Note to tenderers: If the tenderer has a Master Guarantee and Indemnity Deed with Defence and elects to apply that deed to the Contract, this Attachment will be marked ‘Not Used’.

DEED OF GUARANTEE AND INDEMNITY (RFT CORE)

This DEED is made on **(INSERT DATE)**

BETWEEN

The Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 (‘the Commonwealth’)

AND

**(INSERT NAME OF COMPANY)** **(INSERT ACN/ARBN AND ABN IF APPLICABLE)**, having its registered office at **(INSERT DETAILS)** (‘the Guarantor’).

RECITALS

1. The Commonwealth and the Contractor are a party to the Guaranteed Agreements.
2. The Guarantor has agreed to guarantee to the Commonwealth all of the Relevant Obligations and to indemnify the Commonwealth on the terms and conditions in this Deed.

AGREED TERMS

1. Definitions and interpretation (CORE)
   1. Definitions (Core)
      1. In the interpretation of this Deed, unless the contrary intention appears:

“Authorisation” means a licence, accreditation, permit, registration, regulatory approval, or other documented authority (however described), required by law.

“Contractor” means **(INSERT NAME OF COMPANY)** **(INSERT ACN/ARBN AND ABN IF APPLICABLE)**.

“Constitution” means, in relation to any person, the constitution, or similar governing document(s), of that person (if any).

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

“Event of Default” means any event which entitles the Commonwealth to terminate a Guaranteed Agreement for Contractor default.

“Event of Insolvency” means, in respect of a person:

* + - 1. the person:
         1. becoming insolvent;
         2. ceasing to carry on all or a material part of its business; or
         3. taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
      2. the appointment of a Controller (as defined in the *Corporations Act 2001* (Cth)) , a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
      3. the person becoming subject to external administration provided for in Chapter 5 of the *Corporations Act 2001* (Cth);
      4. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the person's property (including seizing the person's property within the meaning of section 123 of the *Personal Property Securities Act 2009* (Cth));
      5. the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
      6. an order or resolution for the winding up or deregistration of the person;
      7. a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
      8. any analogous event under the law of any applicable jurisdiction.

Note to drafters: Drafters to consider whether any additional agreements should be included in this definition.

“Guaranteed Agreements”means:

* + - 1. the contract dated **(INSERT DATE)** between the Commonwealth and the Contractor for the supply of **(INSERT REQUIREMENT)**; and
      2. **(INSERT DETAILS)**.

“Guaranteed Money” means all amounts the payment or repayment of which from time to time forms part of the Relevant Obligations and includes any amount recoverable as a debt to the Commonwealth in relation to the Guaranteed Agreement.

“Obligor” means the Contractor or the Guarantor.

“Power” means any right, power, authority, discretion, remedy or privilege.

“Relevant Obligations” means all of the liabilities and obligations of the Contractor to the Commonwealth under or by reason of the Guaranteed Agreements and includes any liabilities or obligations of the Contractor which:

* + - 1. are liquidated or unliquidated;
      2. are present, prospective or contingent;
      3. are in existence before or come into existence on or after the date of this Deed; or
      4. relate to the payment of money or the performance or omission of any act.

“Security Interest” means each of the following:

* + - 1. a security for the payment of money or performance of an obligation, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
      2. a “security interest” as defined in section 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); and
      3. an agreement to create any of these or allow any of these to exist.

“Unpaid Sum” means any sum due and payable by the Guarantor under this Deed but unpaid.

“Working Day” in relation to the doing of an action in a place, means any day in that place other than:

* + - 1. a Saturday, Sunday or public holiday; and
      2. any day within the two-week period that starts on:
         1. the Saturday before Christmas Day; or
         2. if Christmas Day falls on a Saturday, Christmas Day.
  1. Interpretation (Core)
     1. In this Deed, unless the contrary intention appears:
        1. headings are for the purpose of convenient reference only and do not form part of this Deed;
        2. the singular includes the plural and vice-versa;
        3. a reference to one gender includes any other;
        4. a reference to a person includes a body politic, body corporate or a partnership;
        5. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
        6. 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;
        7. a reference to a clause includes a reference to a sub-clause of that clause;
        8. a reference to a “dollar”, “$”, “$A” or “AUD” means the Australian dollar;
        9. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of this Deed, or alternatively, a reference to another version of the document if agreed in writing between the parties;
        10. the word “includes” in any form is not a word of limitation;
        11. 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 Deed; and
        12. a reference to a document (including any Guaranteed Agreement) is to that document as varied, novated, ratified, replaced or restated from time to time.
  2. Joint and Several Liability (Optional)

Note to drafters: Include this clause where the Guarantor comprises more than one party.

