



**Australian Government**  
**Department of Defence**  
Capability Acquisition and  
Sustainment Group

# ASDEFCON Technical Data and Intellectual Property Framework



- The new TDIP framework is...
  - **Collaborative**
    - Lead by technical stakeholders with support from commercial.
  - **Streamlined**
    - Improves IP management practices
  - **Commercial**
    - Provides a basis for concrete and constructive negotiations between Defence and Industry




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# ASDEFCON Technical Data and Intellectual Property Framework

## Session 1 Overview / Key Concepts



## **ASDEFCON SM: Former Approach**

- 
- Insufficient focus on TD as capability enabler
  - Overly broad IP licences
  - Inadequately developed IP Plans
  - Practical complexity in identifying / managing IP categories
  - Inadequate recognition of Software
  - Uncertainty regarding Third Party IP

## Objectives of New Approach

Balancing Defence and Industry interests

- Ensure appropriate balance between Defence IP needs and protection of Industry's interests
- 

Importance of TD

- Better reflecting TD's importance and its relationship with IP
- 

Improved negotiation outcomes

- Streamlining negotiation of IP and TD provisions (by facilitating a better understanding of Req'mts and motivations of Defence and Industry)
- 

Improving IP / TD management practices

- Enhancing the IP and TD management practices of Defence and Industry

## What is Technical Data, Software and Contract Material

### TECHNICAL DATA

Technical / scientific data, know-how or info reduced to a material form in relation to the Materiel System.

**Example:**

- Operating & Maintenance Manuals
- User Guides, Handbooks
- Databases, Data, Calculations
- Specifications, Standards

**Includes: Source Code  
(previously captured under  
Software)**

### SOFTWARE

Computer code comprising a set of instructions / statements used by a computer to bring about a certain result.

**Example:**

- Application Software
- Firmware
- Web-based applications
- Compilers, assemblers
- Operating systems
- Run-time environments
- Debuggers and editors
- Configuration Mgt tools
- Database Mgt systems

### CONTRACT MATERIAL

Information other than TD / Software reduced to a material form provided / required to be provided to CoA under or in connection with the Contract.

**Example:**

- Management plans
- Contractor performance reports
- Management information
- S&Q Services Quotes
- Contract Change Proposals

## Why the focus on Technical Data?

TD is a fundamental resource for the acquisition and sustainment of a Materiel System

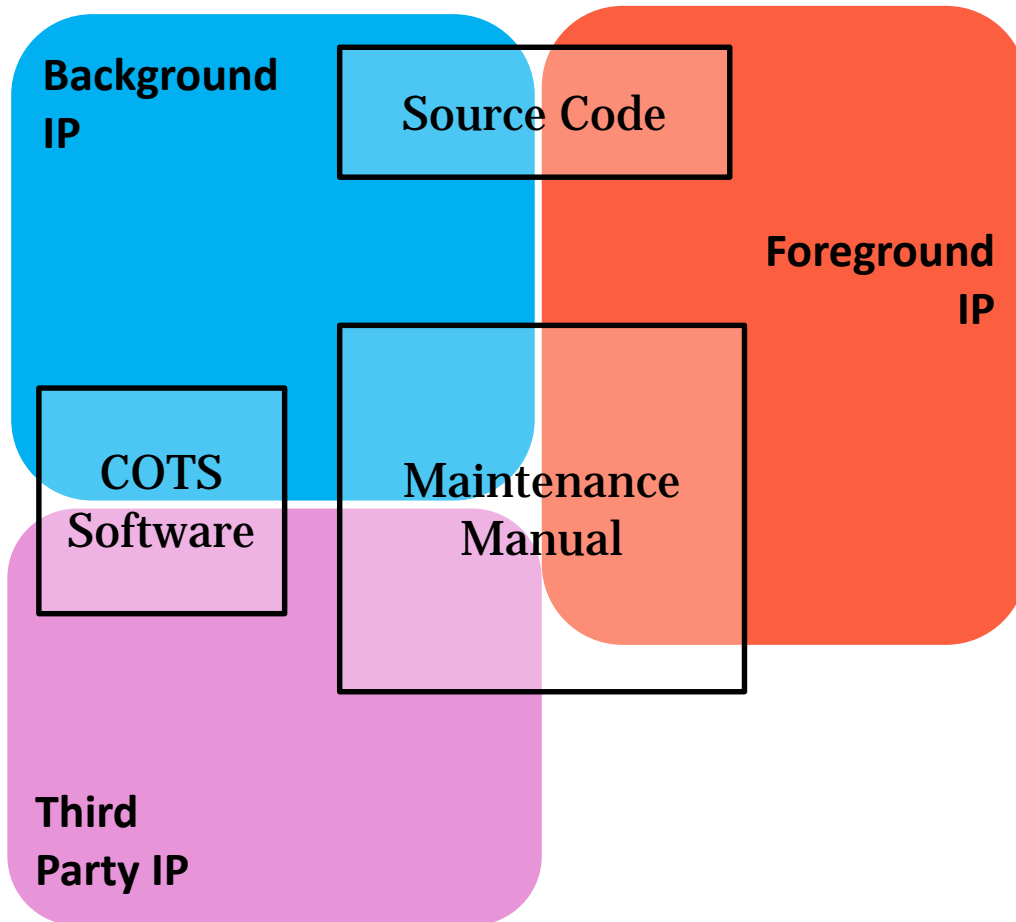
Required to establish and maintain technical integrity, configuration control, logistic support, sustainability and availability

Sufficient (but not excessive) TD will minimise Life Cycle Cost (LCC)

