

Next Generation Technologies Fund (NGTF) Research Contract Contract Framework



Australian Government
Department of Defence

Contract No: [insert number]

Item 1 The Project: [insert high level description of Project]

Item 2 The Parties:

COMMONWEALTH OF AUSTRALIA
represented by the Department of Defence
ABN 68 706 814 312
(in this contract referred to as **Defence**)

[insert name of Participant]
ABN [insert ABN]
(in this contract referred to as **Participant**)

Item 3 NGTF Research Contract Standard Terms Version: [insert current version number of, and web link for, the NGTF Research Contract Standard Terms]

Item 4 What this contract comprises: This contract comprises:
(a) this Contract Framework;
(b) the CSS(s);
(c) the version of the NGTF Research Contract Standard Terms referred to in item 3 of this Contract Framework; and
(d) the annexures.

Item 5 Governing law: [insert relevant Australian state or territory]

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

Signature

Signature of director

Print name and position

Print name of director

Date

Date

In the presence of:

Signature of witness

Signature of director/company secretary (delete whichever is inapplicable)

Print name and position

Print name of director/company secretary (delete whichever is inapplicable)

Date

Date

NGTF Research Contract No: [insert number]

Contract Stage Statement (CSS)

Information for Respondents:

The CSS includes all the critical information for the project. The NGTF Research Contract may have one or more CSSs attached to it when the contract is signed and one or more CSSs may be added for additional Stages during the life of the contract. There are a number of key inputs that must be agreed when developing a NGTF Research Contract. These decision points are contained in the items of the CSS set out below. The content of the CSS will be agreed during the call for applications and contract negotiation process.

The Stage 1 CSS forms the basis of this contract. Any subsequent Stage (as set out in any other CSS attached to this contract at the commencement of the contract) will only come into effect if Defence, at its sole discretion, exercises its option to activate that Stage (see clauses 11.4 and 11.6 of the NGTF Research Contract Standard Terms). Additional Stages can also be added by negotiation (see clause 11.8 of the NGTF Research Contract Standard Terms).

Item 1 Stage	Stage [insert number of stage] – [insert broad description of stage, e.g. “Investigation of Feasibility”, “Testing and application” etc- note further details should be included in the Project Execution Plan]
Item 2 Stage Start Date	[insert stage start date]
Item 3 Stage Research Objectives	[Detail the research objectives for this Stage. The Participant will be obliged to use its best endeavours to meet these objectives.]
Item 4 Price (excluding GST)	[insert the total of all Milestone payments for this Stage – see Item 16]
Item 5 Aggregate Price	[insert] Insert aggregate of all amounts under this CSS and any prior CSS (do <u>not</u> add future payments under possible future CSS)

Item 6 Intellectual Property Arrangements

Item 6a.	Details of Foreground IP	Owner
<p>Ownership of Foreground IP (clause 21.1 of the NGTF Research Contract Standard Terms)</p>	<p>[Insert details of Foreground IP owned. If there is only 1 owner of all the Foreground IP, insert "All Foreground IP".]</p> <p>[Note: This contract does not permit multiple persons to own the same item of Foreground IP (ie joint ownership), so this field must detail how the parties will determine who owns each particular item of Foreground IP, or the default ownership arrangements, set out below in 6b will apply.]</p>	<p>Participant* Defence* named Key Subcontractor* [If Key Subcontractor, specify name] named third party* [insert name of other third party party]*</p> <p>[Note: If another third party is to own Foreground IP, a direct licence to use that IP must also be required under item 6g –see clause 24.1]</p> <p>*delete whichever does not apply</p>
	<p>[Repeat as above for each item (or class of items) of Foreground IP]</p>	<p>[Repeat as above for each item (or class of items) of Foreground IP]</p>
<p>Item 6b. Default Foreground IP Ownership (for Foreground IP not identified above) (clause 21.2 of the NGTF Research Contract Standard Terms)</p>	<p>Participant* Defence* Not applicable (in which case, the Party to this contract which creates the item of Foreground IP – see clause 21.2)* *select one and delete the others. Note Do not use option 3 if Foreground IP is likely to be created by a Subcontractor.</p>	
<p>Item 6c. Restrictions on Use of Foreground IP (clauses 21.4, 21.5 and 21.6 of the NGTF Research Contract Standard Terms)</p>	<p>[Note: This item is intended to restrict the scope of the IP licences granted under clauses 21.4, 21.5 and 21.6. Restrictions can be of general application, or specific to individual items of IP. In the event of a conflict between a restriction on use and the application of an additional purpose (see item 6d), the restriction applies, however care should be taken in drafting this item to avoid conflict, where possible.]</p> <p>Restrictions on Use of Defence owned Foreground IP: [Insert details of the Defence owned Foreground IP and the particular restrictions to be applied to that IP, or insert "not applicable".]</p> <p>Restrictions on Use of Participant owned Foreground IP: [Insert details of Participant owned Foreground IP and the particular restrictions to be applied to that IP, or insert "not applicable".]</p> <p>Restrictions on Use of Key Subcontractor’s Foreground IP: [Insert details of Key Subcontractor owned Foreground IP and the particular restrictions to be applied to that IP, or insert "not applicable".]</p>	

<p>Item 6d. Additional Purposes for Use of Foreground IP (clauses 21.4(c), 21.5(c) and 21.6(c) of the NGTF Standard Terms)</p>	<p>[Note: This item is intended to extend the scope of the IP licences granted under clauses 21.4, 21.5 and 21.6. Additional purposes can be of general application, or specific to individual items of IP. In the event of a conflict between a restriction on use (see item 6c) and the application of an additional purpose, the restriction will take precedence, therefore care should be taken in drafting this item to avoid conflict with item 6c, where possible.]</p> <p>Defence owned Foreground IP: [Insert details of Defence owned IP and the particular additional purposes to which the Participant can utilise that IP, or insert “not applicable”.]</p> <p>Participant owned Foreground IP: [Insert details of Participant owned IP and the particular additional purposes to which Defence can utilise that IP, or insert “not applicable”.]</p>
<p>Item 6e. Restrictions on the Use of Background IP (clause 22.2 of the NGTF Research Contract Standard Terms)</p>	<p>[Note: Clause 22 is intended to ensure that Background IP is available to ensure Foreground IP can be fully utilised in accordance with clause 21, however there may be situations, particularly with sensitive Defence owned background IP, where restrictions are necessary. Restrictions on use of Background IP may have significant impact on the practical ability to utilise Foreground IP, if the utilisation of the Foreground IP is dependent on the utilisation of Background IP, therefore restrictions on use of Background IP should be avoided if possible. Restrictions can be of general application, or specific to individual items of IP.]</p> <p>Defence owned Background IP: [Insert restrictions and which items of IP to which they apply]</p> <p>Participant owned Background IP: [Insert restrictions and which items of IP to which they apply]</p>
<p>Item 6f. Approved Third Party IP (clause 23.5 of the NGTF Research Contract Standard Terms)</p>	<p>[Note: It is essential that Defence carries out diligent enquiries about the suitability of third party IP that it intends to approve before the contract is signed and also makes sure it has appropriate licences from the owner of that third party IP, where necessary. The onus will be on Defence to do this, not the Participant. This includes the IP of Key Subcontractors, if their IP is to be approved and listed here.</p> <p>Alternatively, clause 24 can be relied on (and the third person and their relevant IP is included in item 6g of the CSS)</p> <p>[Insert description of the third party IP which has been pre-approved by Defence, include the owner of that IP]</p>
<p>Item 6g. Requirement for an IP deed to be executed (clause 24.1 of the NGTF Research Contract Standard Terms)</p>	<p>[Note: Use this item if either a direct IP licence is critical to the Research, or if the intended owner of relevant Foreground IP is neither the Participant, nor Defence]</p> <p>[Insert description of the IP for which a separate deed needs to be provided, include the owner of that IP]</p>

Item 7 Defence Representative

[Insert name / title]
[Insert address]
[Insert email address]

Item 8 Participant Representative

[Insert name / title]
[Insert address]
[Insert email address]

Item 9 Confidential Provisions

[Insert items of the CSS or annexures that the Parties agree to keep confidential.]

Item 10 Liability and Insurance

Limitation Amount (clause 37.1)	[Insert amount]
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Insurance Policies (clause 35.1)		
Policy Type	Insurance Policy Limit	Policy Requirements
Public liability	[insert]	[insert]
Professional Indemnity	[insert]	[insert]
[insert other insurances, if required]	[insert]	[insert]

Item 11 Additional Terms

Term	Applies (Yes or No)	Details
Clause 51 (Indigenous Procurement Policy)	[insert Yes or No]	
Clause 52 (Change of Control)	[insert Yes or No]	
Clause 53 (Asset Disposal)	[insert Yes or No]	
Clause 54 (Indemnity)	[insert Yes or No]	
Clause 55 (Defence Collaboration)	[insert Yes or No] If clause 55 applies, also ensure item 14 lists Defence Key Personnel and item 16 includes defence Deliverables.	Note the clauses in Annexure A will replace certain clauses identified in clause 55 and add additional clauses to the contract.
Clause 56 (Defence Items)	[insert Yes or No] [if this clause applies, also complete item 13]	
Clause 57 (Access to Defence Premises)	[insert Yes or No]	
Clause 58 (Work Health and safety)	[insert Yes or No]	
Clause 59 (WHS Notifiable Incidents)	[insert Yes or No]	
Clause 60 (Interest on late payments)	[insert Yes or No]	Insert this clause if total estimated contract price (including optional Stages) is less than \$1 million.

