



Australian Government
Department of Defence



Australian Government
Department of Health and Ageing

THE COMMONWEALTH OF AUSTRALIA as represented by

THE DEPARTMENT OF DEFENCE

acting through

**THE DEFENCE SCIENCE AND TECHNOLOGY ORGANISATION
(ABN 68 706 814 312)**

and

**THE DEPARTMENT OF HEALTH AND AGEING
(ABN: 83 605 426 759)**

MEMORANDUM OF UNDERSTANDING

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DATE

This Memorandum of Understanding is dated ____ <day> _____ <month> 2012.

PARTIES

This Memorandum of Understanding is made between and binds the following parties:

1. **THE DEPARTMENT OF DEFENCE** acting through THE DEFENCE SCIENCE AND TECHNOLOGY ORGANISATION (ABN 68 706 814 312), ("Defence"); and
2. **THE DEPARTMENT OF HEALTH AND AGEING** (ABN 83 605 426 759) of Woden, ACT, (DoHA)

PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to reflect the intention of the Parties to promote cooperative Project Arrangements which would support Australia's membership in the Medical Countermeasures (MedCM) Consortium. Emphasis of the Arrangements will be on Chemical, Biological and Radiological (CBR) threats affecting civilian and military populations and on emerging infectious diseases and pandemics.

The Parties will aim to develop medical countermeasures including drugs, vaccines and diagnostics for Defence, public health and National Security use and which may affect biosurveillance, health protection and health security.

CONTEXT

This MOU is made in the following context:

- A Defence, and in particular, the Defence Science and Technology Organisation ("DSTO"), has expertise and or technologies in the field of Human Protection including biomedical defence, physical characterisation, modelling, simulation and systems analysis. (the "Agreement Area").
- B DoHA has expertise in health protection in the areas of epidemiology, pathogen security, laboratory capacity, stockpiling of emergency-use pharmaceuticals and health emergency planning.
- C The parties wish to undertake a long term research and development program to develop technologies in the Agreement Area for the purpose of

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enhancing Australian defence and public health capabilities applicable to both the military and civilian environments.

- D Defence and DoHA recognise that each has responsibilities and functions that contribute to a whole of government approach to protecting Australia from a range of existing and potential threats. The parties respect each others different but complementary functions and are committed to act cooperatively and collaboratively to enhance the effectiveness of each others activities in pursuing their common goals.
- E The parties now wish to enter this MOU to establish a framework by which they can combine their skills and expertise and work together in the Agreement Area.
- F Any activities agreed to be undertaken under this MOU will require the completion of an appropriate Project Arrangement.

THE PARTIES AGREE AS FOLLOWS

In consideration of the mutual promises contained in this document, the parties to this Memorandum of Understanding agree as follows:

1 INTERPRETATION

- 1.1 Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

Annex	means an Annex made in accordance with this MOU;
Agencies	means the Department of Defence (Defence) and the Department of Health and Ageing (DoHA)
Confidential Information	<p>means any information held by a Party (or any agent or employees of such) in any form or medium which is or may be disclosed to the other Party for their functions and the purposes of this MOU.</p> <p>Such information includes, but is not limited to: trade secrets, know-how, information, research protocols and methodology, processes, techniques, software, computer records, business and marketing plans and projections, details of agreements and arrangements with third parties, customer and product information and lists, designs, plans, drawings and models, but does not include:</p> <ul style="list-style-type: none">(a) information which is publicly available at the commencement of this MOU;(b) information which becomes publicly available after the commencement of this MOU other than as a result of a breach of this MOU by the recipient or disclosure by any

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	<p>other person contrary to this MOU; and</p> <p>(c) information obtained from third parties outside the context of this MOU.</p>
Defence	<p>The Department of Defence including the Australian Defence force (ADF), the Defence Materiel Organisation (DMO), the Defence Science and Technology Organisation (DSTO) and other Defence organisations.</p>
Defence Personnel	<p>This includes:</p> <p>(a) A "Defence Member" and "Defence Civilian" as defined under the Defence Force Discipline Act 1982; and</p> <p>(b) A person employed in or attached to the Department of Defence under the Public Service Act 1999; but does not include contractors or members of a foreign Defence force.</p>
Defence Use	<p>A Defence purpose including but not limited to, any use for Australian defence, national security or strategic purposes. Additionally, it shall include a use (without limitation) for the purpose of:</p> <p>(a) permitting third party contractors to provide, or offer to provide, goods or services to or for the Commonwealth for those related purposes; or</p> <p>(b) fulfilling Australia's obligations under international law including (without limitation) any treaties, conventions or international agreements to which Australia may be a party or has adopted.</p>
Disclosing Party	<p>means the Party disclosing Confidential Information under this MOU;</p>
Intellectual Property	<p>includes copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable and also includes Confidential Information.</p>
Liaison Officer	<p>means the person for the time being holding, occupying or performing the duties of the position in either Agency specified in Item C of Schedule 1 or any other person specified in writing and notified to the Agencies.</p>
Steering Committee	<p>means the committee established under clause 6 involved in the management of the MOU.</p>
Material	<p>includes documents, equipment, software, goods, information, and data stored by any means;</p>

