



Rapid Prototyping, Development and Evaluation Program

Deed of Standing Offer

Change History

VERSION	DATE	DESCRIPTION OF CHANGE
1.0		Initial document
1.1	11/01/2016	Effective Date definition included ABN/CAN option included

Table of Contents

Parties.....	5
Background	5
Operative Part.....	5
1. Definitions	5
2. Interpretation.....	6
3. Standing Offer Framework.....	7
4. Precedence of Documents	7
5. Commencement of Operation and Term.....	7
Services	8
6. Services request and Services Contract	8
7. No Assurance of Service Contracts.....	8
8. Sub-Contractors	8
Equipment and Facilities	9
9. Conditions Applicable to Transportable Equipment	9
10. Conditions Applicable to Non-Transportable Equipment or Facilities.....	9
11. Conditions Applicable to all Equipment	10
12. Ownership and Risk	11
13. Warranties and Representations.....	11
Price & Payment	12
14. Payment and Invoice	12
15. Rates.....	13
16. Taxes and Duties	13
Indemnity and Insurance.....	14
17. Indemnity.....	14
18. Insurance	14
Policy and Law	15
19. Applicable Law.....	15
20. Compliance with Laws	15
21. Policy Requirements	15
22. Post Defence Separation Employment.....	16
23. Commonwealth Audit Powers	16

24. Severability 16

25. Privacy..... 17

26. Survivorship 17

27. Dispute Resolution 18

28. Suspension and Termination..... 18

29. Right of Commonwealth to Recover Money 18

General..... 19

30. Notices 19

31. Change to this Standing Offer or Services Contract 19

32. Waiver..... 19

33. Assignment and Novation 19

34. Negation of Employment and Agency 19

35. Entire Agreement..... 20

Schedule 1 Rates..... 21

Deed

Date

Parties

First party

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

ABN 68 706 814 312

Second party

Name [insert name of Contractor] (**the Contractor**)

ACN/ABN

Background

- A. The Commonwealth has a requirement for the provision of Services to the Rapid Prototyping, Development and Evaluation Program (**RPDE Program**).
- B. The Contractor will provide Services on the terms set out in this Standing Offer.

Operative Part

1. DEFINITIONS

In this Standing Offer, unless the contrary intention appears:

The definitions and interpretations set out in the Relationship Agreement apply to this Standing Offer and all Services Contracts.

Adjustment Note has the meaning given by section 195.1 of the GST Act.

APP Code has the meaning given in section 6 the *Privacy Act 1988* (Cth).

Australian Privacy Principles or **APP** has the meaning given in section 14 of the *Privacy Act 1988* (Cth).

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

Equipment means either Transportable Equipment, or Non-Transportable Equipment, or both (as the case may be), and any associated operating manuals.

Facilities has the meaning provided in clause 10.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated taxation legislation.

Non-Transportable Equipment means fixtures, and includes structures, and objects permanently attached to those structures.

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

Personal Information has the meaning given in section 6 the *Privacy Act 1988* (Cth).

Rates means the rates set out in Schedule 1.

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

Services means the services to be provided to the RPDE Program, including, but not limited to, those set out in clause 3.2.

Services Contract means a contract for Services formed under this Standing Offer, in accordance with clause 6.5.

Services Request means a request for Services.

Source Currency means the local currency of the country in which the relevant activity of concern predominantly takes place.

Tax Invoice has the meaning given to it in section 29.70 of the GST Act.

Taxable Importation has the meaning given to it in section 195.1 of the GST Act.

Taxable Supply has the meaning given to it in section 195.1 of the GST Act.

Term means the term of this Standing Offer as determined in accordance with clause 5.

Transportable Equipment means equipment which is not a fixture, or permanently attached to a structure, and includes machinery, software, hardware and other movable articles.

Working Day in relation to the doing of an act in a place, means any day other than:

- (a) a Saturday, Sunday or public holiday in that place; or
- (b) any day within the two-week period that starts on:
 - (i) the Saturday before Christmas Day; or
 - (ii) if Christmas Day falls on a Saturday, Christmas Day,

provided that paragraph (b) of this definition will not apply to the calculation of Working Days in respect of:

- (c) a notice concerning termination or remediation of a breach of either this Standing Offer or any Services Contract; or
- (d) the calculation of liquidated damages or any grace period in respect of them.

