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APPROVED SUBCONTRACTOR DEED

This DEED is made on 7 Nov 2019

BETWEEN

BABCOCK INTEGRATED TECHNOLOGY LIMITED a company duly incorporated under the laws of England and Wales and having its registered office at **33 WIGMORE STREET London, W1U 1QX, England** ("**the Approved Subcontractor**")

AND THE

COMMONWEALTH OF AUSTRALIA acting through its Department of Defence ABN 68 706 814 312 ("**the Commonwealth**").

RECITALS

- A. The Commonwealth has entered into a Contract
- B. CASG/SD/Con9044/2 dated 1st March 2019 ("**the Contract**") with the Contractor (Naval Group SA and/or Naval Group Australia, as applicable) for the supply of Additional Work Scope 1 – Procurement of Long Lead Items.
- C. The Contractor has entered into a contract (Contract N°6531564) dated 18 10 19 ("**the Approved Subcontract**") with the Approved Subcontractor for the supply of studies, development, qualification and procurement of Weapon Discharge System for the Future Submarine Program.

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- E. Accordingly, the Approved Subcontractor provides the contractual commitments set out in this Deed to the Commonwealth on the terms of this Deed to apply to each contract entered into between the Contractor and the Approved Subcontractor for the Future Submarine Program (FSP) from the Effective Date onwards.

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TERMS

PART A – DEFINITIONS AND INTERPRETATION

1 INTERPRETATION

1.1 Definitions

1.1.1 In the interpretation of this Deed, unless the contrary intention appears:

“AIC Sub-Plan” has the meaning given in the relevant Approved Subcontract.

“Approved Subcontract” means any subcontract entered into between the Contractor (or any Related Body Corporate of the Contractor) and the Approved Subcontractor in pursuance of the FSP from the Effective Date onwards.

“Approved Subcontractor Personnel” means any employee, officer, agent or adviser of the Approved Subcontractor.

“Australian Sovereign Submarine Programs” means any activity pursuant to any of the Commonwealth’s programs for Australian submarines operated by the Royal Australian Navy, including any current or future class of Australian submarine.

“Background IP” means IP in the Supplies, other than Commercial TD or Commercial Software, that:

- a. is in existence at the Effective Date, is subsequently brought into existence other than as a result of the performance of an Approved Subcontract or is the result of Customisation; and
- b. is embodied in, or attaches to, the Supplies or is otherwise necessarily related to the functioning or operation of the Supplies, to the extent that such IP, other than Commercial TD or Commercial Software, is necessary for the Commonwealth to receive the benefit of and make use of the Supplies for the purposes (and subject to any restrictions) set out in clauses 2.2 and 2.3.

“Balances” means the design outcome developed to satisfy a General Technical Requirement including weight, electrical, cooling shock and acoustic.

“Circuit Layout” means a circuit layout that is protected under the *Circuit Layouts Act 1989* (Cth) or the corresponding laws of any other jurisdiction.

“Claim” means a claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings (whether or not before a tribunal).

“Combat System” means all submarine systems, subsystems and equipment as defined in the Common PBS that are functionally and physically integrated and to be delivered by the CSI.

“Commercial Item” means an item that is:

- a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and
- b. able to be used for its intended purpose under the Approved Subcontract without development or modification (except as necessary to install or to configure the item),

except where that item is specified by either by the Commonwealth or the Contractor in writing to the Approved Subcontractor as a critical system, subsystem or item of equipment or Software for the functioning or operation of the Materiel System.

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"Commercial Licence" means, in relation to Commercial TD or Commercial Software, a non-exclusive licence of all Intellectual Property in respect of Commercial TD or Commercial Software.

"Commercial Software" means Software that is:

- a. a Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item under the standard commercial terms applicable to that item; or
- c. Free and Open Source Software.

"Commercial TD" means TD, that is:

- a. Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that item or Software.

"Commercialise" means to exploit the Intellectual Property in TD, Contract Material or Software in return for the receipt of a Royalty or a commercial return.

"Common PBS or CPBS" means the Common Product Breakdown Structure for the Whole Warship as described in the Approved Subcontract.

"Commonwealth Contract Material" means the Contract Material in which Foreground IP is owned by the Commonwealth (including Foreground IP that vests in the Commonwealth under clause 2.1.2 of this Deed).

"Commonwealth Default" means a Default by the Commonwealth, Commonwealth Personnel or a Commonwealth Contractor (other than the Contractor or the Approved Subcontractor) ("Commonwealth").

"Commonwealth Officer" means each of the following:

- a. a Minister of State for the Commonwealth;
- b. a person employed or engaged under the Public Service Act 1999 or the Members of Parliament (Staff) Act 1984;
- c. a person who is included in Defence Personnel; and
- d. a member of the Australian Federal Police.

"Commonwealth Personnel" means Commonwealth Officers, Defence Personnel, agents or advisers of the Commonwealth.

"Commonwealth Representative" means the person holding or performing the office of Director General Future Submarine Program or any other person appointed pursuant to this Deed as the Commonwealth Representative.

"Confidential Information" means:

- a. any information that is identified at Schedules 2 and 3 to this Deed; or
- b. any other information:
 - (i) that is commercially sensitive (not generally known or ascertainable);
 - (ii) disclosure of which would cause unreasonable detriment to the owner of the information or another party; and
 - (iii) that was provided with an express or implied understanding that it would remain confidential;

but does not include information that:

- c. is or becomes public knowledge other than by breach of this Deed;

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- d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- e. has been independently developed or acquired by the receiving party.

"Contract Material" means information (other than TD or Software) that relates to the administration of the Approved Subcontract reduced to a material form (whether stored electronically or otherwise) that is to be incorporated in or form part of the Supplies delivered or required to be delivered to the Commonwealth through the Contractor under the Contract. Without limiting the information that is Contract Material, it includes contract status reports, project management plans, earned value management reports, performance management data and contract administration documents.

"Contract Change Proposal" means a proposal by the Contractor to amend, modify or vary the Contract or a Work Scope for approval by the Commonwealth.

"Contractor Personnel" means any employee, officer, agent or adviser of the Contractor.

"Contractor Managed Commonwealth Assets" means any item of Commonwealth Property subject to inventory and stock control that is in the care, custody or control of the Approved Subcontractor or Approved Subcontractor Personnel for the purposes of the Approved Subcontract.

"Copyright" means any existing or future copyright as defined under the *Copyright Act 1968* (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.

"CSI" mean Lockheed Martin Australia Pty Limited ACN 008 425 509.

"Customisation" means minor or incremental changes to the Background IP in an existing design, system or equipment which does not significantly alter the form, fit, function or performance of that design, system or equipment.

"Deed" means this deed, including the schedules.

"Default" means for the purposes of the definition of "Commonwealth Default": any of the following committed by the Commonwealth:

- a. a breach of an express or implied provision of the Contract; and
- b. a breach of an applicable general law or statutory duty or the governing law in relation to the Contract or Approved Subcontract.

"Defence" means the Department of Defence and/or the Australian Defence Force of the Commonwealth.

"Defence Personnel" means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the *Defence Act 1903* (Cth)) and the equivalents from other organisations on exchange to Defence.

"Delivered" in relation to an item, means in relation to delivery by the Contractor:

- a. the item has been delivered under and in accordance with the Contract; or
- b. where the item is required to be delivered under the Contract and is not yet due for delivery, at the time and in the manner required by the Contract for delivery; and

in relation to delivery by the Approved Subcontractor, means:

- c. the item has been delivered under and in accordance with the Approved Subcontract; or
- d. where the item is required to be delivered under the Approved Subcontract and is not yet due for delivery, at the time and in the manner required by the Approved Subcontract for delivery.

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"Effective Date" means the date on which this Deed is signed by the Commonwealth and the Approved Subcontractor, or if signed on separate days, the date of the last signature.

"Environment" in the context of environmental management, means any of the following:

- a. ecosystems and their constituent parts;
- b. natural and physical resources;
- c. the qualities and characteristics of locations, places and areas;
- d. noise; and

the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs a, b or c.

"Escrow Agent" means the person appointed to hold the Escrow Items under the Escrow Agreement in accordance with clause 2.5.

"Escrow Agreement" means the agreement of that name referred to in clause 2.5.

"Escrow Item" means those items containing Background IP of the Approved Subcontractor referred to in clause 2.5.

"Export Approval" means an export licence, agreement, approval, end user certificate, 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 Supplies.

"Foreground IP" means IP which is created in the performance of an Approved Subcontract, including the Approved Subcontract, or a Subcontract with any Subcontractor under an Approved Subcontract. For clarity, where Background IP is further developed under the Approved Subcontract or a Subcontract, the Foreground IP will:

- a. only consist of the newly created IP; and
- b. not include Customisation.

"Free and Open Source Software" means Software that:

- a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and
- b. may be used, modified, developed or adapted by any person subject to specified conditions,

and includes open source software, public domain software, shareware, community source software and freeware.

"Future Submarine" means the submarines to be acquired by the Australian Government for service in the Royal Australian Navy under the Future Submarine Program.

