



**Rapid Prototyping, Development and Evaluation  
Program**

**2016 Relationship Agreement**

### Change History

VERSION	DATE	DESCRIPTION OF CHANGE
1.0		Initial document

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# Deed

Date

## Parties

### First party

**Name** Each of the Members who execute this Agreement prior to the Start Date

### Second party

**Name** The Commonwealth of Australia represented by the Department of Defence (the **Commonwealth**)

**ABN** 68 706 814 312

## Background

- A. The Commonwealth of Australia (the **Commonwealth**) has established a Rapid Prototyping, Development and Evaluation (**RPDE**) Program with the Program Charter set out in Schedule 4.
- B. The RPDE Program seeks to fulfil the following primary functions in relation to Defence:
  - (a) rapidly analyse, assess, develop, test and evaluate new concepts, doctrine, procedures, organisation and technologies (including through prototypes);
  - (b) identify the potential for rapid delivery of capability to war fighters; and
  - (c) inform the military strategy and capability development process on options, risks and the value of new technology developments.
- C. The Commonwealth does this by engaging with industry in a collaborative approach to the development of Australian Defence Force (**ADF**) capability.
- D. Tangible benefits arise from modification of existing and proposed activities, operational processes and doctrine. The nature of the Services provided by the Parties include development, analysis and evaluation.
- E. The framework for the RPDE Program comprises:
  - (a) this Agreement, which defines the obligations between the Parties;
  - (b) the Standing Offer, which provides the mechanism for the Commonwealth to acquire Services from the Members; and
  - (c) the Policies, which define the operational processes of the RPDE Program.

## Operative part

### 1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

**Affiliate** means a Related Body Corporate within the meaning of section 9 of the *Corporations Act 2001* (Cth) or an entity that directly or indirectly controls, is controlled by or is under common control with the Member, and for this purpose, 'control' will mean the possession directly, or indirectly, of the power to direct, or cause the direction of, management and policies of the entity whether through voting shares, securities or otherwise.

**Agreement** means this deed titled the '2016 Relationship Agreement', (including any schedule or annexure to it), as amended from time to time.

**Background IP** means IP, other than Third Party IP, that is:

- (a) brought into existence other than as a result of performing any Services; and
- (b) embodied in, or attaches to, Services, or is otherwise necessarily related to the functioning or operation of Services.

**Board** means the board of the RPDE Program.

**Board Member** means a member of the Board.

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday in the place where an act is to be performed or a payment is to be made.

**Change of Control** means where a person who did not (directly or indirectly) effectively control the Member, either alone or together with others, acquires control, through:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50 percent of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50 percent of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; or
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

**Commercialisation** means to manufacture, produce, market and sell goods but does not include the right to sub-licence.

**Commercially Sensitive Information** means information including trade secrets, know-how and any information comprised in Technical Data that:

- (a) is by its nature confidential; or
- (b) the receiving party knows or ought to know is confidential;

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Agreement or a Services Contract;
- (d) is in the possession of the party without restriction in relation to disclosure before the date of receipt; or
- (e) has been independently developed or acquired by the receiving party.

**Commonwealth Board Member** means the member representing the Commonwealth who is appointed to the Board.

**Conflict** means any matter, circumstance, interest or activity affecting a Member (including the officers, employees, agents and subcontractors of the Member) arising in connection with the Member's involvement in the RPDE Program which may or may appear to materially impair the ability of the Member to diligently, fairly and independently meet its obligations under this Agreement, the Standing Offer or any Services Contract.

**Core Team** means the General Manager and other non-Task based personnel within the RPDE Program who will be provided to the RPDE Program by any of the Members under a Services Contract.

**Effective Date** means the date on which the Board approves the organisation as a Member.

**Equipment** includes any:

- (a) machinery;
- (b) software;
- (c) hardware; or
- (d) any combination of the above and any associated operating manuals.

**Embedded Background IP** means that Background IP that is irretrievably interwoven into Foreground IP or which is necessary or logically required to use Foreground IP.

**Facilities** means any facilities provided by a Member for the operation of the RPDE Program.

**Foreground IP** means all Intellectual Property created under a Services Contract, including any subcontract.

**General Manager** means the person appointed by the Commonwealth to manage the RPDE Program.

**Intellectual Property or IP** means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, Commercially Sensitive Information (including trade secrets and know-how), circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

**Internal Distribution** means any internal distribution (of information) within the the Party, which, for the avoidance of doubt, must only occur within Australia.

**IP Library** means the library of IP created and maintained in accordance with this Agreement and the Policies.

**IP Register** means the register of IP created and maintained in accordance with this Agreement and the Policies.

**Joining Deed** means a deed in the form of Schedule 1 to this Agreement.

**Loss** means damage or loss of any description, due to the performance of (or failure to perform) or discharge of (or failure to discharge) any obligation or duty under or arising out of or in connection with the RPDE Program whether arising at law, including by statute or in equity generally, including without limitation, for restitution, unjust enrichment or unconscionable conduct.

**Member** means a member of the Program in accordance with this Agreement.

**Member Criteria** means the qualifications for an organisation to be a Member as set out in the Policies.

**Party** means a party to this Agreement and Parties has a corresponding meaning.

**Personnel** of a Member includes that Member's employees, contractors, officers, agents and consultants.

**Policy or Policies** means any policy relating to the operation of the RPDE Program approved by the Board or the Commonwealth Board Member (as applicable) from time to time, including those in force at the time of this Agreement set out in Schedule 3.