2. INTERPRETATION

In this Standing Offer and in any Services Contract, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Standing Offer or any Services Contract;
- (b) the singular includes the plural and vice-versa;
- (c) a reference to one gender includes the others;
- (d) a reference to a person includes a body politic, body corporate or a partnership;

- (e) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action must be done no later than the end of the next Business Day;
- (f) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended or replaced from time to time, and includes a reference to any subordinate legislation made under the Act;
- (g) a reference to a clause includes a reference to a subclause of that clause;
- (h) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- (i) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date and updated or replaced from time to time;
- (j) the word 'includes' in any form is not a word of limitation; and
- (k) a reference to a party includes that party's administrators, successors, and permitted assignees, including any person to whom that party novates any part of this Standing Offer or any Services Contract.

3. STANDING OFFER FRAMEWORK

- 3.1 This Standing Offer constitutes a standing offer for the Term during which the Commonwealth may engage the Contractor to provide Services to the RPDE Program as and when required.
- 3.2 The Services provided include but are not limited to:
 - (a) provision of Personnel to the RPDE Program;
 - (b) provision of representatives to the Board;
 - (c) support to Tasks;
 - (d) provision of Equipment and Facilities; and
 - (e) design, development and manufacture of Equipment.

4. PRECEDENCE OF DOCUMENTS

- 4.1 Clause 6.4 of the Relationship Agreement outlines the order of precedence if there is any inconsistency between provisions of this Standing Offer, any Services Contract, the Relationship Agreement and the Policies.

5. COMMENCEMENT OF OPERATION AND TERM

- 5.1 This Standing Offer commences on the Effective Date, and continues in effect until:
 - (a) this Standing Offer is terminated in accordance with these terms and conditions; or
 - (b) the Relationship Agreement expires or is terminated (whether in relation to the Contractor or generally).
- 5.2 Services Contracts entered prior to the expiry or termination of this Standing Offer survive the expiry or termination of this Standing Offer.

Services

6. SERVICES REQUEST AND SERVICES CONTRACT

- 6.1 The Commonwealth may request the Contractor to provide Services as set out in a Services Request.
- 6.2 The Contractor must respond to a Services Request in accordance with the time frame specified in that Services Request.
- 6.3 The Contractor's response must:
- (a) offer to perform the Services Request in accordance with the Services Request;
 - (b) propose amendments to the Services Request; or
 - (c) decline to perform the Services Request (in accordance with the Policies).
- 6.4 If the Contractor offers to perform the Services Request, the Commonwealth may, in its absolute discretion:
- (d) accept the Contractor's offer;
 - (e) reject the Contractor's offer; or
 - (f) enter into further negotiations with the Contractor.
- 6.5 A binding Services Contract is formed upon the Commonwealth's or Commonwealth's authorised representative's acceptance of a Services Request, as negotiated and including any special conditions, and the Services Contract incorporates:
- (g) the terms and conditions of this Standing Offer;
 - (h) the details and requirements in the Services Request;
 - (i) the Relationship Agreement; and
 - (j) the Policies.
- 6.6 The Contractor is not to respond to any instructions regarding a Services Contract other than instructions from the Commonwealth or the Commonwealth's authorised representative.

7. NO ASSURANCE OF SERVICE CONTRACTS

- 7.1 The Commonwealth does not make any representation nor in any way binds itself to placing any specific number of Service Contracts, or any Service Contracts at all, during the Term of this Standing Offer.
- 7.2 This Standing Offer or any Service Contract does not:
- (a) provide the Contractor the right to be the sole provider of the Services, or any part of the Services, to the Commonwealth; or
 - (b) prevent the Commonwealth from seeking the Services from other Members or from other suppliers, or from performing the Services itself.

8. SUB-CONTRACTORS

- 8.1 Subject to clauses 8.1 to 8.5 and the Policies, the Contractor may sub-contract any part of a Services Contract.

