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MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES DEPARTMENT OF DEFENSE,
AS REPRESENTED BY
THE DEFENSE POW/MIA ACCOUNTING AGENCY
AND THE
AUSTRALIAN DEPARTMENT OF DEFENCE,
AS REPRESENTED BY
UNRECOVERED WAR CASUALTIES – ARMY

INTRODUCTION

The Defense POW/MIA Accounting Agency (DPAA) is the United States Government representative responsible for the entire process of investigation, recovery, and identification of unaccounted-for personnel from past conflicts.

For the Australian Government, Unrecovered War Casualties – Army, the History and Heritage Branch of Air Force Headquarters, and the Sea Power Centre perform similar roles for the Australian Department of Defence (ADOD).

The Armed Forces Medical Examiner System (AFMES) is part of the U.S. Department of Defense, and is responsible for determining cause and manner of death, performing DNA testing for human remains identification, and making comparisons against references it maintains to assist in identifying unaccounted for U.S. DoD personnel.

The DPAA and the ADOD, hereinafter, collectively, the Participants:

DESIRING to further collaborate with regard to unaccounted-for U.S. DoD and ADOD personnel from past military conflicts;

SEEKING to ensure that the Participants work effectively together to recover, identify and appropriately commemorate the personnel from both nations who remain unaccounted for;

RECOGNIZING the families of personnel missing in action during the Korean War, for whom this is an important and emotional issue, desire for the relevant Australian and U.S. authorities to continue full cooperation so that the missing personnel may be identified as expeditiously as possible; and

ACKNOWLEDGING the *Exchange of Notes Constituting an Agreement Between the Government of the United States of America and the Government of Australia Concerning*

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Certain Mutual Defense Commitments (the Chapeau Agreement), which entered into force on December 1, 1995, as amended, will apply to this Memorandum of Understanding (MOU).

Have reached the following understanding:

**SECTION 1
OBJECTIVES**

- 1.1 The objectives of this MOU are to facilitate cooperation between the Participants in order to:
 - 1.1.1 Foster closer relations between the Participants;
 - 1.1.2 Advance common interests in relation to the location, recovery and identification of missing personnel, particularly from the Korean War; and
 - 1.1.3 Continue the long-standing working relationship between the Participants on a better defined and more formal basis.

**SECTION 2
PURPOSE AND SCOPE**

- 2.1 The purpose of this MOU is to recognize the collaborative bilateral relationship between the Participants in working together to locate, recover and appropriately commemorate personnel from both the U.S. and Australia who remain unaccounted for.
- 2.2 The Participants jointly intend to, as authorized by applicable U.S. and Australian laws, regulations, and policies, and as available resources permit:
 - 2.2.1 Coordinate and exchange information relating to possible U.S. and Australian unrecovered casualties, including the location of remains and all pertinent unclassified records;
 - 2.2.2 Collaborate on appropriate field activities and opportunities to exchange information, the specifics of which are to be established in separate instruments mutually determined between the Participants;
 - 2.2.3 Provide mutual support to access and share unclassified records held by their respective governments relating to investigating, locating, and recovering unaccounted for personnel from past conflicts;
 - 2.2.4 Provide information regarding the scheduling of disinterment, DNA sampling and processing of remains that are assessed as possibly Australian;

