



Rapid Prototyping, Development and Evaluation Program
2016 Relationship Agreement
Schedule 3
Part 1 - Governance Policy
Version 2.0

Approved By _____

This Policy may be amended from time to time by the Commonwealth Board Member

Change History

VERSION	DATE	DESCRIPTION OF CHANGE
1.0		Initial document
1.1	June 2016	Change to clause 5.7 to align with clause 24 of 2016 RA
2.0	25 August 2016	Incorporating Commonwealth Director and establishment of the Deputy Chair to the Board. Inclusion of Commonwealth observers to the Board.

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1. REFERENCES

- A. RPDE 2016 Relationship Agreement and Standing Offer

2. INTRODUCTION

2.1 Purpose

This Policy contains provisions setting out the manner in which the Commonwealth and the Members of the Program have agreed to conduct the governance of the Program.

2.2 Objectives

The objectives of the Program are:

- (a) to provide the Commonwealth with a mechanism to obtain:
- (i) expert advice on:
 - A. strategies to obtain solutions to the Commonwealth's capability requirements;
 - B. research and development programs;
 - C. assessment and testing of projects and programs; and
 - D. evaluation of projects.
 - (ii) services (such as delivery of a prototype solution) from Members flexibly and quickly; and
- (b) to provide Members with:
- (i) an organised forum to stay informed of the Commonwealth's capability requirements;
 - (ii) an ability to provide input into the strategies and solutions that the Commonwealth implements to meet its capability requirements; and
 - (iii) a pre-qualification so that services can be obtained flexibly and quickly.

3. DEFINITIONS

TERM OR ABBREVIATION	MEANING
Application for Membership	means the form set out in Appendix 1, as amended or replaced from time to time
Board	means the Program's management committee
Board Member	refers to a member of the Board
Chair	means the chairperson of the Board
Committee	means a committee appointed by the Commonwealth Board Member in accordance with clause 6.16 of this Policy
Commonwealth	means the Commonwealth of Australia
Commonwealth Director	means the Commonwealth Member occupying the role of Head Force Design
Commonwealth Board Member	means the Commonwealth Member occupying the role of First Assistant Secretary Defence Industry Policy
Commonwealth Observer	means an employee of the Commonwealth invited by the Commonwealth Board Member to participate in RPDE Board Meetings
Defence	means the Department of Defence (and agencies thereof)

TERM OR ABBREVIATION	MEANING
Deed of Standing Offer	means a Deed of Standing Offer between a Member and the Commonwealth for the provision of services to the Program
Deputy Chair	means the Commonwealth Director appointed as Deputy Chair
Director	refers to the Commonwealth Board Member, Commonwealth Director, an Independent Director or a Member Director as appropriate
General Manager	means the person appointed by the Commonwealth to manage the Program
Independent Director	means a Board Member who is appointed by the Commonwealth Board Member who does not need to be an employee of a Member
Initial Members	of the Program means those Members listed in Appendix 2 of this Policy
Interested Board Member	has the meaning referred to in clause (i)
Member	means a member of the Program in accordance with the 2016 Relationship Agreement
Membership	means the state of being a Member of the Program
Member Criteria	means the qualifications required of an organisation to be eligible to apply to become a Member
Member Director	means a director appointed to the Board in accordance with clause 6.7 of this Policy
NV1 Security Clearance	means a Negative Vetting Level One security clearance provided by the Australian Government Security Vetting Agency
Policy and Policies	means the policies of the Program as approved by the Board or the Commonwealth Board Member (as applicable) from time to time (including any amendments or replacements)
Program	means the Rapid Prototyping, Development and Evaluation Program
Program Information	means all communications, correspondence, reports, minutes and other papers and documents relating to any of the affairs or business of the Program
Relationship Agreement	means the deed titled '2016 Relationship Agreement' (including and schedule or annexure to that deed) , as amended from time to time
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

4. BACKGROUND

4.1 The name of the Program is the Rapid Prototyping, Development and Evaluation Program.

5 MEMBERSHIP

5.1 Membership Qualification Criteria

In order to be eligible to become a member of the Program a person must:

(a) meet the following eligibility criteria:

(i) be:

A. a company registered, with an Australian Company Number, under the *Corporations Act 2001* (Cth);

- B. an Australian university; or
 - C. a sole trader who is an Australian citizen and holds an NV1 Security Clearance;
- (ii) has demonstrated research and development capability, or demonstrated experience and commitment to innovation, or both;
- (iii) possess relevant capabilities that can support the Program;
- (iv) has staff who:
- A. are capable of obtaining and maintaining a NV1 Security Clearance; and
 - B. can carry out work for the Program;
- (v) have executed:
- A. the Relationship Agreement (or Joining Deed to the Relationship Agreement, if not an Initial Member); and
 - B. a Deed of Standing Offer; and
- (b) submit an Application for Membership in accordance with clause 5.2.

5.2 Applications for Membership

- (a) Applications for Membership must be sent to the General Manager.
- (b) As soon as practicable after receiving an Application for Membership, the General Manager must refer the application to the Board to determine whether to approve or to reject the application.
- (c) As soon as practicable after the Board makes that determination, the General Manager must notify the applicant, in writing, that the Board has approved or rejected the application.

5.3 Address of Member

Each Member is required to provide to the General Manager details of:

- (a) the full name of the Member;
- (b) the Member's Australian Company Number or Australian Business Number;
- (c) the address, facsimile number and electronic mail address of the Member for notices under the Relationship Agreement and Policies;
- (d) the name of a primary and secondary contact; and
- (e) such other information as the Board requires.

5.4 Register of Members

- (a) The following must be entered in the register of members in respect of each Member:
 - (i) the full name of the Member;
 - (ii) the Member's Australian Company Number or Australian Business Number;
 - (iii) the address, facsimile number and electronic mail address of the Member;
 - (iv) the name of the Member's primary and secondary contact;
 - (v) the date of admission to and cessation of Membership; and

(vi) such other information as the Board requires.

- (b) Each Member must notify the General Manager in writing of any change in the details referred to in clause (a) within one month after the change.

5.5 Cessation of Membership

- (a) A Member ceases to be a Member if

(i) they:

- A. resign in writing, by providing one month's notice;
- B. are expelled under clause 5.6;
- C. become insolvent or under any form of insolvent administration within the meaning of the *Corporations Act 2001 (Cth)*;
- D. become bankrupt;
- E. are convicted of an indictable offence;
- F. cease to be registered under the *Corporations Act 2001 (Cth)*;
- G. cease to have a current Deed of Standing Offer; or
- H. cease to meet the Member Criteria; or

(ii) the Relationship Agreement expires or, insofar as it relates to them, is terminated.

- (b) If a Member of the Program ceases to be a Member under clause 5.5, and in every other case where a Member ceases to hold Membership, the General Manager must make an appropriate entry in the Register of Members recording the date on which the Member ceased to be a Member.

5.6 Expulsion from Membership

The Board may, in its absolute discretion, expel a Member from the Program or suspend a Member from Membership, which, without limitation, may be exercised if a Member:

- (a) does not access the Program's web portal for more than six months; or
- (b) does not respond to three or more Program task requests or surveys within a 12 month period,

and does not provide a satisfactory reason for failing to do so when requested by the General Manager (or the Member cannot be contacted despite reasonable attempts by the General Manager to do so).

5.7 Membership Entitlements Not Transferable

Subject to clause 24 of the 2016 Relationship Agreement, a right, privilege or obligation associated with Membership of the Program:

- (a) is not capable of being transferred or transmitted to another person or organisation; and
- (b) terminates on cessation of Membership.

6 BOARD

6.1 Role

- (a) Subject to paragraph (b), the role of the Board is to make decisions:
 - (i) on Membership applications, expulsions and suspensions;
 - (ii) on the strategic direction of the Program to achieve the capability requirements as stated by Defence;
 - (iii) on the business priorities of the Program to achieve the capability requirements as stated by Defence;
 - (iv) in relation to any matter as instructed by the Commonwealth Board Member; and
 - (v) on the approval and amendment of Policies related to paragraphs (i) to (iv).
- (b) Despite anything in this Policy, the Board is not authorised to make any decision that has the effect of committing the Commonwealth to making a payment of any kind.

6.2 Management of Program

- (a) Other than in respect of the responsibilities of the Board set out in clause 6.1 all other decisions in relation to the Program will be made by the Commonwealth Board Member, including decisions in relation to:
 - (i) controlling and managing the affairs of the Program;
 - (ii) approving and amending Policies; and
 - (iii) performing all such lawful acts as are considered necessary or desirable to achieve the proper management of the affairs of the Program, its objects and purposes.
- (b) In making decisions in relation to the Program, the Commonwealth Board Member must consult with the Board prior to making decisions on:
 - (i) appointing key roles within the Program;
 - (ii) removing Board Members pursuant to clause 6.10;
 - (iii) implementing or amending Policies; and
 - (iv) the outcome of any review of the rates under the Deed of Standing Offer,

unless there are circumstances of urgency and importance that make it unreasonable or inappropriate to wait until the next Board meeting to make the decision.

6.3 **No Duty to Particular Members**

In exercising their duties, powers and discretions, neither the Program nor the Board must have regard to the interests of any particular Member, nor does the Program or the Board have any duty to a particular Member that is not owed to the Program and the Members as a whole.

6.4 **Commonwealth Board Member**

The Commonwealth Board Member is the Chair of the Board.

6.5 **Board Composition**

The Commonwealth Board Member must appoint the Program's Board, which must have a minimum of four Directors and a maximum of twelve Directors, comprising:

- (a) one Commonwealth Board Member, who will be the Chair;
- (b) one Commonwealth Director who will be the Deputy Chair;
- (c) up to eight Member Directors, to be appointed by the Commonwealth Board Member;
- (d) up to two Independent Directors, to be appointed by the Commonwealth Board Member; and
- (e) up to five Commonwealth Observers to the Board.

6.6 **Member Director Qualification Criteria**

To be eligible as a Member Director, the Director must hold a NV1 Security Clearance and:

- (a) in the case of a Member who is a corporation or a university, must be an employee of the Member; and
- (b) in the case of a Member who is a sole trader, must be the business owner.

6.7 **Appointment of Member Directors**

Member Directors are appointed by:

- (a) the proposed Member Director meeting the Member Director qualification;
- (b) being recommended by the Member Director Nomination Committee (which must be established by the Commonwealth Board Member in accordance with clause 6.16 with terms of reference governing, at a minimum, the required qualifications, the desired qualifications and the nomination procedure); and
- (c) the Commonwealth Board Member appointing the Member Director.

6.8 **Term of Member Director Appointment**

- (a) Member Directors may, subject to clause 6.9, remain in office for a maximum period of two consecutive years.
- (b) A Member Director may seek re-appointment to the Board at the conclusion of their first term, for a second term, but may not seek re-appointment immediately following the expiry of their second term

6.9 Disqualification of Member Directors

A Member Director ceases to hold their position on the Board, and the position becomes vacant, if:

- (a) they die;
- (b) the Member (of which the Member Director is employed):
 - i) resigns from Membership; or
 - ii) is expelled or suspended pursuant to clauses 5.5 and 5.6;
- (c) they resign membership of the Board;
- (d) they are removed pursuant to Clause 6.10;
- (e) they are, in the opinion of the remainder of the Board, either:
 - i) unable to participate in Board meetings; or
 - ii) otherwise unable to discharge the duties of a Board Member;
- (f) they are convicted of an offence involving fraud or dishonesty;
- (g) they are prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act 2001 (Cth);
- (h) they cease to meet the eligibility criteria to be a Member Director; or
- (i) they are absent from more than three consecutive Board meetings.

6.10 Removal of Board Member

Subject to clause 6.2(b)(ii), the Commonwealth Board Member may remove any Member Director from that office before the expiration of the Member Director's term of office and may appoint another person from the Members to the position until the expiration of the term of office of the Member Director so removed.

6.11 Casual Vacancies

Subject to this Policy, the Commonwealth Board Member may appoint a person to fill a casual vacancy on the Board.

6.12 Independent Directors

- (a) The Commonwealth Board Member may appoint up to two Independent Directors, who are not required to do any of the following:
 - (i) be an employee of a Member;
 - (ii) meet the Member Director qualification criteria; or
 - (iii) be nominated by the Member Director Nomination Committee.
- (b) The Independent Director's appointment will be governed by the terms of their appointment.

6.13 Proceedings of the Board

- (a) The Board must meet at intervals of no longer than three months, at such times and places, and in such manner, as the Chair determines.
- (b) Additional Board meetings may be convened by the Chair of the Program.

- (c) Written notice of a Board meeting must be given by the General Manager to each Board Member at least seven days (or such other period as may be unanimously agreed by the Board) before the time appointed for the holding of the meeting.
- (d) Where the Chair considers the matter(s) to be discussed are urgent, effective notice of a Board meeting may be given to all Board Members by any form of communication at least twenty-four hours prior to the meeting.
- (e) Notice of a Board meeting pursuant to clause (d) must specify the general nature of the business to be transacted at the meeting.
- (f) Subject to clause 6.14, a Board Member having a pecuniary or other material personal interest in a contract with the Program or any other matter before the Board, must disclose that interest to the Board, and must not vote with respect to that contract or other matter before the Board.
- (g) The quorum at Board meetings is three Board Members of whom at least one must be the Commonwealth Board Member or Commonwealth Director. The number of responses, whether voting for or against a resolution of the Board or abstaining from the vote, must meet the quorum of this clause.
- (h) The Deputy Chair will chair Board meetings in the absence of the Chair and will have all the powers of the Chair.
- (i) Commonwealth Observers to the Board will play no role in decision-making, but may provide advice or input at Board meetings when called on to do so by the Board.

6.14 Disclosure of Interests

- (a) A Board Member who has a pecuniary or other material personal interest in a matter that is being considered at a meeting of the Board must not:
 - (i) be present while the matter is being considered at a meeting; or
 - (ii) vote on the matter.

This clause (a) does not apply if clause (b) allows the Board Member to be present.

- (b) Where:
 - (i) a Board Member has a pecuniary or other material personal interest in a matter that is being considered at a meeting of the Board (Interested Board Member); and
 - (ii) the Board Members who do not have a pecuniary or other material personal interest in the matter have passed a resolution that:
 - A. identifies the nature and extent of the Interested Board Member's interest and its relation to the affairs of the Program; and
 - B. states that those other Board Members are satisfied that the interest should not disqualify the Interested Board Member from doing so, then the Interested Board Member may, according to the terms of that permission:
 - C. be present while the matter is being considered at the meeting;
 - D. vote on the matter; or
 - E. both be present while the matter is being considered at the meeting and vote on the matter.

6.15 **General Manager**

- (a) Subject to this Policy, the General Manager must keep records of the business of the Program, including the Policies, register of Members, register of Board Members, minutes of all general and Board meetings and a file of correspondence.
- (b) The General Manager will make available the minutes of the general and Board meetings to all Members in a timely manner. For the avoidance of doubt, the General Manager may redact or omit any information from those minutes that he or she regards (in his or her absolute discretion) as inappropriate to make available.
- (c) All records, books, documents and securities of the Program must be kept in the custody or control of the General Manager.

6.16 **Committee**

- (a) The Commonwealth Board Member may appoint a Committee to make recommendations to the Board or Commonwealth Board Member (as the case may be) on any matter regarding the Program.
- (b) The Commonwealth Board Member may issue directions, regulations, rules or codes in relation to the administration of any Committee, its meetings and decision making processes, which binds all members of the Committee.

7 ADMINISTRATION

7.1 **Validity of Acts**

Despite anything contained in this Policy, if it is found that some formality required by this Policy has been inadvertently omitted or has not been carried out by the Board, acting in good faith, such omission does not invalidate any resolution, act, matter or thing which, but for such omission, would have been valid.

7.2 **Confidentiality**

All Board Members and Members must maintain the confidentiality of Program Information and must not disclose any Program Information to any person except:

- (a) with the prior written consent of the General Manager;
- (b) to the Board, the Program's employees and the professional advisors of the Program; and
- (c) if applicable, as required by law, or statutory, or portfolio duties, after first consulting the General Manager about the form and content of the disclosure.

7.3 **Media Authorisation and Conduct**

- (a) No individual Board Member or any individual Member of the Program may make media comment, issue media releases, participate in media interviews, or correspond with the media on behalf of the Program without the authorisation of the Board. This clause does not apply to the Chair of the Board or the General Manager.
- (b) The Commonwealth Board Member may issue directions, regulations, rules or codes in relation to media authorisation and conduct.