- 8.2 The Contractor, by sub-contracting any part of the Services, is not relieved of its liabilities or obligations under the Relationship Agreement or Standing Offer and must be responsible for all sub-contractor work and services.
- 8.3 The Contractor must not enter into a sub-contract with an organisation named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
- 8.4 The Contractor must not enter into a subcontract for any part of the Services involving the development of or access to security classified information or equipment, without the prior written permission of the Commonwealth.
- 8.5 The Contractor agrees that where the value of a subcontract or multiple subcontracts with the same sub-contractor is 25 percent or more of the value of the Services Contract, the Contractor must use its best endeavours to include provisions within the subcontract granting the Commonwealth substantially the same rights as available to the Commonwealth under clause 23 (Commonwealth Audit Powers) and clause 28 (Suspension and Termination) in respect of the subcontractor. Where the Contractor is unable to include these provisions, the Contractor must consult with the Commonwealth as to an appropriate course of action.

Equipment and Facilities

9. CONDITIONS APPLICABLE TO TRANSPORTABLE EQUIPMENT

- 9.1 Where a Party provides Transportable Equipment (the Owning Party) to the other Party (the Receiving Party) under a Services Contract the following clauses will apply:
 - (a) responsibility for the Transportable Equipment pass from the Owning Party to the Receiving Party when the Receiving Party accepts the delivery of the Transportable Equipment to the facilities detailed in the Services Contract (**Facilities**) on the time and date specified in the Services Contract;
 - (b) the Receiving Party is responsible for the costs of delivery and return of the Transportable Equipment to and from the Facilities specified in the Services Contract. Where return or delivery is to or from Facilities other than that specified in the Services Contract, the Receiving Party is entitled to be compensated for any additional costs incurred in delivery or return. Responsibility for the Transportable Equipment passes to the Owning Party upon collection of the Transportable Equipment from the Receiving Party; and
 - (c) the Receiving Party must comply with any reasonable written instructions provided by the Owning Party about use and storage of the Transportable Equipment by the Receiving Party, including any instructions contained in a Services Request.

10. CONDITIONS APPLICABLE TO NON-TRANSPORTABLE EQUIPMENT OR FACILITIES

- 10.1 Where a Party (the Owning Party) provides access to and use of Non-transportable Equipment or facilities detailed in the Services Contract (Facilities) to another Party (the Receiving Party) under a Services Contract the following clauses will apply:
 - (a) any person using the Non-Transportable Equipment or Facilities or accessing the Owning Party's Facilities to facilitate or observe the use must agree to comply with all policies and procedures of the Owning Party and to comply with all lawful and

reasonable directions of the Owning Party relating to access of the Non-Transportable Equipment or Facilities. Failure to comply with any of these policies, procedures or lawful directions would allow the Owning Party to immediately remove that person from their Facilities;

- (b) the Owning Party may require any level of security clearance, or veto any person or class of persons from using their Non-Transportable Equipment or Facilities, or both, and must give notice of any requirements or limitations under this clause within their response to the Services Request; and
- (c) a Party must use its best endeavours to ensure that its Personnel using the Non-Transportable Equipment or Facilities or accessing the Owning Party's Facilities comply with any requirement under clause 10.1(a).

11. CONDITIONS APPLICABLE TO ALL EQUIPMENT

11.1 The Owning Party warrants that the Equipment will be:

- (a) in working order when provided to the Receiving Party; and
- (b) unless otherwise specified in the Services Contract, maintained by the Owning Party in appropriate working order while provided for use under a Services Contract,

but the Owning Party does not warrant the suitability of the Equipment for any particular use or application.

11.2 The Owning Party must maintain appropriate insurance (or self-insurance) for the current market value for replacement of an item of Equipment with an identical item or of the same standard, age and condition of the Equipment.

11.3 If additional insurance premiums are payable in order to insure Equipment while it is being used for the RPDE Program, the Owning Party must notify the Commonwealth of any additional premium and provide detailed information as to the value of the Equipment prior to the use of the Equipment. Subject to the Owning Party providing prior notice of the additional insurance premiums payable, together with sufficient detailed information as to the value of the Equipment, if the Commonwealth wishes to use the Equipment the Commonwealth will pay the amount of any additional insurance premiums.