Item 12 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 (\$)
1.	[Insert]	[Insert]	[Insert]	[Insert]
2.	[Insert]	[Insert]	[Insert]	[Insert]

Item 13 Defence Items (Note - optional clause 56 must be incorporated into the contract if Defence is supplying items)

No	Description of item	Permitted use and modifications	Restrictions on use (if applicable) <small>Note IP restrictions should be included in CSS item 6e</small>	Date and place to be provided	Date and place to be returned (if applicable)	Additional requirements
1.	[Insert]	[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]

Item 14 Key Persons

Name and position <small>If Defence is collaborating on the research and clause 55 is included (see CSS item 11), also include Defence Key Persons below and identify that the person concerned is Defence Personnel in the next column.</small>	Is the Key Person Defence Personnel? <small>Defence Personnel are only to be included in item 14 if Defence is collaborating on the research and clause 55 is included (see CSS item 11).</small>	Role / Work to be performed
[Insert name and position description]	[insert No or Yes]	[Insert]
[Insert name and position description]	[insert No or Yes]	[Insert]

Item 15 Project Execution Plan

Information for Respondents:

As part of the application process, respondents will be asked to develop a Project Execution Plan (PEP). Once agreed with Defence, the PEP will be inserted into the contract at item 15, or included as Attachment 1 to this contract if substantial in size.

The PEP can be in your own format. It will be the document that specifies your overall approach to managing the project, the resources you intend to use to achieve the Stage Research Objectives, maturing your research and complying with the requirements of this contract.

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

If your project envisages collaborative research by Defence Science and Technology, that collaboration aspect should be included in your PEP.

Examples of PEP content might include:

- A brief description of the Research to be undertaken in the Stage;
- a summary of key Stage Research Objectives and success criteria;
- a description of the Project scope, including a high level summary of your approach to achieving the Stage Research Objectives and a summary of the Project schedule, resources to be used and key Deliverables (e.g. this might include your approach to Systems Engineering, Systems Safety, etc);
- a work breakdown structure, which will provide a framework for Project planning, management and status reporting and for estimating costs, schedule and technical achievements at completion;
- proposed Deliverables and outcomes, and other key metrics (where appropriate); and
- a proposed Schedule – planned sequence of activities and decision points to enable the achievement of Stage Research Objectives and contract requirements.

SAMPLE

Item 16 Milestones, Milestone Requirements and Milestone Payments

Information for Respondents:

A Milestone within a NGTF Research Contract may be made up of one or more Deliverables identified in this item 16. Defence will collaborate with respondents during the RFP and contract negotiation process to agree a schedule of achievable Milestones over the life of the NGTF Research Contract. The Milestone schedule will be designed to balance the applicant's cash flow needs with the value for money requirements of Defence.

The Milestones, Milestone Requirements and Milestone Payments are set out in the following table:

No	Milestone If Defence is collaborating on the research and clause 55 is included (see CSS item 11), also include Milestones and Deliverables for which Defence will be responsible	Criteria for Achievement	Milestone Due Date	Milestone Payment	If milestone includes a deliverable:			
					Conforming to ...	Approval or Review	Delivery location/format details	Will the Participant own the Deliverable?
1	[insert Milestone description]	[insert criteria for achievement of Milestone]	[insert due date for Milestone]	[insert Milestone Payment]	[insert standards etc]	[insert details]	[insert details]	[insert either Yes or No] Note clause 5.7 – default is that Deliverables belong to the Commonwealth
2								
3								

Item 17 Special Conditions

The Participant and Defence agree:	
SC1	[Note – if none, insert “not applicable”. Each Special Condition is numbered “SC1”, “SC2” etc, to avoid confusion with the NGTF Research Contract Standard Terms. Defence drafters should consult with Defence Legal if special conditions are considered necessary for the contract.] [insert special condition. If required]
SC2	[as above]
SC3	[as above]

SAMPLE

NGTF Research Contract Standard Terms

Version 1.0

Term of Contract

1 Term

- 1.1 This contract commences on the date the last Party executes it.
- 1.2 This contract ends in accordance with clause 11.11(b) unless terminated earlier.

Interpretation and Definitions

2 Interpretation

- 2.1 In this contract, except where the contrary intention is expressed:
 - (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to an Act, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
 - (d) a reference to A\$, \$A, AUD, dollar or \$ means the Australian dollar;
 - (e) a reference to a clause is to a clause of this contract (and includes reference to sub-clauses and paragraphs of this contract);
 - (f) a reference to a Party includes that Party's executors, administrators, successors and permitted assignees and substitutes;
 - (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (h) a reference to a specification, policy, document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
 - (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this contract or any part of it;
 - (k) if a day on or by which an obligation must be performed or an event must occur is not a Working Day, the obligation must be performed or the event must occur on or by the end of the next Working Day; and
 - (l) headings and notes are for ease of reference only and do not affect interpretation.

- 2.2 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 CSS (excluding item 15);
 - (c) these NGTF Research Contract Standard Terms (including where applicable Annexure A); and
 - (d) item 15 of the CSS,and the provision in the higher ranked document will prevail.

3 Definitions for this contract

- 3.1 The definitions listed in Annexure F apply to this contract (other than for Annexures B, D, and E).

The Work

4 Participant to undertake the Project

Note: Clauses 4.1 and 4.2 do not apply if clause 55 applies – see CSS item 11.

- 4.1 The Participant must:
 - (a) deploy the resources and carry out the activities described in the PEP and any other approved Plan; and
 - (b) use its best endeavours to achieve the Stage Research Objectives.
- 4.2 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 achieve the Stage Research Objectives. 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 4.1 (or clause 5.1 if the Participant cannot achieve a Milestone as a result), provided it follows the procedure in clauses 12 and 13.

5 Milestones

Note: Clauses 5.1 to 5.8 do not apply if clause 55 applies – see CSS item 11.

- 5.1 The Participant must achieve each Milestone by the relevant Milestone Date.
- 5.2 If a Milestone requires delivery of a Deliverable, that Deliverable must be delivered:
 - (a) by the relevant Milestone Date;
 - (b) in accordance with the requirements for that Milestone set out in item 16 of the CSS.
- 5.3 The Participant only achieves a Milestone if the criteria in item 16 of the CSS for that Milestone are met.
- 5.4 The Participant must notify Defence when it considers that a Milestone has been achieved and, if requested, must give Defence evidence that the criteria for that Milestone have been met.
- 5.5 Defence will be taken to have accepted the Milestone has been achieved unless it advises the Participant that it considers that the

Milestone has not been achieved, giving its reasons. Defence has fifteen (15) Working Days from the time the Participant has given notice under clause 5.4 to provide such advice.

- 5.6 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 5.1 for that Milestone.

Ownership and risk

- 5.7 Unless otherwise stated in item 16 of the CSS or otherwise agreed by the Parties, title to each Deliverable transfers to Defence on delivery.
- 5.8 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.

6 Technical Data

Note: Clauses 6.1 and 6.2 do not apply if clause 55 applies – see CSS item 11.

- 6.1 The Participant must provide to Defence all Technical Data required:
- (a) to enable the assessment, analysis, testing and evaluation by Defence of the Research or the progress in meeting the Stage Research Objectives;
 - (b) to enable the verification of the results, outcomes and recommendations in the Milestones;
 - (c) for Commonwealth Purposes; or
 - (d) by the PEP or a Milestone or Deliverable.
- 6.2 The Participant must provide the Technical Data at the times and in the manner specified in the PEP or item 16 of the CSS (where applicable); or otherwise promptly following a request from Defence.
- 6.3 Defence may provide Technical Data to a person who is not a party to this contract:
- (a) in accordance with its IP rights set out in clauses 21 to 23; but
 - (b) subject to any applicable confidentiality obligations under clause 25.

7 Standard of work

Note: Clause 7.1 does not apply if clause 55 applies – see CSS item 11.

- 7.1 The Participant must carry out (and must ensure any Subcontractor carries out) work under this contract in accordance with:
- (a) the standards specified in this contract;
 - (b) all Applicable Laws; and
 - (c) Good Industry Practice.

8 Location of Work

- 8.1 The Participant must ensure that the work under this contract is substantially carried out in Australia or New Zealand unless otherwise specified in the PEP or otherwise agreed by Defence.

9 Progress reports

- 9.1 The Participant must meet all reporting obligations set out in item 16 of the CSS to the standards and by the times as specified in that item.
- 9.2 Defence may require the Participant, on reasonable notice, to participate in meetings at which the Participant will be required to provide an update on the progress of the work being carried out by the Participant. Those meetings will take place in person, or with Defence's agreement, by means of telephone conference, video conference or other means of instantaneous, or near-instantaneous, communication.

10 Special conditions

- 10.1 Each Party must comply with the special conditions (if any) imposed on it in item 17 of the CSS.

Stages, additional Stages and changes to Stages

11 Staged approach to this contract

- 11.1 The Participant acknowledges and agrees that:
- (a) even if the Participant satisfies the Stage Research Objectives and meets the requirements of a particular Stage of this contract, the nature of the Research may not be suitable or considered valuable for use by Defence;
 - (b) further research or development may be required in addition to activities under this contract to further progress the Research; and
 - (c) Defence is under no obligation to:
 - (i) exercise its options under clause 11.4 or 11.6; or
 - (ii) enter into a new CSS or any subsequent contract with the Participant, even if Defence has requested a proposal under clause 11.8(b).

Status of Stages as at the Contract Start Date and exercising options to extend

- 11.2 Clauses 11.3 to 11.7 only apply if this contract comprises more than one CSS as at the Contract Start Date.
- 11.3 Subject to this clause 11:
- (a) the Participant is not to carry out any work under any CSS other than the CSS for Stage 1; and
 - (b) Defence is under no obligation to make any payments for work unrelated to the CSS for Stage 1.

Defence's option to extend the contract to include Stage 2

- 11.4 If at the Contract Start Date this contract includes a CSS for Stage 2, Defence may at its sole discretion by written notice to the Participant extend the contract to include Stage 2.
- 11.5 Defence may exercise its option under clause 11.4 at any time during Stage 1.

Defence's option to extend the contract to include Stage 3

- 11.6 If at the Contract Start Date this contract includes a CSS for Stage 3 and Defence has exercised its option to extend the contract under clause 11.4, Defence may at its sole discretion by written notice to the Participant extend the contract to include Stage 3.
- 11.7 Defence may exercise its option under clause 11.6 at any time during Stage 2.

