

**Suggested Language: Memorandum of Understanding
WITH ANNOTATIONS**

This memorandum of understanding (“**MOU**”) sets forth the current understanding of [REDACTED] (“**Party One**”) and [REDACTED] (“**Party Two**”), together, the “**Parties**”, per the Collaboration section below. This document is an expression of intent only to be used as a negotiation aid by the Parties; the Parties do not intend to be bound by the terms set forth herein, unless expressly stated to the contrary. The terms set forth herein will be described with greater detail in an applicable definitive agreement if the Parties choose to move forward. This document contains the full and complete understanding between the Parties relating to the subject matter hereof and supersedes all prior and contemporary understandings and agreements, whether oral or written, relating to such subject matter hereof. This MOU contains preliminary initial proposal terms and does not contain final terms and conditions (the “*Proposed Transaction*”).

WHEREAS, it is the present intention of the Parties to enter into transactions on terms and conditions similar to those set forth in this MOU. These terms are based upon information currently available. They do not reflect all of the material terms of the Proposed Transaction but provide a basis for negotiating the Definitive Agreements (as defined below).

WHEREAS, this MOU [including Exhibit A attached hereto]¹, shall be non-binding except for Sections [*Good Faith Negotiation, No-Shop, Confidentiality, Marketing & Publicity and Termination*].

1. Subject to Definitive Agreement. This MOU is for discussion purposes only and is not intended to constitute a legally binding or enforceable agreement or commitment on either Party, except for Sections [*Good Faith Negotiation, No-Shop, Confidentiality, Marketing & Publicity and Termination*] which shall be binding on the Parties in accordance with its terms.

2. Understandings. This Section [#] sets forth the understandings of the Parties with respect to the Proposed Transaction.

(a) Party One is [*Party One business description*]. Party Two is [*Party Two business description*]. In order to [*broad business objective*]. To that end, the Parties desire to form a strategic relationship focused on [*broad project scope*]. The intended collaboration establishes a framework for the Parties to work together to [*broad business objective*]. To complete this effort, and subject to future negotiations, the parties will split roles and responsibilities according to their expertise. The Parties will work together towards a [*short-term and/or long-term*] relationship and collaboration whereby [*Party One anticipated deliverables*] and [*Party Two anticipated deliverables*]. To reach that objective, the parties will share information and work together to [*broad project scope*].

(b) Definitive Agreements. The Parties intend to negotiate one or more formal written agreements that would govern the Proposed Transaction (“**Definitive Agreement(s)**”). Binding obligations with respect to the Proposed Transaction shall only arise upon the execution of the applicable Definitive Agreement by both Parties. [The anticipated Definitive Agreements are as follows:

(i) DEFINITIVE AGREEMENT 1

¹ **Non-Binding Statements of Work:** Include this provision if a Non-Binding Statement of Work will be included in the MOU.

(ii) DEFINITIVE AGREEMENT 2

(iii) ...etc.]²

(c) Customary Provisions. The Definitive Agreements would contain such covenants, conditions, indemnities, representations and warranties as are customary for this type of transaction and as the Parties mutually agree.

3. Financing Summary of Proposed Terms³

(a) Class of Security

(i) [Series X Preferred Stock]/[Common Stock]/[\$X post-money valuation cap SAFE]/[X% Discount SAFE]

(b) Total Offering Amount

(i) A minimum of \$X and up to \$Y, of which [*lead investor*] as the lead shall invest \$Z and other investors acceptable to the Company and [*lead investor*] shall invest the remaining amount.

(c) Target Closing Date

(i) The initial closing is expected to occur on or around [DATE] (the “*Initial Closing*”). The final closing date shall occur on or before [DATE].

(d) Exclusivity⁴

(i) Earlier of [X]⁵ days of exclusivity from the date of this Term Sheet and signing of definitive documents.

(e) Closing Conditions

(i) Satisfactory completion of due diligence; negotiation and execution of definitive documents, including (i) [*applicable financing documents*] which shall be drafted by Company counsel and (ii) a side letter with customary [pro-rata rights, an MFN, information rights and inspection rights, which shall be drafted by Investor counsel]; Investor legal fees reimbursed at Closing of up to [\$X]

² **Identifying Proposed Definitive Agreements:** To include if definitive agreements are known at the MOU/Term Sheet discussion stage.

³ **Particulars of Financial Investment:** The below Term Sheet Provisions will be applicable only in the financial investment context. See *Venture Financings: Highlighted Terms and Suggested Language* for exemplar language for the definitive investment documents. Some common provisions, such as director appointment rights or major investment rights, are not contained here as the terms are not specific to the defense industry.

⁴ **Including Exclusivity Provisions:** This exclusivity or “No-Shop” provision may also be included in the MOU context where parties are exploring a highly specific technical integration such that there is mutual benefit to ensuring that neither party explores substantially similar commercial arrangements with competitor companies during a specified window.