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- 2.2.5 Cooperate on exchanges of information and methods related to identifying remains, including improvements in DNA sampling and testing methods;
 - 2.2.6 Establish notification procedures in the event a possible match is made;
 - 2.2.7 Provide travel for their respective personnel related to the collaboration covered by this MOU; and
 - 2.2.8 Co-host meetings of the Participants, as the Participants deem appropriate, regarding the collaboration covered by this MOU. The dates and locations of any such meetings will be mutually determined by the Participants.
- 2.3 The DPAA intends to, as authorized by applicable U.S. laws, regulations, and policies, and as available resources permit:
- 2.3.1 Request, as appropriate, that AFMES continue to maintain the searchable database associated with the ADOD missing service members, and to search unknown DNA profiles associated with Korean War missing against this database.
 - 2.3.2 Request, as appropriate, that AFMES provide to DPAA a DNA data summary and/or DNA comparison report for all specimens that generate DNA results.
 - 2.3.3 Coordinate, as appropriate, the transfer of DNA data summaries to ADOD for comparison against the ADOD database.
 - 2.3.4 Coordinate, as appropriate, and request through the AFMES electronic Laboratory Information System Analysis (eLISA), the transfer of DNA data summaries from the ADOD for comparison against the AFMES Korean Family Reference Sample (FRS) database.
 - 2.3.5 Coordinate, as appropriate, the transfer of mitochondrial DNA (mtDNA), Y-chromosomal, and/or autosomal DNA data summaries from appropriate references identified by the ADOD for inclusion in the searchable database associated with the ADOD missing service members.
- 2.4 The ADOD intends to, as authorized by applicable Australian laws, regulations, and policies, and as available resources permit:
- 2.4.1 Submit to DPAA mtDNA, Y-chromosomal, and/or autosomal DNA data summaries as additional references for ADOD missing individuals are obtained.
 - 2.4.2 Submit DNA sequences associated with Korean War missing service members to DPAA.

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- 2.5 This MOU is not intended to create binding legal relations under domestic or international law for either Participant. The MOU is subject to the respective national laws, regulations and policies of the Participants, and applicable international agreements and arrangements between the Participants and their Governments.

**SECTION 3
IMPLEMENTING ORGANIZATIONS AND REVIEW**

- 3.1 Within the ADOD, each Service has responsibility for finding, identifying and appropriately commemorating its missing personnel. Unrecovered War Casualties – Army (UWC-A) within the Australia Army will be the primary ADOD organization responsible for the ADOD implementation of this MOU, and for accounting for unrecovered war dead of the Australian Army. The History and Heritage Branch of Air Force Headquarters within the Royal Australian Air Force (RAAF) and the Sea Power Centre within the Royal Australian Navy (RAN) perform similar roles in respect of missing RAAF and RAN members and will act as secondary implementing organizations where required.
- 3.2 DPAA will be the responsible organization within the U.S. DoD for the implementation of this MOU.
- 3.4 The Participants intend to conduct annual periodic reviews to determine whether or not the purposes of this MOU are being met and to assess the ongoing value of the coordination.

**SECTION 4
FINANCIAL PROVISIONS**

- 4.1 This MOU is not intended to create any financial commitments on either of the Participants. Unless otherwise determined in writing, each Participant will be responsible for their own costs in relation to activities carried out in accordance with this MOU. Neither Participant will incur a cost on behalf of the other Participant unless the other Participant's approval is received in writing prior to the incurring of such a cost. Where such prior approval is given, the Participant on behalf of whom the cost was incurred will be responsible for that cost.

**SECTION 5
DISCLOSURE AND USE OF INFORMATION**

- 5.1 The Participants intend to exchange sufficient information to carry out the activities described in Section 2 (Purpose and Scope) of this MOU. Such information will be provided without charge by one Participant to the other Participant provided:

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- 5.1.1 The information is necessary to or useful in the activities under the MOU, with the providing Participant determining whether it is "necessary to" or "useful in" the activity;
- 5.1.2 The information may be made available only if the rights of third party intellectual rights holders are not infringed; and
- 5.1.3 Disclosure of such information is consistent with national disclosure laws, regulations and policies of the providing Participant.
- 5.2 Unless the providing Participant gives prior consent in writing, information provided under this MOU will be used only for the purposes for which it was provided. The receiving Participant will not disclose such information to third parties or any other persons (unless otherwise specified by the providing Participant) or use the information in any other way without the specific prior written consent of the providing Participant.
- 5.3 No transfer of ownership of information will take place between the Participants under this MOU.
- 5.4 Any information exchanged or disclosed pursuant to this MOU will be clearly labelled by the providing Participant with the following, as applicable: the country of origin; any protective markings or any other limitations on its use or disclosure; the markings required by paragraph 5.5 of this Section; and that the information was exchanged or disclosed pursuant to this MOU.
- 5.5 If any information is subject to disclosure and use restrictions with respect to third party intellectual property rights, the information will also be marked by the providing Participant with a restrictive legend that sets forth that the information is proprietary, the nature of any confidence, any limitations on its use or disclosure, including the stated use to which the information can be put, and identify the owner of the information.
- 5.6 The Participants acknowledge that the families of missing personnel have an interest in the cooperation anticipated by this MOU. The Participants have therefore mutually determined that this MOU may be made publicly available.

**SECTION 6
SECURITY**

- 6.1 It is the intent of the Participants that activities under this MOU will be carried out at the UNCLASSIFIED level.
- 6.2 If the Participants mutually determine that there is a need to exchange classified information to fulfil the objectives of this MOU, such exchanges will be carried out in accordance with the *Agreement Between the Government of the United States of America*

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and the Government of the Australia Concerning Security Measures for the Protection of Classified Information, which entered into force on November 7, 2002 (the GSOIA).

**SECTION 7
VISITS**

- 7.1 It is the intent of the Participants that they may mutually determine that visits to its Government establishments, agencies, and laboratories by employees of the other Participant are necessary to carry out the activities under this MOU. Such visits will require authorization by both Participants and the visiting employees will have appropriate security clearances and a need-to-know.
- 7.2 Any visits requiring access to classified information will be carried out in accordance with Article 11 of the GSOIA.
- 7.3 All visiting personnel will be required to comply with the security regulations of the hosting Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.
- 7.4 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform to the established visit procedures of the hosting Participant.

**SECTION 8
CLAIMS**

- 8.1 It is the intent of the Participants that claims arising under this MOU will be dealt with under paragraph 1 of the Chapeau Agreement. Any costs to be shared under subparagraph 1.b)ii. of the Chapeau Agreement will be shared as follows:
 - 8.1.1 Where one of the Participants, its personnel, servants or agents are responsible for the damage, loss, injury or death, all costs arising under the claim will be met solely by that Participant;
 - 8.1.2 Where both Participants are responsible for the damage, loss, injury or death, each Participant will meet the costs of handling and settling the claim to the extent they are respectively responsible for the damage, loss, injury or death; and
 - 8.1.3 Where it is not possible to attribute responsibility for the damage, loss, injury or death, the costs of handling the claim will be distributed equally between the Participants, unless otherwise mutually determined by the Participants in writing.

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**SECTION 9
RESOLUTION OF DISPUTES**

- 9.1 It is the intent of the Participants that any disputes arising from the interpretation or implementation of this MOU will be resolved amicably and expeditiously by consultation between the Participants and will not be referred to any national or international court or tribunal or any other third party for resolution.

**SECTION 10
DATE OF EFFECT, AMENDMENT AND TERMINATION**

- 10.1 This MOU will come into effect on the date of last signature and will remain in effect until terminated.
- 10.2 The Participants may amend this MOU at any time by mutual determination in writing.
- 10.3 The Participants may mutually determine in writing to terminate this MOU at any time.
- 10.4 Either Participant may terminate this MOU by providing the other Participant a notice in writing of its intention to terminate, in which case the MOU will terminate thirty (30) calendar days after the date of such notice. If such notice is provided, the Participants will consult to mutually determine how best to conclude any activities that are in the process of being carried out under the MOU.

Signed:

on behalf of
**DEFENSE POW/MIA ACCOUNTING
AGENCY**



Kelly K. McKeague
Director
Defense POW/MIA Accounting Agency

Date: 3 August 2018

on behalf of
**AUSTRALIAN DEPARTMENT OF
DEFENCE**



D. L. Johnston, AO, RAN
Vice Admiral
Vice Chief of the Defence Force

Date: 24 August 2018