



**Australian Government**

---

**Department of Defence**

# **ASDEFCON**

## **(Loan of Defence Asset)**

**Incorporating:**

**General Conditions of Deed**

## Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

## Disclaimer

While every effort has been made to ensure this publication is accurate and up-to-date, any external user should exercise independent skill and judgement before relying on it. Further, this publication is not a substitute for independent professional advice and users external to Defence should obtain appropriate advice relevant to their particular circumstances.

Defence does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this publication and nothing in this publication should be considered a representation by the Commonwealth. In publishing this information, Defence does not warrant that the information will be used in any particular procurement process. Defence is not liable for any loss resulting from any action taken or reliance made on any information or material in this publication (including, without limitation, third party information).

## Copyright

Commonwealth of Australia 2015

With the exception of the Commonwealth Coat of Arms, this publication is provided under a [Creative Commons Attribution 3.0 Australia](#) licence.



The details of the relevant licence conditions are available on the Creative Commons website (accessible using the links provided) as is the [full legal code for the CC BY 3.0 AU licence](#).

This publication should be attributed as *ASDEFCON (Loan of Defence Asset) V1.1*

## Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the [It's an Honour](#) website.

## Feedback

All feedback on this publication and suggestions for improvement should be sent to:

[procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au).

## Amendment Record

Version	Release and Currency	Description of Amendments
1.1	June 2015	DPPI Incorporation

The Deed made between the Commonwealth of Australia represented by the Department of Defence A.B.N 68 706 814 312 (the "Commonwealth") and (...INSERT COMPANY NAME, COMPANY A.C.N/A.R.B.N AND A.B.N AS APPLICABLE...) and having its registered office at (...INSERT COMPANY'S REGISTERED OFFICE...) (the "Borrower").

**RECITALS**

- A. The Borrower has requested, and the Commonwealth has agreed to provide, the Equipment for the Loan Use on the following terms and conditions.
- B. The parties acknowledge that the Equipment is subject to first call by the Commonwealth of Australia for a Defence Use.

**THE PARTIES AGREE AS FOLLOWS:**

**GENERAL CONDITIONS FOR DEED OF LOAN OF DEFENCE EQUIPMENT**  
**TABLE OF CONTENTS**

- 1 DEED FRAMEWORK .....1**
  - 1.1 Definitions (Core) .....1
  - 1.2 Interpretation (Core).....2
  - 1.3 Commencement of Operation (Core) .....2
  - 1.4 Entire Agreement (Core).....2
- 2 ROLES AND RESPONSIBILITIES .....2**
  - 2.1 Commonwealth Representative (Core) .....2
  - 2.2 Notices (Core) .....3
- 3 LOAN OF EQUIPMENT .....3**
  - 3.1 Loan (Core) .....3
  - 3.2 Taxes and Duties (Core).....3
- 4 PICK UP AND OPERATION.....3**
  - 4.1 Pick Up of Equipment (Core) .....3
  - 4.2 Operation of Equipment (Core).....4
  - 4.3 Problematic Substances (Optional) .....4
  - 4.4 Problematic Sources (Optional).....4
  - 4.5 Asbestos Containing Material (Optional) .....5
- 5 USE AND MAINTENANCE.....5**
  - 5.1 Use (Core).....5
  - 5.2 Maintenance (Core) .....5
  - 5.3 Damage (Core) .....6
- 6 SECURITY AND VALUE .....6**
  - 6.1 Security Deposit (Core).....6
  - 6.2 Agreed Value (Core).....6
- 7 RETURN OF EQUIPMENT .....6**
  - 7.1 Return and same condition (Core).....6
- 8 PROPERTY IN EQUIPMENT.....7**
  - 8.1 Property and title (Core).....7
- 9 INSURANCE AND LIABILITY .....7**
  - 9.1 Indemnity (Core) .....7
  - 9.2 Insurance (Core) .....7
- 10 EXCLUSION OF WARRANTIES.....8**
  - 10.1 Fitness for Purpose (Core).....8
- 11 DEED MANAGEMENT .....8**
  - 11.1 Change to the Deed (Core).....8
  - 11.2 Waiver (Core).....8
  - 11.3 Assignment and Novation (Core).....8
  - 11.4 Negation of Employment and Agency (Core) .....8

