

## FRAMEWORK AGREEMENT

between

the Organisation for Joint Armament Cooperation (Organisation Conjointe de Coopération en Matière d'Armement (OCCAR)),

and

the Government of Australia

for

the participation of Australia in OCCAR-managed Programmes

### PREAMBLE

RECOGNISING the Convention on the Establishment of the Organisation for Joint Armament Cooperation (OCCAR) signed on 9 September 1998, in Farnborough, hereinafter referred to as the "OCCAR Convention" which entered into force on 28 January 2001;

ACKNOWLEDGING the OCCAR Security Agreement between the OCCAR Member States signed on 24 September 2004, in Paris, hereinafter referred to as the "OCCAR Security Agreement";

RECOGNISING that the Board of Supervisors of OCCAR (BoS) has authorised the OCCAR-EA Director to sign this Framework Agreement on behalf of OCCAR (hereinafter referred to as "Agreement"), on the understanding that entry into such Agreement will under no circumstances confer on Australia the status of membership in OCCAR as a Member State or entitle Australia to lay claim to such status;

OCCAR and Australia, hereinafter referred to as "the Parties", have agreed as follows:

### DEFINITIONS

The following definitions shall apply to this Agreement, and other capitalised terms shall be read as defined in the OCCAR Rules.

Administrative Budget	means the budget required to cover those activities associated with the internal functioning of a Programme Division or Central Office (as appropriate) for the implementation of an Implementing Arrangement, and the Programme share of the site costs.
-----------------------	---

Administrative Maximum Financial Commitment	means the amount of financial resources that Programme Participating States make available to OCCAR to allow OCCAR-EA to fulfil its obligations under the relevant Implementing Arrangement.
Australian Representative	means the Department of Defence Deputy Secretary Capability Acquisition and Sustainment Group or authorised delegate.
Classified Information	<p>means any information, document or material the unauthorised disclosure of which could cause prejudice to the interests of OCCAR, its Member States or any other State participating in an OCCAR Programme, whether such information originates within OCCAR or is received from its Member States or from States participating in an OCCAR Programme and which has been so designated and marked with a security classification.</p> <p>Classified Information may include information provided by any other state or international organisation for purposes of an OCCAR Programme.</p>
High Level Objective(s) (HLO(s))	means the objective(s) set in an Implementing Arrangement, in terms of cost, time, and/or performance (including quality) of part of the work to be performed under that Implementing Arrangement.
Implementing Arrangement	means a Programme Decision signed by Australia and by which Australia participates in an OCCAR-managed Programme in accordance with the provisions of this Agreement.
OCCAR-managed Programme	means a Programme assigned to OCCAR for management from the signature of the first Programme Decision by the Programme Board.
OCCAR Management Procedure(s) (OMP(s))	means the procedures adopted by the BoS and defining rules and policies for the management of OCCAR activities.
OCCAR Programme Memoranda of Understanding (MoU(s))	means an instrument entered into by the Programme Participating States containing the commitments of the Programme Participating States towards each other, and indicating the Programme Participating States' intention to entrust the management of the programme to OCCAR in accordance with its rules regulations and procedures.

Operational Budget	means the budget enabling OCCAR-EA to fulfil the requirement of a Programme Decision. The Operational Budget does not include the Administrative Budget.
Operational Maximum Financial Commitment	means the amount of financial resources that Programme Participating States commit to as a maximum, for the undertaking of the activities covered under the relevant Programme Decision.
Programme Contract	means any contract placed by OCCAR in the name and/or on behalf of Australia as a concerned Participating State.
Programme Decision	means the decision approved and signed by the representatives of the Programme Participating States on the relevant Programme Board and which, for Australia, shall be an Implementing Arrangement entered into pursuant to this Agreement.
Programme Participating States	means any State participating in an OCCAR-managed Programme. This term is also used to refer to any international organisation or institution which participates in an OCCAR-managed Programme.
Unclassified Information	means any information, document or material which has not been designated and marked with a security classification, as detailed in OMP11.
Unclassified Sensitive Information	means any Unclassified Information containing specific sensitivities relating to an OCCAR-managed Programme, whose unauthorised disclosure would be disadvantageous to the interests of OCCAR, one of its Member States, Programme Participating States or any other originator.

## **Article 1. Purpose**

- 1.1 The purpose of this Agreement is to provide the legal framework for the integration and participation of Australia in OCCAR-managed Programmes.

## **Article 2. Scope**

- 2.1 The provisions of this Agreement shall apply to cooperative activities for the integration and participation of Australia in OCCAR-managed Programmes.
- 2.2 This Agreement may cover all activities, Common Elements or Non-Common Elements, linked to all life-cycle phases of OCCAR-managed Programmes.

- 2.3 For OCCAR-managed Programmes, any analytical calculation of industrial *juste retour* on a programme-by-programme basis shall not be applied.

### **Article 3. General Provisions**

- 3.1 Australia confirms that all OCCAR-managed Programmes with Australian participation shall be managed by OCCAR in accordance with the OCCAR Rules, noting that implementation of this Agreement will be by Implementing Arrangements as detailed in Article 4 of this Agreement. Representatives of Australia shall participate in the relevant Programme Boards (PB) and the Programme Committees (PC), which have been or will be created by the OCCAR BoS to manage these Programmes, as described in the OCCAR Rules. The designation of representatives shall be notified by Australia to OCCAR in writing and those representatives shall have the authority to decide on all matters within the responsibility of the relevant PB and PC.
- 3.2 In this Agreement, OCCAR Rules means the OCCAR Convention, the OCCAR Security Agreement and OCCAR Management Procedures, including all principles, strategies and policies. The version of these documents to apply is the one in force at the time of usage and will be accessible to the representatives of Australia.
- 3.3 Regarding the application of the OCCAR Convention, Australia shall undertake the procedure to grant the privileges and immunities in accordance with the terms and conditions of Annex I of the OCCAR Convention. During the period until the full application of the aforementioned provisions for the procedure to grant the privileges and immunities is finally confirmed (which may occur after entry into force of this Agreement), the following conditions shall apply with the full acknowledgment of Australia:
- (a) an OCCAR Programme Division shall not be located in Australia;
  - (b) no OCCAR Programme meetings shall be held in Australia;
  - (c) no Prime Contractors shall be appointed from Australia; and
  - (d) no national of Australia shall be recruited as an OCCAR staff member.
- 3.4 The provisions for arbitration as described in Annex II of the OCCAR Convention shall apply to cooperative activities for the integration and participation of Australia in OCCAR-managed Programmes.
- 3.5 This Agreement shall constitute the agreement between OCCAR and Australia referred to in Article 37 of the OCCAR Convention, concerning cooperative activities for the integration and participation of Australia in OCCAR-managed Programmes. The Australian Representative or authorised delegate shall be responsible for the effective implementation of this Agreement. Australia shall promptly advise OCCAR of any change of the Australian Representative.
- 3.6 OCCAR-EA Director shall serve as the single point of contact for Australia for the implementation of this Agreement.

#### **Article 4. Implementation**

- 4.1 In respect of Australia's participation in OCCAR-managed Programmes, this Agreement shall be implemented by means of Implementing Arrangements. Several Implementing Arrangements may be required to be established for a single given OCCAR-managed Programme.
- 4.2 Following a request in accordance with the OCCAR Rules, the process for the integration of Australia in a given OCCAR-managed Programme shall start with the approval by the BoS of the Programme Management Authorisation (PMA) for the management of that Programme by OCCAR. The aim and scope of OCCAR-managed Programmes with the participation of Australia shall be as detailed in the relevant Implementing Arrangement(s) mentioned above.
- 4.3 Following the signing of Implementing Arrangements pursuant to this Agreement, Australia shall, in accordance with the OCCAR Rules, be legally bound to the relevant OCCAR-managed Programme, including the financial commitments and budget in accordance with Article 10 of this Agreement, and Programme HLOs, and shall enjoy the rights arising from participation in the OCCAR-managed Programme, to the same extent as OCCAR Member States participating in the Programme.
- 4.4 Implementing Arrangements entered into pursuant to this Agreement shall:
  - (a) constitute the decisions referred to in Article 38 of the OCCAR Convention; and
  - (b) not be considered to be treaties within the meaning of the Vienna Convention of 1969.

#### **Article 5. Organisation and Management**

- 5.1 OCCAR shall direct and manage OCCAR-managed Programmes in accordance with the OCCAR Rules. Additional specific provisions for the organisation and management by OCCAR of an OCCAR-managed Programme shall be detailed in the relevant Implementing Arrangement.
- 5.2 Australia shall conduct all activities under this Agreement and any subsequent Implementing Arrangement in accordance with its national laws and regulations.

#### **Article 6. OCCAR-EA Reporting System**

- 6.1 OCCAR-EA shall provide Australia with reports on the progress of relevant Programmes and, in particular, on any matter which might have an impact on the achievement of any of the HLOs. Such reports shall be in accordance with the OCCAR Rules.

#### **Article 7. Contractual Arrangements**

- 7.1 OCCAR-EA shall, in accordance with the OCCAR Rules, negotiate, award and administer Programme Contracts and all amendments thereto in the name

and/or on behalf of Australia as a concerned Participating State, so that Australia and the Programme Contractor are the parties to the Programme Contract(s).

### **Article 8. Pricing**

8.1 Price investigations, cost forecasting and price audits shall be carried out in accordance with the OCCAR Rules.

### **Article 9. Work allocation**

9.1 Work allocation shall be monitored and recorded by OCCAR-EA in accordance with the OCCAR Rules, including the OCCAR Global Balance Policy Paper.

### **Article 10. Financial Commitments and Budgets**

10.1 For the avoidance of doubt, any reference to "year" shall be interpreted as the OCCAR financial year, equivalent to a calendar year.

10.2 For each financial year, an Administrative Budget and an Operational Budget shall be prepared, managed and reported on by OCCAR-EA in accordance with the OCCAR Rules.

#### **Administrative Costs**

10.3 For integration activities for a Programme in which Australia proposes to participate, Australia shall pay a contribution for the support from OCCAR-EA Central Office as and if requested in the PMA and acknowledged in writing by Australia.

10.4 Australia shall pay its contribution to the Administrative Budget of a given financial year consistent with and up to the Administrative Maximum Financial Commitment, as calculated in accordance with the OCCAR Rules and established in the relevant Implementing Arrangement.

#### **Operational Costs**

10.5 Australia shall pay its contribution to the Operational Budget of a given financial year consistent with and up to the Operational Maximum Financial Commitment, as calculated in accordance with the OCCAR Rules and established in the relevant Implementing Arrangement.

10.6 The costs related to Common Elements under the Operational Budget shall be shared as shown in the relevant Implementing Arrangement.

10.7 The costs related to Non-Common Elements (if any) under the Operational Budget shall be borne by that (or those) Participating State(s) which generate(s) them.

## **Article 11. Call for Funds and Payment Arrangements**

- 11.1 OCCAR-EA shall call for administrative funds from Australia in EURO. As provided for in the OCCAR Rules, the amount of the call for administrative funds shall not exceed the Administrative Budget ceilings.
- 11.2 OCCAR-EA shall call for operational funds from Australia in EURO, unless otherwise mutually determined in the relevant Implementing Arrangement. As provided for in the OCCAR Rules, the amount of the call for operational funds shall not exceed the Operational Budget ceilings.
- 11.3 OCCAR-EA shall establish a dedicated bank account for the Operational Budget for Australia's involvement in any OCCAR-managed Programme, which shall be managed by OCCAR-EA. Interest earned on the Operational Budget bank account shall be Australia's property.
- 11.4 Australia shall meet its financial commitments to activities as defined in the relevant Implementing Arrangement and in response to the relevant call for funds, by payment into the nominated OCCAR-EA bank account. If Australia should pay its contribution after the date specified by OCCAR-EA in the call for funds, Australia shall bear alone the consequences of this delay, if any, including any additional costs.

## **Article 12. Audits**

- 12.1 Internal and external audits shall be performed in accordance with the OCCAR Rules taking into account the Board of Auditors Terms of Reference, and OCCAR-EA internal procedures which may apply.
- 12.2 To enable Australia to discharge its audit functions as regards its national administration, and to report to Parliament as provided by statute, national auditors may obtain the necessary information and examine the documents held by OCCAR-EA which relate to the integration and participation of Australia in an OCCAR-managed Programme.

## **Article 13. Intellectual Property**

- 13.1 OCCAR shall, under Programme Contract(s), secure:
  - (a) for itself, enough rights to manage the OCCAR-managed Programme in accordance with the terms of this Agreement and as further detailed in the relevant Implementing Arrangement; and
  - (b) for Australia, the rights stated in the relevant OCCAR Programme MoU with particular regard to the rights and obligations specified in relation to the disclosure of Programme information to third parties and to intellectual property rights.

## **Article 14. Government Quality Assurance and Airworthiness Requirements**

14.1 Government Quality Assurance and Programme Qualification Management shall be carried out in accordance with the OCCAR Rules.

## **Article 15. Levies**

15.1 OCCAR-EA shall ensure that any Programme Contract shall contain provisions giving effect to the provisions of the relevant OCCAR Programme MoU in respect of the applicability of levies.

## **Article 16. Security of Information**

16.1 Classified Information exchanged or generated pursuant to this Agreement shall be used, handled and protected in accordance with the Parties' applicable security laws and/or regulations, including the OCCAR Rules, and the OCCAR-Australia Security Agreement for the Protection of Classified Information (OCCAR-Australia Security Agreement), upon its entry into force.

16.2 Australia shall, in accordance with national security laws and regulations, ensure the protection of OCCAR Classified Information, provided to or generated by legal entities under its jurisdiction.

16.3 OCCAR shall handle and protect Australian Classified Information in accordance with the provisions set out in OCCAR Management Procedures.

16.4 Within the scope of applicable security laws and regulations, the receiving Party shall not disclose or use or permit the disclosure of any Classified or Unclassified Sensitive Information without the prior written consent of the originating Party.

16.5 Unclassified Information and Unclassified Sensitive Information exchanged or generated pursuant to this Agreement shall be used, handled and protected in accordance with the Parties' applicable security laws and/or regulations, including the OCCAR Rules.

## **Article 17. Changes in Requirement, Withdrawal and Termination of an OCCAR-managed Programme**

### **Change of Requirement, Withdrawal**

17.1 Should Australia wish to change its requirement(s) or reduce the quantity of goods to be procured in accordance with the relevant Implementing Arrangement ("off-take") or withdraw from an OCCAR-managed Programme, the following procedure shall apply:

(a) consultations shall take place between Australia, the other Participating States and OCCAR-EA, at PC level, on the consequences of such a change of requirement or off-take or withdrawal;

(b) following such consultations, if Australia still wishes to change its



requirement or off-take or to withdraw, it shall give not less than six (6) months' notice in writing to the other Participating States and a copy of the notice shall be also provided to the OCCAR-EA Director and the Representatives of the Participating States to the PC.

- 17.2 In the event of a change of requirement or off-take or withdrawal from an OCCAR-managed Programme by Australia, Australia shall:
- (a) take all necessary action to minimise the consequences of such a change of requirement or off-take or withdrawal; and
  - (b) meet in full its commitments up to the date of change of requirement or off-take or withdrawal; and
  - (c) be solely responsible for any additional costs, damage, penalty or liability resulting from such a change of requirement or off-take or withdrawal.
- 17.3 In the event of a reduction of requirement or off-take or withdrawal from an OCCAR-managed Programme, any additional costs, damage, penalty or liability resulting from such a change of requirement or off-take or withdrawal, shall not exceed the amount Australia would have contributed had it not changed its requirement or its off-take or had it not withdrawn from the OCCAR-managed Programme.
- 17.4 If an increase of Australia's off-take leads to a reduction in cost, that reduction shall be shared by all Participating States as defined in the relevant Implementing Arrangement.

#### Termination of an OCCAR-managed Programme

- 17.5 If the Participating States decide collectively to terminate an OCCAR-managed Programme under an Implementing Arrangement, they shall jointly meet the cost of termination in accordance with the provisions of that Implementing Arrangement.

#### Residual Obligations

- 17.6 The rights and obligations of Australia and the obligations of OCCAR-EA regarding "Intellectual Property", "Levies", "Security of Information", "Disputes" and "Liabilities" shall continue irrespective of Australia's withdrawal from, or the termination or expiration of, the relevant OCCAR-managed Programme.

### **Article 18. Disputes**

- 18.1 Disputes shall be settled in accordance with the OCCAR Rules.
- 18.2 Any dispute between OCCAR and Australia, concerning the interpretation or application of this Agreement should, if possible, be settled by consultation.

- 18.3 If a dispute cannot be settled by consultation, at the request of either Party, it shall be submitted to arbitration under the conditions laid down in Annex II of the OCCAR Convention.
- 18.4 Each Programme Contract shall provide for conciliation and shall include an arbitration clause.

### **Article 19. Liabilities**

- 19.1 Liabilities shall be settled in accordance with the OCCAR Rules.
- 19.2 If it is claimed by a third party that damage or injury has been caused by OCCAR, its staff members or experts, and OCCAR does not waive immunity, the BoS shall take all appropriate steps to deal with the claim and, if the claim is justified, to settle it.

### **Article 20. Entry into Force, Amendment, Duration and Termination**

- 20.1 Each Party shall notify the other Party of the completion of its internal procedures required to bring this Agreement into force. The Agreement shall enter into force on the date of signature of the last note.
- 20.2 The Parties may amend this Agreement at any time by mutual agreement in writing. Any agreed amendments shall enter into force in accordance with the procedure set forth in Article 20.1 of this Agreement, unless otherwise provided for by the Parties.
- 20.3 This Agreement shall remain in force for an initial period of ten (10) years and shall continue in force thereafter, unless terminated.
- 20.4 The Parties may terminate this Agreement at any time by mutual agreement in writing, and shall consult to establish the effective date of termination. Alternatively, this Agreement may be terminated by either Party giving the other written notice of its intention to terminate in which case it shall terminate six (6) months after the receipt of the written notice.
- 20.5 In the event both Parties agree to terminate this Agreement or where one Party wishes to terminate this Agreement, the Parties shall manage the consequences of termination on a fair and equitable basis prior to the effective date of termination and shall negotiate the settlement of financial issues with respect to the ongoing tasks affected by the termination.
- 20.6 In the event where one Party terminates this Agreement, all costs resulting from the termination shall be borne by that terminating Party. However, the amount of these costs, including Programme Contract termination costs, shall not exceed the total committed financial responsibilities of the terminating Party under this Agreement. If the Parties decide jointly to terminate this Agreement, each Party shall meet its own termination costs and the Parties shall jointly decide how the share of any outstanding costs is to be met.
- 20.7 The termination of this Agreement shall result in the termination of any subsequent Implementing Arrangements.

20.8 The termination of this Agreement or any Implementing Arrangement shall not release the Parties from the execution of the obligations resulting from its implementation concerning "Security of Information", "Disputes", "Financial commitments and Budgets" and "Liabilities", that shall continue irrespective of a Party's withdrawal from or termination of this Agreement or any Implementing Arrangement.

IN WITNESS WHEREOF the undersigned, respectively duly authorised, have signed this Agreement.

DONE at Perth and Bonn on 5 February 2021 in two (2) original copies of this Agreement written in the English language.

For the  
Government of Australia:

For the Organisation for Joint  
Armament Cooperation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: Minister for Defence

Title: OCCAR-EA Director