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MOU	this Memorandum of Understanding on the collaborative working relationship between the Defence Science and Technology Organisation and the Department of Health and Ageing.
National Security Use	means any purpose for National Security within the jurisdiction of the National Security Science and Technology Centre including (without limitation) for the purpose of: <ul style="list-style-type: none"> (a) permitting third party contractors to provide, or offer to provide, goods or services to or for the Commonwealth for National Security purposes; or (b) fulfilling Australia's obligations under international law including (without limitation) any treaties, conventional or international agreements to which Australia may be a party or has adopted.
Public Health	Means the protection of the health of the Australian community through effective national leadership and coordination and building of appropriate capacity and capability to detect, prevent and respond to threats to public health.
Project Arrangement	means a Project's specification prepared in the format prescribed by Annex A.
Receiving Party	means the Party receiving the Confidential Information under this MOU

- 1.2 In this Agreement unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and words in the plural include the singular;
 - c. clause headings are for guidance only and have no effect on the interpretation of the clauses to which they refer;
 - d. words importing a person include a partnership and a body whether corporate or otherwise;
 - e. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;
 - f. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - g. the Schedules and any attachments form part of this Agreement;

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- h. where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedules (and attachments if any), the terms and conditions of the clauses prevail;
- i. where any conflict arises between any part of the Schedules and any part of an attachment, the Schedule prevails; and
- j. this Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same Agreement.

2 NON-BINDING NATURE OF THIS MEMORANDUM OF UNDERSTANDING

- 2.1 The Parties acknowledge and agree that nothing in this MOU:
 - a. confers any exclusive right on either party;
 - b. obliges either party to engage the services of the other party for any project;
 - c. creates any relationship between the parties including any relationship of partnership, agency, trust, joint venture or otherwise and neither Party has any power or authority to bind or represent the other Party;
 - d. obliges either party to do any act or thing which the party determines, at its sole discretion, would prejudice that party's primary purposes; and
 - e. subject to the obligations of confidentiality, precludes either party from entering into any future arrangements with any third party in relation to any matter.
- 2.2 DoHA acknowledges that:
 - a. Defence personnel and equipment are subject to first call by the Commonwealth of Australia for defence and national security requirements; and
 - b. notwithstanding any other provision of this MOU, Defence will not be obliged to do any act or thing where Defence determines, at its sole and unfettered discretion, that such act or thing would prejudice the Commonwealth of Australia's defence interests or prevent Defence from properly performing its obligations to the Australian Defence Force.
- 2.3 Defence acknowledges that:
 - a. DoHA personnel and equipment are subject to priorities that may be set in accordance with its governing legislation; and

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- b. notwithstanding any other provision of this MOU, DoHA will not be obliged to do any act or thing where DoHA determines, at its sole and unfettered discretion, that such act or thing would prevent DoHA from properly performing its function to provide advice and guidance to the Commonwealth Government.

3 OBJECTIVES

- 3.1 To enable Defence and DoHA to benefit from each others expertise and experience in the areas of CBR defence which may include new technologies, science and technology programs, exercise planning and conduct, evaluation and cross agency coordination and liaison.
- 3.2 To foster a collaborative relationship between the Parties.
- 3.3 The scope of the collaboration under this MOU may include the parties working together to:
 - a. synergistically facilitate the development of technology, know-how and products incorporating such technology and know-how;
 - b. develop and enhance the existing expertise, experience and Intellectual Property of each party;
 - c. promote and enhance the industrial and business capabilities in Australian defence and national security and other industries in support of defence and national security self-reliance; and
 - d. enhance the service provided by the Australian Defence Force to Australian residents and promote interaction between the Australian Defence Force and other Australian industry.
- 3.4 The Parties acknowledge that there is considerable scope for cooperation at both the strategic policy and local operational levels. The Parties will therefore support each other in the development of effective policies and legislation concerning areas of mutual interest in order to provide the Australian Government with coherent balanced advice.

