

DEED

DEED OF AGREEMENT IN RELATION TO THE LICENSING FOR PUBLICATION OF THE WORK

'[ARTICLE TITLE]' _____

IN

'[NAME OF JOURNAL]' _____

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

AND

JOHN WILEY & SONS LTD

Department of Defence
Defence, Science and Technology Organisation
506 Lorimer Street
Fisherman's Bend
Victoria 3207, Australia

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DEED

Date

This Deed of Agreement is dated the _____ day of _____ [YEAR].

Parties

This Deed is made between and binds the following parties:

1. Commonwealth of Australia (the Commonwealth) represented for the purposes of this Deed by **Department of Defence, Defence, Science and Technology Organisation**, 506 Lorimer Street, Fisherman's Bend, Victoria 3207, Australia) (the Licensor).

AND

2. **JOHN WILEY & SONS LTD** of The Atrium, Southern Gate, Chichester, West Sussex, PO09 8SQ, UNITED KINGDOM (the Licensee).

Hereinafter referred to as 'the Parties'.

Context

This Deed is made in the following context:

- A. The Commonwealth is the sole owner of copyright subsisting in the work authored by

- B. entitled _____

which is also known by its short title _____ (the Work).

- C. The Licensee is the publisher of _____ (the Journal).

- D. The Licensee wishes to publish the Work in the Journal.

NOW THIS DEED witnesses as follows:

1 Interpretation

1.1 Definitions

1.1.1 Unless the contrary intention appears, a term in bold type has the meaning shown opposite it:

Commencement Date means the date on which the Deed is made.

Enhancement includes any modification, adaptation or redevelopment of the Work, any work derived from the Work, any new module of the Work, machine readable representations of any of the foregoing, and any ancillary documentation or other Material intended at that time of its creation to be used primarily in conjunction with the Work.

Intellectual Property includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:
 - d. Moral Rights;
 - e. the rights of performers; or
 - f. rights in relation to Confidential Information;

Material includes documents, equipment or goods, and any medium whatsoever in which information is embodied.

Moral Rights includes the following rights of an author of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

1.2 Interpretation

1.2.1 In this Deed, unless the contrary intention appears:

- a. Words importing a gender include any other gender;
- b. Words in the singular include the plural and words in the plural include the singular;
- c. Clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. Words importing a person includes a partnership and a body whether corporate or otherwise;
- e. A reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- f. If any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that work or phrase has a corresponding meaning;
- g. A reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3 Guidance on construction of this Deed

1.3.1 This Deed records the entire agreement between the parties in relation to its subject matter.

1.3.2 A variation of this Deed is binding only if agreed in writing and signed by the parties.

1.3.3 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

1.3.4 The terms of this Deed apply on and from the Commencement Date.

1.3.5 A provision of this Deed shall not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2 Grant of Licence

- 2.3.1 The Licensor grants to the Licensee a permanent royalty-free, worldwide, non exclusive, Licence to reproduce and publish the Work in the Journal in all media of expression now known or later developed and in all languages and to sub-licence third parties on the same terms as set out in this Licence.
- 2.3.2 All rights not expressly granted to the Licensee are reserved to the Licensor.
- 2.3.3 The ownership of Intellectual Property in the Work shall, at all times, continue to vest in the Licensor.

3 Acknowledgement, Association and Disclaimer

- 3.3.1 The Journal incorporating the Work shall contain the following copyright notice, acknowledgment and disclaimer (or such other form of notification as may be approved from time to time by the Licensor):
- © Commonwealth of Australia [YEAR]
- This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced without prior written permission. Requests and enquiries concerning reproduction and rights should be directed in the first instance to John Wiley & Sons Ltd of The Atrium, Southern Gate, Chichester, West Sussex PO19 8SQ UNITED KINGDOM; alternatively to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>.
- The Work has been produced with the assistance of funding provided by the Department of Veterans' Affairs. However, the views expressed in this version of the work do not necessarily represent the views of the Minister for Veterans' Affairs or the Department of Veterans' Affairs. The Commonwealth does not give any warranty nor accept any liability in relation to the contents of this work.
- 3.3.2 The Licensee shall not, without justification, represent that any views expressed in the Work, have any endorsement or approval of the Department of Veterans' Affairs or the Commonwealth.
- 3.3.3 The Licensee shall not, without prior written authorisation, use or apply any trade mark or logo of the Commonwealth or the Department of Veterans' Affairs in relation to the Work.

4 Enforcement of Intellectual Property

- 4.3.1 The Licensee undertakes to give prompt notice of any infringement of Intellectual Property in the Work which comes to its attention, and agrees to cooperate with the Licensor in order to protect such Intellectual Property.

5 Negation of Employment, Partnership and Agency

- 5.3.1 The Licensee shall not represent itself as being an officer, employee, partner or agent of the Licensor, or as otherwise able to bind or represent the Licensor.
- 5.3.2 The Licensee shall not, by virtue of this Deed, be or for any purpose be deemed to be, an officer, employee, partner or agent of the Licensor, as a having any power or authority to bind or represent the Licensor.

6 Assignment and Novation

- 6.3.1 The Licensee shall not assign, in whole or in part, its rights and obligations under this Deed without the prior written approval of the Licensor.
- 6.3.2 The Licensee shall not consult with any other person or body for the purposes of entering into an arrangement which will require novation of the Deed without first consulting the Licensor.

7 Default

- 7.3.1 If either Party is in default under this Deed on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Deed, the Party not in default may, subject to clause 9.1.2, by notice in writing to the other Party, terminate this Deed in whole or in part without prejudice to any right of action or remedy which has accrued or may accrue in favour of either Party.
- 7.3.2 Where the default is capable of being remedied, a Party shall not exercise its rights of termination under clause 9.1.1 unless it has first given to the other Party notice in writing specifying the default and requiring the other Party to remedy it within the time (being not less than 10 working days) specified in the notice and the default is not remedied within the time allowed.
- 7.3.3 If the Licensee goes in to liquidation or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed, the Licensor may, by notice in writing, terminate this Deed without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either Party.

8 Notices

- 8.3.1 Any notice, request or other communication to be given or served pursuant to this Deed shall be in writing and dealt with as follows:
- a. If given by the Licensee to the Licensor – addressed and forwarded to the Project Officer, at the address indicated at the commencement of this Deed or as otherwise notified by the Project Officer.
 - b. If given by the Licensor to the Licensee – signed by the Project Officer and forwarded to the Licensee at the address indicated at the commencement of this Deed or as otherwise notified by the Licensee.
- 8.3.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid security post or facsimile to the address of the party to which it is sent.
- 8.3.3 Any notice, request or other communication will be deemed to be received:
- a. If delivered personally, on the date of delivery;
 - b. If sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
 - c. If sent by facsimile, on the business day next following the day of despatch providing that the sender receives an “OK” code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of despatch that the transmission was illegible.

9 Entire Agreement

- 9.3.1 This Deed constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to Intellectual Property in the Work.

10 Applicable Law

- 10.3.1 This Deed shall be governed by and construed in accordance with the laws of the Australian Capital Territory.

11 Dispute Resolution

11.1 Procedure for dispute resolution

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 7 Business Days each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them; and
- d. if a resolution is not reached within a further 28 Business Days the parties shall submit the dispute to arbitration in the Australian Capital Territory under the *Commercial Arbitration Act 1986*.

IN WITNESS WHEREOF the Parties have executed this document as their Deed

SIGNED, SEALED AND DELIVERED)

by _____ [name])

for and on behalf of the)

COMMONWEALTH OF AUSTRALIA)

In the presence of:)

_____ [name])

_____ [name])

SIGNED, SEALED AND DELIVERED)

by _____ [name])

Legal representative for and on behalf of)

JOHN WILEY & SONS LTD)

In the presence of:)

_____ [name])

_____ [name])

Publication cannot proceed without a signed copy of this Agreement. Please download, sign and email the scanned document to the Journal Production Editor (contact details to be found via the journal's Guidelines to Authors).