11.4 Subject to any Policies:

- (a) if:
 - (i) any Equipment is not insurable; or
 - (ii) if any loss or damage to Equipment is not covered by insurance; and
- (b) provided the Contractor has provided notice of all exclusions and limitations on its insurance coverage prior to its use,

the Commonwealth will pay the Owning Party the costs of repairing the Equipment or replacing it with an identical item or an item of the same standard, age and condition of the Equipment.

12. OWNERSHIP AND RISK

- 12.1 Unless otherwise specified in a Services Contract, ownership of any material manufactured or created under a Services Contract passes to the Commonwealth upon final payment relating to that Services Contract.
- 12.2 At the time ownership of material passes to the Commonwealth, that material must be free of any registered or unregistered charge, lien, mortgage or other encumbrance.
- 12.3 Risk of loss of or damage to the material resides with the Contractor until the material has been delivered in accordance with the Services Contract.
- 12.4 Where the Commonwealth returns the material for further work, risk of loss of, or damage to, that material will revert to the Contractor on repossession or seven days after notification of return, whichever is the earlier.
- 12.5 Where required, the Contractor must undertake all reasonable assistance to confirm the Commonwealth's ownership of material in accordance with clause 12.1.

13. WARRANTIES AND REPRESENTATIONS

- 13.1 The Contractor warrants that:
 - (a) any Personnel supplied by the Contractor under a Services Contract will be appropriately skilled, qualified and experienced to fulfil the requirements of the Services Contract;
 - (b) the Services by that Party will meet the requirements of this Standing Offer and any Services Contract;
 - (c) it has the necessary expertise, experience, capacity and capability required to perform the Services in accordance with this Standing Offer;
 - (d) any Equipment or Facilities that it provides meets the technical specifications detailed in the relevant Services Contract;
 - (e) it will undertake the manufacture of any Equipment specified in a Services Contract with the appropriate skill, incorporating the appropriate materials and to the appropriate standards; and
 - (f) it will ensure that the design, materials and workmanship in any Equipment will conform with, and meet, the requirements of the Services Contract under which the Party supplies the Equipment.
- 13.2 Clause 13.1 does not apply to the extent that Equipment provided by the Contractor is Commercial Off the Shelf (**COTS**) Equipment in which instance the Contractor warrants that any COTS Equipment provided to the Commonwealth under a Services Contract is appropriate and provides to the Commonwealth the full extent of any warranty available to the Contractor.
- 13.3 The warranty provided under this clause 13 will not apply to the extent that the error or defect arises from the Commonwealth's or another contractor's negligence or wilful misconduct.
- 13.4 The Contractor must remedy any errors or defects in any Services that are notified to the Contractor by the Commonwealth during the period specified in the Services Contract.

- 13.5 The Contractor, unless otherwise agreed by the Commonwealth in writing, must meet all costs of, and incidental to, the performance of remedial work to ensure its compliance with this clause 13.
- 13.6 The Contractor must meet all costs of, and incidental to, the discharge of its warranties under this clause 13.
- 13.7 Subject to the Policies, the rights and remedies provided in clause 17 are the only remedies available to a Party for any breach of this clause.

Price & Payment

14. PAYMENT AND INVOICE

- 14.1 When the Contractor submits a claim for payment it must:
- (a) be a correctly rendered Tax Invoice;
 - (b) be accompanied by any documentation necessary to establish, to the satisfaction of the Commonwealth, that the claim is in accordance with the Services Contract; and
 - (c) indicate the:
 - (i) Services Contract number;
 - (ii) Task number or name; and
 - (iii) amount and method of calculation of any Goods and Services Tax payable by the Contractor in relation to that claim for payment as a separate item.
- 14.2 The maximum price of a Services Contract is as specified in the Services Contract.
- 14.3 The Contractor agrees that invoices must be submitted in accordance with the timing and dates identified in the Policies (but not more frequently than monthly or in accordance with a Services Contract's milestones).
- 14.4 It is a condition precedent to the Contractor's entitlement to payment of any invoice that the invoice be submitted within 90 days of the times referred to in clause 14.3.
- 14.5 On receipt of a claim for payment the Commonwealth will either:
- (a) approve the claim where it is submitted in accordance with this clause 14; or
 - (b) reject the claim where the claim is not submitted in accordance with this clause 14, or the Commonwealth is not satisfied that the Services have been provided in accordance with the Services Contract.
- 14.6 Where a claim is approved under clause 14.1(a) the Commonwealth will make payment within 30 days of submission of the invoice into the bank account specified in the applicable Services Contract. Where an invoice refers to more than one Services Contract, payment will be made into the bank account specified in the invoice, or, where no account is specified into any account specified in any of the Services Contracts.
- 14.7 Where the Commonwealth rejects the claim, the Commonwealth will, within 14 days of receipt of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.