4 PROJECT ARRANGEMENTS

- 4.1 Prior to undertaking a specific activity, the Parties will negotiate and enter into a separate Project Arrangement that will provide the terms and conditions under which that Project will occur.
- 4.2 Unless otherwise agreed, the terms and conditions provided at Annex A will be used for a Project Arrangement and must include the following:

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- a. the respective responsibilities of each party in relation to the project;
 - b. the work plan, timetable and specified personnel for the project;
 - c. any project specific requirements for Confidential Information with a National Security Classification, which will be handled in accordance with the respective party's Security Manual;
 - d. any project specific requirements for Intellectual Property and details of each party's pre-existing resources that may be used in the project;
 - e. sources of financing and payment schedules for the project; and
 - f. any other matter deemed necessary for the efficient management of the project.
- 4.3 The Parties acknowledge that the conduct of activities pursuant to a Project Arrangement may involve the exchange of resources including:
- a. confidential information;
 - b. personnel;
 - c. equipment; and
 - d. intellectual property
- 4.4 A Register of the Project Arrangements will be created in accordance with this MOU and will be recorded and maintained by each of the Parties at Schedule 1, Item E.

5 CONFIDENTIAL INFORMATION EXCHANGE

- 5.1 The Parties acknowledge that:
- a. the identification of activities for the Parties to undertake under this MOU; and
 - b. evaluating and reporting on progress with implementing this MOU, including the status of Project Arrangements entered into under it;
- may require the exchange of Confidential Information.
- 5.2 Each Party may disclose to the other Party such of its Confidential Information as it considers necessary or convenient for the effective functioning of this MOU on the terms specified in this clause 5.
- 5.3 A Register of the Confidential Information disclosed in accordance with this MOU shall be recorded and maintained by each of the parties as Schedule 1, Item A.

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- 5.4 The Receiving Party:
- a. shall not disclose the Confidential Information of the Disclosing Party to a third Party, without the prior written consent of the Disclosing Party;
 - b. shall not use or copy the Confidential Information or reduce it into tangible, visible or recorded form, other than for the purpose of this MOU or as otherwise authorised in writing by the Disclosing Party;
 - c. acknowledges and agrees that use or disclosure of any Confidential Information provided to the Receiving Party other than in accordance with this MOU may be detrimental to the Disclosing Party in the performance of its functions and may cause harm to any third Parties with an interest in the Confidential Information;
 - d. shall not remove any proprietary or confidential designations on the Confidential Information.
- 5.5 In giving written consent to use or disclose its Confidential Information, the Disclosing Party may impose conditions as it thinks fit, and the Receiving Party agrees to comply with these conditions.
- 5.6 The obligations on the Parties under this MOU will not be taken to be breached to the extent that Confidential Information:
- a. is disclosed by a Party to its employees solely in order to undertake the performance of this MOU including Project Arrangements;
 - b. is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of MOU related activities;
 - c. is disclosed by either Defence or DoHA to responsible Minister/s;
 - d. is disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Commonwealth within the Department of Defence or the Department of Health and Ageing;
 - f. is authorised or required by law to be disclosed;
 - g. is information in a Material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that Material form, has vested in, or is assigned to, the Receiving Party under this MOU or otherwise, and that disclosure is permitted by that licence or otherwise; or
 - h. is in the public domain otherwise than due to a breach of this MOU.

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- 5.7 Where a Party discloses Confidential Information to another person:
- a. pursuant to clauses 5.6 (a), (b) or (f), the Party disclosing the Confidential Information must:
 - A. notify the receiving person that the information is Confidential Information; and
 - B. not provide the information unless the receiving person agrees to keep the information confidential; or
 - b. pursuant to clauses 5.6 (d) and (e), the Party disclosing the Confidential Information must notify the Receiving Party that the information is Confidential Information.

6 STEERING COMMITTEE

- 6.1 The Parties will form a Steering Committee that will:
- a. oversee the implementation and operation of the MOU;
 - b. promote collaboration under this MOU;
 - c. approve activities for the Parties to undertake through appropriate Project Arrangements;
 - d. provide annual reports to the Chief Executive of each Party on progress of this MOU, including the status of Arrangements entered into under it;
 - e. consist of 2 representatives of each Party of the status of Assistant Secretary (Liaison Officer – DoHA) or delegate for DoHA and Division Chief (Liaison Officer – DSTO) or delegate for Defence, with invited advisors as appropriate;
 - f. rotate the chairperson between the Parties on an annual basis; and
 - g. Defence to provide secretariat support including administrative duties, maintaining records and overseeing or performing secretarial duties such as organising meetings between the parties, preparing papers and minutes of meetings; and correspondence, for the duration of the MOU.
- 6.2 The Steering Committee will meet at least twice a year to fulfil their obligations under 6.1.
- 6.3 In Steering Committee meetings, the Parties may engage Government Agencies with whom either Party has an independent MOU. The participation of the Government Agency will be subject to approval of the other Party.

