ensure that the GFEI is at all times kept in the possession or control of the Participant until it is returned to Defence and is operated or accessed in a professional, proper and safe manner, in accordance with the behavioural expectations, and so as to avoid damage to or loss of the GFEI and injury to or death of any persons operating, using, accessing or handling the GFEI.
- 3.8.9 The Participant must:
- a. store and use the GFEI in a responsible, competent, proper and skillful manner and comply with all instructions given by Defence regarding the manner in which this should be done;
 - b. take all reasonable steps to ensure the proper protection and security of the GFEI; and
 - c. not make any alteration, addition or modification to any of the GFEI.
- 3.8.10 The Participant acknowledges and agrees that it shall be solely liable and responsible for all costs and expenses arising out of or in connection with the performance of all activities necessary to comply with its obligations under this clause 3.8.
- 3.8.11 The Participant must ensure that the GFEI is not in any way damaged, modified or destroyed as a result of its use by the Participant.
- 3.8.12 The GFEI must be returned to Defence at the Defence Location on the earlier of:
- a. the time for return agreed by Defence and the Participant; or
 - b. demand by Defence,
- in the same condition (including its form and functionality) as when it was provided to the Participant.
- 3.8.13 If, in Defence's opinion, the GFEI has been damaged, modified or destroyed by the Participant, Defence will notify the Participant and may make whatever arrangements (including entering into contracts with third party repairers or suppliers of the GFEI) as Defence, in its discretion, considers necessary to replace or restore the GFEI to the same condition as it was in when it was provided to the Participant.
- 3.8.14 The Participant will be solely responsible for all costs and expenses incurred by Defence in replacing or restoring the GFEI in accordance with clause 3.8.13. All such amounts may be recovered by Defence as a debt owing to Defence from the Participant.
- 3.8.15 If the Participant fails to return any items of the GFEI, Defence may repossess the GFEI and may enter any Participant premises for this purpose.
- 3.8.16 Nothing in this Deed is taken to vest title to the GFEI in the Participant. To avoid doubt, the GFEI does not form part of the Technology.

[insert reference]

- 3.8.17 The provision of the GFEI by Defence does not convey any licence to use any trade marks, patents or patentable inventions which are disclosed by, or comprised in, or included on, the GFEI.

3.9 Intellectual Property

- 3.9.1 Nothing in this Deed affects either party's ownership of Intellectual Property rights and a Participant is not required to grant any Intellectual Property rights under this Deed.
- 3.9.2 The Participant is responsible for obtaining any Intellectual Property rights required in relation to the Technology or its use for the Exhibition.
- 3.9.3 The Participant warrants that, to the best of its knowledge and belief, the Technology does not infringe the Intellectual Property of any person.

3.10 Confidential Information

- 3.10.1 Subject to clause 3.10.3, each party will not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party. Consent may be given at any time.
- 3.10.2 In giving written consent under clause 3.10.2, either party may impose such conditions as it sees fit. Each Party agrees to comply with any terms or conditions imposed by a party under this clause 3.10.
- 3.10.3 The obligations on each party under clause 3.10 will not be taken to have been breached to the extent that the Confidential Information:
- a. is disclosed by a party to its advisers, employees or service providers solely to comply with the terms of the Deed;
 - b. is disclosed to a party's internal management personnel, solely to enable effective management of auditing of activities related to this Deed;
 - c. is disclosed by a party to the responsible Minister;
 - d. is disclosed by a party in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared within a party, or with other another Commonwealth entity, where this serves the legitimate interests of the Commonwealth of Australia; or
 - f. is disclosed by a party to the Auditor-General, Ombudsman or Privacy Commissioner.
- 3.10.4 The obligations under this clause 3.10 in relation to any Confidential Information continue notwithstanding the expiry or termination of this Deed.
- 3.10.5 The Participant acknowledges that members of the public and foreign nations may be present at the Exhibition and therefore no Confidential Information may be included in the Exhibition. Defence cannot protect any Confidential Information which is visible to third parties during the Exhibition, and such information will be deemed to be in the public domain.
- 3.10.6 The Participant warrants that the Technology does not include any export controlled technology. The Participant acknowledges that it may constitute a breach of any transfer Authorisation or other government approval by the Participant if export controlled technology is displayed at the Exhibition.

3.11 Public communications

- 3.11.1 In any public communications relating to the Exhibition, the Participant must not make or permit to be made any statement known by the Participant to be inaccurate, false or misleading.

3.12 Licenses and Permits

- 3.12.1 The Participant is responsible for obtaining all import and export approvals, licences, permits or other approvals or authorisations required in relation to the Technology (including to transport the Technology to and from the Defence Location) and carrying out of the Authorised Activities.
- 3.12.2 The Participant must provide evidence of any licences and permits referred to in clause 3.12.1 to Defence upon request.

3.13 Hazardous Technology

- 3.13.1 In addition to and without limiting its other obligations under this Deed, the Participant must not bring to the Exhibition or Defence Location any potentially hazardous or dangerous (whether to health, property

or the environment) Technology or any potentially hazardous or dangerous item, equipment or material (collectively, "Hazard") except as expressly specified in this Deed.

- 3.13.2 The Participant must comply with all reasonable directions and Defence procedures relating to work health and safety and security in effect for the Exhibition or as notified by the Defence Representative to the Participant from time to time, concerning the safe use and storage of any potentially hazardous or dangerous Technology or any Hazard. However, nothing in this Deed limits the Participant's responsibility for, or liability relating to, the Technology or the Hazard.
- 3.13.3 The Participant must ensure that any Hazard it delivers to the Defence Location under this Deed is not live, connected to power or otherwise functional in any way. The Participant must ensure that any Hazards are clearly labelled and securely and safely exhibited and stored at the Exhibition.
- 3.13.4 The Participant warrants that this Deed contains a full description of the Technology, including potentially hazardous or dangerous Technology and all Hazards to be brought onto Defence Premises by or on behalf of the Participant.

3.14 Problematic Substances and Problematic Sources

- 3.14.1 The Participant has provided to Defence the Problematic Substance Register and Problematic Sources Register for the Technology set out in Attachment B. The Participant warrants that the Problematic Substance Register and Problematic Sources Register is accurate and complete and identifies all Problematic Substances or Problematic Sources on or in the Technology.
- 3.14.2 The Participant acknowledges that it bears all risk, liability and responsibility for:
 - a. identifying and immediately notifying Defence of any additional Problematic Substances or Problematic Sources on or in the Technology;
 - b. the presence of any Problematic Substances or Problematic Sources that may be on or in the Technology and anything incidental to them including compliance with all applicable laws, including the WHS Legislation, and the requirements of any government agency; and
 - c. ensuring no damage, Loss or injury is sustained (including to workers, other persons or the environment) by or as a result of Problematic Substances or Problematic Sources that may be on or in the Technology.
- 3.14.3 The Participant must not breach areas or disturb any component of the Technology which may contain Problematic Substances or Problematic Sources during the Exhibition.
- 3.14.4 To the extent permitted by law, the Participant assumes all risk and responsibility for:
 - a. identifying and updating the information provided in Attachment B to notify Defence as far as possible in advance of the Arrival Date of any risks and hazards in or on the Technology or arising from the transport, storage, display or use of the Technology; and
 - b. ensuring that no damage, loss or injury is sustained by any person (including to workers, as defined in the WHS Legislation and other persons) by or arising from the presence of risks and hazards in or on the Technology, including when workers perform activities associated with the transport, use or storage of the Technology.

3.15 Work Health and Safety (WHS)

- 3.15.1 The Participant must comply with all reasonable directions and Defence procedures relating to work health and safety and security in effect or as notified by the Defence Representative to the Participant from time to time, so far as these directions concern the safe use of the Technology.
- 3.15.2 The Participant:
 - a. must comply with, and must ensure that all its contractors comply with, the applicable WHS Legislation including the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with Defence or contractors and any other person who, concurrently with the Defence, Participant or the contractor, has a work health and safety duty under the WHS Legislation in relation to the same matter; and
 - b. acknowledges, in carrying out any obligations under this Deed, that it has a duty to ensure, so far as is reasonably practicable, the health and safety of:
 - (i) Defence Personnel;
 - (ii) Participant Personnel; and

[insert reference]

(iii) other persons,

in connection with the transport, use, display, exhibition or storage of the Technology.

3.15.3 The Participant represents and warrants that:

- a. it has given careful, prudent and comprehensive consideration to the work health and safety implications of the Technology; and
- b. its proposed method of using the Technology and carrying out the Authorised Activities complies with, and includes a system for identifying and managing work health and safety risks which complies with all applicable legislation relating to work health and safety including the applicable WHS Legislation.