Adding Stages by negotiation

- 11.8 The Parties may agree to amend this contract to include a new CSS to provide for an additional Stage, either:
- (a) by the Participant providing a proposal for the continuation of research or development under another Stage; or
 - (b) by Defence requesting that the Participant provide such a proposal.
- 11.9 The proposal must be in the form of a draft new CSS, including details of the further research or development proposed, a proposed project execution plan and pricing. The Parties may negotiate the terms of the proposed CSS.
- 11.10 If the Parties agree on the terms of the additional CSS, they will enter into a deed, substantially in the form of Annexure B, to update this contract to incorporate that additional CSS.
- 11.11 Without limiting any other termination rights, if the Parties have not agreed to the additional CSS:
- (a) by the date that is six (6) months after the date Defence approved the Final Report under the last CSS – either Party may terminate this contract by notice to the other Party; or
 - (b) by the date that is twelve (12) months after the date Defence approved the Final Report under the last CSS – this contract ends unless otherwise agreed by the Parties.
- 11.12 The Parties may agree for work to commence under an additional CSS prior to all Milestones being achieved under any other CSS. In this case, during that period all references in this contract to 'CSS' are references to all CSSs.
- 11.13 The Parties' rights and obligations under the a CSS are not extinguished by adding another CSS in the contract.

Changing a Stage

- 11.14 The Parties may amend a CSS in accordance with clause 41.1.

Problem Solving

12 Notification of problems

Note: Clause 12 does not apply if clause 55 applies – see CSS item 11.

- 12.1 The Participant must promptly notify Defence if it becomes aware that it may not be able to:
- (a) achieve one or more Stage Research Objectives;
 - (b) comply with the PEP; or

- (c) achieve a Milestone.

- 12.2 If Defence considers that the Participant may be unable to do the things referred to in clause 12.1, it may notify the Participant of its concerns.

13 Process for resolving problems

Note: Clauses 13.1 to 13.3 do not apply if clause 55 applies – see CSS item 11.

- 13.1 The Parties must meet promptly and in any event no later than twenty (20) Working Days after a notice given under clause 12.
- 13.2 The purpose of the meeting referred to in clause 13.1 is to provide a forum where the Parties can seek to resolve the issues identified under clause 12. To enable the Parties to fully discuss the issues identified under that clause, Defence may require the Participant to provide oral or written information on:
- (a) the Project's progress and the resources deployed by the Participant to date;
 - (b) obstacles to progress;
 - (c) possible solutions to those obstacles (if this is possible); and
 - (d) whether there are any reasons to continue with the Project even though the Stage Research Objectives cannot be achieved.
- 13.3 The Parties may, as a result of their discussions under clause 13.2, agree to:
- (a) continue with the contract unamended;
 - (b) amend the contract (in particular the CSS);
 - (c) seek third party assistance;
 - (d) appoint an independent third party to help the Parties resolve the issues; or
 - (e) terminate this contract (in which case the Parties must agree on a termination date and any conditions on termination, such as the provision of a report by the Participant, or the payment of reasonable costs under clause 38.4.)
- 13.4 Defence may terminate this contract by notice if the Parties have not agreed the next steps under clause 13.3 within forty-five (45) Working Days of meeting under clause 13.1.
- 13.5 Defence and the Participant must each act reasonably and in good faith in exercising their respective rights under this clause 13.
- 13.6 This clause 13 does not limit Defence's termination rights.

Cooperation

14 Agreement to work together

- 14.1 The Parties agree to work together cooperatively, including:
- (a) by informing each other in a timely way of matters that may affect the Project and performance of this contract;
 - (b) by sharing relevant documents, information and opinions reasonably required for performance of the contract;
 - (c) by working co-operatively to minimise and mitigate Project risks;
 - (d) by striving to resolve differences between them quickly; and

- (e) by dealing with each other frankly and openly, on a “best for project” basis.
- 14.2 The Parties agree that nothing done in collaborating, cooperating or working together 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.

15 Defence’s role

- 15.1 From time to time, Defence may elect to make Defence Personnel with relevant technical expertise available for the Participant to consult with in relation to the Stage Research Objectives.
- 15.2 Defence’s approval (however described) of any Plan or any test in respect of the Project is for Defence’s benefit only and cannot be relied on by the Participant. Defence makes no representation by giving such approval.

Payment

16 Payment of Milestone Payment

- 16.1 The Participant may only submit an invoice to Defence if Defence has accepted or has been taken to have accepted (under clause 5.5 or 5.6) that the Milestone for the relevant Milestone Payment has been achieved.
- 16.2 Defence will pay the Participant each Milestone Payment within thirty (30) days after receiving a Correctly Rendered Invoice for the payment, only if:
- (a) Defence has accepted or has been taken to have accepted (under clause 5.5 or 5.6) 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.
- 16.3 For this clause 16 an invoice is a Correctly Rendered Invoice 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.
- 16.4 If Defence rejects an invoice, it must notify the Participant of its rejection of the invoice, providing its reasons for the rejection and any action to be taken by the Participant for the invoice to be payable.
- 16.5 Upon receipt of a notice issued under clause 16.4 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 16, as if it were the original invoice.

- 16.6 Payments of invoices will only be made by electronic funds transfer to the credit of the account notified to Defence by the Participant.
- 16.7 Payment of any 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.

17 Taxes included

- 17.1 The Parties agree that the Price includes all applicable Australian and overseas taxes, duties and government charges, excluding GST.
- 17.2 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.
- 17.3 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.

18 Defence may set off, or give notice of debt

- 18.1 Defence may deduct from any amount that it owes to the Participant under this contract, any amount that the Participant owes to Defence in connection with this contract.
- 18.2 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 thirty (30) days of receipt of the notice.

Managing delays

19 Participant to minimise delays

Note: Clause 19.1 does not apply if clause 55 applies – see CSS item 11.

- 19.1 The Participant must take all reasonable steps to prevent and minimise delay and to mitigate both Parties’ Loss due to delay.

20 Entitlement to schedule adjustment

Note: Clauses 20.1 to 20.4 do not apply if clause 55 applies – see CSS item 11.

- 20.1 Subject to clause 20.3, the Participant is entitled to postponement of a Milestone 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.

- 20.2 If the Participant notifies Defence of a claim for postponement of a Milestone Date:
- (a) Defence must, to the extent it considers that the Participant is entitled to postponement of a Milestone Date under clause 20.1, agree to grant the postponement; and
 - (b) the Defence Representative and Participant Representative may agree to update the dates in item 16 of the CSS to implement the agreed postponement without entering a deed to vary this contract under clause 41.1.
- 20.3 The Participant is not entitled to postponement of a Milestone Date and must instead follow the procedures set out in clauses 12 and 13 where the Participant becomes aware that it is unable to achieve a Milestone because:
- (a) it is unable, despite using its best endeavours, to achieve the Stage Research Objectives;
 - (b) it is unable to comply with the PEP; or
 - (c) the resources allocated to the achievement of the Stage Research Objectives, as set out in the PEP, are insufficient.
- 20.4 The Participant is not entitled to postponement of a Milestone Date to the extent the delay resulted from a Default of the Participant or any Subcontractor.

Intellectual Property Rights and Confidential Information

21 Foreground IP

- 21.1 With respect to each item of Foreground IP, ownership of that Foreground IP vests immediately upon its creation in the person identified as the owner of that Foreground IP in item 6a of the CSS.
- 21.2 The ownership of an item of Foreground IP that is not identified in item 6a of the CSS will vest upon its creation in the Party that created it, or as specified in item 6b of the CSS.
- Note: Clause 21.3 does not apply if clause 55 applies – see CSS item 11.
- 21.3 The Participant must, whenever Foreground IP is created:
- (a) promptly notify Defence in writing; and
 - (b) amend the IP Register accordingly.
- 21.4 If Defence is the owner of Foreground IP, it licenses the Participant to Use that Foreground IP (subject to the restrictions set out in item 6c of the CSS):
- (a) for the purposes of this contract;
 - (b) for any other purpose other than Commercialisation; and
 - (c) for any additional purpose set out in item 6d of the CSS ,
- with that licence having world-wide effect and being non-exclusive, free and perpetual.
- 21.5 If the Participant is the owner of Foreground IP it licenses Defence to Use that Foreground IP (subject to the restrictions set out in item 6c of the CSS):

- (a) for the purposes of this contract;
- (b) for Commonwealth Purposes; and
- (c) for any additional purpose set out in item 6d of the CSS ,

with that licence having world-wide effect and being non-exclusive, free and perpetual.

- 21.6 If a Key Subcontractor is the owner of Foreground IP the Participant must ensure that that Key Subcontractor licenses Defence to Use that Foreground IP (subject to the restrictions set out in item 6c of the CSS):

- (a) for the purposes of this contract;
- (b) for Commonwealth Purposes; and
- (c) for any additional purpose set out in item 6d of the CSS ,

with that licence having world-wide effect and being non-exclusive, free and perpetual.

- 21.7 Each Party must, if requested by the other Party and at its own cost, do all things and execute all documents necessary or convenient to give effect to this clause 21.

- 21.8 The Parties shall promptly notify each other of any infringement of any rights relating to Foreground IP which comes to its attention, and each Party agrees to give the other Party all assistance which the other Party may reasonably require in order to protect its interest in the Foreground IP.

22 Background IP

- 22.1 Nothing in this contract affects the ownership of Background IP.
- 22.2 Subject to any restrictions set out in item 6e of the CSS, each Party licenses the other Party to Use its Background IP, with those licences being for the purposes of enabling the other Party to fully utilise its Foreground IP and:
- (a) in the case of the Commonwealth – fully exercising its rights under clauses 21.5 and 21.6; and
 - (b) in the case of the Participant – for the purposes of carrying out this contract and fully exercising its rights under clause 21.4.
- 22.3 The licences under clause 22.2 have world-wide effect and are non-exclusive, royalty-free and perpetual.