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- 6.4 The secretariat established at clause 6.1(g) will nominate a Chairperson for a period of one (1) year, from either party. The Chairperson must alternate between the parties at the end of the term. All information and documentation accumulated during the term will be filed and stored at Defence.
- 6.5 The Steering Committee may provide the opportunity for a Business Representative from DoHA and/or Defence to participate in meetings and to consult on Intellectual Property and contractual matters.
- 6.6 The Steering Committee will consist of the persons listed at Item C of Schedule 1 and any changes to the Committee will be noted and appended to this MOU.

7 COSTS AND EXPENSES

- 7.1 Unless otherwise agreed by the parties, each party will be responsible for all costs and expenses incurred by it in performing its obligations under this MOU.
- 7.2 The Parties may jointly apply for Project Arrangement funding from a third party. Should funds be awarded and financial commitments undertaken, authorisation of such projects should be provided by those representatives of each Party who hold the appropriate financial delegations.
- 7.3 Any funds awarded to the parties as per clause 7.2, will be dealt with in accordance with the terms and conditions set out in the appropriate Project Arrangement.

8 TERM AND TERMINATION

- 8.1 This MOU comes into effect from the date of the last signatory appearing on the execution page, and, unless terminated earlier in accordance with Clause 8.3 expires five (5) years from that date.
- 8.2 The provisions of Clause 5 shall survive the expiry or termination of this MOU.
- 8.3 Either Party may terminate this MOU on the provision to the other Party of three (3) months notice in writing ("Notice").

9 NOTICES

- 9.1 A Notice is to be delivered by hand, sent by prepaid post or transmitted by facsimile to the persons named and to the address provided for the relevant Party identified at Schedule 1, Item B.
- 9.2 A Notice will be deemed to be received:
- a. if delivered by hand, upon delivery;

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- b. if sent by prepaid post within Australia, upon the expiration of two (2) Business Days after the date on which it was sent; or
- c. if transmitted by facsimile, on the Business Day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business on the next Business Day following the day of despatch that the transmission was illegible.

10 ASSIGNMENT

- 10.1 This MOU is personal to the parties and neither party may assign its benefits or obligations under this MOU unless mutually agreed in writing by the parties.

11 VARIATION

- 11.1 This MOU may not be varied or modified unless in writing executed in the same manner as this MOU.

12 APPLICABLE LAW

- 12.1 This MOU is governed by the laws of the State or Territory set out in Item D of Schedule 1 and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of that State or Territory.

13 DISPUTES

- 13.1 If there is a dispute between the Parties about the MOU, the Party claiming that a dispute or difference has arisen will give notice to the other Party, including:
- a. details of the matters in dispute;
 - b. nominating a person with authority to settle the dispute; and
 - c. request that the other Party promptly nominate a person with authority to settle the dispute.
- 13.2 The Parties agree that the nominated persons will meet within 21 days of the date of the notice referred to in clause 12.1 to seek to resolve the dispute.
- 13.3 If the nominated persons cannot resolve the dispute, the Parties will refer the dispute to their respective Agency head and failing this to the relevant Ministers.

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EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of
THE DEPARTMENT OF DEFENCE (ABN 68 706 814 312)


SIGNED for and on behalf of
THE DEPARTMENT OF HEALTH AND AGEING (ABN 83 605 426 759)

by:
s22

(signature)

Alex Zelinsky, CDS
.....
(name and position)

an officer duly authorised to sign on its behalf in the presence of :

s22

.....
(signature of witness)


IAN SARE
.....
(name of witness)

by:
s22

(signature)

CJ BAGGOLEY, CHIEF MEDICAL OFFICER
.....
(name and position)

an officer duly authorised to sign on its behalf in the presence of:

s22

.....
(signature of witness)

GARY LUM
.....
(name of witness)

SCHEDULE 1

A CONFIDENTIAL INFORMATION (CI) REGISTER

Entry No.	Form of CI (report, Material, equipment)	Description of CI	Owner of CI (Defence/DoHA)	Security Classification	Document Located/ File Reference

The Parties agree that to the best of their knowledge this is a true and correct record of the Confidential Information contributed as at, under the MOU between Defence and DoHA

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B NOTICES

Defence

Name and title: Dr Simon Oldfield, Chief Human Protection and Performance

Address: Defence Science and Technology Organisation
BLD 1, 506 Lorimer Street, Fishermans Bend, 3207, VIC,
Australia

Facsimile: s47E(d)

Telephone: s47E(d)

DoHA

Name and title: Dr Gary Lum, Assistant Secretary, Health and
Emergency Management Branch, Office of Health
Protection

Address: Department of Health and Ageing, Level 3,
Scarborough House, Atlantic Street, Woden ACT
2006, Australia

Facsimile: s47E(d)

Telephone: s47E(d)

C STEERING COMMITTEE

Liaison officer

Defence: Dr Simon Oldfield, Chief Human Protection and Performance Division, DSTO

DoHA: Dr Gary Lum, Assistant Secretary, Office of Health Protection

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Secretariat:

Parties to be nominated by DoHA and Defence.

Chairperson to be identified.

Storage of Documentation: Defence Science and Technology Organisation
BLD 1, 506 Lorimer Street,
Fishermans Bend, VIC 3207, Australia

Business Representative:

Defence: s47E(d) DSTO, Business and Commercialisation Office –
Melbourne, Science, Industry and External Relations Division

DoHA: s47E(d) Director, Health Countermeasures Section, Office of Health
Protection

D APPLICABLE LAW

The laws of the Australian Capital Territory are to apply to this Agreement.

E PROJECT ARRANGEMENT REGISTER

Entry No.	Project Arrangement name	Description of Project Arrangement	Date of Execution	Security Classification	Document Located/ File Reference

The Parties agree to update this register as new Project Arrangements are executed in accordance with this MOU between Defence and DoHA

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ANNEX A

DEFENCE/DOHA PROJECT ARRANGEMENT

Title:

Number:

DATE

This Arrangement is made on the _____ day of <insert month> <insert year>.

PARTIES

This Arrangement is made between the following Parties:

THE DEPARTMENT OF DEFENCE as represented by the [insert Defence organisation here e.g. Defence Science and Technology Organisation; make consistent throughout] (ABN 68 706 814 312), ("DSTO"); and

THE DEPARTMENT OF HEALTH AND AGEING (ABN 83 605 426 759) of Woden, ACT, ("DoHA")

BACKGROUND

- A. DSTO has technical expertise and knowledge in a range of areas relating to national defence, including <insert field in which collaborative activities is to occur> (the "**Arrangement Area**").
- B. DoHA has expertise in health protection in the areas of epidemiology, pathogen security, laboratory capacity, stockpiling of emergency-use pharmaceuticals and health emergency planning
- C. The Parties have entered into a Memorandum of Understanding on <insert day> <insert month> 2012 by which the Parties have agreed that they will combine their skills and expertise and work together to undertake collaborative activities where it is in the national interest for them to do so, including in the Arrangement Area.
- D. The Parties now agree to undertake the work specified in this Annex A, (the "**Project**") on the following terms and conditions of this non-exclusive Arrangement.

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THE PARTIES AGREE AS FOLLOWS

The Parties to this Project Arrangement agree as follows:

14 INTERPRETATION

14.1.1 Unless the contrary intention appears, in this Project Arrangement:

Background IP/ Background Material	means any Intellectual Property or Material that existed prior to the execution of the Arrangement
Confidential Information	<p>any information held by a Party (or any agent or employee of such) in any form or medium which is or may be disclosed to the other Party for their functions and the purposes of this Arrangement.</p> <p>Such information includes, but is not limited to: trade secrets, know-how, information, research protocols and methodology, processes, techniques, software, computer records, business and marketing plans and projections, details of Arrangements and arrangements with third Parties, customer and product information and lists, designs, plans, drawings and models, but does not include:</p> <ul style="list-style-type: none"> a. information which is publicly available at the commencement of this Arrangement; b. information which becomes publicly available after the commencement of this Arrangement, other than as a result of a breach of this Arrangement by the recipient or disclosure by any other person contrary to this Arrangement; or c. information obtained from third Parties outside the context of this Arrangement;
Defence Use	<p>means any use for Australian defence, national security or strategic purposes by the Department of Defence including (without limitation) for the purpose of:</p> <ul style="list-style-type: none"> a. permitting third party contractors to provide, or offer to provide, goods or services to or for the Commonwealth for defence, national security or strategic purposes; or b. fulfilling Australia's obligations under international law including (without limitation) any treaties, conventions or international Arrangements to which Australia may be a party or have adopted;