3.15.4 To the extent not inconsistent with the express requirements of this Deed, the Defence Representative may direct the Participant to provide particular information or documentation that Defence considers reasonably necessary to enable it to comply with applicable legislation relating to work health and safety including the WHS Legislation.

3.15.5 The Participant must ensure that if the WHS Legislation requires that:

- a. a person (including a contractor):
 - (i) be authorised or licensed in accordance with the WHS Legislation to carry out any works at a workplace, that that person is so authorised or licensed and complies with any conditions of such Authorisation; or
 - (ii) has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that that person has the required qualifications or experience or is so supervised; or
- b. a workplace, plant, substance or design, or work (or class of work) be authorised or licensed, that that workplace, plant, substance or design, or work (or class of work) is so authorised or licensed.

3.15.6 To the extent the WHS Legislation applies, the Participant must report to Defence any Notifiable Incident in connection with the Technology, its use or the performance of this Deed that involves:

- a. Participant Personnel on Defence premises;
- b. Defence Personnel on the Participant or the Participant's contractors' premises; or
- c. any person (including Defence Personnel or Participant Personnel), where the incident arises out of the conduct of Defence's business or undertaking, and the Defence owes such person a duty under the WHS Legislation.

3.15.7 Where practicable, the Participant must report Notifiable Incidents in accordance with Department of Defence Form AE527, as amended from time to time.

3.15.8 The Participant must promptly provide copies of notices or any other documentation provided to or issued by the regulator and provide such other information and reasonable assistance as may be required to ensure Defence complies with its reporting obligations to Comcare, if any, regarding the Notifiable Incident.

3.16 Insurance

3.16.1 The Participant shall ensure that it effects and maintains insurance arrangements that are appropriate given the nature and risks associated with the Technology and the Authorised Activities, and at a minimum holds the insurances specified in Attachment A.

3.16.2 If required by the Defence, the Participant must promptly provide evidence of the insurance arrangements referred to in clause 3.16.1 to Defence's satisfaction.

3.17 Responsibility and costs

3.17.1 Each party will bear its own costs of entering and performing this Deed.

3.17.2 The Participant must, on receipt of an invoice and substantiating documentation from Defence, promptly reimburse Defence for the cost of rectification of any damage to the Defence Location or Defence equipment caused by the Technology, the Participant or its Personnel.

3.17.3 Defence accepts no responsibility for the security of any equipment and materials the Participant brings to the Defence Location, including that Defence accepts no responsibility for any damage to, or loss

of, the Technology, whether before, during or after the Exhibition and including as a result of Defence's negligence.

- 3.17.4 Except as expressly set out in this Deed, preparation for and participation in the Exhibition, and in relation to any matter concerning the Exhibition, is at the Participant's sole risk, cost and expense. Defence will not be liable to the Participant or any other person for any costs or expenses incurred in relation to, or incidental to, the Exhibition (including, without limitation, instances where a Participant relies on advice from Defence or any other Commonwealth entity in relation to the Exhibition or where Defence exercises any rights under this Deed or at law).

3.18 Indemnity

- 3.18.1 The Participant indemnifies and hold harmless Defence and Defence's officers, employees, contractors and agents ("those indemnified") against any Loss suffered, sustained or incurred by those indemnified arising out of or in connection with:

- a. the performance of this Deed by the Participant, including the carrying out of activities referred to in this Deed; or
- b. any act or omission of the Participant or its officers, employees, contractors or agents; or
- c. the breach of any of the terms of this Deed by the Participant or any laws applicable to the Technology,

except to the extent that such Loss results from any unlawful or negligent act or omission on the part of those indemnified. Defence will hold the rights of those indemnified (other than the Defence) on trust and may exercise the rights on behalf of those indemnified.

3.19 Exclusion of liability

- 3.19.1 To the maximum extent permitted by law, Defence and Defence Personnel have no liability to the Participant or to the Participant's Personnel (including subcontractors) or any third party for any loss, damage or injury they suffer arising out of the Exhibition or the performance of this Deed. This includes, for example, Defence not being able to provide access to the Storage Facility, Defence or Commonwealth premises or any GFEI or Defence items or Defence Personnel as contemplated by this Deed.

3.20 Limitation of Liability

- 3.20.1 To the extent it cannot be entirely excluded by law, the liability of Defence under or in connection with this Deed (including any liability for breach of this Deed, in tort (including negligence), under statute in equity or otherwise) is limited to the minimum amount permitted by law.

3.21 Privacy

- 3.21.1 In this Deed, "Privacy Act" means the *Privacy Act 1988* (Cth) and "Australian Privacy Principles", "Information Commissioner" and "personal information" have the meanings given in the Privacy Act.

- 3.21.2 The Participant must:

- a. if it obtains personal information from Defence in the course of performing this Deed, use or disclose that personal information only for the purposes of this Deed and subject to any applicable exceptions in the Privacy Act;
- b. comply with its obligations under the Privacy Act; and
- c. in the course of performing this Deed, not do any act or engage in any practice which, if done or engaged in by the Defence, would be a breach of the Australian Privacy Principles.

- 3.21.3 The Participant must notify Defence as soon as reasonably practicable if:

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 3.21, whether by the Participant or any other person to whom the personal information has been disclosed for the purposes of this Deed; or
- b. in relation to personal information obtained in the course of performing this Deed:
 - (i) it becomes aware that a disclosure of such personal information may be required by law; or
 - (ii) it is approached by the Information Commissioner.

[insert reference]

- 3.21.4 The Participant must ensure that its contractors and Personnel who deal with personal information for the purposes of this Deed are aware of, and comply with, this clause 3.21.

3.22 Dispute Resolution

- 3.22.1 A party must not commence court proceedings relating to any dispute in relation to this Deed except after following the process in this clause 3.22.
- 3.22.2 The parties must negotiate in good faith and use all reasonable efforts to resolve disputes in relation to this Deed as quickly as practicable.
- 3.22.3 If a dispute in relation to this Deed cannot be settled by negotiation within 2 days, the parties must escalate the dispute to their senior management.
- 3.22.4 The parties must at all times during the dispute continue to fulfil their obligations under this Deed.
- 3.22.5 Nothing in this clause prevents any party from exercising a right to terminate this Deed or reduce the scope of this Deed, or from seeking urgent interlocutory relief in relation to a dispute.

3.23 Defence's rights

- 3.23.1 In addition to its other rights under this Deed or at law, Defence may immediately by notice to the Participant, acting reasonably and providing reasons:
- a. cancel the Exhibition or AW18 or change the dates for either;
 - b. refuse to allow the entry of the Participant to the Defence Location or any part of it;
 - c. require the Participant or any of its Personnel to immediately leave the Defence Location or any part of it;
 - d. require the Participant to rectify any defect in the Technology which is causing inconvenience or harm to others or remove the Technology from the Defence Location;
 - e. require the Participant to cease operating the Technology;
 - f. require the Participant to cease displaying or exhibiting the Technology; or
 - g. postpone, cancel or reduce the scope of the exhibition of the Technology by the Participant.

3.24 Termination

- 3.24.1 Defence may terminate this Deed immediately by notice to the Participant if the Participant breaches a material term of this Deed, including any warranty or any obligation in clauses:
- a. clause 3.1 (Authorised Activities);
 - b. clause 3.2.6 (no interference);
 - c. clauses 3.4.2 or 3.4.3 (access);
 - d. clause 3.10 (Confidential Information);
 - e. clause 3.12 (Licenses and Permits) but only to the extent that the breach was outside of the Participant's reasonable control;
 - f. clause 3.13 (Hazardous Technology);
 - g. clause 3.15 (Work Health and Safety);
 - h. clause 3.16 (Insurance); and
 - i. clause 3.21 (Personal Information).
- 3.24.2 In addition to any other rights it has under this Deed or otherwise at law, Defence may at any time terminate this Deed (in whole or in part) by notifying the Participant in writing.
- 3.24.3 Defence will not be liable for any Loss (including loss of profits, loss of revenue or loss of business opportunity) or costs incurred by the Participant:
- a. as a result of the termination of this Deed under clause 3.24.1; or
 - b. other than the reasonable and substantiated travel and accommodation costs of the Participant, as a result of the termination of this Deed under clause 3.24.2.
- 3.24.4 The Participant may terminate this Deed immediately by notice to Defence if the Participant at any time forms the view that:

[insert reference]

- a. the Storage Facility, any exhibition location or any GFEI is not suitable for its requirements; or
- b. it is not practicable or possible or safe to undertake the Authorised Activities (for example, due to a failure in the Technology).

3.24.5 The Participant will not be liable for any Loss (including loss of profits, loss of revenue or loss of business opportunity) or costs incurred by Defence as a result of the termination of this Deed under clause 3.24.4.

3.25 Notices

3.25.1 Subject to clause 3.25.3 and unless the contrary intention appears, any notice or communication under this Deed will be effective if it is in writing and sent from and delivered to the Defence Representative or Participant Representative, in accordance with the details specified in Items 3 or 4 of Attachment A.

3.25.2 A notice or communication will be deemed to have been delivered:

- a. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another;
- b. if hand delivered, when received at the address, or by the addressee if sooner; or
- c. 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, if the receipt, transmission or entry into the information system is not on a Working Day or is after 5.00pm (addressee's local time) on a Working Day, the notice is taken to be received at 9.00am (addressee's local time) on the next Working Day.

3.25.3 Any notice under this Deed which is required to be given urgently or immediately must be given either orally or by telephone and followed by a written form of notice.

3.26 General

3.26.1 Either party may propose a variation to this Deed. This Deed must only be varied in writing and when signed by both parties. The Participant acknowledges that it is unlikely that Defence will agree to any substantive variations relating to the Technology which will or may increase the risk to persons, safety, security or property.

3.26.2 If any of clauses 1 to 3.27 of this Deed are inconsistent with any provision in an Attachment or Annex to this Deed, then clauses 1 to 3.27 of this Deed take precedence to the extent of the inconsistency.

3.26.3 If any part of this Deed is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Deed will not be affected and must be read as if that part had been severed.

3.26.4 The laws of New South Wales apply to this Deed. The courts of that State have non-exclusive jurisdiction to decide any matter arising out of this Deed and each party submits to the jurisdiction of those courts for any proceedings in connection with this Deed.

3.26.5 The Participant must not represent itself, and must ensure that its Personnel do not represent themselves, as being employees, partners or agents of Defence.

3.26.6 The Participant may not, without the prior, written consent of Defence, assign in whole or in part, its rights under this Deed or novate this Deed.

3.26.7 Failure by either party to enforce a term of this Deed must not be construed as in any way affecting the enforceability of that term or this Deed as a whole.

3.26.8 A clause of this Deed must not be interpreted against a party merely because that party was responsible for drafting the clause.

3.26.9 Each party must do all things, including execute all documents, necessary to give effect to this Deed.

3.26.10 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Defence, Defence is unable to perform in whole or in part any obligation under this Deed, Defence is relieved of that obligation to the extent and for the period that it is unable to perform that obligation. No liability of Defence arises from any such delay or non-performance of the obligation.

3.26.11 This Deed represents the parties' entire agreement in relation to its subject matter and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

[insert reference]

3.26.12 This Deed may be executed in counterparts and all executed counterparts, taken together, constitute one document.

3.27 Survival

3.27.1 The following clauses survive the expiry or termination of this Deed:

- a. clause 3.10 (Confidential Information);
- b. clause 3.11 (Public communication);
- c. clause 3.18 (Indemnity);
- d. clause 3.19 (Limitation of Liability);
- e. clause 3.21 (Privacy); and
- f. any other provision which expressly or by implication from its nature is intended to survive the termination or expiration of this Deed, and any rights arising on termination or expiration, including provisions relating to exclusion of warranties, indemnities, costs, export controls, dispute resolution and termination.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE DEPARTMENT OF DEFENCE

(signature) (print name and position) (date)

In the presence of:

(signature of witness) (print name of witness) (date)

SIGNED, SEALED AND DELIVERED for and on behalf of

[...INSERT PARTICIPANT...]

Note to drafters: Appropriate execution clauses and instructions on their use are detailed in the 'Guide to Executing Agreements', found in the Procurement and Contracting Policy and Practice intranet page under the ASDEFCON and Contracting Initiatives section at: <http://drnet.defence.gov.au/DMO/PP/Pages/Home.aspx>

ATTACHMENT A – PARTICULARS

1. Technology (clause 1.1)

- 1.1 The Technology comprises the following: [...insert an exact description of the Technology (including whether it is only a prototype) and its intended functionality...].
- 1.2 The Technology has the following dimensions: [...insert dimensions for the components of the Technology ...].
- 1.3 The Technology weighs: [...insert details ...].
- 1.4 The Technology is powered by: [...insert details ...].

2. Defence Location (clause 1.1)

HMAS Creswell; and/or

Jervis Bay Airfield; and/or

any other Defence organised site in Jervis Bay, NSW in connection with AW18.

3. Defence Representative (clause 1.1 and 3.25)

- 3.1 [...Insert details of Defence Representative including address details for notices...]

a.

4. Participant Representative (clause 1.1 and 3.25)

- 4.1 [...Insert details of Participant Representative including address details for notices...]

5. Arrival Date (clause 1.1)

Note to drafters: Delete the option which is not applicable or delete both options and insert an alternative.

- 5.1 **Option A:** The Arrival Date is [...insert time and date...]

- 5.2 **Option B:** Defence will notify the Participant in writing of the Arrival Date.

6. Authorised Activities (clause 3.1)

- 6.1 Transporting the Technology in the Defence Location using [...to be inserted...]
- 6.2 Displaying the Technology in the dedicated display area allocated by Defence from time to time.
- 6.3 Exhibiting the Technology by [...description of how the Technology will be exhibited to be inserted...]
- 6.4 Accessing the Storage Facility for the purpose of storing or retrieving the Technology.
- 6.5 [...insert any other uses that the Participant may make of the Technology...]

7. Exhibition requirements (clause 3.3)

- 7.1 The Exhibition of the Technology requires [...to be inserted – e.g. access to a pier, a clear area of [x] metres, etc... Defence will not provide access to any platform participating in AW18 for the purposes of an Exhibition.]
- 7.2 The Participant will take approximately [x (period of time)] to prepare the Technology for exhibition.
- 7.3 [...insert any other requirements from the tender...]

8. GFEI (clause 3.5) (Optional)

Note to tenderers: Defence may agree to make available items of equipment or infrastructure to the Participant on a short term basis to assist the Participant to transport, display, exhibit or store the Technology at the Defence Location. These items of equipment or infrastructure may be listed in the table below.

Item of GFEI	Purpose for which GFEI may be used by the Participant	Period during which the GFEI is required

[insert reference]

9. Storage Facility (clause 3.7)

Facility	Date of Commencement of Access	Period of Access	Comments / Conditions of Access / Intended Purpose

10. Licences and permits (clause 3.10)

[...Insert details of licences and permits if applicable (eg for import or transportation).]

11. Insurance (clause 3.16)

[insert details of insurances depending on Technology]

ATTACHMENT B – DISCLOSURES

1. RISK ASSESSMENT

- 1.1 The Participant warrants that it has undertaken a comprehensive risk assessment in respect of its participation in the Exhibition using the Technology, and that this is annexed to this Attachment as Annex 1.
- 1.2 The Participant warrants that if there is any substantive change to the risk assessment at any time prior to the completion of the Exhibition, it will immediately notify the Defence Representative by telephone and email.

2. DESCRIPTION OF PROBLEMATIC SUBSTANCES

- 2.1 The Participant warrants to Defence that only the following Problematic Substances are contained in the Technology:
 - a. [...insert details of problematic substances in a register format or insert 'See attached Problematic Substances Register in Annex 2' and attach a copy of the register...]

3. DESCRIPTION OF PROBLEMATIC SOURCES

- 3.1 The Participant warrants to Defence that only the following Problematic Sources are contained in the Technology:
 - a. [...insert details of problematic sources in a register format or insert 'See attached Problematic Sources Register in Annex 3' and attach a copy of the register...]

4. GENERAL HEALTH AND SAFETY AND OTHER DISCLOSURES

- 4.1 The Participant has disclosed to Defence the following matters relating to the Technology and warrants that, when read in conjunction with the other disclosures made by the Participant in this Deed, the following provides a true and correct statement of the risks to the public and the risks and costs to Defence of the Participant's participation in the Exhibition using the Technology:
 - a. [...insert details of any issues from the EOI or Proposal. For example, if the Technology cannot be stored adjacent to a particular substance; or object or if the Technology has not been trialled in a similar environment to the Defence Location; or if the Technology has known safety or functionality risks; or if the Technology may cause any environmental damage...]
 - b. [...insert details of any Defence resources (other than GFE) which the Participant will require, particularly electricity and water consumption requirements...]

ANNEX 1 – Risk Assessment

[insert reference]

ATTACHMENT C – SPECIFIC REQUIREMENTS

Note to drafters: This Attachment is used to include Defence's requirements which are specific to a type of Technology. Insert 'not used' into any Schedules which are not applicable.