23 Third Party IP

- 23.1 Nothing in this contract affects the ownership of Third Party IP.
- Note: Clauses 23.2 to 23.5 do not apply if clause 55 applies – see CSS item 11.
- 23.2 The Participant must not utilise Third Party IP for the purposes of this contract without first:
- (a) providing the information set out in clause 23.3 to Defence; and
 - (b) obtaining Defence's consent to its use, whose consent may not be unreasonably withheld.
- 23.3 For the purposes of clause 23.2(a), the Participant will provide Defence with the following information about the Third Party IP:
- (a) all details of any restrictions, conditions or encumbrances, that apply, or may apply, to

- the utilisation of the Third Party IP, including fees or royalties; and
- (b) any other information as is reasonably requested by Defence.
- 23.4 If Defence consents to the utilisation of the Third Party IP, it may do so subject to reasonable conditions and the Participant must comply with those conditions. Those conditions may include a requirement that the Participant obtains a licence on behalf of Defence (at no cost to Defence) for the utilisation of the Third Party IP on equivalent (or better) terms as the licence granted by the Participant to Defence under clause 22.
- 23.5 Clauses 23.2 to 23.4 do not apply to the approved Third Party IP listed in item 6f of the CSS .
- 24 Other IP requirements**
- IP deed*
- 24.1 The Participant must ensure that an owner of any IP identified in item 6g of the CSS grants a direct licence of that IP to Defence and delivers to Defence an IP deed substantially in the form of Annexure D .
- 24.2 If an IP deed is required under clause 24.1, unless otherwise agreed by Defence, the Participant must ensure that IP deed is delivered to Defence:
- (a) In the case of IP of a Subcontractor (including a Key Subcontractor) – before that Subcontractor undertakes any work in relation to this contract; and
- (b) In any other case – before any work is undertaken in relation to the CSS.
- Compliance*
- 24.3 The Participant must ensure that any Participant Personnel (and any other person to whom the Participant provides Defence owned IP) comply with any restrictions in relation to Defence owned IP identified at item 6e of the CSS.
- IP Register*
- 24.4 The Participant must regularly update the IP Register and must ensure that it accurately identifies all Foreground IP, Background IP and Third Party IP (including identifying the owner of each item of IP).
- Note: An additional obligation is imposed on the Parties concerning the IP Register if clause 55 applies – see CSS item 11.
- 24.5 The Participant will provide an up to date copy of the IP Register to Defence:
- (a) promptly upon request by Defence; and
- (b) within twenty (20) Working Days of the expiry or termination of this contract.
- 24.6 If Defence notifies the Participant of any errors in the IP Register, the Participant must within five (5) Working Days:
- (a) amend the IP Register to the reasonable satisfaction of Defence; and
- (b) provide a copy of the amended IP Register to Defence.
- 24.7 The IP Register is for record management purposes and does not in any way alter or limit any provision in this contract.
- IP warranties*
- Note: Clause 24.8 does not apply if clause 55 applies – see CSS item 11.
- 24.8 The Participant warrants that Defence will not, in exercising its IP Rights granted under or in connection with this contract, infringe the IP Rights or any Moral Rights of any person.
- 25 Confidential Information**
- 25.1 Each Party agrees not to disclose :
- (a) the Confidential Information of 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, the Key Subcontractors, a Subcontractor, 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.
- 25.2 The Participant acknowledges and agrees that:
- (a) nothing in clause 25.1 prevents Defence from exercising its IP rights under this contract (including its rights under clauses 21 to 22) or its rights with respect to other Defence owned 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 comprising IP Rights owned by the Participant or a Key Subcontractor or any other person who is not a party to this contract) to the extent necessary for Defence to exercise its IP rights under clauses 21 to 22.
- 25.3 The Participant must not disclose information under clause 25.1(f) or 25.1(i) unless the recipient is obliged to act consistently with this clause 25. Any disclosure by a recipient that would be a breach of this clause is taken to be a breach by that Party.

25.4 Defence must not disclose Confidential Information to any Defence Service Provider under clause 25.1(d) unless the recipient is obliged to act consistently with this clause 25.

Confidentiality deed poll

25.5 If a Party (“the Disclosing Party”) intends to make the other Party’s IP Related Confidential Information available to a person who is not a party to this contract, the other Party may require the Disclosing Party to obtain a legally effective confidentiality deed, in the form of Annexure D, from the third party, before making that IP Related Confidential Information available to the third party.

25.6 In clause 25.5 a Party’s “IP Related Confidential Information” means that Party’s Confidential Information relating either to its Foreground IP or its Background IP.

Public Announcements, Research Presentations and Research Publications

25.7 The Participant must not, during the Term, disseminate information about this contract or the Project (including any results of the Project), without first consulting the Defence Representative.

25.8 For clause 25.7 “disseminate information” means making any form of public disclosure, or making any public announcement, publishing research papers or other publications, or making presentations whether in writing or orally.

25.9 Clause 25.7 does not prevent the Participant from making announcements that it is required to make to comply with a written law (including applicable rules of a stock exchange).

No exclusion of law or equity

25.10 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

26 The Representatives

26.1 The Defence Representative administers this contract for Defence.

26.2 The Participant Representative administers this contract for the Participant.

27 Notices

27.1 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.

27.2 A notice or communication sent by email in accordance with the requirements of clause 27.1 will be taken to be signed by the named sender.

27.3 A notice or communication that meets the requirements of clause 27.1 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

28 Key Subcontractors and other Subcontractors

28.1 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 that is, or is likely to be, significant for the development, testing, production, installation, integration or use of any Deliverables or any Research.

28.2 The Participant may request that Defence approve an additional Subcontractor to be included as a Key Subcontractor in item 12 of the CSS. 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 item 12 of the CSS to include the additional Subcontractor without entering a deed to vary this contract under clause 41.1.

28.3 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.

28.4 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

29 Key Persons and Participant Personnel

Note: Clauses 29.1 to 29.4 do not apply if clause 55 applies – see CSS item 11.

29.1 The Participant must ensure that each Key Person performs the duties or carries out the work specified for that person in item 14 of the CSS.

29.2 The Participant must not replace a Key Person without Defence’s prior approval.

- 29.3 If the Participant becomes aware that a Key Person is unable or may be unable to perform their duties or carry out their work, the Participant must:
- (a) promptly notify Defence; and
 - (b) subject to clause 29.4, ensure that a replacement person is appointed as soon as practicable.
- 29.4 Before appointing a replacement Key Person under clause 29.3(b), the Participant must obtain the agreement of Defence, whose agreement must not be unreasonably withheld.
- 29.5 The Defence Representative and the Participant Representative may update item 14 of the CSS to reflect any approved changes to Key Persons without entering into a deed to vary this contract under clause 41.1.
- 29.6 Defence may at any time require the Participant to remove Participant Personnel (including a Key Person) from carrying out work in relation to this contract. Defence must not exercise this right unreasonably. The Participant must promptly arrange for the removal of such Participant Personnel and to replace them at the earliest opportunity with personnel acceptable to Defence at no cost. Defence must not unreasonably withhold its consent to proposed replacement personnel.
- 29.7 If the Participant is unable to provide replacement personnel with suitable skills or in a sufficient time to enable the Participant to achieve the Milestones, the Parties' Representatives will meet to determine, in good faith, if any aspect of this contract should be varied to accommodate the inability or delay in replacing the personnel.
- 29.8 If the Parties are unable to agree to vary this contract under clause 29.7, the Commonwealth may terminate this contract by notice to the Participant.

Law and Commonwealth policies

30 Law and policies

- 30.1 The law in force in the State or Territory of Australia specified in item 5 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.
- 30.2 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 ten (10) Working Days of a request; and

- (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).

- 30.3 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.

Records, access to records, and premises

31 Maintain records and provide access

- 31.1 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; 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 records described in clause 31.1(a) – and accounts for any purpose related to this contract; and
- must ensure that each Key Subcontractor does the same. Defence may copy and retain any such records and accounts.
- 31.2 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 this contract and must ensure that each Key Subcontractor does the same.
- 31.3 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.

Defence security

32 Defence Security

- 32.1 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.
- 32.2 Defence may at any time, in accordance with the Australian Government Protective Security Manual and the Australian Government Information and Telecommunications Technology Security Manual, determine that a particular national security classification applies to information or equipment relevant to the Project.

- 32.3 If Defence makes a determination under clause 32.2, Defence must provide notice to the Participant advising of:
- (a) the national security classification that is to apply to the information or equipment relevant to the Project; and
 - (b) any security conditions that are to apply.
- 32.4 After providing the Participant with a notice under clause 32.3, the Defence Representative and Participant Representative must meet within five (5) Working Days (or some other time as agreed between the Representatives) to:
- (a) discuss how the change in national security classification is to be implemented; and
 - (b) determine if any aspect of this contract (for example – scope of Project, IP ownership, resourcing, timeframe for delivery Deliverables related to the Project, or use of subcontractors) needs to be varied to accommodate the change in national security classification.
- 32.5 If the Participant is unable or unwilling to comply with a security condition in accordance with clause 32.3 and if the Parties cannot agree to vary this contract under clause 32.4, Defence may terminate this contract by notice to the Participant.
- 32.6 The Participant must ensure the requirements of this clause 32 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

33 Conflict of Interest

- 33.1 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.
- 33.2 For the purposes of clause 33.1, the Participant will have a conflict of interest if:
- (a) it enters an agreement to receive funding or to be paid for activities or services connected with any aspect of research related to this contract; or
 - (b) has in the five (5) years prior to the Contract Start Date received funding or has been paid for activities or services connected with any aspect of research related to this contract,
- from a country (or an entity based in a country) included in the “Countries Policies and Embargoes” list on the USA Department of State’s Directorate of Defense Trade Controls website (see

http://www.pmdtcc.state.gov/embargoed_countries/index.html)

- 33.3 Within five (5) Working Days after giving notice under clause 33.1(b), 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.
- 33.4 Defence may terminate this contract if:
- (a) the Participant fails to notify Defence of a conflict of interest or risk of such a conflict of interest under clause 33.1;
 - (b) the Participant is unable or unwilling to resolve the conflict as required under clause 33.3; or
 - (c) in the opinion of Defence, the conflict cannot be satisfactorily resolved or managed.
- 33.5 The Participant must ensure that all Key Subcontracts contain equivalent provisions to those set out in this clause 33.

Post Defence Separation Employment

34 Post Defence Separation Employment

- 34.1 Except with the prior approval of the Defence Representative, the Participant must not allow (and must ensure that each Key Subcontractor does not allow) any Relevant Defence Personnel to Assist the Participant (or Key Subcontractor) in relation to this contract.
- 34.2 For the purposes of clause 34.1:
- (a) “Assist” means to perform, contribute to or advise on the performance of this contract (or Key Subcontractor, as applicable); and
 - (b) a person is “Relevant Defence Personnel” if that person, acting in their capacity as Defence Personnel, at any time during the six (6) months prior to the date on which the Participant (or Key Subcontractor) proposes that the person start Assisting the Participant (or Key Subcontractor), was engaged or involved in:
 - (i) the preparation or management of this contract;
 - (ii) the assessment or selection of the Participant; or
 - (iii) the planning or performance of any activity relevant or related to this contract.
- 34.3 The Defence Representative must not unreasonably withhold approval of a person under clause 34.1 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 six (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 Key Subcontract) in the manner proposed under clause 34.3(b), and the arrangements which the Participant (or Key Subcontractor) proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
 - (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.
- (c) cover the liability of the Participant at general law arising from a negligent breach of duty owed in a professional capacity as a result of any act or omission of the Participant or Participant Personnel;
 - (d) 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; and
 - (e) cover claims arising up to 7 years after this contract terminates or expires.

35.6 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.

Insurance

35 Insurance requirements

- 35.1 The Participant must maintain:
- (a) all insurance and registrations required by law;
 - (b) any insurance identified in item 10 of the CSS on such terms that satisfy the policy requirements identified in item 10 and 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.
- 35.2 The insurance must, unless otherwise agreed:
- (a) be effected before the Participant commences work under the CSS; 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.
- 35.3 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

- 35.4 Any public liability insurance must be written on an occurrence basis with the specified limit of indemnity for 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

- 35.5 Any professional indemnity insurance must:
- (a) have the specified limit of indemnity per claim and in the aggregate for all claims in any twelve (12) month policy period;
 - (b) include a right of reinstatement;

Evidence of cover

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

Indemnities and limitation of liability

36 Indemnities

- 36.1 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.
- 36.2 The amount that the Participant is to pay under the indemnity in clause 36.1 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.

37 Limitation of liability

Note: Clauses 37.1 to 37.4 do not apply if clause 55 applies – see CSS item 11.

- 37.1 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 10 in the CSS.
- 37.2 The limitation in clause 37.1 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.
- 37.3 For the purposes of clause 37.2(c), "infringement" includes unauthorised acts which would, but for the operation of s.25 of the *Circuit Layout Act 1989* (Cth), s.183 of the *Copyright Act 1968* (Cth), s.100 of the *Designs Act 2003* (Cth) or s.163 of the *Patents Act 1990* (Cth), constitute an infringement.

37.4 Defence may terminate this contract by notice to the Participant if the Participant would have, except for the operation of the limitation in clause 37.1, been liable to Defence, under or in connection with this contract, for an amount greater than the Limitation Amount listed at item 10 in the CSS.

Termination

38 Termination rights

38.1 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 twenty (20) Working Days after receiving notice from Defence, remedy a breach of this contract which is capable of remedy; or
- (c) an Insolvency Event occurs in respect of the Participant.

38.2 Without limiting its rights at law or under this contract, a Party ("the Terminating Party") may terminate this contract by notice to the other Party if a clause in this contract expressly permits the Terminating Party to terminate the contract in the circumstances contemplated by that clause, with that termination subject to the requirements of that clause.

Termination for any reason

38.3 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

38.4 If this contract is terminated under clause 38.3, or the Parties agree that reasonable costs are payable as a condition of termination as contemplated by clause 13.3(e):

- (a) the Participant must stop work under this contract in accordance with any directions from Defence 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 current CSS 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 5 of the most recent CSS.

39 Timing of termination

39.1 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.

39.2 A termination under clause 13.3(e) will take effect on the date agreed by the Parties.

40 What happens on termination or expiry

40.1 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 (if any) and ceasing use of any Defence IP);
- (b) except as provided for in clause 38.4(b), 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.

Miscellaneous provisions

41 Amendments to this contract

41.1 Except as specifically provided for in this contract, this contract may be changed (including the CSS), but only by a deed between the Parties in the form of Annexure B.

41.2 The Defence Representative and the Participant Representative may agree to update the PEP to reflect any agreed changes without entering into a deed in accordance with clause 41.1.

42 Survival of provisions of this contract

42.1 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 Rights, the right of Defence to recover money and defence security.

43 Preservation of rights and remedies

43.1 Failure by either Party to enforce a right of this contract does not affect the enforceability of that or any other right.

43.2 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.

43.3 Subject to the terms of this contract, the rights and obligations of the Parties under this contract 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.

44 No assignment

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

45 Severability

45.1 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.

46 Entire agreement

46.1 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.

47 No agency

47.1 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.

48 Discretion in exercising rights

48.1 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).

49 Counterparts

49.1 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.

Additional terms

50 Application of additional terms

50.1 Clauses 51 to 57 apply to the extent specified in item 11 of the CSS.

51 Indigenous Procurement Policy

51.1 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.)

51.2 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.

51.3 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.

51.4 The Participant must provide written reports and evidence of its compliance with this clause 51 every year during the Term.

51.5 In this clause 51:

- (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.dpmc.gov.au/ipp).

52 Change of Control

52.1 Subject to clause 52.2, the Participant must seek the Defence Representative's prior consent to any proposed Change of Control by providing notice to Defence at least fifteen (15) Working Days before the proposed Change of Control is to occur.

52.2 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 52.1, the Participant must seek that consent by providing notice to Defence within five (5) Working Days after the Change of Control.

52.3 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.

52.4 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.

52.5 Nothing in this clause 52 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.

53 Asset Disposal

53.1 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.

53.2 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.
- 53.3 Defence may terminate this contract by notice to the Participant if an Asset Disposal of the Participant occurs during the Term without Defence's approval.
- 54 Indemnity**
- 54.1 The Participant must indemnify Defence and Defence Personnel in respect of any Loss in connection with a claim by a person who is not a party to this contract 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.
- 54.2 The amount that the Participant is to pay under the indemnity in clause 54.1 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.
- 55 Defence Collaboration**
- 55.1 For the purposes of the Stage to which this clause 55 applies, the clauses in Annexure A apply and the following clauses do not apply:
- clauses 4.1 and 4.2;
 - clauses 5.1 to 5.8;
 - clauses 6.1 and 6.2;
 - clause 7.1;
 - clause 12;
 - clauses 13.1 to 13.3;
 - clause 19.1;
 - clauses 20.1 to 20.4;
 - clause 21.3;
 - clauses 23.2 to 23.5;
 - clause 24.8;
 - clauses 29.1 to 29.4; and
 - clauses 37.1 to 37.4.
- 55.2 The application of the clauses in Annexure A does not limit the operation of clause 14.
- 56 Defence Items**
- 56.1 Subject to clause 56.3, Defence must provide the Defence Items to the Participant as set out in item 13 of the CSS.
- 56.2 The Participant must:
- (a) use the Defence Items only for the purposes set out in item 13 of the CSS;
 - (b) not modify a Defence Item except as set out in item 13 of the CSS;
 - (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 13 of the CSS, 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 13 of the CSS, or as otherwise directed by Defence; and
 - (f) comply with any additional requirements specified in item 13 of the CSS.
- 56.3 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.
- 56.4 If Defence is not able to make available a Defence Item in the way set out in item 13 of the CSS, Defence must notify the Participant and the Parties must seek to agree appropriate next steps.
- 56.5 The Participant must notify Defence within five (5) Working Days after becoming aware of any loss of or damage to, or a defect in, a Defence Item.
- 56.6 For the purposes of clauses 56.7, 56.8 and 56.10, 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 13 of the CSS.
- 56.7 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 20; and
 - (b) if the delay significantly and adversely affects the ability of the Participant to provide a Deliverable required for a Milestone – the Participant may, within sixty (60) Working Days after the delay arising, terminate this contract by notice to Defence.
- 56.8 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.
- 56.9 Defence gives no warranty, and makes no representations, about the suitability or fitness for purpose of any Defence Item.
- 56.10 Defence has no liability and the Participant has no entitlement resulting from a delay in a Defence Item being delivered, other than under clause 56.7 and 38.4.
- 56.11 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 13 of the CSS;
 - (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.
- 56.12 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 Defence Items notified in the CSS or as notified by Defence.
- 56.13 Nothing in this clause 56 affects the ownership of a Defence Item.
- 57 Access to Defence Premises**
- 57.1 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.
- 57.2 Unless otherwise agreed, the Participant must seek written permission from the Defence Representative, at least five (5) Working Days prior to entry being required, for each person the Participant wishes to have access to Defence Premises.
- 57.3 The Defence Representative may, by notice to the Participant, withdraw access rights to any Defence Premises at any time for any period.
- 57.4 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 57.1:
- (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 20; and
 - (c) if the Participant's ability to provide a Deliverable is significantly and adversely affected as a result, the Participant may, within three (3) months after the withdrawal or notice that Defence is unable to give access, terminate this contract by notice to Defence.
- 57.5 The Participant must comply with (and must ensure all persons afforded access under this clause 57 to comply with) any relevant Defence safety and security requirements (including those contained in the Defence Security Manual as in force at the time of the access), regulations, standing orders, or codes of behaviour for the Defence place, area or facility.
- 57.6 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.
- 57.7 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; but
 - (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.
- 57.8 Clause 57.7 does not require Defence to remove Defence Premises from operational requirements, or to provide Defence Premises allocated to, or available for, other contracts.
- 57.9 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.
- 57.10 At the conclusion of the Participant's access to Defence Premises it must ensure that:
- (a) those Defence Premises are left in a clean and tidy condition; and
 - (b) all property of the Participant (and the Participant Personnel's property) is removed from those Defence Premises, unless Defence gives its prior consent for it to remain.
- 57.11 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.
- 58 Work Health and Safety**
- 58.1 Without limiting clause 7.1(b), 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
- 59 WHS Notifiable Incidents**
- 59.1 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.