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DoHA use	means any use for public health or national health emergency response purposes by DoHA including (without limitation) for the purpose of: <ul style="list-style-type: none"> a. permitting third parties to provide, or offer to provide, goods or services to or for the Commonwealth for public health, health emergencies or other strategic purposes; or b. fulfilling Australia's obligations under international law including (without limitation) any treaties, conventions or international Arrangements to which Australia may be a party or have adopted;
Foreground IP/Developed Material	means any Intellectual Property or Material created under or otherwise in connection with the performance of this Arrangement
Home Organisation	means the Department which is the permanent employer of a Seconded
Intellectual Property	means all industrial and intellectual property rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable;
Material	Includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;
MOU	means the Memorandum of Understanding signed between the parties on <insert day> <insert month> 2012;
Parties	means the Parties to the MOU and Project Arrangement and their respective successors or permitted assigns and "Party" shall have the corresponding meaning;
Project Arrangement	means an Arrangement to undertake an Activity pursuant to the terms and conditions in the MOU signed by the parties, the additional terms and conditions for which are specified in this Annex A.
Project Manager	means the project manager appointed under Schedule 2, Item 4;

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Secondee	means the person or persons who may be seconded to the Seconding Party as specified in Schedule 2;
Seconding Party	means the Department where the person or persons carries out the Secondment
Secondment	means the secondment of an person or persons at the Seconding Parties premises for the term specified in Schedule 2 to this Project Arrangement

14.1.2 Unless the contrary intention appears, in this Project Arrangement

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for guidance only and have no effect on the interpretation of the clauses to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;
- f. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; the Schedules and any attachments form part of this Arrangement; and
- g. where any conflict arises between the terms and conditions contained any part of the Project Arrangements, the terms and conditions of the MOU clauses prevail.

15 CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 15.1.1 All Confidential Information provided or developed during the course of a Project will be subject to the same terms and conditions specified in Clause 5 of the MOU.
- 15.1.2 Intellectual Property in all Developed Material brought into existence under a Project vests in the Commonwealth and shall be managed by the party which brought the Intellectual Property into being.
- 15.1.3 DSTO shall have unrestricted rights to use the Developed Material for Defence Uses.
- 15.1.4 DoHA shall have unrestricted rights to use the Developed Material for Health uses.
- 15.1.5 Any commercialisation of Developed Material created under the Project Arrangement will be the subject of separate Agreement between DoHA and DSTO.

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- 15.1.6 Clause 2.2 does not affect the ownership of Intellectual Property in Background Material.
- 15.1.7 Subject to clauses 2.8 and 2.9, a party which receives Background Material from the other party in the course of a Project will not, without the prior express written approval of the other party, directly or indirectly disclose, copy or use it.
- 15.1.8 In the case of Background Material owned by DSTO which is provided to DoHA in the course of a Project, DSTO grants to DoHA a perpetual, irrevocable, non-exclusive, non-transferable and royalty-free right to use the Background Material only for DoHA use, subject to clause 2.10.
- 15.1.9 In the case of Background Material owned by DoHA which is provided to DSTO in the course of a Project, DoHA grants to DSTO a perpetual, irrevocable, non-exclusive, non-transferable and royalty-free right to use the Background Material for Defence Uses, subject to clause 2.10.
- 15.1.10 A party which receives Intellectual Property in Background Material or in Material developed under a Project from the other party will only use that Intellectual Property in accordance with any condition, limitation or restriction notified in writing by the other party or specified in a Project Arrangement.
- 15.1.11 All Background Material intended to be provided for a Project Arrangement will be registered at Schedule 2, Item 11A at the commencement of the Project. If additional Background Material is provided for a Project Arrangement an amended Schedule 2, Item 11A will be prepared.
- 15.1.12 All Developed Material created as a result of a Project Arrangement will be registered at Schedule 2, Item 11B at the end of the Project.
- 15.1.13 The provisions of this clause survive the termination or expiry of both the MOU and the Project Arrangement

16 PUBLICATION

- 16.1.1 If a party or any of its employees wishes to publish or otherwise disclose the results of a Project Arrangement by way of:
- a. written publication including departmental, annual or other reports; or
 - b. written or oral disclosure at any seminar, lecture or other meeting; and
 - c. via any media;
- the following procedures will be observed:
- d. the party wishing to publish will submit to the other party details of the Project results proposed to be published or disclosed. The other party must reply in writing within one month stating whether it approves or does not approve the

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publication or disclosure. If the other party does not reply within the time specified the other party is deemed to have approved the publication or disclosure; and

- e. the other party must not withhold such approval unless it reasonably believes that such publication or disclosure would harm, prejudice or in any other way injure the interests which the other party has in the Project results.
 - f. To ensure adequate time for both parties to analyse outcomes and evaluate the implications of publication, a request for agreement to publish will not be made until at least three (3) months following finalisation of the work undertaken as part of this Project Arrangement.
- 16.1.2 Where either party publishes or discloses the results of the work performed under the Project Arrangement, the party undertaking the publication or disclosure will acknowledge the source of the Material so published or disclosed.
- 16.1.3 A party may not use the name of the other party without having first obtained the prior written consent of the other party. The use of such name will be subject to any conditions attaching to such consent.

17 COSTS AND EXPENSES

- 17.1.1 Unless otherwise agreed by the Parties, each Party will be responsible for all costs and expenses incurred by it in performing its obligations under this Project Arrangement.
- 17.1.2 If one Party requires the other Party to perform services which are beyond the scope of the Project as defined in the Project Arrangement, the Parties will negotiate a fee payable to the relevant Party for the additional work required. The Parties agree that ownership of the results generated from the additional work will vest in the Party paying for the additional work.
- 17.1.3 All fees payable under clause 4.2, will be specified in Schedule 2, Items 9 and 10.

18 OUTPOSTING AND SECONDMENT

- 18.1.1 The Parties acknowledge that a project may involve a Secondee being outposted or seconded to the other party for the purposes of providing consultancy services for the project. The details of any secondment will be specified in Schedule 2, Item 12.
- 18.1.2 The Project Manager will be responsible for the Secondee while engaged in the work described in each Project Arrangement.
- 18.1.3 The Secondee remains an employee of the home organisation throughout the secondment and subject to his/her employment conditions with the home organisation.

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- 18.1.4 The Seconding Party will provide such facilities, materials and equipment as are reasonably required for the proper conduct of the Project Arrangement.
- 18.1.5 Arrangements for the costs involved in an outposting or secondment, such as moving expenses, reimbursement of salary, travel costs, etc will be negotiated on a case-by-case basis between the parties. Any Arrangement as to the sharing or apportionment of these costs must be included in Schedule 2, Item 12.
- 18.1.6 The parties hereby grants to each Secondee a non-exclusive, personal and non-transferable licence to enter in and remain on its premises for the Term and for the roles and responsibilities as specified in Schedule 2, Item 12.
- 18.1.7 The home organisation will ensure that the Secondee complies with all policies, rules, regulations and codes applying to the Seconding party premises and obeys the Seconding Party's lawful instructions relating to matters such as occupational health and safety and protective security.
- 18.1.8 The home organisation will accept any liabilities for personal injury or loss or damage to personal property which might be sustained by an employee in connection with a Secondment wherever the work relating to the Secondment is undertaken.
- 18.1.9 The liability and indemnity applicable to the home organisation under clause 5.8 does not apply to the extent that any such injury or loss of or damage to property is caused by the negligence or wrongful act or omission of the Seconding Party or its officers, employees, agents or subcontractors.

19 SUBCONTRACTORS

- 19.1.1 The Parties may only subcontract its obligations under this Agreement to a subcontractor listed in Item 6 of Schedule 2, subject to any conditions specified in Item 6 of Schedule 2.
- 19.1.2 The Party subcontracting its obligations must ensure that each subcontract for the performance of any part of the Project is in writing, and imposes obligations on the subcontractor no less onerous than the provisions of the MOU and Project Arrangement.
- 19.1.3 The Party subcontracting its obligations is fully responsible for the performance of the Project and compliance with this Project Arrangement, and will not be relieved of that responsibility because it has subcontracted the performance of any part of the Project.

20 NOTICES

- 20.1 A Notice is to be delivered by hand, sent by prepaid post or transmitted by facsimile to the persons named and to the address provided for the relevant Party identified at Schedule 2, Item 13.
- 20.2 A Notice will be deemed to be received:

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- a. if delivered by hand, upon delivery;
- b. if sent by prepaid post within Australia, upon the expiration of two (2) Business Days after the date on which it was sent; or
- c. if transmitted by facsimile, on the Business Day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business on the next Business Day following the day of despatch that the transmission was illegible.

21 ASSIGNMENT

- 21.1 This Project Arrangement is personal to the parties and neither party may assign its benefits or obligations under this Project Arrangement unless mutually agreed in writing by the parties.

22 VARIATION

- 22.1 This Project Arrangement may not be varied or modified unless executed in writing in the same manner as this Project Arrangement.

23 APPLICABLE LAW

- 23.1 This Project Arrangement is governed by the laws of the Australian Capital Territory set and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of that Territory.

24 DISPUTES

- 24.1 If there is a dispute between the Parties about the Project Arrangement, the Party claiming that a dispute or difference has arisen will give notice to the other Party, including:
- a. details of the matters in dispute;
 - b. nominating a person with authority to settle the dispute; and
 - c. request that the other Party promptly nominate a person with authority to settle the dispute.
- 24.2 The Parties agree that the nominated persons will meet within 21 days of the date of the notice referred to in clause 7.1 to seek to resolve the dispute.
- 24.3 If the nominated persons cannot resolve the dispute, the Parties will refer the dispute to their respective Agency head and failing this to the relevant Ministers.

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In WITNESS WHEREOF the Parties have executed this Project Arrangement on the date first above written

SIGNED for and on behalf of
COMMONWEALTH OF AUSTRALIA
Represented by the Defence Science
and Technology Organisation
of the Department of Defence
(ABN 68 706 814 312)

SIGNED for and on behalf of
THE COMMONWEALTH OF AUSTRALIA
Represented by the Department of Health
and Ageing **(ABN 83 605 426 759)**

by:

by:

.....
(signature)

.....
(signature)

.....
(name and position)
an officer duly authorised to sign
on its behalf in the presence of :

.....
(name and position)
an officer duly authorised to sign
on its behalf in the presence of:

.....
(signature of witness)

.....
(signature of witness)

.....
(name of witness)

.....
(name of witness)

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SCHEDULE 2

SCOPE OF THE ARRANGEMENT AREA AND ROLE OF EACH PARTY

1. **Project** - <insert Classification>

A. BACKGROUND

<Insert>

B. AIMS/OBJECTIVES

<Insert>

C. METHODS/DESCRIPTION OF THE PROJECT

<Insert – This should be reasonably detailed statement of the work to be undertaken. Include timing of tasks, division of responsibilities between the organisations, the location of work, etc>

D. DELIVERABLES

<Insert>

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2. Project Purpose

<Insert>

3. Period of Project

Commencement Date:

Term:

4. Project Managers

DSTO: <Insert>

DoHA: <Insert>

5. Specified Personnel

DSTO: <Insert>

DoHA: <Insert>

6. Subcontractor

<Insert details and from which organisation>

7. Equipment

<Insert details and from where sourced>

8. Other Resources to be Provided

<Insert details and from where sourced>

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9. Payment Schedule

<Insert whether the Project Arrangement is DSTO or DoHA funded>

Instalment Number	When instalment becomes payable	Due Date	Amount (excluding GST)
1		XX/XX/20XX	\$
2		XX/XX/20XX	\$
3		XX/XX/20XX	\$
Total (excluding GST)			\$

10. Heads of Expenditure Table

Categories of Expenditure	GST Exclusive Amount	GST Component	GST Inclusive Amount
Salaries	\$	\$	\$
Stakeholder Overheads	\$	\$	\$
Travel	\$	\$	\$
Other	\$	\$	\$
Total (including GST)			\$

11. INTELLECTUAL PROPERTY

<Insert any variation to Clause 2 of the Project Arrangement>

A. DSTO-DoHA BACKGROUND INTELLECTUAL PROPERTY REGISTER

Entry No.	Title of Background Material	Description of Background Material	Type of IP	Owner of Background Material	Security Classification	Document Located/ File Reference	Restrictions/ Encumbrances

The Parties agree that to the best of their knowledge this is a true and correct record of the Background IP contributed as at, under the Project Arrangement No: between DSTO and DoHA

Signed for on behalf of DSTO by:

Signed for on behalf of DoHA by:

.....
Chief

.....
Chief

B. DSTO-DoHA FOREGROUND/DEVELOPED INTELLECTUAL PROPERTY REGISTER

Entry No.	Title of Developed Material	Description of Developed Material	Type of IP	Contributors	Date Created	Where was the Material created	Purpose	Security Classification	Document Located/ File Reference	Owner	Restrictions/ Encumbrances

The Parties agree that to the best of their knowledge this is a true and correct record of the Developed Intellectual Property as at, under the Project Arrangement No: XXX executed under the MOU between DSTO and DoHA

Signed for on behalf of DSTO by:
Chief

Signed for on behalf of DoHA by:
Chief

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12. OUTPOSTING OR SECONDMENT

A. DSTO/DoHA Secondee:

B. Supervisors:

DSTO Supervisor:

Contact Details:

DoHA Supervisor:

Contact Details:

C. Term of Secondment:

Start Date:

End Date:

D. Location of Secondment:

E. Position Description:

To carry out the project as described in Schedule 2

F. Role and Responsibilities:

<Insert as much detail as possible regarding the contribution of the Secondee to the project, and the need to be stationed at the Seconding Organisation>

G. Any Special conditions for the secondment

<Could be related to the costs as described in clause 5.5>

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13. **NOTICES**

DSTO:

Director
Business and Commercialisation Office
DSTO
506 Lorimer Street
Fishermans Bend, VIC 3207
Tel: s47E(d)
Fax: s47E(d)

DoHA:

Director
Health Emergency Countermeasures Section
Office of Health Protection
Department of Health and Ageing
Scarborough House
Atlantic Street
Woden ACT 2601
Tel: s47E(d)
Fax: s47E(d)