14.8 Upon receipt of a notice issued pursuant to clause 14.7 the Contractor must immediately take all necessary steps to make the Services and the claim for payment conform to the requirements and must submit a revised claim to the Commonwealth when such action is complete. The resubmitted claim will be subject to the same conditions as if it were the original claim.

15. RATES

- 15.1 The Rates applicable to a Services Contract will be the Rates in force at the date the Services are provided.
- 15.2 The Contractor is responsible for ensuring the adequacy of any workers' compensation, payment of any sick pay, holiday pay, PAYE tax, fringe benefit tax, payroll tax, superannuation and other statutory charges in relation to any Seconded or Personnel working under a Services Contract. None of these amounts are recoverable by the Contractor from the Commonwealth other than in accordance with the Rates.
- 15.3 The Contractor must indemnify the Commonwealth in respect of any fine, penalty or other charge imposed on the Commonwealth as a result of the Contractor's non-compliance with clause 15.2.
- 15.4 Where the Contractor is authorised by the Commonwealth or through a Services Contract to purchase goods or services (except travel) on behalf of the RPDE Program then such purchases are to be made in accordance with the Policies and, unless otherwise stated in the Services Contract, will be reimbursed on the basis of cost plus 10 percent.
- 15.5 Where a Services Contract involves:
- (a) Personnel wholly based in a country other than Australia;
 - (b) Equipment or Facilities wholly based in a country other than Australia; or
 - (c) components or raw materials sourced entirely from a country other than Australia,
- the relevant components of the price will be expressed in the Source Currency.
- 15.6 The Parties acknowledge and agree that on or about 1 July 2016 and annually each subsequent year, the Commonwealth Board Member must review, and may, in his or her absolute discretion, adjust the Rates, to reflect changes in the cost of labour and the market for the Services, and, if revised, the revised rates will take effect from the date the Commonwealth Board Member determines.

16. TAXES AND DUTIES

- 16.1 Subject to clause 16.2 all taxes, duties and government charges imposed or levied in Australia or overseas in connection with a Services Contract must be met by the Contractor and are included within the Rates.
- 16.2 The Rates include Goods and Services Tax (GST) for Services to be delivered under the Services Contract which are Taxable Supplies within the meaning of the GST Act.
- 16.3 Where the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid Tax Invoice, the Contractor must issue to the Commonwealth a valid Adjustment Note in accordance with the GST Act.
- 16.4 If the Commonwealth makes, or is assessed by the Australian Tax Office (ATO) as having made, a Taxable Supply to the Contractor under or in connection with this Standing Offer or

Services Contract, the Commonwealth will be entitled to recover from the Contractor upon presentation of a valid Tax Invoice, the amount of GST paid or payable by the Commonwealth to the ATO.

- 16.5 Any amount of GST to be paid by the Contractor under clause 16.4 is a debt recoverable by the Commonwealth.
- 16.6 To avoid doubt, any GST levied in Australia upon any Taxable Importation, made in connection with a Services Contract, will be borne by the Party importing the goods and entering the goods for home consumption (within the meaning of the Customs Act 1901 (Cth)). The GST levied upon any Taxable Importation is not included in Rates.

Indemnity and Insurance

17. INDEMNITY

17.1 The Contractor is liable for and will indemnify the Commonwealth and its Personnel from and against any Proceedings arising in relation to the RPDE Program as a result of any acts or omissions of the Contractor, its officers, employees or agents where such acts or omissions are made:

- (a) subject to clause 17.2:
- (i) under the direction of the Contractor; or
 - (ii) by the officers, employees and agents of a Participant to the extent that they are not engaged under a Services Contract; or
- (b) outside the RPDE Program.

In this clause the existence of an employer – employee relationship will not be taken as presuming direction from the employer.

17.2 Subject to the Relationship Agreement, the Contractor is not liable to the Commonwealth for any acts or omissions undertaken in accordance with:

- (a) directions from the Board;
- (b) a Services Contract under this Standing Offer; or
- (c) the Policies.

17.3 This clause does not limit the exceptions to the Commonwealth's liability in clause 9 of the Relationship Agreement.

17.4 The Contractor's liability to and obligation to indemnify the Commonwealth under clause 17.1 will be reduced proportionately to the extent that any acts or omissions on the part of the Commonwealth, including the Commonwealth's officers, employees or agents, directly contributed to the Proceedings.

18. INSURANCE

18.1 Before commencing work under this Standing Offer, the Contractor must:

- (a) be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Contractor, including liability under statute and common law;

- (b) have and maintain professional indemnity insurance for an amount of not less than AUD\$5 million; and
 - (c) have current public and products liability insurance for an amount of not less than AUD\$20 million.
- 18.2 Unless otherwise agreed by the Commonwealth the Contractor must ensure each subcontractor is insured against the subcontractor's corresponding liabilities.
- 18.3 The Contractor must maintain the insurance required by this clause 18 for the Term of this Standing Offer or until completion of all Services Contracts, whichever occurs last.
- 18.4 On request by the Commonwealth, the Contractor must provide satisfactory evidence of the insurance referred to in this clause 18 to the Commonwealth.

Policy and Law

19. APPLICABLE LAW

- 19.1 The laws of the Australian Capital Territory apply to this Standing Offer and any Services Contract. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this Standing Offer.

20. COMPLIANCE WITH LAWS

- 20.1 The Contractor must, in the performance of all work under or in connection with either this Standing Offer or a Services Contract, comply with and ensure that its Personnel and subcontractors comply with, the laws from time to time in force in the State, Territory and other jurisdictions (including overseas) in which any part of this Standing Offer or the Services Contract is to be carried out.

21. POLICY REQUIREMENTS

- 21.1 The Contractor must comply with and require its officers, employees, agents and subcontractors to comply with the following Commonwealth policies of general application relevant or applicable to this Standing Offer:
- (a) Conflict of Interest policy as detailed in the Defence Procurement Policy Manual (DPPM);
 - (b) Defence Equity and Diversity policy as detailed in DI(G) PERS 35-3;
 - (c) Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
 - (d) Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
 - (e) Fraud Control policy as detailed in DI(G) FIN 12-1;
 - (f) Hazardous Substances policy as detailed in the DPPM;
 - (g) Information Management policy as detailed in DIMPI 1/2004; DIMPI 5/2001; and DI(G) ADMIN 10-6;
 - (h) Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in the DPPM; and
 - (i) any other policies the Commonwealth notifies the Contractor as applying from time to time.

22. POST DEFENCE SEPARATION EMPLOYMENT

22.1 The Contractor must ensure that any employee who is a former Defence Employee complies with the requirements of DMI (PERS) 1/2007 and DI(G) PERS 25-4 (as amended or replaced) and the Policies as applicable.

22.2 In this clause:

- (j) "Defence" means the Department of Defence or the Australian Defence Force (or both, as the case may be);
- (k) "Employee" means an employee of Defence or a member of the Australian Defence Force.

23. COMMONWEALTH AUDIT POWERS

23.1 During the performance of this Standing Offer and any Services Contract, the Contractor will permit the Commonwealth or any person authorised by the Commonwealth access to its Facilities, within 14 days or any other period as agreed by the parties, and access to any of its records or accounts in connection with performance of work under this Standing Offer or any Services Contract. The Commonwealth may copy any relevant records or accounts for the purposes of this clause.

23.2 Without limiting the generality of clause 23.1, the purposes for which the Commonwealth may require access include:

- (a) investigating the reasonableness of proposed prices or costs or rates;
- (b) ensuring that the Contractor is still compliant with the Member Criteria;
- (c) inspecting, conducting or checking Commonwealth provided Equipment or Facilities or other material; and
- (d) determining whether and to what extent steps should be taken to register or otherwise protect IP.