60 Late payment arrangements

- 60.1 Clause 60.2 applies only if the amount of the interest calculated under clause 60.2 exceeds \$100.
- 60.2 If Defence fails to pay a Correctly Rendered Invoice within thirty (30) days after the date of receipt it must pay interest on the unpaid amount at the General Interest Charge Daily Rate calculated in respect of each day from the day after the amount was due and payable, up to and including the day that Defence effects payment.
- 60.3 For clause 60.2, 'General Interest Charge Daily Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

Annexure A – Clauses for collaboration projects

(see NGTF Research Contract clause 55)

The Work

61 Parties to undertake the Project

- 61.1 Each Party must:
- (a) deploy its respective resources and carry out its respective tasks as described in the PEP and any other approved Plan; and
 - (b) use its best endeavours to achieve the Stage Research Objectives relevant to its tasks.
- 61.2 The Parties accept that it may become apparent during the Term that, despite a Party using its best endeavours, it is not possible in the circumstances to achieve the Stage Research Objectives relevant to that Party's tasks. If this is the case, and the relevant Party has otherwise performed its obligations under this contract, that Party will not be in breach of clause 61.1 (or clause 62.1 if that Party cannot achieve a Milestone as a result), provided it follows the procedure in clauses 65 and 66.
- 61.3 Despite any other clause or requirement in this contract, Defence is not be obliged to do any act or thing where, in the sole opinion of the Commonwealth of Australia (which will not be obliged to give reasons) that act or thing would prejudice the Commonwealth's defence or national security interests, or prevent the Commonwealth from properly performing its obligations, functions or duties.

62 Milestones

- 62.1 Each Party must achieve the Milestones for which they are responsible by the relevant Milestone Date.
- 62.2 If a Milestone requires delivery of a Deliverable, the Party responsible for the delivery of that Deliverable must deliver the Milestone:
- (a) by the relevant Milestone Date;
 - (b) in accordance with the requirements for that Milestone set out in item 16 of the CSS.
- 62.3 A Party only achieves a Milestone if the criteria in item 16 of the CSS for that Milestone are met.
- 62.4 A Party responsible for the achievement of a Milestone must notify the other Party when it considers that the Milestone has been achieved and, if requested by the other Party, must provide evidence that the criteria for achieving that Milestone have been met.
- 62.5 The Party notified under clause 62.4 has fifteen (15) Working Days from the time it receives the notice to advise the other Party if it does not consider that the Milestone has been achieved, giving its reasons, otherwise it will be deemed to have accepted that the Milestone has been achieved.
- 62.6 The Party responsible for achieving the Milestone must rectify the issues (if any)

identified by the other Party under clause 62.5 and give evidence to the other Party that the issues have been rectified. If the other Party confirms the Milestone has been achieved on submission of that evidence, the Party responsible for achieving the Milestone is taken to have satisfied clause 62.1 for that Milestone.

Ownership and risk

- 62.7 Unless otherwise stated in item 16 of the CSS or otherwise agreed by the Parties, title to each Deliverable:
- (a) transfers to Defence on delivery (if the Deliverable is being provided by the Participant); or
 - (b) is retained by Defence (if the Deliverable is being provided by Defence).
- 62.8 A Party responsible for the delivery of a Deliverable bears the risk of loss of, or damage to, that Deliverable:
- (a) until title to that Deliverable transfers to the other Party (if applicable); and
 - (b) at any other time it is in its care, custody and control.

63 Technical Data

- 63.1 Each Party must provide to the other Party all Technical Data required:
- (a) to enable the assessment, analysis, testing and evaluation by the other Party of the Research or the progress in meeting the Stage Research Objectives;
 - (b) to enable the verification of the results, outcomes and recommendations in the Milestones;
 - (c) in the case of Defence – for Commonwealth Purposes; or
 - (d) by the PEP or a Milestone or Deliverable.
- 63.2 Each Party must provide the Technical Data at the times and in the manner specified in the PEP or item 16 of the CSS (where applicable); or otherwise promptly following a request from the other Party.

64 Standard of work

- 64.1 Each Party must carry out (and must ensure that all their Subcontractors carry out) their work under this contract in accordance with:
- (a) the standards specified in this contract;
 - (b) all Applicable Laws; and
 - (c) Good Industry Practice.

Problem Solving

65 Notification of problems

- 65.1 A Party must promptly notify the other Party if it becomes aware that it may not be able to:
- (a) achieve one or more Stage Research Objectives;
 - (b) comply with the PEP; or
 - (c) achieve a Milestone for which it is responsible.

- 65.2 If a Party considers that the other Party may be unable to do the things referred to in clause 65.1, it may notify the other Party of its concerns.
- 66 Process for resolving problems**
- 66.1 The Parties must meet promptly and in any event no later than twenty (20) Working Days after a notice given under clause 65.
- 66.2 The purpose of the meeting referred to in clause 66.1 is to provide a forum where the Parties can seek to resolve the difficulty identified under clause 65. To enable the Parties to discuss that difficulty, the Party in difficulty may be required by the other Party to provide it with oral or written information on:
- the Party in difficulty's progress in relation to the Project and the resources deployed by it to date;
 - obstacles to progress;
 - possible solutions to those obstacles (if this is possible); and
 - whether there are any reasons to continue with the Project even though the Stage Research Objectives cannot be achieved.
- 66.3 The Parties may, as a result of their discussions under clause 66.2, agree to:
- Continue with the contract unamended;
 - amend the contract (in particular the CSS);
 - seek third party assistance;
 - appoint an independent third party to help the Parties resolve the difficulty; or
 - terminate this contract (in which case the Parties must agree on a termination date and any conditions on termination, such as the provision of a report, or payment of reasonable costs under clause 37.4.)
- 67 Parties to minimise delays**
- 67.1 Each Party must take all reasonable steps to prevent and minimise delay and to mitigate both Parties' Loss due to delay.
- 68 Schedule Adjustments due to unforeseen delay**
- 68.1 Subject to clause 68.3, a Party is entitled to postponement of a Milestone Date:
- to the extent that the Party is delayed by an event or circumstance that is beyond the reasonable control of that Party and its Subcontractors; and
 - provided that Party has taken all reasonable steps to prevent and minimise delay and to mitigate both Parties' Loss due to delay.
- 68.2 If a Party ('the Delayed Party') notifies the other Party of a claim for postponement of a Milestone Date:
- The other Party must, to the extent it considers that the Delayed Party is entitled to postponement of a Milestone Date under clause 68.1, agree to grant the postponement; and
 - the Defence Representative and Participant Representative may agree to update the dates in item 16 of the CSS to implement the agreed postponement without entering a deed to vary this contract under clause 41.1.
- 68.3 A Party is not entitled to postponement of a Milestone Date and must instead follow the procedures set out in clauses 65 and 66 where that Party becomes aware that it is unable to achieve a Milestone because:
- it is unable, despite using its best endeavours, to achieve the Stage Research Objectives;
 - it is unable to comply with the PEP; or
 - the resources allocated to the achievement of the Stage Research Objectives, as set out in the PEP, are insufficient.
- 68.4 A Party is not entitled to postponement of a Milestone Date to the extent the delay resulted from a Default of that Party or any of its Subcontractors.
- Intellectual Property**
-
- 69 Foreground IP**
- 69.1 A Party must, whenever it creates Foreground IP:
- promptly notify the other Party in writing; and
 - the Participant must amend the IP Register accordingly.
- 70 Third Party IP**
- 70.1 A Party ('the Requesting Party') must not utilise Third Party IP for the purposes of this contract without first:
- providing the information set out in clause 70.2 to the other Party; and
 - obtaining the other Party's consent to its use, whose consent may not be unreasonably withheld.
- 70.2 For the purposes of clause 70.1(a), the Requesting Party will provide the other Party with the following information about the Third Party IP:
- all details of any restrictions, conditions or encumbrances, that apply, or may apply, to the utilisation of the Third Party IP, including fees or royalties; and
 - any other information as is reasonably requested by the other Party.
- 70.3 If the other Party consents to the utilisation of the Third Party IP, it may do so subject to reasonable conditions and the Requesting Party must comply with those conditions. Those conditions may include a requirement that the Requesting Party obtains a licence on behalf of the other Party (at no cost to the other Party) for the utilisation of the Third Party IP on equivalent (or better) terms as the licence granted by the Requesting Party to the other Party under clause 22.
- 70.4 Clauses 70.1 to 70.3 do not apply to the approved Third Party IP listed in item 6f of the CSS.

71 Additional requirement for the IP Register

- 71.1 Defence will regularly inform the Participant of matters pertinent to the IP Register that arise as a consequence of its role in the Project and the Participant will include those matters in the IP Register.

other Party, under or in connection with this contract, for an amount greater than the Limitation Amount listed at item 10 in the CSS.

72 IP warranties

- 72.1 Each Party warrants that, to the best of its knowledge and belief, it is entitled, or will be entitled at the relevant time, to deal with its Background IP in accordance with this contract.

Personnel

73 Key Persons

- 73.1 Each Party must ensure that each of its Key Persons carries out the work specified for that person in item 14 of the CSS.
- 73.2 A Party must not replace a Key Person without the other Party's prior approval.
- 73.3 If a Party becomes aware that one of its Key Persons is unable or may be unable to continue to carry out their work, that Party must:
- (a) promptly notify the other Party; and
 - (b) subject to clause 73.4, ensure that a replacement person is appointed as soon as practicable
- 73.4 Before appointing a replacement Key Person under clause 73.3(b), the relevant Party must obtain the agreement of the other Party, whose agreement must not be unreasonably withheld.

Liability

74 Limitation of liability

- 74.1 The liability of one Party ('the Liable Party') to the other Party 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 10 in the CSS.
- 74.2 The limitation in clause 74.1 does not apply to a liability of the Liable Party in respect of:
- (a) death, personal injury, disease or illness of any person;
 - (b) loss of or damage to any property (other than the property of either Party);
 - (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.
- 74.3 For the purposes of clause 74.2(c), 'Infringement' includes unauthorised acts which would, but for the operation of s.25 of the *Circuit Layout Act 1989* (Cth), s.183 of the *Copyright Act 1968* (Cth), s.100 of the *Designs Act 2003* (Cth) or s.163 of the *Patents Act 1990* (Cth), constitute an infringement.
- 74.4 The Party not liable may terminate this contract by notice to the Liable Party if the Liable Party would have, except for the operation of the limitation in clause 74.1, been liable to the

Annexure B – Form of Amending Deed

(See NGTF Research Contract clause 41.1)

Date – see clause 2 of this deed

Contract No:	[insert number of NGTF Research Contract]
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The Parties:

COMMONWEALTH OF AUSTRALIA represented by the Department of Defence ABN 68 706 814 312 (in this Deed referred to as Defence)

[insert name of Participant] ABN [insert ABN] (in this Deed referred to as Participant)

1 Recitals

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

2 Date of this Deed

- 2.1 The date of this deed is the date that the last Party signs it.

3 Definitions

- 3.1 Words and expressions in this deed have the meanings that they have in the NGTF Research Contract.
- 3.2 Clauses 28.1 (governing law), 46 (discretion in exercising rights) and 47 (counterparts) of the NGTF Research Contract apply to this deed as if any references to the NGTF Research Contract in those clauses were references to this deed.

4 Amendments

- 4.1 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 NGTF Research Contract is amended by adding the additional CSS in Attachment A.]

[Option 2: the CSS in the NGTF Research Contract is amended as set out in the marked up copy of the CSS attached as Attachment A.]

[Option 3: the NGTF Research Contract is amended as set out in the marked up copy of the contract attached as Attachment A.]

5 Confirmation and acknowledgement

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

[Note to drafters: If a new CSS being incorporated into the contract under this amending deed involves a change in the ownership of IP, an assignment of the 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 IP including whether stamp duty is payable. Specialist legal advice should be obtained for an appropriate assignment clause.]

Signed as a Deed:

Signed, sealed and delivered, for and on behalf of the **Commonwealth of Australia**, as represented by the Department of Defence by

Signed, sealed and delivered, 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

Signature

Signature of director

Print name and position

Print name of director

Date

Date

In the presence of:

Signature of witness

Signature of director/company secretary (delete whichever is inapplicable)

Print name and position

Print name of director/company secretary (delete whichever is inapplicable)

Date

Date

SAMPLE

Amending Deed Attachment A – Details of Amendment

[insert, as per options 1, 2 or 3 in clause 4 of this deed]

SAMPLE

Annexure C – IP Schedule

(see NGTF Research Contract clause 24.4)

Background IP					
No	Owner	Title of Background IP	Description of Background IP	Form of Background IP (eg document, email, CD)	Licence and Restrictions (if any)
1					
2					

Foreground IP					
No	Owner	Title of Foreground IP	Description of Foreground IP	Form of Foreground IP (eg document, email, CD)	Licence and Restrictions (if any)
1					
2					

Third Party IP					
No	Owner	Title of Third Party IP	Description of Third Party IP	Form of Third Party IP (eg document, email, CD)	Licence and Restrictions (if any)
1					
2					

Annexure D – IP Confidentiality Deed Poll

(see NGTF Research Contract clause 25.5)

Details

Date of this deed:

[insert date that this deed poll is executed by the Confidant]

NGTF Research Contract No:

[insert NGTF Research Contract No and Date]
(in this deed referred to as the **NGTF Research Contract**)

This deed poll made by:

[insert name of Confidant]

ABN [insert ABN]

(in this deed referred to as **Confidant**)

in favour of:

COMMONWEALTH OF AUSTRALIA

represented by the Department of Defence

ABN 68 706 814 312

(in this deed referred to as **Defence**)

and:

[insert name of Participant]

ABN [insert ABN]

(in this deed referred to as **Participant**)

Information Owner:

Defence/Participant*

*Delete whichever is not applicable

Defence's Representative:

[insert name and title]

[insert address]

[insert email address]

Participant's Representative:

[insert name and title]

[insert address]

[insert email address]

Confidant's Representative:

[insert name and title]

[insert address]

[insert email address]

Governing Law:

[insert Australian state or territory, consistent with the NGTF Research Contract]

Terms

1 Recitals

- 1.1 Defence and the Participant have entered into the NGTF Research Contract.
- 1.2 Confidential Information may be disclosed to the Confidant in connection with, and on the terms of, the NGTF Research 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 NGTF Research 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 NGTF Research 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 NGTF Research Contract) of the Participant, who:
 - (i) has a need to know the Confidential Information for the Participant to perform its obligations under the NGTF Research 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 NGTF Research 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;

- (a) with the consent of the Participant and Defence; and
- (b) 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:

- (a) in writing (which includes email);
- (b) signed by the sender's Representative; and
- (c) 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:

- (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.

16 Interpretation and Definitions

16.1 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.

16.2 The definitions listed below apply to this deed poll, unless a contrary intention appears:

Confidential Information

information that is described in Attachment A to this deed, but not information that:

- (a) is or becomes public knowledge otherwise than by breach of a confidentiality obligation;
- (b) 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
- (c) was independently developed or acquired by the Confidant.

Defence Personnel

means any of the following individuals:

- (a) an officer or agent of the Commonwealth;
- (b) an employee in the Department of Defence;
- (c) a member of the Australian Defence Force (including a reservist);
- (d) the equivalent of an individual described in paragraphs (a) to (c) of this definition from other organisations on exchange to Defence;
- (e) a Defence Service Provider.

Defence Service Provider

means a person (other than a person described in paragraphs (a) to (d) of the definition of Defence Personnel above) 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

means the section of this deed headed "Details".

Document

includes:

- (a) 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.

Representative

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

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.

Executed as a Deed

Signed, sealed and delivered, by **[insert name of Confidant]** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors:

Note: The Confidant may provide alternative execution block for approval by Defence if section 127 execution does not apply or is impracticable

Signature of director

Print name of director

Date

Signature of director/company secretary (delete whichever is inapplicable)

Print name of director/company secretary (delete whichever is inapplicable)

Date

Annexure E – Intellectual Property Licence Deed

(see NGTF Research Contract clause 24.1)

Date of this deed – see clause 2

The Parties

COMMONWEALTH OF AUSTRALIA
represented by the Department of Defence
ABN 68 706 814 312
(in this Deed referred to as **Defence**)

and

[insert name of Licensor]
ABN [insert ABN]
(in this Deed referred to as the **Licensor**)

Details

1. Intellectual Property

[insert description of intellectual property which is to be licensed under this deed, these should be listed individually and with sufficient detail to avoid confusion]

Note: Drafters should take care to ensure the description of IP is consistent with how the same IP is described in the NGTF Research Contract, particularly if the Intellectual Property is come into existence as foreground IP under the research contract.

2. Restrictions on use of Intellectual Property

Note: This item is intended to restrict the scope of the IP licence granted under clause 4.4 of this deed. Restrictions can be of general application, or specific to individual items of IP. Care should be taken in drafting this item to avoid conflict with the additional purposes item below.

[insert details of the Licensor's IP and the particular restrictions on Defence's utilisation of that IP, or insert "not applicable"]

3. Additional Purposes for use of the Intellectual Property

Note: This item is intended to extend the scope of the IP licence granted under clauses 4.4 of this deed. Additional purposes can be of general application, or specific to individual items of IP. In the event of a conflict between a restriction on use (see item 6c) and the application of an additional purpose, the restriction will take precedence, therefore care should be taken in drafting this item to avoid conflict with the restrictions on the use of the IP set out above.

[Insert details of the Licensor's IP and the particular additional purposes to which Defence can utilise that IP, or insert "not applicable".]

4. NGTF Research Contract

[insert contract title, contract number, date, full names of the Participant and their ABN or NZBN and a brief description of the contract]

5. Key Subcontract

[insert contract title, date, full names of the parties to that Key Subcontract and their ABN or NZBN and a brief description of the contract, or if this licence is not with a Key Subcontractor insert "not applicable"]

6. Defence's Representative:

[insert name and title]
[insert address]
[insert email address]

7. Licensor's Representative:

[insert name and title]
[insert address]
[insert email address]

8. Governing Law:

[insert Australian state or territory, consistent with the NGTF Research Contract]

Terms

1 Recitals

1.1 Defence and the participant referred to in item 4 of the Details (in this deed referred to as "the Participant") have entered into the NGTF Research Contract.

1.2 In accordance with the NGTF Research Contract, the Participant is required to ensure that the Licensor enters into this deed.

[insert one or more of the following recitals and ensure correct numbering]

1.x The Participant and the Licensor have entered into the Licensor Arrangement [insert description of arrangement, including its date] and the Licensor is the owner of the Intellectual Property.

or

1.x The Licensor is a Key Subcontractor as defined in the NGTF Research Contract.

and/or

1.x According to the terms of the NGTF Research Agreement it is intended that ownership of the Intellectual Property will vest upon its creation in the Licensor.

or

1.x the Licensor is the owner of the Intellectual Property

1.3 The parties intend that the Licensor's Intellectual Property be licensed to Defence on the terms of this deed.

2 Date of this Deed

2.1 The date of this deed is the date that the last Party signs it.

3 Survival

3.1 The rights and obligations created under or in connection with this deed survive the termination or expiry of the NGTF Research Contract and the Key Subcontract under the NGTF Research Contract (if the Licensor is a Key Subcontractor).

4 Intellectual Property

Special arrangements for Intellectual Property arising from the NGTF Research Contract

4.1 Clauses 4.2 and 4.3 of this deed only apply if item 6a of a Contract Stage Schedule to the NGTF Research Contract indicates that ownership of the Intellectual Property will vest upon its creation in the Licensor.

4.2 Ownership of the Intellectual Property vests in the Licensor upon its creation.

4.3 Defence may notify the Licensor of restrictions on the utilisation or disclosure of the Intellectual Property for national security, government-to-government or Export Approval reasons.

General arrangements for all Intellectual Property covered by this deed

4.4 The Licensor licenses Defence to Use the Intellectual Property (subject to the restrictions set out in the Details):

(a) for the purposes of the NGTF Research Contract;

(b) for Commonwealth Purposes; and

(c) for any additional purpose set out in the Details,

with that licence having world-wide effect and being non-exclusive, free and perpetual.

4.5 If the Licensor is a Key Subcontractor with respect to the NGTF Research Contract, the Licensor must provide Defence with all Technical Data relating to the Intellectual Property which is required:

(a) to enable the assessment, analysis, testing and evaluation by Defence of the Research;

(b) to enable the verification of the results, outcomes and recommendations in the Milestones;

(c) for Commonwealth Purposes; or

(d) by the NGTF Research Contract's Project Execution Plan, Milestones or Deliverables.

4.6 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.

4.7 The Licensor must provide to the Participant all information in relation to the Intellectual Property necessary for the Participant to comply with its obligations in relation to an IP Schedule under the NGTF Research Contract.

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

- 6.1 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 NGTF Research 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 9.1 will be taken to be signed by the named sender.
- 10.3 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:
- (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

- 11.1 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 Interpretation and Definitions

- 12.1 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 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.
- 12.2 The definitions listed below apply to this deed, unless a contrary intention appears:

Commercialisation

means the exploitation of IP rights in return for the receipt of a royalty, fee, or a commercial return.

Commonwealth Purposes

means (within the power of the Commonwealth):

- (a) any purpose relating to the defence and security of the Commonwealth of Australia;
- (b) any activity relating to domestic or international peace keeping, or domestic or international emergency aid to the civil community;
- (c) any activity involving, or for the benefit of, domestic or international security (including border security), or domestic or international law enforcement;
- (d) any activity involving, or for the benefit of, a foreign government (or foreign government agency) with whom the Commonwealth collaborates in connection with the activities described in paragraphs (a), (b), or (c) of this definition; and
- (e) any other purpose that is necessary or incidental to any of the purposes referred to in paragraph (a), (b), (c), or (d) of this definition,

but excludes Commercialisation.

Deliverable

means a deliverable under the NGTF Research Contract.

Details

the section of this deed headed "Details".

Intellectual Property

means the intellectual property listed in the Details.

Intellectual Property Rights

means:

- (a) all copyright;
- (b) all rights in relation to inventions (including patent rights), trademarks (including service marks), designs, and circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields recognised in domestic law anywhere in the world,

whether registered or unregistered.

Key Subcontract

is the contract so described in the Details.

Milestones

means a milestone under the NGTF Research Contract.

Moral Right

has the meaning given to that term by section 189 of the *Copyright Act 1968*.

NGTF Research Contract

is the contract so described in the Details.

Signed as a Deed:

Signed, sealed and delivered, for and on behalf of the **Commonwealth of Australia**, as represented by the Department of Defence by

Signature

Print name and position

Date

In the presence of:

Signature of witness

Print name and position

Date

Representative

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

Research

means the research being conducted under the NGTF Research Contract.

TD or Technical Data

technical or scientific data, know-how or other information produced, acquired or used by the Licensor in relation to the Deliverables or the Research reduced to a material form (whether stored electronically or otherwise). Examples of Technical Data include manuals, handbooks, specifications, design documentation, reports, models, plans, drawings, calculations, simulations, training materials and test results, source code, raw data, methodology, validation techniques, limitation/obstacles, literature, extensions and measures of effectiveness.

Use

means, with respect to the Intellectual Property, to exercise any or all Intellectual Property Rights subsisting within that Intellectual Property and includes the right to sublicense those rights.

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.

Signed, sealed and delivered, by [insert name of Licensor] in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors:

Note: the Licensor may provide alternative execution block for approval by Defence if section 127 execution does not apply or is impracticable

Signature of director

Print name of director

Date

Signature of director/company secretary (delete whichever is inapplicable)

Print name of director/company secretary (delete whichever is inapplicable)

Date

Annexure F – Definitions for this contract

(see NGTF Research Contract clause 3)

The following Definitions apply to the contract (not including Annexures B, D, and E), unless there is a contrary intention.

All Applicable Laws

include:

- (c) the WHS Legislation;
- (d) the *Defence Trade Controls Act 2012* (Cth);
- (e) the *Workplace Gender Equality Act 2012* (Cth); and
- (f) the *Privacy Act 1988* (Cth).

Authorisation

means 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 or any rights to:

- (a) Foreground IP;
- (b) any Background IP that the Participant licenses to Defence under this contract and which is material in the context of the development of any Research, or material and integral to a Deliverable; or
- (c) any other asset (whether owned or licensed by the Participant) that is, or is likely to be, significant for the development, testing, production or installation or integration of any Research, or the proper performance of this contract.

Background IP

means any IP,

- (a) owned by a Party to this contract;
- (b) created other than as a result of the performance of this contract; and
- (c) utilised in connection with this contract.

Change of Control

with respect to the Participant, 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

means the exploitation of IP rights in return for the receipt of a royalty, fee, or a commercial return.

Commonwealth Purposes

means (within the power of the Commonwealth):

- (a) any purpose relating to the defence and security of the Commonwealth of Australia;
- (b) any activity relating to domestic or international peace keeping, or domestic or international emergency aid to the civil community;
- (c) any activity involving, or for the benefit of, domestic or international security (including border security), or domestic or international law enforcement;
- (d) any activity involving, or for the benefit of, a foreign government (or foreign government agency) with whom the Commonwealth collaborates in connection with the activities described in paragraphs (a), (b), or (c) of this definition; and
- (e) any other purpose that is necessary or incidental to any of the purposes referred to in paragraph (a), (b), (c), or (d) of this definition, but excludes Commercialisation.

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 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; and

the Commonwealth's Confidential Information includes commercially sensitive information relating to Defence owned Foreground IP (see item 6a of the CSS) which is created by the Participant or Participant Personnel in the performance of this contract.

Confidential Provisions

means the provisions of this contract identified in item 9 of the CSS.

Contract Framework

means the document entitled 'Contract Framework' executed by both Parties.

Contract Stage Statement or CSS

means, subject to clause 11.12:

- (a) a document included in this contract at Contract Start Date entitled Contract Stage Statement (CSS); and

- (b) any new document entitled Contract Stage Statement (CSS) included in this contract in accordance with clause 11.10.

Contract Start Date

means the date this contract commenced under clause 1.1.

Default

means 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

means Foreground IP or Background IP owned by Defence.

Defence Item

means an item identified in item 13 of the CSS.

Defence Personnel

means any of the following individuals:

- (d) an officer or agent of the Commonwealth;
- (e) an employee in the Department of Defence;
- (f) a member of the Australian Defence Force (including a reservist);
- (g) the equivalent of an individual described in paragraphs (a) to (c) of this definition from other organisations on exchange to Defence;
- (h) a Defence Service Provider.

Defence Premises

means property owned by, leased or licensed to, or otherwise occupied by, the Commonwealth and administered by Defence and includes a vessel or offshore installation.

Defence Representative

means the person identified as the Defence Representative in item 7 of the CSS or as otherwise notified by Defence.

Defence Service Provider

means a person (other than a person described in paragraphs (a) to (d) of the definition of Defence Personnel above) engaged to perform a function, or discharge a duty, of Defence, including a person engaged to provide:

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

Deliverable

means anything that, under this contract, must be delivered to Defence under any Stage and includes:

- (a) each Deliverable listed in item 16 of the CSS or

any previous CSS for this contract; and

- (b) the Technical Data.

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;
- (d) ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels.

Export Approval

means 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

means the 'Final Report' listed as a Deliverable in item 16 of the CSS.

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.

GST Act

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

Injury

means any injury, disease or illness.

Insolvency Event

means, with respect to a person, any of the following events:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) 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;
- (c) being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- (d) being unable to pay its debts, or presumed to be unable to pay its debts under the *Companies Act 1993* (NZ);
- (e) being, or presumed to be, insolvent, dead, or bankrupt;
- (f) ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
- (g) 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);
- (h) being declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 (NZ);
 - (i) having a statutory manager appointed or having a recommendation for such an appointment to be made;
 - (j) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
 - (k) any event analogous to any of the events described in paragraphs (a) to (j) of this definition under the laws of any jurisdiction.

Intellectual Property or IP

means:

- (a) all copyright;
- (b) all rights in relation to inventions (including patent rights), trademarks (including service marks), designs, and circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields recognised in domestic law anywhere in the world,

whether registered or unregistered.

IP Register

means the register set out in Annexure C, as updated in accordance with clause 25.4.

Foreground IP

means any IP created under (or otherwise in connection with the performance of) this contract.

Key Person

means a person identified in item 14 of the CSS.

Key Subcontract

means a Subcontract entered into with a Key Subcontractor.

Key Subcontractor

means a person identified as a 'Key Subcontractor' in item 12 of the CSS as updated from time to time.

Loss

means 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

means each milestone identified in item 16 of the CSS.

Milestone Date

means the date identified for each Milestone in item 16 of the CSS.

Milestone Payment

means the price identified for a Milestone in item 16 of the CSS.

Moral Right

has the meaning given to that term by section 189 of the *Copyright Act 1968*.

NGTF Research Contract Standard Terms

means this document entitled 'NGTF Research Contract Standard Terms'.

Notifiable Incident

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

Participant Personnel

means 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

means the person identified as the Participant Representative in item 8 of the CSS or as otherwise notified by the Participant.

Party

means a party to this contract.

PEP

means the Project Execution Plan attached at item 15 of the CSS.

Plan

means a Deliverable in the form of a plan.

Price

means the amount referred to in item 4 of the CSS.

Project

means the project being undertaken by the Participant under this contract.

Related Body Corporate

has the definition given in section 9 of the *Corporations Act 2001* (Cth).

Representative

means in relation to a Party, the person identified in item 7 or 8 of the CSS as its representative, unless otherwise notified.

Research

means any research or technology developed under this contract.

Stage

means a Stage of this contract under a CSS.

Stage Research Objectives

means the objectives set out in item 3 of the CSS.

Subcontractor

means any person that, in connection with the Research or this contract, provides goods or services directly, or indirectly through another person, to the Participant, and includes Key Subcontractors; and "Subcontract" has a corresponding meaning.

Technical Data

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

Examples of Technical Data include manuals, handbooks, specifications, design documentation, reports, models, plans, drawings, calculations, simulations, training materials and test results, source code, raw data, methodology, validation techniques, limitation/obstacles, literature, extensions and measures of effectiveness.

Term

means the term as specified in clause 1.

Third Party IP

means any IP Rights owned by a person other than Defence or the Participant.

Use

means, with respect to IP, to exercise any or all rights subsisting in that IP and includes the right to sublicense those rights.

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

means, in relation to the doing of an action in a place, 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.