

Innovation Contract - Standard Terms

Version 4

The work

1. Participant to develop Technology

- 1.1 The Participant must:
- deploy the resources and carry out the activities described in the PEP and any approved Plan;
 - use its best endeavours to develop the Technology and ensure that the Technology meets the requirements in the CPS; and
 - achieve the Phase Objectives.
- 1.2 Defence accepts that it may become apparent during the Term that, despite the Participant using its best endeavours, it is not possible in the circumstances to develop the Technology as envisaged by this contract. If this is the case, and the Participant has otherwise performed its obligations under this contract, the Participant will not be in breach of clause 1.1 (or clauses 2.1 or 3.1 if the Participant cannot achieve a Milestone or deliver a Deliverable as a result), provided it follows the procedure in clauses 7 and 9.
- ### 2. Milestones
- 2.1 The Participant must achieve each Milestone by the relevant Milestone Date.
- 2.2 The Participant only achieves a Milestone if the criteria in item 19 of the CPS for that Milestone are met.
- 2.3 The Participant must notify Defence if it considers that a Milestone has been achieved and, if requested, must give Defence evidence that the criteria have been met. Within 15 Working Days (or such other time as agreed by the parties) after the Participant gives Defence notice, Defence must notify the Participant:
- confirming that the Milestone has been achieved; or
 - advising that the Milestone has not been achieved, in which case Defence must identify which criteria for the Milestone were not met or why the evidence was not satisfactory.
- 2.4 If Defence advises that a Milestone has not been achieved, the Participant must rectify the issues identified by Defence and give evidence to Defence that the issues have been rectified. If Defence confirms the Milestone has been achieved on submission of this evidence, the Participant is taken to have satisfied clause 2.1 for that Milestone.

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

3. Deliverables

- 3.1 The Participant must:
- deliver each Deliverable by its date for delivery in item 18 of the CPS;
 - deliver each Deliverable in accordance with the delivery requirements (including as to format and location) identified in item 18 of the CPS (or as otherwise notified by Defence); and
 - ensure that each Deliverable meets the Deliverable's description and requirements set out in item 18 of the CPS, to Defence's reasonable satisfaction.
- 3.2 For Deliverables that are to be approved under item 18 of the CPS, Defence must, within 15 Working Days (or such other time as agreed by the parties) after submission of the relevant item(s) for approval:
- approve the Deliverable where all requirements have been met; or
 - reject the Deliverable, in which case Defence must notify the Participant of the defects that causes the rejection.
- 3.3 If Defence rejects a Deliverable, the Participant must rectify the deficiencies or omissions identified by Defence and resubmit the Deliverable within the period specified by Defence in the rejection notice. If Defence approves the Deliverable on resubmission, the Participant is taken to have satisfied clause 3.1 for that Deliverable.
- Ownership and risk*
- 3.4 Unless otherwise stated in the PEP or otherwise agreed by the parties, title to each Deliverable transfers to Defence on delivery. If title is not transferred to Defence on delivery, Defence has no obligation to maintain any Deliverable or to take any care of any Deliverable in its care, custody and control.
- 3.5 Defence may elect to return a Deliverable to the Participant (including for disposal) at any time up to 1 year after the expiry or termination of this contract if the PEP so specifies – in which case title transfers on delivery to the Participant.
- 3.6 The Participant bears the risk of loss of, or damage to, a Deliverable until its delivery to Defence, and at any other time it is in the Participant's care, custody and control.
- ### 4. Technical Data
- 4.1 The Participant must regularly update the TD Schedule and must ensure that the TD Schedule identifies the Technical Data

- described in clause 4.2, including any Technical Data in existence at the Contract Start Date and as updated or created under this contract. A copy of the TD Schedule must be provided to Defence promptly on request and may be approved by Defence.
- 4.2 The Participant must provide to Defence all Technical Data required:
- a. to enable the assessment, analysis, testing and evaluation of the Technology by Defence;
 - b. to enable the evaluation of the maturity of the Technology and the potential development and application of the Technology (including potential installation or integration of the Technology into other systems);
 - c. to enable the verification of the results, outcomes and recommendations in the Deliverables;
 - d. to undertake Capability Development Activities; and
 - e. by the PEP or a Deliverable.
- 4.3 The Participant must provide the Technical Data described in clause 4.2 at the times and in the manner specified in the PEP, or otherwise promptly following a request from Defence.
- 4.4 Defence may provide Technical Data to a third party in accordance with its IP rights set out in clause 18.
- 4.5 Defence must act reasonably in exercising its rights under this clause 4.
- 5. Standard of work**
- 5.1 The Participant must carry out work under this contract in accordance with the standards specified in this contract, all applicable laws and otherwise in accordance with good industry practice.
- 5.2 For the purposes of clause 5.1, "good industry practice" means practices, methods and standards that would reasonably be expected from professional and experienced contractors in the relevant industry undertaking the same type of work as the Participant in the same or similar circumstances.
- 6. Location of work**
- 6.1 The Participant must ensure that the work under this contract is substantially carried out in Australia unless otherwise specified in the PEP or otherwise agreed by the parties.

Problem Solving

7. Participant to notify Defence

- 7.1 If the Participant becomes aware that it may not be able to:
- a. develop the Technology;
 - b. comply with the PEP;

- c. deliver a Deliverable; or
 - d. achieve a Milestone,
- the Participant must promptly give a notice to Defence.

8. Defence to notify Participant

- 8.1 Subject to any security, confidentiality or other restrictions on Defence, Defence will endeavour to inform the Participant if the Defence Representative becomes aware of:
- a. any material obstacles to the use of the Technology; or
 - b. any competing technology which could materially affect the commercial viability of the Technology or the success of the Project.

9. Parties may request information and resolution plan

- 9.1 If:
- a. the Participant gives a notice under clause 7.1;
 - b. Defence gives a notice under clause 8.1; or
 - c. Defence gives notice to the Participant that it considers that the Participant may be unable to do the things referred to in clause 7.1a to 7.1d,

the parties must meet promptly, and in any event within 20 Working Days, of the notice.

- 9.2 The purpose of the meeting is to provide a forum within which the Participant and Defence can agree the next steps, which may include one or more of the following:

- a. the development by the Participant of a written report:
 - i. identifying the obstacles to meeting the requirements of this contract;
 - ii. identifying what would be required to overcome those obstacles (if this is possible);
 - iii. identifying any potential uses of the Technology even if it cannot be developed as envisaged by this contract;
 - iv. detailing the resources that the Participant has deployed to date in the performance of its obligations under the PEP; and
 - v. addressing any other matters required by Defence; or

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

Collaboration and cooperation

10. Agreement to work together

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

- 10.2 The parties agree that nothing done in collaborating, cooperating or working together as required by clause 10.1 will have the effect of:
- a. amending the express provisions of this contract;
 - b. waiving a right in connection with this contract; or
 - c. releasing an obligation under this contract.

11. Defence's role

- 11.1 The Participant acknowledges and agrees that:
- a. the Participant cannot rely on any representations made by Defence about the use of the Technology after its development under this contract;
 - b. even if the Technology meets the requirements of this contract, it may not be suitable for use by Defence;
 - c. further development of the Technology may be required in addition to activities under this contract to develop the Technology into a working state suitable for a subsequent Defence procurement or certification; and
 - d. Defence is under no obligation to procure the Technology under a subsequent contract.
- 11.2 Defence's approval of any Plan or any test readiness review or the provision of a test readiness review certificate is for Defence's benefit only and cannot be relied on by the Participant. Defence makes no representation by giving such approval or certificate.

Payment

12. Payment of Milestone Payment

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

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

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

14. Defence may set off

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

Defence Items

15. Defence Items

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

- contract, the Participant will be entitled to a schedule adjustment in accordance with clause 17; and
- b. if the delay significantly and adversely affects the ability of the Participant to provide a Deliverable – the Participant may, within 3 months after the delay arising, terminate this contract by notice to Defence.
- 15.8 Defence may terminate this contract by notice to the Participant if:
- a. Defence is delayed in delivering a Defence Item as result of the Participant not meeting its obligations under this contract;
 - b. it is not practicable (taking into account costs, logistics and other competing Defence requirements) for Defence to supply the Defence Item (or replacement item) to the Participant within a reasonable period; and
 - c. without the relevant Defence Item, the Participant is unable to perform some or all of its obligations under this contract.
- 15.9 Defence gives no warranty, and makes no representations, about the suitability or fitness for purpose of any Defence Item.
- 15.10 Defence has no liability and the Participant has no entitlement resulting from a delay in a Defence Item being delivered, other than under clause 15.7 and 32.4.
- 15.11 The Participant is liable for any Loss incurred by Defence in connection with any loss of, or damage to, a Defence Item that arises while the Defence Item is in the care, custody or control of the Participant or the Participant's Personnel, except:
- a. any loss or damage that arises as a result of modification expressly contemplated by item 15 of the CPS;
 - b. fair wear and tear;
 - c. to the extent Defence or Defence Personnel's Default or wilful misconduct contributed to that loss or damage; or
 - d. to the extent that the loss or damage arose from an Excepted Risk.
- 15.12 The Participant must not:
- a. use Defence Items otherwise than for the purposes of its work on the Project;
 - b. transfer possession or control of a Defence Item to anyone else (except to a Key Subcontractor or with Defence's prior consent);
 - c. create a security interest in respect of a Defence Item, or allow one to be created; or
 - d. act contrary to any IP rights applicable to Defence Items notified in the CPS or as notified by Defence.
- 15.13 Nothing in this clause 15 affects the ownership of a Defence Item.
- Adjusting the schedule***
- 16. Participant to minimise delays**
- 16.1 The Participant must take all reasonable steps to prevent and minimise delay and to mitigate both parties' Loss due to delay.
- 17. Entitlement to schedule adjustment**
- 17.1 The Participant is entitled to postponement of a Milestone Date or to a Delivery Date:
- a. to the extent that the Participant is delayed by an event or circumstance that is beyond the reasonable control of the Participant and its Subcontractors; and
 - b. provided the Participant has taken all reasonable steps to prevent and minimise delay and to mitigate both parties' Loss due to delay.
- 17.2 If the Participant makes a claim for postponement of a Milestone Date or to a Delivery Date:
- a. Defence must, to the extent it considers that the Participant is entitled to postponement of a Milestone Date or Delivery Date under clause 17.1, agree to grant the postponement; and
 - b. the Defence Representative and Participant Representative may agree to update the dates in item 19 or 18 of the CPS to implement the agreed postponement without entering a deed in accordance with clause 38.1.
- 17.3 The Participant is not entitled to postponement of a Milestone Date or Delivery Date and must instead follow the procedures set out in clauses 7 and 9 where the Participant becomes aware that it is unable to achieve a Milestone Date or a Delivery Date because:
- a. it is unable, despite using its best endeavours, to develop the Technology;
 - b. it is unable to comply with the PEP; or
 - c. because the resources allocated to the development of the Technology, as set out in the PEP, are insufficient.
- 17.4 Without limiting clause 1.2, the Participant is not entitled to postponement of a Milestone Date or Delivery Date to the extent the delay resulted from a Default of the Participant or any Subcontractor.

Intellectual Property and Confidential Information

18. Intellectual property

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

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

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

Public Announcements

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

No exclusion of law or equity

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

Governance

20. The Representatives

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

21. Notices

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

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

Subcontracting

22. Key Subcontractors

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

Workplace Gender Equality

- 22.4 The Participant must not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

Statements of Tax Record

- 22.5 The Participant shall not enter into a Subcontract with a proposed direct Subcontractor (or agree to a novation of a direct Subcontract) if the total value of all work under the Subcontract is expected to exceed \$4 million (inc GST), unless the Participant has obtained and holds a Satisfactory and Valid Statement of Tax Record for the Subcontractor. The Statement of Tax Record required for each kind of entity is specified in paragraph 10 of the Black Economy Procurement Connected Policy.
- 22.6 If the Participant or a direct Subcontractor is a partnership, the Participant will ensure that if a new partner subsequently becomes directly involved in the delivery

of this contract or a direct Subcontract (as applicable), it obtains and holds a Valid and Satisfactory Statement of Tax Record for the partner within 10 Working Days after it becomes aware of that partner's direct involvement.

- 22.7 The Participant shall provide Defence with copies of the Statements of Tax Record referred to in clauses 22.5 and 22.6 within 5 Working Days after a written request by Defence.

Participant Personnel

23. Key Personnel

- 23.1 The Participant must ensure that each Key Person is appointed to the roles or positions described for that Key Person in item 16 of the CPS.
- 23.2 The Participant must not replace a Key Person without Defence's prior approval. The Defence Representative and the Participant Representative may update item 16 of the CPS to reflect any approved changes to Key Persons without entering into a deed in accordance with clause 38.1.
- 23.3 If the Participant becomes aware that a Key Person is unable, or may be unable, to perform their role, the Participant must:
- promptly notify Defence; and
 - as soon as practicable, appoint another person, approved by Defence, to perform that role.
- 23.4 Defence must act reasonably in deciding whether to approve the proposed appointment of any Key Person and notify the Participant as soon as practicable.
- 23.5 The Participant must promptly remove a Key Person from their role performing work under this contract and nominate a replacement if Defence gives it a notice, including reasons, that in Defence's opinion the Key Person is:
- unable to perform their work due to incapacity or incompetence; or
 - not appropriate for their role for reasons relating to work health and safety, security, equity and diversity, workplace gender equality, probity or the relationship between Defence and the Participant.

Law and Commonwealth policies

24. Law and policies

- 24.1 The law in force in the State or Territory of Australia specified in item 7 of the Contract Framework governs this contract and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this contract.
- 24.2 The Participant must comply with, and must ensure any Subcontractor complies

with, all applicable laws in connection with work being performed under this contract. "Applicable laws" include:

- the WHS Legislation;
- the *Defence Trade Controls Act 2012*;
- the *Customs Act 1901* and regulations made under that Act;
- the *Workplace Gender Equality Act 2012*; and
- the *Privacy Act 1988*.

- 24.3 The Participant must:

- 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;
- 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;
- provide a copy of any Authorisation to Defence within 10 Working Days of a request; and
- promptly notify Defence of any refusal to grant, revocation or qualification of an Authorisation required for performance of the work under this contract (including provision of the Deliverables).

- 24.4 The Participant must comply with Defence policies listed on the Defence Innovation Hub website <https://www.innovationhub.defence.gov.au/> and as otherwise notified by Defence.

25. Work Health and Safety

- 25.1 Without limiting clause 24.2, the Participant must:
- 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
 - promptly provide any information or copies of documentation requested by Defence to enable Defence to comply with its obligations under WHS Legislation.

26. WHS Notifiable Incidents

- 26.1 If, in connection with work under this contract, a Notifiable Incident occurs:
- on Defence Premises; or
 - which involves Defence Personnel, Participant Personnel or Subcontractors,
- the Participant must:
- immediately report the incident to Defence;

- d. promptly give Defence copies of any notices or other documents provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
- e. give Defence any other information as may be required by Defence to facilitate the notification to, or investigation by, the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation; and
- f. provide other reasonable assistance required by Defence to undertake mandatory incident reporting.

Records and access to records and premises

27. Maintain records and provide access

27.1 The Participant must:

- a. maintain records, in sufficient detail, which are complete and accurate and which fully reflect all work done, expenditure incurred and results achieved in the performance of this contract (the **Project Records**); and
- b. on any reasonable request by Defence, give Defence (and any person authorised by Defence) timely and sufficient access to its premises, hardware, software, records (including the Project Records) and accounts for any purpose related to this contract and Defence may copy and retain any such records or accounts;

and must ensure that each Key Subcontractor does the same.

27.2 The Participant must co-operate with the Auditor-General (including by providing access to personnel, records and accounts) conducting reviews under the *Auditor-General Act 1997* in relation to the Project (and must ensure that each Key Subcontractor does the same).

27.3 Defence must comply with any reasonable safety and security requirements or codes of behaviour applicable to the Participant's, Key Subcontractor's or Subcontractor's premises when accessing the relevant premises.

Insurance

28. Insurance requirements

28.1 The Participant must maintain:

- a. all insurance and registrations required by law;
- b. any insurance identified in item 12 of the CPS with at least the limits of indemnity specified in that item; and
- c. such other insurance, with such limits of indemnity, as a

prudent Participant undertaking similar work would maintain.

28.2 The insurance must, unless otherwise agreed:

- a. be effected before the Participant commences work under the CPS; and
- b. be maintained until the expiry or termination of this contract, except in the case of professional indemnity insurance which must be maintained for 7 years after the expiry or termination of this contract.

28.3 The Participant must use its best endeavours to ensure that all its Key Subcontractors are covered by insurance that is appropriate (in terms of risks covered, and limits of cover) to their work in connection with this contract.

Public liability cover

28.4 Any public liability insurance must be written on an occurrence basis with the specified limit of indemnity each and every occurrence, and must cover the Participant and Participant Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under this contract by the Participant or Participant Personnel.

Professional Indemnity cover

28.5 Any professional indemnity insurance must:

- a. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Participant or Participant Personnel under this contract;
- b. have the specified limit of indemnity per claim and in the aggregate for all claims in any 12 month policy period; and
- c. cover claims arising up to 7 years after this contract terminates or expires.

28.6 In addition to clause 28.5, any professional indemnity insurance should cover:

- a. claims related to software and IT risks, unless the Participant has insured against these risks in a separate policy and demonstrates such to Defence's satisfaction; and
- b. claims for unintentional breaches of IP rights.

Products liability cover

28.7 Any products liability insurance must be written on an occurrence basis with the specified limit of indemnity per claim and in the aggregate for all claims in any 12 month policy period, and must

cover the Participant and Participant Personnel for their respective liabilities caused by, arising out of, or in connection with, the negligent manufacture, processing, alteration, repair or installation of any product.

- 28.8 Except for insurances required by law, each insurance required by this contract must be with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or with an insurer approved by Defence, acting reasonably.

Evidence of cover

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

Indemnities and limitation of liability

29. Indemnities

- 29.1 The Participant indemnifies Defence against any Loss arising from any Injury to, or death of any officer or employee of the Participant or a Subcontractor in connection with this contract.

- 29.2 The amount that the Participant is to pay under the indemnity in clause 29.1 is reduced to the extent that the Participant demonstrates that the Loss arose out of or as a consequence of a Default or wilful misconduct by Defence or Defence Personnel.

30. Limitation of liability

- 30.1 The liability of the Participant to Defence under or in connection with this contract (including at general law, in negligence or in equity) is limited (in aggregate) to the Limitation Amount listed at item 12 in the CPS.

- 30.2 The limitation in clause 30.1 does not apply to a liability of the Participant in respect of:

- a. death, personal injury, disease or illness of any person;
- b. loss of or damage to any property (other than Defence property);
- c. infringement of IP rights (including Moral Rights);
- d. breach of confidentiality, privacy or security obligations; or
- e. fraud, wilful misconduct or a criminal offence.

Asset Disposal

31. Asset Disposal

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

Participant of its decision including any conditions to approval as soon as practicable.

Termination

Specific termination rights

- 32.1 Without limiting its rights at law or under this contract, Defence may terminate this contract by notice to the Participant if:
- a. the Participant breaches this contract and the breach is not capable of remedy;
 - b. the Participant does not, within 20 Working Days after receiving notice from Defence, remedy a breach of this contract which is capable of remedy;
 - c. an Insolvency Event occurs in respect of the Participant;
 - d. a termination right arises under clause 56;
 - e. an Asset Disposal of the Participant occurs without Defence's approval;
 - f. the Participant fails to notify Defence of a conflict of interest or risk of such a conflict of interest in accordance with clause 36 or is unable or unwilling to resolve the conflict of interest as required, or in the opinion of Defence, the conflict cannot be satisfactorily resolved or managed; or
 - g. the Participant would have, except for the operation of the limitation in clause 30.1, been liable to Defence, under or in connection with this contract, for an amount greater than the Limitation Amount listed at item 12 in the CPS.

- 32.2 This contract will terminate if the parties agree to terminate as contemplated under clause 9.2e or if a termination right is enforced under clause 9.4, 15.7b or 15.8 (or 50.4c, if applicable) or item 6.6a of the Contract Framework.

Termination for any reason

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

Termination costs

- 32.4 If this contract is terminated under clause 15.7b or 32.3 or the parties agree that reasonable costs are payable as a condition of termination as contemplated by clause 9.2e:
- a. the Participant must stop work under this contract in accordance with the notice and mitigate all Loss (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected Key Subcontractors; and

- b. provided the Participant has complied with all of its obligations under this contract, the Participant is entitled to reimbursement of any reasonable costs incurred by the Participant in performance of its obligations under the CPS that are directly attributable to the termination, if the Participant substantiates these amounts to the satisfaction of Defence and provided the total amount paid by Defence to the Participant under this contract (including the reimbursement) is not more than the Aggregate Price set out in item 6 of the CPS.

33. Timing of termination

- 33.1 Termination takes effect on the date of a notice of termination or, in the case of termination by Defence, if the notice of termination specifies a later date, the later date.
- 33.2 A termination under clause 9.2e will take effect on the date agreed by the parties.

34. What happens on termination or expiry

- 34.1 On termination or expiry of this contract:
 - a. the Participant must comply with any directions given by Defence (including in connection with the delivery of documents, return of Defence Items and ceasing use of any Defence IP);
 - b. except as provided for in clause 32.4b, Defence will not have any liability to the Participant other than for Milestones achieved before the effective date of termination; and
 - c. the Participant will not be entitled to revenue or profit anticipated on any part of this contract terminated.

- DISP in accordance with Principle 16 of the DSPF;
- b. if not required to be a member of the DISP, comply with the classification and protection of official information requirements of Principle 10 of the DSPF;
- c. ensure that all required personnel (if any) possess a personnel security clearance specified in item 11 of the CPS, and comply with the requirements and procedures of Principle 40 of the DSPF; and
- d. possess the facility accreditation (if any) and ICT system accreditation (if any) specified in item 11 of the CPS and comply with the requirements and procedures of Principle 73 of the DSPF.

35.3 The Participant must classify all information in its possession relating to the performance of this contract according to the Security Classification and Categorisation Guide at Annexure E, or as otherwise agreed by the Commonwealth, and must ensure that such information is safeguarded and protected according to its level of security classification.

35.4 The Participant must ensure that no security classified information furnished or generated under this contract is released to a third party, including a representative of another country, without prior written approval of the originator through the Defence Representative.

35.5 The Participant must promptly report to the Defence Representative any instance in which it is known or suspected that security classified information furnished or generated under this contract has been lost or disclosed to unauthorised parties, including a representative of another country.

35.6 The Participant must ensure that all security classified information transmitted between the parties or a party and a Key Subcontractor, in Australia, whether generated in Australia or overseas, are subject to the terms of Principle 71 of the DSPF.

35.7 The Participant must ensure that:

- a. without limiting clause 35.6, all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia must be subject to the terms of Principle 13 of the DSPF; and
- b. all security classified information transmitted between the parties or a party and a Subcontractor located overseas, whether generated in Australia or by another country, are subject to the laws of the overseas country regarding the custody and protection of security classified

Defence security

35. Defence Security

- 35.1 The Participant must:
 - a. ensure that Participant Personnel undertake any security checks, clearances or accreditations as required by Defence;
 - b. notify Defence of any changes to circumstances which may affect the Participant's capacity to perform this contract in accordance with Defence's security requirements; and
 - c. provide written undertakings in respect of security or access to Defence place, area or facility in the form required by Defence.
- 35.2 The security classification of the Technology will be up to and including the level specified in item 11 of the CPS. The Participant must:
 - a. if required in item 11 of the CPS, obtain and maintain membership of

- information, and to any bilateral security instrument between Australia and the overseas country.
- 35.8 The Participant must ensure the requirements of this clause 35 are included in all contracts with Key Subcontractors and Subcontractors where the Key Subcontractor or Subcontractor requires access to any Defence place, area or facility, or to security classified information, in order to perform its obligations under that contract.

Conflict of Interest

36. Conflict of Interest

- 36.1 The Participant:
- a. warrants that, to the best of its knowledge after making diligent inquiry, no conflict of interest exists at the Contract Start Date, or is likely to arise in the performance of its obligations under this contract by itself or any Participant Personnel; and
 - b. must promptly notify Defence if such a conflict or risk of such a conflict of interest arises.
- 36.2 Within 5 Working Days after giving notice under clause 36.1, the Participant must notify Defence of the steps the Participant will take to resolve the issue. If Defence considers those steps are inadequate, it may direct the Participant to resolve the issue in a manner proposed by Defence.
- 36.3 The Participant must ensure that all Key Subcontracts contain equivalent provisions to those set out in this clause 36.

Post Defence Separation Employment

37. Post Defence Separation Employment

- 37.1 Except with the prior written approval of the Defence Representative, the Participant must not allow (and must ensure that each Key Subcontractor does not allow) any Defence Personnel who, at any time during the preceding 6 month period was engaged or involved in:
- a. the preparation or management of this contract;
 - b. the assessment or selection of the Participant; or
 - c. the planning or performance of any activity relevant or related to this contract,
- to perform, contribute to or advise on the performance of this contract (or Key Subcontract).
- 37.2 For clarity, the 6 month period referred to in clause 37.1 applies from the date which is 6 months before the date on which the Participant proposes that the person start performing or contributing to the performance of this contract (or Key

Subcontract).

- 37.3 The Defence Representative must not unreasonably withhold approval of a person under clause 37.1 and, in making a decision, must consider:
- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 6 month period;
 - b. any information provided by the Participant about the character and duration of the services proposed to be performed by the person under this contract (or Key Subcontract);
 - c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of this contract (or Key Subcontract) in the manner proposed under 37.3b, 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.

Miscellaneous provisions

38. Amendments to this contract

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

39. Survival

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

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

40. Preservation of rights and remedies

- 40.1 Failure by either party to enforce a right of this contract does not affect the enforceability of that or any other right.
- 40.2 The rights and remedies provided under this contract are cumulative and

- not exclusive of any rights or remedies provided by law or any other right or remedy.
- 40.3 Subject to the terms of this contract, the rights and obligations of the parties under this deed are in addition to and not in derogation of any other right or obligation between the parties under any other contract to which they are parties.
- 41. No assignment**
A party may not assign or otherwise deal with its rights under this contract without the written consent of the other party.
- 42. Severability**
If any part of this contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this contract, and the operation of this contract outside that jurisdiction, are not affected.
- 43. Entire agreement**
To the extent permitted by law, this contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 44. No agency**
44.1 The Participant and Participant Personnel are not, merely because of this contract, employees, partners or agents of Defence, and the Participant must not represent itself, and must ensure that Participant Personnel do not represent themselves, as being an employee, partner or agent of Defence.
- 45. Discretion in exercising rights**
45.1 Unless expressly stated otherwise, each party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this contract, in its absolute discretion (including by imposing conditions).
- 46. Counterparts**
46.1 This contract may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document.
- 47. Interpretation**
47.1 In this contract, unless the contrary intention appears:
- a. headings do not form part of this contract;
 - b. the singular includes the plural and vice-versa;
 - c. a reference to a person includes a body politic, body corporate or a partnership;
 - d. if the last day of a period prescribed for the doing of an action falls on a day which is not a Working Day, the action must be done no later than the end of the next Working Day;
- e. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
 - f. a reference to a "dollar", "\$", "\$A" or "AUD" means the Australian dollar;
 - g. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, as amended or brought into existence from time to time;
 - h. the word "includes" in any form is not a word of limitation;
 - i. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this contract; and
 - j. a reference to liquidation or insolvency includes official management, judicial management, receivership, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- 47.2 To the extent there is any inconsistency between the provisions of this contract, a descending order of precedence will be given to:
- a. the Contract Framework;
 - b. the CPS (excluding item 17);
 - c. these Standard Terms;
 - d. item 17 of the CPS;
 - e. Annexures C, E and F; and
 - f. Annexures A and D,
- and the provision in the higher ranked document will prevail.
- 47.3 To the extent this contract provides for the Participant to be liable for any Loss, if Defence elects to recover an amount from the Participant in respect of that Loss, it may give the Participant a notice of the existence of a debt recoverable which must be paid by the Participant within 30 days of receipt of notice.
- 48. Glossary**
48.1 In this contract:

Authorisation

a licence, permit, Export Approval or other authority required by law that:

- a. a person needs to do work under this contract; or
- b. is needed for a Deliverable or any other item to be provided or used by Defence for its intended purpose.

Asset Disposal

occurs where the Participant transfers or otherwise disposes of its ownership of or any rights to:

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

Background IP

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

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

but does not include Other Supplier IP or Defence IP.

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

Black Economy Procurement Connected Policy

Black Economy Procurement Connected Policy – Increasing the integrity of government procurement – March 2019.

Capability Development Activities

activities relating to:

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

for Defence Purposes, but does not include Commercialisation.

Change of Control

occurs where a person obtains, or ceases to have:

- a. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the votes that may be cast at a general meeting of the Participant;
- b. the ability to dispose or exercise control over the disposal of more than 50% of the shares in the Participant;
- c. the ability to appoint or remove a majority of the directors of the Participant;
- d. the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the Participant; or
- e. other means, direct or indirect, of controlling the decision making and financial and operating policies of the Participant.

Commercialisation

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

COMSEC

means communication security.

Confidential Information

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

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

Confidential Provisions

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

Contract Deliverable

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

Contract Framework

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

Contract Phase Statement or CPS

subject to item 6.7 of the Contract Framework, the most recent of:

- a. the document included in this

contract at Contract Start Date entitled Contract Phase Statement (CPS); and

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

Contract Start Date

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

Default

a breach of:

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

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

Defence IP

IP that is:

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

Defence Item

an item identified in item 15 of the CPS.

Defence Personnel

any Defence Service Provider and each of the following:

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

and their equivalents from other organisations on exchange to Defence.

Defence Premises

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

Defence Purposes

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

Defence Representative

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

Defence Service Provider

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

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

Deliverable

each Deliverable listed in item 18 of the CPS.

Delivery Date

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

DISP

means Defence Industry Security Program.

DSPF

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

Excepted Risk

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

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

Export Approval

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

Final Report

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

GST Act

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

ICT

means information and communications technology.

Injury

any injury, disease or illness.

Innovation IP

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

Insolvency Event

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

Intellectual Property or IP

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

IP Schedule

means

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

Key Person

a person identified in item 16 of the CPS.

Key Subcontract

a Subcontract entered into with a Key Subcontractor.

Key Subcontractor

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

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

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

Loss

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

Milestone

each milestone identified in item 19 of the CPS.

Milestone Date

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

Milestone Payment

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

Moral Right

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

Notifiable Incident

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

Other Supplier IP

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

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

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

Participant Personnel

each of the following:

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

the Key Subcontractor.

Participant Representative

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

PEP

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

Phase

a phase of this contract under a CPS.

Price

the amount referred to in item 5 of the CPS.

Plan

a Deliverable in the form of a plan.

Project

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

Phase Objectives

the objectives so described in item 3 of the CPS.

Related Body Corporate

as defined by section 9 of the Corporations Act.

Reporting Period

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

for any Final Report – the current Phase.

Representative

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

Satisfactory

meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.

Standard Terms

this document entitled 'Standard Terms'.

Statement of Tax Record

a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR.

Subcontractor

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

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

Technology

the Technology described in item 4 of the CPS.

TD or Technical Data

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

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

TD Schedule

means

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

Technical Performance Measures or TPMs

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

Term

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

Valid

valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.

WHS Legislation

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

Working Day

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

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

49. Additional terms

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

50. Access to Defence Premises

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51. Third party funding

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

52. IP Deed

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

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

53. Systems integration

53.1 The Participant must use reasonable endeavours, in accordance with industry best practice, to ensure that:

- a. no Harmful Code is included or introduced into Defence's systems or information technology environment; and
- b. no Defence data is lost, corrupted or rendered inaccessible, in connection with the Participant's access to Defence's systems, information technology

- environment or data in connection with this contract.
- If the Participant becomes aware that:
- a. any Harmful Code has been introduced into Defence's systems or information technology environment; or
 - b. any Defence data has been lost, corrupted, or rendered inaccessible,
- the Participant must immediately report that to Defence and provide reasonable assistance to resolve the issues as requested by Defence.
- 53.2 The Participant must take all reasonable action requested by Defence to:
- a. contain and eliminate Harmful Code if it is introduced into Defence's systems or information technology environment in connection with this contract, and/or
 - b. to recover any lost, corrupted or inaccessible data.
- 53.3 Where Defence data is provided to the Participant and is placed on Participant systems, the Participant must:
- a. take reasonable and prudent steps consistent with good industry practice to protect its systems from cyber attack, and to protect the Defence data from loss, corruption or being rendered inaccessible;
 - b. ensure that the Participant's systems are controlled so that only those Personnel with a need to access Defence data for a purpose related to the performance of this contract are able to access Defence data; and
 - c. notify Defence if it becomes aware of any cyber attack on Participant systems, or any unauthorised access to, use, copying or disclosure of Defence data and take all reasonable action requested by Defence to address the issue, including, if required by Defence, advising the Australian Cyber Security Centre of the cyber attack.
- 53.4 In this clause 53, **Harmful Code** means any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code.
- 54. Indigenous Procurement Policy**
- 54.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information.)
- 54.2 The Participant must use its reasonable endeavours to increase its:
- a. purchasing from Indigenous enterprises; and
 - b. employment of Indigenous Australians,
- in the performance of its obligations under this contract.
- 54.3 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Participant's supply chain.
- 54.4 The Participant must provide written reports and evidence of its compliance with this clause 54 every year during the Term.
- 54.5 If during the Term the value of this contract exceeds \$7.5 million, then this contract will become a "High Value Contract" for the purposes of the Indigenous Procurement Policy, in which case the Participant must (unless otherwise agreed):
- a. within 20 Working Days after the \$7.5 million value is reached, develop an Indigenous Participation Plan that addresses:
 - i. how the Participant intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
 - ii. the Participant's current rate of Indigenous employment and supplier use;
 - iii. the Participant's commitment to Indigenous participation;
 - iv. if any part of this contract is being or will be delivered in a Remote Area, how the Participant will ensure this contract will provide significant Indigenous employment or supplier use outcomes in that Remote Area; and
 - b. submit the draft Indigenous Participation Plan to Defence for its review and, if appropriate, approval.
- 54.6 Following approval of the draft Indigenous Participation Plan under clause 54.5b, the Participant must:
- a. comply with the Indigenous Participation Plan;
 - b. report against its compliance with the Indigenous Participation Plan quarterly during the Term; and
 - c. comply with any reasonable directions issued by the Defence Representative in relation to the Participant's implementation of the Indigenous Participation Plan.
- 54.7 In this clause 54:
- a. "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business; and
 - b. "Indigenous Procurement Policy" means the policy of that name (available at www.dpmc.gov.au/ipp).

55. 20 Day Payment Terms and Late Payment

- 55.1 In clause 12.1 of the Standard Terms, “30 days” is deleted and replaced with “20 days”.
- 55.2 Clauses 55.3 to 55.5 apply where the amount of the interest payable exceeds A\$100.
- 55.3 If payment of a correctly rendered invoice is made late, interest is payable to the Participant by Defence in accordance with the formula at clause 55.4.
- 55.4 For the purposes of this clause 55, an interest payment will be calculated in accordance with the following formula:

$$\frac{I\% \times P \times n}{100}$$

where:

‘I%’ for late payments = the Australian Taxation Office sourced General Interest Charge rate current at the due date of payment expressed as a percentage

P = the amount of the late payment

n = the number of days after the due date for payment that the payment is made

- 55.5 If the interest payment is not offset or paid as part of the subject invoice, Defence must adjust the next approved payment under this contract. If there are no further payments, Defence must pay the interest payment within 20 days of being provided with notice in the form of a correctly rendered invoice.

56. Change of Control

- 56.1 Subject to clause 56.2, the Participant must seek the Defence Representative's prior written consent to any proposed Change of Control by providing notice to Defence at least 15 Working Days before the proposed Change of Control is to occur.
- 56.2 If a Change of Control occurs as a result of a transfer of shares or other interests listed on a recognised stock exchange and the consent of the Defence Representative could not have been obtained in accordance with clause 56.1, the Participant must seek that consent by providing notice to Defence within 5 Working Days after the Change of Control.
- 56.3 In any notice given to Defence seeking consent to a Change of Control, the Participant must include the following details:
- 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;

- 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;
- 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
- the steps the Participant has taken, or proposes to take, to minimise the impact of the change or prospective change.

- 56.4 If there is a Change of Control and the Defence Representative does not consent to the Change of Control, then Defence may:

- terminate this contract by notice; or
- agree not to terminate this contract, subject to the Participant providing further information, giving specified undertakings, or executing further agreements, as may be required by Defence.

- 56.5 Nothing in this clause 56 requires the Participant to act in a manner inconsistent with its obligations under the *Corporations Act 2001* (Cth) or equivalent laws and regulations in a foreign jurisdiction.

57. Delivery requirements

- 57.1 The Participant must ensure that all Deliverables that are not documents are appropriately packaged and have appropriate package marking, consignment documentation and documentation language standards, including to comply with applicable regulatory requirements (including WHS Legislation).
- 57.2 The Participant must ensure that secure and legible documentation is affixed to the outside of any package delivered to Defence, with duplicate copies inside at the top of each package, which includes the following information at a minimum:
- the relevant Project identifier (Project name);
 - the relevant contract number;
 - the item name;
 - the item quantity;
 - the name of the supply source;
 - the consignment delivery point; and
 - the date of dispatch.
- 57.3 The Participant must ensure that all Deliverables delivered to Defence are accompanied by a ‘certification of conformance’ signed by the Participant to meet regulatory requirements.

58. Indemnity

- 58.1 The Participant must indemnify Defence and Defence Personnel in respect of any Loss in connection with a claim by a third party in respect of loss of or damage to any property arising out of or as a consequence of a Default or wilful misconduct of the Participant or any Participant Personnel.
- 58.2 The amount that the Participant is to pay under the indemnity in clause 58.1 is exempted or reduced to the extent that the Participant demonstrates that the Loss arose out of or as a consequence of a Default or wilful misconduct by Defence or Defence Personnel.