* + 1. The expression "Guarantor" refers to each person identified as a Guarantor, and the obligations of the Guarantors under this Deed bind each person identified as a Guarantor, jointly and severally.
  1. Liability as Guarantor and Indemnifier (Core)
     1. Any reference in this Deed to the obligations or liabilities of the Guarantor shall be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this Deed.
  2. Principal Obligation (Core)
     1. Each obligation of the Guarantor under this Deed constitutes a principal, not a secondary or ancillary obligation, such that, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negatived.
  3. No Bias against Drafting Party (Core)
     1. No term or provision of this Deed shall be construed against a party on the basis that this Deed or the term or provision in question was put forward or drafted by that party.

1. Guarantee (Core)
   1. Guarantee (Core)
      1. Subject to clause 2.4, the Guarantor irrevocably and unconditionally guarantees to the Commonwealth the due and timely performance by the Contractor of all the Relevant Obligations.
   2. Performance of Relevant Obligations (Core)
      1. Subject to clause 2.4, if the Contractor fails to perform any of the Relevant Obligations in accordance with the relevant Guaranteed Agreement, the Guarantor shall, in addition to its obligations under clause 2.3, on demand from time to time by the Commonwealth, immediately cause to be performed, such Relevant Obligations required to be performed by the Contractor in accordance with that Guaranteed Agreement.
   3. Payment by Guarantor (Core)
      1. Subject to clause 2.4, if the Contractor does not pay the Guaranteed Money when due in accordance with the terms of the relevant Guaranteed Agreement, the Guarantor shall within three Working Days following demand by the Commonwealth, pay to the Commonwealth the Guaranteed Money which is then due and unpaid.
   4. Limitation of Liability (Core)
      1. Subject to clause 7.1.1, the Guarantor’s liability pursuant to this Deed in respect of any Guaranteed Agreement shall be no greater than the aggregate of the remaining Relevant Obligations of the Contractor as they exist from time to time pursuant to or arising out of that Guaranteed Agreement and the Guarantor shall be entitled to all defences and limitations of liability to which the Contractor is entitled under that Guaranteed Agreement. The total sum recoverable from the Guarantor under this Deed in respect of any Guaranteed Agreement shall not exceed the liability the Contractor would otherwise have for the Relevant Obligations under that Guaranteed Agreement.
2. indemnity (Core)
   * 1. Subject to clause 2.4, the Guarantor, as a separate additional and primary liability, shall irrevocably and unconditionally indemnify the Commonwealth against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by the Commonwealth arising out of or as a consequence of:
        1. any failure by the Contractor to perform the Relevant Obligations in accordance with the Guaranteed Agreements; or
        2. any obligation or liability that would otherwise form part of the Relevant Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason (including the insolvency of the Contractor), whether or not the Commonwealth knew or ought to have known of that reason.
3. nature and preservation of liability (Core)
   1. Absolute and Unconditional Liability (Core)
      1. Subject to clause 2.4, the liability of the Guarantor under this Deed:
         1. is absolute and is not subject to the performance of any condition precedent or subsequent; and
         2. shall not be affected by any act, omission, matter or thing which may release the Guarantor from that liability or reduce the liability of the Guarantor (other than an express release of the Guarantor from all of its liabilities under this Deed) including any of the following:
            1. the occurrence before, on or at any time after, the date of this Deed of any Event of Insolvency in relation to any Obligor;
            2. any Guaranteed Agreement or any payment or other act, the making or doing of which would otherwise form part of the Relevant Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
            3. the Commonwealth granting time, waiver or other concession to, or making any composition, arrangement or compromise with any other Obligor (including to or with the Contractor in respect of the liability of the Guarantor) or any other person;
            4. the Commonwealth not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of any Guaranteed Agreement or any Relevant Obligation;
            5. the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Commonwealth or any other Obligor of any Guaranteed Agreement or any Relevant Obligation;
            6. any variation to any Guaranteed Agreement or any Relevant Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any Obligor;
            7. the full, partial or conditional release or discharge by operation of law of any other Obligor from any Guaranteed Agreement or any Relevant Obligation;
            8. the transfer, assignment or novation by the Commonwealth or any Obligor of all or any of its rights or obligations under any Guaranteed Agreement;
            9. any person, whether named as a party or not, does not execute any Guaranteed Agreement or the execution of any Guaranteed Agreement by any person is invalid, forged or irregular in any way; or
            10. any failure by the Commonwealth to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Commonwealth relating to or affecting any Obligor at any time before or during the term of any Guaranteed Agreement, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Commonwealth was under a duty to disclose that fact, circumstance, event or thing to any Obligor.
   2. No Merger (Core)
