



THE COMMONWEALTH OF AUSTRALIA represented by

XXXXXXXXXX (ABN XX) of XXXXXX

and

XXXXXXXXXX (ABN XX) of XXXXXX

INTELLECTUAL PROPERTY LICENCE DEED

DATE

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

PARTIES

This Deed is made between

COMMONWEALTH OF AUSTRALIA represented by the **[COMMONWEALTH SPONSOR] of XXXXXX (ABN XX XXX XXX XXX)** (referred to in this Deed as **the Commonwealth**); and

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

BACKGROUND

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 Funding Agreement for the conduct of the Project on **XXXXXXXX** (referred to in this Deed as the DIP Funding Agreement).
- B. **XXXXXXXX** 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.

CONDITIONS OF DEED

The Parties agree as follows:

1 Definitions and Interpretation

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:

<i>Background Intellectual Property</i>	<p>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, and in the case of the Funding Recipient, is as follows:</p> <p>[Researcher to populate]</p> <p>Any additional Background Intellectual Property contributed to the Project by the Funding Recipient will be identified in writing by the Funding Recipient to the Commonwealth.</p>
<i>Background Material</i>	<p>means any Material made available by the Funding Recipient in connection with the Project, including any copies or derivations of such Material, whether:</p> <ul style="list-style-type: none">(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.
<i>Commercialise</i>	<p>includes:</p> <ul style="list-style-type: none">(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, <p>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.</p> <p>Commercialisation is similarly defined.</p>
<i>Commonwealth Purposes</i>	<p>means:</p> <ul style="list-style-type: none">(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

	<p>paragraphs (a) to (d) inclusive, including on commercial terms, but not for any other purpose,</p> <p>but excludes (other than in accordance with paragraph (f) above), Commercialising any Material or Intellectual Property.</p>
DIP Funding Agreement	has the meaning given to it in Recital A above.
Intellectual Property	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.
Material	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.
Moral Rights	has the meaning given in the <i>Copyright Act 1968</i> (Cth).
Party	means a party to this Deed.
Personnel	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.
Project	means the research activities detailed in the Project Specification set out in the Schedule of the DIP Funding Agreement.
Project Intellectual Property	means any Intellectual Property created under, or otherwise in connection with the Project.
Project Material	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.
Third Party Intellectual Property	means Intellectual Property that is owned by a party other than the Commonwealth or the Funding Recipient.
Use	means, with respect to Intellectual Property, to exercise any or all rights subsisting in Intellectual Property, including to license or sub-license those rights.

Interpretation

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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.

2 Commencement

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

3 Project Intellectual Property – Commonwealth licence

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 reasonable 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 represents and warrants that the use of any Material or the Use of any IP by the Commonwealth for purposes permitted by this Deed will not infringe the Moral Rights of the Funding Recipient's Personnel.

3.9 The Funding Recipient must 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.

3.10 Nothing in this Deed affects the ownership of Background Intellectual Property.

4 Intellectual Property – Third Party Intellectual Property

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
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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 Project Material if the Commonwealth agrees in writing.

5 Taxes, Duties and Government Charges

- 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

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 XXXXXX of XXXXXX (ABN XX)** 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

Executed as a deed for and on behalf of **XXXXXXXXX (ABN XX) of XXXXXX** 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)

Position held by authorised person (print)

In the presence of:

Name of witness (print)

Signature of authorised person

Signature of witness