"Future Submarine Program" or "FSP" means the Commonwealth's SEA1000 Future Submarine Program from time to time and includes all activities connected with that Program, including all elements of the design, development, build, operation, sustainment and disposal of the Materiel System during its life of type.

"Intellectual Property" means all present and future rights conferred by law in or in relation to any of the following:

- a. Copyright;
- b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); or

any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered.

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"Licence" means (subject to clauses 2.2 2.3 of this Deed) a Royalty free, irrevocable, non-exclusive, perpetual and world-wide licence (including a right to sub-license in accordance with this Deed), but does not include a right to Commercialise.

"Loss" means any liability, loss (including economic loss), damage, compensation, costs and expenses. It includes the following in relation to a Loss as so defined:

- a. wasted expenditure;
- b. the costs of retendering;
- c. the costs of investigating, prosecuting, defending and settling a Claim; and
- d. any related legal costs and expenses on a solicitor and own client basis.

"Material" means Technical Data, Software and Contract Material.

"Materiel System" means the combination of the mission system and the support system for the Future Submarines.

"Naval Group SA" means the company of that name incorporated as a société anonyme under French law and having its head office at 40-42 Rue du Docteur, Finlay, 75015 Paris, France.

"Naval Group Australia" means the company of that name incorporated under Australian law and having its registered office at Level 2, 1 Richmond Road Keswick SA, 5035.

"Official of the US Government or the UK Government" means an officer, employee or member of the defence forces of the US government or UK government, as applicable.

"Patent" means the rights and interests in any registered, pending, or restored standard or innovation patent under the *Patents Act 1990* (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.

"PBS" means product breakdown structure.

"Platform System" means all submarine systems, subsystems and equipment as defined in the Common PBS, amended from time to time, that are functionally and physically integrated and to be delivered by the Contractor.

"Program Contract" means any contract between the Commonwealth and the Contractor for the FSP, including the Contract.

"Related Body Corporate" has the meaning as given by section 9 of the *Corporations Act 2001* (Cth).

"Relevant Work" for the purpose of clause 2.5 means a specific package of work as required by the Commonwealth or the Contractor required to support the Supplies and the functions set out in 2.3.2 b to i.

"Registrable Design" means a design able to be protected under the *Designs Act 2003* (Cth) or the corresponding laws of any other jurisdiction.

"Royalty" means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use any Intellectual Property, however calculated.

"Software" means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result (including using a computer programming language to control a computer or its peripheral devices) and includes computer programs, firmware and applications, but excludes Source Code.

"Software Design Data" means data which describes the internal design and operation of a software program and its interface with the external software and hardware systems in which

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it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).

"Software List" means the list of Software provided in accordance with the Approved Subcontract.

"Software Update" means, in relation to software (including Software Design Data and Source Code), any:

- a. new release of or change to that software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the software); or
- b. new version of that software (which is designed to enhance or provide extra functionality to that software);

"Source Code" means the expression of software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that software.

"Sovereign Asset" means any asset owned by the Commonwealth that is designated as a Sovereign Asset which is in the care, custody or control of the Approved Subcontractor or Approved Subcontractor Personnel.

s33(a)(ii)

"Subcontractor" means any person other than the Commonwealth, that for the purposes of a Approved Subcontract, furnishes Supplies directly to the Approved Subcontractor or indirectly to the Approved Subcontractor through another person (other than the Commonwealth).

"Subcontractor Personnel" means any employees, officers, agents or advisers of any Subcontractors.

"Supplies" means goods and services, and associated rights, such as Intellectual Property, and including Technical Data, Software and Contract Material required to be delivered under an Approved Subcontract as contractor deliverables, including the goods and services and rights supplied by the Approved Subcontractor to form part of the Supplies (as defined in a Program Contract) to be delivered by the Contractor to the Commonwealth under a Program Contract, and includes items acquired in order to be incorporated in the Supplies.

"TDSR Schedule" means Schedule 1 to this Deed.

"Technical Data" or "TD" means all technical or scientific data, know-how and information reduced to a material form (whether stored electronically or otherwise) produced, acquired or used by the Approved Subcontractor or its Subcontractors in relation to the Supplies and includes all data, databases, manuals, handbooks, designs, standards, specifications, design documentation reports, writings, models, sketches, plans, drawings, calculations, Training Materials, Source Code, Software Design Data, simulations, notes, instructions, test results, software and Software Updates and other items describing or providing information relating to the Supplies or their use or operation. This definition is not to be taken as requiring the delivery by the Approved Subcontractor of information or an item referred to in this definition where that item is not required to be delivered under the Approved Subcontract or this Deed.

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"Technical Data/Software List" means the List of Technical Data and Software provided in accordance with the Approved Subcontract.

"Trade Mark" means a trade mark protected under the *Trade Mark Act 1989* (Cth) or corresponding laws of any other jurisdiction.

"Training" means the processes, systems, materials, resources, and services for bringing Personnel to the required standard of competency by instruction, practice or other prescribed methodology.

"Training Materials" means material, not contained in a publication, necessary for a suitably qualified instructor to effectively and efficiently conduct a sequence of Training given to a body of students who meet the defined entry requirements. This material includes lesson scripts, assessment instruments (including recording/tracking tools), Training aids, student précis, exams, mass briefs, sorties, and, if applicable, computer-based training hardware, software and manuals required as a deliverable under any Approved Subcontract.

"Unable" means where:

- a. the Approved Subcontractor ceases to carry on business;
- b. the Approved Subcontractor becomes bankrupt, insolvent or the subject of any other external control of the Approved Subcontractor's business or assets;
- c. the acquisition or merger of the Approved Subcontractor, unless the successor in interest provides assurances of its willingness, and has the lawful capacity and power to meet the continuing requirements of any effective current Approved Subcontract which remains to be performed and any future Approved Subcontract;
- d. the country where the Approved Subcontractor is incorporated is at war or in a conflict with the Commonwealth;
- e. the Approved Subcontractor is under an effective restriction, whether imposed by a government authority or a legal instrument, that prevents it from undertaking the work and both Parties have used reasonable endeavours to resolve the restriction without success;
- f. the Approved Subcontractor does not have the capability for technical reasons or the capacity to perform the work; or
- g. the Approved Subcontractor is unable to access or obtain the necessary information, IP rights, tools, or facilities to undertake the work. provided always that: i) none of the required information consists of IP rights, tools or facilities that are identified in the TDSR as being subject to a restriction; and / or ii) any information, IP rights, tools or facilities that the Approved Subcontractor is unable to access or obtain can be accessed or obtained by alternative contractors of the Commonwealth on equivalent terms of access that the Approved Subcontractor would have been required to obtain in order to perform the Commonwealth work requirement.

"Unwilling" means where the Approved Subcontractor is unwilling to undertake the work on reasonable commercial terms.

"Use" means to use, reproduce, adapt, modify, improve, develop, disclose, transmit and communicate by the Commonwealth internally and to permitted licensees.

"WBS" means a work breakdown statement.

"Whole Combat System" means the Combat System integrated with the subsystems and equipment provided by the Contractor to meet the requirements of the Functional Combat Subsystem Specification (FC-SSS).

"Whole Warship" means the Platform System with the Combat System physically integrated to achieve the Functional Ship Subsystem Specifications (FS-SSS) and the Balances.

"WHS" means any obligation or requirement under WHS Legislation.

"WHS Legislation" means any of the following:

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- 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).

“Work Scope” means any scope of work separately identified and entered into by the Subcontractor as a work scope statement under an Approved Subcontract for an applicable phase of the FSP.

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

- a. a Saturday, Sunday or public holiday; and
- b. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or from Christmas Day when it falls on a Saturday).

1.2 Interpretation

1.2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed;
- b. the singular includes the plural and vice versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a “dollar”, “\$”, “\$A” or “\$AUD” means the Australian dollar;
- i. 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 Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word “includes” in any form is not a word of limitation; and
- k. a reference to a party includes that party’s administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract.

1.3 Application

1.3.1 This Deed applies in respect of each contract that the Contractor enters into with the Approved Subcontractor for the performance of work under the FSP.

1.4 Precedence

1.4.1 The terms of this Deed prevail over the provisions of any Schedule to this Deed to the extent of any inconsistency.

1.5 Survival

1.5.1 Except for clauses 5, 6 and 7 of this Deed, the rights and obligations created under or in connection with this Deed survive the termination or expiry of the Contract or an Approved Subcontract.

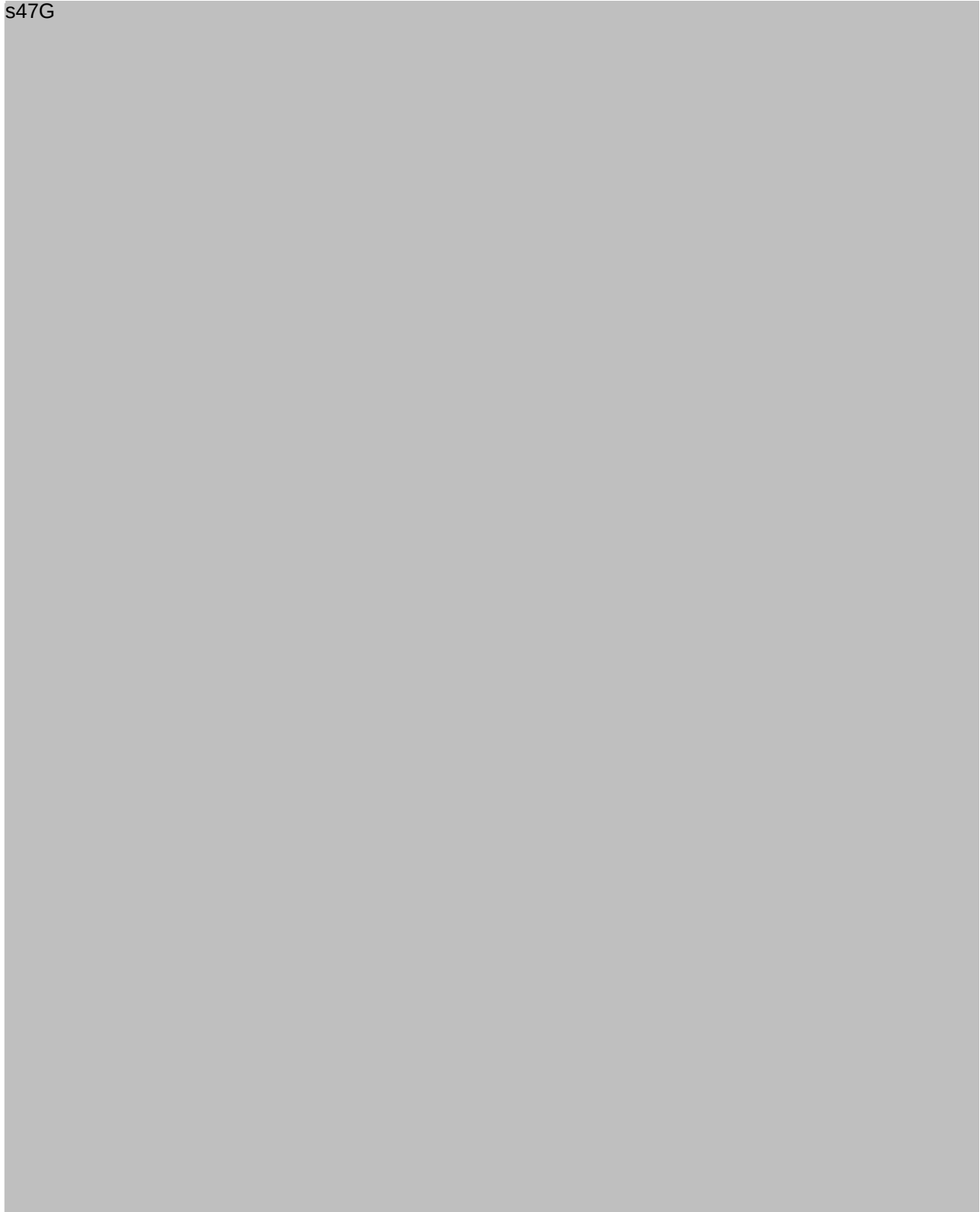
Notwithstanding clause 1.5.1 above, in the event the Contract and/or Approved Subcontract is terminated for convenience by the Commonwealth or the Contractor, prior to Delivery of

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and payment for a full set of Approved Subcontractor Supplies, including hardware necessary for installation of the Approved Subcontractor's system onto the first of class platform of the FSP, the rights and obligations created under or in connection with this Deed shall only be exercised for the Supplies that are delivered prior to the termination.

2 FOREGROUND AND BACKGROUND IP

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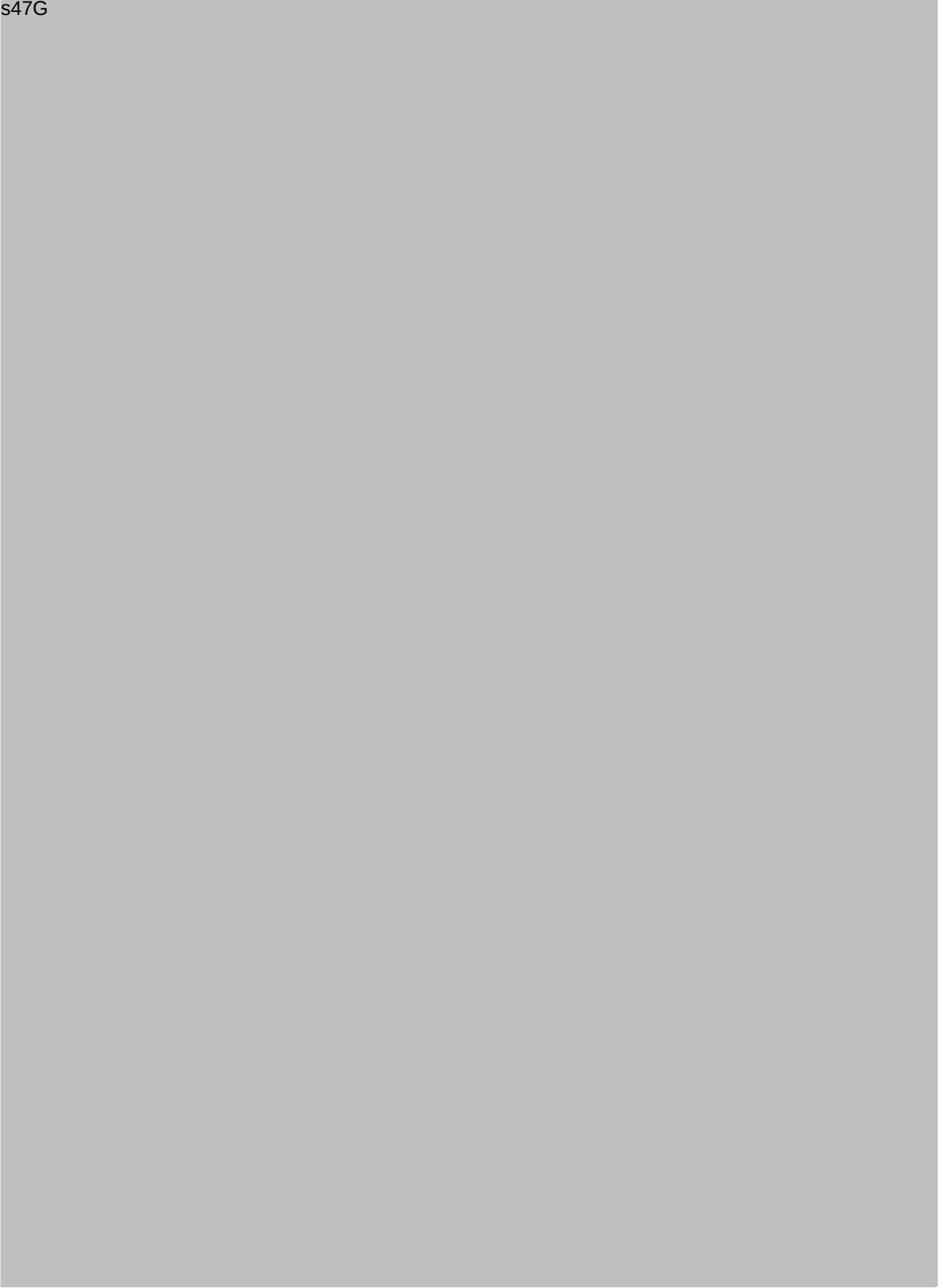
2.5 Escrow

- 2.5.1 The Approved Subcontractor agrees that the Commonwealth may obtain access to the Material specified in Annex D to the TDSR Schedule ("Escrow Material") in accordance with this clause 2.5 and the terms of an Escrow Agreement for the purpose of the Commonwealth performing functions set out in clauses 2.3.2 a to i or sublicensing the performance of work to undertake the functions set out in clauses 2.3.2 b to i only and subject to the restrictions specified in relation to that Escrow Material in the TDSR Schedule, where the Approved Subcontractor is Unable or Unwilling to undertake the Relevant Work during the life of the Future Submarine, where it has been given a reasonable opportunity on reasonable terms to do so. Escrow Material accessible on any specific occasion shall be limited to the extent necessary to complete the Relevant Work.
- 2.5.2 The Approved Subcontractor shall within 60 days after the Effective Date or final signature of the first Approved Subcontract, whichever is later, deliver to the Commonwealth an Escrow Agreement in respect of the Escrow Material:
- a. that includes an agent to hold the Escrow Material as approved by the Commonwealth ("Escrow Agent");
 - b. that is in a form agreed by the Commonwealth; and
 - c. that is duly executed by the Escrow Agent and the Approved Subcontractor.
- 2.5.3 The Approved Subcontractor shall ensure that the Escrow Agent:
- a. is not the Approved Subcontractor, the Contractor, a Subcontractor or Related Body Corporate of the Approved Subcontractor, the Contractor or a Subcontractor;
 - b. has premises located in Australia for the purposes of storing the Escrow Material; and
 - c. obtains and maintains all necessary security clearances and authorisations certifying all designated storage facilities and relevant personnel.
- 2.5.4 The fees of the Escrow Agent shall be as approved by the Commonwealth, and shall be payable by the Commonwealth.
- 2.5.5 Subject to clauses 2.5.1 and 2.5.2, the Commonwealth shall execute the Escrow Agreement and provide executed copies to the Escrow Agent and the Approved Subcontractor.
- 2.5.6 The Approved Subcontractor shall deliver the Escrow Material to the Escrow Agent at its premises in Australia in accordance with the Escrow Agreement.
- 2.5.7 The Approved Subcontractor shall ensure that:
- a. the Escrow Items delivered to the Escrow Agent are current and up to date;
 - b. promptly after each deposit, modification or update of an Escrow Item, notify the Commonwealth in writing that the Escrow Item has been deposited with the Escrow Agent, together with the list, description of, reference number/version and date of the deposited items and

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- c. any Subcontracts for the delivery of an Escrow Item include terms that enable the Approved Subcontractor to meet its obligations under this clause 2.5.