Effective TD Management is required to achieve best whole of life cost

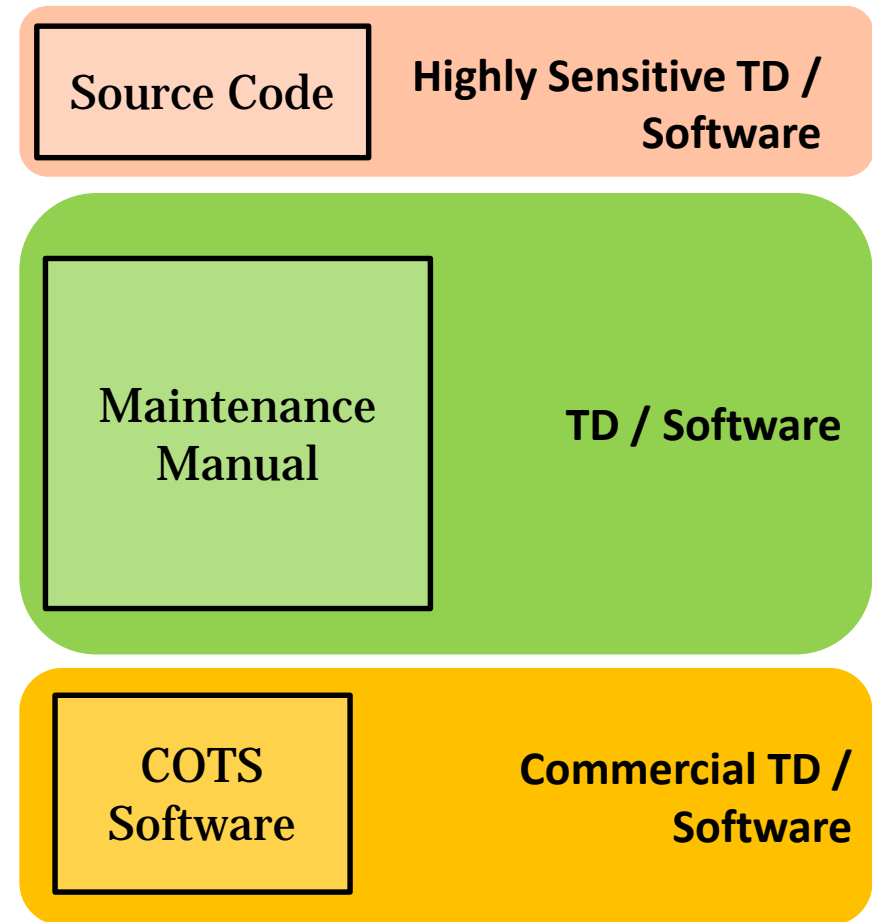
## Former Approach

Rights based on vague / broad IP concepts



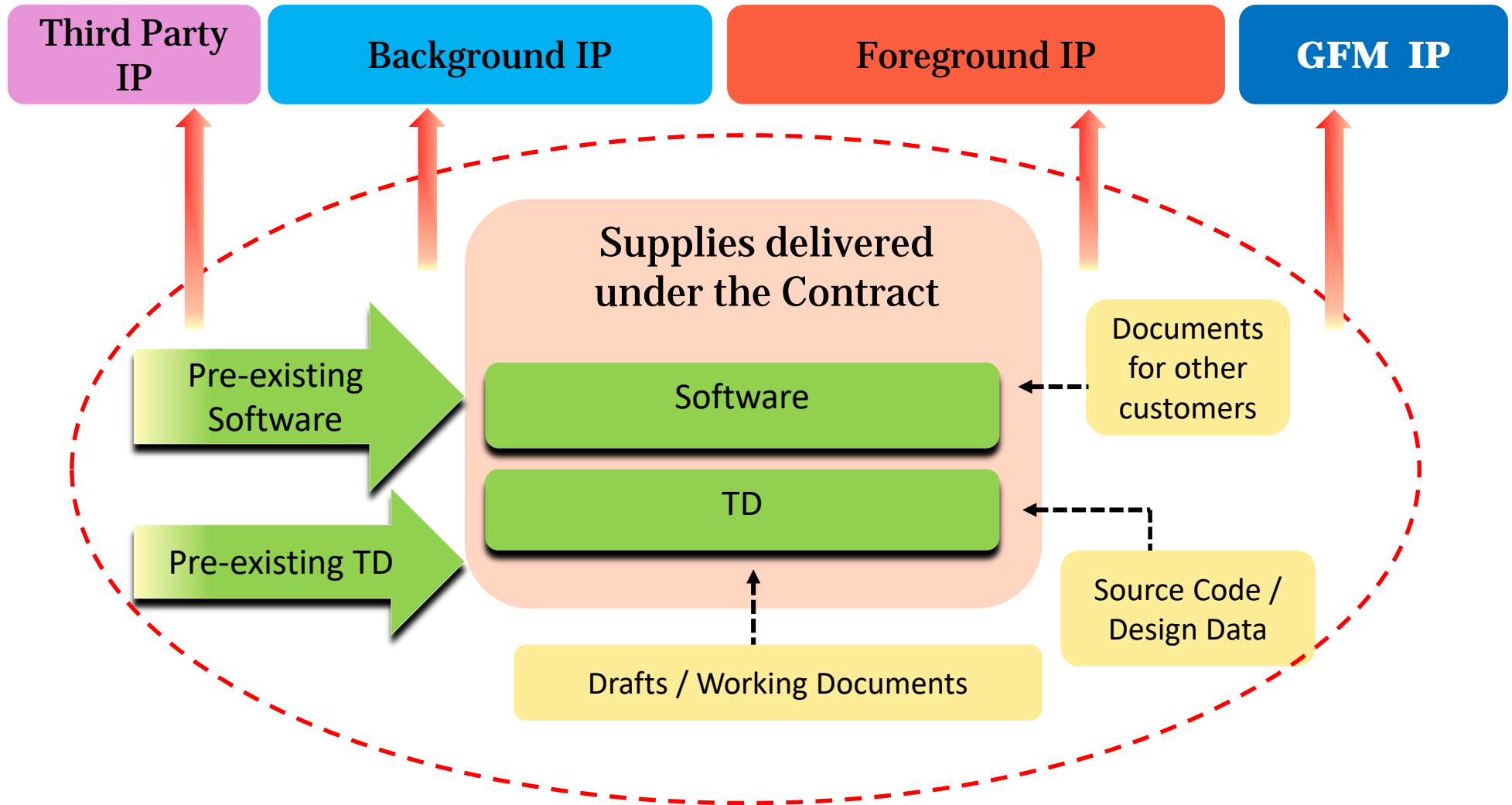
## New Approach

Rights based on categories of TD / Software

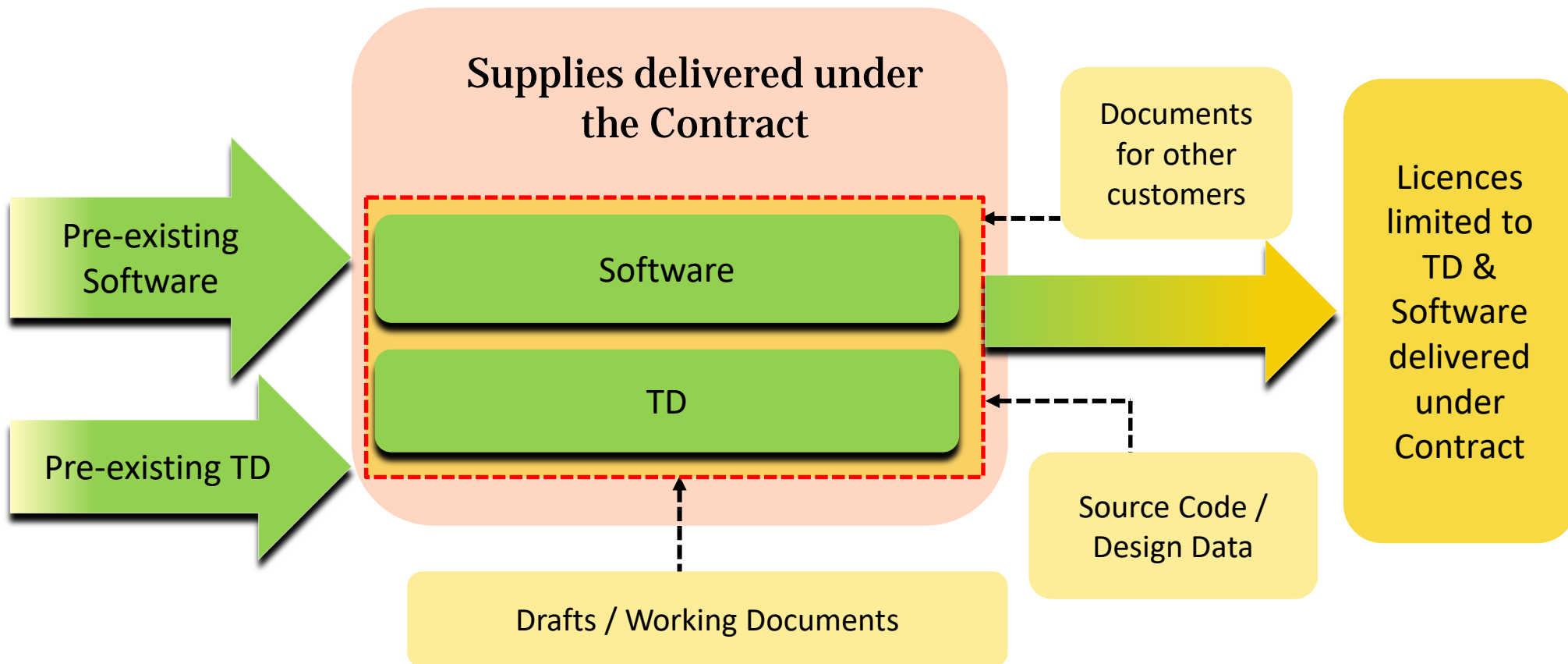




## Former Approach: Primary focus was IP



## New Approach: Focus on TD / Software that's Delivered



## New Approach: Licensing and Ownership

### Licensing

- Focus on TD / Software capability enablers
- Targeted licences : TD / Software 'delivered under Contract'

### Ownership

- TD / Software created under contract IP owned by Contractor
- Cth can elect to own IP in certain circumstances (eg national security)

### Right to 'Use'

- Broad Cth licence to use, reproduce, modify TD / Software for Defence Purposes
- "above the line" contractors licence to use, reproduce, modify TD / Software

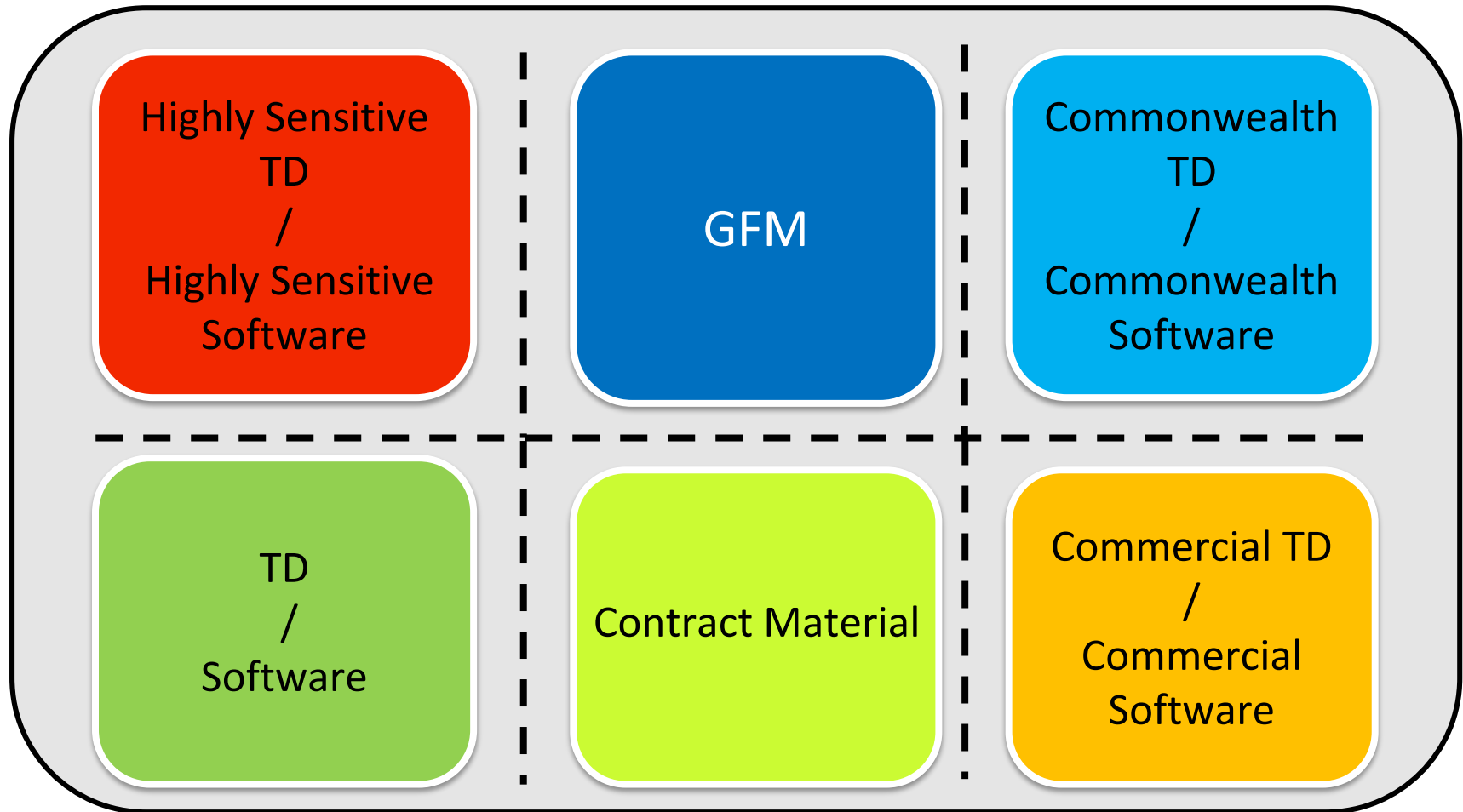
### Right to sublicense

- Cth can sublicense to different third parties for different purposes
- Broad rights to sublicense in respect of "default purposes"
- Sublicensing for other purposes may be subject to restrictions

### Commercial TD / Software

- COTS / MOTS - TD and Software
- Contractor obtains licences on 'best commercial terms'

## Categories: TD / Software / Contract Material / GFM



**MUTUALLY EXCLUSIVE**

## Former Approach

Cth or Contractor  
Ownership

Foreground, Background  
Third Party IP

Rights based on IP Categories

Broad licence of all IP relating  
to the Supplies

IP Plan / IP Schedule

IP Deeds: all Approved  
Subcontractors

## New Approach

Contractor  
Ownership

TD / Software Categories

Rights based on  
TD / Software Categories

Licence to TD/Software  
delivered under Contract

TD & Software Rights Schedule

IP Deeds: identified Approved  
Subcontractors only



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# ASDEFCON Technical Data and Intellectual Property Framework

**Session 1**

**Importance of TD/ Software**



## Overview

- IP, Technical Data and Software
- Requirements
- Process
- Products of Process
  - Master Technical Data Index
  - Software List
- Links within ASDEFCON
  - Technical Data and Software Rights Schedule

**TD  
Software**



**IP**

*“delivered or  
required to be delivered”*

*technical data  
and software  
rights*



# Capability Life Cycle

## Project Execution Strategy

**PES**

**Strategy  
and  
Concepts**

**Risk Mitigation  
and  
Requirements**

**Acquisition**

**In Service  
and  
Disposal**

# Key Requirements Documents

**OCD**

**FPS**

**SOW**

# Technical Data Management

**Identify Data Requirements**



**Data Acquisition**

**Acquire or Create Data**



**Verify/Validate and Accept Data**



**Store, Maintain and Control Data**

**Data Use and Management**

**Use, Distribute and Exchange Data**

**Archive or Dispose of Data**

# Technical Data Requirements Analysis

System

Activities

Technical Data

**TD**

Rights

Format

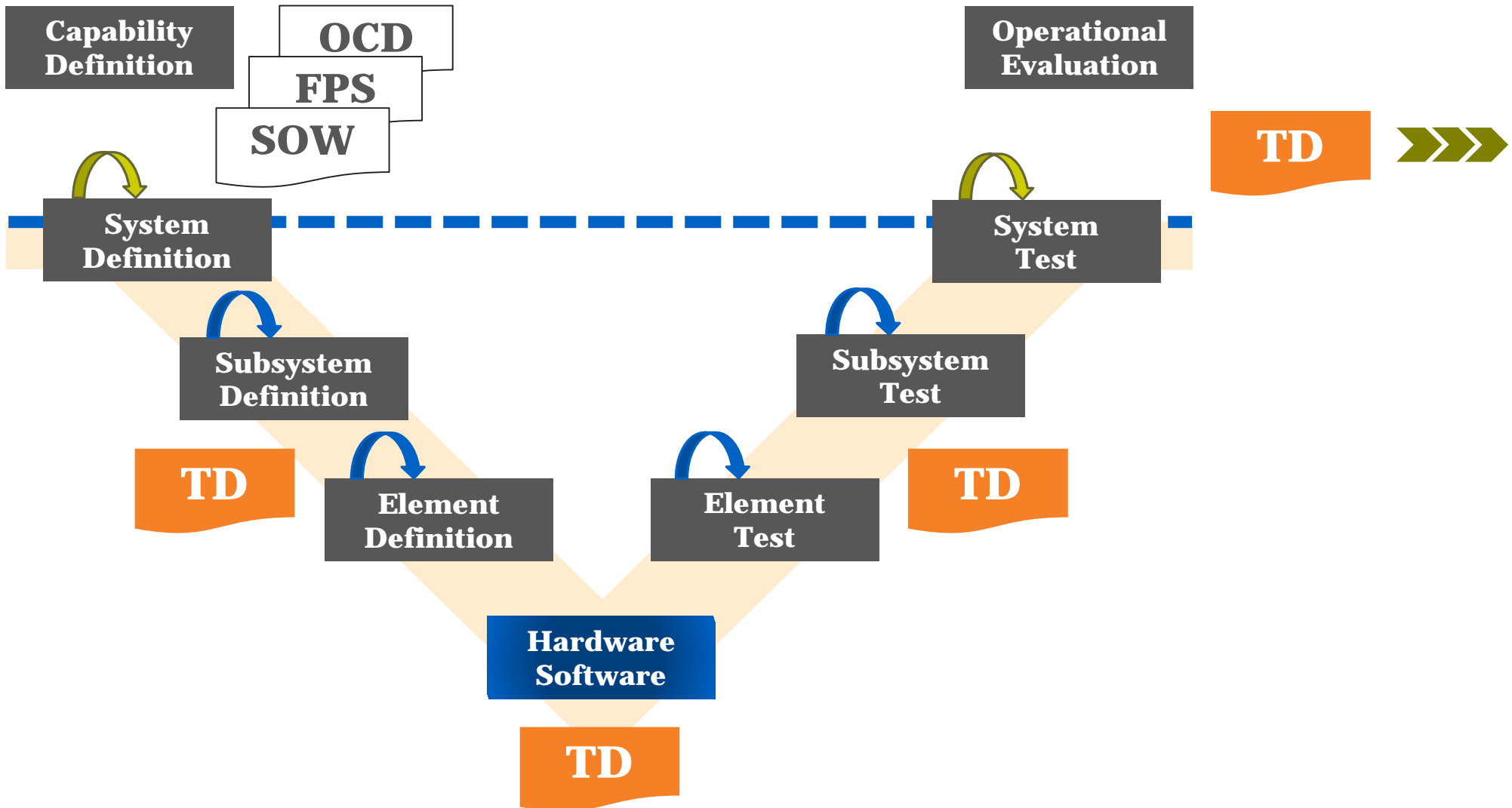
Purposes

**IP**

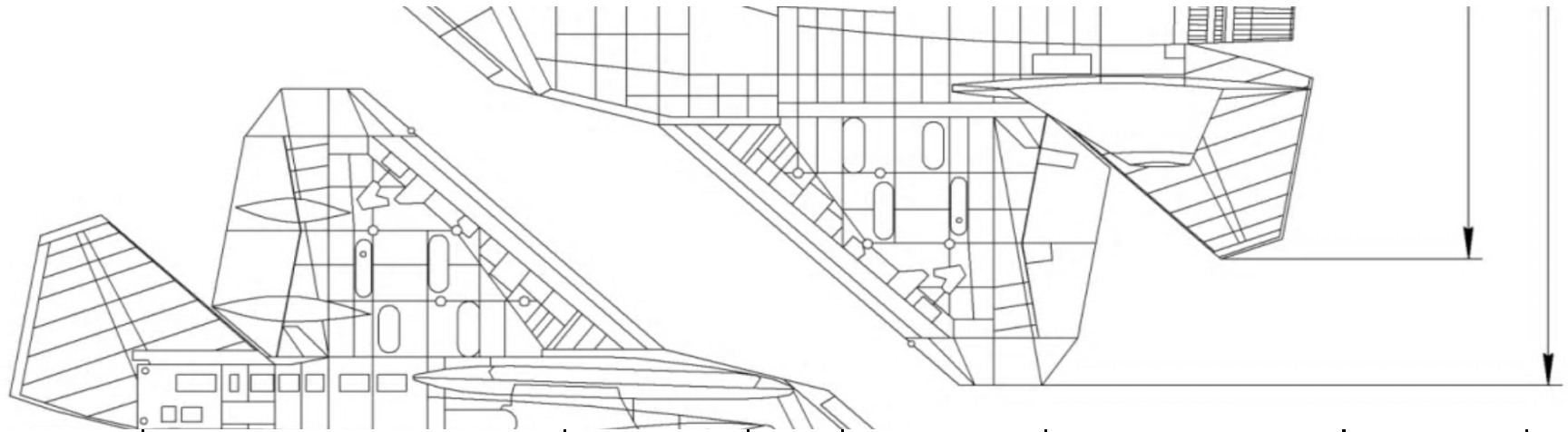
Source

Restrictions

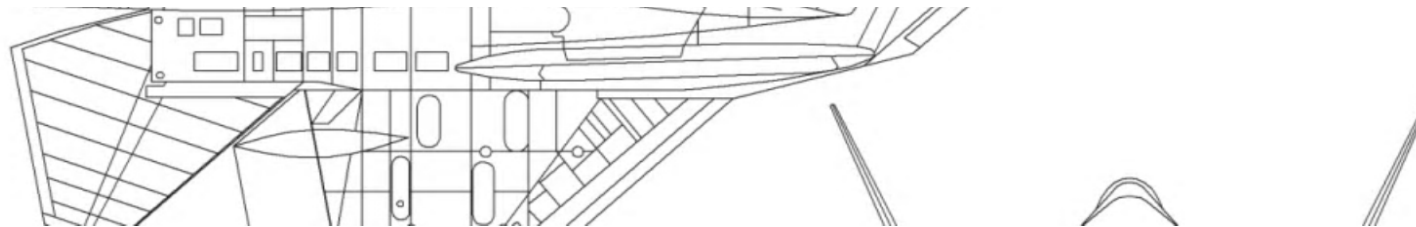
# Systems Engineering Process



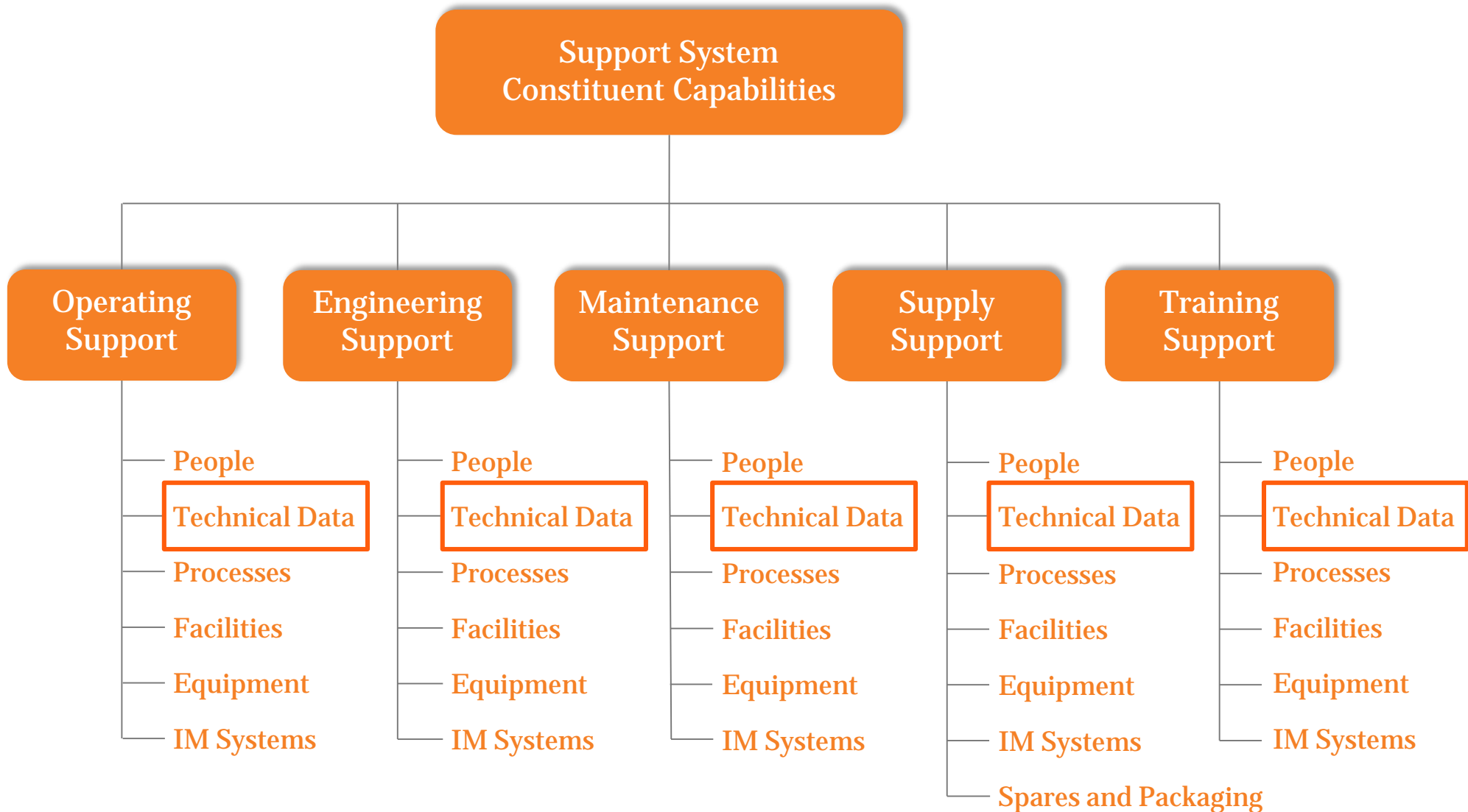
# Acquisition and Support Technical Data



ENG-710	Engineering Drawings	4.5.4	a	Draft	DDR-40	1H, 1S
			b	Final	PCA-20	1H, 1S

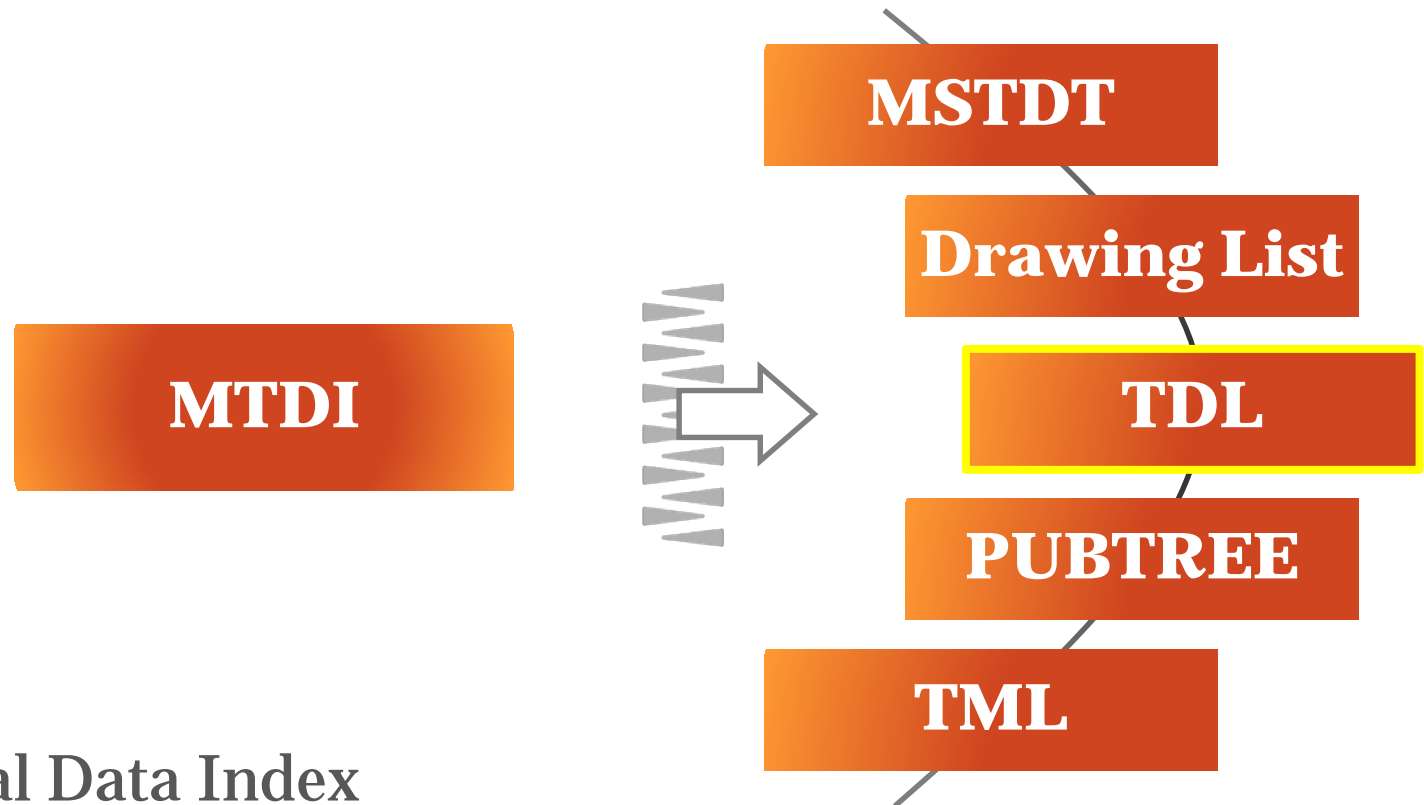


# Support System



## Technical Data List

- The complete list of technical data required to enable the Support System Functional Baseline to be met





### Technical Data

- **Implementation**

- create, develop or acquire the technical data in accordance with the Approved TDP
- deliver the technical data in accordance with the Approved TDL

## Hierarchical Process

PMP

SEMP

ISP

## Software

SWMP

SWSP

## Technical Data

TDP

## Products of the Process

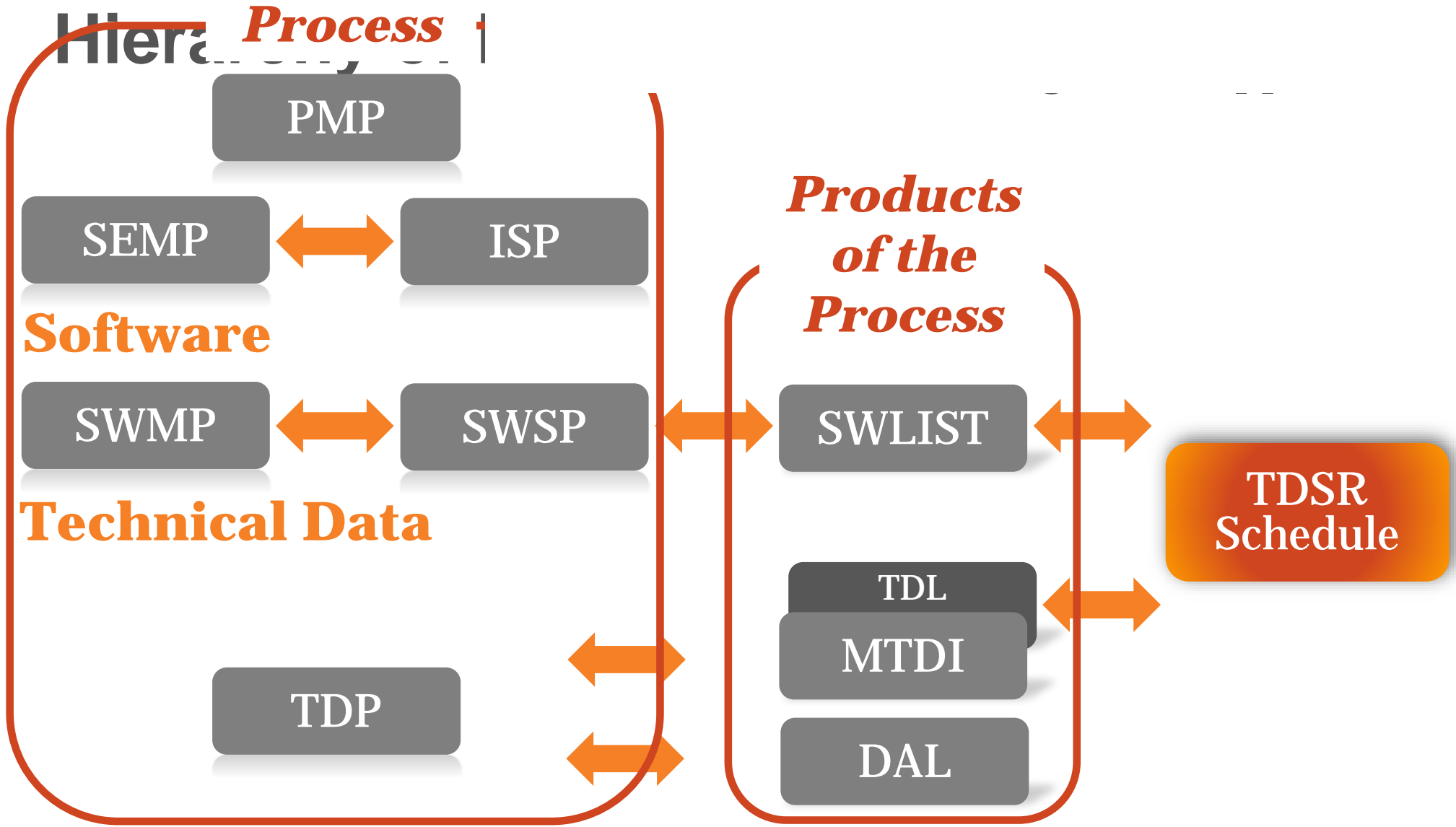
SWLIST

TDL

MTDI

DAL

TDSR  
Schedule





# Differences between the Templates

Support  
Support Short

**SM**

## **Strategic Materiel**

large scale design, development

**SPT**

**CM2**

## **Complex Materiel (Volume 2)**

major components exist but  
required to integrate these or  
components or interfaces

**SPTS**

**CM1**

## **Complex Materiel (Volume 1)**

no significant design and development

## **ASDEFCON Statements of Work**

- Mr Roger Mohr  
Director  
ASDEFCON SOW Policy

## **Technical Data and Software**

- Mr Paul Steinback  
Deputy Director  
Engineering and Technical Management Control



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# ASDEFCON Technical Data and Intellectual Property Framework

## Session 2 Ownership and Licensing Regime



# Strategic Materiel Table of Contents

Clauses 5.2 – 5.6 cover the five different categories of TD/Software

Contract material is a 'sixth' category of material (not TD/Software)

Clauses 5.8 – 5.11 contain provisions that apply to all categories

The restrictions schedule (TDSRS) gets its own subclause

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# Ownership and Licensing regime

## Ownership of IP created under Contract

### Default Position

#### Owned by Contractor

Highly Sensitive TD  
/  
Highly Sensitive Software

TD  
/  
Software

Contract Material

GFM  
(specified - Contractor owned)

All other GFM

### Exceptions

Commonwealth TD  
/  
Commonwealth Software

Owned by the Cth

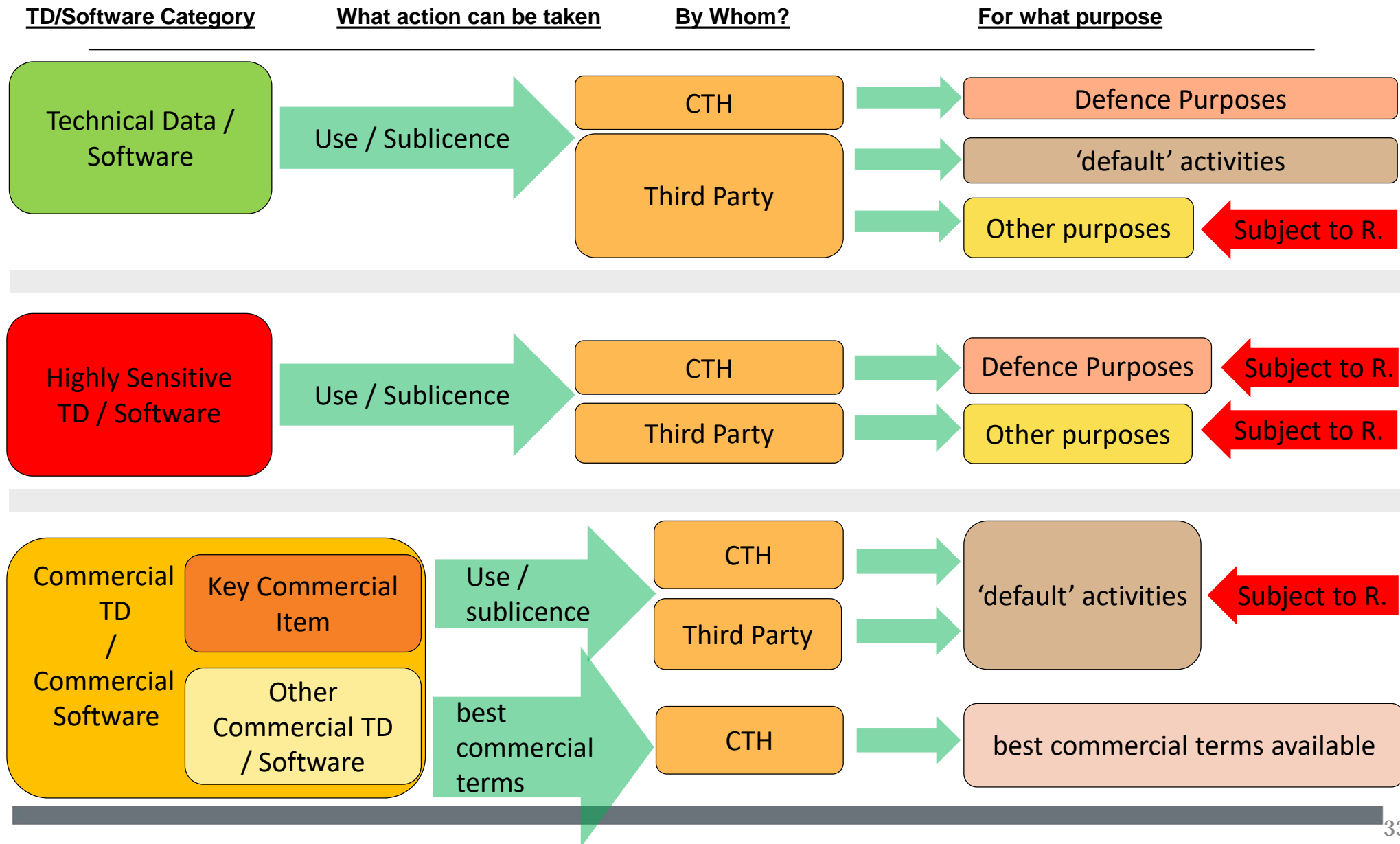
### Ownership not assigned

Commercial TD  
/  
Commercial Software

Owned by Contractor / other parties



# Ownership and Licensing regime



# Ownership and Licensing regime

TD/Software Category

What action can be taken

By Whom?

For what purpose

Contract Material

Use / Sublicence

CTH

Third Party

Defence Purposes

Other purposes

Subject to R.

Commonwealth  
TD / Software

Use / sublicence

Contractor

Subcontractor

Contract obligations

Perform its obligations  
under the Subcontract

Subject to R.

Subject to R.

GFM  
(modifications  
owned by the Cth)

Use / sublicence

Contractor

Subcontractor

Contract obligations

Perform its obligations  
under the Subcontract

Subject to R.

Subject to R.

## **Rights to Use and Sublicense**

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### **Licence**

- Non-exclusive licence for TD, Software or Contract Material
- Worldwide and perpetual
- No additional payment required (e.g. Royalty)
- Cannot be revoked
- Does not grant a right for the Cth to Commercialise

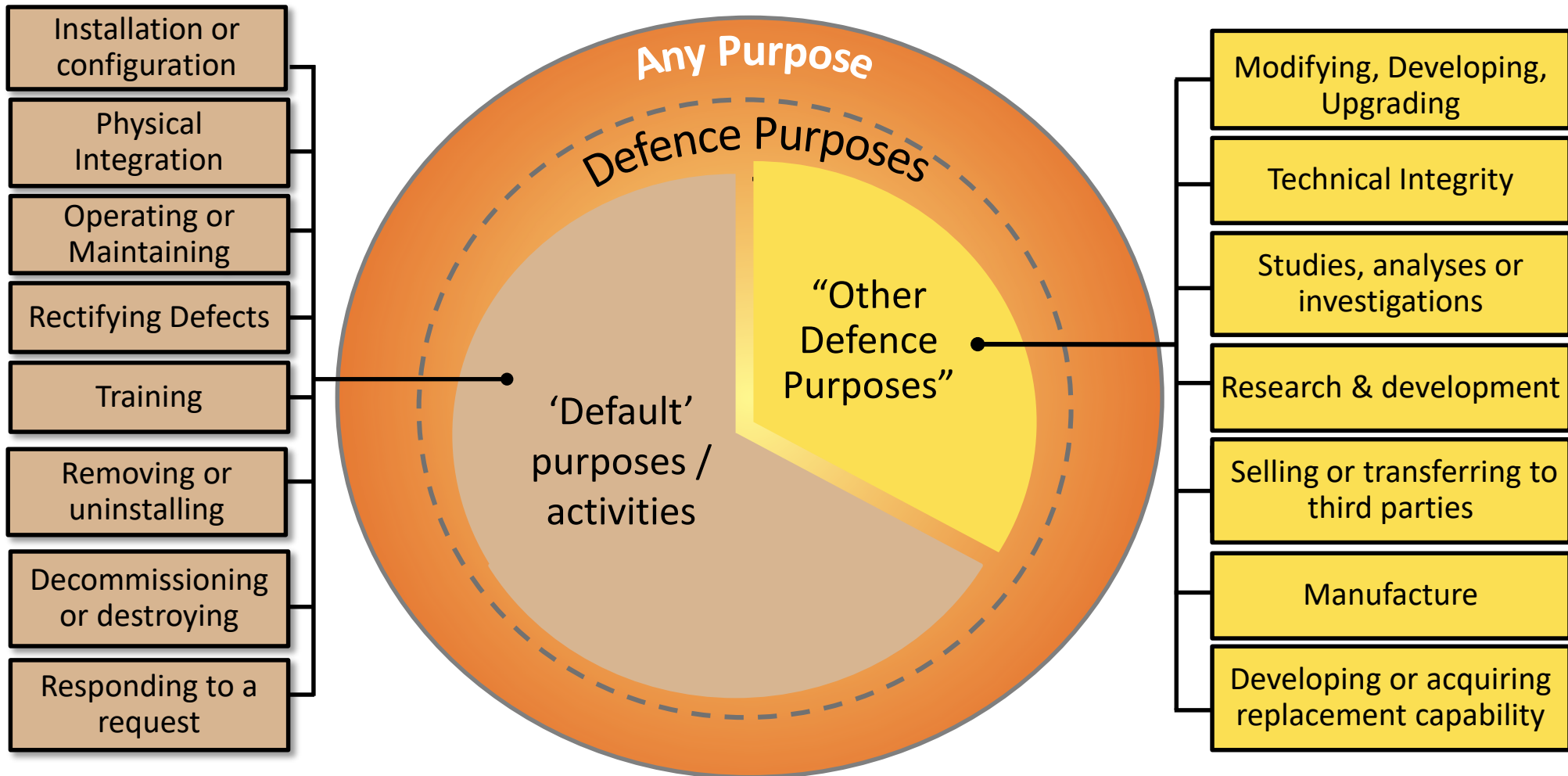
### **Sublicence**

- Cth can only sublicense on terms that comply with the requirements of the sublicensing restrictions

### **Use**

- use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence / sublicense
- disclose, transmit and communicate the TD, Software or Contract Material to officers, employees or agents or to a sublicensee

## Defence Purposes / default purpose and other purposes



## Sublicensing Restrictions: Commonwealth Service Providers

### Commonwealth Service Providers

A person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth.

#### Sublicence to Cth Service Providers

- Commonwealth may grant a Sublicence to Commonwealth Service Provider to Use the TD or Software to enable the them to perform their obligations, functions or duties to the Commonwealth.

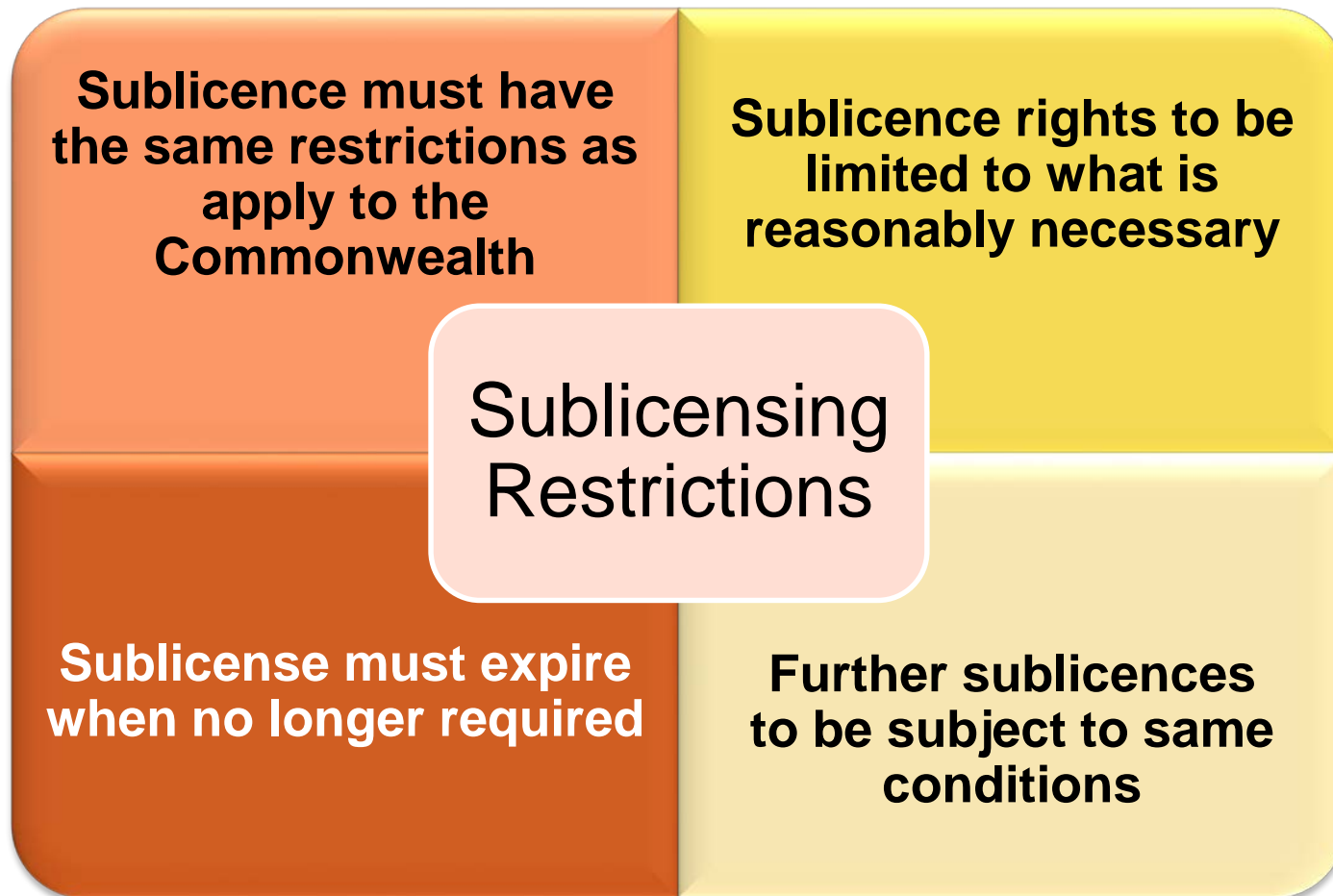
#### Restriction on Sublicensing to Excluded Parties

- Certain competitors may be designated as "Excluded Parties" in the TDSRS, these persons will be prohibited from being Commonwealth Service Providers.

#### Sublicensing on alternative basis

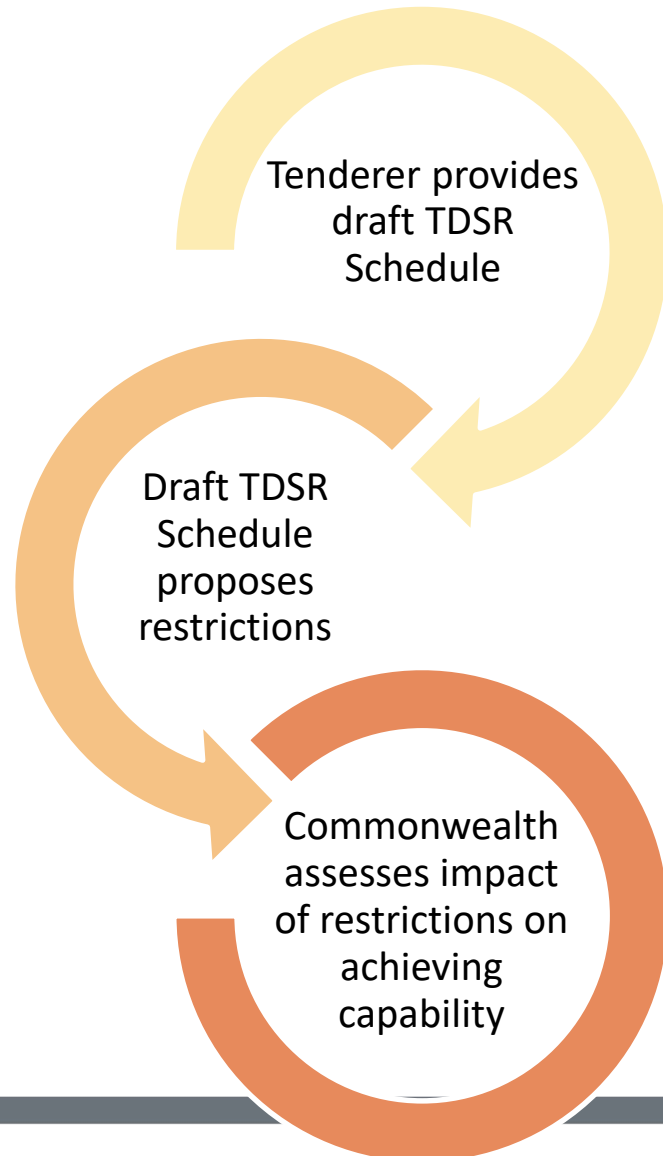
- Designation of an "Excluded Party" will not prevent the Commonwealth from granting a Sublicence to that person on another basis permitted under the Contract.

## Sublicensing Restrictions



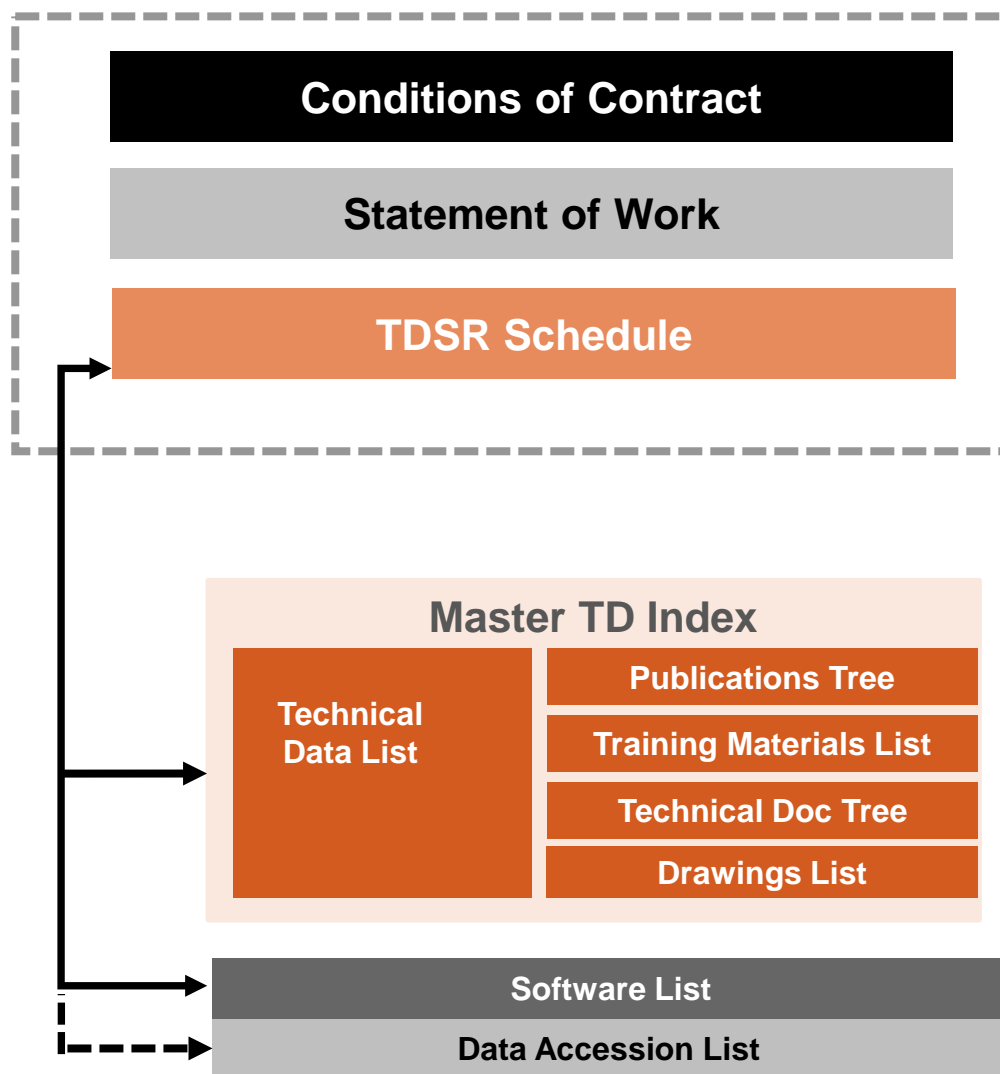
## **Tender Process: Identifying proposed restrictions**

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- Tenderers will be required to provide a draft TDSR Schedule as part of the tender process
- The draft TDSR Schedule should specify those restrictions the Contractor will require under any resulting Contract
- The Commonwealth to assess the impact of these restrictions on its ability to achieve the intended capability

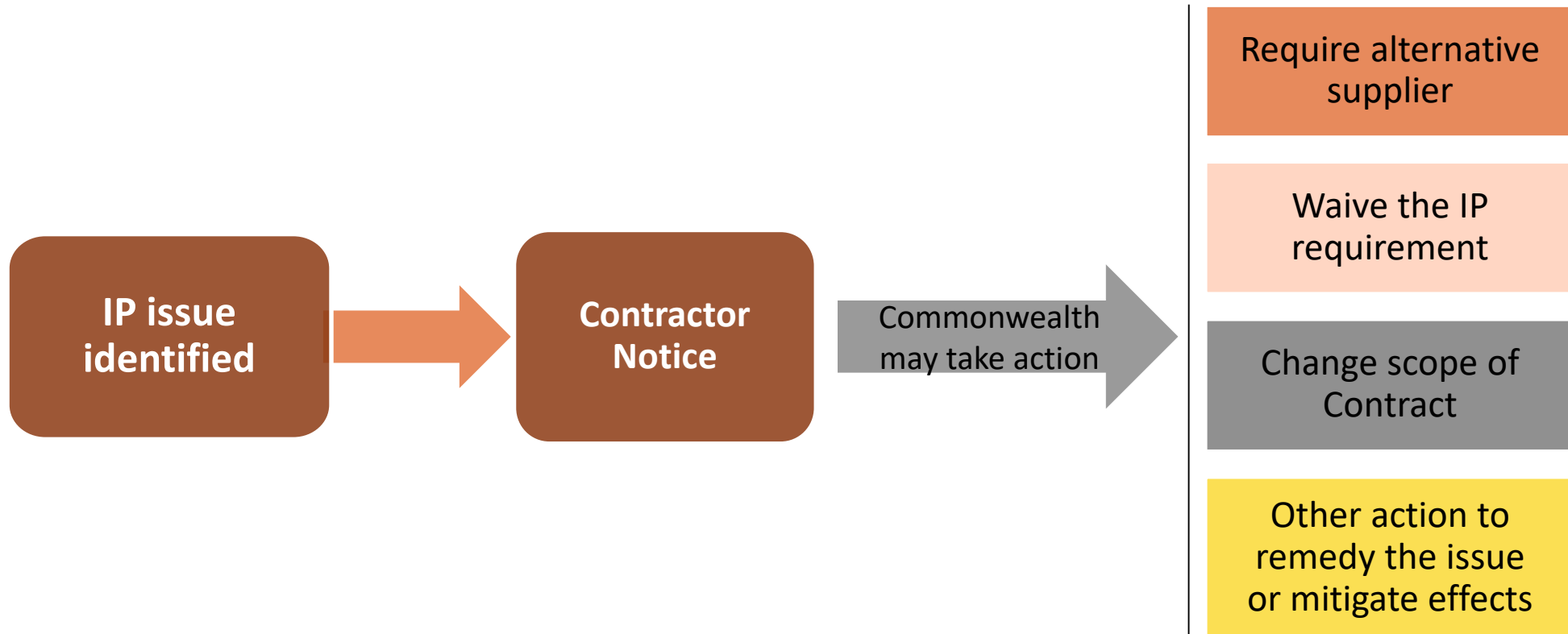
## TD & Software Rights Schedule



- TD & Software Rights (**TDSR**) Schedule sets out the **exceptions** to the rights to be granted under CoCs
- TDSR Schedule not comprehensive list of all TD/Software delivered (or required to be delivered) under Contract
- TDSR Schedule links to the Approved TD List and Software List
- Data Accession List (**DAL**) – records all TD created or used for the Contract (**but not delivered**)



## Failure to obtain IP rights



## **Additional IP Provisions**

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### **Rights**

- No Commercialisation
- Delivery (Including Electronic Delivery)
- Subcontractor IP Deeds
- Patents, Registrable Designs and Circuit Layouts

### **Management of TD and Software**

- Updates to TDSR Schedule
- Markings
- Escrow (Optional)

### **Interaction with other provisions**

- Export Approvals
- Existing IP Licences

## Warranties: TD and Software

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### TDL and Software List

- TD and Software listed (in the TDL and Software List) will enable the requirements of Support System Functional Baseline to be met

### Materiel System

- Rights granted will not prevent the Materiel System being used and supported as provided for in the Contract

### Key Commercial Items

- Rights granted in relation to a Key Commercial Item shall be on terms no less favourable than the best commercial terms available

### MTDI and DAL

- TD listed in the MTDI and DAL (taken together) includes all of the TD used or generated by the Contractor and its Subcontractors in performance of the Contract

## Integration of IP and Confidentiality

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Closer integration of IP and confidentiality

Right to sublicense for confidentiality disclosure purpose

Confidentiality Deed Poll requirements

Expanded list of permitted disclosures



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# ASDEFCON Technical Data and Intellectual Property Framework

## Further Information



- Contract Risk Module 2: ASDEFCON Technical Data and Intellectual Property
  - Intended to be open to both Defence and Industry to attend in future
- Send EOI's to [procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au)

- Primary Communication: Website:

- Internal:

- <http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Technical-Data-and-Intellectual-Property-Framework.aspx>

- External:

- <https://www.defence.gov.au/CASG/DoingBusiness/ProcurementDefence/PoliciesGuidelinesTemplates/Defence%20Procurement%20Policy.asp>

- ASDEFCON TD / IP Commercial Handbook
- Technical Data Management Handbook
- Campus
- POC: [procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au).



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# Questions?