23.3 The Commonwealth will comply with, and will require any delegate or person authorised by the Commonwealth to comply with, any Contractor's reasonable safety and security requirements or codes of behaviour for the Contractor's Facilities.

23.4 Where the Commonwealth authorises a third party that is a direct commercial competitor of the Contractor (whether or not they are a Member) to undertake any action under this clause the Contractor may refuse to give that third party access to the Contractor's premises or information.

23.5 For the avoidance of doubt, nothing in clause 23.1 to 23.4 limits any rights the Commonwealth, or any other Commonwealth body, may have under any Law or contract separate from this Standing Offer.

24. SEVERABILITY

24.1 If any part of this Standing Offer or Services Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Standing Offer or Services Contract (as the case may be) will not be affected and will be read as if that part had been severed.

25. PRIVACY

25.1 The Contractor must:

- (a) if it obtains Personal Information in the course of performing this Standing Offer or Services Contract, use or disclose that Personal Information only for the purposes of this Standing Offer or Services Contract;
- (b) comply with all of its obligations under the *Privacy Act 1988* (Cth);
- (c) as a contracted service provider within the meaning of the *Privacy Act 1988* (Cth), not to 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; and
- (d) disclose in writing to any person who asks, the content of the provisions of this Standing Offer and Services Contract (if any) that are inconsistent with a registered APP Code that is binding on a party to this Standing Offer or Services Contract, or with an Australian Privacy Principle.

25.2 The Contractor must immediately notify the Commonwealth if:

- (a) it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 25, whether by the Contractor, subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of this Standing Offer or Services Contract; and
- (b) in relation to Personal Information obtained in the course of performing this Standing Offer or Services Contract:
 - (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.

25.3 The Contractor must ensure that any of its officers, employees and agents who deal with Personal Information for the purposes of this Standing Offer or Services Contract are aware of, and comply with, clause 25.1 to 25.4.

25.4 The Contractor must ensure that any subcontract entered into for the purposes of fulfilling its obligations under this Standing Offer or Services Contract, contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 25, including the requirement in relation to subcontracts.

26. SURVIVORSHIP

26.1 Any provision of this Standing Offer or Services Contract which expressly or by implication from its nature is intended to survive the termination or expiration of this Standing Offer or a Services Contract and any rights arising on termination or expiration will survive, including provisions relating to Commercially Sensitive Information, Privacy, Intellectual Property and the right of the Commonwealth to recover money, Defence Security and any warranties, guarantees, licences, indemnities, limitation of liability or financial and performance securities given under this Standing Offer or Services Contract.

27. DISPUTE RESOLUTION

- 27.1 The Parties agree to resolve any dispute in accordance with the Relationship Agreement and the Policies.
- 27.2 Unless otherwise agreed, the Contractor and the Commonwealth will at all times during the dispute proceed to fulfil its obligations under this Standing Offer or a Services Contract except where such obligations directly relate to the matter in dispute.

28. SUSPENSION AND TERMINATION

- 28.1 The Commonwealth may terminate any Services Contract or reduce the scope of any Services Contract or suspend the operation of a Services Contract for convenience by issuing a written notice to the Contractor.
- 28.2 Where the Commonwealth issues a notice under clause 28.1 the Contractor must:
- (a) stop work in accordance with the notice;
 - (b) comply with any directions given to the Contractor by the Commonwealth; and
 - (c) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in accordance with the termination including those arising from affected subcontracts.
- 28.3 The Commonwealth shall only be liable for:
- (a) payments under the payment provisions of the Services Contract for work conducted before the effective date of termination; and
 - (b) any reasonable costs incurred by the Contractor that are directly attributable to the termination,
- where the Contractor substantiates these amounts to the satisfaction of the Commonwealth.
- 28.4 The Contractor shall not be entitled to profit anticipated on any part of the Services Contract terminated.

