

OIA-2015-2312

5 October 2015

Valerie Morse

fyi-request-3131-5cce7a78@requests.fyi.org.nz

Dear Ms Morse

I refer to your email of 9 September 2015 requesting, under the Official Information Act 1982 (OIA), information relating to the activities of the Defence Technology Agency (DTA). I have addressed each of your questions separately below:

1. *Can you please provide copies of your Memorandums of Understanding between the DTA and Uniservices and Callaghan Innovation (the link from your website is no longer active).*

Please find attached a copy of the Memorandum of Collaboration between DTA and Industrial Research Limited (IRL) now known as Callaghan Innovation, dated 30 August 2012, and the Memorandum of Understanding between DTA and UniServices dated 14 November 2011. Please note that redactions have been made to these documents under section 9(2)(a) of the OIA, to protect the privacy of individuals. Public interest considerations do not outweigh the need to protect personal privacy.

2. *What are the terms and conditions for the commercialisation of technologies developed by DTA?*

The terms and conditions for the commercialisation of technology by DTA include the following:

- a. Any technology transfer or commercialisation is covered by a licensing agreement which includes provision for outright purchase of the technology;
- b. Agreements are of a fixed term (usually 5 years) with right of renewal and termination options;
- c. Agreements include clauses stating the obligations on each party, how disputes are to be managed and how third party infringements should be managed;
- d. Royalties and fees are paid monthly, annually and/or per unit and are subject to the supply of goods and services (technology) in return;
- e. Any technology which is licensed is subject to continuing access by DTA for use and continuing development;
- f. Agreements may be exclusive or non-exclusive depending on the field and purpose of use;
- g. All offshore sales of DTA technology are subject to Export Control Authority approval; and
- h. All agreements contain confidentiality clauses.

The agreements also contain Intellectual Property (IP) descriptions and IP assignment clauses.

3. *Has the DTA been engaged in any Public-Private Partnerships in the development of new technologies in the past 5 years?*

DTA has not been engaged in Public-Private Partnership in the development of new technologies in the past 5 years.

4. *What are the nature of the partnerships between the DTA and Israel Aerospace Industries, Saab & Thales?*

DTA's relationship with Israel Aerospace Industries (IAI) is limited to DTA being engaged by the NZDF and the Ministry of Defence to support the decision to acquire the ELTA radar (supplied by IAI) for use on the P-3K Orion aircraft. IAI has also presented products for NZDF to consider using as part of the frigate systems upgrade for the ANZAC frigates. DTA was present at this presentation.

Saab is contracted by Lockheed Martin (Canada) to supply parts for the frigate systems upgrade. DTA currently has no relationship with Saab.

Thales is also contracted by Lockheed Martin (Canada) to supply parts for the frigate systems upgrade. DTA has been discussing the manufacture and supply of a training magazine for the Steyr rifle with Thales.

I trust this satisfies your request for information.

Yours sincerely



G.R. SMITH

Commodore, RNZN
Chief of Staff HQNZDF

Enclosures:

1. Memorandum of Collaboration between DTA and Industrial Research Limited (IRL; now Callaghan Innovation), 30 August 2012.
2. Memorandum of Understanding between DTA and UniServices, 14 November 2011.

MEMORANDUM OF COLLABORATION

PARTICIPANTS TO THIS MEMORANDUM

INDUSTRIAL RESEARCH LIMITED, registered in New Zealand under number 545472, of 69 Gracefield Road, Lower Hutt, New Zealand (**IRL**); and

HER MAJESTY THE QUEEN in Right of Her Government in New Zealand acting by and through the Chief of Defence Force (“the **NZDF**”)

(together, “the Participants”)

1. CONTEXT

- 1.1 IRL is a New Zealand Crown Research Institute and undertakes industrial research and development for the benefit of New Zealand (NZ).
- 1.2 The NZDF is a Crown department and advises the Government on the defence of New Zealand and its interests. It acquires military equipment, and it assesses and audits the NZDF functions, duties, responsibilities and projects.
- 1.3 The Defence Technology Agency (DTA) is an operational unit of the NZDF and has expertise in applied defence science and technology research. DTA is the primary NZDF agency with responsibility for developing, managing and enhancing all aspects of national and international scientific and technical coordination and collaboration.
- 1.4 The Participants wish to conclude this Memorandum of Collaboration to reflect their interests in developing a relationship whereby they may work together on long-term strategic and collaborative research and development goals that will provide outcomes of mutual benefit to the Participants and to NZ.

2. RELATIONSHIP GOALS

- 2.1 The Participants wish to develop a long-term collaborative relationship with each other, providing visibility of, and access to resources and capability, research programme goals and technology roadmaps, with the objective of developing shared and innovative capability.
- 2.2 The Participants will explore areas of common interest, with the aim of identifying collaborative and joint research projects that are of mutual benefit and can assist appropriate commercialisation of each Participant's products and services. Examples may include, but are not limited to, the following
 - a *Comms: RF; EMC pre-testing; data security; cognitive radio; signal processing; optics*
 - b *Network Systems: control; advanced mathematics; modelling; smart algorithms; big data management; trend analysis*
 - c *Sensor Systems: chemical; optical; magnetic; pressure; temperature; stress*
 - d *Human Systems: status monitoring; audio; digital simulation; assistive devices*

e *Applied Vehicle Systems: computational analysis, energy and propulsion; performance and durability of traditional and advanced materials*

- 2.3 The Participants may refer each other's organisation and capability to customers
- 2.4 The Participants will act in the spirit of collaboration and work together for mutual organisational benefit, including wider benefits to NZ and to the NZ economy.
- 2.5 Where it is identified that collaborative or joint involvement for a research project or projects is desirable, or that the Participants intend to create legal relations between them and legal obligations, the Participants will enter into a separate agreement on such terms and conditions as may be decided between them.

3. TERM

- 3.1 This MOC will expire on the 31 December 2015, unless otherwise terminated earlier or superseded by a contract, signed by both Participants, which specifically states that it supersedes this MOC.
- 3.2 Notwithstanding paragraph 3.1, either Participant may terminate this MOC by providing the other Participant with written notice.

4. ACKNOWLEDGMENTS

- 4.1 For the purposes of this MOC, the Participants acknowledge that:
 - a. Nothing in this MOC creates any relationship between the Participants including any relationship of partnership, joint venture, agency, trust or otherwise and neither Participant has any power or authority to bind or represent the other Participant;
 - b. This MOC does not confer any exclusive right on the Participants or oblige the Participants to provide goods or services including access to information;
 - c. Unless otherwise agreed to in writing by the Participants, each Participant will be responsible for all costs and expenses incurred by it in executing and operating this MOC;
 - d. Any difference regarding the interpretation or status of this MOC will be resolved through consultation between the Participants;
 - e. All information exchanged between the Participants in connection with this MOC is confidential to them and may not be disclosed to any third party except:
 - i. with the written consent of the other Participant;
 - ii. if required to be disclosed by law or governmental agency or authority;
 - iii. in connection with legal proceedings by authority of a court of competent jurisdiction; or
 - iv. if the information is or becomes generally and publicly available but not as a result of a breach by either Participant of this sub-paragraph.
 - f. The above sub-paragraph (e) will survive the termination or expiry of this MOC.

- g. In no event will either Participant be liable to the other for any damages whatsoever including, without limitation, direct, indirect, speculative, incidental, special or consequential damages in connection with performance under this MOC, unless an alternative liability arrangement is specified in a separate agreement related to a collaborative or joint research project.
- h. Neither Participant gives any representation or warranty with respect to any information other than that it has the right to disclose such information.
- i. This MOC is not intended to create a legal obligation on or between the Participants. However, for the purposes of interpretation it will be construed in accordance with the laws of NZ.
- j. This MOC may be signed in counterparts, including by facsimile or email, all of which when read together will constitute one and the same document.
- k. This MOC will be dated the date the last person signing signed.

Signed for and on behalf of the **Industrial Research Limited**

Signed for and on behalf of the **Chief of Defence Force**



 Signature



 Signature

Shaun Coffey

 Name of authorised signatory

RR Jones

 Name of authorised signatory

Chief Executive.

 Position

Chief of Defence Force.

 Position

30 August 2012.

 Date

30 August 2012.

 Date

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FILE COPY

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MEMORANDUM OF UNDERSTANDING

MADE this 14th day of November 2011

BETWEEN **DEFENCE TECHNOLOGY AGENCY** an agency of the New Zealand Defence Force located at HMNZ Naval Base, Auckland, hereinafter referred to as "**DTA**";

AND **AUCKLAND UNISERVICES LIMITED**, a company located at 70 Symonds Street, Auckland, hereinafter referred to as "**UniServices**".

Collectively the "parties" to this Memorandum of Understanding (MOU)

WHEREAS

- A. UniServices is a wholly owned subsidiary of The University of Auckland ("University"). The University vests all its intellectual property in UniServices and has granted to UniServices the right to contract the University's staff and facilities.
- B. DTA is a unit of the New Zealand Defence Force (NZDF). It is NZDF's centre of excellence for defence science, research and development.
- C. The parties have had initial discussions about a potential Research and Commercialisation Partnership Agreement. This MOU is not intended to be legally binding but rather outlines a framework of understanding, which will allow the parties to work together to reach agreement for a long-term business relationship based on trust and understanding.
- D. DTA has capabilities and expertise in the field of defence technologies, R&D management, and application of such technologies for defence applications. DTA's mission is to ensure "the innovative application of science and technology enabling the NZDF to secure and protect New Zealand and its interests".
- E. Following Ministerial review, DTA has a mandate to exploit commercial and industry development opportunities. This includes: identifying opportunities to exploit IP created by its Research & Development (R&D) programmes; to build relationships with industry and further development business; and develop capability to manage technology transfer. The parties believe a proposed Research and Commercialisation Partnership Agreement will support achievement of these goals.

- F.** Uniservices has capabilities and expertise in the field of commercialisation and business development, with a proven track record and more than 20 years experience in technology transfer. The University of Auckland has capabilities and expertise across multi-disciplinary domains of research that are of benefit to DTA's research programmes.
- G.** The parties have a long history of contract research engagement and wish continue their collaboration by negotiating a formal Research and Commercialisation Partnership Agreement, and by virtue of this MOU, to record their understanding of the terms and conditions applicable to a combination of capabilities and expertise, and to provide a platform for the implementation of research, commercialisation, business development and other activities related to defence R&D and related outputs.

1. Purpose

1.1. The parties intend to collaborate on the provision of contract research, consultancy services, business development and commercialisation activities using a mixture of DTA staff and Uniservices' staff (including University of Auckland staff available to Uniservices under Uniservices contract with the University).

1.2. It is generally expected that:

UniServices will:

- Maintain a broad awareness of DTA activities
- Provide on-going support to DTA in their area of expertise, specifically in developing industrial or university partnerships to exploit DTA and NZDF Intellectual Property (IP)
- Continue to provide a point of engagement for developing Science & Technology (S&T) relationships, support and management of research programmes and identifying potential research opportunities, between DTA and the NZDF and the University of Auckland
- Provide access on a case by case basis (on mutually agreed terms) to the full suite of commercialisation services, including voice of market, networks, investment committees and investors.

DTA will:

- Identify to UniServices potential areas for exploitation of DTA or NZDF IP
- Continue to identify areas for potential research support or general University of Auckland collaboration
- Provide support and clarification for individual commercialisation projects as identified as necessary by UniServices.

2. Intellectual Property

2.1. The parties will enter into a separate Deed of Confidentiality concerning disclosure of confidential commercial and technical information supplied by

one party to the other and shall not use such information for any purpose other than fulfilling the objectives of this MOU. Any intellectual property arising out of the partnership will be dealt with in accordance with the proposed Research and Commercialisation Partnership Agreement,

- 2.2. The parties will collaborate in good faith and ensure that neither party's intellectual property is prejudiced or compromised.
- 2.3. Each party will retain exclusive and absolute rights of ownership to their pre-existing intellectual property and enhancement on pre-existing intellectual property.
- 2.4. Each party will retain exclusive and absolute rights of ownership to their own sole developments. Intellectual property on shared developments will be negotiated on a case by case basis.
- 2.5. Under agreed and specific circumstances, intellectual property generated may be jointly owned by both parties. The intellectual property managing party, and associated costs of intellectual property protection will be shared and subject to agreement between both parties.

3. Communications

- 3.1. Communication on all matters relating to this MOU, and to performance and activities undertaken in terms hereof, shall be between National Business Development Manager for Uniservices and Director DTA, Group Director, Business Services for DTA.
- 3.2. Each party will advise the other party if it is no longer able or willing to adhere to the governing principles of this MOU including this principle.

4. Notice

- 4.1. If either party wishes to terminate this MOU they will provide the other party twenty days (20) working days notice in writing.

5. Structure and Process

- 5.1. General familiarity to be maintained by both parties.
- 5.2. A Technical Advisory Board will be created with representation from both parties. Uniservices representatives may include employees of the University. The Board will provide guidance and direction regarding short and long term research programmes and strategy, and oversight with respect to commercialisation activities.

5.3. Contract research management and business development support. It is proposed that both parties identify opportunities for contract research and collaborative research projects that contribute to DTA's/NZDF's research programmes. UniServices will provide contract research management and business development support. Allocated resource and focus for business development activities are to be agreed by both parties. Appendix A contains the agreed template for research and consultancy contracts "Conditions of Agreement".

5.4. Commercialisation and IP management. It is proposed that specific commercialisation projects presented by either party identify

- The nature of the proposed project
- The returns to each party
- Provide indication of IP position
- Formalise an agreement to proceed regarding IP management, ownership and commercialisation roles and responsibilities

UniServices will then take over the project on behalf of DTA to assess the project/opportunity through UniServices' Investment Stage-Gate process. This can include where relevant:

- Review of IP position, patent search
- State-of-technology assessment
- Market analysis to assess the opportunity
- Identify a suitable commercial partner
- Formalise and negotiate an agreement with that partner
- Monitor the progress of the partnership
- Involve DTA as necessary and appropriate

6. Liability and Legality

6.1. Neither party shall be liable to the other for any costs, liability, damages, loss, claims or proceedings of whatever nature arising out of this MOU and neither party shall be liable to the other for any loss of profit, loss of business or consequential loss of that party, howsoever caused.

6.2. The parties acknowledge this MOU is not a legally binding agreement.

6.3. The parties may enter into further legally binding agreements at a later date as and when required by either party.

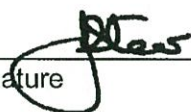
6.4. The parties will comply with each other's protocols and policies as and when requested by the other party, where possible.

7. Disputes

7.1. If a dispute arising out of this MOU occurs between the parties, then the parties will in good faith try to resolve that dispute. This process may also include mediation.

EXECUTION

SIGNED on behalf of
DTA by:


Signature

J. R. Steer
Name

Vice Chief of Defence Force
Title

14 November 2011
Date

SIGNED on behalf of
AUCKLAND UNISERVICES LIMITED
by:


Signature

Dr Rosanne Ellis
Name

National Business Development Manager
Title

14 November 2011
Date

APPENDIX A

Agreed Template Contract Research and Consultancy Agreement "Conditions of Agreement"

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OFFICIAL INFORMATION ACT



HER MAJESTY THE QUEEN

NEW ZEALAND DEFENCE FORCE
TE OPE KĀTUA O AOTEAROA

AND

Auckland Uniservices Ltd

CONDITIONS

OF

AGREEMENT NO INSERT AGREEMENT NO.

FOR

Research Services in relation to

insert title of Research Services (project)

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OFFICIAL INFORMATION ACT

SIGNATURE PAGE

THIS AGREEMENT is made on the day of 20YY

BETWEEN HER MAJESTY THE QUEEN in right of Her Government in New Zealand acting by and through the Chief of Defence Force (New Zealand Defence Force ("NZDF")) **AND**

AUCKLAND UNISERVICES LTD (CN 373821) a duly incorporated company with its registered office at Level 10, 70 Symonds Street, Auckland, New Zealand ("the Supplier").

Background

- A. NZDF through its Defence Technology Agency requires research to be undertaken from time to time.
- B. The University of Auckland provides research services utilising members of its academic staff and students undertaking Masters and PhD degrees who are supervised by academic staff.
- C. The University of Auckland provides its research services through the Supplier.
- D. The Supplier has agreed to provide the research services specified to NZDF upon the terms and conditions set out in this Agreement.

SIGNED for CHIEF OF DEFENCE FORCE)
by **INSERT NAME**)
Insert Rank)
being the Insert Position)
in the presence of:)

Witness

Signature:
Name:
Occupation:
Address:

SIGNED for and on)
behalf of **Auckland UniServices Ltd**)
by **ROSANNE ELLIS**)
being the –National Business Development)
Manager-Technology)
in the presence of:)

Witness

Signature: _____
Name: _____
Occupation: _____
Address: _____

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CONDITIONS

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Agreement means this Agreement signed by both parties for the provision of the Deliverables.

Day means a calendar day other than any Saturday, Sunday, public holiday or any day falling within the period from 24 December to 5 January both inclusive.

Deliverables means the Research Services specified in the **Schedule**.

Intellectual Property means all copyright, patents, designs, trademarks (registered or pending), know-how or other protectable rights.

NZDF's Representative means the person set out in the **Schedule**.

Researchers means the students and academic staff of Auckland University undertaking the Research Services

Research Services means the **Research**

Research Information includes:

- a. all reports, records, analyses, data, software, commercial and technical information and project information, diagrams, drawings, estimates, calculations, specific designs, specifications and other materials which are developed by the Supplier (including its employees, agents and sub-contractors) or arise during this Agreement specifically in connection with the Deliverables described in the Schedule;
- b. any other Deliverable specified in the **Schedule** (including design methods, new designs and processes developed specifically in connection with the Deliverables but will not include any concept, thought process, idea or design method used by the Supplier to facilitate the development of the Deliverables);
- c. any design assumptions made and the identification of the design method used in providing the Deliverables will be documented and such document will be included in the Research Information; and
- d. information supplied to the Supplier by NZDF.

Research Information does not include information that prior to the commencement of any Deliverables provided under the terms of this Agreement was the property of the Supplier or other parties or in the public domain.

Purchase Order means an official numbered form specifying the details of the Deliverables requested by NZDF.

University means University of Auckland .

2 The Supplier's Obligations

- 2.1 The Supplier will provide the Deliverables using the personnel specified in the **Schedule** and will fulfil all of its obligations under this Agreement.
- 2.2 The Supplier will report directly to NZDF's Representative and will comply with all directions given by NZDF's Representative which are reasonably required for the performance of this Agreement.
- 2.3 The Supplier will exercise the degree of skill, care and diligence reasonably expected of contractors in similar circumstances.
- 2.4 Except in respect of the equipment and facilities to be provided by NZDF that are specified in the Schedule, the Supplier will provide all personnel, equipment, tools, materials and supplies required to provide the Deliverables.
- 2.5 The Supplier warrants that the Supplier and its personnel have the necessary skills, experience, training, resources and appropriate best practice research principles are in place to provide the Deliverables.
- 2.6 The Supplier will ensure that any personnel providing the Deliverables are appropriately qualified and maintain all certificates and licences and are registered with or licensed by the appropriate statutory or professional body during the term of this Agreement.
- 2.7 The Supplier will comply with all laws applicable to the provision of the Deliverables and with the provisions of all statutes, regulations and bylaws of any government, or any local or other public authority that may be applicable to the supply of the Deliverables.
- 2.8 The Supplier will ensure that University Staff and Researchers undertaking the Research are aware of the non-disclosure and confidentiality provisions which apply under the terms of this agreement and the overarching MOU between UniServices and the NZDF.
- 2.9 Subject to NZDF's prior written consent, the Researchers may make publications or presentations regarding the Research Information or Deliverables (collectively, a "Publication"). In order to obtain NZDF's prior written consent, the Researchers must through the Supplier deliver the proposed text of the Publication to NZDF for NZDF's review at least thirty (30) days prior to submission of the same to any publisher or other third party. The NZDF may, within thirty (30) days of such delivery, object to the Publication on the grounds that it would involve the disclosure of NZDF's confidential information, or because there is patentable subject matter in which NZDF has an interest which needs protection. Upon written objection, the University and the Researchers will remain bound by the Non Disclosure Deed. Where the subject matter of the Research Services creates a patentable right, NZDF will take steps to file a patent application. Once this is achieved, then NZDF will grant consent to Publication. The provisions of this clause shall also apply to the publication of a thesis by any student working on the Deliverables. Should NZDF make publications or presentations regarding the Research or Deliverables (collectively, a "Publication") NZDF will ensure that the Researchers contribution will be acknowledged. This clause is inserted for the benefit of the Researchers and the University pursuant to s.4 of the Contracts (Privity) Act 1982.
- 2.10 The Supplier will notify NZDF immediately on becoming aware of any potential delay in providing the Deliverables or failure of ability to provide the Deliverables when requested, and will immediately take all necessary actions to reduce the impact of any delay or failure to an absolute minimum.
- 2.11 The Supplier warrants that no form of inducement or reward has been or will be directly or indirectly provided to any representative of NZDF in respect of this Agreement.

- 2.12 The Supplier makes no warranty as to the suitability of any reports made under this agreement or application of any intellectual property arising out of the research performed pursuant to this agreement for any subsequent purposes of the NZDF or its clients.

3 NZDF's Obligations

- 3.1 NZDF will co-operate with the Supplier and not interfere with or obstruct the proper delivery of the Deliverables. NZDF will provide decisions promptly on all matters properly referred to NZDF by the Supplier.

4 Commencement, Completion and Alteration

- 4.1 The Supplier will commence and complete the provision of the Deliverables at the times specified in the **Schedule** subject to any extensions granted pursuant to clause 4.2.
- 4.2 NZDF may, in writing, order variations to the Deliverables and may request the Supplier to submit proposals for variations to the Deliverables. The agreed value of any variation will be added to or deducted from any fees and NZDF will, if necessary, grant a fair and reasonable extension of time to the Supplier.

5 Purchase Orders

- 5.1 NZDF will order the Deliverables by placing a Purchase Order on the Supplier.

6 Payment

- 6.1 NZDF will pay the Supplier for the Deliverables, the fees and expenses specified in the **Schedule**. NZDF will not be liable for payment of any expenses incurred by the Supplier unless previously agreed to in writing.
- 6.2 The total amount of fees invoiced by the Supplier under this Agreement will not be more than the fees specified in the **Schedule**. Unless otherwise agreed under Clause 4.2,
- 6.3 Invoices for Deliverables will be endorsed with the Purchase Order number and forwarded to the address specified on the Purchase Order.
- 6.4 Subject to clause 6.6, NZDF will pay any amounts due to the Supplier under this Agreement in full on the 20th of the month following the month in which NZDF received the invoice.
- 6.5 Payment will be for the amount specified in the invoice less any deductions NZDF is entitled to make under this Agreement or by law.
- 6.6 If NZDF disputes any part of an invoice, the Supplier will be promptly notified of the reason. NZDF may withhold any amount under dispute but will not delay payment of the remainder of the invoice. If any dispute cannot be resolved, the Dispute Resolution clause will apply.

7 Set off

- 7.1 NZDF is entitled at any time without notice to set off any amount the Supplier owes NZDF against any amount that NZDF owes the Supplier under this Agreement.

8 Taxes

- 8.1 The Supplier is in all respects an independent contractor and not an employee of NZDF and will be responsible for all taxation payable in respect of earnings under this Agreement.
- 8.2 NZDF will not be liable for any corporate, personal or withholding taxes or other taxes and levies in respect of (or in respect of any payment to) the Supplier, its employees, or sub-contractors. The Supplier will indemnify NZDF for any claim by the Inland Revenue Department for any such corporate, personal or withholding taxes or other taxes or levies which should have been paid in respect of the Supplier, its employees or sub-contractors and/or any payment to the Supplier.
- 8.3 The Supplier warrants that it is a New Zealand resident for the purposes of Section RD 8 and Part A of Schedule 4 of the Income Tax Act 2007 and confirms that payments to it under this Agreement are not liable for Non-Resident Withholding Tax.

9 Security and Confidentiality

- 9.1 The Supplier and its personnel will comply with NZDF's security, operational, staff and building procedures, protocols and regulations for access to NZDF premises as required by NZDF.
- 9.2 At all times, the Supplier and its personnel will not disclose to any person any passwords or any other information necessary for access to NZDF property, premises or computer systems.
- 9.3 The outcome of the Research Services is confidential information belonging to the NZDF except as is already or becomes public knowledge, otherwise than as a result of a breach by the Supplier receiving that information under this agreement, and except where it can be shown in written records to have been independently discovered by an agent or employee of the Supplier without access to the information disclosed by NZDF. The Supplier will not use or disclose any confidential information supplied by NZDF in the course of this Agreement other than as necessary to fulfil its obligations under this Agreement.
- 9.4 The Supplier will at all times take all reasonable steps to safeguard and keep secure and confidential all of NZDF's information which it receives or holds while providing the Deliverables. This clause will survive the termination of this Agreement.
- 9.5 The Supplier is not to employ or continue to employ on this Project any person for whom NZDF has notified a formal objection to employment, based on failure to meet the requirements for a security clearance.
- 9.6 An employee or Researcher whose security clearance has been denied or withdrawn is to be advised of that decision and of their right to appeal in writing to the Chief of Defence Force. An independent panel will convene to hear any appeal.

10 NZDF Property

- 10.1 NZDF will as soon as practical make available free of cost to the Supplier for the purposes of this Agreement, the equipment and facilities specified in the **Schedule**.
- 10.2 NZDF will provide to the Supplier, promptly and free of charge, all available information reasonably required by the Supplier to provide the Deliverables.
- 10.3 The Supplier will exercise all due care and diligence in the handling and storage of any of NZDF property.

- 10.4 On termination or expiry of this Agreement, the Supplier must return to NZDF all NZDF property including (without limitation) all security swipecards, keys, books, records, papers or other property in the possession of the Supplier or its personnel.

11 Sub-Contracting

- 11.1 Despite the sub-contracting of any of the Deliverables, the Supplier is responsible for:
- a. the fulfilment of all its obligations under this Agreement; and
 - b. the acts, defaults and neglects of any sub-contractors, its agents or employees as if they were the acts, defaults or neglects of the Supplier.
- 11.2 All agreements with sub-contractors must include an obligation on the sub-contractor to perform in the same manner in each and every respect as the Supplier.

12 Health and Safety

- 12.1 The Supplier will:
- a. comply with its obligations, all regulations and all approved codes of practice made under the Health and Safety in Employment Act 1992;
 - b. follow NZDF's health and safety procedures when on NZDF premises; and
 - c. ensure that the Supplier's personnel follow NZDF's health and safety procedures when on NZDF's premises.

13 Intellectual Property

- 13.1 NZDF and the Supplier acknowledge that each party has existing Intellectual Property, including their respective business processes, procedures and systems, at the date of this Agreement which Intellectual Property rights shall remain and be unaffected by the Agreement.
- 13.2 All Intellectual Property created by the Supplier during the performance of this Agreement will be owned by the Supplier, unless the parties agree otherwise in writing.
- 13.3 The Supplier grants to the NZDF and/or its contractors a non-exclusive, royalty free, unlimited and perpetual, non-transferable licence to use any Intellectual Property and Project Information created during the supply of the Deliverables within the Defence Industry and for internal or external NZDF sponsored research work.
- 13.4 The cost of enforcing or defending any Intellectual Property right will be met by the owner, unless the need to take such action arose because of the failure of one of the parties to meet its obligations under this Agreement, in which case, the defaulting party will meet such costs.

13.5 Research Information

- 13.6 The Research Information belongs to NZDF. Upon this Agreement coming to an end (for any reason) the Supplier will, if called upon by NZDF, immediately hand over (where practicable the original or otherwise a copy) all Research Information held by it to NZDF.
- 13.7 The Supplier warrants that all Research Information will be supplied to the NZDF in a prompt and timely manner.

- 13.8 If NZDF asks, the Supplier will also supply reasonable comment or explanation in connection with the Research Information as is reasonably required to complete the Research. Such comment or explanation will be supplied within a reasonable time of the request. The Supplier will be entitled to charge for providing such comment in accordance with the basis of remuneration set out in this Agreement, and where the basis of remuneration is not applicable, the fair value for such additional services.

14 Liability and Insurance

- 14.1 Unless prohibited by law, the Supplier will indemnify NZDF against any loss, damage, expense or cost incurred by NZDF as a result of negligent performance under this Agreement by the Supplier.
- 14.2 The Supplier indemnifies NZDF in respect of any liability NZDF may incur (including legal costs on a solicitor/client basis) arising from a claim by any person providing the Deliverables on behalf of the Supplier for NZDF under this Agreement that that person is an employee of the NZDF as a consequence of the provision of those Deliverables.
- 14.3 If the Supplier is liable to indemnify NZDF under this clause, the maximum amount of compensation payable will be limited to the fees and expenses or the agreed value set out in the **Schedule**.

15 Termination and Suspension

- 15.1 Either party may terminate this Agreement or suspend the provision of the Deliverables or any part of them, following 10 Days written notice. Upon such termination or suspension, NZDF will immediately pay any amounts due to the Supplier under this Agreement.
- 15.2 NZDF may terminate this Agreement without notice in the case of any breach or non-performance of this Agreement or serious misconduct by the Supplier.
- 15.3 On receipt of notice of termination from NZDF, the Supplier will immediately make arrangements to stop the Deliverables and minimise further expenditure. NZDF will immediately pay any amounts due to the Supplier under this Agreement (including any reasonable costs incurred by the Supplier in giving effect to the notice to terminate or suspend).
- 15.4 Any termination of this Agreement is without prejudice to any other rights or powers of NZDF under this Agreement and will not relieve the Supplier from any liability for breach of contract.

16 Dispute Resolution

- 16.1 If any difference or dispute arises as to the interpretation of this Agreement or as to any matter arising out of or in connection with this Agreement, either party may, by notice in writing served on the other party, inform the other party of the details of the difference or dispute.
- 16.2 Both parties undertake to use their best endeavours to resolve any differences or disputes between them by negotiation or by utilising appropriate dispute resolution techniques.
- 16.3 Where a difference or dispute remains unresolved for more than one month, either party may refer the difference or dispute to arbitration in accordance with the Arbitration Act 1996.
- 16.4 Pending resolution of the dispute, the parties will continue to perform all their obligations under this Agreement except where it is impractical to continue performing any

obligations, being the subject of the dispute and such obligations will be suspended during the dispute.

- 16.5 Each party will bear their own costs relating to the resolution of any dispute. The parties will share equally the costs or fees of any mediator or arbitrator.
- 16.6 Nothing in this clause restricts or limits the right of either party to obtain interlocutory relief or to immediately terminate this Agreement where this Agreement provides such a right.

17 Force Majeure

- 17.1 NZDF or the Supplier will promptly notify the other party if it considers that:
- a. circumstances have arisen which are reasonably beyond its control, or
 - b. there were no reasonable steps that could be taken to avoid or mitigate those circumstances or the consequences, and
 - c. those circumstances make it irresponsible or impossible for the notifying party to perform the whole or part of its obligations under this Agreement.
- 17.2 If, on being notified the parties agree, or in the event of dispute, the notifying party's view is confirmed under the Dispute Resolution clause, then performance of this Agreement or the relevant part of it, will be suspended until the circumstances no longer apply.
- 17.3 For the purpose of these force majeure provisions, a circumstance reasonably beyond the control of the party relying on this clause, does not include industrial action on the part of that party or the personnel of that party, or inability on the part of that party to obtain supplies or materials due to disputes with its third party suppliers.
- 17.4 If the period of suspension referred to exceeds 20 Days, either party may terminate this Agreement on giving 20 Days notice to the other party.

18 Notices

- 18.1 Notices under this Agreement are to be in writing and delivered either by hand, post or email to the addresses detailed in the **Schedule**.
- 18.2 Notice will be deemed given if it is:
- a. delivered, when it is left at the relevant address; or
 - b. sent by post, two Days after it is posted; or
 - c. sent by email, as soon as it enters the computer system of the addressee.
- 18.3 If a notice is delivered after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Day.

19 General Provisions

- 19.1 The Supplier will take all reasonable steps to ensure no conflict of interest with NZDF will arise and will immediately advise NZDF if any conflict of interest does arise.

- 19.2 Neither party may assign any rights or benefits under this Agreement to a third party without the prior written approval of the other party. For the avoidance of doubt, except as expressly provided in this Agreement, no third party is intended to take a benefit under the Contracts (Privity) Act 1982.
- 19.3 Nothing in this Agreement restricts NZDF from using third party contractors to supply Deliverables that are the same as or similar to the Deliverables being supplied by the Supplier under this Agreement.
- 19.4 This Agreement including any Purchase Orders submitted by NZDF under the terms and conditions of this Agreement, constitutes the entire Agreement between the parties relating to the provision of the Deliverables and supersedes all previous Agreements and understandings. Any subsequent variation signed by both parties may be added to and will then form part of this Agreement.
- 19.5 This Agreement will be governed by the law of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts where any dispute arises concerning this Agreement.

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SCHEDULE

Deliverables:	
Reporting:	
Commencement Date:	
Completion Date:	
Milestone Dates:	
Equipment and Facilities to be provided by NZDF:	
Milestone Payments and Expenses:	
Liability and Insurance:	
NZDF's Project Manager:	
Uniservices's Personnel:	
Notices:	<p>NZDF</p> <p>Contracts Defence Shared Services National Service Centre Cnr Dante and Alexander Roads Private Bag 902 UPPER HUTT 5014</p> <p>Uniservices</p> <p>Uniservices House Level10 70 Symonds Street AUCKLAND 1010</p> <p>Private Bag 92019 AMC AUCKLAND 1142</p>

Insert research proposal where relevant

1. Proposed Research Project
2. Summary
3. Defence Relevance
4. Project Description
5. Areas of Work
6. Payment Schedule
7. NZDF Equipment and Facilities
Location of work
NZDF will provide the following for the researchers

APPENDIX B

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