**Proceedings** includes any action, claim, dispute, suit or proceeding resulting in any direct liability, loss, damage, costs (on a solicitor-client basis) or expenses.

**Prototype** means a piece of Equipment designed, developed and manufactured for the purpose of proving technology but not for the purpose of being used in production.

**Seconded** means Personnel seconded into the Core Team.

**Services** means the Seconded, services, goods, Equipment, and Facilities to be provided under any Services Contract as part of a Task, including documents, equipment, and materials, that are:

- (a) brought, or required to be brought into existence, as part of, or for the purposes of, performing the Services;
- (b) incorporated in, supplied, or required to be supplied along with the Services; or
- (c) copied or derived from the material provided.

**Services Contract** means either:

- (a) any contract formed in accordance with a Standing Offer (and Service Order has the same meaning); or
- (b) any other contract formed between the Commonwealth and a Member for the provision of services as part of the RPDE Program.

**Services Request** means a request in any format setting out details of Services requested to be provided in accordance with a Standing Offer.

**Standing Offer** means the deed of standing offer as agreed and executed by the Commonwealth and each Member setting out the terms on which Services will be provided.

**Start Date** means 31 December 2015.

**Task** means a tasking in relation to the RPDE Program under a Services Contract.

**Technical Data** means all technical know-how and information reduced to material form produced, acquired or used by a Member or its subcontractors in relation to the Services and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, source code, software design data, test results, software and software updates and other items describing or providing information relating to the Services or their operations.

**Third Party IP** means that IP which is owned by a party other than a Member or an Affiliate of a Member and is embodied in Services, or attaches to Services or is otherwise necessarily related to the functioning or operation of the RPDE Program.

**WHS Legislation** means

- (a) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (b) any corresponding work health and safety law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

## 2. INTERPRETATION

In this Agreement, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only;
- (b) the singular includes the plural and vice-versa;
- (c) a reference to a person includes a body politic, body corporate or a partnership;
- (d) where the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- (e) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended or replaced from time to time, and includes a reference to any subordinate legislation made under the Act;
- (f) a reference to a clause includes a reference to a subclause of that clause;
- (g) a reference to a 'dollar', '\$AUD' or '\$AU' means the Australian dollar unless otherwise stated;
- (h) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date and as amended or replaced from time to time;
- (i) the word 'includes' in any form is not a word of limitation;
- (j) a reference to a Member includes that Member's administrators, successors, and permitted assigns, including any person to whom that Member novates any part of this Agreement or a Standing Offer; and

- (k) the rights, duties, obligations and liabilities of the Parties shall in every case be several and not joint or joint and several.

### **3. TERM**

- 3.1 This Agreement will commence on the Start Date and subject to this clause 3, will remain in force until 31 December 2020.
- 3.2 The Commonwealth may extend the term of this Agreement to 31 December 2025, by providing written notice to all parties who are Members as at the date of the notice, at any time prior to 31 December 2020.
- 3.3 If any of the following occurs:
  - (a) the Commonwealth notifies the Members that it will not provide further funding to, or will discontinue, the RPDE Program; or
  - (b) the Commonwealth notifies the Members that it will terminate the Agreement in accordance with clause 20,

this Agreement will terminate on the date contained in the Commonwealth's notice, and in the event there is no date contained in the notice, four weeks from the date of the notice.

- 3.4 The Commonwealth must use its best efforts to give the Members three months' notice of the Commonwealth's intention to act in accordance with clause 3.3(a).

### **4. NATURE OF RELATIONSHIP**

- 4.1 This Agreement is not intended to create nor will it be construed as creating any legal partnership, joint venture or fiduciary relationship between the Parties and it will not give rise to any obligations between the Parties apart from those obligations expressly stated in this Agreement or imposed by law.
- 4.2 A Party, its officers, employees, contractors and agents will not by virtue of this Agreement be, or for any purpose be deemed to be, an officer, employee, contractor or agent of another Member.
- 4.3 Except as otherwise specifically provided in a Services Contract, no Member has any authority or power to act for, or to create or assume any responsibility or obligation on behalf of the Commonwealth.
- 4.4 No Member has any authority or power to act for, or to create or assume any responsibility or obligation on behalf of another Member.

### **5. RPDE PROGRAM GOVERNANCE**

- 5.1 The RPDE Program will operate under the governance set out in this Agreement, the Standing Offer and the Policies and will be managed by a General Manager.
- 5.2 A Member is not bound to provide Services unless it has signed a Services Contract for those Services.
- 5.3 Each Party must assist the Board to undertake a review of the allocation of Services Requests and Services Contracts as directed by the Board.

## **6. RELATIONSHIP TO STANDING OFFER AND POLICIES**

- 6.1 It is a condition of Members' involvement in the RPDE Program that they must execute both a Standing Offer and this Agreement.
- 6.2 Subject to clause 6.4, nothing in this Agreement reduces or otherwise affects a Member's obligations under its Standing Offer.
- 6.3 Each Member must comply with the Policies.
- 6.4 If there is any inconsistency between the provisions of this Agreement, a Standing Offer, any resulting Services Contracts, and the Policies, then to the extent of any inconsistency, the descending order of precedence will be:
- (a) the Services Contract;
  - (b) this Agreement;
  - (c) the conditions of a Standing Offer; and
  - (d) the Policies.

## **Representations and Liability**

### **7. GENERAL COMMITMENT**

- 7.1 Each Party must:
- (a) work together to achieve the successful outcomes of the RPDE Program, including:
    - (i) supporting the RPDE Program; and
    - (ii) committing to raising the profile of the RPDE Program both internally and externally;
  - (b) develop and contribute to the Policies;
  - (c) comply with its obligations under this Agreement, its Standing Offer, any resulting Services Contracts, and the Policies;
  - (d) comply with decisions of the:
    - (i) Board, for matters where the Board has the authority to make decisions; and
    - (ii) Commonwealth Board Member, for matters where the Commonwealth Board Member has the authority to make decisions; and
  - (e) ensure its Personnel give effect to this Agreement.
- 7.2 All Parties acknowledge their obligations under the Competition and Consumer Act 2010 (Cth) including section 45 of that Act.

### **8. COMMITMENT TO ACT IN GOOD FAITH AND WARRANTIES**

- 8.1 Each Party must act in good faith when participating in the RPDE Program including:
- (a) being prompt in taking action, giving approval, and making decisions relating to the RPDE Program;
  - (b) being fair, reasonable and honest to the other Parties;

- (c) doing all things reasonably expected of it by another Party and by the Board;
- (d) not impeding or restricting other Parties' performance of their obligations under the RPDE Program;
- (e) not intentionally doing anything which directly or indirectly may adversely affect the good name and reputation of the RPDE Program;
- (f) to the extent commercially feasible, giving as much weight to the interests of the RPDE Program as to its own interests; and
- (g) not unreasonably inducing or encouraging any employee of any other Party involved in the RPDE Program to leave the employment of that other Party.

## **9. LIABILITY**

- 9.1 Subject to this clause 9, the Commonwealth is liable to the extent of the indemnity in clause 9.4 for any Proceedings arising as a result of any acts or omissions of a Member, its officers, employees or agents made in accordance with:
- (a) a direction from the Board;
  - (b) a Services Contract covering the involvement in the RPDE Program of that Member, its officers, employees or agents;
  - (c) the Policies; or
  - (d) a direction by a Member, its officers, employees or agents that is consistent with clauses 9.1(a), 9.1(b) and 9.1(c).
- 9.2 Other than in relation to clauses 9.3(a), 9.3(b) or 9.3(c) a Member will not be liable for any Proceedings arising as a result of any acts or omissions of that Member, its officers, employees or agents made under the direction of another Member, its officers, employees or agents.
- 9.3 Each Member (Liable Member) is liable to any other Member or a third party for any Proceedings arising as a result of:
- (a) any infringement or alleged infringement of a third party's IP arising out of a licence of IP granted by the Liable Member under this Agreement;
  - (b) use by the Liable Member of another Member's IP other than in accordance with a licence granted by that Member under this Agreement; and
  - (c) any personal injury or death suffered by the Liable Member's officers, employees and agents but the Liable Member is not precluded from recovering in part or whole from another Member who contributed to that personal injury or death.
- 9.4 Subject to clause 9.5, the Commonwealth will indemnify each Member (indemnified persons), including its officers, employees and agents against Proceedings arising out of or as a consequence of that Member providing Services, except for any Proceedings arising:
- (a) to the extent that a Member is a:
  - (b) Liable Member in relation to those Proceedings under clause 9.3(a) or 9.3(b); or
  - (c) Member or Liable Member in relation to Proceedings under clause 9.3(c);

- (d) as a result of any breach or alleged breach by a Member of other Parties' rights in IP not covered by clause 9.3;
  - (e) as a result of loss to Equipment covered by clause 9 of a Standing Offer;
  - (f) under clause 9 of a Standing Offer;
  - (g) in relation to any design, manufacture, delivery, use or operation of any Prototype;
  - (h) to the extent of any failure by a Member to comply with a direction from the Board referred to in clause 9.1(a) or a direction from a Member referred to in clause 9.1(d) or a Services Contract or the Policies; or
  - (i) to the extent the damage arose from acts or omissions of the indemnified person which are fraudulent, wilful or reckless.
- 9.5 Clause 9 does not include liability arising in respect of or as a consequence of the design, manufacture, delivery, use or operation of any Prototype. Liability arising in respect of a Prototype will be covered by the Commonwealth under a separate indemnity in accordance with a Standing Offer and Services Contract under which the Prototype is created.
- 9.6 Except as otherwise provided for in this Relationship Agreement, the Standing Offer or a Services Contract:
- (a) a Party will not be liable to any other Party for any Loss;
  - (b) each Party waives any right they may have against other Parties in relation to any Loss; and
  - (c) the Parties will resolve any dispute or conflict arising between two or more Parties by negotiation (including negotiation at Board level) and a Party will not institute litigation or arbitration against another Party.
- 9.7 Nothing in this clause 9 is intended to limit a Party's ability to join one or more other Parties to an action brought by a third party.
- 9.8 This clause 9 does not exclude non-excludable statutory rights or liabilities.
- 9.9 A Member must:
- (a) notify the Commonwealth as soon as practicable of any Proceedings threatened or brought against the Member which the Member considers would be covered by the indemnity in clause 9.4; and
  - (b) take all reasonable steps to mitigate any possible loss arising from any Proceedings.
- 9.10 If requested by the Commonwealth and permitted by law, the Member agrees to withdraw from any Proceedings and allow the Commonwealth to conduct the Proceedings in its own name and at its own expense.
- 9.11 Where the Member is not granted leave to withdraw from any Proceedings the Member will undertake the Proceedings and will:
- (a) continue to keep the Commonwealth informed of all developments;
  - (b) defend, arbitrate, appeal, settle or otherwise conduct the Proceedings as the Commonwealth may reasonably direct; and

(c) consult with the Commonwealth prior to offering, negotiating or accepting any settlement.

9.12 The Parties agree that the Commonwealth's aggregate liability to all Members with respect to the indemnities provided under Clause 9.4 of the Relationship Agreement is limited to AUD100 million per annum. If the cumulative costs or potential costs to the Commonwealth under clause 9.4 exceed AUD20 million the Commonwealth may immediately terminate this Agreement by notice in writing to the Members. This clause survives the expiry or termination of this Agreement.

9.13 The Members must participate as requested in any risk assessment process conducted by the Commonwealth to ensure risks arising from a proposed Services Contract are identified, properly managed and acceptable to the Commonwealth, and the benefits to the RPDE Program of the Services Contract outweigh those risks.

## **10. CONFLICT OF INTEREST**

10.1 The Commonwealth acknowledges that participation by the Members in the RPDE Program is not of itself a Conflict.

10.2 If during the term of this Agreement an actual, potential or perceived Conflict arises, or appears likely to arise, the affected Member undertakes to notify the General Manager immediately in writing and to take such steps as the Board may reasonably require to resolve or otherwise deal with the Conflict and to comply with the Policies. If the affected Member fails to notify the General Manager or is unable or unwilling to provide information or resolve or deal with the Conflict as required, or to comply with the Policies, the Commonwealth may take steps in accordance with 20.1(a)(v).

10.3 A Member must take all reasonable steps to ensure that any subcontractor of the Member does not engage in any activity or obtain any interest during the course of the RPDE Program that is likely to conflict with or restrict that Member in providing the Services fairly and independently.

## **11. EXCLUSION FROM PROCUREMENT PROCESS**

Provided a Member complies with the relevant Policies, that Member will not be excluded from any future Commonwealth procurement process solely because of being a Member of the RPDE Program.

## **12. NO BENEFIT OR ADVANTAGE**

Nothing in this Agreement or the Standing Offer will oblige the Commonwealth to place any number of Services Requests or Services Contracts, or any Services Requests or Services Contracts at all, with a Member.

## **RPDE Program Members**

### **13. MEMBERSHIP CHANGES**

13.1 The Parties acknowledge that the Members may change over the term of this Agreement, through the admission of new Members and the retirement, termination or expulsion of Members, and the Parties must comply with the terms of this Agreement:

- (a) in respect to any new Members, from the date that the organisation becomes a Member; and
- (b) in respect of all remaining Members, in the event that a Member retires or expelled, or its membership is terminated.

#### **14. NEW MEMBERS**

14.1 Any organisation that meets the Member Criteria may request to be admitted as a Member to the RPDE Program by:

- (a) executing a Joining Deed;
- (b) executing a Standing Offer; and
- (c) applying to the Board for admission as a Member in accordance with the RPDE Program's Governance Policy (as amended or replaced from time to time).

14.2 In respect of any organisation applying to be admitted as a Member, this Agreement:

- (a) is conditional on the Board approving the organisation as a Member; and
- (b) terminates automatically if the Board rejects the organisation's application for Membership.

#### **15. RETIREMENT**

15.1 Where a Member's Membership ceases, it must use its best endeavours to provide for a smooth withdrawal from the RPDE Program (including the removal of critical Personnel) and must comply with all Policies and any reasonable directions or requests from the General Manager in relation to the transitioning out of the RPDE Program.

### **Commercially Sensitive Information**

#### **16. COMMERCIALY SENSITIVE INFORMATION**

16.1 Each Party must in relation to any Commercially Sensitive Information which is disclosed to it by another Party or developed in carrying out the RPDE Program:

- (a) keep it confidential;
- (b) use it only for the RPDE Program or as authorised under this Agreement;
- (c) not disclose it to any person other than to its Personnel:
  - (i) who have a need to know (and only to the extent that each such person has a need to know) for the purpose of the RPDE Program; and
  - (ii) who have first agreed in writing to keep it confidential and to use it only as permitted under this Agreement (**Undertaking**);
- (d) use reasonable efforts to enforce each Undertaking at its cost;
- (e) not copy it or any part of it that is in material form other than as strictly necessary and, where possible, include the warning notation 'This document contains commercially sensitive information. The disclosure and use of this information may be subject to additional constraints.' - (name of person who disclosed the information)';

- (f) safeguard it in accordance with its usual practices against unauthorised copying, use and disclosure (whether that disclosure is oral, in writing or in any other form);
- (g) immediately notify the General Manager of any suspected or actual unauthorised copying, use or disclosure; and
- (h) comply with any reasonable direction given by the Party who provided the Commercially Sensitive Information or the General Manager about a suspected or actual breach.

16.2 A Party's obligations of confidentiality under this Agreement do not apply to information that (whether before or after this Agreement is executed):

- (a) the Party who disclosed the information has been identified in writing as being released from the obligation of confidentiality;
- (b) in the case of the Commonwealth, to the extent that the Commonwealth would be prevented from exercising any of its IP rights under this Agreement, the Standing Offer or any Services Contract; or
- (c) is required to be disclosed for the observance of any applicable laws, parliamentary orders, court order, court proceedings or the rules or policies of any stock exchange or government or regulatory authority having jurisdiction in this matter or pursuant to a constitutional, statutory or portfolio duties, provided that, where practicable, that Party informs the other Parties of the requirement to disclose the information before it is disclosed.

16.3 Without limiting or otherwise affecting clause 16.2(c), a Party will not be in breach of its obligations under this clause where it is required by law to disclose Commercially Sensitive Information disclosed to it by another Party or developed as part of the RPDE Program provided that the Party:

- (a) gives the Party that provided the Commercially Sensitive Information reasonable prior notice;
- (b) discloses only so much of that Commercially Sensitive Information as it is required to disclose by law; and
- (c) takes all reasonable steps to ensure that the recipient of such disclosure is made aware of the confidential nature of the Commercially Sensitive Information.

16.4 The receiving Party bears the onus of showing that any of the exceptions in this clause apply.

16.5 The obligations of confidentiality imposed on a Party in relation to Commercially Sensitive Information continue after termination of this Agreement or after a Member is expelled or retires from the RPDE Program until the relevant Commercially Sensitive Information lawfully becomes part of the public domain.

## **17. INTELLECTUAL PROPERTY AND TECHNICAL DATA**

The Intellectual Property and Technical Data arrangements are set out in Schedule 2 and each Party agrees to comply with those arrangements.

## **18. WORK HEALTH AND SAFETY**

Each Member shall, when participating in the RPDE Program, comply with, and shall ensure that their subcontractors comply with the obligation under the WHS Legislation to consult, co-operate and co-ordinate activities with other Members, subcontractors (as the case may be) and any other person who, concurrently with the Member, bears a work health and safety duty in relation to the same matter.

## **General**

### **19. PREMISES**

- 19.1 The Commonwealth is responsible for providing premises for the day to day operations of the RPDE Program.
- 19.2 Each Party must comply with, and ensure that its employees, officers, agents, consultants and subcontractors comply with, the Commonwealth's safety and security requirements, codes of behaviour, and other relevant policies and procedures at all times whilst on the premises, and whilst transmitting information.
- 19.3 Each Member in control of premises where any Tasks are carried out (Host) must at all reasonable times give each other Party or any person nominated by another Party (Visitor) access to those premises, but the Host may:
- (a) impose as a condition of access that the Visitor signs an agreement, in a form acceptable to the Host, which:
    - (i) sets out the terms of the visit; and
    - (ii) contains any obligations of confidentiality that the Host requires in addition to clause 16 (Commercially Sensitive Information) to protect the interests of the Host; and
  - (b) require a Visitor to comply with any reasonable safety and security requirements, codes of behavior or other relevant policies and procedures at all times whilst on the premises.

### **20. TERMINATION**

- 20.1 In addition to its other rights, the Commonwealth may immediately terminate this Agreement or reduce the scope of this Agreement in respect of an individual Member by notice in writing to the Member, if:
- (a) the Member:
    - (i) becomes bankrupt or insolvent;
    - (ii) becomes subject to any form of administration or assigns its rights otherwise than in accordance with this Agreement;
    - (iii) ceases to be a Member of the RPDE Program;
    - (iv) commits any breach for which this Agreement, the Standing Offer or any Services Contract provides a notice of termination for default may be given;
    - (v) commits a breach of clauses 10.2 or 16; or

- (vi) fails to take action to remedy a default by the Member of an obligation to be performed or observed under this Agreement (other than those referred to in clause 20.1(a)(v)) within 14 days of being given notice in writing by the Commonwealth, to do so or, if action is taken within 14 days, the Member fails to remedy the default within the period specified in the notice; or
  - (b) the Standing Offer is terminated or a Services Contract is terminated for the default of the Member.
- 20.2 In addition to any other rights it has under this Agreement, the Commonwealth may at any time terminate this Agreement by written notice to the Members.
- 20.3 If the Commonwealth issues a notice under clause 20.2, the Member must:
- (a) comply with any directions given to the Member by the Commonwealth; and
  - (b) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction, including those arising from affected subcontracts.

## **21. NOTICES**

Any notice or communication under this Agreement will be valid if it is:

- (a) in writing, signed; and
- (b) delivered in accordance with the Policies to the General Manager or Member's representative (as applicable).

## **22. SEVERABILITY**

If all or any part of any clause of this Agreement is illegal, invalid or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.

## **23. WAIVER**

Failure by any Party to enforce a provision of this Agreement will not be construed as in any way affecting the enforceability of that provision or this Agreement as a whole.

## **24. ASSIGNMENT AND NOVATION**

- 24.1 No Member may assign in whole or in part, its rights under this Agreement without the prior written agreement of the Commonwealth.
- 24.2 For the purpose of, but without limiting clause 24.1, an assignment of this Agreement will be deemed to have occurred where there has been a Change of Control.
- 24.3 A Member may only novate this Agreement with the prior written agreement of the Commonwealth and may only novate this Agreement to an organisation that meets the Member Criteria.
- 24.4 Where a Member proposes to enter into any arrangement that will require the novation of this Agreement, it must notify the other Parties at least 90 days prior to the proposed novation.

**25. COUNTERPARTS**

This Agreement may be signed in any number of counterparts.

