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Industry Outplacement Deed

between

Department of Defence
ROYAL AUSTRALIAN NAVY
(The "COMMONWEALTH")

Deed Number : DNCME 03/11

and

Prodrive Racing (Australia) Pty Ltd
A.C.N. 35 103 001 029
(The "MENTOR ORGANISATION")

25 NOVEMBER 2011

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INSTRUMENT OF DEED

MENTORING DEED made the day of 2011

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA, represented by and acting through the Director General Naval Personnel, ROYAL AUSTRALIAN NAVY, located at Russell Offices, Canberra, ACT, 2600 ("the Commonwealth")

AND

PRODRIVE RACING (AUSTRAIA) PTY LTD (A.C.N. 35 103 001 029) of 33 Glenbarry Road, Campbellfield Victoria 3061 ("Mentor Organisation")

WHEREAS:

A. The Commonwealth agrees to the Mentoring Participant undertaking the Mentoring Programme in the Mentor Organisation, for the Assignment Period, for the purpose of enhancing the Mentoring Participant's professional skills.

B. The Mentor Organisation agrees to the Mentoring Participant undertaking the Mentoring Programme in the Mentor Organisation on the terms and conditions set out in this Deed.

IT IS AGREED:

1. The documents listed at (a) to (b) below shall together be taken to be the Mentoring Deed (the "Deed") for the Mentoring Programme. In the event of any inconsistency between the documents constituting the Deed a descending order of precedence shall be accorded to:

(a) This Instrument of Deed and Annexures;

(b) Mentoring Deed - General Conditions.

2. The Mentor Organisation has been fully informed of the terms and conditions of the Deed and understands those terms and conditions.

3. Addresses for the service of notices shall be as follows:

In the case of the Commonwealth:

Deputy Director Navy Category Management Engineering (DNCME)
s22 Russell Offices, Canberra ACT 2600
Contact Person: CMDR s22
Tel: s22
Fax: s22
Email: s22 @defence.gov.au

In the case of the Mentor Organisation:

Prodrive Racing (Australia) Pty Ltd
Locked Bag 47
Campbellfield VIC 3061
Contact Person: s22
Tel: s22
Fax: s22
Email: s22

Signed for the Commonwealth:

s22

Full Name: RADM s22

Position: Head Navy Engineering

Date: 6. Nov 11

Signed for the Mentor Organisation:

s22

Full Name: s22

Position: Managing Director
Prodrive Racing (Australia) Pty Ltd

Date: 3 Nov 11

ANNEXURE A to the Deed:

MENTOR ORGANISATION SCHEDULE

Workplace Address: Building 4, 40 Glenbarry Road Campbellfield VIC 3061 and V8SCA venues for 2012 Supercar rounds

Mentor Organisation's Representative: s22

Assigned Mentor/Supervisor: s22

Commencement Date: 23 January 2012

Termination Date: 14 December 2012

Normal Hours of Work: 38 hours

Details of Insurance Policies:

(a) Public Liability Insurer: TBC with FPR

(b) Workers' Compensation Insurer: TBC with FPR

(c) Other insurance (please specify):

(i) Comprehensive Motor Vehicle Third Party Liability: TBC with FPR

ANNEXURE B to the Instrument of Deed

DNCME – MENTORING PARTICIPANT SCHEDULE

Mentoring Participant (full name):

Rank:

Branch:

Service Number:

Training & Courses completed to date:

Position with Mentor (describe duties):

Insert any additional personal information concerning the member:

ANNEXURE C to the Instrument of Deed:

Acknowledgment by Mentoring Participant

I acknowledge that I will:

1. Remain a member of the RAN and will continue to receive my current pay, terms and conditions of employment as prescribed in my RAN employment contract and relevant RAN determinations and my participation in the Mentoring Programme with the Mentor Organisation is on the basis of a secondment for the purposes of training and skills development;

2. Conduct myself in a manner befitting a member of the RAN while participating in the Mentoring Programme;

3. Use my best endeavours to achieve the Mentoring Objectives detailed at Annexure D of this Deed;

4. Complete documentation as required by DGNP in connection with the Assignment;

5. Comply with the Participant's Manual;

6. Keep all information, documents, and data relating to the Mentor Organisation's business activities confidential. Such information, documentation or data, shall not be disclosed to any third party unless required by law or the information is in the public domain;

Signed:

Full Name [please print]:

Rank:

Service Number:

Date:

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ANNEXURE D to the Instrument of Deed

MENTORING PLAN - OBJECTIVES

Objectives

The objectives should cover but are not limited to the following:

- Growth of technical skills;
- Provide practical and meaningful work experience ashore;
- Enhance knowledge of high performance equipment;
- Enhance diagnostic skills;
- Exercise trade skills appropriately;
- Gain knowledge on use of general and special to type test equipment;
- Teamwork and high pressure work environment;
- Branding and Recruitment initiative;
- Develop Defence Industry Awareness; and
- Gain industry project.

MENTORING DEED - GENERAL CONDITIONS

Interpretation – Definitions

In the Deed, unless the contrary intention appears, the term:

"ADF" means Australian Defence Force;

"Deed" means this document including the attachments and annexures and any document expressly incorporated as part of the Deed;

"Assignment Period" means the whole of the term (12 months) during which the Mentoring Participant is placed for training with the Mentor Organisation.

"Commencement Date" means the date on which the Mentoring Participant commences the Mentoring Programme with the Mentor Organisation;

"Commonwealth Representative" means the person that, from time to time, is nominated by DNCME to conduct business on behalf of the Commonwealth;

"Day" means calendar day;

"Direction" includes a decision, demand, determination, instruction, order, request or requirement and "directed" shall have a like meaning;

"DNCME" means Director Navy Category Management Engineering;

"DNCME Representative" means the individual within DNCME who is the point of contact for the Mentoring Programme;

"Effective Date" means the date on which this Deed is signed by the Commonwealth and the Mentor Organisation, or if signed on separate days, the date of last signature;

"Event of Insolvency" means in relation to a party:

(a) a Controller, administrator or similar person is appointed in respect of that party or all or a material part of the assets of that party (whether under the Corporations Act or any other applicable legislation);

(b) a liquidator or provisional liquidator is appointed in respect of the party;

(c) any application (not being an application withdrawn, dismissed or defended within 28 days, or which is frivolous or vexatious) is made to a court for an order or an order is made or a resolution is passed for the purpose of:

  (i) appointing a person referred to in paragraphs (a) or (b) to the party;

  (ii) winding up the party; or

  (iii) proposing or implementing a scheme or arrangement in respect of the party;

other than in any such case for the purposes of a solvent reconstruction of the party;

(d) a moratorium of any debts of the party or an official assignment or a composition or an arrangement (formal or informal) with the party's creditors or any similar proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors is ordered, declared or agreed to; or

(e) the party becomes, admits in writing that it is, is declared by a court of competent jurisdiction to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts as they become due and payable;

"Government Furnished Equipment (GFE)" means equipment supplied by the Commonwealth to the Mentor Organisation in the form of Mentoring Tool Kits.

"Government Furnished Information (GFI)" means information supplied by the Commonwealth to the Mentor Organisation which is embedded in either electronic media, drawings, photographic images, documentation or software.

"**Law**" means any statute, ordinance, rule, regulation, by-law, Code of Conduct, Australian Standard or award, decree, order or judgment of any court tribunal or arbitral body of competent jurisdiction, and includes any licence condition and any direction or guideline given imposed or issued in accordance with any of the foregoing by any body or authority responsible for the administration of any of the foregoing, notwithstanding that the same may not be legally enforceable;

"Mentor Organisation Representative" means the person that, from time to time, is nominated by DNCME to conduct business on behalf of Ford Performance Racing.

"Mentoring Participant" means an MT sailor of the RAN directed by the RAN to undertake the Mentoring Programme at the Mentor Organisation's premises in accordance with this Deed;

"Mentoring Programme" means the assignment of the Mentoring Participant with the Mentor Organisation on the basis of a secondment for the purposes of training and skills development in accordance with this Deed and the Particpant's Conditions of Assignment;

"**Month**" means calendar month;

"**RAN**" means the Royal Australian Navy;

"**Week**" means calendar week; and

"**Year**" means calendar year.

1.A Period of Deed

1A.1 This Deed shall be for the period of five (5) years from Effective Date, with five (5) separate reviews in accordance with Clause 28A.

1A.2 The Mentoring Participants' Commencement Date will be the date mutually agreed between the Commonwealth and the Mentor Organisation from time to time, which will be as close as possible to the first day of February each year

1.1 Commonwealth's Investigations

1.1 Inspection of the Workplace

1.1.1 The Commonwealth acknowledges that, prior to the Effective Date, the Mentor Organisation provided the Commonwealth with every opportunity to inspect the workplace and gave the Commonwealth every assistance to investigate the local and other conditions affecting the Mentoring Participant's roles under the Deed.

2. The Mentor Organisation's Acknowledgments

2.1 The Mentor Organisation acknowledges that it has the capacity and resources to place the Mentoring Participant within its organisation for the purpose of enhancing the Mentoring Participant's skills in accordance with the Mentoring Programme Plan.

3. Representation

3.1 Each party will appoint an appropriate person to represent it in all matters concerning this Deed. Each party shall immediately advise the other should any change of representative occur. In the case of the Commonwealth is the person nominated by DNCME to conduct business on behalf of the Commonwealth

4. Progress Reports and Meetings

6.1 The Commonwealth may from time to time request that other information, forms and reports be completed by the Mentor Organisation in an acceptable form at no cost to it in respect of any matter under this Deed. The Mentor Organisation shall comply with Commonwealth's request within five (5) working days or as agreed between the Parties.

4.2 The Mentor Organisation Representative shall meet with the Commonwealth Representative from time to time as requested by the Commonwealth Representative. Such meetings should be at the Mentor Organisation's premises.

5. Responsibility for Costs of Assignment

5.1 The Mentoring Participant will remain a member of the RAN and will continue to receive current pay, terms and conditions of employment as prescribed in their RAN employment contract and relevant RAN determinations, and their participation in the Mentoring Programme with the Mentor Organisation is on the basis of a secondment for the purposes of training and skills development.

5.2 The RAN will ensure that Mentoring Participants are paid for travel costs and expenses at least equivalent to the relevant determinations provided in the ADF Pay & Conditions Manual.

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6A. Government Furnished Equipment (GFE)

6A.1 The Commonwealth undertakes to supply GFE to the Mentoring Participant. The Mentoring Participant will be responsible for care and any deficiencies whilst in their custody.

6A.2 The Mentor Organisation shall ensure the Mentoring Participant will store GFE in a secure environment and identify it as being property of the Commonwealth.

6A.3 Deficiencies in GFE as issued to a Mentoring Participant, must be reported as soon as practicable to the Commonwealth Representative by the Mentoring Participant.

6A.4 The Mentor Organisation must, at the completion of the Mentoring Programme, ensure that the GFE is returned by the RAN participant.

6A.5 The Commonwealth reserves the right to enter the Mentor Organisation's premises from time to time to inspect GFE in the custody of the Mentoring Participant and/or Mentor Organisation.

6A.6 The Mentor Organisation must take all steps necessary to ensure GFE is correctly cared for and returned to the Commonwealth on completion and/or termination of this Deed.

7. Mentor Organisation's Organisational Structure

7.1 The Mentor Organisation shall provide the Commonwealth with a copy of a detailed organisation chart, which shall show positions, job descriptions and reporting relationships for supervisory personnel associated with the Mentoring Participant and relevant to this Deed.

8. Hours of Work

8.1 The regular work schedule of the Mentoring Participant shall be subject to the approval of the Commonwealth representative, whose approval shall not be unreasonably withheld.

8.2 The Mentor Organisation shall provide the Mentoring Participant with a work schedule showing hours of work and shift roster (if any) seven (7) days in advance of any proposed changes to an approved work schedule.

8.2A The Commonwealth acknowledges that the nature of the work performed in the Mentor Organisation's is inherently unpredictable. It may therefore be necessary to have a Mentoring Participant change their work schedules at short notice to reflect activities of the racing team.

8A. Location of Work

8A.1 The parties agree that the location at which the Mentoring Participant is required to attend for work will not be varied from that specified in Annexure A to the Agreement, except by mutual Deed between the parties.

9. Alcohol and Drug Testing

9.1 The Commonwealth has certain powers in relation to drug and alcohol testing of ADF personnel. The Mentor Organisation acknowledges that the results of any such testing remain confidential and that it does not hold equivalent powers in relation to ADF personnel.

9.2 Should the Mentor Organisation have reasonable cause to suspect and/or witness behaviour of a Mentoring Participant the Mentor Organisation will contact the Commonwealth Representative to promptly undertake action in accordance with the Commonwealth's (ADF) Alcohol and Drug Testing Policy.

9.3 The Mentor Organisation must advise the Commonwealth Representative of the nature of events concerning the behaviour of a Mentoring Participant and the time and place of such incident as soon as practical after the incident.

9.4 Pursuant to Clause 9.3, such notice may be given to the Commonwealth's Representative orally for action however, notice will be provided in writing within four (4) working hours of occurrence of an incident. Should an incident occur outside the Mentor Organisation's normal working hours, notice in writing will be provided on the following working day.

9.5 On occurrence of an incident, the Mentoring Participant will be temporarily 'stood down' by the Mentor Organisation, pending outcome of the action undertaken by the Commonwealth.

10. Compliance and Awareness of Mentor Organisation Rules, Regulations and Policies

10.1 The Mentor Organisation is responsible for ensuring that the Mentoring Participant under its control and supervision is aware of and complies with all rules, regulations, policies and guidelines issued from time to time by the Mentor Organisation.

10.2 The Mentor Organisation acknowledges that Mentoring Participant holds no authority to contract or make representations on behalf of the Commonwealth, the ADF or the RAN.

11. Mentor Organisation's Induction Programme

11.1 On arrival at the Mentor Organisation's workplace, the Mentoring Participant must successfully undergo an induction conducted by the Mentor Organisation before commencing work.

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12. Industrial Relations

12.1 The Mentor Organisation agrees to notify and fully inform the Commonwealth Representative of any industrial dispute involving the Mentor Organisation's employees or any union.

12.2 The Parties agree that the Mentoring Participant will not be required to join any industrial union.

13. Safety

13.1 The Mentor Organisation is directly responsible for the safety of the Mentoring Participant during the Mentoring Participant's participant in the Mentoring Programme. The Mentor Organisation must ensure that its employees, subcontractors and the Mentoring Participant at all times observe safe working standards and adopt, as a minimum, known and acceptable industry safety standards and practices.

13.2 Should the Mentor Organisation observe, in its opinion, an unsafe act, practice or procedure, or become aware of a proposed unsafe act, practice or procedure, the Mentor Organisation must direct the Mentoring Participant to ensure that a safe workplace is maintained.

14. Injury and Damage

14.1 The Mentor Organisation must comply with relevant Commonwealth and State/Territory legislative regulatory accident, injury or dangerous occurrence reporting requirements occurring as a result of the Deed and inform the Commonwealth Representative of any incidents involving the Mentoring Participant. The Mentor Organisation shall immediately report any damage to the Mentor Organisation's property or to third party property alleged to be in connection with the Mentoring Participant and the Mentor Organisation.

15. Indemnities and Insurance

15.1 The Mentor Organisation's Insurance Responsibility

15.1.1 Before commencing any obligations under this Deed, the Mentor Organisation shall effect insurances on the basis set out below and maintain them in force for the full period of the Deed:

(a) A public liability policy with a sum insured of not less than $10,000,000.

(b) The Mentor Organisation shall ensure that all motor vehicles (which expression shall include any item of plant and equipment which is or is required to be licensed as a motor vehicle in accordance with the requirements of any law) used pursuant to this Deed are insured against liability for both third party

personal injury and third party property damage in accordance with statutory requirements.

(c) The Mentor Organisation shall in addition comply with all statutory requirements concerning the arrangement of motor vehicle Third Party liability insurance in respect of the ownership, possession, operation or use of motor vehicles.

(d) The Mentor Organisation shall effect insurance on all items of its own mobile plant and equipment used in performance of obligations under this Deed.

(e) Any other insurance which the Mentor Organisation requires by applicable Laws.

15.2 Approval of Policies

15.2.1 The Mentor Organisation shall furnish the Commonwealth for approval prior to the Commencement Date, a certificate of currency for the insurance policies as evidence that the Mentor Organisation has complied with its obligations in relation to insurance under the Deed.

15.3 Failure of Mentor Organisation to Insure

15.3.1 If the Mentor Organisation fails to effect or to keep in force any of the insurance required under this Deed, the Commonwealth Representative is to be notified immediately and the Commonwealth may terminate the Deed by giving four(4) weeks notice in writing.

16. Default or Insolvency

16.1 Default of the Mentor Organisation

16.1.1 If the Mentor Organisation at any time:

(a) fails to carry out the obligations under this Deed to the satisfaction of the Commonwealth Representative; or

(b) defaults in the performance or observance of any obligation, term, condition or stipulation contained in this Deed and on its part to be performed or observed; or

(c) refuses or neglects to carry out any direction which the Commonwealth or Commonwealth Representative is entitled to give,

the Commonwealth may give the Mentor Organisation notice specifying the default and requiring the Mentor Organisation to remedy the same or the Commonwealth may terminate the Deed by giving four(4) weeks notice in writing.

16.2 Insolvency of the Mentor Organisation

16.2.1 If any Event of Insolvency occurs in relation to the Mentor Organisation, then the Mentor Organisation shall notify the Commonwealth's Representative and the Commonwealth Representative may terminate the Deed in accordance with Clause 18.

17. Removal of Mentoring Participant

17.1 The Commonwealth may, at any time, remove the Mentoring Participant from the Mentoring Programme, due to operational requirements. If possible, the Commonwealth will provide advice of such removal at the earliest practicable opportunity in advance.

17.2 If the Mentoring Participant suffers serious extended illness or extended disability (temporary or permanent) whilst within the Mentoring Programme, their participation in the Mentoring Programme may be terminated as mutually agreed by both parties.

"Extended illness" or "extended disability (temporary or permanent)" are defined as an incident to the individual's health that would prevent the Mentoring Participant from attending his normal duties under the Mentoring Programme for a period in excess of four (4) working weeks.

17.3 Should the Mentoring Participant suffer a temporary disability that affects his capacity to perform his normal duties under the Mentoring Programme for a short period, the Participant must inform the RAN of the health condition. A "short period" of "Light Duties" is defined as ten (10) consecutive working days.

17.4 The Mentor Organisation will after the initial short period of light duties, have an RAN nominated medical practitioner examine the Mentoring Participant to determine the Mentoring Participant's health status and their ability to return to normal duties. Should the Mentoring Participant be found to be unfit for normal duties, a further short period of light duties may be directed by the Mentor Organisation. After two (2) consecutive periods of light duties, the Mentor Organisation may terminate the Mentoring Participant's Mentoring Programme.

17.5 The Mentor Organisation reserves the right to terminate a Mentoring Participant from the Mentoring Programme in the case that the Mentoring Participant is proven to have committed a crime, or been involved in improper or inappropriate conduct whilst participating under the terms of this Deed.

18. Termination of Deed

18.1 The Commonwealth may, at any time in its absolute discretion, terminate this Deed in whole or in part by giving the Mentor Organisation four (4) weeks notice in writing.

18.2 The Mentor Organisation may, at any time in its absolute discretion terminate, this Deed in whole or in part by giving the Commonwealth four (4) weeks notice in writing.

19. Publicity

19.1 The Mentor Organisation shall not, except with the prior consent of the Commonwealth or as required by law, make any reference, comment or statement which may be published, broadcast, shown or displayed in books, magazines, newspapers or periodicals or by way of advertisement or by radio, television, film, Internet or other medium with respect to or comprising:

(a) any matter of a political nature relating to the Commonwealth or the RAN;

(b) this Deed or any of its terms and conditions;

(c) the Mentoring Participant; or

(d) any other information in relation to the Commonwealth, the RAN, this Deed or the Mentoring Participant.

19.1A Except where required by law or portfolio duties, the Commonwealth may only publicise the arrangements under which the Deed is conducted with the Deed of the Mentor Organisation.

20. Confidentiality

20.1 The Commonwealth shall ensure that it procures the Deed of the Mentoring Participant to keep all information, documents, and data relating to the Mentor Organisation's business activities confidential. Such information, documentation or data, shall not be disclosed to any third party unless required by law or the information is in the public domain. Commonwealth members or employees shall only use such confidential information for the purpose of performing its obligations under this Deed.

20.2 The obligation of confidence created by this clause shall subsist until the relevant information shall pass into the public domain without any breach by the Commonwealth, the RAN, the Commonwealth Representative or the Mentoring Participant.

20.3 The Mentor Organisation, its employees and contractors shall take reasonable steps and observe due discretion and limit access to Commercial in Confidence material or other confidential information pertaining to Ford Performance Racing.

21. Dispute Resolution

21.1 Notice of Dispute and Mediation by Commonwealth

21.1.1 In the event of a dispute or difference arising between the parties as to the construction of this Deed or as to any matter or thing arising under or in connection with the Deed then the parties' representatives will seek to resolve the matter in the first instance at the earliest opportunity. Should the dispute not be resolved to the satisfaction of the parties, then each party may give the other party notice in writing identifying the matters the subject of the dispute or difference and the matter will be mediated by the Commonwealth.

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21.2 Mentoring Participant's Assignment may be Suspended or Terminated

21.2.1 On receipt of a notice of dispute pursuant to clause 21.1.1 in writing, the Mentoring Participant's participation in the Mentoring Programme with the Mentor Organisation may be suspended or terminated by the Commonwealth or the Mentor Organisation.

21.2.2 The Mentoring Participant's participant in the Mentoring Programme may be terminated by the Mentor Organisation or the Commonwealth with or without notice, as detailed in the Mentoring Programme Plan.

22. Mentor Organisation's Warranties and Acknowledgments

22.1 The Mentor Organisation represents and warrants to and for the benefit of the Commonwealth that:

(a) it has been duly incorporated in its place of incorporation and is validly existing under the laws of that jurisdiction;

(b) it has the power to own its assets and to carry on its business as it is now being conducted;

(c) it has the power and authority to enter into and perform its obligations under the Deed;

(d) it has obtained all necessary consents and approvals and has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms;

(e) it has and will fully and correctly disclose all information to the Commonwealth which has been requested by the Commonwealth in relation to or under this Deed or which relates to the planning and management of the Deed.

(f) it shall treat Mentoring Participants placed within its organisation with due skill, care and diligence and all Mentor Organisation personnel assigned to the performance of the obligations under this Deed have the necessary competencies.

23. Governing Law

23.1 This Deed shall be governed by and construed in accordance with the laws in force for the time being in the State of New South Wales and the parties hereby submit to the non-exclusive jurisdiction of the courts of that State and courts competent to hear appeals.

24. Notices

24.1 A notice, request, approval, consent or other communication to be given by one party to another under this Deed shall be in writing and:

(a) hand delivered; or
(b) sent by post to an address in Australia, postage prepaid; or
(c) sent to an address outside Australia by prepaid airmail; or
(e) sent by facsimile; or
(f) sent by email.

24.2 If a party changes it postal address, facsimile number or email address for service, it is to give notice of that change to the other party.

24.3 The following are the relevant Commonwealth Representative's associated with this Deed:

Deputy Director Navy Category Management Engineering (DNCME)
s22
Russell Offices
Canberra ACT 2600

Contact Person: CMDR s22
Tel: s22
Fax: s22
Email: s22 @defence.gov.au

24.5 In this Deed, unless contrary intention appears from the context, the above authorities shall include their authorised representatives who may be members of the authorities' staff or other officers of the Commonwealth of Australia.

25. Assignment

25.1 The Mentor Organisation may not assign this Deed in whole or in part without the prior written consent of the Commonwealth.

26. Waiver

26.1 A party's failure to exercise or delay in exercising a power or right does not operate as a waiver of that power or right.

27. Negation of Partnership, Agency or Joint Venture

27.1 Nothing contained in this Deed shall create any relationship of employer and employee between the Mentor Organisation and the Mentoring Participant. The Mentoring Participant has no authority to bind the Commonwealth or the Mentor Organisation by contract or otherwise.

27.2 Nothing contained in this Deed may be interpreted or construed as giving rise to the existence of any partnership, agency or joint venture between the parties.

28. Variations to Mentoring Deed

28.1 The obligations under this Deed may only be varied by the parties in writing except where provided to the contrary.

28.2 To ensure the Deed continues to meet the requirements of both parties over the Period of Deed as described at Clause 1A.1, the Deed will be reviewed annually by the parties to modify on a case by case basis as agreed mutually, clauses within the Deed to ensure the Mentoring Deed remains pertinent to the evolution in RAN work practices for Mentoring Participants.

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The annual review date for the Deed will be once per year or as mutually agreed by both parties.

29. Entire Deed

29.1 This Deed contains the entire Deed between and understanding of the parties relating to the subject matter of the Deed.

30. Restraint on Engagement of Mentoring Participants

30.1 The Mentor Organisation agrees that it will not, and must ensure that its officers, employees, agents and related entities do not:

(a) solicit, entice away or attempt to solicit or entice away the Mentoring Participant from continuing to be engaged by the Commonwealth, either on behalf of the company or any other person, or engage the Mentoring Participant during the Assignment Period, including any extensions of the Assignment Period, and continuing for 12 months after termination or expiration of the Assignment Period;

30.1A The RAN agrees it will not and must ensure that its officers, employees, agents and related entities do not solicit, entice away, or attempt to solicit or entice away, Mentor Organisation personnel from continuing to be engaged by the Mentor Organisation, either on behalf of RAN and/or the Commonwealth.

30.2 The restraints contained in clause 30.1 will be regarded as separate, distinct and several as regards each time period so that enforceability of a restraint in respect of one time period will not affect the enforceability of the others.

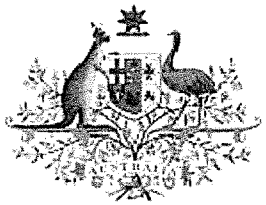
30.3 The Mentor Organisation will not be in breach of a restraint contained in clause 30.1 if an authorised representative of the Commonwealth gives prior written consent to the Mentor Organisation, its officers, employees, agents or related entities to solicit, entice away or engage the Mentoring Participant on behalf of the Mentor Organisation or any other person.

31. Survivorship

31.1 The obligations on the parties described in clause 15 (Indemnities and Insurance) shall survive two (2) years following the Effective Date of the Deed;

31.2 The obligations on the parties described in Clause 19 (Confidentiality) shall survive ten (10) years following the Effective Date of the Deed.

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Deed

between

The Commonwealth of Australia

and

Prodrive Racing Australia Pty Ltd

for the

Workplace Skills
Industry Outplacement Program

Deed Number:

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ATTACHMENT A – INDUSTRY OUTPLACEMENT PROGRAM PLAN

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This Deed for the placement of Royal Australian Navy Personnel under the Workplace Skills Industry Outplacement Program is made the day of 2016

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA, represented by the Department of Defence, and acting through the Royal Australian Navy, specifically, Director General Navy People, Brindabella Park, Canberra, ACT, 2600 (**Commonwealth**)

AND

PRODRIVE Racing Australia (ACN 103 001 029) having its registered office at 4/40 Glenbarry Road, Campbellfield Victoria 3061 (**Industry Outplacement Organisation**)

WHEREAS:

A. The Commonwealth and the Industry Outplacement Organisation have agreed to enter into this Deed for the purpose of providing an overarching framework for the placement of members of the Royal Australian Navy, concurrently, as Industry Outplacement Participants in the Industry Outplacement Organisation, for a period of up to 12 Months for the purpose of enhancing the Industry Outplacement Participants' professional skills.

B. This Deed specifies the respective responsibilities that the Commonwealth and the Industry Outplacement Organisation accept with regard to the placement of Royal Australian Navy members ("the Industry Outplacement Participants").

NOW IT IS HEREBY AGREED AS FOLLOWS:

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WORKPLACE SKILLS INDUSTRY OUTPLACEMENT PROGRAM DEED - GENERAL CONDITIONS

1. Interpretation – Definitions

1.1 In this Deed, unless the contrary intention appears, the term:

"ADF" means the Australian Defence Force;

"Assignment" means each industry outplacement that an individual Industry Outplacement Participant undertakes for an Assignment Period in the nominated position with the Industry Outplacement Organisation;

"Assignment Period" means the whole of the term during which an individual Industry Outplacement Participant is placed for training with the Industry Outplacement Organisation in the nominated position with the Industry Outplacement Organisation (Annexure B). The Assignment Period is set out in the Industry Outplacement Participant Schedule (Annexure B) completed for the respective Industry Outplacement Participant;

"Australian Standard" means the relevant Australian Standard as issued and amended by Standards Australia from time to time;

"Australian Privacy Principles" has the same meaning as in the *Privacy Act 1988* (Cth);

"Background Intellectual Property" means Intellectual Property that is in existence at the Effective Date or is subsequently brought into existence by a party to this Deed, other than as a result of the performance of this Deed;

"Commencement Date" means the date on which the Industry Outplacement Participant commences the Assignment Period with the Industry Outplacement Organisation;

"Commonwealth" means the Commonwealth of Australia, for the purposes of this Deed represented by the Department of Defence and acting through the RAN, specifically, Director General Navy People;

"Commonwealth Representative" means the natural person that from time to time is nominated by DGNP to conduct business on behalf of the Commonwealth in relation to the Industry Outplacement Program and this Deed;

"Confidential Information" means information relating to the activities of a party that is by its nature confidential, is designated by a disclosing party as being confidential or which a receiving party ought to know is confidential, but does not include information which:

(a) is or becomes public knowledge other than by breach of this Deed;

(b) is in the possession of a receiving party without restriction in relation to disclosure before the date of receipt of it from a disclosing party;

(c) has been independently developed or acquired by the receiving party; or

(d) is in respect of ideas, concepts, know-how, techniques or methodologies where disclosure is permitted by the disclosing party (and the disclosing party is not to withhold its permission unreasonably);

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"Day" means a Working day;

"Deed" means this Deed including any attachment, annexes and any document expressly incorporated as part of this Deed;

"Divisional Officer" means the individual responsible for Divisional duties. This may include: bi-monthly liaison visits; processing of RAN forms; and disciplinary issues;

"Direction" includes a decision, demand, determination, instruction, order, request or requirement, and "directed" has a corresponding meaning;

"DGNP" means the Director General Navy People (DGNP);

"Effective Date" means the date on which this Deed is signed by the Commonwealth and the Industry Outplacement Organisation, or if signed on separate days, the date of last signature;

"Event of Insolvency" means, in relation to a party to this Deed, where:

(a) a Controller, administrator or similar person is appointed in respect of that party or all or a material part of the assets of that party (whether under the *Corporations Act 2001* (Cth) or any other applicable legislation);

(b) a liquidator or provisional liquidator is appointed in respect of the party;

(c) any application (not being an application withdrawn, dismissed or defended within 28 days, or which is frivolous or vexatious) is made to a court for an order or an order is made or a resolution is passed for the purpose of:

(i) appointing a person referred to in paragraphs (a) or (b) to the party;
(ii) winding up the party; or
(iii) proposing or implementing a scheme or arrangement in respect of the party; other than in any such case for the purposes of a solvent reconstruction of the party;

(d) a moratorium of any debts of the party or an official assignment or a composition or an arrangement (formal or informal) with the party's creditors or any similar proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors is ordered, declared or agreed to; or

(e) the party becomes, admits in writing that it is, is declared by a court of competent jurisdiction to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts as they become due and payable;

"Extended Medical Condition" means a medical condition (whether temporary or permanent) that would prevent the Industry Outplacement Participant from attending to his/her normal duties under this Deed for a period in excess of twenty (20) consecutive working days;

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"Foreground Intellectual Property" means all Intellectual Property (other than Background Intellectual Property and Third Party Intellectual Property) which is generated or otherwise created under or otherwise in connection with this Deed by a party to this Deed during the term of this Deed;

"Government Furnished Information (GFI)" means information supplied by the Commonwealth to the Industry Outplacement Organisation which is embedded in electronic media, drawings, photographic images, documentation or software;

"Industry Outplacement Organisation" means **PRODRIVE Racing Australia** ACN 103 001 029 having its registered office at 4/40 Glenbarry Road, Campbellfield Victoria 3061;

"Industry Outplacement Organisation Representative" means the individual within the Industry Outplacement Organisation who is the point of contact for the Industry Outplacement Program as identified in Annexure A;

"Industry Outplacement Participant" means a member of the RAN who has executed the acknowledgement by the Industry Outplacement Participant (Annexure C) and has been temporarily assigned for duty by the RAN to serve with the Industry Outplacement Organisation for the purposes of this Deed;

"Industry Outplacement Program" means the Assignment of Industry Outplacement Participants with the Industry Outplacement Organisation for the purposes of training and skills development in accordance with this Deed;

"Industry Outplacement Program Plan" means the written plan at Annexure A(Industry Outplacement Program Plan document, Version 1, dated **16 January 2017**), as amended from time to time and agreed between the parties, detailing the training to be undertaken by the Industry Outplacement Participants;

"Information Officer" means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth);

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

"Law" means any statute, ordinance, rule, regulation, by-law, Code of Conduct, Australian Standard or award, decree, order or judgment of any court tribunal or arbitral body of competent jurisdiction, and includes any licence, condition and any direction or guideline given imposed or issued in accordance with any of the foregoing by any body or authority responsible for the administration of any of the foregoing, notwithstanding that the same may not be legally enforceable;

"Month" means calendar month;

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"Period of this Deed" means the term of this Deed as defined in clause 2.1 and detailed in Annexure A;

"Privacy Commissioner" has the same meaning as in the *Australian Information Commissioner Act 2010* (Cth);

"RAN" means the Royal Australian Navy;

"Requisite Skills" means the basic skills that the Industry Outplacement Participant is required to possess as determined by DGNP;

"Short Period" means up to ten (10) consecutive working days;

"**Termination Date"** means the date an Assignment Period ends;

"**Third Party Intellectual Property**" means that IP which is owned by a party other than the Commonwealth or the Industry Outplacement Organisation;

"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 WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

"Working day" means Monday to Friday, excluding public holidays, unless otherwise specified;

"Working week" means calendar week, unless otherwise specified; and

"Year" means calendar year.

1.2 In this Deed, unless the contrary intention appears:

(a) headings and sub-headings are for the purpose of convenient reference only and do not form part of the Deed;
(b) the singular includes the plural and vice-versa;
(c) a reference to one gender includes the other;
(d) a reference to a person includes a body politic, a body corporate, association, partnership and a natural person;
(e) a reference to a clause includes a reference to a subclause of that clause;
(f) a reference to a "dollar", "$", "$A" or AUD means the Australian dollar unless otherwise stated;
(g) 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, or alternatively, a reference to another version of the document if agreed in writing between the parties;
(h) the word "includes" in any form is not a word of limitation; and

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(i) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Deed.

1.3 If there is any inconsistency between clauses in different parts of this Deed, a descending order of precedence shall be accorded to:

(a) Industry Outplacement Organisation Schedule (Annexure A);
(b) Industry Outplacement Participant Schedule (Annexure B) and completed individual Industry Outplacement Participant Schedule attached to the Deed in accordance with clause 3;
(c) Acknowledgement by the Industry Outplacement Participant (Annexure C) and completed individual Industry Outplacement Participants Acknowledgements attached to the Deed in accordance with clause 3;
(d) Industry Outplacement Plan – Technical Tasking (Annexure D) and any individual Industry Outplacement Participant Technical Tasking attached to the Deed in accordance with clause 3;
(e) the Industry Outplacement Program Plan (Attachment A); and
(f) any other attachments, annexure or documents.

2. Period of Deed

2.1 This Deed commences on the Effective Date and, unless terminated earlier in accordance with the terms of this Deed, shall continue for a period of five (5) Years. The parties may, by mutual agreement, agree to extend the term of this Deed for a further five (5) Years.

2.2 This Deed covers all Industry Outplacement Program Assignments, which fall within the Period of Deed outlined in clause 2.1.

3. Assignments

3.1 The Commonwealth may, during the Period of this Deed, place Industry Outplacement Participants concurrently within the Industry Outplacement Organisation, for each agreed Assignment Period, in accordance with the terms and conditions of this Deed.

3.2 For each Industry Outplacement Participant:
(a) an Industry Outplacement Participant Schedule in the form of Annexure B; and
(b) the Industry Outplacement Plan – Technical Tasking in the form of Annexure D, will be agreed no later than one Month before the proposed Commencement Date.

3.3 Prior to the Industry Outplacement Participant's Commencement Date, the Commonwealth will provide to the Industry Outplacement Organisation a signed Acknowledgement by the Industry Outplacement Participant in the form of Annexure C.

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3.4 The Industry Outplacement Participant's will carry out the Assignment in accordance with this Deed until the Termination Date, unless the Assignment or the Deed is terminated earlier in accordance with this Deed.

4. Commonwealth's Investigations and Acknowledgments

4.1 Inspection of the Workplace

4.1.1 The Industry Outplacement Organisation must provide the Commonwealth, prior to the Effective Date, with every reasonable opportunity to inspect the Industry Outplacement Organisation's workplace and any other environment the Industry Outplacement Participant might be working in under this Deed. If the Commonwealth becomes aware of any potentially hazardous situation in the Industry Outplacement Organisation's workplace or other environment, the Commonwealth must immediately bring it to the Industry Outplacement Organisation's attention. The Industry Outplacement Organisation is to take reasonable action to remedy the situation as soon as practicable.

4.2 The Commonwealth's Acknowledgments

4.2.1 The Commonwealth must ensure that each Industry Outplacement Participant placed with the Industry Outplacement Organisation has the Requisite Skills.

4.2.2 The Commonwealth must ensure that that the Industry Outplacement Organisation is provided with the opportunity to vet and approve the appointment of all proposed Industry Outplacement Participants via a pre-assignment interview to be conducted in person or via video conference.

5. The Industry Outplacement Organisation's Obligations

5.1 The Industry Outplacement Organisation warrants that for the Period of this Deed it has the capacity and resources to place Industry Outplacement Participant's, concurrently, within its organisation for each agreed Assignment Period for the purpose of enhancing each Industry Outplacement Participant's skills.

5.2 The Industry Outplacement Organisation further warrants that the Industry Outplacement Participants will remain extras to its workforce and will not be utilised as a replacement for an employee or subcontractor of the Industry Outplacement Organisation.

5.3 The Industry Outplacement Organisation must use its best endeavours to ensure that the work carried out by an Industry Outplacement Participant under the supervision of the Industry Outplacement Organisation is performed with care, skill, efficiency and diligence in accordance with best industry standards and practices and in accordance with this Deed. This includes, but is not limited to, the Industry Outplacement Organisation providing any required and/or appropriate briefings, training and supervision that may be required in order for the Industry Outplacement Participant to be in the best possible position to complete the Assignment Period.

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5.4 The Industry Outplacement Organisation must use its best endeavours to ensure that workplace relations issues do not unduly affect the performance by the Industry Outplacement Participants of their duties. In the event that a workplace relations incident occurs, which is beyond the Industry Outplacement Organisation's control, subsequent remedial action is taken by the Industry Outplacement Organisation so as not to disadvantage the Industry Outplacement Participants from obtaining the full benefit of completing their Assignment Period (e.g., if an industrial action were to occur and the organisation ceases operations for two weeks, the Assignment Period is extended by two weeks).

5.5 The Industry Outplacement Organisation warrants that it will utilise the Industry Outplacement Participants to undertake assignment work primarily related to the three embedded technical categories: Aviation Technician; Electronic Technician; and Marine Technician. The Aviation technical sailor will be required but not limited to work within the areas of composite manufacturing and repair, car body rebuild, servicing, diagnostics and the management of tyres, pits and garage. The Electronic technical sailor position will be required but not limited to work within the areas of electronics installations, testing or repair of transducers, wiring harnesses, video equipment, radio and digital communications, telemetry equipment and transfer of vehicle performance data for analysis. The Marine technical sailor will be required but not limited to work within the areas of engine rebuild, maintenance, servicing, diagnostics, tyre management pits and garage and car body rebuild.

6. Representation

6.1 Each party must appoint an appropriate natural person to represent it in all matters concerning this Deed.

6.2 For the Commonwealth, this will be the Commonwealth Representative and for the Industry Outplacement Organisation, this will be the Industry Outplacement Organisation Representative.

6.3 Each party must immediately advise the other formally in writing should any change of representative occur.

7. Progress Reports and Meetings

7.1 The Commonwealth may, from time to time, request that other information, forms and reports (including but not limited to performance reviews) be completed by the Industry Outplacement Organisation, in an acceptable form, and at no cost to the Commonwealth, in respect of any matter under this Deed. The Industry Outplacement Organisation must comply with Commonwealth's request within five (5) Working days or as otherwise agreed between the parties.

7.2 Where the Commonwealth requests a level of reporting that exceeds the normal day to day capacity of the Industry Outplacement Organisation within its current system of operation, the Industry Outplacement Organisation may make a written request to the Commonwealth to contribute to the cost of that reporting.

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7.3 The Industry Outplacement Organisation Representative must meet with the Commonwealth Representative from time to time, if requested by either party. Such meetings are to occur at the Industry Outplacement Organisation's premises or as otherwise agreed between the parties.

8. Variations to the Industry Outplacement Plan

8.1 The Industry Outplacement Organisation must not vary an Industry Outplacement Participants' primary work assignment as detailed in clause 5.5 of this Deed, except as agreed in writing between the parties.

9. Responsibility for Costs of Assignment

9.1 The Industry Outplacement Organisation and the Commonwealth both acknowledge that each Industry Outplacement Participant remains a member of the RAN and will continue to receive current pay and other terms and conditions of service as prescribed by the ADF, and that the Industry Outplacement Participants' relationship with the Industry Outplacement Organisation is on the basis of a temporary assignment for duty with the Industry Outplacement Organisation for the purposes of training and skills development.

9.2 The Commonwealth acknowledges that the only costs and expenses which the Industry Outplacement Organisation is required to pay in connection with the Assignment of an Industry Outplacement Participant under this Deed are:

(a) provision of suitable workplace for each Industry Outplacement Participant for the duration of their Assignment Period;

(b) provision of appropriate Industry Outplacement Organisation safety clothing, as required, to each Industry Outplacement Participant, for the duration of their Assignment Period. Each Industry Outplacement Participant must return the safety clothing to the Industry Outplacement Organisation upon completion of their Assignment Period. The Commonwealth acknowledges the provision to incur the cost of one race suit per member for the duration of the position. If the sponsorship/branding are changed within the rotation, the cost of replacement race suits will be incurred by the Industry Outplacement Organisation.

(c) provision of all material and resources (including computing equipment and stationery) while work is being carried out at the premises of the Industry Outplacement Organisation; and

(d) payment of any costs and expenses associated with the Industry Outplacement Participants' travelling or accommodation away from their normal Industry Outplacement Organisation workplace as detailed in the Industry Outplacement Organisation Schedule (Annexure A), in order to undertake duties placed upon the Industry Outplacement Participants' by the Industry Outplacement Organisation during the Assignment Period, to the extent payable to an equivalently qualified employee pursuant to the Industry Outplacement Organisation's policies and procedures. Industry Outplacement Participants are

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paid for removal travel costs and expenses in accordance with the relevant determinations provided in the ADF Pay & Conditions Manual. If these entitlements are above those payable pursuant to the Industry Outplacement Organisation's policies and procedures, the Commonwealth will not be responsible for the payment of the shortfall to the Industry Outplacement Participants. If the Industry Outplacement Program requires Industry Outplacement Participants to travel or require accommodation away from the normal workplace address, the parties will separately discuss the associated costs that will be paid for by the Commonwealth once the race schedule for the calendar year has been published.

9.3 Except as provided for in clause 9.2, the Commonwealth shall remain responsible for the remuneration of each Industry Outplacement Participant for the Assignment Period, maintenance of Workers' Compensation insurance coverage (or equivalent) and Superannuation entitlements in relation to the Industry Outplacement Participant, and payment of all other incidental costs, expenses and charges in relation to each Assignment with the Industry Outplacement Organisation.

10. Government Furnished Information (GFI)

10.1 The Commonwealth may provide as GFI, to the Industry Outplacement Organisation, reporting software for the Industry Outplacement Participant to access and reproduce Commonwealth reporting documentation to fulfil the Industry Outplacement Participant's reporting requirements under this Deed.

10.2 The Industry Outplacement Organisation must take all steps necessary to ensure that the GFI is correctly cared for, and returned to the Commonwealth upon the expiration or earlier termination of this Deed.

10.3 The Industry Outplacement Organisation must not use the GFI for any other purposes other than those expressly defined in this Deed.

11. Industry Outplacement Organisation's Organisational Structure

11.1 The Industry Outplacement Organisation must (if requested) provide the Commonwealth with a copy of a detailed organisation chart which must show positions, job descriptions and reporting relationships for Industry Outplacement Organisation supervisory personnel associated with the Industry Outplacement Participants as relevant to this Deed.

11.2 The Industry Outplacement Organisation's employees or subcontractors so nominated by the Industry Outplacement Organisation (and persons appointed to replace them) to supervise an Industry Outplacement Participant must have appropriate qualifications enabling them to perform the tasks respectively assigned to them.

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12. Hours of Work

12.1 The regular work schedule of each Industry Outplacement Participant is subject to the written approval of the Commonwealth Representative, whose approval must not be unreasonably withheld and shall be set out in Annexure B to this Deed.

12.2 Notwithstanding Clause 12.1, an Industry Outplacement Participant may be required to work hours which are inconsistent with those provided in Annexure B but are consistent with hours and times worked, or expected to be worked by other employees of the Industry Outplacement Organisation who are engaged in the same or similar duties as the Industry Outplacement Participant, in order to meet urgent requirements and operational commitments of the Industry Outplacement Organisation.

12.3 The Industry Outplacement Organisation must provide each Industry Outplacement Participant with a work schedule showing hours of work and shift roster (if any) seven (7) days in advance of any proposed changes to an approved work schedule.

12.4 The Industry Outplacement Participant will work in the Industry Outplacement Organisation in accordance with the work schedule provided under clause 12.3 and will maintain timesheets showing hours worked in accordance with the Industry Outplacement Program Plan.

12.5 The Industry Outplacement Organisation acknowledges that each Industry Outplacement Participant may occasionally be required to undertake RAN duties in support of RAN local area command for a Short Period of time. The Commonwealth will provide notice of such duties to the Industry Outplacement Organisation at the earliest practicable opportunity. The Industry Outplacement Organisation must release each Industry Outplacement Participant for RAN duties in support of local area command requirements.

12.6 The Industry Outplacement Organisation acknowledges that each Industry Outplacement Participant may take annual or other forms of personal leave entitlements during the Assignment Period. Where the taking of leave entitlements is likely to be in excess of five (5) days, the leave must be approved by both parties.

13. Location of Work

13.1 The parties agree that the location at which an Industry Outplacement Participant is required to attend for work will not be varied from that specified in Annexure A to this Deed, except by mutual agreement between the parties' representatives.

14. Alcohol and Drug Testing

14.1 The Commonwealth has certain powers in relation to drug and alcohol testing of ADF personnel. The Industry Outplacement Organisation acknowledges that the results of any such testing remain confidential and that it does not hold equivalent powers in relation to ADF personnel.

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14.2 Should the Industry Outplacement Organisation have reasonable cause to suspect and/or witness behaviour of an Industry Outplacement Participant which is believed to be in breach of the Industry Outplacement Organisation's Alcohol and Drug Policy, the Industry Outplacement Organisation must immediately contact the Commonwealth Representative.

14.3 Once an incident is reported, the Commonwealth Representative must take immediate action in accordance with the Commonwealth's Alcohol and Drug Testing Policy to implement processes necessary to determine if an Industry Outplacement Participant is in breach of the policy.

14.4 The Industry Outplacement Organisation must advise the Commonwealth Representative of the nature of events concerning the behaviour of an Industry Outplacement Participant and the time and place of such incident(s), with records of events being passed to the Commonwealth Representative as soon as practical after the incident.

14.5 Pursuant to clause 14.4, such notice may be given to the Commonwealth Representative orally for action; however, subsequent written notice must be provided within four (4) working hours of the occurrence of an incident. Should an incident occur outside the Industry Outplacement Organisation's normal working hours, notice in writing will be provided on the following Working day.

14.6 On occurrence of an incident, an Industry Outplacement Participant must be temporarily 'stood down' by the Industry Outplacement Organisation, pending action by the Commonwealth.

14.7 Pursuant to clause 14.6, an Industry Outplacement Participant must be temporarily assigned back to the Commonwealth by the Industry Outplacement Organisation, pending the outcome of the action undertaken by the Commonwealth. Such periods of reassignment to the Commonwealth will be no more than ten (10) Working days.

14.8 The Commonwealth must advise the Industry Outplacement Organisation Representative on the outcome of any action taken by the Commonwealth. Should an Industry Outplacement Participant be reasonably believed to have breached Australian law or Commonwealth policy, that Industry Outplacement Participant's Assignment Period may be terminated. In the event of an Assignment Period being terminated under this clause 14.8, the Industry Outplacement Participant will be removed from the program or replaced at no cost and minimal inconvenience to the Industry Outplacement Organisation.

15. Compliance and Awareness of Industry Outplacement Organisation Rules, Regulations and Policies

15.1 The general discipline and control of an Industry Outplacement Participant will at all times remain the responsibility of the Commonwealth, provided that the Industry Outplacement Organisation shall be entitled to issue lawful and reasonable directions to the Outplacement Participants on matters related to work duties and such directions must be complied with fully and promptly.

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15.2 The Industry Outplacement Organisation must ensure that each Industry Outplacement Participant under its control and supervision is aware of, and complies with, all rules, regulations, policies and guidelines contained in the Industry Outplacement Program Plan – Participant Conditions of Assignment (Attachment A) and any additional conditions as advised during the Industry Outplacement induction or the Assignment Period, and as updated from time to time by the Industry Outplacement Organisation. Each Industry Outplacement Participant must comply with:

(a) all security, office and site regulations as may be in effect from time to time at the Industry Outplacement Organisation's premises; and

(b) all work health and safety requirements of the Industry Outplacement Organisation while working at the Industry Outplacement Organisation's premises.

15.3 The Commonwealth shall direct each Industry Outplacement Participant to:

(a) comply with the Industry Outplacement Organisation's policies and procedures detailed in the Industry Outplacement Program Plan – Participant Conditions of Assignment (Attachment A), and any additional conditions as advised during the Industry Outplacement induction or the Assignment Period;

(b) comply with the lawful and reasonable directions of his/her Industry Outplacement Organisation supervisor;

(c) exercise all due skill, care and diligence while working at the Industry Outplacement Organisation in accordance with the Industry Outplacement rules, regulations, policies and guidelines referenced in clause 15.2;

(d) act in accordance with their signed Acknowledgment as referenced in clause 3.3.

15.4 The Industry Outplacement Organisation acknowledges that an Industry Outplacement Participant holds no authority to contract or make representations on behalf of the Commonwealth, the Department of Defence, the ADF or the RAN.

16. Industry Outplacement Organisation's Induction Program

16.1 Each Industry Outplacement Participant must undergo an induction, conducted by the Industry Outplacement Organisation, upon arrival at the Industry Outplacement Organisation's workplace on their Commencement Date and, before they are to commence any work with the Industry Outplacement Organisation.

17. Industrial Relations

17.1 The Industry Outplacement Organisation agrees to notify and fully inform the Commonwealth Representative of any industrial dispute involving the Industry Outplacement Organisation's employees or any union, if relevant to the Industry

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Outplacement Organisation's obligations under this Deed or if such industrial action may affect the Industry Outplacement Program.

17.2 The parties agree that each Industry Outplacement Participant will not be required to join any industrial union.

18. Work Health and Safety

18.1 The Industry Outplacement Organisation must ensure, so far as reasonably practicable, the work health and safety of each Industry Outplacement Participant during the performance of work by the Industry Outplacement Participant which is under the care, control and supervision of the Industry Outplacement Organisation. The Industry Outplacement Organisation must ensure that its workers, subcontractors and each Industry Outplacement Participant at all times observe safe working standards and adopt, as a minimum, known and acceptable industry safety standards and practices.

18.2 Should the Industry Outplacement Organisation observe, in its opinion, an unsafe act, practice or procedure, or become aware of a proposed unsafe act, practice or procedure, the Industry Outplacement Organisation must direct the Industry Outplacement Participant to ensure that a safe workplace is maintained.

18.3 If the Industry Outplacement Organisation believes that an Industry Outplacement Participant poses a threat to the safety or health of the Industry Outplacement Organisation's workers, contractors or agents, or to the Industry Outplacement Participant himself/herself or other persons, then the Industry Outplacement Participant's Assignment Period may be terminated pursuant to clause 23 of this Deed.

19. Injury and Damage

19.1 Notwithstanding anything in this Deed and without limiting the obligation to comply with all relevant Laws, the parties must comply with requirements of the WHS legislation, *Safety, Rehabilitation and Compensation Act 1988* (Cth) and *Australian Radiation Protection and Nuclear Safety Act 1998*(Cth). This includes the requirement under WHS legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth and any other person who, concurrently with the Industry Outplacement Organisation, has a work health and safety duty under the WHS Legislation in relation to the same matter.

19.2 The parties must comply with relevant Commonwealth and State legislative regulatory accident, injury or dangerous occurrence reporting requirements in relation to accidents, injury or dangerous occurrences that arise. The Industry Outplacement Organisation must inform the Commonwealth Representative of any work health and safety incidents involving an Industry Outplacement Participant. The Industry Outplacement Organisation must immediately report any damage to the Industry Outplacement Organisation's property or to third party property alleged to arise in connection with an Industry Outplacement Participant, and the Industry Outplacement Organisation must permit and must procure such further permission as may be necessary for the Industry Outplacement Organisation and the

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Commonwealth (or any person nominated by it) to inspect, examine, interview and take statements from the Industry Outplacement Organisation and any subcontractors as it deems fit for the purposes of determining the causes and effects of such accidents, injuries or dangerous occurrences.

19.3 If the Industry Outplacement Organisation believes that an Industry Outplacement Participant's acts or omissions pose a threat to the property of the Industry Outplacement Organisation, or to third party property, then the Industry Outplacement Participant's Assignment may be terminated pursuant to clause 23 of this Deed.

20. Indemnities and Insurance

20.1 The Industry Outplacement Organisation's Insurance Responsibility

20.1.1 Before commencing any obligations under this Deed, the Industry Outplacement Organisation must effect insurances on the basis set out below and maintain them in force for the full period of this Deed:

(a) a public liability insurance policy with a sum insured of not less than $10,000,000 in the aggregate;

(b) the Industry Outplacement Organisation must ensure that all motor vehicles (which expression shall include any item of plant and equipment which is or is required to be licensed as a motor vehicle in accordance with the requirements of any law) used pursuant to this Deed are insured against liability for both third party personal injury and third party property damage in accordance with statutory requirements;

(c) the Industry Outplacement Organisation must in addition comply with all statutory requirements concerning the arrangement of motor vehicle Third Party liability insurance in respect of the ownership, possession, operation or use of motor vehicles;

(d) the Industry Outplacement Organisation must affect insurance on all items of its own mobile plant and equipment used in performance of obligations under this Deed; and

(e) any other insurance which the Industry Outplacement Organisation requires by Law, including workers compensation insurance.

20.1.2 Details of the Industry Outplacement Organisation's Insurance Policies in furtherance of the requirements in clause 20.3.1 are as set out in Annexure A.

20.2 Approval of Insurance Policies

20.2.1 The Industry Outplacement Organisation must, if requested, provide to the Commonwealth for approval, prior to the Commencement Date, a certificate of currency for the insurance policies in clause 20.3 as evidence that the Industry

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Outplacement Organisation has complied with its obligations in relation to insurance under this Deed.

20.2.2 The Commonwealth may at any subsequent time require the Industry Outplacement Organisation to provide proof of the existence and currency of such insurances.

20.3 Failure of Industry Outplacement Organisation to Insure

20.3.1 If the Industry Outplacement Organisation fails to effect or to keep in force any of the insurances required under this Deed, the Commonwealth Representative must be notified immediately and the Commonwealth may terminate this Deed immediately.

21. Default or Insolvency

21.1 Default of the Industry Outplacement Organisation

21.1.1 If the Industry Outplacement Organisation at any time:

(a) fails to carry out the obligations under this Deed; or

(b) defaults in the performance or observance of any obligation, term, condition or stipulation contained in this Deed; or

(c) refuses or neglects to carry out any direction which the Commonwealth or Commonwealth Representative is entitled to give under this Deed,

then the Commonwealth may give the Industry Outplacement Organisation thirty days' notice in writing specifying the default and requiring the Industry Outplacement Organisation to remedy the same.

21.1.2 The Commonwealth may terminate this Deed should the Industry Outplacement Organisation fail to remedy any default in Clause 21.1.1 that it is notified of.

21.2 Insolvency of the Industry Outplacement Organisation

21.2.1 If any Event of Insolvency occurs in relation to the Industry Outplacement Organisation, then the Industry Outplacement Organisation must notify the Commonwealth Representative as soon as reasonably practicable and the Commonwealth Representative may terminate this Deed immediately.

22. Removal of Industry Outplacement Participant by Commonwealth

22.1 The Commonwealth reserves the right to remove an Industry Outplacement Participant, with or without notice to the Industry Outplacement Organisation, in the event that the Commonwealth is required to undertake operations (including but not limited to specific areas of conflict, war and peacekeeping), or there is another operational requirement that necessitates such removal. If possible, the Commonwealth must provide notice of such removal to the Industry Outplacement Organisation at the earliest practicable opportunity. In this event, the Industry Outplacement Participant's Assignment Period shall be terminated and the

Commonwealth must use its best endeavours to replace the Industry Outplacement Participant with minimal inconvenience to the Industry Outplacement Organisation.

22.2 The Commonwealth may terminate an Industry Outplacement Participant's Assignment:

(a) without notice,

(i) pursuant to clause 14.8 and clause 22.1;

(ii) in the event that the Industry Outplacement Organisation supervisor is proven to have committed a crime, or been involved in improper or inappropriate conduct;

(b) with notice, pursuant to clause 30.2;

(c) with or without notice as detailed in Section 2 of the Industry Outplacement Program Plan (Attachment A) to this Deed; or

(d) with four (4) weeks' notice in writing where the Commonwealth has approved the Industry Outplacement Participant's request to terminate the Assignment before the Termination Date.

22.3 Where an Industry Outplacement Participant experiences an Extended Medical Condition during the Assignment Period, the Commonwealth may, on a case by case basis, remove the Industry Outplacement Participant following consultation with the Industry Outplacement Organisation. Should this occur the Industry Outplacement Participant's Assignment Period shall be terminated and the Commonwealth must use its best endeavours to replace the Industry Outplacement Participant with minimal inconvenience to the Industry Outplacement Organisation.

22.4 Should an Industry Outplacement Participant experience a medical condition (including an ongoing medical condition), the Industry Outplacement Organisation must permit the Industry Outplacement Participant to be examined by a Commonwealth nominated medical practitioner to determine the Industry Outplacement Participant's health status and their ability to return to normal duties.

22.5 Should an Industry Outplacement Participant experience a medical condition that affects his/her capacity to perform his/her normal duties under this Deed for a short period of time, the Industry Outplacement Organisation must inform the Commonwealth Representative of that fact and, following consultation with the Commonwealth representative, either place the Industry Outplacement Participant on appropriate restricted duties or release the Industry Outplacement Participant for sick/recuperation leave, for a short period consistent with the advice of the nominated medical practitioner. The decision to place the Industry Outplacement Participant on restricted duties or release the Industry Outplacement Participant for sick/recuperation leave shall be made with the view to maintaining continuity of the Industry Outplacement Participant's Program for the Assignment Period.

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22.6 Should an Industry Outplacement Participant experience an ongoing medical condition, which prevents his/her return to normal duties in excess of ten days, the Industry Outplacement Organisation must inform the Commonwealth Representative of that fact and, following consultation with the Commonwealth Representative, either place the Industry Outplacement Participant on appropriate restricted duties or release the Industry Outplacement Participant for sick/recuperation leave, for a further short period consistent with the advice of the nominated medical practitioner. If after two (2) consecutive periods of restricted duties and/or sick/recuperation leave, the Industry Outplacement Participant is still not fit to return to normal duties, the Industry Outplacement Participant will be deemed to be suffering an Extended Medical Condition.

23. Removal of Industry Outplacement Participant by Industry Outplacement Organisation

23.1 The Industry Outplacement Organisation reserves the right to terminate an Industry Outplacement Participant's Assignment Period:

(a) without notice, in the event that the Industry Outplacement Participant is reasonably believed to have committed a crime, or been involved in improper or inappropriate conduct, whilst participating in the Industry Outplacement Program;

(b) without notice, in the event that clause 18.3 or clause 19.3 have been triggered;

(c) with notice, pursuant to clause 30.2; or

(d) with or without notice as detailed in Section 2, Industry Outplacement Program Plan (Attachment A) to this Deed.

24. Termination of Deed

24.1 Without prejudice to any other ground for termination under this Deed, either party may at any time, in its absolute discretion, terminate this Deed in whole or in part by giving the other party four (4) weeks' notice in writing.

25. Publicity

25.1 The Industry Outplacement Organisation must not, except with the prior written consent of the Commonwealth or as required by law, make any reference, comment or statement which may be published, broadcast, shown or displayed in books, magazines, newspapers or periodicals or by way of advertisement or by radio, television, film, Internet or other medium with respect to or comprising:

(a) any matter of a political nature relating to the Commonwealth, the Department of Defence, the ADF or the RAN;

(b) this Deed or any of its terms and conditions;

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(c) an Industry Outplacement Participant placed with the Industry Outplacement Organisation under this Deed; or

(d) any other information in relation to the Commonwealth, the Department of Defence, the ADF, the RAN, this Deed or an Industry Outplacement Participant.

25.2 Notwithstanding the above, the Industry Outplacement Organisation shall be entitled to make occasional ad hoc references to the Industry Outplacement Program and this Deed for the purposes of demonstrating the Industry Outplacement Organisation's positive engagement with the Royal Australian Navy. Such references will not contain any specific details about the Deed or any past or present Industry Outplacement Participant.

25.3 The Commonwealth may only publicise the arrangements under which this Deed is conducted with the Deed of Industry Outplacement Organisation or where required by law or statutory or portfolio duties.

26. Intellectual Property

26.1 Nothing in this Deed affects the ownership of the Background Intellectual Property of a Party. Where use of the Industry Outplacement Organisation's Background Intellectual Property is necessary for the performance of the Assignment, the Industry Outplacement Organisation grants to the Commonwealth and each Industry Outplacement Participant a non-exclusive, royalty-free, licence to use its Background Intellectual Property solely for the performance of the Assignment.

27. Foreground Intellectual Property

27.1 All Foreground Intellectual Property vests immediately on its creation ('vesting date'), in the Industry Outplacement Organisation. If, and to the extent that, any Foreground Intellectual Property would, but for this clause by operation of law vest in the Commonwealth or an Industry Outplacement Participant, the Commonwealth must itself, and must require that relevant Industry Outplacement Participants assign all such Foreground Intellectual Property with effect from the vesting date, to the Industry Outplacement Organisation. Such Foreground Intellectual Property may only be used by the Commonwealth or an Industry Outplacement Participant after obtaining the express approval in writing of the Industry Outplacement Organisation.

28. Confidentiality

28.1 If in connection with the performance of their obligations under this Deed, Confidential Information is provided by one party to another, either through its Representative, an Industry Outplacement Participant or another nominated person, the receiving party shall ensure that any person receiving the information on its behalf is made aware of and protects the confidential nature of the information. In addition, each Industry Outplacement Participant must sign the Acknowledgement at Annexure C.

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28.2 If it is necessary for a receiving party to disclose Confidential Information that it has received to a third party, the receiving party shall obtain the written consent of the disclosing party.

28.3 A receiving party shall not, in marking information provided to it, misuse the term "Confidential Information" or their equivalent. The marking of information as "Confidential Information" shall not affect the legal nature and character of the information. The receiving party must only use such Confidential Information for a purpose connected with the performance of their obligations under the Deed.

28.4 The obligations on the parties under this clause 28 will not be taken to have been breached to the extent that Confidential Information:

(a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Deed;

(b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Deed related activities;

(c) is disclosed by a party to the responsible Minister;

(d) is disclosed by a party, in response to a request by a House or a Committee of the Parliament of the Commonwealth or a State, as relevant;

(e) is shared by a party within the party's organisation, or with another agency, where this serves the party's legitimate interests;

(f) is authorised or required by law, including under this Deed, under a licence or otherwise, to be disclosed; or

(g) is in the public domain otherwise than due to a breach of this clause 28.

28.5 Nothing in clause 28.4 however permits any security classified information provided under this Deed to be released to a third party, including a representative of another country, without the prior written approval of the originator through the Commonwealth Representative. The Industry Outplacement Organisation shall promptly report to the Commonwealth Representative any instance in which it is known or suspected that security classified information furnished or generated under the Deed has been lost or disclosed to unauthorised parties, including a representative of another country.

28.6 Where a party proposes to disclose Confidential Information to another person:

(a) pursuant to clauses 28.4(a), (b) or (e), the party must:

(i) notify the receiving person that the information is Confidential Information; and

(ii) not provide the information unless the receiving person agrees to keep the information confidential; or

(b) pursuant to clauses 28.4(c) and (d), the party must notify the receiving person that the information is Confidential Information; or

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(c) pursuant to clause 28.4(f) the party must first notify the other party prior to its release.

28.7 The parties agree that this Deed constitutes Confidential Information as of the date that the first party signs it.

28.8 The Industry Outplacement Organisation, its employees and contractors shall take all reasonable steps and observe due discretion to limit each Industry Outplacement Participant's access to any Confidential Information that it does not wish disclosed to the Commonwealth.

28.9 On termination of an Assignment, or this Deed, the Commonwealth is required to ensure that each Industry Outplacement Participant immediately returns all Industry Outplacement Confidential Information that the Industry Outplacement Participant possesses to the Industry Outplacement Organisation.

29. Privacy

29.1 The Industry Outplacement Organisation must:

(a) if it obtains Personal Information in the course of performing its obligations under this Deed, use or disclose that Personal Information only for a purpose connected with the performance of its obligations under this Deed;

(b) comply with its obligations under the *Privacy Act 1988* (Cth); and

(c) not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.

29.2 The Industry Outplacement Organisation must notify the Commonwealth as soon as practicable if:

(a) it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in clause 29.1, whether by the Industry Outplacement Organisation or one of its officers, employees, agents, servants, Subcontractors or any other person to whom the Personal Information has been disclosed for the purposes of this Deed; or

(b) in relation to Personal Information obtained in the course of performing its obligations under this Deed:

(i) it becomes aware that a disclosure of such Personal Information may be required by law; or

(ii) it is approached by the Privacy Commissioner or by any individual to whom such Personal Information relates.

29.3 The Industry Outplacement Organisation must ensure that its officers, employees, agents, servants and Subcontractors who deal with Personal Information for the purposes of this Deed are aware of, and comply with, this clause 29.

30. Dispute Resolution

30.1 Notice of Dispute and Mediation

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30.1.1 In the event of a dispute or difference arising between the parties as to the construction of this Deed, or as to any matter or thing arising under or in connection with this Deed, then the parties' representatives must seek to resolve the matter in the first instance at the earliest opportunity.

30.1.2 Should the dispute not be resolved to the satisfaction of the parties within twenty-one (21) days of referral to the parties' representatives, then each party may give the other party notice in writing identifying the matters the subject of the dispute or difference and the matter will be mediated by an independent mediator agreed upon by the parties. If the parties cannot agree upon a mediator within seven (7) days of the giving of a notice under this sub-clause 30.1.2, the chairperson of the Resolution Institute or their nominee will appoint a mediator.

30.1.3 If the mediation does not resolve the matter to the satisfaction of the parties, the matter shall be referred to Arbitration to be held in the Australian Capital Territory in accordance with the laws relating to arbitration in the Australian Capital Territory. The parties may be represented by a legal practitioner or other representative.

30.2 Industry Outplacement Participant's Assignment may be Suspended or Terminated

30.2.1 On receipt of a notice of dispute pursuant to Clause 30.1 relating to an Industry Outplacement Participant or their Assignment, the Industry Outplacement Participant's Assignment with the Industry Outplacement Organisation may be suspended or terminated by either party.

30.2.2 Should an Industry Outplacement Participant's Assignment Period be suspended by a party, that party must provide the other party with details and reasons for the suspension, in writing, prior to the suspension.

31. Industry Outplacement Organisation's Warranties and Acknowledgments

31.1 The Industry Outplacement Organisation represents and warrants to, and for the benefit of, the Commonwealth that:

(a) it has been duly incorporated in its place of incorporation and is validly existing under the laws of that jurisdiction;

(b) it has the power to own its assets and to carry on its business as it is now being conducted;

(c) it has the power and authority to enter into and perform its obligations under this Deed;

(d) it has obtained all necessary consents and approvals and has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms;

(e) it has and will fully and correctly disclose all information to the Commonwealth which has been requested by the Commonwealth in relation to

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or under this Deed or which relates to the planning and management of this Deed; and

(f) it shall treat Industry Outplacement Participants placed within its organisation with due skill, care and diligence and all Industry Outplacement Organisation personnel assigned to the performance of the obligations under this Deed have the necessary competencies.

32. Exclusion of Liability for Consequential and Indirect Losses

32.1 Notwithstanding any other provision of this Deed, and to the full extent permitted by law, this Deed excludes liability for all consequential and indirect losses arising from any breach of contract, in tort, under statute or any other basis in law or equity including, but not limited to:

(a) loss of profit;

(b) loss of revenue;

(c) loss of production;

(d) loss of access to markets;

(e) loss of goodwill;

(f) loss of business reputation, future reputation or publicity;

(g) damage to credit rating;

(h) loss of use;

(i) remote, abnormal or unforeseeable loss;

(j) loss of data (electronic or otherwise);

(k) any other indirect or consequential loss; and

(l) any similar loss whether or not in the reasonable contemplation of the parties at the time of the execution of this Deed.

33. Restraint on Engagement of Industry Outplacement Participants

33.1 During each Assignment Period, including any extensions of the Assignment Period, and continuing for a period of twelve (12) Months after termination or expiration of the Assignment Period, the Industry Outplacement Organisation agrees that it must not, and must ensure that its officers, employees, agents and related entities do not directly or indirectly solicit, induce, recruit, encourage or otherwise endeavour to cause or attempt to solicit, induce, recruit, encourage or cause an Industry Outplacement Participant to terminate their engagement with the ADF.

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33.2 The Commonwealth agrees that it must not and must ensure that an Industry Outplacement Participant does not directly or indirectly solicit, induce, recruit, encourage or otherwise endeavour to cause or attempt to solicit induce, recruit, encourage or cause Industry Outplacement Organisation personnel to terminate their engagement with the Industry Outplacement Organisation.

33.3 The restraints contained in this Clause 33 will be regarded as separate, distinct and several as regards each time period so that enforceability of a restraint in respect of one time period will not affect the enforceability of the others.

34. Audit

34.1 The Industry Outplacement Organisation must cooperate with the auditing requirements of the Commonwealth (including, for the avoidance of doubt, the Auditor-General or an Information Officer).

34.2 Without limiting any other provision of this Deed:

(a) the Australian Government Auditor-General; and

(b) an Information Officer, or their delegate, for the purpose of performing their statutory functions or powers respectively, may, at reasonable times:

(c) access the Industry Outplacement Organisation's premises;

(d) require the Industry Outplacement Organisation or its personnel to provide records and other information which are related to this Deed; and

(e) inspect and copy documentation and records or any other matter relevant to the Industry Outplacement Organisation's obligations or performance of the Deed, however stored, in the custody or under the control of the Industry Outplacement Organisation or its personnel.

34.3 Except when notice is not practicable or appropriate, the Commonwealth must give the Industry Outplacement Organisation reasonable notice of an audit and where reasonably practicable an indication of which documents or class of documents the auditor may require.

35. Governing Law

35.1 This Deed shall be governed by, and construed in accordance with, the laws in force for the time being in the Australian Capital Territory, and the parties hereby submit to the non-exclusive jurisdiction of the courts of that Territory and courts competent to hear appeals there from.

36. Notices

36.1 Unless the contrary intention appears, any notice, request, approval, consent or other communication to be given by one party to the other party under this Deed shall be valid if it is in writing, signed and:

(a) hand delivered; or

(b) sent by post to an address in Australia, postage prepaid; or

(c) sent to an address outside Australia by prepaid airmail; or

(d) sent by facsimile; or

(e) sent by email

to the Commonwealth Representative or the Industry Outplacement Organisation Representative, as the case may be, at the following address, or as otherwise set out in Annexure A (Industry Outplacement Organisation Schedule) and Annexure B (Industry Outplacement Participant Schedule):

Director General Navy People
s22
Director General Navy People - Executive
29 Brindabella Business Park
Brindabella Circuit
Canberra Airport
ACT 2609
Telephone: s22

And the Industry Outplacement Organisation at:
PRODRIVE Racing Australia (PRA) Pty Ltd
Locked Bag 47
SOMERTON VIC 3062

Contact Person:
Chief Executive Officer (PRA) s22
Telephone: s22
Email: s22

36.2 A notice, request, approval, consent or other communication shall be deemed to have been delivered:

(a) by prepaid post, in five Working days if sent within Australia and in ten Working days if sent by air mail from one country to another;

(b) by facsimile, at the time recorded by the transmitting machine, unless within one Working day the sender is informed that the transmission was received in incomplete or garbled form; in which case a re-transmitted notice or other communication shall be received when it is effectively delivered in accordance with this Clause 36.

(c) by email, when the email enters the addressee's information system, unless the sender's information system receives a message within one working day that the email has not been delivered to the addressee. For the avoidance of doubt,

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if the receipt, transmission or entry into the information system is not on a working day or is after 5.00pm (recipient's local time) on a Working Day, the notice is taken to be received at 9:00am (recipient's local time) on the next Working Day.

36.3 If a party changes it postal address or facsimile number for service, it is to give notice of that change to the other party as soon as reasonably practicable.

36.4 In this Deed, unless a contrary intention appears from the context, the above authorities shall include their authorised representatives who may be members of the authorities' staff or other officers of the Commonwealth.

37. Assignment

37.1 The Industry Outplacement Organisation must not assign this Deed, in whole or in part, without the prior written consent of the Commonwealth.

38. Waiver

38.1 A party's failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right.

39. Negation of Partnership, Agency or Joint Venture

39.1 Nothing contained in this Deed shall create any relationship of employer and employee between the Industry Outplacement Organisation and an Industry Outplacement Participant. For the avoidance of any doubt, an Industry Outplacement Participant remains at all times an ADF member, and continues to be bound by any and all Commonwealth and ADF policies, requirements, obligations, regulations, directives and the like.

39.2 An Industry Outplacement Participant has no authority to bind the Commonwealth or the Industry Outplacement Organisation by contract or otherwise.

39.3 Nothing contained in this Deed may be interpreted or construed as giving rise to the existence of any partnership, agency or joint venture between the parties.

40. Variations to this Industry Outplacement Deed

40.1 The obligations under this Deed may only be varied by the parties in writing except where expressly provided to the contrary.

40.2 To ensure this Deed continues to meet the requirements of both parties over the Period of this Deed, as described in clause 2, this Deed will be reviewed at the conclusion of each Industry Outplacement Assignment by the parties to modify, on a case by case basis, as agreed mutually, clauses within this Deed to ensure this Deed

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remains pertinent to the evolution in RAN work practices for Industry Outplacement Participants.

41. Privity

41.1 Only a party may enforce, and have any benefit of, this Deed unless specifically provided otherwise.

42. Counterparts

42.1 This Deed may be executed in counterpart. All counterparts taken together constitute one instrument.

43. Entire Deed

43.1 This Deed represents the entire Deed between, and understanding of, the parties relating to the subject matter and supersedes all prior offers and representations, communications, Deeds, statements and understandings, whether oral or in writing.

44. Survivorship

44.1 The obligations on the parties described in Clause 20 (Indemnities and Insurance) shall survive two (2) Years from the Effective Date of this Deed.

44.2 The obligations on the parties described in Clause 26 (Intellectual Property), and Clause 28 (Confidentiality) shall survive two (2) Years following the Effective Date of this Deed.

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EXECUTED by the Parties as a Deed

SIGNED for and on behalf of the COMMONWEALTH OF AUSTRALIA on:

4th September 2016
Date

by:

Commodore
s22 RAN
Name of signatory

s22
Signature

Director General Navy People
Position of signatory

in the presence of:

Sublieutenant
s22 RAN
Name of witness

s22
Signature of witness

SIGNED for and on behalf of Prodrive Racing Australia Pty Ltd (ACN 103 001 029) pursuant to section 127 of the *Corporations Act 2001* (Cth) :

21st September 2016
Date

by:

s22
Signature of Director

s22
Signature of Director/Secretary

s22
Name of Director

s22
Name of Director/Signature

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Annexure A – INDUSTRY OUTPLACEMENT ORGANISATION SCHEDULE

Workplace Address: Building 4, 40 Glenbarry Road, CAMPBELLFIELD VIC 3061

Industry Outplacement Organisation's Representative: s22

Assigned Industry Outplacement Organisation Supervisor: s22

Effective Date: 16 January 2017

Period of Deed: 14 December 2022

Details of Insurance Policies:

(a) Public Liability Insurer: SLE Worldwide Australia

(b) Workers Compensation Insurer: QBE Insurance

(c) Other insurance: Comprehensive Motor Vehicle Third Party Liability AON Pty Ltd

Payment of the Industry Outplacement Participant:

Payment of an Industry Outplacement Participant's remuneration entitlements for the duration of the Assignment Period is the sole responsibility of the Commonwealth in accordance with clause 9 of the Deed.

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Annexure B – DGNP – INDUSTRY OUTPLACEMENT PARTICIPANT SCHEDULE

(Template of Schedule to be provided for each Industry Outplacement Participant during the Term)

Industry Outplacement Participant (full name):

Rank:

Branch:

Service Number:

Training & Courses completed to date:

Commencement Date:

Termination Date:

Normal Hours of Work:

Position with Industry Outplacement Organisation (describe duties, agreed work program with job responsibilities, accountabilities, deliverables and learning outcomes):

Ensuring that meets objectives of Training Plan, Section 2 in Attachment A of the Industry Outplacement Program Plan

Dress:

An Industry Outplacement Participant is to wear clothing as required by the Industry Outplacement Organisation; at all other times, an Industry Outplacement Participant's clothing must be respectable and appropriate for the task at hand.

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Insert any additional information concerning the Participant:

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Annexure C – ACKNOWLEDGEMENT BY THE INDUSTRY OUTPLACEMENT PARTICIPANT

(Template of Acknowledgment to be signed by each Industry Outplacement Participant during the Term)

I acknowledge that I volunteered for a placement with the Industry Outplacement Organisation and will, during my Assignment Period with the Industry Outplacement Organisation:

1. remain a member of the Royal Australian Navy (RAN) and will continue to receive my current pay and other conditions of service as prescribed by the ADF, and that my relationship with the Industry Outplacement Organisation is on the basis of a temporary assignment for duty for the purposes of training and skills development; however, I will be carrying out work in accordance with my position with the Industry Outplacement Organisation (Annexure B).

2. conduct myself in a manner befitting a member of the RAN and acknowledge that, as a member of the RAN, I will remain at all times subject to the *Defence Force Discipline Act 1982* (Cth) and all applicable Australian Defence Force (ADF) policies, requirements, obligations, regulations and directives during the Assignment Period.

3. abide by all rules, regulations, policies, guidelines statutory and legal obligations contained in the Deed and any additional conditions as advised during induction or the Assignment Period.

4. exercise all due skill, care, and diligence, and use my best endeavours in performing my duties in my Position with the Industry Outplacement Organisation (Annexure B) as attached to this Acknowledgement and to achieve the Industry Outplacement Objectives (Annexure D) attached to this Acknowledgement.

5. comply with the lawful and reasonable directions of the Industry Outplacement Organisation's assigned supervisor, the Commonwealth Representative, or their nominated delegate.

6. complete documentation, as required by the Industry Outplacement Organisation and the Directorate of Navy Workforce Management, in connection with my Assignment.

7. consent to the Industry Outplacement Organisation supplying the Commonwealth Representative with any Personal Information relevant to the Outplacement (including but not limited to performance reviews, work health and safety reports);

8. maintain Industry Outplacement Organisation weekly timesheets and participate in Industry Outplacement Organisation Performance and Development Review's as detailed in the Industry Outplacement Program Plan - Reporting Plan (Attachment A).

9. with the exception of any moral rights, agree that any Intellectual Property created by me during the Assignment Period and in relation to the Assignment, vest, on their creation, in the Industry Outplacement Organisation;

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10. keep all information, documents, and data relating to the Industry Outplacement Organisation's business activities confidential. I acknowledge that this requirement constitutes a lawful command and that I may be liable for any breaches of confidentiality under the *Defence Force Discipline Act 1982* (Cth).

11. on termination of the Assignment for whatever reason, will return to the Industry Outplacement Organisation, through the assigned Industry Outplacement Organisation supervisor, all information, documents and data, in whatever media or format they are held, which are confidential or proprietary to the Industry Outplacement Organisation

12. maintain the RAN Work History Sheets, which will form the basis of my post-Assignment presentation and interview as detailed in the Industry Outplacement Program Plan - Reporting Plan (Attachment A).

13. report to the Commonwealth Representative on a regular basis, as well as on any occasion that I may be required to leave or not attend the Industry Outplacement Organisation's workplace during working hours.

Signed:

Full Name [please print]:

Rank:

Service Number:

Date:

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Annexure D – INDUSTRY OUTPLACEMENT PLAN - TECHNICAL TASKING

(Template of Technical Tasking to be provided for each Industry Outplacement Participant during the Term)

Purpose

The purpose of this Annexure is to identify the technical requirements of the Industry Outplacement Program Plan in improving the skill bases and capability of technical Royal Australian Navy (RAN) personnel.

Scope

DGNP envisages that technical RAN personnel will be involved in all areas of work tasking as detailed in the Training Plan at Section 2 of the Industry Outplacement Program Plan (Attachment A), highlighting:

- Planning - information gathering, resource allocation/scheduling, location and task scope.
- Preparation - setting boundaries, pre-task inspection.
- Conducting - application of skills, use of testing equipment, diagnostics.
- Completion - Testing and Inspection.

Objectives

The objectives should cover, but are not limited to, the following:

- Provide practical and meaningful work experience ashore that will enhance the employability of the incumbent on return to the RAN.
- Enhance diagnostic skills.
- Exercise trade skills appropriately.
- Gain knowledge on use of General and Special to type Test Equipment.
- Develop Defence Industry Awareness.
- Gain industry project management knowledge.