- 11.5 Commonwealth Access (Core) .....8
- 11.6 Security .....9
- 12 POLICY AND LAW .....9**
- 12.1 Applicable Law (Core).....9
- 12.2 Policy Requirements (Core).....9
- 12.3 Severability (Core) .....9
- 12.4 Work Health and Safety (Core).....9
- 13 DISPUTES AND TERMINATION .....10**
- 13.1 Resolution of Disputes (Core).....10
- 13.2 Borrower Default (Core).....10
- 13.3 Reversion of Equipment to Commonwealth (Core) .....11
- 13.4 Survivorship (Core) .....11
- 13.5 Termination For Convenience (Core) .....11

**ATTACHMENTS**

- A. Deed Particulars (Core) .....A-1

## 1 DEED FRAMEWORK

### 1.1 Definitions (Core)

---

1.1.1 In this Deed unless the contrary intention appears:

**Option: For use only if clause 4.5 (Asbestos Containing Material) is used.**

"Asbestos Containing Material" or "ACM" has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

"Attachment" means an attachment to the Deed listed in the table of contents.

"Commonwealth Representative" means the person holding or performing the office of [...INSERT OFFICE...] or any other person appointed pursuant to the Deed as the Commonwealth Representative.

"Deed" means the conditions of deed, the Attachments, and any document expressly incorporated as part of the Deed.

"Defence Purpose" means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peacekeeping and emergency aid to the civil community, and purposes that are necessary or incidental to any of those purposes.

"Defence Use" means use by the Commonwealth for Defence Purposes, and use by third party contractors for the purpose of providing, or offering to provide, goods or services to the Commonwealth for Defence Purposes.

"DPPM" means the Defence Procurement Policy Manual.

"Effective Date" means the date on which the Deed is signed by the parties, or if signed on separate days, the date of the last signature.

"Equipment" means the equipment to be provided hereunder and specified in Attachment A.

"Loan Period" means the period specified in Attachment A.

"Loan Use" means the uses specified in Attachment A.

"Location for Use" means the location specified in Attachment A.

"Notifiable Incident" has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth).

"Pick Up Location" means the location for pick up of the Equipment by the Borrower specified in Attachment A.

"Pick Up Time" means the time and date specified in Attachment A that the Equipment will be made available by the Commonwealth for pick up by the Borrower at the Pick Up Location.

**Option: For use only if clause 4.3 (Problematic Substances) is used.**

"Problematic Substance" means:

- a. any substance identified as having ozone depleting potential, or any gas identified as a Synthetic Greenhouse Gas, in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act;
- b. any dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (extant edition and as amended); or
- c. any hazardous chemicals as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

**Option: For use only if clause 4.4 (Problematic Sources) is used.**

"Problematic Sources" means a source of ionising or non-ionising radiation, from a material or apparatus, that is required to be licenced with the Australian Radiation Protection and Nuclear Safety Authority.

“WHS Legislation” means:

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

“Working Day” in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

## **1.2 Interpretation (Core)**

---

1.2.1 In this Deed unless the contrary intention appears:

- a. the singular includes the plural and vice-versa;
- b. a reference to one gender includes the other;
- c. a reference to a person includes a body politic, body corporate or a partnership;
- d. headings in the Deed are for the purpose of convenient reference only and do not form part of the Deed;
- e. where the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- 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 unless otherwise stated;
- 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 Deed.

## **1.3 Commencement of Operation (Core)**

---

1.3.1 The Deed commences on the Effective Date.

## **1.4 Entire Agreement (Core)**

---

1.4.1 This Deed constitutes the parties’ entire agreement in relation to the subject matter and supersedes all prior representations, communications, Deeds, statement and understandings, whether oral or in writing.

## **2 ROLES AND RESPONSIBILITIES**

### **2.1 Commonwealth Representative (Core)**

---

2.1.1 The Commonwealth Representative is responsible for administering the Deed on behalf of the Commonwealth. The Borrower shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the administration of the Deed. If given orally a direction shall be confirmed in writing within 14 days. Unless otherwise specified in the Deed, the Commonwealth Representative shall have no authority to waive any provision of, or release the Borrower from, its obligations under the Deed except in accordance with clause 11.1.

## **2.2 Notices (Core)**

---

- 2.2.1 Unless the contrary intention appears, any notice or communication under the Deed shall be effective if it is in writing, signed and delivered to the Commonwealth Representative or Borrower's representative, as the case may be, at the following address:
- [... INSERT COMMONWEALTH REPRESENTATIVE'S POSTAL ADDRESS AND FAX NUMBER...]
- (... INSERT BORROWER REPRESENTATIVE'S POSTAL ADDRESS AND FAX NUMBER...)
- 2.2.2 A notice or communication shall be deemed to have been delivered:
- a. by pre-paid post, in 3 Working Days if sent within Australia and in 8 Working Days if sent by air mail from one country to another; or
  - b. by facsimile, at the time recorded by the transmitting machine, unless within one Working Day the sender is informed that the transmission was received in incomplete or garbled form.