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2.9 Patents, Registrable Designs and Circuit Layouts

- 2.9.1 The Approved Subcontractor warrants and shall ensure that the licences granted or obtained under the Approved Subcontract include the right to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use the Supplies for the purposes provided for in the Approved Subcontractor Deed.
- 2.9.2 The Approved Subcontractor warrants and shall ensure that any restriction on a right referred to in clause 2.7.1 is specified in Annex C to the TDSR Schedule.

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3 CONFIDENTIAL INFORMATION**3.1 Release of Confidential Information to third parties**

- 3.1.1 Each party shall ensure that Confidential Information provided by the other party is not disclosed, except to the extent the disclosure is:
- a. required by law;
 - b. required to be made by the Commonwealth due to statutory or portfolio duties, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister;
 - c. to a legal adviser, insurer, financier or auditor of a party, to the extent required to enable them to perform their roles;
 - d. to a Related Body Corporate for internal management purposes;
 - e. permitted by another clause of this Deed;
 - f. required to be made where compelled by a court or tribunal in any legal proceedings arising in relation to the Contract, this Deed or an Approved Subcontract; or
 - g. to Commonwealth Personnel or Approved Subcontractor Personnel (subject to clause 3.1.3); or
 - h. required to apply for and obtain any Export Approval,
- unless the other party has provided its prior written consent to the disclosure.
- 3.1.2 The Approved Subcontractor acknowledges and agrees that nothing in clause 3.1.1 shall affect or limit the Commonwealth's rights or obligations granted in relation to TD, Software or Contract Material under clause 2, to the extent permitted by that clause 2.
- 3.1.3 The Commonwealth shall, subject to clause 3.1.5, before disclosing Confidential Information of the Approved Subcontractor to any other person ('**Recipient**') (except as permitted under clauses 3.1.1a, b, f or g, or clause 3.1.5) obtain a deed containing provisions substantially in the form of the Deed of Confidentiality as set out in Schedule 2 for an organisation, and in the form set out in Schedule 3 for individuals, duly executed by the Recipient. The exception referred to above in respect of paragraph g of clause 3.1.1 does not apply to agents or advisers of the Commonwealth.
- 3.1.4 The Approved Subcontractor shall not disclose Confidential Information of the Commonwealth to any other person, except as permitted by, and in accordance with the terms of an Approved Subcontract, including the requirement for and obligations of a confidentiality deed under the Approved Subcontract.
- 3.1.5 Notwithstanding clause 3.1.3, the Approved Subcontractor agrees that, where a third party that receives TD, Software or Contract Material containing Background IP that is owned by the Approved Subcontractor is an Official of the United States or United Kingdom governments, the Commonwealth is not required to obtain a deed of confidentiality or non-disclosure agreement from those third parties as the bilateral security obligations between Australia and those countries and laws of those countries will apply to, protect against any unauthorised use or disclosure of the Confidential Information and will not allow any disclosure to another third party.
- Other than as provided for in clauses 2.3.1, 2.3.2, 3.1.1 and 3.1.3, the Commonwealth's right to provide TD, Software or Contract Material containing Background IP that is owned by the Approved Subcontractor to a third party is not subject to any further consent or approval from the Approved Subcontractor.

FOR OFFICIAL USE ONLY**5 COST AND PRICE TRANSPARENCY AND COMMONWEALTH ACCESS AND PRICING RULES FOR FUTURE WORK WITH THE COMMONWEALTH****5.1 Cost and Price Transparency and Access**

5.1.1 The Approved Subcontractor shall, subject to the Commonwealth (or the Contractor on the Commonwealth's behalf) giving no less than ten Working Days' prior notice to the Approved Subcontractor, provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with:

- a. access to records, systems, accounts, policies and premises of the Approved Subcontractor for the purposes of investigating and verifying; and
- b. assistance from Approved Subcontractor Personnel for the purposes of investigating, verifying and understanding,

the costing and pricing of an Approved Subcontract (including the price of an Approved Subcontract and basis of estimate supporting that price) and any amounts payable under the Approved Subcontract.

Notification provided by the Commonwealth to the Approved Subcontractor shall include the appropriate level of detail to allow for the Commonwealth's requirements to be achieved.

5.1.2 The Approved Subcontract shall ensure that any access and assistance provided under clause 5.1.1 shall be sufficient for the Commonwealth to gain an accurate and complete understanding of the costing and pricing of an Approved Subcontract (including the price of an Approved Subcontract and basis of estimate supporting that price) and any amounts payable under the Approved Subcontract.

5.1.3 The Approved Subcontractor shall ensure that details of cost and price shall be allocated to the deliverables / WBS elements of the Approved Subcontract costs and shall include:

- a. direct costs, their categories and descriptions including:
 - (i) labour costs, including:
 - 1) skills / level category;
 - 2) volume of hours per skills / level category; and
 - 3) rates for each skills / level category);
 - (ii) materials costs, including key categories of materials and associated costs;
 - (iii) other direct costs (being costs that are not labour costs or materials costs and are directly attributed by the Approved Subcontractor to the cost of providing goods or services under the Approved Subcontract) including all key other direct costs categories and their associated costs;
- b. indirect costs / overheads, including:
 - (i) the key cost elements;
 - (ii) the overall percentage of indirect costs / overheads compared to direct costs of the business/projects;
 - (iii) an understanding of how indirect costs / overheads are attributed business/projects; and
 - (iv) the method of apportionment and rates for indirect costs / overheads;
- c. pricing uncertainty, risk and any other contingencies, allowances or payments included in the Approved Subcontractor's price;
- d. profit rates and the composition of the profit component of the Approved Subcontractor's price; and
- e. analyses, calculations, assumptions and explanations relevant to the Approved Subcontractor's price.

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- 5.1.4 The Commonwealth shall provide reasonable notice of access required under clause 5.1.1.
- 5.1.5 Where the Approved Subcontractor has government contracts where government authorities audit and approve labour or indirect cost / overhead rates, the Approved Subcontractor shall ensure that labour rates and indirect cost / overhead attribution percentages, do not exceed such approved labour rates and indirect / overhead cost attributions. Upon request by the Commonwealth, the Approved Subcontractor shall provide independent evidence of the labour rates and indirect cost / overhead attribution percentages approved by the relevant government authority (usually in the form of a Government endorsed letter).
- 5.1.6 The Approved Subcontractor shall ensure that the system for managing costs in relation to an Approved Subcontract integrated within its resources and program management systems.

5.2 Commonwealth Access

- 5.2.1 The Approved Subcontractor shall, subject to the Commonwealth (or the Contractor on the Commonwealth's behalf) giving ten Working Days' prior notice to the Approved Subcontractor, provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with access to its premises, records and accounts for the purposes referred to in this clause 5.2. However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, the Commonwealth may require, and the Approved Subcontractor shall provide, immediate access to the premises, records and accounts for any purpose related to such emergency, investigation or threat. The Commonwealth may copy any records or accounts for such purposes.
- 5.2.2 Without limiting clause 5.1, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access comprise:
- a. inspecting Sovereign Assets or Commonwealth property, in the care, custody or control of the Approved Subcontractor and attending, conducting or checking stocktakes of Sovereign Assets or Commonwealth property, including viewing and assessing the Approved Subcontractor's inventory control and stocktaking systems, and removing Sovereign Assets or Commonwealth property that is no longer required for the performance of the Approved Subcontract, where reasonable prior notification has been provided;
 - b. monitoring compliance and assessing progress in performing the Approved Subcontract including in conjunction with the Contractor:
 - (i) conducting quality audits of the Approved Subcontractor's systems and processes relevant to the Approved Subcontract;
 - (ii) performing audit and verification activities in relation to the Approved Subcontractor's performance of work under the Approved Subcontract to provide assurance that specified requirements to which a product or service, or aggregation of products and services, is built, coded, assembled and provided have been fulfilled; and
 - (iii) validating the Approved Subcontractor's progress in meeting the Approved Subcontractor's AIC Sub-plan;
 - c. subject to clause 5.1, investigating the reasonableness of proposed prices or costs in any changes to an Approved Subcontract submitted as part of a Contract Change Proposal by the Contractor to the Commonwealth;
 - d. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
 - e. validating the Approved Subcontractor's progress in meeting its obligations under an Approved Subcontract to record and manage IP, TD, Software and Contract Material for the purpose of validating the Approved Subcontractor's performance under the Approved Subcontract; and

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- f. without being under any obligation to do so, reviewing and assessing information and records, and seeking explanations, relating to the Approved Subcontractor's compliance with any applicable laws or plans implemented by the Approved Subcontractor in connection with the protection of WHS or the Environment, including the development and implementation of any systems, policies or procedures related to WHS and environmental compliance as required under the Approved Subcontract.

5.3 Conditions of Access

- 5.3.1 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Approved Subcontractor safety and security requirements or codes of behaviour for the Approved Subcontractor's premises.
- 5.3.2 The Commonwealth acknowledges that Commonwealth access pursuant to clauses 5.1 and 5.2 may be subject to approval by relevant government authorities and, in which case, if approval is delayed or refused by those authorities, the Approved Subcontractor shall not be in breach of clause 5.1 or 5.2 by reason of a delay or decision by those authorities.
- 5.3.3 For the purpose of obtaining approval under clause 5.3.2, the Commonwealth shall provide the Approved Subcontractor with 10 Working Days' notice of its advisers and other persons acting for or on its behalf who are authorised to have access to premises, records, accounts and personnel of the Approved Subcontractor in accordance with clause 5.1 or 5.2. The Contractor shall report as soon as possible to the Commonwealth if the relevant authority does not approve access for any such advisers or persons.

5.4 Auditor-General Access and Records

- 5.4.1 The Approved Subcontractor acknowledges and agrees that:
 - a. the Auditor-General has the power under the *Auditor Act 1997* (Cth) to conduct audits (including performance audits) of the Approved Subcontractor and Subcontractors in relation to the Approved Subcontracts;
 - b. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to an Approved Subcontract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
 - c. the Commonwealth Representative may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts of the Approved Subcontractor in accordance with clause 5.1.

5.5 Pricing rules for future work with the Commonwealth

- 5.5.1 Where the Commonwealth selects the Approved Subcontractor or any Related Body Corporate of the Approved Subcontractor for future work on the Future Submarine Program, the following pricing principles will apply:
 - a. the contract price will be built up in accordance with the CASG Profit Principles at the time the Approved Subcontractor or Related Body Corporate is selected; and
 - b. the Approved Subcontractor will ensure that overheads and any administration fees allocated to the Program contain only costs and the Approved Subcontractor will not allocate overheads and administrative fees that would result in the Approved Subcontractor recovering more than its costs for performing that future work.
- 5.5.2 The parties agree that clause 5 will be appropriately reflected in any future contract with the Commonwealth for future work on the Future Submarine Program.

6 AUSTRALIAN INDUSTRY CAPABILITY

- 6.1.1 The Approved Subcontractor acknowledges that the objective of the Australian Industry Program (AIP) for the FSP is to:

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- a. develop and utilise Australian industry in performance of the FSP in a manner consistent with achieving the Sovereignty objective; and
 - b. maximise opportunities for the involvement of the Australian industry through all phases of the FSP, without unduly compromising the Commonwealth's requirements relating to capability, cost and schedule.
- 6.1.2 The Approved Subcontractor's approach and obligations for giving effect to the objectives described in clause 6.1.1 shall be set out in the AIC Sub-plans developed and delivered under each Approved Subcontract, which shall detail the specific activities and other commitments (including Local Industry Activities) that the Approved Subcontractor will undertake in connection with the performance of the relevant Approved Subcontract..
- 6.1.3 In performing its AIC related obligations under an Approved Subcontract, the Approved Subcontractor shall:
- a. take all necessary steps to maximise the participation of Australian industry in the performance of the Approved Subcontracts without unduly compromising capability, cost and schedule;
 - b. continuously monitor and explore opportunities for the increased involvement of Australian industry in the performance of the Approved Subcontracts (including with respect to its various procurement activities); and
 - c. liaise with the Commonwealth and the Contractor in relation to Australian industry involvement in the performance of the Approved Subcontracts over the various phases of the FSP.

7 SUBCONTRACTORS

- 7.1.1 The Approved Subcontractor, if requested by the Commonwealth, shall provide the Commonwealth with names of all tier 1 Subcontractors and a copy of any subcontract with a Subcontractor, which shall contain prices. The Approved Subcontractor shall inform its Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractor's participation in the performance of the Approved Subcontract. The Commonwealth will use its best endeavours consistent with its statutory and other legal duties to protect commercially sensitive information disclosed by the Approved Subcontractor. Any such subcontract material provided shall be for Commonwealth use only and shall not be disclosed to third parties, including the Contractor, except to the extent the Commonwealth are required to publicly disclose the material by law or a government body.
- 7.1.2 The Approved Subcontractor shall not enter into a subcontract under the Approved 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).
- 7.1.3 For the purposes of clause 7.1.1, the 'Commonwealth' includes any industry personnel seconded to perform functions for the Commonwealth in the Future Submarine Program, which meet the requirements of clause 2.2.2.

8 LAW**8.1 Goods and Services Tax**

- 8.1.1 In this clause, "GST" means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* and the expressions "adjustment event", "taxable supply" and "tax invoice" have the meaning as in that Act.
- 8.1.2 If a party to this Deed (the "Supplier") makes a taxable supply under or in connection with this Deed or in connection with any matter or thing occurring under this Deed to another party to this Deed (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other

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consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.

- 8.1.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment shall be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier shall refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient shall pay the deficiency to the Supplier.
- 8.1.4 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.

8.2 No exclusion of law or equity

- 8.2.1 Subject to its terms, this Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

8.3 Waiver

- 8.3.1 Failure by either party to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

8.4 Remedies

- 8.4.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 8.4.2 Subject to the terms of this Deed, the rights and obligations of the parties under this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.
- 8.4.3 Notwithstanding clause 8.4.1 and 8.4.2 above, the Approved Subcontractor shall not be in breach of any clause in this Deed or have any liability to the Commonwealth in contract, indemnity, warranty, tort, strict liability or otherwise in the event that they are prevented from complying with any obligation in the Deed as the result of a restriction imposed on them by a government authority or legal instrument. This clause 8.4.3 shall not apply to the extent that the restriction has been imposed as a result of a negligent act or omission by the Approved Subcontractor.

8.5 Variation

- 8.5.1 This Deed may only be varied by written agreement of the parties.

8.6 Applicable Law

- 8.6.1 The laws of the Australian Capital Territory, Australia apply to this Deed, and the courts of that Territory have non-exclusive jurisdiction to decide any matter relating to this Deed.

8.7 Notices

- 8.7.1 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 relevant party, at the following address:

Commonwealth Representative:

CDRE CRAIG BOURKE

Director General Future Submarine Program

Future Submarine Program Office

PO Box 169

Kilburn North SA 5084

Email: s47E(c)@defence.gov.au

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s47F

Sovereignty Program Director

Naval Group
 AFS Program
 40-42 rue du Docteur Finlay
 75732 Paris CEDEX 15
 France
 Email: s47F

Approved Subcontractor Representative

Commercial Director

Babcock Integrated Technology Ltd
 Ashton House
 Ashton Vale Road
 Bristol
 BS3 2HQ
 Email: s47F @babcockinternational.com

8.7.2 A notice or communication is deemed to be delivered:

- a. if sent by pre-paid post, when received at the address;
- b. if hand delivered, when received at the address, or by the addressee if sooner;
- c. 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
- d. 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 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.

8.7.3 This clause 8.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (Legal Notices) where the method of service is mandated in applicable procedural rules. In such cases the applicable rules shall apply. For Legal Notices where no rules of service are otherwise mandated, the Parties agree service must be by pre-paid post or hand delivered in accordance with clause 8.7.2 a. or clause 8.7.2 b. above only. Legal Notices sent by facsimile or email shall not be valid.

SIGNED AS A DEED

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SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA:

s22

(signature)

CHARA BOURKE

(print name and position)

DIRECTOR GENERAL FUTURE SUBMARINE PROGRAM

7 NOV 19

(date)

In the presence of:

s22

(signature)

s47E(c)

(print name) s47E(c)

7 Nov 19

(date)

SIGNED for and on behalf of

THE APPROVED SUBCONTRACTOR:

s22

(signature)

s47F

(print name and position)

MANAGING
DIRECTOR

9th July 2019

(date)

In the presence of:

(signature)

s47F

(print name)

9th JULY 2019.

(date)

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SCHEDULE 1

TDSR SCHEDULE

- 1.1 Schedule 1 consists of the following Annexes:
- a. s47 & s33(a)(ii)
 - b. Annex B – Commercial TD and Commercial Software;
 - c. Annex C – Patents, Registrable Designs and Circuit Layouts
 - d. s47 & s33(a)(ii)

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[illegible]

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ANNEX C – PATENTS, REGISTRABLE DESIGNS AND CIRCUIT LAYOUTS

Unique Line Item Description	Supplies containing a Patent, Registrable Design or Circuit Layout (pending or registered)	Type of IP (Patent, Registrable Design or Circuit Layout)	Owner / IP Applicant	Application / Registration No (if applicable)	Countries or regions of permitted use	Restriction
(a)	(b)	(c)	(d)	(e)	(f)	(g)

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SCHEDULE 2

CONFIDENTIALITY DEED FOR ORGANISATIONS

This Deed Poll is made on (....INSERT DATE...)

By:

(....INSERT NAME AND ADDRESS....) (the 'Confidant')

In favour of:

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

RECITALS:

- A. The Confidant will receive or have access to Protected Information belonging to the Commonwealth, a Relevant Third Party and/or a Subcontractor for use in relation to the Permitted Purposes and which, as the case may be, may include Relevant Third Party Background IP which is provided to the Confidant by the Commonwealth.
- B. The Commonwealth requires, and the Confidant agrees, that it is necessary to take all necessary steps (including the execution of this Deed for the benefit of the Commonwealth) to ensure that the Protected Information is kept confidential, is not disclosed to any party that is not authorised to receive it and is only used for the Permitted Purposes.

OPERATIVE PROVISIONS

1. ACKNOWLEDGEMENT

- 1.1 The Confidant acknowledges the truth and accuracy of the statements in the Recitals in every particular.

2. DEFINITIONS

- 2.1 In the interpretation of this Deed, unless the contrary intention appears:

Additional Restrictions means [...INSERT ANY ADDITIONAL RESTRICTIONS AS MAY BE REQUIRED IN RELATION TO THE PROTECTED INFORMATION UNDER THE CONTRACT...].

Australian Sovereign Submarine Programs means any activity related to any of the Commonwealth's programs for Australian submarines operated by the Royal Australian Navy, including any current or future class of Australian submarine.

Circuit Layout means a circuit layout that is protected under the *Circuit Layouts Act 1989* (Cth) or the corresponding laws of any other jurisdiction.

Confidential Information means information (whether or not owned by the Commonwealth, a Relevant Third Party and/or a Subcontractor) that:

- a. is specifically identified in Schedule A; or
- b. any other information:
 - (i) that is commercially sensitive (not generally known or ascertainable);

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- (ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and
- (iii) that was provided with an express or implied understanding that it would remain confidential,

but does not include information which:

- c. is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligation;
- d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- e. has been independently developed or acquired by the receiving party.

Contract Material means information (other than TD or Software) reduced to a material form (whether stored electronically or otherwise). Without limiting the information that is Contract Material, it includes contract status reports, project management plans, earned value management reports, performance management data and contract administration documents.

Copyright means any existing or future copyright as defined under the *Copyright Act 1968* (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.

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

Future Submarine means the submarines to be acquired by the Australian Government for service in the Royal Australian Navy under the Future Submarine Program.

Future Submarine Program or **FSP** means the Commonwealth's SEA1000 Future Submarine Program from time to time and includes all activities connected with that Program, including all elements of the design, development, build, operation, support system, sustainment and disposal of the Future Submarine during its life of type.

Intellectual Property means all present and future rights conferred by law in or in relation to any of the following:

- a. Copyright;
- b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); or
- c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered.

Naval Group means Naval Group SA, a corporation established and operating under the laws of France and having its registered office at 40-42 Rue du Docteur Finlay, 75015, Paris, France.

Naval Group Australia means the company of that name incorporated under Australian law and having its registered office at Level 2, 1 Richmond Road Keswick SA, 5035.

Patent means the rights and interests in any registered, pending, or restored standard or innovation patent under the *Patents Act 1990* (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.

Permitted Purposes means:

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- a. the purpose of providing [...INSERT RELEVANT GOODS OR SERVICES...] to the Commonwealth solely in relation to the Commonwealth's Future Submarine Program and Australian Sovereign Submarine Programs [...DELETE IF INAPPLICABLE...]; and
- b. any other purpose that may be approved in writing by the Commonwealth from time to time.

Personnel means any officer or employee of the Confidant.

Protected Information means information (whether or not owned by the Commonwealth or the Relevant Third Party) that:

- a. comprises Intellectual Property in TD, Software or Contract Material;
- b. is Confidential Information; or
- c. is security classified information,

in relation to the Future Submarine Program or Australian Sovereign Submarine Programs (excluding Intellectual Property and Confidential Information owned by the Confidant).

Registrable Design means a design able to be protected under the *Designs Act 2003* (Cth) or the corresponding laws of any other jurisdiction.

Related Body Corporate has the meaning given by section 9 of the Corporations Act.

Relevant Third Party means Naval Group, Naval Group Australia and any other party nominated in writing by the Commonwealth to the Confidant.

Relevant Third Party Background IP means Intellectual Property in information owned by a Relevant Third Party or any of its Subcontractors that comprises TD, Software or other material.

Software means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result, including using a computer programming language to control a computer or its peripheral devices and includes computer programs, firmware and applications, but excludes Source Code.

Software Design Data means data which describes the internal design and operation of a software program and its interface with the external software and hardware systems in which it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).

Software Update means, in relation to software (including Software Design Data and Source Code) any of the following:

- a. a new release of or change to that software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the software); and
- b. a new version of that software (which is designed to enhance or provide extra functionality to that software).

Source Code means the expression of software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that software.

Subcontractor means any person (other than the Commonwealth) that provides items or services directly or indirectly to a Relevant Third Party.

Technical Data or TD means all technical know-how and information reduced to a material form, and includes all data, databases, manuals, handbooks, designs, standards, specifications, design documentation reports, writings, models, sketches, plans, drawings, calculations, training materials, Source Code, Software Design Data, simulations, notes, instructions, test results, software and Software Updates and other items describing or providing information relating to systems or equipment or their operation.

Trade Mark means a trade mark protected under the *Trade Mark Act 1989* (Cth) or corresponding laws of any other jurisdiction.

Working Day means any day other than:

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- a. a Saturday, Sunday or public holiday in Adelaide, Canberra, Paris or other place where work is performed for the Permitted Purpose (and has effect where this Deed requires the doing of an act in one of those places); and
- b. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or from Christmas Day when it falls on a Saturday).

3. INTERPRETATION

3.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this Deed;
- b. the singular includes the plural and vice versa;
- c. a reference to a person includes a body politic, body corporate or a partnership;
- d. 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 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 clause includes a reference to a subclause of that clause;
- g. the word 'includes' in any form is not a word of limitation; and
- h. 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.

4. UNDERTAKINGS OF NON DISCLOSURE

4.1 The Confidant:

- a. acknowledges and agrees that this Deed is for the benefit of the Commonwealth and is directly enforceable by the Commonwealth, even though it is not a party to this Deed;
- b. shall ensure that the Protected Information is kept confidential and secure from disclosure to any person not authorised to receive the Protected Information;
- c. shall only use the Protected Information for the Permitted Purposes and comply with any Additional Restrictions on the use of the Protected Information;
- d. may disclose Protected Information to its Personnel or permit its Personnel to disclose any of the Protected Information to another member of its Personnel provided that such Personnel:
 - (i) have a need to know and require access to the Protected Information in order for the Confidant to carry out the Permitted Purposes; and
 - (ii) where required by the Commonwealth, have executed a confidentiality undertaking substantially in the form set out in Schedule B in favour of the Commonwealth and provided a copy of the executed confidentiality undertaking to the Commonwealth;
- e. shall not without the prior written consent of the Commonwealth, disclose or permit any person to disclose any of the Protected Information to any other person (including any its Personnel who are not permitted to receive Protected Information in accordance with clause 4.1d) and the Commonwealth may grant or withhold its consent in its discretion;
- f. where the Commonwealth has granted its consent to any disclosure by the Confidant of the Protected Information to another person under clause 4.1e, shall ensure that any such person to whom it discloses Protected Information has executed:
 - (i) if the person is an organisation, a confidentiality undertaking in substantially the same form as this Deed in favour of the Commonwealth; and

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- (ii) if the person is an individual, a confidentiality undertaking substantially in the form set out in Schedule B,
 - and provided a copy of the executed confidentiality undertaking to the Commonwealth; and
 - g. shall promptly notify the Commonwealth of any unauthorised possession, disclosure or use of the Protected Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use.
- 4.2 The restrictions imposed by this Deed in relation to Protected Information will not apply to the disclosure by the Confidant or its Personnel of any Protected Information to the extent it is required to be disclosed by law or a court order.
- 4.3 To the extent permitted by law or a court order, before making any disclosure in reliance on clause 4.2, the Confidant shall immediately notify the Commonwealth, giving full details of the circumstances of the proposed disclosure and of the information to be disclosed, or if it is not reasonably practical or legally permitted to notify the Commonwealth prior to disclosure, provide that notification occurs as soon as practicable after the disclosure is made.
- 4.4 The Confidant acknowledges that it may be provided with the ability to access Commonwealth-held information (in addition to the Protected Information) in connection with its performance of the Permitted Purposes, including through access to Commonwealth information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant shall not seek to access or use Commonwealth-held information except to the extent strictly required to undertake the Permitted Purposes, and in accordance with the requirements applicable to access to, and dealing with information in, that system.
- 4.5 The Confidant acknowledges that it may be provided with the ability to access Relevant Third Party-held information (in addition to the Protected Information) in connection with its performance of the Permitted Purposes, including through access to that Relevant Third Party's information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant shall not seek to access or use the Relevant Third Party-held information except to the extent strictly required to undertake the Permitted Purposes, and in accordance with the requirements applicable to access to, and dealing with information in, that system.
- 5. CONFIDANT'S REPRESENTATIVES**
- 5.1 The Confidant shall ensure that its Personnel (whether or not still employed or engaged in that capacity) do not do or omit to do anything which, if done or omitted to be done by the Confidant, would be a breach of the Confidant's obligations under this Deed.
- 5.2 The Confidant shall give the Commonwealth all assistance it reasonably requires to take any action or bring any proceedings for breach of the undertaking contained in clause 5.1.
- 6. RETURN OF PROTECTED INFORMATION**
- 6.1 Without limiting Confidant's obligations at law, the Confidant shall deliver to the Commonwealth, or destroy or erase, as required by the Commonwealth, all documents and any other material (including electronically stored or otherwise) in its possession, power or control which contain or relate to the Protected Information.
- 6.2 The Confidant shall ensure that its Personnel and each person to whom it (or its Personnel) has disclosed any Protected Information comply with the requirements of this clause 6 as if personally bound by it.
- 6.3 If the Commonwealth makes a demand under clause 6.1 and the Confidant has placed, or is aware that documents containing the Protected Information are beyond its possession or control, then the Confidant shall provide full particulars of the whereabouts of the documents containing the Protected Information, and the identity of the person in whose custody or control they may reside.

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- 6.4 Return or destruction of any Protected Information does not release the Confidant from its obligations under this Deed.

7. TERMINATION OF RIGHT TO USE INFORMATION

- 7.1 The Commonwealth may, at any time, direct the Confidant to cease to use the Protected Information and to protect and secure that information, and the Confidant shall comply with such directions of the Commonwealth.

8. CONSEQUENCES OF BREACH

- 8.1 Without limiting the Commonwealth's rights under this Deed or otherwise at law, the Confidant agrees that if it fails to comply with its obligations under this Deed (including, without limitation, clauses 4.1c and d) the Commonwealth may, in its discretion, do any one or more of the following:
- a. immediately revoke the Confidant's ability to access the Protected Information or other information held by the Commonwealth, including information which is accessible using the Commonwealth's or a Relevant Third Party's information technology systems;
 - b. terminate for default, or otherwise, any contract or other arrangement with the Confidant in connection with the Permitted Purposes; and
 - c. require the Confidant to take such further steps (including the provision of further undertakings) as the Commonwealth reasonably considers necessary to seek to avoid, or minimise, the impacts on the Commonwealth of the Confidant's breach of this Deed.

9. INDEMNITY

- 9.1 The Confidant indemnifies the Commonwealth, its officers, employees and agents against all liability or loss (including loss of profits) arising directly or indirectly from, and any costs, charges and expenses (including the cost of settling any action) arising or incurred in connection with:
- a. any breach by the Confidant of this Deed; or
 - b. any act or omission by any of the Confidant's Personnel which, if done or omitted to be done by the Confidant, would breach the Confidant's obligations under this Deed.

10. INJUNCTIVE RELIEF

- 10.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Commonwealth for any breach of this Deed and that the Commonwealth is entitled to injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Confidant, in addition to any other remedies available at law or in equity.

11. MARKINGS

- 11.1 In relation to any material of the Commonwealth, a Relevant Third Party and/or a Subcontractor, to which this Deed applies, that has been marked by the Commonwealth, a Relevant Third Party and/or a Subcontractor as containing Protected Information (whether the marking is that the material contains Intellectual Property, Confidential Information and/or security classified information), the Confidant shall ensure that the relevant marking on the Protected Information is maintained.

12. WAIVER

- 12.1 Failure by the Commonwealth to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

FOR OFFICIAL USE ONLY**13. REMEDIES CUMULATIVE**

- 13.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy provided under any other deed or agreement.

14. APPLICABLE LAW

- 14.1 The laws of the Australian Capital Territory shall apply to this Deed. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of this Deed.

15. NOTICES

- 15.1 Unless the contrary intention appears any notice or communication under this Deed shall be effective if it is in writing, signed and delivered as the case may be, at the following address:
- a. [...INSERT COMMONWEALTH REPRESENTATIVE'S POSTAL ADDRESS, FAX NUMBER AND EMAIL ADDRESS...]; or
 - b. [...INSERT CONFIDANT'S REPRESENTATIVE POSTAL ADDRESS, FAX NUMBER AND EMAIL ADDRESS...].
- 15.2 A notice or other communication shall be deemed to have been delivered:
- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another; or
 - b. by 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.

EXECUTED AS A DEED POLL BY (...INSERT NAME OF CONFIDANT...)

(...INSERT CONFIDANT'S EXECUTION CLAUSE...)

In the presence of:

.....
 (signature of witness) (print name of witness) (date)

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SCHEDULE A

CONFIDENTIAL INFORMATION

[...INSERT LIST OF CONFIDENTIAL INFORMATION...]

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

SCHEDULE B

FORM OF DEED OF CONFIDENTIALITY FROM INDIVIDUALS

[...INSERT FORM OF DEED SET OUT IN SCHEDULE 3 OF THIS APPROVED SUBCONTRACTOR
DEED...]

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FOR OFFICIAL USE ONLY

SCHEDULE 3

CONFIDENTIALITY DEED FOR INDIVIDUALS

This Deed Poll is made on (...INSERT DATE...)

By:

(...INSERT NAME AND ADDRESS....) (the 'Confidant')

In favour of:

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

RECITALS:

- A. The Confidant will receive or have access to Protected Information belonging to the Commonwealth, a Relevant Third Party and/or a Subcontractor for use in relation to the Permitted Purposes and which, as the case may be, may include Relevant Third Party Background IP which is provided to the Confidant by the Commonwealth.
- B. The Commonwealth requires, and the Confidant agrees, that it is necessary to take all necessary steps (including the execution of this Deed for the benefit of the Commonwealth) to ensure that the Protected Information is kept confidential, is not disclosed to any party that is not authorised to receive it and is only used for the Permitted Purposes.

OPERATIVE PROVISIONS

1. ACKNOWLEDGEMENT

- 1.1 The Confidant acknowledges the truth and accuracy of the statements in the Recitals in every particular.

2. DEFINITIONS

- 2.1 In the interpretation of this Deed, unless the contrary intention appears:

Additional Restrictions means [...INSERT ANY ADDITIONAL RESTRICTIONS AS MAY BE REQUIRED IN RELATION TO THE PROTECTED INFORMATION UNDER THE CONTRACT...].

Australian Sovereign Submarine Programs means any activity related to any of the Commonwealth's programs for Australian submarines operated by the Royal Australian Navy, including any current or future class of Australian submarine.

Circuit Layout means a circuit layout that is protected under the *Circuit Layouts Act 1989* (Cth) or the corresponding laws of any other jurisdiction.

Confidential Information means information (whether or not owned by the Commonwealth, a Relevant Third Party and/or a Subcontractor) that:

- a. is specifically identified in Schedule A; or
- b. any other information:
 - (i) that is commercially sensitive (not generally known or ascertainable);
 - (ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and

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- (iii) that was provided with an express or implied understanding that it would remain confidential,

but does not include information which:

- c. is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligation;
- d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- e. has been independently developed or acquired by the receiving party.

Contract material means information (other than data or software) reduced to a material form (whether stored electronically or otherwise). Without limiting the information that is contract material, it includes contract status reports, project management plans, earned value management reports, performance management data and contract administration documents.

Copyright means any existing or future copyright as defined under the *copyright act 1968* (cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.

Corporations Act means the *corporations act 2001* (cth).

Future submarine means the submarines to be acquired by the Australian government for service in the Royal Australian Navy under the future submarine program.

Future Submarine Program or **FSP** means the Commonwealth's sea1000 future submarine program from time to time and includes all activities connected with that program, including all elements of the design, development, build, operation, support system, sustainment and disposal of the future submarine during its life of type.

Intellectual Property means all present and future rights conferred by law in or in relation to any of the following:

- a. Copyright;
- b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); or
- c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered.

Naval Group means Naval Group SA, a corporation established and operating under the laws of France and having its registered office at 40-42 Rue du Docteur Finlay, 75015, Paris, France.

Naval Group Australia means the company of that name incorporated under Australian law and having its registered office at Level 2, 1 Richmond Road Keswick SA, 5035.

Patent means the rights and interests in any registered, pending, or restored standard or innovation patent under the *Patents Act 1990* (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.

Permitted Purposes means:

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- a. the purpose of providing [...INSERT RELEVANT GOODS OR SERVICES...] to the Commonwealth solely in relation to the Commonwealth's Future Submarine Program and Australian Sovereign Submarine Programs [...DELETE IF INAPPLICABLE...]; and
- b. any other purpose that may be approved in writing by the Commonwealth from time to time.

Protected Information means information (whether or not owned by the Commonwealth or the Relevant Third Party) that:

- a. comprises Intellectual Property in TD, Software or Contract Material;
- b. is Confidential Information; or
- c. is security classified information,

in relation to the Future Submarine Program or Australian Sovereign Submarine Programs (excluding Intellectual Property and Confidential Information owned by the Confidant).

Registrable Design means a design able to be protected under the *Designs Act 2003* (Cth) or the corresponding laws of any other jurisdiction.

Related Body Corporate has the meaning given by section 9 of the Corporations Act.

Relevant Third Party means Naval Group, Naval Group Australia and any other party nominated in writing by the Commonwealth to the Confidant.

Relevant Third Party Background IP means Intellectual Property in information owned by a Relevant Third Party or any of its Subcontractors that comprises TD, Software or other material.

Software means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result, including using a computer programming language to control a computer or its peripheral devices and includes computer programs, firmware and applications, but excludes Source Code.

Software Design Data means data which describes the internal design and operation of a software program and its interface with the external software and hardware systems in which it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).

Software Update means, in relation to software (including Software Design Data and Source Code) any of the following:

- a. a new release of or change to that software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the software); and
- b. a new version of that software (which is designed to enhance or provide extra functionality to that software).

Source Code means the expression of software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that software.

Subcontractor means any person (other than the Commonwealth) that provides items or services directly or indirectly to a Relevant Third Party.

Technical Data or TD means all technical know-how and information reduced to a material form and includes all data, databases, manuals, handbooks, designs, standards, specifications, design documentation reports, writings, models, sketches, plans, drawings, calculations, training materials, Source Code, Software Design Data, simulations, notes, instructions, test results, software and Software Updates and other items describing or providing information relating to systems or equipment or their operation.

Trade Mark means a trade mark protected under the *Trade Mark Act 1989* (Cth) or corresponding laws of any other jurisdiction.

Working Day means any day other than:

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- c. a Saturday, Sunday or public holiday in Adelaide, Canberra, Paris or other place where work is performed for the Permitted Purpose (and has effect where this Deed requires the doing of an act in one of those places); and
- d. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or from Christmas Day when it falls on a Saturday).

3. INTERPRETATION

3.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this Deed;
- b. the singular includes the plural and vice versa;
- c. a reference to a person includes a body politic, body corporate or a partnership;
- d. 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 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 clause includes a reference to a subclause of that clause;
- g. the word 'includes' in any form is not a word of limitation; and
- h. 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.

4. UNDERTAKINGS OF NON DISCLOSURE

4.1 The Confidant:

- a. acknowledges and agrees that this Deed is for the benefit of the Commonwealth and is directly enforceable by the Commonwealth, even though it is not a party to this Deed;
- b. shall ensure that the Protected Information is kept confidential and secure from disclosure to any person not authorised to receive the Protected Information;
- c. shall only use the Protected Information for the Permitted Purposes and comply with any Additional Restrictions on the use of the Protected Information;
- d. shall not without the prior written consent of the Commonwealth, disclose or permit any person to disclose any of the Protected Information to any other person and the Commonwealth may grant or withhold its consent in its discretion;
- e. where the Commonwealth has granted its consent to any disclosure by the Confidant of the Protected Information to another person under clause 4.1d, shall ensure that any such person to whom it discloses Protected Information has executed:
 - (i) if the person is an individual, a confidentiality undertaking in substantially the same form as this Deed in favour of the Commonwealth; and
 - (ii) if the person is an organisation, a confidentiality undertaking substantially in the form set out in Schedule B,
 and provided a copy of the executed confidentiality undertaking to the Commonwealth; and
- f. shall promptly notify the Commonwealth of any unauthorised possession, disclosure or use of the Protected Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use.

4.2 The restrictions imposed by this Deed in relation to Protected Information will not apply to the disclosure by the Confidant of any Protected Information to the extent it is required to be disclosed by law or a court order.

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- 4.3 To the extent permitted by law or a court order, before making any disclosure in reliance on clause 4.2, the Confidant shall immediately notify the Commonwealth, giving full details of the circumstances of the proposed disclosure and of the information to be disclosed, or if it is not reasonably practical or legally permitted to notify the Commonwealth prior to disclosure, provide that notification occurs as soon as practicable after the disclosure is made.
- 4.4 The Confidant acknowledges that it may be provided with the ability to access Commonwealth-held information (in addition to the Protected Information) in connection with its performance of the Permitted Purposes, including through access to Commonwealth information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant shall not seek to access or use Commonwealth-held information except to the extent strictly required to undertake the Permitted Purposes, and in accordance with the requirements applicable to access to, and dealing with information in, that system.
- 4.5 The Confidant acknowledges that it may be provided with the ability to access Relevant Third Party-held information (in addition to the Protected Information) in connection with its performance of the Permitted Purposes, including through access to that Relevant Third Party's information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant shall not seek to access or use the Relevant Third Party-held information except to the extent strictly required to undertake the Permitted Purposes, and in accordance with the requirements applicable to access to, and dealing with information in, that system.

5. RETURN OF PROTECTED INFORMATION

- 5.1 Without limiting Confidant's obligations at law, the Confidant shall deliver to the Commonwealth, or destroy or erase, as required by the Commonwealth, all documents and any other material (including electronically stored or otherwise) in its possession, power or control which contain or relate to the Protected Information.
- 5.2 If the Commonwealth makes a demand under clause 5.1 and the Confidant has placed, or is aware that documents containing the Protected Information are beyond its possession or control, then the Confidant shall provide full particulars of the whereabouts of the documents containing the Protected Information, and the identity of the person in whose custody or control they may reside.
- 5.3 Return or destruction of any Protected Information does not release the Confidant from its obligations under this Deed.

6. TERMINATION OF RIGHT TO USE INFORMATION

- 6.1 The Commonwealth may, at any time, direct the Confidant to cease to use the Protected Information and to protect and secure that information, and the Confidant shall comply with such directions of the Commonwealth.

7. CONSEQUENCES OF BREACH

- 7.1 Without limiting the Commonwealth's rights under this Deed or otherwise at law, the Confidant agrees that if it fails to comply with its obligations under this Deed (including, without limitation, clauses 4.1c and d) the Commonwealth may, in its discretion, do any one or more of the following:
- a. immediately revoke the Confidant's ability to access the Protected Information or other information held by the Commonwealth, including information which is accessible using the Commonwealth's or a Relevant Third Party's information technology systems;
 - b. terminate for default, or otherwise, any contract or other arrangement with the Confidant in connection with the Permitted Purposes; and
 - c. require the Confidant to take such further steps (including the provision of further undertakings) as the Commonwealth reasonably considers necessary to seek to avoid, or minimise, the impacts on the Commonwealth of the Confidant's breach of this Deed.

FOR OFFICIAL USE ONLY**8. INJUNCTIVE RELIEF**

- 8.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Commonwealth for any breach of this Deed and that the Commonwealth is entitled to injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Confidant, in addition to any other remedies available at law or in equity.

9. WAIVER

- 9.1 Failure by the Commonwealth to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

10. REMEDIES CUMULATIVE

- 10.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy provided under any other deed or agreement.

11. MARKINGS

- 11.1 In relation to any material of the Commonwealth, a Relevant Third Party and/or a Subcontractor, to which this Deed applies, that has been marked by the Commonwealth, a Relevant Third Party and/or a Subcontractor as containing Protected Information (whether the marking is that the material contains Intellectual Property, Confidential Information and/or security classified information), the Confidant shall ensure that the relevant marking on the Protected Information is maintained.

12. APPLICABLE LAW

- 12.1 The laws of the Australian Capital Territory shall apply to this Deed. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of this Deed.

13. NOTICES

- 13.1 Unless the contrary intention appears any notice or communication under this Deed shall be effective if it is in writing, signed and delivered as the case may be, at the following address:
- a. [...INSERT COMMONWEALTH REPRESENTATIVE'S POSTAL ADDRESS, FAX NUMBER AND EMAIL ADDRESS...]; or
 - b. [...INSERT CONFIDANT'S REPRESENTATIVE POSTAL ADDRESS, FAX NUMBER AND EMAIL ADDRESS...].
- 13.2 A notice or other communication shall be deemed to have been delivered:
- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another; or
 - b. by 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.

EXECUTED AS A DEED POLL BY (...INSERT NAME OF CONFIDANT...)

(...INSERT CONFIDANT'S EXECUTION CLAUSE...)

In the presence of:

.....
(signature of witness)

.....
(print name of witness)

.....
(date)

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SCHEDULE A

CONFIDENTIAL INFORMATION

[...INSERT LIST OF CONFIDENTIAL INFORMATION...]

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

SCHEDULE B

FORM OF DEED OF CONFIDENTIALITY FROM ORGANISATIONS

[...INSERT FORM OF DEED SET OUT IN SCHEDULE 2 OF THIS APPROVED SUBCONTRACTOR
DEED...]

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