      1. The guarantee and indemnity from the Guarantor under this Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any Guaranteed Agreement or any other Power of the Commonwealth.
   3. No Obligation to Gain Consent (Core)
      1. The Guarantor has no right or entitlement to consent to or be made aware of any event referred to in clause 4.1.1b, any transaction between the Commonwealth and any Obligor or any particulars concerning any obligation or liability that forms part of the Relevant Obligations.
   4. Appropriation (Core)
      1. The Commonwealth is under no obligation to marshal or appropriate in favour of the Guarantor, or to exercise, apply, transfer or recover in favour of the Guarantor, any Security Interest or any funds or assets which the Commonwealth holds, has a claim on, has received or is entitled to receive, but may do so in the manner and order as the Commonwealth determines in its discretion.
   5. Void or Voidable Transactions (Core)
      1. If a claim that a payment to the Commonwealth in connection with this Deed or any Guaranteed Agreement is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld by a court of competent jurisdiction or conceded or compromised then the Commonwealth is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed if the payment had not occurred.
   6. Claim or Demand on the Guarantor (Core)
      1. Where any Guaranteed Agreement obliges the Commonwealth to deliver a notice or demand to the Contractor or to comply with an obligation (including observing time periods for performance and Contractor opportunities to cure defaults) prior to the Commonwealth exercising a right under that Guaranteed Agreement in respect of a failure by the Contractor to comply with a Relevant Obligation, the Commonwealth shall deliver that notice or demand to the Contractor or comply with that obligation (including observing time periods for performance and Contractor opportunities to cure defaults) before making a demand under this Deed in respect of a failure by the Contractor to comply with that Relevant Obligation.
      2. Subject to the Commonwealth complying with clause 4.6.1, the Guarantor agrees that the Commonwealth is not required to make any claim or demand on any Obligor, or to otherwise enforce any Guaranteed Agreement or any other right, power or remedy against any other Obligor, before making any demand or claim on the Guarantor.
   7. Waiver of Rights (Core)
      1. The Guarantor may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of any other Obligor before the Relevant Obligations are satisfied in full and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have before the Relevant Obligations are satisfied in full.
4. representations and warranties (CORE)
   1. General Representations and Warranties (Core)
      1. The Guarantor represents and warrants to the Commonwealth that:
         1. this Deed constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
         2. the execution, delivery and performance of this Deed and each transaction contemplated by this Deed does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;
         3. all Authorisations required to be obtained by it in connection with the execution, delivery and performance of this Deed, the transactions contemplated by this Deed and the legality, validity and enforcement of this Deed have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Authorisations or aware of any fact or circumstance which may cause any of those Authorisations to be suspended, forfeited, cancelled or rendered void;
         4. no Event of Default has occurred which has not been remedied or waived in accordance with the terms of the relevant Guaranteed Agreement;
         5. it is not the trustee of any trust; and
         6. it does not enjoy immunity from suit or execution in relation to its obligations under this Deed.
   2. Corporate Representations and Warranties (Core)
      1. The Guarantor represents and warrants to the Commonwealth that:
         1. it is duly registered and remains in existence;
         2. its execution, delivery and performance of this Deed does not (and the transactions contemplated by this Deed do not) violate its Constitution nor, if the Guarantor is listed on a stock exchange, any listing requirements or business rules of the applicable stock exchange;
         3. it has the power to enter into, deliver and perform this Deed and to carry out the transactions contemplated by this Deed;
         4. it has taken all corporate action required to enter into, deliver and perform this Deed and to carry out the transactions contemplated by this Deed; and
         5. the entry into and the performance of its obligations under this Deed is in its best interests and for a proper purpose.
   3. Representations and Warranties Repeated (Core)
      1. Each representation and warranty in clauses 5.1 and 5.2 shall be repeated on each day while any of the Relevant Obligations remain outstanding with reference to the facts and circumstances then subsisting, as if made on each such day.
5. payments (CORE)
   1. Payments on Demand (Core)
      1. All payments by the Guarantor under this Deed are to be made to the Commonwealth in Australian dollars in immediately available funds and on the due date specified in the notice to the Guarantor or if no due date is specified, within three Working Days following receipt of demand by the Commonwealth.
   2. Payments of Interest on Unpaid Sums (Core)
      1. The Guarantor shall pay default interest on all Unpaid Sums. Default interest shall be calculated:
         1. where the Contract provides for the payment of default interest for late payment by the Contractor, in accordance with the relevant provisions of the Contract; and
         2. otherwise in accordance with clause 6.2.2.
      2. Where this clause 6.2.2 applies, default interest shall be calculated in accordance with the following formula:

|  |  |
| --- | --- |
| Interest payment = | *I% x P x n* |
| *365* |

Where:

"I%" means the Australian Taxation Office sourced General Interest Charge rate current at the due date of payment of the Unpaid Sum expressed as a percentage;

"P" means the amount of the Unpaid Sum; and

"n" means the number of days after the due date for payment that the payment of the Unpaid Sum is made.

* + 1. Notwithstanding any of the terms of the Contract, default interest accruing under this clause 6.2 shall be immediately payable by the Guarantor on demand by the Commonwealth.
  1. No Set-off or Counterclaim (Core)
     1. All payments by the Guarantor under this Deed shall be without any set off or counterclaim, and the Guarantor irrevocably waives any rights of set-off or counterclaim which it may have against the Commonwealth.
  2. Merger (Core)
     1. If the liability of the Guarantor to make any payment under this Deed becomes merged in any judgment or order, the Guarantor shall as an independent obligation pay to the Commonwealth interest at the rate which is the higher of that payable under clause 6.2 and that fixed by or payable under the judgment or order.
  3. No Deduction for Taxes (Core)
     1. All payments by the Guarantor under this Deed shall be without deduction or withholding for any present or future taxes, unless the Guarantor is compelled by law to deduct or withhold the same.
     2. If the Guarantor is compelled by law to make any deduction or withholding from any payment under this Deed on account of taxes, the Guarantor shall on demand by the Commonwealth pay to the Commonwealth any additional amounts necessary to ensure that the Commonwealth receives (after all deductions and withholdings for taxes) a net amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made.

1. Expenses (Core)
   1. Reimbursement (Core)
      1. The Guarantor shall reimburse the Commonwealth on demand for, and shall indemnify the Commonwealth against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by the Commonwealth arising out of or as a consequence of the Commonwealth exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any rights under this Deed. The limitation of liability in clause 2.4 does not apply to this clause.
2. GOODS AND SERVICES TAX (CORE)
   1. Goods and Services Tax (Core)
      1. In this clause, ‘GST’ means the Commonwealth tax imposed by the *A New Tax System (Goods and Services Tax) Act* *1999*, and ‘adjustment event’, ‘input tax credits’, ‘taxable supply’ and ‘tax invoice’ have the respective meanings given to them by that Act.
      2. If a party (the ‘Supplier’) makes a taxable supply to another party in relation to this Deed or any matter or thing occurring under this Deed (the ‘Recipient’), and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled to recover from the Recipient the amount of any GST on the taxable supply, in addition to any other consideration recoverable for the taxable supply.
      3. If the amount paid by the Recipient to the Supplier for GST differs from the actual amount of GST payable for the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), the following adjustments apply:
         1. if the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier will refund the excess to the Recipient; or
         2. if the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient will pay the balance to the Supplier.
      4. If a party is entitled to recover or be compensated for all or a proportion of its costs in relation to this Deed or any matter or thing occurring under this Deed, the amount of the recovery or compensation is reduced by the amount of (or the same proportion of the amount of) any input tax credits available in relation to those costs.
      5. A party is not required to pay any amount for GST to another party unless a valid tax invoice has been issued for that GST.
3. No representation by or reliance (CORE)
   * 1. The Guarantor acknowledges that:
        1. the Commonwealth does not have any duty to supply it with information in relation to or affecting the Contractor or the Commonwealth before the date of this Deed or during the term of any Guaranteed Agreement;
        2. it has relied on its own inquiries as to the Contractor, the nature and extent of the entire relationship between the Contractor and the Commonwealth (whether or not recorded in the Guaranteed Agreements) and the nature and effect of the Guaranteed Agreements; and
        3. it does not enter into this Deed in reliance on any representation, promise, statement, conduct or inducement by or on behalf of the Commonwealth, except for any inducement expressly set out in this Deed.
4. Assignment and Novation (Core)
   * 1. Neither party may, without the prior written consent of the other party, assign, novate or otherwise transfer any of its rights or obligations under this Deed.
5. Resolution of Disputes (Core)
   * 1. A party shall not commence court proceedings relating to any dispute arising from this Deed except when that party seeks urgent relief from a court or when dispute resolution has failed under this clause 11. If a party fails to comply with this clause 11, the other party is not required to undertake dispute resolution for the dispute in accordance with clause 11.
     2. The parties shall negotiate in good faith to settle a dispute arising between them and, if the dispute cannot be settled by negotiation (including negotiation between senior management of the parties) within **(INSERT PERIOD)** days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
     3. The parties shall at all times during the dispute continue to fulfil their obligations under this Deed.
6. miscellaneous (Core)
   1. Notices (Core)
      1. Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing and sent from and delivered to the Commonwealth or Guarantor, as the case may be, at the following address:

**[INSERT COMMONWEALTH ADDRESS, FAX NUMBER AND EMAIL]**

**(INSERT GUARANTOR ADDRESS, FAX NUMBER AND EMAIL)**

* + 1. A notice or communication is deemed to be delivered:
       1. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another;
       2. if hand delivered, when received at the address, or by the recipient if sooner;
       3. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within one Working Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
       4. if sent as an email, when the email enters the recipient’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 recipient,
    2. but if the receipt, transmission or entry into the information system is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the notice is taken to be received at 9.00am (recipient’s local time) on the next Working Day.
  1. Laws (Core)
     1. The laws of **(INSERT RELEVANT STATE OR TERRITORY)** apply to this Deed, and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter relating to this Deed.
  2. Entire Agreement (Core)
     1. This Deed 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.
  3. Further Assurances (Core)
     1. Each party shall take the steps, sign the documents, and do all other acts and things as may be reasonably required by the other party to give effect to this Deed and to perfect the Powers afforded or created by this Deed.
  4. Powers Cumulative (Core)
     1. The Powers conferred by this Deed on the Commonwealth are cumulative and in addition to all other Powers available to the Commonwealth by law or under any Guaranteed Agreement.
  5. Form of Demand (Core)
     1. A demand on the Guarantor for payment under this Deed may be in any form and contain any information as the Commonwealth determines.
  6. Severability (Core)
     1. If any part of this Deed is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Deed shall not be affected and shall be read as if that part had been severed.
  7. Waiver (Core)
     1. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power provided by law or under this Deed by the Commonwealth does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power provided by law or under this Deed.
     2. A waiver or consent given by the Commonwealth under this Deed is only effective and binding if it is given or confirmed in writing by the Commonwealth.
     3. No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.
  8. Consents (Core)
     1. A consent required under this Deed from the Commonwealth may be given or withheld, or may be given subject to any conditions, as the Commonwealth (in its discretion) thinks fit, unless this Deed expressly provides otherwise.
  9. Moratorium Legislation (Core)
     1. To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, are expressly waived.
  10. Binding on each Signatory (Core)
      1. This Deed binds and is enforceable against the Guarantor despite:
         1. any other person not executing this Deed or its execution being defective in any way; or
         2. any obligation or liability of any other party under this Deed not being binding or enforceable against that party for any reason.
  11. Counterparts (Core)
      1. This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

SIGNED AS A DEED

SIGNED, SEALED AND DELIVERED

by the COMMONWEALTH OF AUSTRALIA

..............................................................................

in the presence of

..............................................................................

Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the ‘Executing Agreements Fact Sheet’, found on the Procurement and Contracting intranet page at:

<http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

This guidance is developed for Commonwealth Personnel and should be used to assess the Guarantor’s execution of the Deed. The Guarantor should seek its own independent legal advice on its execution of the Deed.

**(INSERT EXECUTION CLAUSE OF THE GUARANTOR)**