## **3 LOAN OF EQUIPMENT**

### **3.1 Loan (Core)**

---

- 3.1.1 The Commonwealth agrees to make available on loan to the Borrower, the Equipment for the Loan Use.
- 3.1.2 Subject to clause 11.1 the Equipment will be provided to the Borrower for the Loan Period.

### **3.2 Taxes and Duties (Core)**

---

- 3.2.1 Unless otherwise agreed by the parties, each party will be responsible for its own costs and expenses incurred in connection with the entry into and operation of this Deed.
- 3.2.2 To the extent that any supply made by the Commonwealth under or in connection with this Deed is a taxable supply the GST exclusive consideration otherwise to be paid or provided for that taxable supply will be increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid, upon presentation of a valid tax invoice, at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.
- 3.2.3 If the Commonwealth makes, or is assessed by the Australian Taxation Office (ATO) as having made, a taxable supply to the Borrower under or in connection with the Deed, the Commonwealth shall be entitled to recover from the Borrower upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 3.2.4 Any amount of GST to be paid by the Borrower under clause 3.2.3 shall be a debt recoverable by the Commonwealth.
- 3.2.5 Where the supplier incorrectly states the GST amount payable, or paid, by the recipient on an otherwise valid tax invoice, the supplier shall issue to the recipient a valid adjustment note in accordance with the GST Act.
- 3.2.6 For the purposes of this clause 3.2, "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "adjustment note", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act.

## **4 PICK UP AND OPERATION**

### **4.1 Pick Up of Equipment (Core)**

---

- 4.1.1 The Borrower shall pick up the Equipment from the Pick Up Location at the Pick Up Time.
- 4.1.2 Unless otherwise agreed by the parties in writing, the Borrower shall be responsible for the safe packing and transportation of the Equipment from the Pick Up Location to the Location for Use.
- 4.1.3 The Borrower will bear all costs of preparation, safe package and transportation in connection with the pick up, transit and delivery of the Equipment.



**Note to drafters: Drafters will need to determine and insert, having regard to the disposal requirements, an appropriate time period for when the Hirer is to provide details of its proposed arrangements for the pickup of the Equipment.**

**Where the Pick Up Location will be on Commonwealth premises (i.e. a Defence base/facility), drafters will need to insert the additional words in square brackets in clause 4.1.4 below.**

- 4.1.4 Without limiting clause 4.1.2, the Borrower shall provide details of its proposed arrangements for the pickup of the Equipment from the Pick Up Location and transportation to the Location for Use to the Commonwealth within [...INSERT PERIOD...] Working Days prior to the pickup of the Equipment [...and shall comply with any directions given by the Commonwealth Representative in relation to the pickup or transportation of the Equipment from the Pick Up Location...].

#### **4.2 Operation of Equipment (Core)**

---

- 4.2.1 The Borrower shall, at all times operate the Equipment in accordance with:
- any guidelines, regulations or requirements issued by the Commonwealth;
  - all requirements and obligations in relation to work health and safety (including the applicable WHS Legislation), or other regulations which are applicable to the Equipment or its operation; and
  - the specifications or requirements of the manufacturer of the Equipment.
- 4.2.2 Without limiting clause 4.2.1, the Borrower shall ensure that the Equipment is, at all times, during the Loan Period, operated in a professional, proper and safe manner and so as to avoid injury or damage to the Equipment and any persons operating, using or handling the Equipment.
- 4.2.3 The Borrower shall keep a daily running record of all actual use of the Equipment.
- 4.2.4 The Borrower shall forward a written report of all use of the Equipment within fourteen days after the end of March, June, September and December throughout the Loan Period.

#### **4.3 Problematic Substances (Optional)**

---

**Option: For use only when the item being loaned contains or may contain Problematic Substances (as defined at clause 1.1.1).**

- 4.3.1 The Borrower acknowledges that the Equipment may contain Problematic Substances.
- 4.3.2 On or before the Pick Up Time, the Commonwealth shall provide to the Borrower the Problematic Substance register for the Equipment. No representation, condition or warranty is provided by the Commonwealth that the register is accurate or complete or identifies all Problematic Substances on or in the Equipment. The Borrower assumes risk and responsibility for verifying and locating any Problematic Substances on or in the Equipment and for ensuring no damage, loss or injury is sustained (including to workers, other persons or the environment) by the presence of Problematic Substances on or in the Equipment.

#### **4.4 Problematic Sources (Optional)**

---

**Option: For use only when the item being loaned contains or may contain Problematic Sources (as defined at clause 1.1.1).**

- 4.4.1 The Borrower acknowledges that the Equipment may contain Problematic Sources.
- 4.4.2 On or before the Pick Up Time, the Commonwealth shall provide to the Borrower the Problematic Source register for the Equipment. No representation, condition or warranty is provided by the Commonwealth that the register is accurate or complete or identifies all Problematic Sources on or in the Equipment. The Borrower assumes risk and responsibility for verifying and locating any Problematic Sources on or in the Equipment and for ensuring no damage, loss or injury is sustained (including to workers, other persons or the environment) by the presence of Problematic Sources on or in the Equipment.

#### 4.5 Asbestos Containing Material (Optional)

**Option: For use only when the item being loaned contains or may contain Asbestos Containing Material (as defined at clause 1.1.1).**

- 4.5.1 The Borrower acknowledges that the Equipment may contain ACM.
- 4.5.2 On or before the Pick Up Time, the Commonwealth shall provide to the Borrower the ACM register for the Equipment. No representation, condition or warranty is provided by the Commonwealth that the register is accurate or complete or identifies all ACM on or in the Equipment. The Borrower assumes risk and responsibility for verifying and locating any ACM on or in the Equipment and for ensuring no damage, loss or injury is sustained (including to workers, other persons or the environment) by the presence of ACM on or in the Equipment.

### 5 USE AND MAINTENANCE

**Note to drafters: There may be circumstances where Defence Personnel will be required to operate or maintain the Equipment for the Borrower or train the Borrower in its use (e.g. because of the type of Equipment being used, or situations where specialist technicians need to be mandated for certain equipment). Seek specialist advice if additional clauses are required.**

#### 5.1 Use (Core)

- 5.1.1 Subject to clause 11.1 and clause 12.4.5, the Borrower shall be entitled to use the Equipment during the Loan Period only for the Loan Use.
- 5.1.2 Unless otherwise approved in writing by the Commonwealth, the Borrower shall ensure that the Equipment is used only at the Location for Use.
- 5.1.3 The Borrower shall ensure that the Equipment is not in any way damaged or destroyed as a result of its use for the Loan Use.
- 5.1.4 The Borrower acknowledges that the Equipment may contain risks and hazards to health and safety. The Commonwealth shall provide the Borrower with a written notice of the condition of the Equipment (including any faults identified in the Equipment by the Commonwealth) and any risks and hazards present on or in the Equipment on or before the Pick Up Time, to the extent necessary to comply with any obligations under the WHS Legislation. No representation, condition or warranty is provided by the Commonwealth that the notice is accurate or complete or identifies all faults, hazards or risks to health and safety on or in the Equipment.
- 5.1.5 Upon collection of the Equipment, the Borrower assumes risk and responsibility for verifying and locating any faults, risks and hazards on or in the Equipment and for ensuring no damage, loss or injury is sustained (including to workers who use the Equipment, other persons or the environment) by the presence of risks and hazards on or in the Equipment.
- 5.1.6 Prior to the collection of the Equipment, the Borrower shall obtain and maintain in force any necessary licences, accreditations, permits, registrations, regulatory approvals or other documented authority (however described) required by law and necessary for the use of the Equipment and the performance of its obligations under this Deed.

#### 5.2 Maintenance (Core)

- 5.2.1 The Borrower shall:
- a. store and use the Equipment in a responsible competent, proper and skilful manner and comply with all instructions given by the Commonwealth regarding the manner in which this should be done;
  - b. permit the Commonwealth to affix plates or marks to the Equipment to identify it as Commonwealth property and shall not allow any such plate or mark to be removed, obliterated, defaced or covered up;
  - c. take all reasonable steps to ensure the proper protection, safe custody and security of the Equipment;
  - d. not make any alteration, addition or modification to any of the Equipment except as authorised in advance in writing by the Commonwealth;

- e. at the Borrower's expense, carry out a physical stocktaking at no less than six (6) monthly intervals of each item of the Equipment and within 2 Working Days of completing the stocktake, notify the Commonwealth in writing of any discrepancies in the stocktake and the physical and operational condition of each item of Equipment; and
- f. maintain the Equipment in good and serviceable mechanical repair, working order and condition.

5.2.2 The Borrower acknowledges and agrees that it shall be solely liable and responsible for all costs and expenses arising out of or in connection with the performance of all activities necessary to comply with its obligations under clause 5.2.1 and otherwise under this Deed.

5.2.3 The Borrower shall keep detailed and accurate records of all maintenance, services and repairs affected to the Equipment while in the Borrower's custody, care or control. Such records shall be made available for inspection by the Commonwealth, if so required by the Commonwealth in accordance with clause 11.5.1. Upon return of the Equipment in accordance with clause 7.1.1, the Borrower shall deliver to the Commonwealth a copy of all maintenance, service and repair records kept in accordance with this clause 5.2.3.

### **5.3 Damage (Core)**

---

5.3.1 The Borrower shall immediately advise the Commonwealth in writing, of any loss of, or damage to any part of the Equipment.

5.3.2 The Borrower shall comply with all directions given by the Commonwealth in response to a notice given by the Borrower under clause 5.3.1.

## **6 SECURITY AND VALUE**

### **6.1 Security Deposit (Core)**

---

6.1.1 The Borrower shall, on or before the Effective Date, pay to the Commonwealth a security deposit of [...INSERT VALUE...] ("Security Deposit").

6.1.2 Subject to clause 6.1.3, the Security Deposit (or part thereof) shall be refunded to the Borrower within a reasonable period after the expiration or termination of the Deed and the reversion of the Equipment to the Commonwealth in accordance with clause 7.

6.1.3 The Commonwealth shall be entitled, in addition to any other legal rights, from time to time to deduct any amounts payable or owing to the Commonwealth from the Borrower from the Security Deposit.

### **6.2 Agreed Value (Core)**

---

6.2.1 The Commonwealth and the Borrower agree that the value of the Equipment is specified in Attachment A.

6.2.2 The value of the Equipment specified in Attachment A represents the Commonwealth's best estimate at the Effective Date of the unit price for replacement Equipment that may be charged by a supplier. This value does not include all costs, losses and damages that may be suffered by the Commonwealth if the Equipment were lost, destroyed or damaged.

## **7 RETURN OF EQUIPMENT**

***Note to drafters: There may be situations where use of the Equipment generates materials or waste which Defence may wish to have returned, or requires the Borrower to dispose of safely. Seek specialist advice if additional clauses are required.***

### **7.1 Return and same condition (Core)**

---

7.1.1 On the last day of the Loan Period the Borrower shall arrange for, and bear all costs in connection with the preparation, packaging, loading, transportation and insurance for the return, and delivery of the Equipment, to the Commonwealth at such address notified by the Commonwealth from time to time.

7.1.2 The Equipment must be returned to the Commonwealth on the last day of the Loan Period in the same condition (including its form and functionality) as when it was provided to the Borrower.

- 7.1.3 If in the Commonwealth's opinion, the Equipment does not meet the requirements of clause 7.1.2, the Commonwealth will notify the Borrower and may make whatever arrangements (including entering into contracts with third party repairers or suppliers of the Equipment) as the Commonwealth, in its absolute discretion, considers necessary to restore the Equipment to the same condition as when it was provided to the Borrower.
- 7.1.4 The Borrower shall be solely responsible for all costs and expenses incurred by the Commonwealth in restoring the Equipment in accordance with clause 7.1.3. All such amounts may be recovered by the Commonwealth as a debt owing to the Commonwealth from the Borrower.

**Note to drafters: Where the Equipment will be returned to the Commonwealth on Commonwealth premises (i.e. a Defence base/facility), drafters will need to insert the additional words in square brackets in clause 7.1.5 below.**

- 7.1.5 Without limiting the other provisions in this clause 7.1, the Borrower shall provide details of its proposed arrangements for the return of the Equipment to the Commonwealth at least 5 days prior to the return of the Equipment [...and shall comply with any directions given by the Commonwealth Representative in relation to the return or transportation of the Equipment...].
- 7.1.6 Without limiting clause 7.1.2, the Borrower shall upon return of the Equipment provide to the Commonwealth a written notice of the condition of the Equipment (including any faults identified in the Equipment by the Borrower not remedied at the time of its return) and any risks and hazards to health and safety present on or in the Equipment.

## **8 PROPERTY IN EQUIPMENT**

### **8.1 Property and title (Core)**

---

- 8.1.1 The Equipment shall be, and remain the property of the Commonwealth notwithstanding any mode or degree of installing or affixing the Equipment at the Borrower's premises.
- 8.1.2 Nothing in this Deed is taken to vest title to the Equipment in the Borrower.
- 8.1.3 No part of the Equipment shall be removed from the Location for Use nor substantial alteration to its location be made without the prior written consent of the Commonwealth.
- 8.1.4 The provision of the Equipment by the Commonwealth does not convey any licence to use any patents or patentable inventions which are disclosed by the Equipment.

## **9 INSURANCE AND LIABILITY**

### **9.1 Indemnity (Core)**

---

- 9.1.1 The Borrower shall indemnify the Commonwealth, its officers, employees and agents against all liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and expenses suffered or incurred by the Commonwealth arising out of or as a consequence of the Borrower's (or the Borrower's officers', employees', agents' or contractors') use, possession, maintenance or control of the Equipment under or in connection with this Deed. The Borrower's liability to indemnify the Commonwealth shall be reduced proportionately to the extent that a negligent act or unlawful act or omission of the Commonwealth caused or contributed to the relevant liability, loss, damage, costs or expenses.

### **9.2 Insurance (Core)**

---

**Note to drafters: The DPPM provides information on insurance requirements.**

- 9.2.1 Before taking delivery of the Equipment, the Borrower must:
- a. be fully insured or registered with the appropriate statutory authority against liability for death or injury to persons employed by the Borrower, including liability under statute and common law;
  - b. obtain a suitable insurance policy to cover itself, its employees and agents against any liability in respect of any damage or loss to the Equipment arising out of or in any way connected with the negligent acts or omissions of itself, its employees and agents; and

- c. effect public liability insurance for the amount of cover that a prudent operator in the Hirer's industry would consider normal and adequate when undertaking activities of the same or similar type as the Hire Use,  
and produce satisfactory evidence of such insurance to the Commonwealth Representative.

9.2.2 The Borrower shall maintain the insurance or registration required under this clause 9 for the duration of the Deed and for the obligations that survive expiry or termination of the Deed, shall ensure that cover is maintained for the period that those obligations survive expiry or termination or for a period as otherwise specified by the Commonwealth. The Borrower shall, on request produce satisfactory evidence of the insurance to the Commonwealth Representative.

## **10 EXCLUSION OF WARRANTIES**

### **10.1 Fitness for Purpose (Core)**

---

10.1.1 To the extent permitted by law, the Commonwealth does not warrant or represent that the Equipment supplied to the Borrower under this Deed is, or will be at any time, fit or suitable for any particular purpose or use.

## **11 DEED MANAGEMENT**

### **11.1 Change to the Deed (Core)**

---

11.1.1 Either party may propose a change to the Deed. The Deed may only be varied in writing and signed by both parties.

11.1.2 The Commonwealth Representative may issue an amendment to the Deed to incorporate any changes that have taken effect under clause 11.1.1. The amendment does not affect the legal status of the Deed change as determined under clause 11.1.1.

11.1.3 The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the variation is in accordance with clause 11.1.

### **11.2 Waiver (Core)**

---

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

### **11.3 Assignment and Novation (Core)**

---

11.3.1 Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Deed.

11.3.2 Where the Borrower proposes to enter into any arrangement which will require the novation of the Deed, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.

### **11.4 Negation of Employment and Agency (Core)**

---

11.4.1 The Borrower shall not represent itself, and shall ensure that its officers, employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Commonwealth.

11.4.2 The Borrower, its officers, employees, agents and subcontractors shall not by virtue of the Deed be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth.

### **11.5 Commonwealth Access (Core)**

---

11.5.1 During the performance of the Deed, the Borrower shall permit the Commonwealth Representative or any person authorised by the Commonwealth Representative, access to the premises where the Equipment is being stored to:

- a. affix plates or marks to the Equipment;
- b. examine or test any of the Equipment;

- c. observe the manner in which the Equipment is being used;
- d. review and make copies of any records for the use of the Equipment or purposes of the Deed; or
- e. monitor the Borrower's work health and safety and environmental compliance in connection with the use of the Equipment and the performance of its obligations under this Deed.

11.5.2 The Borrower shall assemble and make available the Equipment and records for inspection by the Commonwealth, if so required by the Commonwealth.

11.5.3 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Borrower safety and security requirements or codes of behaviour for the premises.

## **11.6 Security**

---

11.6.1 The Commonwealth shall notify the Borrower of any security or other requirements or restrictions applicable to the Equipment, or the Borrower's use of the Equipment, from time to time. The Borrower shall comply with all such requirements notified to it by the Commonwealth.

## **12 POLICY AND LAW**

### **12.1 Applicable Law (Core)**

---

12.1.1 The laws of the [...INSERT RELEVANT STATE OR TERRITORY...] shall apply to the Deed. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Deed.

### **12.2 Policy Requirements (Core)**

---

12.2.1 The Borrower shall comply with and require its officers, employees, agents and subcontractors to comply with the following Commonwealth policies of general application relevant or applicable to the Deed:

- a. Defence Equity and Diversity policy as detailed in DI(G) PERS 35-3;
- b. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
- c. Information Privacy Principles and National Privacy Principles of the *Privacy Act* 1988;
- d. Hazardous Substances policy as detailed in the DPPM;
- e. Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in the DPPM;
- f. Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- g. Work Health and Safety policy as detailed in the DPPM; and
- h. Defence Environmental policy as detailed in the DPPM.

### **12.3 Severability (Core)**

---

12.3.1 If any part of the Deed is or becomes illegal, invalid or unenforceable, the legality, validity or unenforceability of the remainder of the Deed shall not be affected and shall be read as if that part had been severed.

### **12.4 Work Health and Safety (Core)**

---

12.4.1 The Borrower shall:

- a. comply with, and must ensure that its officers, employees, agents and subcontractors (as relevant) comply with, the applicable WHS Legislation in connection with the use of the Equipment and the performance of its obligations under this Deed; and
- b. where applicable, comply with, and shall ensure that its subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth, the Borrower or the subcontractors (as the case may be) and any other person who, concurrently with

the Commonwealth, the Borrower or the subcontractor (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.

- 12.4.2 Without limiting the Borrower's obligations under this Deed or at law, the Borrower shall, in connection with the use of the Equipment and the performance of its obligations under this Deed, provide, to the Commonwealth within 10 Working Days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth any information or copies of documentation requested by the Commonwealth and held by the Borrower to enable the Commonwealth to comply with its obligations under the WHS Legislation.
- 12.4.3 If a Notifiable Incident occurs in connection with the use of the Equipment or work carried out under this Deed (including on Commonwealth premises or involving Commonwealth personnel), the Borrower shall:
- a. immediately report the incident to the Commonwealth;
  - b. promptly provide the Commonwealth with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
  - c. provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AE527 (as amended or replaced from time to time)); and
  - d. provide other reasonable assistance to the Commonwealth to undertake mandatory incident reporting.
- 12.4.4 To the extent not inconsistent with the express requirements of this Deed, the Commonwealth Representative may direct the Borrower to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with applicable legislation relating to work health and safety including the WHS Legislation in connection with the Equipment or in relation to the performance of this Deed. The Borrower shall comply with the direction unless the Borrower demonstrates to the reasonable satisfaction of the Commonwealth Representative that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 12.4.5 The Borrower shall not use the Equipment other than for a purpose for which the Equipment was designed, manufactured or constructed.

## **13 DISPUTES AND TERMINATION**

### **13.1 Resolution of Disputes (Core)**

---

- 13.1.1 If a dispute arising between the Commonwealth and the Borrower cannot be settled by negotiation within [...INSERT PERIOD...] days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- 13.1.2 The parties shall at all times during the dispute continue to fulfil their obligations under the Deed.

### **13.2 Borrower Default (Core)**

---

- 13.2.1 The Commonwealth may, in addition to any other right or remedy it may have, by notice in writing to the Borrower, immediately terminate the Deed or reduce the scope of the Deed in the event that the Borrower:
- a. has failed to satisfy any of its obligations under this Deed and the failure is not capable of remedy;
  - b. vacates premises where the Equipment remains;
  - c. is, in the Commonwealth's opinion, allowing the Equipment to be handled, operated, stored or maintained in a manner which may result in loss, damage, injury or destruction of the Equipment, any third party property or any person;
  - d. becomes bankrupt or insolvent, becomes subject to any form of administration or assigns its rights other than in accordance with the Deed;

- e. assigns this Deed in whole or any part or parts with the possession of the Equipment without consent of the Commonwealth;
- f. does not advise the Commonwealth in detail of any and each loss of, or damage to, any of the Equipment within 14 days of that damage or loss of Equipment occurring;
- g. fails to take action to remedy a default by the Borrower of another obligation to be performed or observed under the Deed within 14 days of being given notice by the Commonwealth Representative to do so or, where action is taken within 15 days, the Borrower fails to remedy the default within the period specified in the notice; or
- h. breaches any of its obligations under clause 12.4.

13.2.2 If the Deed is terminated under this clause or otherwise:

- a. the parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination; and
- b. rights to recover damages, including full contractual damages, shall not be affected.

### **13.3 Reversion of Equipment to Commonwealth (Core)**

---

13.3.1 Without limiting the Commonwealth's rights under the Deed, upon the expiration of the Loan Period, or termination of this Deed, (whichever is earlier) the right to possession of the Equipment shall revert immediately to the Commonwealth.

13.3.2 Upon the expiration of the Loan Period, or termination of this Deed (whichever is the earlier), the Borrower shall deliver the Equipment to the Commonwealth in accordance with clause 7.1. If the Borrower fails to deliver the Equipment, the Commonwealth may repossess the Equipment, and shall for that purpose, be entitled to enter any premises where the Equipment may be and transport it to premises owned by the Commonwealth.

13.3.3 All costs of repossession shall be a debt due from the Borrower to the Commonwealth.

### **13.4 Survivorship (Core)**

---

13.4.1 Any provision of the Deed which expressly or by implication from its nature is intended to survive the termination or expiration of the Deed and any rights arising on termination or expiration shall survive, including Intellectual Property, reversion of Equipment to the Commonwealth, and any warranties, guarantees, indemnities or financial and performance securities given under the Deed.

### **13.5 Termination For Convenience (Core)**

---

13.5.1 In addition to any other rights it has under the Deed, the Commonwealth may at any time terminate the Deed or reduced the scope of the Deed by notifying the Borrower in writing.

13.5.2 If the Commonwealth issues a notice under clause 13.5.1, the Borrower must immediately make the Equipment available at the Location for Use for collection by the Commonwealth. The Borrower shall ensure that the Equipment is made available in the same condition (form and functionality included) as when it was provided to the Borrower. The Commonwealth shall bear the costs of collecting and transporting the Equipment from the Location for Use in such circumstances.

13.5.3 The Borrower acknowledge that it has no claims, and releases the Commonwealth from all claims, associated with a termination for convenience by the Commonwealth pursuant to this clause 13.5.1.



EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED for and on behalf of the  
THE COMMONWEALTH OF AUSTRALIA

-----  
(signature) (print name and position) (date)

In the presence of:

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

SIGNED, SEALED AND DELIVERED for and on behalf of  
THE BORROWER

**Note to drafters: Appropriate execution clauses, and instructions on their use are detailed in the 'Guide to Executing Agreements', found in the Procurement and Contracting Policy and Practice intranet page under the ASDEFCON and Contracting Initiatives section at: <http://intranet.defence.gov.au/dmoweb/sites/PP/ComWeb.asp?page=72671>**

(... INSERT APPROPRIATE EXECUTION CLAUSE...)

[Specify Company Name and ACN/ABN/ARBN]

-----  
(signature) (print name) (date)  
Director/Secretary

-----  
(signature) (print name) (date)  
Director

**ATTACHMENT A  
PARTICULARS OF LOAN**

**Note to Drafters: below are two different examples of the structure of the Deed Particulars. The appropriate format to be used will depend on the Equipment being loaned from Defence. For Equipment being loaned for the same period of time, Option A should be used. If there are several different items of Equipment, each to be loaned for different periods of time, Option B should be used.**

**Option A: Where the Equipment is at an overall value and loaned for a certain period of time.**

- 1. DESCRIPTION OF EQUIPMENT**
- 1.1 [...INSERT DESCRIPTION OF EQUIPMENT...include serial numbers as appropriate]
- 2. LOAN PERIOD**
- 2.1 [...INSERT PERIOD OF LOAN...]
- 3. AGREED VALUE OF EQUIPMENT**
- 3.1 [...INSERT AGREED VALUE OF EQUIPMENT...]

**Option B: Where there are different items of Equipment to be loaned for different periods of time, the following table is an example of the format which may be used.**

Description Of Equipment	Loan Period	Agreed Value of Equipment

**Note to Drafters: Details relating to the timing and method of delivery should be specified. The clauses included below are example only and should be modified.**

- 4. PICK UP LOCATION**
- 4.1 [...INSERT DETAILS OF PICK UP LOCATION...]
- 5. PICK UP TIME**
- [...INSERT DETAILS OF PICK UP TIME AND DATE...]
- 6. LOCATION FOR USE**
- 6.1 [...INSERT DETAILS IN ACCORDANCE WITH CLAUSES 4.1.1, 5.1.2 AND 8.1.3...]
- 7. RETURN LOCATION**

**Note to drafters: If the Return Location is known prior to Deed Signature and is not likely to change, it may be inserted below.**

- 7.1 The Commonwealth shall notify the Borrower of the Return Location in accordance with clause 7.

**8. LOAN USE**

**Note to drafters: Ensure that any restrictions on the permitted uses of the Equipment are included below. Clause 5.1 requires that the Equipment is used only as specified below.**

- 8.1 [...INSERT DETAILS OF USE OF EQUIPMENT BY BORROWER...]