⁵ **Duration of No-Shop Obligations:** This “No-shop” provision ensures that the company and the investors will not seek out substantially similar investment opportunities during a specified time period. Standard duration of this no-shop clause can be anywhere from 30-180 days.

(f) Requirements of Office of Strategic Capital (or similar, if any)⁶

(i) [Identify applicable restrictions or conditions imposed by government-facilitated investment program]

4. Proposed Terms of Definitive Agreement⁷

(a) [Identify the anticipated target market (e.g., domestic homeland security, federal and state and local law enforcement, defense agencies, IC, AUKUS etc.).]

(b) [Description of product or innovation of [PARTY ONE / PARTY TWO] that is in scope.]

(c) [Description of value add of [PARTY ONE / PARTY TWO].]

(d) [Key Technical Requirements, including anticipated requirements for obtaining an authority to operate (ATO) depending on the target market identified above.]

(e) [Key points of contact from each side (business and technical).]

5. Good Faith Negotiations. The Parties shall negotiate in good faith and use their reasonable efforts to bring about the execution and delivery of the Definitive Agreement at the earliest practicable time.

6. Due Diligence.⁸ Conclusion of the Proposed Transaction is subject to completion of a due diligence investigation by the Parties. Each Party agrees to provide representatives of the other Party with reasonable access to such information and such individuals as the other Party may reasonably request in order to carry out its due diligence investigation. The Parties shall complete their due diligence investigation within [30 days] of the date of this MOU.

⁶ **Government Facilitating of Private Investment:** Certain conditions, requirements or restrictions may apply to an investment due to one or more government programs designed to increase private capital investment in critical technologies, such as those implemented by the Small Business Investment Company Critical Technology Initiative implemented by the Department of Defense Office of Strategic Capital. To the extent any such conditions, requirements or restrictions exist and are relevant, they can be reflected in this section.

⁷ **Particulars of Commercial Collaboration:** The below Term Sheet Provisions will be applicable only in the context of a potential technical or product collaboration.

⁸ **Phased Approach to Conducting Due Diligence Review:** Depending on the deal structure, parties should be prepared for multiple phases of diligence. At the MOU/Term Sheet stage, diligence can be limited in scope to basic financial information and introductory technical diligence. In the financial context, a second phase of more robust diligence is likely to be requested by the banks including audited financial statements and forward-looking financial projections. Lawyers will also likely conduct more robust legal diligence including review of material contracts, employee invention assignment agreements, regulatory compliance, compliance capabilities and intellectual property ownership matters. For the MOU, more robust technical diligence may also be requested. For technical diligence, parties should consider limiting tech diligence to restrict exactly what employees from each party will have access to the technical specifications of each product as both parties will likely be sharing valuable intellectual property during this diligence phase. Additionally, in the MOU context, sales people may request access to or analyses of particular products to assess their sale value and general marketability. The intricacies of how diligence will be conducted will vary significantly based on the stage of a transaction and the purpose of the diligence (financial, technical, legal, sales). Defense primes should be considerate that the diligence burden on emerging companies can be a significant expense and take valuable time.

7. Costs and Expenses. Each Party [shall be responsible for all of its costs and expenses]/[Party X will cover [#%] of Party Y's diligence costs]⁹ associated with pursuing the Proposed Transaction, including without limitation (i) the performance of its obligations under this MOU, (ii) conducting its due diligence investigation, and [(iii) drafting and negotiating the Definitive Agreements, except that [Party One/Party Two] will pay no less than \$[X] and no more than \$[Y] in conducting its due diligence investigation.]¹⁰

8. Intellectual Property. As between the Parties, each Party remains the owner of its independently developed intellectual property prior to the MOU. [Subject to the foregoing, [PARTY] grants to Company a [royalty-free, worldwide license/short-term beta license]¹¹¹² to use the [MOU diligence IP] during the term of this MOU for its legitimate diligence purposes.

9. Confidentiality. [During the term of this MOU, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**").

(a) Exclusions. Confidential Information shall not include information that, at the time of disclosure and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section [#] by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by, or in the possession of, the Receiving Party or its representatives before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (v) is, subject to the paragraph below, required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.

(b) Legally Required Disclosure. In the event Receiving Party is required to disclose, pursuant to a judicial order, a requirement of a governmental agency or by operation of law, any Confidential Information provided to it by the Disclosing Party, then Receiving Party will provide the Disclosing Party written notice of any such requirement promptly after learning of any such requirement to the extent legally permissible, and take commercially reasonable measures at the Disclosing Party's sole expense to avoid or limit disclosure under such requirements and to obtain

⁹ **Contours of Cost-Sharing (if any):** Defense Primes should consider how much, if any, cost sharing they are willing to take on for diligence. Emerging companies should try to have larger counterparties subsidize some of the cost splitting.

¹⁰ **Range of Due Diligence Related Expenses:** Inserting a diligence range can establish a scope of diligence and give industry entrant companies more upfront predictability regarding the economic impact of the MOU.

