

1.1

DATED

DAY OF



**DEFENCE INNOVATION PARTNERSHIP  
COLLABORATIVE RESEARCH FUNDING  
AGREEMENT**

**BETWEEN**

**PREMIER OF SOUTH AUSTRALIA**

as represented by Defence SA

**(Defence SA)**

**-AND-**

**[insert]**

**(Recipient)**

**[This document is a DRAFT provided only for the purposes of furthering negotiations between the parties. No party will be legally bound unless and until this document is executed by the parties and any actions taken in anticipation of such formal execution is at the risk of the person taking them.]**

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**SCHEDULE**

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<b>ANNEXURE C</b>	<b>COMMONWEALTH PROPERTY INTELLECTUAL PROPERTY LICENCE DEED</b>

AGREEMENT dated \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**PARTIES:**

**THE PREMIER OF SOUTH AUSTRALIA** a body corporate under the *Administrative Arrangements Act 1994 (SA)* (as represented by Defence SA) of Level 4, 151 Pirie Street, Adelaide, South Australia 5000 (**Defence SA**)

**AND**

**INSERT** of (Recipient)

**RECITALS**

- A. The Recipient is seeking to undertake a collaborative research grant related to (name of activity) (Project).
- B. Research topics will include the following area(s): (general statement of scope of work)
- C. At the Recipient's request the Premier has agreed to provide to the Recipient grant Funds, in aggregate not to exceed \$XX.XX, excluding GST, to facilitate the Project.
- D. Defence SA agrees to provide the Funds on the terms and conditions of this agreement.

**IT IS AGREED:**

2. **CONDITION PRECEDENT**

The Recipient agrees to comply with the Intellectual Property ownership and licensing requirements of the Commonwealth of Australia in relation to the Project and this agreement is subject to the Recipient entering into an agreement with the on the Terms and Conditions comprising Annexure C by the Condition Precedent End Date specified in Schedule 1.

3. **TERM OF AGREEMENT**

The **Term** of this agreement is the period specified in the schedule.

4. **ADMINISTRATION OF AGREEMENT**

Any power or discretion exercisable by Defence SA under this agreement may be exercised by the person for the time being in the position of Chief Executive, Defence SA.

## 5. PAYMENT OF FUNDS

- 5.1 Subject to this agreement, in consideration of the Recipient participating in the **Project** Defence SA agrees to pay the funds to the Recipient in accordance with the **Milestone Payments** (if any) as specified in the schedule.
- 5.2 The Recipient may only use the Funds for the **Purpose** specified in the Schedule.
- 5.3 Defence SA will pay the Funds to the Recipient at the times specified in the Schedule and within thirty (30) days of receipt of claim notice in the form provided in Annexure A, or another form satisfactory to Defence SA.
- 5.4 At the end of the Term the Recipient must:
  - 5.4.1 provide a report on the level of any unexpended Funding to Defence SA;
  - 5.4.2 repay any part of the Funding which is unexpended at the end of the Term to Defence SA, unless Defence SA gives written approval for the Recipient to retain the money.

## 6. OBLIGATIONS OF THE RECIPIENT

The Recipient must:

- 6.1 comply with the terms and conditions of this agreement, including the **Special Conditions** specified in the schedule.
- 6.2 at all times, make best endeavours to achieve the **Key Performance Indicators** specified in the Schedule;
- 6.3 maintain accounting records of the Funding in accordance with generally accepted accounting principles and any other standards reasonably required by Defence SA;
- 6.4 ensure that any activity carried out by the Recipient in connection with the Project complies with the laws from time to time in force in South Australia; and
- 6.5 comply with its constitution, or other governing instrument.

## 7. INFORMATION AND REPORTS

- 7.1 The Recipient must provide Defence SA with appropriate and regular information, records and reports as specified in the schedule and otherwise as requested by Defence SA from time to time, including information about:
  - 7.1.1 the progress of and material changes to the nature and scope of the Project;
  - 7.1.2 any other funding or financial assistance promised or received for the Project from sources other than Defence SA;
  - 7.1.3 the use of the Funding; and
  - 7.1.4 any other matters relevant to the Project, as reasonably required by Defence SA.
- 7.2 The Recipient must:
  - 7.2.1 prepare financial statements in the nature of a general purpose financial report; and

- 7.2.2 where requested by Defence SA, provide management accounts, annual reports, financial statements and any other information or documents relevant to the Funding.
- 7.3 The Recipient must, upon reasonable notice permit any officer authorised by Defence SA:
  - 7.3.1 to have access to all accounting records, equipment, documents and information in relation to the Project and the Funding; and
  - 7.3.2 to discuss matters pertaining to the Project and the Funding with employees of the Recipient.

## 8. TERMINATION

- 8.1 If the Recipient fails to comply with this agreement, Defence SA may at its reasonable discretion, do one or more of the following:
  - 8.1.1 require the Recipient to repay any portion of the Funding Amount paid but not properly expended at the time of termination, in Defence SA's absolute discretion;
  - 8.1.2 pursue any legal rights or remedies which may be available to the Defence SA; and
  - 8.1.3 terminate this agreement by giving thirty (30) days written notice.
- 8.2 Defence SA may review any decision made pursuant to clause 7.1 if the Recipient is able to satisfy Defence SA that the Recipient has complied with the conditions of this agreement.

## 9. INSURANCE

The Recipient must comply with any insurance obligations specified in the schedule.

## 10. GST

- 10.1 The parties acknowledge that compliance with obligations or the grant of rights under this agreement by the Recipient will be a Taxable Supply as defined in the GST Law and the Recipient will be liable to pay GST on the Taxable Supply.
- 10.2 In addition to the Funding Defence SA will pay an amount calculated by multiplying the Funding by the rate at which GST is levied at the time of this agreement (**GST payment**).
- 10.3 If the Funding is payable in instalments, the GST payment will be payable in proportionate instalments.
- 10.4 Defence SA is not liable to pay the GST payment or any instalment of the GST payment unless the Recipient has delivered to the Minister a valid Tax Invoice under GST Law, referable to the Funding (or instalment of the Funding) and associated GST payment.
- 10.5 For the purpose of this clause, **GST Law** has the meaning attributed to it in the *A New Tax System (Goods and Services Tax) Act 1999*.

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**11. AUDIT**

- 11.1 Defence SA may direct the Recipient to arrange for the financial accounts relating to the Funding to be audited at the Recipient's expense.
- 11.2 Defence SA may specify the minimum qualifications to be held by a person appointed to conduct the audit.

**12. ASSIGNMENT**

The Recipient must not assign, novate or encumber any of its rights or obligations under this agreement without the prior written consent of Defence SA.

**13. PUBLICITY**

- 13.1 Subject to clause 12.2, the Recipient must not make or permit a public announcement or media release to be made about any aspect of this agreement without first obtaining Defence SA's consent, which may not be unreasonably withheld and which will not be required if the public announcement is required by law.
- 13.2 Nothing in clause 11.11 derogates from the operation of the *Not-for-profit Freedom to Advocate Act 2013* or operates to restrict the Recipient from engaging in political or policy advocacy.

**14. CONSENT**

If the Recipient requires Defence SA's consent under this agreement, the Minister may, in its absolute discretion, give or withhold its consent (subject to any provision in this agreement to the contrary) and if giving consent, Defence SA may impose any condition on that consent that it considers appropriate. Defence SA's consent will not be effective unless it is in writing and signed.

**15. ENTIRE AGREEMENT**

- 15.1 This agreement incorporates any schedules and annexures.
- 15.2 This agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject matter.

**16. PROPER LAW**

The laws in force in South Australia apply to this agreement.

**17. JURISDICTION OF COURTS**

- 17.1 The courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this agreement.
- 17.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

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**18. COMPLIANCE WITH LAWS**

The Recipient must comply with the laws in force in South Australia in the course of performing its obligations under this agreement.

**19. NOTICES**

- 19.1 A “**notice**” means a notice in writing or a consent, approval or other communication required to be in writing under this agreement.
- 19.2 Addresses for notices are set out in the Schedule.
- 19.3 A notice must be signed by or on behalf of the sender addressed to the recipient and:
- 19.3.1 delivered to the recipient’s address;
  - 19.3.2 sent by pre-paid mail to the recipient’s address; or
  - 19.3.3 transmitted by email to the recipient’s address.
- 19.4 A notice given to a person in accordance with this clause is treated as having been given and received:
- 19.4.1 on the day of delivery if delivered before 5.00 pm on a business day, otherwise on the next business day;
  - 19.4.2 if sent by pre-paid mail, on the third business day after posting; or
  - 19.4.3 if transmitted by transmitted by email:
    - (a) when the relevant email appears in the sender’s sent log with properties disclosing an appropriate routing; and
    - (b) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable.
- 19.5 A party may from time to time notify its change of its contact details by written notice to the other party.

**20. WAIVER**

- 20.1 Any waiver of any provision of this agreement is ineffective unless it is in writing and signed by the party waiving its rights.
- 20.2 A waiver by either party in respect of a breach of a provision of this agreement by the other party is not a waiver in respect of any other breach or any other provision.
- 20.3 The failure of either party to enforce any of the provisions of this agreement at any time must not be interpreted as a waiver of that provision.

**21. MODIFICATION**

Any modification of this agreement must be in writing and signed by each party.

**22. SEVERANCE**

- 22.1 Each word, phrase, sentence, paragraph and clause of this agreement is severable.

- 22.2 If a court determines that a part of this agreement is unenforceable, invalid, illegal or void, that part may be severed.
- 22.3 Severance of a part of this agreement will not affect any other part of it.

23. **READING DOWN**

Where a word, phrase, sentence, paragraph, clause or other provision of this agreement would otherwise be unenforceable, illegal or void, the effect of that provision will, so far as possible, be limited and read down so that it is not unenforceable, illegal or void.

24. **AUDITOR-GENERAL**

- 24.1 Nothing in this agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).
- 24.2 Without limiting the previous sub-clause, the Recipient acknowledges the Auditor-General's obligations and powers under sections 32 and 34 of the *Public Finance and Audit Act 1987* (SA).

25. **PUBLIC DISCLOSURE**

- 25.1 Defence SA may disclose this agreement and/or information in relation to this agreement in either printed or electronic form to the public or to a particular person as a result of a specific request.
- 25.2 Nothing in this clause derogates from:
- 25.2.1 The Recipient's obligations under any provision of this agreement; or
  - 25.2.2 the provisions of the *Freedom of Information Act 1991* (SA).



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**EXECUTED AS AN AGREEMENT**

**Executed** for and on behalf of the **Premier** by his representative in the presence of:

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Signature of witness

---

Signature of representative

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Full name of witness (print)

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Full name of representative (print)

**Executed** for and on behalf of **[Recipient]** by its representative in the presence of:

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Signature of witness

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Signature of representative

---

Full name of witness (print)

---

Full name of representative (print)

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Address of witness (print)

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**SCHEDULE**
**1. THE TERM**

- 1.1 Subject to Item 1.2, the period commencing on the date of execution of this agreement and ending on **Insert date**.
- 1.2 For the purpose of Clause 1 of the Agreement, the Conditions Precedent End Date is **Insert date** or a later date agreed by Defence SA at its sole and absolute discretion.

**2. THE ACTIVITY**

**Insert details**

**3. THE PURPOSE**

**Insert details**

**4. KEY PERFORMANCE INDICATORS**

The Key Performance Indicators are the achievement of Major Milestones as outlined in Section 8 of this schedule.

**5. THE FUNDING**

The total amount of Funding is \$xxxxx (excluding GST) over the Term, to be paid as set out below.

Payment 1	90% ( <b>\$xxxx</b> ) on signing of this agreement and provision of a tax invoice for this amount
Payment 2	10% ( <b>\$xxxx</b> ) on provision of a Completion Report at the end of the project and provision of a tax invoice for this amount.

**6. INSURANCE**

No specific or minimum level of insurance required.

**7. SPECIAL CONDITIONS**

NIL

**8. REPORTS**Milestone Reports

To be provided within two weeks of either of the following events:

- (a) An activity milestone as detailed within the Funding Agreement is achieved, or
- (b) It is realised that an activity milestone as detailed within the Funding Agreement cannot be met.

A Milestone Report should be limited to one page and contain (at least) the following information:

- (i) Activity name;
- (ii) Lead participant details;
- (iii) Title of milestone;

- 
- (iv) Statement of key activities and/or outcomes achieved;
  - (v) In the case where an activity milestone cannot be met, include details of the reason why the milestone can't be met and details of proposed changes to scope, schedule or budget;
  - (vi) Indication of any additional risks identified (can be in relation to scope, schedule or resources) and risk mitigation or controls put in place; and
  - (vii) Confirm scope and schedule for the next phase of the activity.

### Completion Report

To be provided within one month of completing the activity the Recipient must:

- (a) Complete a Completion Report, and
- (b) Support the preparation of a short case study and presentation to highlight the activity methodology, outcomes and potential benefits for key stakeholders.

The Completion Report should be limited to no more than four pages and contain (at least) the following information:

- (i) Activity name;
- (ii) Lead participant details;
- (iii) Title of milestone;
- (iv) Statement of outcomes;
- (v) Details of benefits or opportunities identified, either potential or realised, including opportunities for additional collaboration, further development or alternate funding;
- (vi) Details of any recommendations resulting from the activity;
- (vii) Signed copy of the Income and Expenditure Statement as per the DIP CRF Funding Agreement (see Annexure C for template); and
- (viii) Complete the Completion Survey that will be forwarded by email and conducted online on receipt of your Completion report.

### Financial Report

A report in the form provided at Annexure B to be submitted with the Completion Report.

## 9. NOTICES

### **Defence SA**

Andrew Fullgrabe  
Director, Defence Innovation Partnership  
Level 4, 151 Pirie Street, Adelaide SA 5000  
Ph: + 61 (08) 8463 7035  
[andrew.fullgrabe@defenceinnovationpartnership.com](mailto:andrew.fullgrabe@defenceinnovationpartnership.com)

### **Recipient**

Name:  
Position:  
Address:  
Telephone:  
Email:

**Annexure A**  
**CLAIM NOTICE**

[Proforma to be completed by Recipient]

To: Premier of South Australia  
Attention: Chief Executive, Defence SA  
Defence SA  
Level 4, 151 Pirie Street  
ADELAIDE SA 5000

This notice requesting payment of Funding is issued under the agreement dated [Insert] between the Premier of South Australia and [insert name of the Recipient].

Unless the context otherwise requires, terms defined in the agreement have the same meanings where used in this notice.

**1. Required Information**

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- (a) Financial Year: [insert]
- (b) Deposit account details:
- Bank:
- Name:
- Account No:
- BSB No:
- (c) Details of achieved Milestone/s

**2. Representations and Warranties**

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The Recipient represents and warrants as at the date of this notice that:

- (a) the proposed Funding will be applied towards the Purpose;
- (b) the representations and warranties set out in the Agreement are true and correct and not misleading in any respect;
- (c) the Payment Milestone relevant to this notice has been achieved;
- (d) the amount of the Funding requested is in accordance with the Minister's agreement to provide Funding under the agreement; and
- (e) the Recipient has used all previous payments of the Funding for the Purpose and is not otherwise in breach of the agreement.

**3. Attachments**

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The following reports required to be provided under the agreement are attached:

- not required

Signed for and on behalf of the Recipient by [insert name and position]

.....  
Date:

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**Annexure B****STATEMENT OF INCOME AND EXPENDITURE  
FOR THE PERIOD**

Project Title

Program

<b>INCOME</b>	<b>COMMENTARY</b>	<b>\$</b>
Income to be received from Premier		\$
Income received from other parties (separate line for each party, including the Grantee)		\$
<b>TOTAL INCOME FOR THE REPORTING PERIOD</b>		<b>\$</b>
<b>EXPENDITURE [Premier's funds only]</b>		
		\$
		\$
		\$
		\$
<b>Total Expenditure of Funds (paid by the Premier) for the reporting period</b>		<b>\$</b>
<b>Surplus/Deficit for the reporting period</b>		<b>\$</b>
<b>BALANCE OF FUNDS (paid by the Premier) AS AT 30 JUNE</b>		<b>\$</b>

**Annexure C**  
**COMMONWEALTH OF AUSTRALIA**  
**INTELLECTUAL PROPERTY LICENCE DEED**



**Australian Government**  
**Department of Defence**  
Science and Technology

**THE COMMONWEALTH OF AUSTRALIA** represented by  
**THE DEFENCE SCIENCE AND TECHNOLOGY GROUP**  
**OF THE DEPARTMENT OF DEFENCE (ABN 68 706 814 312)**

and

**XXXXXX (ABN XX XXX XXX XXX)**

## **INTELLECTUAL PROPERTY LICENCE DEED**

### **DATE**

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This Deed is made on the day the last Party signs it.

### **PARTIES**

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This Deed is made between

COMMONWEALTH OF AUSTRALIA represented by the Defence Science and Technology Group of the Department of Defence (ABN 68 706 814 312) (referred to in this Deed as ***the Commonwealth***); and

**XXXXXXXX (ABN XX)** of **XXXXXX** (referred to in this Deed as ***the Funding Recipient***).

### **BACKGROUND**

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This Deed is made in the following context:

- A. The Funding Recipient and Defence SA (as the administering organisation of the Defence Innovation Partnership referred to in this Deed as ***the DIP***) entered a Collaborative Research Funding Agreement for the conduct of the Project on **XXXXXX** (referred to in this Deed as the ***DIP Funding Agreement***).
- B. Under the DIP Funding Agreement, the Funding Recipient agreed to comply with the Intellectual Property ownership and licensing requirements of the Grant Sponsor in relation to the Project. (**CI XXXX; Project name**).
- C. The Commonwealth is the Grant Sponsor referred to in the DIP Funding Agreement.
- D. In acknowledgement of the funds provided for the Project by the Commonwealth through the DIP, the Funding Recipient agrees to licence the Commonwealth to utilise the Intellectual Property rights associated with the Project according to the terms set out below.

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**CONDITIONS OF DEED**


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The Parties agree as follows:

**1 Definitions and Interpretation**


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1.1 A term in bold italics in the table below has the meaning shown opposite it for the purposes of this Deed, unless a contrary intention appears elsewhere in the Deed:

<b><i>Background Intellectual Property</i></b>	means any Intellectual Property, other than Third Party Intellectual Property, embodied in, attached to, or otherwise necessarily related to the functioning, or operation of Background Material.
<b><i>Background Material</i></b>	means any Material made available by the Funding Recipient in connection with the Project, including any copies or derivations of such Material, whether:  (a) existing prior to the execution of this Deed; or (b) acquired or created after the execution of this Deed, other than as a result of the performance of this Deed.
<b><i>Commercialise</i></b>	includes:  (a) to manufacture, sell, license, assign or hire for commercial benefit or otherwise exploit a product or process or other subject matter in which Intellectual Property rights subsist; (b) to provide a service for commercial benefit; (c) to license or authorise any person to do any of the above for commercial benefit, or (d) to do any acts that are related to the acts set out in paragraphs (a), (b) or (c) of this definition,  but excludes the licensing by a Party of Intellectual Property to a person solely for the purpose of that person performing activities on behalf of that Party and also excludes any licensing of Intellectual Property by a Party solely for that Party's own non-commercial purposes.  <b><i>Commercialisation</i></b> is similarly defined.
<b><i>Commonwealth Purposes</i></b>	means:  (a) any purpose within the power of the Commonwealth of Australia with respect to the defence or security of the Commonwealth of Australia; (b) activities for the purposes of peacekeeping or emergency aid to the civil community; (c) any activity involving, or for the benefit of, Australia's defence, national security, law enforcement or border security; (d) any activity involving, or for the benefit of, an overseas government or overseas government agency with whom the Commonwealth collaborates for, or in connection with any purpose contemplated in paragraphs (a), (b) or (c); (e) purposes that are necessary for or incidental to any of those purposes referred to in paragraphs (a) to (d) inclusive; and (f) use by third parties for the purpose of providing, or offering to provide, goods or services for any of those purposes



	referred to in paragraphs (a) to (d) inclusive, including on commercial terms, but not for any other purpose, but excludes (other than in accordance with paragraph (f) above), Commercialising any Material or Intellectual Property.
<b>DIP Funding Agreement</b>	has the meaning given to it in Recital A above.
<b>Intellectual Property</b>	means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and includes copyright, discoveries, inventions, patent rights, trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of this Deed, however it does not include Moral Rights.
<b>Material</b>	includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.
<b>Moral Rights</b>	has the meaning given in the <i>Copyright Act 1968</i> (Cth).
<b>Party</b>	means a party to this Deed.
<b>Personnel</b>	means, in relation to a Party, any employee, officer, agent, contractor, sub-contractor, student or volunteer of that Party, and any employee, officer, agent, contractor, sub-contractor, student or volunteer of a contractor or sub-contractor, but excludes the other Party and its Personnel.
<b>Project</b>	means the research activities detailed in the Project Specification set out in the Schedule of the DIP Funding Agreement.
<b>Project Intellectual Property</b>	means any Intellectual Property created under, or otherwise in connection with the Project.
<b>Project Material</b>	means any Material brought into existence (or required to be brought into existence) as part of, or for the purposes of performing the Project, including any copies or derivations of such Material.
<b>Third Party Intellectual Property</b>	means Intellectual Property that is owned by a party other than the Commonwealth or the Funding Recipient.
<b>Use</b>	means, with respect to Intellectual Property, to exercise any or all rights subsisting in Intellectual Property, including to license or sub-license those rights.

### 25.2.3 Interpretation

1.2 In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or person includes a corporation;
- (c) a reference to any gender includes all genders;
- (d) a reference to either Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;

- (e) a reference to any legislation includes any regulations or rules made under that legislation and any amendment, modification to or replacement of that legislation which may be made from time to time;
- (f) a reference to a clause means a clause in this Deed and includes a reference to a recital, or a sub-clause or paragraph in a clause; and
- (g) words of inclusion will be interpreted as being without limitation.

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## **2 Commencement**

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- 2.1 This Deed commences on the day the last Party signs it.

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## **3 Project Intellectual Property – Commonwealth licence**

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- 3.1 The Funding Recipient licenses the Commonwealth:
- (a) to Use the Project Intellectual Property, as and from its creation, for Commonwealth Purposes; and
  - (b) to Use the Funding Recipient's Background Intellectual Property, but only to the extent necessary to enable the Commonwealth to fully exercise its rights under clause 3.1(a) above.
- 3.2 The licence under clause 3.1 has world-wide effect and is non-exclusive, royalty-free and perpetual.
- 3.3 The Funding recipient will:
- (a) notify the Commonwealth when it has developed Project Material that includes Project Intellectual Property; and
  - (b) provide copies of any Material which the Commonwealth requires to enable it to utilise the licences in clause 3.1.
- 3.4 The Commonwealth will, where reasonably practicable, acknowledge the Funding Recipient as the owner of the Project Intellectual Property and any relevant Background Intellectual Property in all communications or publications referring to that Intellectual Property.
- 3.5 The funding Recipient warrants that, to the best of its knowledge and belief, it is entitled, or will be entitled at the relevant time, to deal with the Project Intellectual Property and its Background Intellectual Property in accordance with this clause 3.
- 3.6 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 3.
- 3.7 The Parties shall promptly notify each other of any infringement of any rights relating to Project Intellectual Property which comes to their 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 Project Intellectual Property.
- 3.8 The Funding Recipient must ensure that its Personnel who are authors of any Materials consent to the Commonwealth's using the Material or IP in a manner that would be a breach of their Moral Rights
- 3.9 The Funding Recipient must use its best endeavours to ensure that none of its Personnel institute, maintain or support any claim or proceeding against the Commonwealth (or its Personnel) for infringement of any of the Moral Rights of the Funding Recipient's Personnel.

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#### 4 Intellectual Property – Third Party Intellectual Property

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- 4.1 Nothing in this Deed affects the ownership of Third Party Intellectual Property.
- 4.2 Before the Funding Recipient can utilise Third Party Intellectual Property for the Project (including through the incorporation of Background Material which incorporates Third Party Intellectual Property), the Funding Recipient must:
- (a) provide the Commonwealth with details of any restrictions, conditions or encumbrances that apply or may apply to use of the Third Party Intellectual Property as part of the use of the Project Material by the Commonwealth in accordance with its rights under this Deed; and
  - (b) use reasonable endeavours to obtain a free licence for the Commonwealth for the Third Party Intellectual Property (other than for commercially available software) on equivalent terms as the licence granted to the Commonwealth for the Funding Recipient's Background Intellectual Property under clause 3.
- 4.3 If the Funding Recipient is unable to obtain the Third Party Intellectual Property licence for the Commonwealth's use under clause 4.2(b) it may only incorporate that Third Party Intellectual Property into the Foreground Material if the Commonwealth agrees in writing.

#### 5 Taxes, Duties and Government Charges

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- 5.1 If the Funding Recipient makes, or is assessed by the Australian Tax Office (in this clause referred to as **the ATO**) as having made, a taxable supply to the Commonwealth under or in connection with this Deed, the Funding Recipient shall be entitled to recover from the Commonwealth, upon presentation of a valid Tax Invoice, the amount of GST paid or payable by the Funding Recipient to the ATO.
- 5.2 In this clause 5:
- (a) **GST** means Goods and Services Tax as defined in the GST Act;
  - (b) **the GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*;
  - (c) **the GST Law** has the same meaning it has in the GST Act
  - (d) words or expressions used in this clause which have a particular meaning in the GST law have the same meaning, unless the context otherwise requires; and
  - (e) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

#### 6 General Provisions

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##### Variations to this Deed

- 6.1 No agreement or understanding varying or extending this Deed is legally binding unless it is in writing signed by the Parties.

##### Restrictions on Assignment

- 6.2 A Party must not Assign its obligations or rights under this Deed without first obtaining the other Party's written consent. The other Party may impose conditions when giving its consent and the Party seeking consent must comply with those conditions.

- 6.3 In clause 6.2, **Assign** includes novate or transfer, in whole or in part.

##### Entire Agreement

- 6.4 This Deed:

- (a) constitutes the entire agreement between the Parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

**Governing Law and Jurisdiction**

- 6.5 This Deed is governed by the law of the State of South Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State in connection with any matters arising under this Deed.

**Waiver**

- 6.6 A failure or delay by a Party to exercise any Right it holds under this Deed does not operate as a waiver of that Right.
- 6.7 A single exercise by a Party of any Right it holds under this Deed does not prevent the Party from exercising the Right again and a partial exercise by a Party of any Right it holds under this Deed does not prevent the Party from fully exercising that Right.
- 6.8 In clauses 6.6 and 6.7, **Right** means a right or remedy provided by this Deed, or at law.

**Clause Severance**

- 6.9 If any part of this Deed is found by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Deed continues in effect, as if the invalid or unenforceable part were excluded.

**Counterparts**

- 6.10 This Deed may be executed in counterparts. All executed counterparts constitute one document.

**SIGNED BY THE PARTIES AS A DEED**

Signed, sealed and delivered for and on behalf of the **Commonwealth of Australia, as represented by the Defence Science and Technology Group of the Department of Defence (ABN 68 706 814 312)** by its duly authorised representative:

\_\_\_\_\_

\_\_\_\_\_  
*Print name of Defence representative above*

\_\_\_\_\_

\_\_\_\_\_  
*Print position held by Defence representative above*

on:

\_\_\_\_\_  
*insert date the deed is signed by Defence*

In the presence of:

\_\_\_\_\_

\_\_\_\_\_  
*Print name of witness above*

\_\_\_\_\_  
*Defence representative to sign above*

\_\_\_\_\_  
*Witness to sign above*

Signed, sealed and delivered for and on behalf of **XXXXXX (ABN XXX )** by its duly authorised representatives:

\_\_\_\_\_

\_\_\_\_\_  
*Print name of Other Party's representative above*

\_\_\_\_\_

\_\_\_\_\_  
*Print position held by Other Party's rep above*

on:

\_\_\_\_\_  
*insert date the deed is signed by other party*

In the presence of:

\_\_\_\_\_

\_\_\_\_\_  
*Print name of witness above*

\_\_\_\_\_  
*Other Party's representative to sign above*

\_\_\_\_\_  
*Signature of witness*

\_\_\_\_\_ )  
*Name of authorised person (print)* )  
 )  
\_\_\_\_\_ ) *Signature of authorised person*  
*Position held by authorised person (print)* )  
 )  
In the presence of: )  
 )  
 )  
\_\_\_\_\_ )  
*Name of witness (print)* ) *Signature of witness*  
 )

DRAFT