29. RIGHT OF COMMONWEALTH TO RECOVER MONEY

- 29.1 Without limiting the Commonwealth's rights under this Standing Offer or a Services Contract, where the Contractor owes any debt to the Commonwealth in relation to this Standing Offer or a Services Contract, the Commonwealth may at its discretion exercise one or both of the following:
- (a) deduct the amount of the debt from payment of any claim under this Standing Offer or a Services Contract; or
 - (b) provide the Contractor with written notice of the existence of a debt recoverable which must be paid by the Contractor within 30 days of receipt of notice.
- 29.2 Where any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor must pay to the Commonwealth interest at the Australian Taxation Office sourced General Interest Charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) current at the date the payment was due for each day the payment is late.

29.3 Nothing in this clause 29 affects the right of the Commonwealth to recover from the Contractor the whole of any debt owed by the Contractor, or any balance that remains owing after the deduction.

General

30. NOTICES

30.1 Any notice or communication under this Standing Offer or Services Contract is valid if it is:

- (a) in writing, signed; and
- (b) delivered in accordance with the Policies.

31. CHANGE TO THIS STANDING OFFER OR SERVICES CONTRACT

31.1 Any variation to this Standing Offer or Services Contract must be in writing and signed by both parties.

32. WAIVER

32.1 Failure by any Party to enforce a provision of this Standing Offer or a Services Contract will not be construed as in any way affecting the enforceability of that provision, or this Standing Offer or the Services Contract as a whole.

33. ASSIGNMENT AND NOVATION

33.1 Neither Party may assign in whole or in part, its rights under this Standing Offer or a Services Contract.

33.2 A Contractor may only novate this Standing Offer or a Services Contract with the written agreement of the Commonwealth.

33.3 Without limiting clause 33.2, where a Contractor proposes to enter into any arrangement that will require the novation of this Standing Offer or a Services Contract, it must notify the Commonwealth within a reasonable period prior to the proposed novation.

34. NEGATION OF EMPLOYMENT AND AGENCY

34.1 Except when acting with the express written authority of the Commonwealth, the Contractor must not represent itself, and must ensure that its officers, employees, and agents do not represent themselves, as being employees, partners or agents of the Commonwealth.

34.2 The Contractor, its officers, employees and agents must not by virtue of this Standing Offer be, or for any purpose be deemed to be, an employee, partner, agent or trustee of the Commonwealth.

34.3 Except as otherwise specifically provided in this Standing Offer or a Services Contract, the Contractor does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of the Commonwealth.

34.4 This Standing Offer or a Services Contract is not intended to create nor will it be construed as creating any legal partnership, joint venture or fiduciary relationship between the Commonwealth and the Contractor.

35. ENTIRE AGREEMENT

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

Schedule 1 Rates

A Table of Rates is maintained in the Rates Guidance Policy.

Definitions:

Per day means a standard eight hour day

Qualifications must demonstrate a relevance to the skill category

Experience means public or private sector experience relevant to the skill category

Technician means either of the following:

- Vocational/Post-Secondary Accreditation with a minimum of three years' relevant experience; or
- Completion of a graduate/post-graduate Qualification.

Professional means any of the following:

- A Technician with at least eight years' relevant experience; or
- A person with graduate Qualifications and at least three years' relevant experience; or
- A person with post-graduate Qualifications and at least one year of relevant experience.

Specialist means any of the following:

- A Technician with at least 15 years' relevant experience; or
- A person with relevant graduate Qualifications and at least eight years' relevant experience; or
- A person with post-graduate Qualifications and at least one year of relevant experience.

Short Term means a contract duration of 12 months or less, or where the work is performed at the Contractor's premises (unless the facilities are separately funded by the RPDE Program).

Long Term means a contract duration longer than 12 months where the work is performed at facilities provided by, or on behalf of, the RPDE Program.

Core Rates means salary based on a two year contract with up to three one-year options to extend.

Board Member rates means a per meeting day rate (GST inclusive)

Workshop Rate means a per day rate (GST Inclusive)

Travel Allowance Rate is a rate paid when the Commonwealth has provided its prior consent. The Contractor shall be entitled to reimbursement of travel and accommodation expenses. Categories and rates are provided in the RPDE Travel Policy.

Executed as a Deed

Signed, sealed and delivered by

Kate Louis

First Assistant Secretary

Defence Industry Policy

as authorised representative for the

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

ABN 68 706 814 312

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

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness

Signed, sealed and delivered by

as authorised representative for

ACN/ABN

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

in the presence of:

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness