Technical Data and Software RIGHTS (TDSR) SCHEDULE

Note to drafters: Prior to RFT release drafters are to:

1. ensure that the TD and Software requirements addressing the Materiel System’s Life of Type requirements, relating to licensing and ownership) are those reflected in the Description of Requirements and the SOW;
2. determine and specify whether the Commonwealth requires ownership of IP in TD and Software (ie, Commonwealth TD and Commonwealth Software); and
3. where applicable, identify in the TDSR Schedule any items or equipment (at a product, system, subsystem or component level) where potential restrictions proposed by a tenderer will not be acceptable to the Commonwealth.

The examples contained in each annex are to be removed prior to RFT release and system-specific information must be inserted where necessary. Information regarding the conduct of a Commonwealth Technical Data Requirements Analysis (TDRA) can be found in the [CASG Handbook (E&T) 12-2-003 Technical Data Management](http://modelpedia.dpe.protected.mil.au/PublishedWebsite/LatestFinal/%7B5E812EBC-90FE-4E4C-9064-3810D9E9C084%7D/Item/AC2783A0-E8CA-4479-BCE7-A1B7A6CF1D9A).

Further information on clause 5 of the draft COC and the TDSR Schedule can be found in the ASDEFCON Technical Data and Intellectual Property Commercial Handbook which is available at:

<https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/intellectual-property-framework>

Note to tenderers: Attachment G and its annexes define any restrictions on the TD and Software rights granted under any resultant Contract and provide additional information for the purposes of the TD and Software provisions under any resultant Contract. Attachment G does not define restrictions on GFM.

Attachment G and its annexes will consist of an amalgamation of information contained in this draft Attachment G, the successful tenderer's response to TDR C-5 and any negotiated adjustments.

1.1 Attachment G consists of the following Annexes:

1. Delivery and Licence Restrictions on Use of TD and Software (Core);
2. Key Commercial Items (Core);
3. Commonwealth TD and Commonwealth Software (Core);
4. Excluded Parties (Core);
5. Patents, Registrable Designs and Circuit Layouts (Core);

DELIVERY AND LICENCE RESTRICTIONS on use of td and software (CORE)

Note to drafters: Drafters should, after considering Life of Type requirements for the Materiel System (particularly for restrictions on sustainment activities and any future support contracts) and for the scope of the draft Contract, and after conducting a TDRA, identify and list (whether in TDR C-5 or in a note to tenderers in column (f) of the table below) any restrictions that the Commonwealth considers would not be acceptable for inclusion in this Annex A.

The Commonwealth must carefully consider TD and Software requirements before agreeing to include any restrictions in this Annex A that will limit:

a. the Licence the Commonwealth receives under clause 5.2.3b(ix) of the draft COC; or

b. delivery requirements under clause 5.13 of the draft COC.

Note to tenderers: In addition to the information provided in this Annex A, tenderers should note any guidance provided in TDR C-5 in relation to specific restrictions that are considered to be unacceptable to the Commonwealth. In responding, tenderers are to identify any proposed restrictions on:

1. the Commonwealth's sublicensing rights in respect of TD and Software under clause 5.2.3b(ix) of the draft COC (columns (f) and (g)); and
2. the Commonwealth's rights to require delivery of TD for the purposes of clause 5.13 of the draft COC (columns (e) and (g)). Restrictions will only be included in column (e) where tenderers have justified the basis for the restricted delivery requirements for the relevant TD or Software. These restrictions will only be agreed if the Commonwealth considers that delivery of the item to the Commonwealth is not required.

If TD or Software currently exists that will be incorporated into Commonwealth TD or Commonwealth Software, tenderers are to list the TD or Software in this Annex A and include a reference to the relevant Unique Line Item Description of the Commonwealth TD or Commonwealth Software from Annex C and insert in column (d).

For any item of TD or Software that is subject to restrictions on delivery to the Commonwealth, the recipient of the TD or Software is the person identified in the Approved Support System Technical Data List (SSTDL) or Approved Software List, as applicable

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| --- | --- | --- | --- | --- | --- | --- |
| Unique Line Item Description | Owner or Licensor | System/ Subsystem/ Component/ CI Name | Description of TD or Software  (and refer to Unique Line Item Description from Annex C, if appropriate) | Restrictions on Commonwealth's rights to the delivery of the TD or Software  (Yes / No)  (COC, clause 5.13)  If yes, specify identity of recipient(s) or nature of the restrictions in column (f) | Restrictions on Commonwealth's rights to Use or to grant a Sublicence of the TD or Software  (COC, clause 5.2.3b(ix)) | Justification for Restriction(s) |
| 1. (a) | 1. (b) | 1. (c) | 1. (d) | 1. (e) | 1. (f) | 1. (g) |
| 1. F-A-1 | 1. Contractor | 1. Helicopter Landing System | 1. Aircraft structural loads and certification data | 1. No | 1. Licences do not include right to grant sublicences for the purpose of a third party upgrading the Supplies. | 1. This data requires access to competitively sensitive data. |
| 1. F-A-2 | 1. Contractor | 1. Combat Management System | 1. Mission Planning Software | 1. No | 1. Licences do not include right to grant sublicences for the purpose of modifying, developing or upgrading the Software without the prior written consent of XYZ Pty Ltd. | 1. This data requires access to competitively sensitive data. |
| 1. F-A-3 | 1. Contractor | 1. Communications System | 1. Business Process Manual | 1. Yes - no right of delivery to Commonwealth, but Contractor will provide directly to a Subcontractor recipient where necessary. | 1. N/A | Contains competitively sensitive data that are trade secrets and not required to utilise this Capability as envisaged under the Contract.   1. Contractor will directly provide to a recipient where necessary. |
| 1. F-A-4 | 1. EW Pty Ltd (Approved Subcontractor) | 1. Combat Management System | 1. Electronic Warfare Source Code | 1. Yes - no right of delivery to Commonwealth, but Contractor will provide directly to a subcontractor recipient where necessary. | 1. N/A | 1. Not required to utilise this Capability as envisaged under the Contract. 2. Contractor will directly provide to a recipient where necessary. |
| 1. F-A-5 | 1. Contractor | 1. Combat Management System | 1. Electronic Warfare Test and configuration Software (ew.test.exe) | 1. Yes - no right of delivery to Commonwealth, but Contractor will provide directly to a subcontractor recipient where necessary. | 1. N/A | 1. Not required to utilise this Capability as envisaged under the Contract. 2. Contractor will directly provide to a recipient where necessary. |
| 1. F-A-6 | 1. Contractor | 1. Communications System | 1. Diagram of crypto device operations on page 3 of XYZ-41 operations manual. 2. (See also item F-C-1 in Annex C) | 1. No | 1. Licences do not include a right to grant sublicences for the purposes of research and development or studies conducted by third parties. | 1. The diagram includes descriptions of sensitive information integral to the unique operation of the crypto device that would provide a competitive advantage to other crypto device makers. |

KEY COMMERCIAL ITEMS (CORE)

Note to drafters: The Commonwealth's rights to Use Commercial TD and Commercial Software relating to a Key Commercial Item must be identified by tenderers and proposed in responding to this Annex B. Where possible, this should be done prior to contract execution or as soon as possible after the supply of the Commercial Item to the Commonwealth.

Note to tenderers: Tenderers are to list all items of Commercial TD or Commercial Software related to a Key Commercial Item in accordance with clause 5.3 of the draft COC, and specify the terms applicable to the licence proposed to be granted for the item. The tenderer may complete column (f) by reference to other documents from which those terms are ascertainable.

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| --- | --- | --- | --- | --- | --- |
| Unique Line Item Description | Description of Key Commercial Item System/ Subsystem/ Component/CI Name | Description of related TD or Software (including version number and use) | Details of Approved Subcontractor or relevant Related Body Corporate | Owner or Licensor | Licence Terms |
| 1. (a) | 1. (b) | 1. (c) | 1. (d) | 1. (e) | 1. (f) |
| 1. F-B-1 | 1. Hydrographic System | 1. XYZ Software V8.5 used in Support System | 1. Microvision Pty Ltd. | 1. Microvision Pty Ltd. | 1. Same terms as per clause 5.3 except no permission to grant a sublicence to ABC Pty Ltd. |
| 1. F-B-2 | 1. Helicopter Landing System | 1. Maintenance Manual for Helicopter Landing System | 1. Safe Landing Pty Ltd. | 1. Safe Landing US Inc. | Terms and conditions are as detailed at www.safelanding.com/manuals/HLS/terms and conditions.aspx as at 1 July 2018.  The Commonwealth must pay to Safe Landing US Inc. an annual licence fee of $3,000.00 starting 2 years after Final Acceptance as notified to the Commonwealth on 1 July 2018. |

COMMONWEALTH TD AND COMMONWEALTH SOFTWARE (CORE)

Note to drafters: Other than any IP created within updates to GFI and GFD, or changes to GFE (including Software provided as GFE), the Commonwealth’s default position is to not own IP created under any resultant Contract or Subcontract. However, in limited cases for national security and / or strategic interest reasons, the Commonwealth can require ownership of IP in specific items of TD or Software by including / describing the TD or Software (applicable to that system) in this Annex C prior to RFT release.

For any TD or Software that is listed in this annex, ownership of any new IP in that TD or Software is assigned to the Commonwealth or its nominee under clause 5.1.3 of the draft COC. Column (d) should describe the category in sufficient detail as to enable the identification of TD or Software that comes within the relevant category. Column (b) is to include a cross reference to the Approved Support System Technical Data List (SSTDL) or Approved Software List, where the relevant TD or Software is to be listed in greater detail.

Note to tenderers: Tenderers are to identify in column (d) of this Annex C, the categories or types of TD or Software relating to each item of Supplies shown below in column (c). For each item of TD or Software that falls within the category listed in column (d), the ownership of IP relating to that item created under or in connection with the Contract will be assigned to the Commonwealth. The relevant TD or Software is referred to as Commonwealth TD or Commonwealth Software (as applicable).

If any Commonwealth TD and Commonwealth Software contains IP owned by the Tenderer or a proposed Subcontractor (being IP in existence prior to Effective Date or created outside the Contract and Subcontracts), the Contractor is to grant a licence to the Commonwealth of that IP under clause 5.2 of the draft COC (subject to any proposed restrictions listed in Annex A). Tenderers should note that such restrictions should not prevent the use of the Commonwealth TD or Commonwealth Software as provided for in the Contract (see clause 5.16.1b of the draft COC).

This Annex does not deal with licences of GFM that are provided by the Commonwealth to the Contractor (see clause 5.5 of the draft COC and Attachment E).

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| Unique Line Item Description | Item Reference within SSTDL / Software List | Equipment/ System/ Subsystem/ Component/ CI Name | Category of TD or Software | Name of Assignee | Restrictions on non-Commonwealth owned IP  (refer Unique Line Item Description from Annex B if required) | Restrictions on licences granted by the Commonwealth under clause 5.4.2 of the COC |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| 1. F-C-1 | 1. ABC #1299 | 1. Communication System | 1. Cryptographic software and manuals. | 1. Commonwealth | 1. Contractor owns IP in crypto diagrams. For restrictions see item F-B-6 of Annex B. | 1. The Contractor may use solely for the purpose of installation and configuration on XYZ subsystem and must not sublicence any of the IP in the Technical Data (see also Part B). |
| 1. F-C-2 | 1. ABC #1976 | 1. Hydrographic System | 1. XYZ environmental operations manual. | 1. Commonwealth | 1. Nil | 1. The Contractor may use solely for the purpose of installation and configuration on XYZ subsystem and must not sublicence any of the IP in the Software. |
| 1. F-C-3 | 1. ABC #1982 | 1. Combat Management System | 1. Operation and maintenance manuals for XYZ combat management system. | 1. ABC Pty Ltd (via the Commonwealth). | Nil | 1. The Contractor may use solely for the purpose of installation and configuration on XYZ subsystem and must not sublicence any of the IP in the Technical Data. |

excluded parties

Note to drafters: Listing parties as Excluded Parties means they cannot be engaged by the Commonwealth as Commonwealth Service Providers for the purposes of the Contract. The effect of this is that the Commonwealth is not entitled to grant these parties the broad Sublicences at clauses 5.2.3a and 5.6.1b(i) of the draft COC. However, Excluded Parties may still be granted Sublicences under clauses 5.2.3b, 5.2.3c, 5.6.1b(ii) or 5.6.1b(iii). The Commonwealth’s preference is that there are no Excluded Parties. In most cases, there will be no need for Excluded Parties because the TDSR Schedule enables the tenderer to protect specific TD or Software that it considers sensitive. For further guidance on the impact of listing parties as Excluded Parties, see Chapter 5 of the ASDEFCON Technical Data and Intellectual Property Commercial Handbook which is available at:

<http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/Handbooks.aspx>.

Note to tenderers: The Commonwealth has broad rights to grant a sublicence in respect of TD, Software and Contract Material to a Commonwealth Service Provider at clauses 5.2.3a and 5.6.1b(i) of the draft COC. The listing of Excluded Parties will only be agreed to by the Commonwealth in exceptional circumstances, due to the administrative and operational constraints for the Commonwealth arising from listing a party in this annex. Specifying that a party is an Excluded Party does not mean that the Commonwealth cannot sublicense to that person if they are engaged in another capacity (for example, to provide maintenance or upgrade services to the Commonwealth) and such sublicensing is not restricted in Annex A or B. For further guidance, see Chapter 5 of the ASDEFCON Technical Data and Intellectual Property Commercial Handbook which is available at:

<https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/intellectual-property-framework>.

* 1. The following parties are excluded from being Commonwealth Service Providers for the purposes of the Contract:

| Unique Line Item Description | Excluded Party  (a party must be capable of being clearly identified by the Commonwealth) | Period of Restriction  (must not be perpetual) | Justification for Non-Disclosure Restriction |
| --- | --- | --- | --- |
| 1. (a) | 1. (b) | 1. (c) | 1. (d) |
| 1. *Example:* 2. *F-D-1* | 1. *XYZ Pty Ltd* | 1. *5 years from Effective Date* | 1. *XYZ Pty Ltd is a direct competitor of the Contractor in relation to the Mission System. If XYZ Pty Ltd is granted a licence as a Commonwealth Service Provider, it will have access to the design and performance characteristics of the Mission System without specific restrictions on the use or disclosure of the TD. This will cause significant harm to the Contractor's competitive advantage and the Contractor's ability to generate revenue from other customers in relation to the Mission System.* |

ANNEX E – PATENTS, REGISTRABLE DESIGNS AND CIRCUIT LAYOUTS (CORE)

Note to tenderers: Tenderers are to identify any restrictions that will limit the licences granted to the Commonwealth in relation to a Patent, Registrable Design or Circuit Layout (in accordance with clause 5.18 of the draft COC). A full description of the relevant Supplies, TD or Software that contains the Patent, Registrable Design or Circuit Layout protection must be included.

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| 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 |
| 1. (a) | 1. (b) | 1. (c) | 1. (d) | 1. (e) | 1. (f) | 1. (g) |
| 1. F-E-1 | 1. Signal Integrator Manual (Method of Signal Capture) | 1. Patent | 1. XYZ Pty Ltd | 1. AU 01 233 323232 | 1. Australia only | 1. The Commonwealth may not make an integrated circuit from the plans contained in the manual for a period of 3 years. |
| 1. F-E-2 | 1. Signal Integrator Device | 1. Circuit Layout | 1. XYZ Pty Ltd | 1. N/A | 1. Australia and United States only | 1. The Commonwealth may not disclose the device to a third party for a period of 5 years. |