**26. GOVERNING LAW**

The laws of the Australian Capital Territory will apply to this Agreement. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this Agreement.

**27. ENTIRE AGREEMENT**

This Agreement, the relevant Standing Offer, any resulting Services Contracts, and the Policies represent the Parties' entire agreement in relation to the RPDE Program and supersede all tendered offers and prior representations, communications, agreements, statements and understandings whether written or oral.

**28. SURVIVORSHIP**

Termination of this Agreement does not relieve any Party from that Party's obligations under clauses 8 (Commitment to act in good faith and warranties), 16 (Commercially Sensitive Information) and any other provision which is expressly stated or by implication from its nature is intended to survive the termination or expiration survives the termination or expiration of this Agreement.

**29. VARIATION**

This Agreement can be varied at any time by the Commonwealth by providing Members with 90 days' notice of the amendments.

# Schedule 1      Joining Deed

THIS DEED POLL is made on

BY                      **(New Member).**

## Background

- A      The RPDE Program was established under a Relationship Agreement dated [31 December 2015], (**Relationship Agreement**).
- B      The Commonwealth has established Member Criteria in relation to participation in the RPDE Program.
- C      The New Member meets the Member Criteria and wishes to become a Member of the RPDE Program.
- D      In consideration of being admitted as a Member of the RPDE Program, the New Member has agreed to be bound by the terms of the Relationship Agreement.

## Operative Part

### 1      Interpretation

#### 1.1      Definitions

Terms not otherwise defined in this document have the meanings given to them in clause 1 of the Relationship Agreement.

#### 1.2      Construction

Clause 2 of the Relationship Agreement applies to this document as if set out in full in this document.

### 2      Covenants by the new Member

#### 2.1      Relationship Agreement to be binding

In consideration of being admitted as an Member of the RPDE Program, the New Member, upon the satisfaction of the condition precedent in clause 14.2 of the Relationship Agreement, is to be added as a Party to the Relationship Agreement as a Member and is bound by the provisions of the Relationship Agreement as if it had been signatory to the Relationship Agreement.

#### 2.2      Obligations under the Relationship Agreement

The New Member obligations under the Relationship Agreement are identical to the existing Members' obligations under the Relationship Agreement, whether the latter obligations arose prior to, contemporaneously with, or after the date of this Deed Poll.

### 3      Governing law

The laws of the Australian Capital Territory will apply to this document. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this document.

**EXECUTED** as a deed poll.

## **Schedule 2            Intellectual Property and Technical Data**

### **Introduction**

- 1.1     The Parties acknowledge that this Schedule:
- (a)     sets out the Parties' IP rights in relation to the RPDE Program;
  - (b)     provides that no Services Contract will reduce a Party's IP rights (however a Services Contract may give a Party additional IP rights and where Third Party IP or product is involved may set out relevant end user licence terms);
  - (c)     provides that all Foreground IP vests on its creation in the Commonwealth;
  - (d)     sets out arrangements for the Members to licence Embedded Background IP to the Commonwealth outside the RPDE Program; and
  - (e)     sets out arrangements for the Commonwealth to licence Foreground IP to the other Members outside the RPDE Program, including some limited sub-licensing rights.

### **General**

- 1.2     The Parties agree that they will:
- (a)     manage Foreground IP, Background IP, Third Party IP and Technical Data in accordance with this Policy and in a manner which will assist to give effect to the operation of this Agreement and the Policies;
  - (b)     not undertake steps or implement procedures which will have the effect of hindering the management of Foreground IP, Background IP, Third Party IP and Technical Data in accordance with this Policy and this Agreement;
  - (c)     do all things necessary (including where appropriate ensuring IP is assigned from employees, sub-contractors or consultants) to ensure that the Party is able to give effect to the licensing and confidentiality provisions of this Agreement; and
  - (d)     ensure that any disclosure of any licensed IP is consistent with the confidentiality obligations under this Agreement.

### **Ownership of Intellectual Property**

- 1.3     Nothing in this Agreement affects the ownership of Background IP or Third Party IP.
- 1.4     Ownership of all Foreground IP vests on its creation in the Commonwealth, which has the exclusive right to apply for registration of that Foreground IP in all countries of the world.
- 1.5     Each Member agrees to do all things necessary or convenient to assist the Commonwealth to protect Foreground IP including assisting the Commonwealth to obtain and maintain registration of Foreground IP.

## **Intellectual Property Licence – Foreground IP**

- 1.6 Subject to items 1.34 to 1.36 of this Schedule inclusive (Effect of Retirement or Expulsion) the Commonwealth grants to each Member a royalty-free, irrevocable, perpetual, non-exclusive licence to use Foreground IP arising from a Task in which the Member was involved only for:
- (a) its internal purposes (including further joint development with other licensed Members) within Australia; and
  - (b) Commercialisation.
- 1.7 Subject to items 1.34 to 1.36 of this Schedule inclusive (Effect of Retirement or Expulsion), where Foreground IP incorporates Embedded Background IP provided by an Affiliate of a Member, the Commonwealth grants to that specific Member, a licence, including the right to sub-licence, for the sole purpose of granting a sub-licence to that specific Affiliate which provided the Embedded Background IP to use that Foreground IP only for Commercialisation.
- 1.8 Except as expressly permitted under item 1.7, the licences granted under items 1.6 and 1.7 exclude any right to sub-licence.
- 1.9 A Member who grants a sub-licence under item 1.7 must ensure that:
- (a) the sub-licence is granted on terms that are the same as those set out in item 1.6;
  - (b) the sub-licence is subject to the laws of the Australian Capital Territory; and
  - (c) where a Member's licence is revoked in accordance with items 1.10, 1.16, or 1.34 of this Schedule, the sub-licence is also automatically revoked.
- 1.10 In the event that a sub-licensee breaches Defence security requirements or makes unauthorised disclosure or use of Commercially Sensitive Information, Foreground IP, or Background IP, the Foreground IP licence granted to the Member which granted that sub-licence may be immediately revoked by notice in writing from the Commonwealth.

## **Seeking a Licence Outside of Automatic Licence**

- 1.11 Any Member may request access to Foreground IP outside of item 1.7. The Commonwealth may agree to grant such a licence on terms and conditions to be negotiated between the Commonwealth and the Member requesting the licence.
- 1.12 The Commonwealth may not unreasonably refuse a request made under item 1.11.

### **Intellectual Property Licence - Background IP**

- 1.13 The Parties acknowledge and agree that more than one Party may be involved in a Task. Each Party grants to each other Party involved in the same Task, a, royalty-free, irrevocable, non-exclusive licence (excluding the right to sub-licence), to utilise Background IP provided for that Task for the sole purpose of completing and evaluating that Task.
- 1.14 Each Member grants to the Commonwealth a, royalty-free, irrevocable, perpetual, non-exclusive licence, (excluding the right to sub-licence) to utilise Embedded Background IP to enable the Commonwealth to use Foreground IP for Defence purposes.
- 1.15 The Commonwealth acknowledges that the rights granted under item 1.14 do not extend to the Commonwealth utilising the Embedded Background IP except in association with Foreground IP.
- 1.16 Where the Commonwealth has granted a licence under item 1.7 (Foreground IP) or a Party has granted a licence under items 1.13 or 1.14 (Background IP) (**Licensor**) to another Party (**Licensee**) and the Licensee has acted other than in accordance with the terms under which the licence was granted, the Licensor may immediately terminate that licence by notice to the Licensee.
- 1.17 Any Party may request access to any other Party's Background IP for a purpose falling outside of items 1.13 or 1.14. The Party that provided the relevant Background IP may in its sole discretion grant such a licence on terms and conditions to be negotiated between the relevant Parties.
- 1.18 The licences granted under items 1.7 to 1.14 inclusive survive the termination of this Agreement and the termination or cessation of the RPDE Program.

### **Intellectual Property Licence – Third Party IP**

- 1.19 Where Third Party IP is provided for carrying out a Task the Party introducing that Third Party IP will use its best endeavours to obtain in favour of the other Parties involved in that Task (**Users**) a royalty-free or best available commercial terms licence to the Third Party IP for the purposes of utilising the Foreground IP or Background IP in accordance with this Agreement.
- 1.20 Before any Third Party IP is provided the Party that wishes to introduce that Third Party IP must notify the Users of the nature of the Third Party IP and the terms on which it will be licensed. The Users have the right to reject that Third Party IP.
- 1.21 The Parties agree to clearly indicate and ensure that any limitations on the use of Third Party IP are recorded in the IP Register.

### **Moral Rights**

- 1.22 With respect to any copyright material provided under this Agreement or under a Services Contract the Parties shall obtain from each author, in favour of the Members, a written consent which extends directly or indirectly to the performance of acts permitted under this Agreement, its Standing Offer or a Services Contract without attribution of authorship (but excluding an act amounting to false attribution of authorship).

## IP Records

- 1.23 In accordance with this Policy, the Parties agree to abide by appropriate procedures and records to ensure that:
- (a) an IP Library is established;
  - (b) ownership and description of Background IP, Foreground IP, and Third Party IP is adequately identified within IP Registers within the RPDE Program IP Library; and
  - (c) any distribution (including Internal Distribution) of Foreground IP under item 1.7 and distribution (including Internal Distribution) of Embedded Background IP under items 1.13 or 1.14 is recorded within the IP Register.
- 1.24 In accordance with this Policy the Parties agree to:
- (a) undertake to register Background IP in the IP Register within 60 days of that Background IP being provided for a Task; and
  - (b) participate in regular meetings in which Background IP not already recorded will be recorded.
- 1.25 Where a Party claims particular IP is Background IP and that IP:
- (a) has not been registered in the IP Register as Background IP within 60 days of that Background IP being provided for a Task; and
  - (b) cannot be proven by the Party claiming it to be Background IP to be Background IP, the IP will be treated as Foreground IP in accordance with this Policy.
- 1.26 If a Party uses IP under item 1.7 on the basis that it is Foreground IP and it is subsequently established to be Background IP, the owner of the Background IP agrees that it may not bring any Proceedings in relation to that use, provided that such use is in accordance with the terms of the licence granted under items 1.7 and 1.8.
- 1.27 In accordance with this Policy a Party may at any reasonable time access relevant sections of the IP Register and the IP Library to ensure they are being correctly managed and resourced.
- 1.28 Each Party must:
- (a) maintain a register of its Personnel with appropriate security clearances who are approved to access RPDE material;
  - (b) maintain a register of its Personnel who access each item of RPDE material; and
  - (c) store RPDE material on ICT networks with appropriate security and access controls in proportion to the security classification of the particular RPDE material.

## Technical Data

- 1.29 Each Party will provide to the RPDE Program all existing Technical Data necessary or convenient to enable a reasonably skilled person to efficiently and effectively perform the Services and to do the things permitted to be done under this Agreement including exercising rights to Foreground IP or Background IP (including Embedded Background IP) (where applicable).
- 1.30 Subject to item 1.31, where a Party grants a licence (**Licensor**) of any Background IP or Foreground IP to another Party (**Licensee**) in accordance with this Agreement, the Licensor agrees to provide one copy of all existing Technical Data necessary or convenient to allow a reasonably skilled person to efficiently and effectively utilise that licence, to the RPDE Program IP Library to enable the Technical Data to be copied in the same format in which it was provided and distributed to the Licensee. The Licensor may:
- (a) place any reasonable limitation (including confidentiality, but not in a manner that is inconsistent with this Schedule) upon the use of the Technical Data; and
  - (b) require the Licensee to comply with any reasonable directions regarding the protection of the Technical Data (including the return or destruction of the Technical Data).
- 1.31 A Party is not required to supply Technical Data when to do so would breach national or international security classifications or controls or would breach an obligation to a third party.
- 1.32 When supplying Technical Data in accordance with this Schedule each Party agrees to supply the Technical Data in an appropriate format accessible by an appropriately skilled person in accordance with the Policies or as agreed by the Parties.
- 1.33 A Party may provide Technical Data to a third party to enable the Party to fully exercise its IP rights under this Schedule provided the Party obtains consent from the Party that provided the Technical Data on the same basis on which a licence to use Background IP may be obtained.

## Effect of Retirement or Expulsion on IP rights

- 1.34 If a Member is expelled for breach of this Agreement, that Member's licence to use Foreground IP is revoked from the date of the expulsion notice.
- 1.35 If a Member retires or is expelled for failing to meet the Member Criteria, that Member retains any licences granted to use all Foreground IP developed up to the date of retirement or expulsion and recorded in the IP Register but has no licence to use any Foreground IP developed after that date, except any Foreground IP that is developed under any Services Contracts in accordance with that contract.
- 1.36 If a Member retires or is expelled:
- (a) all licences that it has granted to Background IP before the date of retirement or expulsion in accordance with items 1.13 to 1.14 of this Schedule inclusive continue in accordance with the terms on which those licences were granted;
  - (b) all Technical Data provided by that Member up to the date of retirement or expulsion remains in the RPDE Program on the terms on which it was provided; and

- (c) that Member remains bound by the obligations to grant future licences of Background IP in accordance with items 1.14 of this Schedule.

**Export Approval and Other Regulatory Requirements**

- 1.37 Each Member acknowledges that the export of material and IP may require export and other regulatory approval and that nothing in this Agreement provides that export or any other regulatory approval.
- 1.38 The Commonwealth agrees to use its best endeavours to assist any Member seeking export or regulatory approval of material or IP developed under the RPDE Program.

## **Schedule 3      Policies**

The Policies of the RPDE Program will change from time to time and are as approved in accordance with this Agreement. At the date of this Agreement, the Policies in force are the:

- Part 1 Governance Policy
- Part 2 Defence Security Requirements Policy
- Part 3 Rates Guidance Policy
- Part 4 Dispute Resolution Policy
- Part 5 Use of Names and Logos Policy
- Part 6 WHS Policy

## Schedule 4      RPDE Program Charter

**Mission:** To accelerate and enhance ADF warfighting capability through innovation and collaboration.

**Charter:** In executing the Strategic Plan and business plans, the RPDE Board, Management Team, One Star Steering Group and participants will adhere to the RPDE Charter.

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We are a responsive organisation committed to:

- Providing an innovative way of doing business that harnesses the collective power of Defence (and other Government agencies) and Industry in a collaborative way.
- Quickly solving problems endorsed by Defence and other Sponsors that conventional acquisition processes may not solve.
- Rapidly (within 18 months) delivering capability for warfighters.
- Creating an environment that encourages and maintains broad stakeholder engagement.
- Managing the Foreground Intellectual Property (IP) and respecting Background IP utilised in RPDE's work.
- Taking an approach to problem solving that takes into account all Fundamental Inputs to Capability (FIC).
- Being lean and agile and not overly bureaucratic to ensure responsiveness.
- Ensuring work is allocated across the membership on best talent-for-money basis.
- Promoting effective cooperation and /or competition for all work (which involves both promoting competition amongst members to ensure the best team is available and promoting competition between members to ensure the best outcome is achieved).

In our everyday dealings with each other we will:

- Work proactively together.
- Communicate openly and honestly.
- Encourage innovation and excellence.
- Respect and support each other.
- Give recognition, celebrate success and reward achievement.
- Provide a challenging work environment.

# Executed as a Deed

Signed, sealed and delivered by

**Kate Louis**

**First Assistant Secretary**

**Defence Industry Policy**

as authorised representative for the

**Commonwealth of Australia represented  
by the Department of Defence**

ABN 68 706 814 312

who warrants that they are duly  
authorised to execute this document on  
behalf of the **Commonwealth of Australia  
represented by the Department of  
Defence** in the presence of:

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness

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**Signed, sealed and delivered** by

as authorised representative for

ACN/ABN

who warrants that they are duly authorised to execute this document on behalf of

in the presence of:

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Signature of Witness

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Signature of Authorised Representative

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Print name of Witness