¹¹ **Including a Beta or other Trial License:** For MOUs relating to early stage technologies consider granting a short-term beta license for the purposes of diligence. For established products or technical features, consider the broader worldwide license structure. The Company's standard commercial form may suffice here for a standard pilot or proof of concept license. In the term sheet context, it is possible that no license to intellectual property will be required at all beyond mere access for product review and assessment purposes.

¹² **Joint IP Development:** IP counsel should be advised when contemplated joint IP development to ensure that the Company's ownership of its IP is not weakened in the course of a joint venture.

confidential treatment or a protective order and allow the Disclosing Party to participate in the proceeding.

(c) **Injunctive Relief.** Receiving Party recognizes and acknowledges that any use or disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the provisions of this MOU will cause the Disclosing Party irreparable damage for which remedies at law may be inadequate. Accordingly, Disclosing Party will have the right to seek an immediate injunction in respect of any breach of these confidentiality obligations to obtain such relief. Notwithstanding the foregoing, this paragraph will not in any way limit the remedies in law or equity otherwise available to either Party.

(d) **Obligations Upon Termination.** Upon expiration or termination of this MOU, the Receiving Party will promptly cease all use of the Disclosing Party's Confidential Information and destroy or return (in accordance with the Disclosing Party's instructions) all Confidential Information to the Disclosing Party except for any archived electronic communications, which shall continue to be stored on a confidential basis by the Receiving Party in accordance with its then-current document retention policies. As between the Parties, the Disclosing Party will remain the sole and exclusive owner of any Confidential Information provided to the Receiving Party under this MOU.

(e) **Duty of Care.** The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this MOU; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this MOU. The Receiving Party shall be responsible for any breach of this Section 3(e) caused by any of its representatives.¹³

(f) [The Parties acknowledge that they are subject to the terms of that certain *[Mutual Non-Disclosure Agreement]* between Party One and Party 2, dated [DATE], which obligations shall cover, in addition to any other obligations, the existence and content of this MOU, the relationship, collaboration and all information shared in connection thereto.]¹⁴

10. Marketing and Publicity.¹⁵ Contingent on execution of this MOU, [both Parties may include the other party's] [Defense Startup] may include [Defense Prime]'s logo in its upcoming presentations, as well as future investor marketing presentations. [Defense Startup] may not include logos or markings of any [government customer/federal agency] which is a customer of the Defense Prime in

¹³ **Implementing Stand-Alone Confidentiality Provisions:** This language is an example of a moderately robust confidentiality arrangement. Parties with significant intellectual property should consider advocating for a fulsome non-disclosure agreement to maximize intellectual property protection. See *Mutual Non-Disclosure Agreement*, and footnote 8 hereto for language relevant when a fulsome NDA is being entered into.

¹⁴ **Relying on Existing NDA between the Parties:** This language is an example of a simpler confidentiality statement where a more fulsome NDA has been executed by the parties.

¹⁵ **Publicity and Marketing:** Many startups find material benefit to the marketability of this relationship at the MOU stage. If there is a particular event or marketing material anticipated, consider calling this out specifically in this section (e.g., *announce at X conference, post on website etc.*).

connection with the relationship between [Defense Startup] and [Defense Prime].¹⁶ Each Party may use the other's brand in marketing and PR materials upon mutual written approval of such content. No Party may issue a press release, public statement or other media communication related to this relationship and collaboration without the express written consent of the other Party. The foregoing

11. Term and Termination. The rights and obligations of the Parties contained in this MOU shall expire upon the execution of the Definitive Agreements.

(a) Termination for Convenience. Either Party may terminate this MOU, upon written notice, for any reason or no reason, within [15/30/60/90]¹⁷ days from the date of this MOU without any obligation or liability to the other Party.

(b) Termination for Cause. Either Party may terminate this MOU, upon written notice, at any time, if the other Party: (i) willfully engages in conduct that is in bad faith and materially injurious to the other Party, including but not limited to misappropriation of trade secrets, fraud, willful misconduct or embezzlement; (ii) commits a material breach of any written agreement between the Parties; or (iii) engages in material misfeasance or material malfeasance demonstrated by a continued pattern of material failure to perform the essential terms associated with this MOU.

(c) Survival. Provided however that, upon termination, Section [#s], except as limited by the terms thereof or as otherwise provided in the Definitive Agreements, shall survive such termination.

[signature page follows]

¹⁶ **Use of Government Customer Logos and Markings:** Most primes and higher-tier contractors will apply restrictions on companies below in the contract chain to not include the logos and markings of its government customers - and may be under contractual obligations not to allow either. When producing marketing materials (including slide presentations) companies should be aware which logos they are allowed to display in connection with their commercial agreements.

¹⁷ **Including a Time Limit on the Duration of the Relationship:** This is another way to constrain the scope of the diligence period and expenses.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date set forth above.

[YOUR COMPANY'S FULL LEGAL NAME]: COMPANY:

Signature:

Signature:

Name:

Name:

Title:

Title: