

**DATED:**

## **RPDE Program**

## **Relationship Agreement**

**Amendment Table:**

<b>Ref No:</b>	<b>Date</b>	<b>Details of amendment</b>
RA/001	6 Jul 05	<ul style="list-style-type: none"><li>• Schedule 1 – updated to include new Members and Associates following ITP No: CDG 1/2005</li><li>• Schedule 6 – amended participation criteria inserted.</li></ul>
RA/002.1	11 Nov 05	<ul style="list-style-type: none"><li>• Schedule 7 – updated to include new provisions reflecting the re-structure of the Board</li><li>• Schedule 8 – amendment to the structure of the RPDE Board, including new processes for selection of Industry Member representatives to the Board and the total number of Board seats available to Participants.</li></ul>
RA/003	1 Dec 05	<ul style="list-style-type: none"><li>• Schedule 1 – updated to include new Members and Associates following ITP No: CDG 2/2005</li></ul>
RA/004	14 Dec 06	<ul style="list-style-type: none"><li>• Schedule 6 – amended participation criteria inserted.</li></ul>
RA/005	27 Apr 07	<ul style="list-style-type: none"><li>• Schedule 1 – updated to include new Members and Associates following ITP No: CDE 1/2007</li></ul>

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**Agreement dated .....**

Between

the Industry Members set out in Schedule 1 and any other organisation that becomes an Industry Member by signing a Joining Deed

**'Industry Members'**

and

the Associates set out in Schedule 1 and any other organisation that becomes an Associate by signing a Joining Deed

**'Associates'**

and

the Commonwealth of Australia represented by the Department of Defence  
A.B.N. 68 706 814 312

**'the Commonwealth'**

Collectively called the **'Participants'**.

## **Introduction**

- A.** The Commonwealth of Australia (the **Commonwealth**) has established a Rapid Prototyping, Development and Evaluation (**RPDE**) Program.
- B.** The RPDE Program seeks to fulfil the following primary functions in relation to Network Centric Warfare (**NCW**):
  - i. Rapidly analyse, assess, develop, test and evaluate new NCW concepts, doctrine, procedures, organisation and technologies;
  - ii. Identify the potential for rapid delivery of capability to war fighters; and
  - iii. Inform the military strategy and capability development process on options, risks and the value of NCW activity.
- C.** The Commonwealth seeks to do this by engaging with industry in a collaborative approach to the development of Australian Defence Force (**ADF**) NCW capability.
- D.** Tangible benefits are expected to arise from modification of existing and proposed activities, operational processes and doctrine. The nature of the Services provided by the Participants include analysis and evaluation and as such may not necessarily provide solutions that can be implemented.

- E.** This Relationship Agreement defines the obligations between all Participants while the Standing Offers provide the mechanisms for the Commonwealth to acquire Services. The Policies define the operational processes of the RPDE Program.

## **The Participants agree:**

### **Overview**

#### **1. Interpretation and Definitions**

##### **1.1** In this Agreement:

- (1) Glossary means the glossary at Schedule 5; and
- (2) definitions and interpretation are as set out in the Glossary.

#### **2. Term**

##### **2.1** This Agreement will start operation on the Start Date and subject to this clause, will remain in force until 30 December 2009 or when one of the following occurs:

- (1) the Industry Members by unanimous written resolution agree to terminate this Agreement;
- (2) following the retirement or expulsion of an Industry Member only one Industry Member remains as a Participant;
- (3) the Commonwealth advises the Industry Members and Associates that it will not provide further funding to, or will terminate, the RPDE Program; or
- (4) the Commonwealth advises the Industry Members and Associates that it will terminate the RPDE Program in accordance with clause 10.12.

##### **2.2** The Participants acknowledge that as at January 2005 the RPDE Program is funded until December 2006.

##### **2.3** The Board will review the RPDE Program:

- (1) in June 2006 to determine whether to recommend to the Commonwealth that the RPDE Program should continue beyond December 2006; and

(2) at any date after December 2006 to determine whether to recommend to the Commonwealth that the RPDE Program should continue beyond its current funded period.

2.4 The Commonwealth agrees to use its best efforts to give the Participants three (3) months notice of the Commonwealth's intention to act in accordance with 2.1(3).

### **3. Nature of Relationship**

3.1 This Agreement is not intended to create nor will it be construed as creating any legal partnership, joint venture or fiduciary relationship between the Participants and it will not give rise to any obligations between the Participants apart from those obligations expressly stated in this Agreement or imposed by law.

3.2 A Participant, its officers, employees, contractors and agents will not by virtue of this Agreement be, or for any purpose be deemed to be, an officer, employee, contractor or agent of another Participant.

3.3 Except as otherwise specifically provided in a Services Contract, neither an Industry Member nor Associate has any authority or power to act for, or to create or assume any responsibility or obligation on behalf of the Commonwealth.

3.4 No Industry Member or Associate has any authority or power to act for, or to create or assume any responsibility or obligation on behalf of another Industry Member or Associate.

### **4. RPDE Program overview**

4.1 The RPDE Program will operate under the governance of a Board made up primarily of representatives from the Participants and will be managed by a General Manager.

4.2 Questions to the RPDE Program may only be submitted by the Commonwealth via the General Manager in accordance with the Policies.

4.3 In response to Questions from the Commonwealth, the General Manager will develop a Task Plan and Participants may provide Services to the RPDE Program and/or Tasks under a Services Contract.

4.4 Tasks will be allocated by the General Manager to Participants on a best for program basis in accordance with the Policies.

- 4.5 The Participants acknowledge that more than one Participant may be involved in a Task and that the Participants will be engaged under different Services Contacts with a common tasking statement.
- 4.6 Services may include secondment of Personnel, provision of representatives to the Board and provision of Equipment, Facilities or Prototypes.
- 4.7 In accordance with the Policies, the General Manager will notify the Participants of any requirements of the RPDE Program, including the need for provision of Secondees or Board Members and the time for which they are requested to be provided. Details of those requirements and any special conditions will be set out in a Services Request to which a Participant may respond.
- 4.8 The Commonwealth and Industry Members have priority in relation to any request to provide Secondees including a General Manager.
- 4.9 Where the Commonwealth and Industry Members are unable or unwilling to provide a Secondee or General Manager to the RPDE Program Associates may be invited to provide a Secondee or General Manager.
- 4.10 A Participant is not bound to provide Services unless it has signed a Services Contract for those Services.
- 4.11 A Participant must use its best endeavours to ensure that any Secondee, Board Member or other Personnel provided by the Participant under a Services Contract:
- (1) provides the Services at all times in a professional manner and observes the ethics of their profession; and
  - (2) at all times complies with its Standing Offer, the terms of the relevant Services Contract, this Agreement, the Policies and the reasonable and lawful directions of the General Manager.
- 4.12 Each Participant agrees to assist the Board to undertake a review of the allocation of Services Requests and Services Contracts as directed by the Board.

## **5. Relationship to Standing Offer and Policies**

- 5.1 It is a condition of Industry Members' and Associates' involvement in the RPDE Program that they must execute both a Standing Offer and this Agreement.
- 5.2 Nothing in this Agreement reduces or otherwise affects an Industry Member or Associate's obligations under its Standing Offer.

- 5.3 Each Participant agrees to comply with the Policies.
- 5.4 If there is any inconsistency between the provisions of this Agreement, a Standing Offer, any resulting Services Contracts, and the Policies, then to the extent of any inconsistency, the descending order of precedence will be:
- (1) this Agreement;
  - (2) the Services Contract;
  - (3) the conditions of a Standing Offer; and
  - (4) the Policies.

## **Governance**

### **6. RPDE Program Roles and Responsibilities**

- 6.1 The RPDE Program will be constituted by:
- (1) the Board;
  - (2) a General Manager; and
  - (3) other roles as required by the Board.
- 6.2 The RPDE Program functions will be performed by:
- (1) the Board;
  - (2) a General Manager;
  - (3) Secondees to the Core Team;
  - (4) Task Teams; and
  - (5) other roles as required by the Board.

### **7. Establishment, Duties & Authority of RPDE Program Board**

- 7.1 The Participants agree to establish, and participate in the functions of, the RPDE Program Board in accordance with this clause, Schedule 7 and Schedule 8.

- 7.2 The Board is responsible for the governance and success of the RPDE Program. It will provide leadership and direction on existing and planned activities of the RPDE Program.
- 7.3 The General Manager will provide a secretariat for the Board to ensure minutes are kept and circulated in accordance with the Policies.

## **Representations and Risk**

### **8. General Commitment**

- 8.1 Each Participant agrees to:
- (1) work together to achieve the successful outcomes of the RPDE Program, including:
    - (a) supporting the RPDE Program; and
    - (b) committing to raising the profile of the RPDE Program both internally and externally;
  - (2) develop and contribute to the Policies;
  - (3) comply with its obligations under this Agreement, its Standing Offer, any resulting Services Contracts, and the Policies;
  - (4) be bound by decisions of the Board; and
  - (5) ensure its Personnel give effect to this Agreement.
- 8.2 All Participants acknowledge their obligations under the *Trade Practices Act 1975 (Cth)* including section 45.

### **9. Commitment to act in good faith and warranties**

- 9.1 Each Participant will act in good faith when participating in the RPDE Program including:
- (1) being prompt in taking action, giving approval or making decisions relating to the RPDE Program;
  - (2) being fair, reasonable and honest to the other Participants;
  - (3) doing all things reasonably expected of it by another Participant and by the RPDE Program;
  - (4) not impeding or restricting another Participant's performance;

- (5) not intentionally doing anything which directly or indirectly may adversely affect the good name and reputation of the RPDE Program;
- (6) to the extent commercially feasible, giving as much weight to the interests of the RPDE Program as to its own self interest; and
- (7) not unreasonably inducing or encouraging any employee of any other Participant involved in the RPDE Program to leave the employment of that other Participant.

9.2 Each Participant warrants that:

- (1) any Personnel supplied by that Participant under a Services Contract will be appropriately, skilled, qualified and experienced to fulfill the requirements of the Services Contract; and
- (2) the Services supplied by that Participant will meet the requirements of its Standing Offer and any Services Contract.

## 10. Risk Allocation

10.1 The Commonwealth is liable for any Proceedings arising as a result of any acts or omissions of a Participant, its officers, employees or agents made in accordance with:

- (1) a direction from the Board;
- (2) a Services Contract covering the involvement in the RPDE Program of that Participant, its officers, employees or agents;
- (3) the Policies; or
- (4) a direction by a Participant, its officers, employees or agents that is consistent with clauses 10.1(1), 10.1(2) and 10.1(3).

10.2 Other than in relation to clauses 10.3(1) or 10.3(3) a Participant will not be liable for any Proceedings arising as a result of any acts or omissions of that Participant, its officers, employees or agents made under the direction of another Participant, its officers, employees or agents.

10.3 Each Participant (**Liabe Participant**) is liable to any other Participant or a third party for any Proceedings arising as a result of:

- (1) any infringement or alleged infringement of a third party's IP arising out of a licence of IP granted by the Liabe Participant under this Agreement;

- (2) use by the Liable Participant of another Participant's IP other than in accordance with a licence granted by that Participant under this Agreement; and
- (3) any personal injury or death suffered by the Liable Participant's officers, employees and agents but the Liable Participant is not precluded from recovering in part or whole from another Participant who contributed to that personal injury or death.

10.4 The Commonwealth will indemnify each Industry Member and Associate, including its officers, employees or agents against Proceedings arising out of or as a consequence of that Industry Member or Associate providing Services, except for any Proceedings arising:

- (1) to the extent that an Industry Member or Associate is a:
  - (a) Liable Participant in relation to those Proceedings under clause 10.3(1) or 10.3(2); or
  - (b) Participant or Liable Participant in relation to Proceedings under clause 10.3(3);
- (2) as a result of any breach or alleged breach by a Participant of another Participant's rights in IP not covered by clause 10.3;
- (3) as a result of any breach by that Participant of clause 23 (Defence Security);
- (4) as a result of loss to Equipment covered by clause 3 of a Standing Offer;
- (5) under clause 7.1 of a Standing Offer; or
- (6) in relation to any Prototype.

10.5 The liability for any Prototype will be covered by the Commonwealth under a separate indemnity in accordance with clause 7.1.4 of a Standing Offer and Services Contract under which the Prototype is created.

10.6 Except as otherwise provided for in this Relationship Agreement or a Standing Offer:

- (1) a Participant will not be liable to any other Participant for any Loss;
- (2) each Participant waives any right they may have against other Participants in relation to any Loss; and

- (3) the Participants will resolve any dispute or conflict arising between two or more Participants by negotiation (including negotiation at Board level) and a Participant will not institute litigation or arbitration against another Participant.
- 10.7 Nothing in this clause 10 is intended to limit a Participant's ability to join one or more other Participants to an action brought by a third party.
- 10.8 This clause 10 does not purport to exclude non-excludable statutory rights or liabilities.
- 10.9 An Industry Member or Associate must:
  - (1) notify the Commonwealth as soon as practicable of any Proceedings threatened or brought against the Industry Member or Associate which the Industry Member or Associate considers would be covered by the indemnity in clause 10.4; and
  - (2) take all reasonable steps to mitigate any possible loss arising from any Proceedings.
- 10.10 If requested by the Commonwealth and permitted by law, the Industry Member or Associate agrees to withdraw from any Proceedings and allow the Commonwealth to conduct the Proceedings in its own name and at its own expense.
- 10.11 Where the Industry Member or Associate is not granted leave to withdraw from any Proceedings the Industry Member or Associate will undertake the Proceedings and will:
  - (1) continue to keep the Commonwealth informed of all developments;
  - (2) defend, arbitrate, appeal, settle or otherwise conduct the Proceedings as the Commonwealth may reasonably direct; and
  - (3) consult with the Commonwealth prior to offering, negotiating or accepting any settlement.
- 10.12 If the cumulative costs or potential costs to the Commonwealth under clause 10.4 exceed AUD20 million the Commonwealth may immediately terminate this Agreement.

## **11. Conflict of Interest**

- 11.1 The Commonwealth acknowledges that participation by the Industry Members and Associates in the RPDE Program is not of itself a conflict of interest.

- 11.2 An Industry Member or Associate will not, and will ensure that any officer, employee, agent of the Industry Member or Associate does not, engage in any activity or obtain any interest during the course of the RPDE Program that is likely to conflict with or restrict that Industry Member or Associate in providing the Services fairly and independently.
- 11.3 If during the term of this Agreement a conflict of interest arises in accordance with clause 11.2, or appears likely to arise, the affected Industry Member or Associate undertakes to notify the General Manager immediately in writing and to take such steps as the Board may reasonably require to resolve or otherwise deal with the conflict and to comply with the Policies. If the affected Industry Member or Associate fails to notify the General Manager or Board or is unable or unwilling to resolve or deal with the conflict as required, or to comply with the Policies, the Board may take steps in accordance with clause 17 (Expulsion of inactive or defaulting Participant).
- 11.4 An Industry Member or Associate will take all reasonable steps to ensure that any subcontractor of the Industry Member or Associate does not engage in any activity or obtain any interest during the course of the RPDE Program that is likely to conflict with or restrict that Industry Member or Associate in providing the Services fairly and independently.

## **12. No Benefit or Advantage**

- 12.1 Nothing in this Agreement or the Standing Offer will oblige the Commonwealth to place any number of Services Requests or Services Contracts or any Services Requests or Services Contracts at all with an Industry Member or Associate.
- 12.2 Other than in accordance with this Agreement or a Services Contract nothing in this Agreement or a Standing Offer creates an obligation on the Commonwealth to provide any benefit or advantage to an Industry Member or Associate including with respect to any future acquisition of goods or services.
- 12.3 The Commonwealth agrees that it will not use any authority granted by this clause 12 to disadvantage or discriminate against an Industry Member or Associate.

## **13. Exclusion from procurement process**

- 13.1 Provided an Industry Member or Associate complies with clause 11 (Conflict of Interest) and clause 32 (Survivorship) and the relevant Policies that Industry Member or Associate will not be excluded from any future Commonwealth procurement process solely by virtue of involvement in the RPDE Program.

## RPDE Program Participants

### 14. New Participants

14.1 Any organisation that meets the Industry Member Criteria must on their request be admitted as an Industry Member to the RPDE Program from the date on which that organisation signs both:

- (1) a Joining Deed; and
- (2) a Standing Offer.

14.2 Any organisation that meets the Associate Criteria must on their request be admitted as an Associate to the RPDE Program from the date on which that organisation signs both:

- (1) a Joining Deed; and
- (2) a Standing Offer.

### 15. Amendment to Criteria

15.1 The Participants acknowledge that the Commonwealth may amend the Industry Member Criteria or Associate Criteria by issuing a revised Schedule 6 specifying the date from which the revised Schedule will apply.

### 16. Retirement

16.1 An Industry Member may with the prior consent of the Board retire from the RPDE Program by giving at least 90 days (or as otherwise agreed by the Board) notice to the Board (**Retirement Notice**) stating their intention to retire, substantiated reasons for their retirement, and, the date on which they wish to retire.

16.2 An Associate may retire from the RPDE Program by giving at least 90 days (or as otherwise agreed by the Board) notice to the Board (**Retirement Notice**) stating their intention to retire, substantiated reasons for their retirement, and, the date on which they wish to retire.

16.3 Where an Industry Member or Associate retires in accordance with clause 16.1 or clause 16.2 the Industry Member or Associate will use their best endeavours to provide for a smooth withdrawal from the RPDE Program (including the removal of critical Personnel) and agrees to follow any Policies and any reasonable directions or requests from the General Manager.

## 17. Expulsion of inactive or defaulting Participants

17.1 The Board Members, other than any Board Member that is employed or otherwise retained by the Participant that is the subject of a determination under this clause (**Defaulting Participant**), may by notice incorporating written reasons recommend to the Commonwealth the expulsion of a Defaulting Participant if:

- (1) those Board Members:
  - (a) determine that Due Cause exists with respect to the Defaulting Participant; and
  - (b) notify the Defaulting Participant that Due Cause exists; and
- (2) the Defaulting Participant does not provide a satisfactory explanation or remedy the subject of the Due Cause within 3 months of notification of the existence of the Due Cause.

17.2 Due cause means

- (1) failing to actively participate in the RPDE Program;
- (2) failing to remedy a conflict of interest under clause 11 in accordance with this Agreement and the Policies;
- (3) unauthorised disclosure or use of Commercial-in-Confidence Information, Foreground IP, Background IP or Third Party IP;
- (4) breach of any material condition of this Agreement or the Standing Offer;
- (5) becoming insolvent, bankrupt or being subject to the appointment of a receiver or entering into a composition with any creditors (otherwise than by a bone fide corporate reconstruction); or
- (6) any other matters that the Board Members (other than a Board Member that is employed or otherwise retained by the Defaulting Participant) do by unanimous decision reasonably and properly declare to be a due cause.

17.3 The Commonwealth may expel an Industry Member or Associate by sending a written notice (**Expulsion Notice**), which will be effective from the date of the Expulsion Notice where:

- (1) there has been a breach by an Industry Member or Associate, its Personnel or agents, of clause 23 (Defence Security);

- (2) the Industry Member has failed to meet the Industry Member Criteria for a period of six months and failed to show, to the satisfaction of the Commonwealth, how it will comply with those criteria within the next 6 months;
- (3) the Associate has failed to meet the Associate Criteria for a period of six months and failed to show, to the satisfaction of the Commonwealth, how it will comply with those criteria within the next 6 months; or
- (4) in accordance with clause 17.1 the Commonwealth has received a recommendation from the Board that the Participant be expelled.

17.4 Where an Industry Member is provided with an Expulsion Notice under clause 17.3(2) and the Industry Member meets the Associate Criteria the Industry Member may continue its involvement with the RPDE Program as an Associate upon fulfilling the requirements of clause 14.2.

## **18. Effect of retirement or expulsion**

- 18.1 An Industry Member or Associate that resigns or is expelled from the RPDE Program is not eligible to re-join the RPDE Program until one year after the date of resignation or Expulsion Notice or any longer period determined by the Commonwealth.
- 18.2 Unless otherwise agreed by the Board, from the date of retirement or the date of the Expulsion Notice, the retiring or Defaulting Participant:
  - (1) ceases to be a Participant to this Agreement;
  - (2) must relinquish its rights under this Agreement, its Standing Offer and the Policies;
  - (3) must complete any Services Contracts other than those Services Contracts that the Commonwealth terminates;
  - (4) continues to be bound by the obligations of clause 9 (Commitment to act in good faith and warranties), 10 (Risk Allocation), 18 (Effect of Retirement or Expulsion), 19 (Commercial-in-Confidence), 20 (Intellectual Property), 23 (Defence Security), Schedule 3 (Intellectual Property and Technical Data), and insurance, and the indemnities given under this Agreement or any Services Contract in relation to the period before the date of its Expulsion Notice or retirement; and
  - (5) agrees to leave seconded Personnel or Personnel working under Services Contracts working during the reasonable transition period of identifying and recruiting new Personnel.

- 18.3 A retiring or Defaulting Participant ceases to have any voting rights from the earlier date of either the:
- (1) Retirement Notice in accordance with clause 16;
  - (2) notice of Due Cause from the Board in accordance with clause 17.1(1)(b); or
  - (3) Commonwealth Expulsion Notice in accordance with clause 17.3.
- 18.4 A Defaulting Participant that provides a satisfactory explanation to the Board or remedies the subject of a notice of Due Cause will have its voting rights reinstated from the date on which the Board resolves that the Due Cause has ceased to exist.
- 18.5 Subject to items 3.24 - 3.26 of Schedule 3 (Intellectual Property and Technical Data) retirement or expulsion of a Participant does not affect or reduce the continuing obligations of the remaining Participants and a Participant's accrued rights and obligations are not affected.

## **Intellectual Property, Commercial-in-Confidence Information and Technical Data**

### **19. Commercial-in-Confidence Information**

- 19.1 Each Participant must in relation to any Commercial-in-Confidence Information which is disclosed to it by another Participant or developed in carrying out the RPDE Program:
- (1) keep it confidential;
  - (2) use it only for the RPDE Program or as authorised under this Agreement;
  - (3) not disclose it to any person other than to its Personnel:
    - (a) who have a need to know (and only to the extent that each such person has a need to know) for the purpose of the RPDE Program; and
    - (b) who have first agreed in writing to keep it confidential and to use it only as permitted under this Agreement (**Undertaking**);
  - (4) use reasonable efforts to enforce each Undertaking at its cost;

- (5) not copy it or any part of it that is in material form other than as strictly necessary and, where possible mark any such copy 'Commercial-in-Confidence - (name of person who disclosed the information)';
- (6) safeguard it in accordance with its usual practices against unauthorised copying, use and disclosure (whether that disclosure is oral, in writing or in any other form);
- (7) immediately notify the General Manager of any suspected or actual unauthorised copying, use or disclosure; and
- (8) comply with any reasonable direction given by the Participant who provided the Commercial-in-Confidence Information or the General Manager about a suspected or actual breach.

19.2 A Participant's obligations of confidentiality under this Agreement do not apply to information that (whether before or after this Agreement is executed):

- (1) the Participant who disclosed the information has identified in writing as being released from the obligation of confidentiality; or
- (2) is required to be disclosed for the observance of any applicable laws, parliamentary orders, court order, court proceedings or the rules or policies of any stock exchange or government or regulatory authority having jurisdiction in this matter or pursuant to a constitutional duty, provided that, where practicable, that Participant informs the other Participants of the requirement to disclose the information before it is disclosed.

19.3 A Participant will not be in breach of its obligations under this clause where it is required by law to disclose Commercial-in-Confidence Information disclosed to it by another Participant or developed as part of the RPDE Program provided that the Participant:

- (1) gives the Participant that provided the Commercial-in Confidence Information reasonable prior notice;
- (2) discloses only so much of that Commercial-in-Confidence Information as it is required to disclose by law; and
- (3) takes all reasonable steps to ensure that the recipient of such disclosure is made aware of the confidential nature of the Commercial-in-Confidence Information.

19.4 Any combination of Commercial-in-Confidence Information made up of single items regarded as being in the public domain is not necessarily in the public domain and may be regarded as confidential.

- 19.5 The receiving Participant bears the onus of showing that any of the exceptions in this clause apply.
- 19.6 The obligations of confidentiality imposed on a Participant in relation to Commercial-in-Confidence Information continue after termination of this Agreement or after a Participant is expelled or retires from the RPDE Program until the relevant Commercial-in-Confidence Information lawfully becomes part of the public domain.

## **20. Intellectual Property and Technical Data**

- 20.1 The Intellectual Property and Technical Data arrangements are set out in Schedule 3 and each Participant agrees to comply with those arrangements.

## **21. Use of names and logo**

- 21.1 A Participant may only use the name, any trademark or logo of another Participant if it first obtains written consent from that other Participant, which consent may include conditions imposed by that other Participant.
- 21.2 A Participant may only use the logo, any trademark or logo of the RPDE Program in accordance with the Policies or as otherwise agreed by the General Manager.

## **General**

### **22. Premises**

- 22.1 The Commonwealth is responsible for providing premises for the operation of the RPDE Program.
- 22.2 Each Participant in control of premises where any Tasks are carried out (**Host**) must at all reasonable times give each other Participant or any person nominated by another Participant (**Visitor**) access to those premises but the Host may:
- (1) impose as a condition of access that the Visitor signs an agreement, in a form acceptable to the Host, which:
    - (a) sets out the terms of the visit; and
    - (b) contains any obligations of confidentiality that the Host requires in addition to clause 19 (Commercial-in-Confidence Information) to protect the interests of the Host; and

- (2) require a Visitor to comply with any reasonable safety and security requirements, codes of behaviour or other relevant policies and procedures for the Premises.

## **23. Defence Security**

- 23.1 Where an Industry Member or Associate requires access to any Commonwealth premises, the Industry Member or Associate will:
  - (1) comply with any security requirements notified to the Industry Member or Associate by the Commonwealth from time to time or contained within the RPDE Program Policies; and
  - (2) ensure that any of its Personnel or sub-contractors are aware of the Commonwealth's security requirements and comply with those requirements.
- 23.2 The Industry Member or Associate will, and will arrange with any of its Personnel or sub-contractors involved in the provision of Services to:
  - (1) agree to and co-operate with any security checks or clearances as required by the Commonwealth;
  - (2) notify the Commonwealth of any changes to circumstances which may affect the Industry Member or Associate's capacity to provide Services in accordance with the Commonwealth's security requirements; and
  - (3) provide any written undertakings in respect of security or access to the Commonwealth in the form required by the Commonwealth.
- 23.3 The security classification of work to be performed under a Standing Offer will be up to and including TOP SECRET/ SECRET level. The Industry Member or Associate will comply with the requirements of Defence industrial security policy and will ensure that all its sub-contractors, officers, employees and agents who have access to classified information in any form possess an appropriate security clearance.
- 23.4 The Industry Member or Associate will ensure that where necessary to complete a Services Contract:
  - (1) they will maintain a facility and/or storage; and
  - (2) where a sub-contractor is required to have access to security classified information, the sub-contractor possesses a facility security clearance,

of the appropriate type and level of security classification, issued by the Defence Security Authority in the case of an Australian based sub-contractor or the relevant government industrial security authority in the case of an overseas based sub-contractor where Australia has a bilateral security agreement in place.

- 23.5 All security classified information furnished or generated under a Standing Offer, will not be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth.
- 23.6 All security classified information transmitted between the Participants or a Participant and a sub-contractor, in Australia, whether generated in Australia or overseas, will be subject to the provisions of the Defence industrial security policy.
- 23.7 All Communications Security (**COMSEC**) material transmitted between the Participants or a Participant and a sub-contractor, in Australia, will in addition to the provisions of clause 23.6, be subject to the special security provisions of the Australian Department of Defence publication Australian Communications Security Instruction 53, as amended from time to time.
- 23.8 All security classified information transmitted between the Participants or a Participant and a sub-contractor overseas, whether generated in Australia or overseas, will be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
- 23.9 All Communications Security (COMSEC) material transmitted between the Participants or a Participant and a sub-contractor overseas, will be subject to approval in the first instance by the Director Defence Signals Directorate (**DSD**), Department of Defence, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material of those countries. In such cases, the material will be subject to the laws of the overseas countries regarding the custody and protection of COMSEC material (as determined by the Director DSD) and to any bilateral security instrument between Australia and the overseas country.
- 23.10 An Industry Member or Associate will promptly report to the Defence Security Authority through the Contract Authority any instance in which it is known or suspected that security classified information furnished or generated under this Agreement or its Standing Offer has been lost or disclosed to unauthorised parties, including a representative of another country.
- 23.11 Each Industry Member or Associate will ensure that, where a sub-contractor is required to have access to security classified information, the

sub-contractor possesses a facility security clearance of the appropriate type and level of security classification, issued by the Defence Security Authority in the case of an Australian based sub-contractor or the relevant government industrial security authority in the case of an overseas based sub-contractor where Australia has a bilateral security agreement in place.

- 23.12 Each Industry Member or Associate will ensure the requirements of clause 23, are included in all sub-contracts where the sub-contractor requires access to security classified information in order to perform the duties of its Standing Offer.
- 23.13 The Commonwealth may take any action necessary against an Industry Member or Associate to assure or enforce compliance with this clause 23.

#### **24. Dispute resolution**

- 24.1 The Participants will work together and where necessary, through the Board, to seek consensus on all matters relating to the RPDE Program in accordance with the RPDE Program Charter.
- 24.2 It is the intention of the Participants that the Board will deal with any disagreement regarding the RPDE Program and the Participants will do their utmost to ensure that the Board is able to fulfil this crucial function effectively and efficiently.
- 24.3 Where a Participant disagrees with a decision made within the RPDE Program the Participant will:
- (1) raise the issue and discuss the matter with the decision maker within the RPDE Program;
  - (2) where necessary escalate the disagreement to an appropriate level person within the RPDE Program and the Participant; and
  - (3) if the matter has not been resolved refer the matter to the Board who will attempt to resolve the dispute.
- 24.4 Where two or more Participants disagree regarding any matter arising as part of their participation in the RPDE Program the Participants will:
- (1) raise the issue and discuss the matter between themselves;
  - (2) where necessary escalate the disagreement to appropriate level persons within their respective organisations; and
  - (3) if the matter has not been resolved refer the matter to the Board who will seek to settle the dispute.

24.5 Where a dispute is referred to the Board under clauses 24.3 or 24.4, the Board will list it as an agenda item for the next Board Meeting.

24.6 Where the Board is considering a dispute under clause 24.5 the Board will, in accordance with the Policies, consider submissions from all interested parties and provide a recommendation for resolution of the dispute to the affected Participants.

## **25. Notices**

25.1 Any notice or communication under this Agreement will be valid if it is:

- (1) in writing, signed; and
- (2) delivered in accordance with the Policies to the General Manager or Participant's representative (as applicable).

## **26. Severance**

26.1 If all or any part of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.

## **27. Waiver**

27.1 Failure by any Participant to enforce a provision of this Agreement will not be construed as in any way affecting the enforceability of that provision or this Agreement as a whole.

## **28. Assignment and Novation**

28.1 No Participant may assign in whole or in part, its rights under this Agreement

28.2 An Industry Member or Associate may only novate this Agreement with the written agreement of the Commonwealth and may only novate this Agreement to an organisation that meets the Industry Member Criteria or Associate Criteria.

28.3 Where a Participant proposes to enter into any arrangement that will require the novation of this Agreement, it will notify the other Participants within a reasonable period prior to the proposed novation.

**29. Counterparts**

29.1 This Agreement may be signed in any number of counterparts.

**30. Governing Law**

30.1 The laws of the Australian Capital Territory will apply to this Agreement. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this Agreement.

**31. Entire Agreement**

31.1 This Agreement, the relevant Standing Offer, any resulting Services Contracts, and the Policies represent the Participants' 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.

**32. Survivorship**

32.1 Termination of this Agreement does not relieve any Participant from that Participant's obligations under clauses 9 (Commitment to act in good faith and Warranties), 10 (Risk Allocation), 18 (Effect of Retirement or Expulsion), 19 (Commercial In Confidence Information), 20 (Intellectual Property and Technical Data), 23 (Defence Security), Schedule 3 (Intellectual Property and Technical Data), and any other provision which is expressly stated to survive termination.

Executed as an Agreement

## Schedule 1 - Industry Members and Associates

### Industry Members

1. **ADI Limited** A.B.N. 66 008 642 751 (**trading as Thales Australia**) and having its registered office at Level 1, Building 51, Cowper Wharf Road, Garden Island, NSW 2011.
2. **ASC Pty Ltd** A.B.N. 64 008 605 034 and having its registered office at Mersey Road, Outer Harbour, SA 5018.
3. **Australian Aerospace Ltd** A.B.N. 60 003 035 470 and having its registered office at 112 Pandanus Avenue, Brisbane Airport, QLD 4007.
4. **BAE Systems Australia Limited** A.B.N. 29 008 423 005 and having its registered office at Evans Building, Taranaki Road, Edinburgh Parks, Edinburgh, SA 5111.
5. **Boeing Australia Limited** A.B.N. 64 006 678 119 and having its registered office at 363 Adelaide Street, Brisbane, QLD 4000.
6. **CEA Technologies Pty Limited** A.B.N. 99 059 951 183 and having its registered office at 59-65 Gladstone Street, Fyshwick, ACT 2609.
7. **Ericsson Australia Pty Ltd** A.B.N. 56 004 071 854 and having its registered office at Unit 4/19 Murray Crescent, Manuka, ACT 2603.
8. **IBM Australia Ltd** A.B.N. 79 000 024 733 and having its registered office at 8 Brisbane Ave, Barton, ACT 2600.
9. **Raytheon Australia Pty Ltd** A.B.N. 35 063 709 295 and having its registered office at Level 2, No 4 Brindabella Circuit, Brindabella Business Park, Canberra Airport, ACT 2609.
10. **RLM Management Pty Ltd** A.B.N. 66 077 181 349 and having its registered office at 82-86 Woomera Avenue, Edinburgh, SA 5111.
11. **Saab Systems Pty Ltd** A.B.N. 88 008 643 212 and having its registered office at 21 Third Avenue, Technology Park, Mawson Lakes, SA 5095.
12. **Tenix Defence Pty Ltd** A.B.N. 51 006 870 846 and having its registered office at 100 Arthur Street, North Sydney, NSW 2060.

## Associates

1. **Acacia Research Pty Ltd** A.B.N. 14 057 989 456 and having its registered office at 5 Butler Drive, Hendon, SA 5014.
2. **Accenture Australia Holdings Pty Ltd** A.B.N. 61 096 995 649 and having its registered office at Level 15, 141 Walker St, North Sydney, NSW 2060
3. **Acumen Alliance (ACT) Pty Ltd** A.B.N. 67 094 078 396 and having its registered office at Suite 3, 10 Thesiger Crescent, Deakin, ACT 2600
4. **Advitech Pty Limited** A.B.N. 29 003 433 458 and having its registered office at 1 Elizabeth Street, Tighes Hill, NSW 2297.
5. **Aerospace Concepts Pty Limited** A.B.N. 33 096 679 186 and having its registered office at 17 Yallourn Street, Fyshwick, ACT 2609.
6. **Agent Oriented Software Pty Ltd** A.B.N. 98 078 321 589 and having its registered office at Level 1, 594 Elizabeth Street Melbourne VIC 3000
7. **Airservices Australia** A.B.N. 59 698 720 886 and having its registered office at 25 Constitution Avenue, Canberra, ACT 2601.
8. **AMW Professional Services Pty Ltd** A.B.N. 70 105 205 650 and having its registered office at 25 Coral Drive, Jerrabomberra, NSW 2619.
9. **Atamo Pty Ltd** A.B.N. 74 102 672 873 and having its registered office C/- Sothertons Level 3, 123 Colin Street, West Perth, WA 6005
10. **ATEK Pty Ltd** A.B.N. 13 062 388 470 and having its registered office at 121 Alton Road, Mount Macedon, VIC 3441.
11. **ATSA Defence Services Pty Ltd** A.B.N. 11 107 679 238 and having its registered office at 21 Huntingdale Drive, Thornton, NSW 2322.
12. **AUSPACE Limited** A.B.N. 35 008 576 645 and having its registered office at 50 Hoskins Street, Mitchell, ACT 2911.
13. **Australian Marine Technologies Pty Ltd** A.B.N. 40 083 122 507 and having its registered office at Nelson House, Nelson Place, Williamstown, VIC 3016.
14. **Ball Solutions Group Pty Ltd** A.B.N. 66 072 963 690 and having its registered office at Level 1, John McEwen House, 7 National Circuit, Barton, ACT 2600.
15. **Bayly Design Associates Pty Ltd** A.B.N. 93 006 646 206 and having its registered office at 235a Lower Heidelberg Road, Ivanhoe, VIC 3079.

16. **Bellinger Instruments Pty Ltd** A.B.N. 28 001 450 504 and having its registered office at 4-6 Muriel Avenue, Rydalmere, NSW 2116.
17. **Blue Glue Pty Ltd** A.B.N. 30 105 811 372 and having its registered office at Suite 1.5, Level 1, 64 Talavera Road, Macquarie Park, NSW 2113.
18. **Booz Allen Hamilton (Australia) Limited** A.B.N 82 003 512 623 and having its registered office at Level 7, 7 Macquarie Place, Sydney, NSW 2000.
19. **Business Improvement Software Pty Ltd** A.B.N. 23 086 515 111 and having its registered office at 30 Zomay Avenue, Dynnyme, TAS 7005.
20. **CAE Australia Pty Ltd** A.B.N. 16 066 670 522 and having its registered office at Unit 40, Slough Business Park, Silverwater, NSW 2128.
21. **Calytrix Technologies Pty Ltd** A.B.N. 75 092 706 217 and having its registered office at Level 16, 251 Adelaide Terrace, Perth, WA 6000.
22. **Capstoneblack Pty Ltd** A.B.N. 54 107 655 989 and having its registered office at Suite 6, Cretonia House 6 –10 Oatley Court, Belconnen, ACT 2616.
23. **Catalyst Interactive Pty Ltd** A.B.N. 99 073 839 059 and having its registered office at 8 Townsville Street, Fyshwick, ACT 2609.
24. **CES Computers Pty Ltd** A.B.N. 82 008 626 239 and having its registered office at 73 Wollongong Street, Fyshwick, ACT 2609.
25. **Charles Darwin University** A.B.N. 54 093 513 649 and having its registered office at Casuarina Campus, Ellengowan Drive, Casuarina, NT 0810.
26. **Chemring Australia Pty Ltd** A.B.N. 96 004 669 452 and having its registered office at 230 Staceys Road, Lara, VIC 3212.
27. **Cirrus Real Time Processing Systems Pty Ltd** A.B.N. 77 075 393 798 and having its registered office at Level 1, 418A Elizabeth Street, Surry Hills, NSW 2010.
28. **Cistech Solutions Pty Ltd** A.B.N. 14 102 572 547 and having its registered office at 8 Waters Road, Glenbrook, NSW 2773.
29. **Clarinnox Technologies Pty Ltd** A.B.N. 89 062 954 170 and having its registered office at 8 Bayside Crescent, Hampton, VIC 3188.
30. **Cobham Flight Services and Operations Australia** A.B.N. 34 003 469 574 and having its registered office at National Drive, Adelaide Airport, SA 5950.
31. **Codarra Advanced Systems Pty Ltd** A.B.N. 81 008 651 723 and having its registered office at 18 O'Rourke Street, Weetangera, ACT 2614.

32. **Communications-Electronics Solutions Pty Ltd trading as C-E Solutions** A.B.N. 34 091 140 297 having its registered office at Level 1, 138 Magnus Street, Nelson Bay, NSW 2315.
33. **Communications Design & Management Pty Limited** A.C.N. 15 053 788 720 and having its registered office at 50 Geils Court, Deakin, ACT 2600.
34. **Compucat Research Pty Limited** A.B.N. 48 008 602 980 and having its registered office at C/- KLa Accounting, Unit 8, 10 Kennedy Street, Kingston, ACT 2604.
35. **Connell Wagner Pty Ltd** A.B.N. 54 005 139 873 and having its registered office at 12<sup>th</sup> Floor, 60 Albert Road, South Melbourne, VIC 3205.
36. **CSC Australia Pty Ltd** A.B.N. 18 008 476 944 and having its registered office at 26 Talavera Road, Macquarie Park, NSW 2113.
37. **Curtin University of Technology** A.B.N. 99 143 842 569 and having its registered office at Kent Street, Bentley, WA 6102.
38. **Daronmont Technologies Pty Ltd** A.B.N. 73 007 030 855 and having its registered office at 5/21 Huntingdale Road, Burnwood, VIC 3125.
39. **Deakin University** A.B.N. and having its registered office at Waum Ponds Campus, Pigdon's Road, Geelong, VIC 3217.
40. **Defence Communications Industry Pty Ltd** A.B.N. 31 101 744 361 and having its registered office at 22 Keele Street, Collingwood, VIC 3066.
41. **Dimension Data Australia Pty Ltd** A.B.N. 65 003 371 239 and having its registered office at Unit 7, 18-20 Brindabella Circuit, Brindabella Business Park, Canberra Airport, ACT 2609.
42. **DSpace Pty Ltd** A.B.N. 31 068 808 622 and having its registered office at Innovation House West, 1<sup>st</sup> Avenue, Mawson lakes, SA 5095.
43. **Earth Resource Mapping Limited** A.B.N. and having its registered office at 2 Abbotsford Road, West Leederville, WA 6007.
44. **EDAG Australia Pty Ltd** A.B.N. 53 084 878 375 and having its registered office at 11 Planetree Avenue, Dingley, VIC 3172.
45. **EDS Australia Pty Limited** A.B.N. 18 002 855 085 and having its registered office at Level 1, 2 Barry Drive, Canberra, ACT 2601.
46. **Electronic Warfare Associates – Australia Pty Limited** A.B.N. 78 082 761 493 and having its registered office at Level 1, 214 Northbourne Avenue, Braddon, ACT 2613.

47. **Embedded Technologies Corporation Pty Ltd** A.B.N. 33 102 257 974 and having its registered office at Unit 2, 16 Augusta Street, Willerton, WA 6155.
48. **Engineering and Scientific Systems Pty Ltd** A.B.N. 90 008 635 185 and having its registered office at Suite 13, Birubi Chambers, Hawker Place, Hawker, ACT 2614.
49. **Envista Pty Limited** A.B.N. 26 114 790 215 and having its registered office at 1/2 Bradfield Street, Downer, ACT 2602.
50. **ESRI-Australia Pty Ltd** A.B.N. 16 008 852 775 and having its registered office at 16 Napier Close, Deakin, ACT 2600.
51. **Evalua Pty Ltd** A.B.N. 33 096 164 313 and having its registered office at 66B Maryborough Street, Fyshwick, ACT 2609.
52. **Fastwave Communications** A.B.N. 95 097 157 705 and having its registered office at Suite 2/14 Jersey Street, Jolimont, Perth, WA 6014.
53. **Fireplay Pty Ltd** A.B.N. 88 101 067 430 and having its registered office at C/- Blackburn Business Advisors, 101 Corlette Street, The Junction, NSW 2291.
54. **Flight Data Systems Pty Ltd** A.B.N. 25 060 690 753 and having its registered office at Building 93, Corner Nomad Road & Bristol Street, Essendon Airport, VIC 3041.
55. **Formation Design Systems Pty Ltd** A.B.N. 68 009 250 686 and having its registered office at Suite B, 1A Parkenham Street, Fremantle, WA 6160.
56. **Frame Group Pty Ltd** A.B.N. 48 095 369 403 and having its registered office at Level 1, 97 Northbourne Avenue, Canberra, ACT 2601
57. **GKN Aerospace Engineering Services Pty Ltd** A.B.N. 56 097 190 308 and having its registered office at Level 1, 859 Lorimer Street, Port Melbourne, VIC 3207.
58. **Hawker Pacific Pty Ltd** A.B.N. 94 001 540 316 and having its registered office at 112 Airport Avenue, Bankstown Airport, NSW 2200.
59. **Hewlett-Packard Australia Pty Ltd** ABN. 74 004 394 763 and having its registered office at Blackburn North, VIC 3130
60. **HSA Systems Pty Ltd** A.B.N. 15 070 936 846 and having its registered office at Level 1, 121 Walker Street, North Sydney, NSW 2000.
61. **Hyder Consulting Pty Limited** A.B.N. 76 104 485 289 and having its registered office at Level 5, 141 Walker Street, North Sydney, NSW 2060.
62. **Igatech Consulting Pty Ltd** A.B.N. 46 008 005 105 and having its registered office at Level 3, 86 Pirie Street, Adelaide, SA 5000.

63. **Innovation Science Pty Ltd** A.B.N. 82 087 945 597 and having its registered office at 305 Unley Road, Malvern, SA 5061
64. **International Seal Company Australia Pty Limited** A.B.N. 76 003 102 725 and having its registered office at 8/5 Vuko Place, Warriewood, NSW 2102.
65. **Jacobs Sverdrup Australia Pty Ltd** A.B.N. 12 079 749 287 and having its registered office at Level 7, 8-10 Hobart Place, Canberra, ACT 2601.
66. **Jenkins Engineering Defence Systems (J.D. & E Pty Ltd)** A.B.N. 40 003 842 126 and having its registered office at 1/1 Military Road, Matraville, NSW 2036.
67. **KAZ Technology Services Pty Ltd** A.B.N. 84 005 083 670 and having its registered office at 41/242 Exhibition Street, Melbourne, VIC 3000.
68. **Kellogg, Brown & Root Pty Ltd** A.B.N. 91 007 660 317 and having its registered office at 186 Greenhill Road, Parkside, SA 5063.
69. **Kesem International Pty Ltd** A.B.N. 88 088 487 450 and having its registered office at Suite 4 Level 1, 230 Church St Richmond, VIC 3121.
70. **KoBold Group Ltd** A.B.N. 67 105 421 976 and having its registered office at 4 Lloyd George St, Eastern Heights, QLD 4305.
71. **KPMG** A.B.N. 51 194 660 183 and having its registered office at Level 3, 18-20 Brindabella Circuit, Canberra Airport, ACT 2609.
72. **Leadership Solutions Australia Pty Ltd** A.B.N. 79 108 729 719 and having its registered office at 94 Crest road, Queanbeyan, NSW 2620.
73. **Learning Systems Analysis Pty Ltd** A.B.N. 33 075 329 994 and having its registered office at 14 Small Street, Hampton, VIC 3168.
74. **LISAsoft Pty Ltd** A.B.N. 93 064 935 011 and having its registered office at 38 Greenhill Road, Wayville, SA 5034.
75. **Lockheed Martin Australia IS&S Pty Limited** A.B.N. 41 112 120 484 and having its registered office at Level 2, AMA House, 42 Macquarie Street, Barton, ACT 2600.
76. **Lockheed Martin Australia Pty Limited** A.B.N. 30 008 425 509 and having its registered office at Level 2, AMA House, 42 Macquarie Street, Barton, ACT 2600.
77. **Longreach Group Limited** A.B.N. 57 010 597 672 and having its registered office at Suite 6, Level 7, 3 Spring Street, Sydney, NSW 2000.
78. **L-3 Communications Australia Pty Ltd** A.B.N. 13 099 461 819 and having its registered office at Level 2, 15-29 Bank Street, South Melbourne, VIC 3205.

79. **L-3 Nautronix Ltd** A.B.N. 28 009 019 603 and having its registered office at 108 Marine Terrace, Fremantle, WA 6160
80. **Madry Technologies Pty Ltd** A.B.N. 52 081 584 009 and having its registered office at Suite 8, 80 Cecil Ave, Castle Hill, NSW 2154.
81. **McGrathNicol + Partners** A.B.N. 41 945 982 761 and having its registered office at Level 3, 20 Brindabella Circuit, Canberra Airport, ACT 2609.
82. **Mediaware International Pty Ltd** A.B.N. 77 077 094 798 and having its registered office at Ground Floor, 18-20 Brindabella Circuit, Canberra Airport, ACT 2600.
83. **Melix Pty Ltd** A.B.N. 57 091 651 900 and having its registered office at 141 Churchill Avenue, Subiaco, WA 6008.
84. **Microsecure Corporation Pty Ltd** A.B.N. 47 083 888 528 and having its registered office at 100 Austins Road, Humevale, VIC 3757.
85. **Microsoft Pty Ltd** A.B.N. 29 002 589 460 and having its registered office at 1 Epping Road, North Ryde, NSW 2113.
86. **MilitaryTech Pty Limited** A.B.N. 77 107 073 174 and having its registered office at 44 Marlene Way, Bibra Lake, WA 6163.
87. **Mincom Limited** A.B.N. 29 010 087 608 and having its registered office at 193 turbot Street, Brisbane, QLD 4000.
88. **Mobicon Systems Pty Ltd** A.B.N. 68 065 342 387 and having its registered office at 12 Harvard Street, Kenmore East, QLD 4069.
89. **MSC. Software Australia Pty Ltd** A.B.N. 97 000 618 619 and having its registered office at Level 13, 309 Pitt Street, Sydney, NSW 2000.
90. **Nova Aerospace Pty Ltd** A.B.N. 11 090 818 214 and having its registered office at Building 26 Taranaki Road Edinburgh SA 5111
91. **Novare Services Pty Ltd** A.B.N. 11 119 849 062 and having its registered office at 482 Kingsford Smith Drive, Hamilton, QLD 4007.
92. **N.R. Pty Limited** A.B.N. 24 830 434 078 and having its registered office at 167 Hawkesbury Crescent, Farrer, ACT 2607.
93. **NetMap Analytics Pty Limited** A.B.N. 50 096 028 741 and having its registered office at 303/52 Atchison Street, St Leonards, Crows Nest, NSW 2065.
94. **Ocean Software Pty Ltd** A.B.N. 59 086 314 883 and having its registered office at Level 5, 50 Queen Street, Melbourne, VIC 3000

95. **Optus Networks Pty Ltd** A.B.N. 92 008 570 330 and having its registered office at 101 Miller Street, Sydney, NSW 2060.
96. **Pacific Noise & Vibration Pty Ltd** A.B.N. 58 077 046 416 and having its registered office at 12/71 Constitution Avenue, Canberra, ACT 2600.
97. **Permian Pty Ltd** A.B.N. 55 067 53 511 and having its registered office at Suite 5, 334 Highbury Road, Mt Waverley, VIC 3149.
98. **plm Services Pty Ltd** A.B.N. 79 109 588 767 and having its registered office at 1186 Toorak Road, Hartwell, VIC 3124.
99. **Point Trading Group (FAXTECH Pty Ltd)** A.B.N. 44 007 154 234 and having its registered office at 145 Wells Street, South Melbourne, VIC 3205.
100. **Prism Defence Pty Ltd** A.B.N. 65 109 062 928 and having its registered office at 3 Home Avenue, Gylnde, SA 5070.
101. **QANTAS Airways Limited** A.B.N. 16 009 661 901 and having its registered office at 203 Coward Street, Building APC 10, Mascot, NSW 2020.
102. **Quick Strike Defence and Aerospace Pty Ltd** A.B.N. 87 091 455 695 and having its registered office at 6 Silverash Court, Capalaba, QLD 4157.
103. **Relegen Pty Ltd** A.B.N. 75 092 239 220 and having its registered office at 5 Taronga Place, Mona Vale, NSW 2103.
104. **Rockwell Collins Australia Pty Ltd** A.B.N. 94 076 376 399 and having its registered office at Level 1, 9 Waterloo Road, North Ryde, NSW 2113.
105. **Rosebank Engineering Pty Ltd** A.B.N. 37 005 285 101 and having its registered office at 77 Nott Street, Port Melbourne, VIC 3207.
106. **Royal Melbourne Institute of Technology (RMIT)** A.B.N. 49 781 030 034 and having its registered office at 124 Latrobe Street, Melbourne, VIC 3000.
107. **RSM Systems Pty Ltd** A.B.N. 93 099 668 345 and having its registered office at 2/10 Gillies Street, Wollstonecraft, NSW 2065.
108. **Seal Solutions Pty Ltd** A.B.N. 35 098 441 680 and having its registered office at 9/28 Ricketts Road, Mount Waverley, VIC 3149.
109. **Signal Processing Know-how Pty Ltd** A.B.N. 91 105 455 230 and having its registered office at Suite 306/566, Jewel Business Centre, St Kilda Road, Melbourne, VIC 3004.
110. **Sikorsky Aircraft Australia Limited** A.B.N. 82 003 031 909 and having its registered office at 777 Macarthur Avenue, Central Pinkenba, QLD 4008.

111. **Simplexity Communications Pty Ltd** A.B.N. 74 112 772 326 and having its registered office at 144 Darling Road, East Malvern, VIC 3145.
112. **Sinclair Knight Merz Pty Ltd** A.B.N. 37 001 024 095 and having its registered office at 100 Christie Street, St Leonards, NSW 2065.
113. **Sonartech Atlas Pty Ltd** A.B.N. 89 081 933 280 and having its registered office at 6/39 Herbert Street, St Leonards, NSW 2065.
114. **Specialty Coatings (Aust) Pty Ltd** A.B.N. 72 006 836 915 and having its registered office at 124-132 Cochranes Road, Moorabbin, VIC 3018.
115. **SPYRUS Pty Limited** A.B.N. 87 084 092 795 and having its registered office at Level 7, 333 Adelaide Street, Brisbane, QLD 4000.
116. **Sun Microsystems Australia Pty Ltd** A.B.N. 87 033 145 337 and having its registered office at 828 Pacific Highway, Gordon, NSW 2072.
117. **Sydac Proprietary Limited** A.B.N. 64 008 178 676 and having its registered office at 113-115 King William Street, Adelaide, SA 5000.
118. **Sypaq Systems Pty Ltd** A.B.N. 14 639 961 588 and having its registered office at Level 3, 434 St Kilda Road, Melbourne, VIC 3004.
119. **Tectonica Australia Pty Ltd** A.B.N. 88 099 869 208 and having its registered office at 3/88 Dynon Road, West Melbourne, VIC 3003.
120. **Tenfold Network Solutions Pty Ltd** A.B.N. 98 097 619 424 and having its registered office at Level 1, 37 Geils Court, Deakin West, ACT 2600.
121. **Thales Underwater Systems Pty Ltd** A.B.N. 70 073 076 212 and having its registered office at 274 Victoria Road, Rydalmere, NSW 2116.
122. **The Distillery Pty Ltd** A.B.N. 69 080 932 467 and having its registered office at Level 2, 214 Northbourne Avenue, Braddon, ACT 2612.
123. **Tough Pty Ltd** A.B.N. 16 097 105 014 and having its registered office at Level 7, 84 Pitt Street, Sydney, NSW 2000.
124. **University of Adelaide** A.B.N. 61 249 878 937 and having its registered office at Adelaide, SA 5005.
125. **University of South Australia** A.B.N. 37 191 313 308 and having its registered office at The Chancellory, Level 2, 160 Currie Street, City West, Adelaide, SA 5000.
126. **University of New South Wales (ADFA)** A.B.N. 57 195 873 179 and having its registered office at Australian Defence Force Academy, Northcott Drive, Campbell, ACT 2600.

127. **VIPAC Engineers & Scientists Ltd** A.B.N. 33 005 453 627 and having its registered office at 279-285 Normanby Road, Port Melbourne, VIC 3207.
128. **YTEK Pty Ltd** A.B.N. 49 063 384 921 and having its registered office at 14 Fletcher Street, Hawthorn East, VIC 3123.
129. **Zylotech Ltd** A.B.N. 15 008 720 223 and having its registered office at Unit 21, 12 Mars Road, Lane Cove, NSW 2066.

## Schedule 2- Joining Deeds

### Industry Members

THIS DEED POLL is made on

BY (New Industry Member).

### RECITALS

- A. The RPDE Program was established under a Relationship Agreement dated on or about 10 February 2005, **(Relationship Agreement)**.
- B. The Commonwealth has established Industry Member Criteria in relation to participation in the RPDE Program.
- C. The New Industry Member meets the Industry Member Criteria and wishes to become a Participant of the RPDE Program.
- D. In consideration of being admitted as an Industry Member of the RPDE Program, the New Industry Member has agreed to be bound by the terms of the Relationship Agreement.

### 1. OPERATIVE PROVISIONS

#### 1.1 INTERPRETATION

##### (1) Definitions

Terms not otherwise defined in this document have the meanings given to them in the Glossary of the Relationship Agreement.

##### (2) Construction

The provisions of the Glossary apply to this document as if set out in full in this document.

## **1.2 COVENANTS BY THE NEW INDUSTRY MEMBER**

### **(1) Relationship Agreement to be binding**

In consideration of being admitted as an Industry Member of the RPDE Program, the New Industry Member upon the execution of this document is to be added as a party to the Relationship Agreement as an 'Industry Member' and is bound by the provisions of the Relationship Agreement as if it had been signatory to the Relationship Agreement.

### **(2) Obligations under the Relationship Agreement**

The New Industry Member's obligations under the Relationship Agreement are identical to the existing Industry Member's obligations under the Relationship Agreement, whether the latter obligations arose prior to, contemporaneously with, or after the Effective Date.

### **(3) Confirmation of the Relationship Agreement**

The New Industry Member confirms the Relationship Agreement.

## **1.3 GOVERNING LAW**

The laws of the Australian Capital Territory will apply to this document. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this document.

**EXECUTED** as a deed poll.

## **Associates**

**THIS DEED POLL** is made on

BY **(New Associate)**.

## **RECITALS**

- A. The RPDE Program was established under a Relationship Agreement dated on or about 10 February 2005, **(Relationship Agreement)**.
- B. The Commonwealth has established Associate Criteria in relation to participation in the RPDE Program.
- C. The New Associate meets the Associate Criteria and wishes to become a Participant of the RPDE Program.
- D. In consideration of being admitted as an Associate of the RPDE Program, the New Associate has agreed to be bound by the terms of the Relationship Agreement.

## **1. OPERATIVE PROVISIONS**

### **1.1 INTERPRETATION**

#### (1) Definitions

Terms not otherwise defined in this document have the meanings given to them in the Glossary of the Relationship Agreement.

#### (2) Construction

The provisions of the Glossary apply to this document as if set out in full in this document.

### **1.2 COVENANTS BY THE NEW ASSOCIATE**

#### (1) Relationship Agreement to be binding

In consideration of being admitted as an Associate of the RPDE Program, the New Associate upon the execution of this document is to be added as a party to the Relationship Agreement as an 'Associate' and is bound by the provisions of the Relationship Agreement as if it had been signatory to the Relationship Agreement.

(2) Obligations under the Relationship Agreement

The New Associate's obligations under the Relationship Agreement are identical to the existing Associate's obligations under the Relationship Agreement, whether the latter obligations arose prior to, contemporaneously with, or after the Effective Date.

(3) Confirmation of the Relationship Agreement

The New Associate confirms the Relationship Agreement.

**1.3 GOVERNING LAW**

The laws of the Australian Capital Territory will apply to this document. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this document.

EXECUTED as a deed poll.

## **Schedule 3 - Intellectual Property and Technical Data**

### **3. Introduction**

3.1 The Participants acknowledge that the intention of this Schedule is to:

- (1) set out the Participants' IP rights in relation to the RPDE Program;
- (2) provide that no Services Contract will reduce a Participant's IP rights (however a Services Contract may give a Participant additional IP rights);
- (3) provide that all Foreground IP vests on its creation in the Commonwealth;
- (4) set out arrangements for the Participants to licence Embedded Background IP to the Commonwealth outside the RPDE Program; and
- (5) set out arrangements for the Commonwealth to licence Foreground IP to the other Participants outside the RPDE Program, including some limited sub-licensing rights.

### **General**

3.2 The Participants agree that they will:

- (1) manage Foreground IP, Background IP, Third Party IP and Technical Data in accordance with the Policies and in a manner which will assist to give effect to the operation of this Agreement and the Policies;
- (2) not undertake steps or implement procedures which will have the effect of hindering the management of Foreground IP, Background IP, Third Party IP and Technical Data in accordance with the Policies and this Agreement;
- (3) do all things necessary (including where appropriate ensuring IP is assigned from employees, sub-contractors or consultants) to ensure that the Participant is able to give effect to the licensing and confidentiality provisions of this Agreement; and
- (4) ensure that any disclosure of any licensed IP shall be consistent with the confidentiality obligations under this Agreement.

### **Ownership of Intellectual Property**

- 3.3 Nothing in this Agreement affects the ownership of Background IP or Third Party IP.
- 3.4 Ownership of all Foreground IP vests on its creation in the Commonwealth, which has the exclusive right to apply for registration of that Foreground IP in all countries of the world.
- 3.5 Each Participant agrees to do all things necessary or convenient to assist the Commonwealth to protect Foreground IP including assisting the Commonwealth to obtain and maintain registration of Foreground IP.

### **Intellectual Property Licence – Foreground IP**

- 3.6 Subject to items 3.34 - 3.36 of this Schedule (Effect of Retirement or Expulsion) the Commonwealth grants to each Industry Member a royalty-free, irrevocable, perpetual, non-exclusive licence to use Foreground IP only for:
  - (1) its internal purposes (including further joint development with other licensed Participants) within Australia; and
  - (2) Commercialisation.
- 3.7 Subject to items 3.34 - 3.36 of this Schedule (Effect of Retirement or Expulsion) the Commonwealth grants to each Associate a royalty-free, irrevocable, perpetual, non-exclusive licence to use Foreground IP arising from a Task in which the Associate was involved only for:
  - (1) its internal purposes (including further joint development with other licensed Participants) within Australia; and
  - (2) Commercialisation
- 3.8 Subject to items 3.34 - 3.36 of this Schedule (Effect of Retirement or Expulsion), where Foreground IP incorporates Embedded Background IP provided by an Affiliate of a Participant, the Commonwealth grants to that specific Participant, a licence, including the right to sub-licence, for the sole purpose of granting a sub-licence to that specific Affiliate which provided the Embedded Background IP to use that Foreground IP only for Commercialisation.

- 3.9 Except as expressly permitted under item 3.8, the licences granted under items 3.6, 3.7 and 3.8 exclude any right to sub-licence.
- 3.10 A Participant who grants a sub-licence under item 3.8 must ensure that:
- (1) the sub-licence is granted on terms that are the same as those set out in items 3.6 and 3.7;
  - (2) the sub-licence is subject to the laws of the Australian Capital Territory; and
  - (3) where an Industry Member or Associate's licence is revoked in accordance with items 3.11, 3.17, or 3.34 of this Schedule, the sub-licence is also automatically revoked.
- 3.11 In the event that a sub- licensee breaches Defence security requirements or makes unauthorised disclosure or use of Commercial-In-Confidence Information, Foreground IP, or Background IP, the Foreground IP licence granted to the Participant which granted that sub-licence may be immediately revoked by notice in writing from the Commonwealth.

#### Seeking a licence outside of automatic licence

- 3.12 Any Industry Member or Associate may request access to Foreground IP outside of items 3.6 - 3.8. The Commonwealth may agree to grant such a licence on terms and conditions to be negotiated between the Commonwealth and the Industry Member or Associate requesting the licence.
- 3.13 The Commonwealth may not unreasonably refuse a request made under item 3.12.

#### **Intellectual Property Licence - Background IP**

*Participants grant to each other licence to BIP for purpose of Task or RPDE Program (as applicable)*

- 3.14 The Participant's acknowledge and agree that more than one Participant may be involved in a Task. Each Participant grants to each other Participant involved in the same Task, a, royalty-free, irrevocable, non-exclusive licence, (excluding the right to sub-licence) to utilise Background IP provided for that Task for the sole purpose of completing and evaluating that Task.

*Industry Members & Associates grant to Cth licence to Embedded BIP for Cth internal purposes (no sub-licensing).*

- 3.15 Each Industry Member and Associate grants to the Commonwealth a, royalty-free, irrevocable, perpetual, non-exclusive licence, (excluding the right to sub-licence) to utilise Embedded Background IP to enable the Commonwealth to use Foreground IP for Defence purposes.
- 3.16 The Commonwealth acknowledges that the rights granted under item 3.15 do not extend to the Commonwealth utilising the Embedded Background IP except in association with Foreground IP.

*Termination of licence for misuse*

- 3.17 Where a Participant (Licensor) has granted a licence under items 3.6 - 3.8 (Foreground IP) or items 3.14 or 3.15 (Background IP) to another Participant (Licensee) and the Licensee has acted other than in accordance with the terms under which the licence was granted the Licensor may immediately terminate that licence by notice to the Licensee.

*Seeking licence outside of automatic licence*

- 3.18 Any Participant may request access to any other Participant's Background IP for a purpose falling outside of items 3.14 or 3.15. The Participant that provided the relevant Background IP may in its sole discretion grant such a licence on terms and conditions to be negotiated between the relevant Participants.

*Survival of licences*

- 3.19 The licences provided under items 3.6 - 3.15 survive the termination of this Agreement and the termination or cessation of the RPDE Program.

### **Intellectual Property Licence – Third Party IP**

- 3.20 Where Third Party IP is provided for carrying out a Task the Participant introducing that Third Party IP will use its best endeavours to obtain in favour of the other Participants involved in that Task (**Users**) a royalty-free or best available commercial terms licence to the Third Party IP for the purposes of utilising the Foreground IP or Background IP in accordance with this Agreement.
- 3.21 Before any Third Party IP is provided the Participant that wishes to introduce that Third Party IP must notify the Users of the nature of the

Third Party IP and the terms on which it will be licensed. The Users have the right to reject that Third Party IP.

- 3.22 The Participants agree to clearly indicate and ensure that any limitations on the use of Third Party IP are recorded in the IP Register.

### **Moral Rights**

- 3.23 With respect to any copyright material provided under this Agreement or under a Services Contract the Participants shall obtain from each author, in favour of the Participants, a written consent which extends directly or indirectly to the performance of acts permitted under this Agreement, its Standing Offer or a Services Contract without attribution of authorship (but excluding an act amounting to false attribution of authorship).

### **IP Records**

- 3.24 In accordance with the Policies the Participants agree to abide by appropriate procedures and records to ensure that:
- (1) an IP Library is established;
  - (2) ownership and description of Background IP, Foreground IP, and Third Party IP is adequately identified within IP Registers within the RPDE Program IP Library; and
  - (3) any distribution (including internal distribution) of Foreground IP under items 3.6 - 3.8 and distribution (including internal distribution) of Embedded Background IP under items 3.14 or 3.15 is recorded within the IP Register.
- 3.25 In accordance with the Policies the Participants agree to:
- (1) undertake to register Background IP within 60 days of that Background IP being provided for a Task; and
  - (2) participate in regular meetings in which Background IP not already recorded will be recorded.
- 3.26 Where a Participant claims particular IP is Background IP and that IP:
- (1) has not been recorded as Background IP within 60 days of that Background IP being provided for a Task; and

- (2) cannot be proven by the Participant claiming it to be Background IP to be Background IP,

the IP will be treated as Foreground IP in accordance with the Policies.

- 3.27 If a Party uses IP under items 3.6 - 3.8 on the basis that it is Foreground IP and it is subsequently established to be Background IP the owner of the Background IP agrees that it may not bring any Proceedings in relation to that use.
- 3.28 In accordance with the Policies a Participant may at any reasonable time access relevant sections of the IP Register and the IP Library to ensure they are being correctly managed and resourced.

### **Technical Data**

- 3.29 Each Participant will provide to the RPDE Program all existing Technical Data necessary or convenient to enable a reasonably skilled person to efficiently and effectively perform the Services and to do the things permitted to be done under this Agreement including exercising rights to Foreground IP or Background IP (including Embedded Background IP) (where applicable).
- 3.30 Subject to item 3.31, where a Participant grants a licence of any Background IP or Foreground IP to another Participant ('**Licensee**') in accordance with this Agreement, that Participant agrees to provide one copy of all existing Technical Data necessary or convenient to allow a reasonably skilled person to efficiently and effectively utilise that licence, to the RPDE Program IP Library to enable the Technical Data to be copied in the same format in which it was provided and distributed to the Licensee but the Participant may:
  - (1) place any reasonable limitation (including confidentiality, but not in a manner that is inconsistent with this Schedule) upon the use of the Technical Data; and
  - (2) require the Licensee to comply with any reasonable directions regarding the protection of the Technical Data (including the return or destruction of the Technical Data).
- 3.31 A Participant is not required to supply Technical Data when to do so would breach national or international security classifications or controls or would breach an obligation to a third party.
- 3.32 When supplying Technical Data in accordance with this Schedule each Participant agrees to supply it in an appropriate format accessible by an appropriately skilled person in accordance with the Policies or as agreed by the Participants.

- 3.33 A Participant may provide Technical Data to a third party to enable the Participant to fully exercise its IP rights under this Schedule provided the Participant obtains consent from the Participant that provided the Technical Data on the same basis on which a licence to use Background IP may be obtained.

### **Effect of Retirement or Expulsion on IP rights**

- 3.34 If a Participant is expelled for Due Cause or breach of Defence security requirements that Participant's licence to use Foreground IP is revoked from the date of the Expulsion Notice.
- 3.35 If a Participant retires or is expelled for failing to meet the Industry Member Criteria and Associate Criteria, that Participant retains any licences granted to use all Foreground IP developed up to the date of retirement or expulsion and recorded in the IP Register but has no licence to use any Foreground IP developed after that date, except any Foreground IP that is developed under any Services Contracts that continue in accordance with clause 18 of this Agreement.
- 3.36 If a Participant retires or is expelled:
- (1) all licences that it has granted to Background IP before the date of retirement or expulsion in accordance with items 3.14 - 3.15 of this Schedule continue in accordance with the terms on which those licences were granted;
  - (2) all Technical Data provided by that Participant up to the date of retirement or expulsion remains in the RPDE Program on the terms on which it was provided; and
  - (3) that Participant remains bound by the obligations to grant future licences of Background IP in accordance with items 3.15 of this Schedule.

### **Export approval and other regulatory requirements**

- 3.37 The Industry Members and Associates acknowledge that that export of material and IP may require export and other regulatory approval and that nothing in this Agreement provides that export or any other regulatory approval.
- 3.38 The Commonwealth agrees to use its best endeavours to assist any Participant seeking export or regulatory approval of material or IP developed under the RPDE Program.

## Schedule 4 - RPDE Program Charter

### MISSION

Enhance ADF warfighting capacity through accelerated capability change in an NCW environment.

We are a responsive organisation committed to achieving the following:

### OBJECTIVES .... WE WILL:

- ✓ Examine NCW issues endorsed by Defence and provide a rapid intervention capability to redress problems and mitigate risk
- ✓ Analyse, assess, develop, test and evaluate new NCW, concepts, doctrine, procedures, organisation and technologies within 18 months
- ✓ Rapidly deliver NCW capability to warfighters when the need, or opportunity, arises
- ✓ Innovate to achieve better business outcomes
- ✓ Provide timely and expert advice and support to the development of capability
- ✓ Encourage an inclusive approach with regular review of membership to identify potential high value contributors to the Program
- ✓ Ensure that work is allocated on a best value for money basis
- ✓ Promote effective cooperation or competition as appropriate for all work

Our **COMMITMENTS** ...to each other – in our everyday dealings with each other ... WE WILL:

- ✓ Work together proactively
- ✓ Communicate openly and honestly
- ✓ Encourage innovation and excellence
- ✓ Respect and support each other
- ✓ Give recognition, celebrate success and reward achievement
- ✓ Provide a challenging work environment

## Schedule 5 – Glossary

### 1. Definitions

#### 1.1 In this Agreement:

- (1) **Affiliate** means a Related Body Corporate within the meaning of s9 of the *Corporations Act 2001* or an entity that directly or indirectly controls, is controlled by or is under common control with the Participant and for this purpose 'control' will mean the possession directly or indirectly of the power to direct or cause the direction of management and policies of the entity whether through voting shares, securities or otherwise.
- (2) **Agreement** means this Relationship Agreement, including any schedule or annexure to it.
- (3) **Annual Report** means the RPDE Program's Annual Report.
- (4) **Associate** means a Participant that meets the Associate Criteria and is listed under 'Associates' in Schedule 1 of the Relationship Agreement as updated from time to time.
- (5) **Associate Criteria** means the criteria within Schedule 6 of the Relationship Agreement.
- (6) **Associate Representative** means the person appointed by the Commonwealth in accordance with Schedule 7 of the Relationship Agreement or elected by the Associates as a Board Member in accordance with Schedule 8 of the Relationship Agreement.
- (7) **Authorised Representative** means the person nominated by the Commonwealth in a Services Request or Services Contract to provide any necessary directions with respect to a Services Request or Services Contract.
- (8) **Background IP** means IP, other than Third Party IP, that is:
  - a. brought into existence other than as a result of performing any Services; and
  - b. embodied in, or attaches to, Services, or is otherwise necessarily related to the functioning or operation of Services.
- (9) **Board** means the board of the RPDE Program.

- (10) **Board Member** means a member of the Board.
- (11) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday in the place where an act is to be performed or a payment is to be made.
- (12) **Chair** means the chair of the Board appointed in accordance with items 7.8 -7.9 of Schedule 7 of the Relationship Agreement.
- (13) **Commercial-in-Confidence Information** means information including trade secrets, know-how and any information comprised in Technical Data that:
- (a) is by its nature confidential; or
  - (b) the receiving party knows or ought to know is confidential; and
  - (c) where it is reduced to material form, is marked as confidential;
- but does not include information which:
- (a) is or becomes public knowledge other than by breach of this Agreement or a Services Contract;
  - (b) is in the possession of the party without restriction in relation to disclosure before the date of receipt; or
  - (c) has been independently developed or acquired by the receiving party.
- (14) **Commercial Off the Shelf (COTS)** equipment or material means item or package that is commercially available in its entirety.
- (15) **Commercialisation** means to manufacture, produce, market and sell goods but does not include the right to sub-licence.
- (16) **Commonwealth** includes Commonwealth employees and professional service providers.
- (17) **Contract Authority** means the Commonwealth representative who manages the Standing Offer on behalf of the Commonwealth.
- (18) **Core Team** means the General Manager and other non-Task based personnel within the RPDE Program who will be provided to the RPDE Program by any of the Participants under a Services Contract.

- (19) **Effective Date** means the date on which a Participant signs a Standing Offer and the Relationship Agreement or a Joining Deed, as the case may be.
- (20) **Embedded Background IP** means that Background IP that is irretrievably interwoven into Foreground IP or which is necessary or logically required to use Foreground IP.
- (21) **Equipment** includes any:
- (a) machinery;
  - (b) software;
  - (c) hardware;
- or any combination of the above and any associated operating manuals.
- (22) **Facilities** means any facilities provided by a Participant for the operation of the RPDE Program.
- (23) **Foreground IP** means all Intellectual Property created under a Services Contract, including any subcontract.
- (24) **General Manager** means the person appointed by the Commonwealth to manage the RPDE Program in accordance with items 7.32 - 7.35 of Schedule 7 of the Relationship Agreement.
- (25) **GST Act** means *A New Tax System (Goods and Services) Act 1999 (Cth)* as amended.
- (26) **Hazardous Substances** means a substance which has the potential through being used to harm the safety of persons as detailed in the National Occupational Health and Safety Commission's (NOHSC) NOHSC: 1008 (1999) 'Approved Criteria for Classifying Hazardous Substances' and NOHSC: 10005 (1999) 'List of Designated Hazardous Substances'.
- (27) **Industry Member** means a Participant that meets the Industry Member Criteria and is listed under 'Industry Members' in Schedule 1 of the Relationship Agreement as updated from time to time.
- (28) **Industry Member Criteria** means the criteria in Schedule 6 of the Relationship Agreement.

- (29) **Intellectual Property** or **IP** means all copyright (including Moral Rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, Commercial-in-Confidence Information (including trade secrets and know-how), circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
- (30) **Joining Deed** means one of the deeds in the form of Schedule 2 to the Relationship Agreement.
- (31) **Loss** means damage or loss of any description, due to the performance of (or failure to perform) or discharge of (or failure to discharge) any obligation or duty under or arising out of or in connection with the RPDE Program whether arising at law, including by statute or in equity generally, including without limitation, for restitution, unjust enrichment or unconscionable conduct.
- (32) **Non-transportable Equipment** means Equipment that for reasons of logistics or operational requirements is not reasonably able to be physically transported to another location.
- (33) **Ozone Depleting Substances** means any ozone depleting substance within the meaning of the *Ozone Protection Act 1989*.
- (34) **Participant** means a party to the Relationship Agreement.
- (35) **Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- (36) **Personnel** of a Participant includes that Participant's employees and contractors or consultants.
- (37) **Policy or Policies** means any policy relating to the operation of the RPDE Program endorsed by the Board from time to time.
- (38) **Proceedings** includes any action, claim, dispute, suit or proceeding resulting in any direct liability, loss, damage, costs (on a solicitor client basis) or expenses.
- (39) **Prototype** means a piece of Equipment designed, developed and manufactured for the purpose of proving technology but not for the purpose of being used in production.

- (40) **Question** means a formal request for a question to be investigated submitted by the Commonwealth to the RPDE Program in accordance with the Policies.
- (41) **Relationship Agreement** means the Agreement executed by the Participants which governs the operation of the RPDE Program.
- (42) **RPDE Program Charter** means the Charter contained within the Relationship Agreement.
- (43) **RPDE Program** means the Network Centric Warfare Rapid Prototyping, Development and Evaluation Program established under the Relationship Agreement and operated in accordance with the Relationship Agreement.
- (44) **Seconded** means Personnel seconded into the Core Team.
- (45) **Services** means the services, goods, Equipment or Facilities to be provided under any Services Contract as part of a Task, including documents, equipment, and materials, that are:
- (a) brought, or required to be brought into existence, as part of, or for the purposes of, performing the Services;
  - (b) incorporated in, supplied, or required to be supplied along with the Services; or
  - (c) copied or derived from the material provided.
- (46) **Services Contract** means a contract formed in accordance with a Standing Offer or in the instance of being between two parts of the Commonwealth means a Memorandum of Understanding formed in accordance with Schedule 9 of the Relationship Agreement.
- (47) **Services Request** means a request in any format containing the content of Schedule B of the Standing Offer or Schedule 9 of the Relationship Agreement setting out details of Services requested to be provided in accordance with a Standing Offer.
- (48) **Source Currency** means the currency applicable to the country in which the personnel, facility or equipment is based. Where the Personnel, Facilities or Equipment is based in more than one country it is the country in which it is based the majority of the past 12 months.
- (49) **Standing Offer** means the Standing Offer as agreed and executed by the Commonwealth and a Participant setting out the terms on which Services will be provided.

- (50) **Start Date** means the date on which the initial signatories to the Relationship Agreement have signed the Relationship Agreement.
- (51) **Task** means a discrete activity or set of activities undertaken by the RPDE Program in response to a Question.
- (52) **Task Plan** means a plan for a Task.
- (53) **Technical Data** means all technical know-how and information reduced to material form produced, acquired or used by a Participant or its subcontractors in relation to the Services and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, source code, software design data, test results, software and software updates and other items describing or providing information relating to the Services or their operations.
- (54) **Third Party IP** means that IP which is owned by a party other than a Participant or an Affiliate of a Participant and is embodied in Services, or attaches to Services or is otherwise necessarily related to the functioning or operation of the RPDE Program.
- (55) **Transportable Equipment** means Equipment that is physically able and logistically appropriate to be transported to a different location or premises.

## 2. Interpretation

2.1 In the Relationship Agreement, Standing Offer, Services Request, Services Contract and Policies, unless the contrary intention appears:

- (1) headings are for the purpose of convenient reference only and do not form part of a Document;
- (2) the singular includes the plural and vice-versa;
- (3) a reference to a person includes a body politic, body corporate or a partnership;
- (4) where 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 shall be done no later than the end of the next Business Day;
- (5) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;

- (6) a reference to a clause includes a reference to a subclause of that clause;
- (7) a reference to a 'dollar', '\$AUD' or '\$AU' means the Australian dollar unless otherwise stated;
- (8) 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;
- (9) the word 'includes' in any form is not a word of limitation;
- (10) a reference to a Participant includes that Participant's administrators, successors, and permitted assigns, including any person to whom that Participant novates any part of the Relationship Agreement or a Standing Offer; and
- (11) the rights, duties, obligations and liabilities of the Participants shall in every case be several not joint and several.

## **Schedule 6 - Criteria**

### **Membership Criteria**

Membership status is subject to review and determination by Defence based on the level and quality of participation and commitment to RPDE.

### **Industry Members and Associates:**

- must accept the standard terms and conditions and entry restrictions of the RPDE Relationship Agreement and the agreed terms and conditions of the Standing Offer.
- must demonstrate skills and expertise in one or more of the following Defence capability areas:
  - military systems and materials/platform integration
  - communications/electronics/networking
  - human factors engineering/operations research/organisational analysis
  - data/information management/fusion; or
  - software development/integration
- must commit to undertake all RPDE activities at RPDE facilities or a designated RPDE outpost.
- must have clearance from, or ability to meet, the Australian Defence Industrial Security Program.
- must have an ABN.

### **Industry Members:**

- must possess a broad suite of defence industry capabilities with experience of delivering complex systems into the ADF;
- must demonstrate understanding of the ADF's requirements and operations through successfully delivering or completing one or more of the following:
  - contracts with Defence to a total value of at least A\$100m;
  - a sub-contract to a value of at least A\$50m on a major Defence capital investment program;

- a prime contract to a value of at least A\$50m on a major Defence capital investment program.

Note: The Commonwealth reserves the right to waive this criterion in the event that an applicant can demonstrate to the satisfaction of HCS that they possess other qualifications or experience that are relevant to the activities of RPDE.

- must have a well-established R&D capability with a broad networked warfare emphasis;
- must demonstrate commitment to:
  - a. research and development, that may include test and evaluation activities, through an average annual funds allocation of at least 3% of turnover or at least A\$20m (including the cost of directly contracted research and development and test and evaluation); and
  - b. research and development and / or test and evaluation activities appropriate to networked warfare capability including capability modelling, operational analysis and / or prototyping.

Note: Certified financial records and examples of research and development and test and evaluation which is appropriate to networked warfare capability must be included in evidence supporting the respondent's ability to meet this criterion. References to test and evaluation in this criterion have the meaning given in DI(G)-OPS 43-1 *Defence Test and Evaluation Policy* dated May 04 a copy of which is available at [www.rpde.org.au](http://www.rpde.org.au).

- must have the capacity to provide high quality people with skills and expertise in multiple networked warfare related Defence capability areas to contribute to most tasks envisaged to be undertaken by RPDE.

**Associates:**

- must possess niche defence related capabilities.
- must have an established R&D capability.
- must have the capacity to provide high quality people with skills and expertise in their applicable niche Defence capability areas envisaged to be explored by RPDE.

## **Schedule 7 - RPDE Program Board**

### **7. Representation**

7.1 The Board Members will be:

- (1) either four or six representatives from the Industry Members appointed in accordance with Part A of Schedule 8;
- (2) either two or three representatives from the Department of Defence appointed in accordance with Part B of Schedule 8;
- (3) either two or three representatives for the Associates appointed in accordance with Part C of Schedule 8; and
- (4) any other Board Members agreed by the unanimous decision of the Board.

7.2 Each Board Member must:

- (1) have sufficient authority to make decisions on matters within the province of the Board, as set out in this Agreement;
- (2) have executed an undertaking in relation to Commercial-in-Confidence information in accordance with clause 19; and
- (3) have a security clearance to the level necessary to enable them to participate in the deliberations of the Board.

7.3 Where, in accordance with item 7.1 a Participant has more than one representative on the Board each representative has one vote.

7.4 No member of the Core Team may act as a Board Member or an alternate representative.

### **Quorum**

7.5 The quorum for any meeting of the Board will be a representative from each Participant who, in accordance with the process set out in Schedule 8, has voting rights at the time of the meeting.

## Chair

- 7.6 A Board Member appointed by the Commonwealth in accordance with item 7.1(2) will be Chair of the Board.
- 7.7 Where the Chair is unable to attend a Board Meeting the Chair will nominate a deputy Chair from among the Board Members for that Board Meeting and the deputy Chair will conduct the Board Meeting in place of the Chair.

## Replacement or removal of Board Member

- 7.8 The office of a Board Member immediately becomes vacant if:
- (1) the Industry Member whom the Board Member represents ceases to be an Industry Member;
  - (2) the Associate which employs the Associate Representative ceases to be an Associate;
  - (3) the Board Member (or alternates) fail to attend two consecutive Board Meetings; or
  - (4) the Board Member is replaced in accordance with items 7.10 - 7.12.
- 7.9 An Industry Member or the Associates (acting collectively) may at any time replace any of their representatives to the Board with another person (who, in the case of the Associates, must be elected in accordance with Schedule 8) by providing the RPDE Program and the Board with written notification of their intention to replace that representative. A replacement must comply with item 7.2 of this Schedule 7.
- 7.10 Where a Board Member is obstructing the smooth operation of the Board (**Obstructive Board Member**) all Board Members other than the Obstructive Board Member may require a Participant replace an Obstructive Board Member where the Board Members other than the Obstructive Board Member pass a unanimous resolution that the Obstructive Board Member is hampering the smooth running of the Board.
- 7.11 If a resolution is made in accordance with item 7.10, the Board will notify the Chair and the Chair will approach the CEO of the relevant Industry Member or, in the case of the Commonwealth, the Chief of the Capability Development Group, or in the case of the Associates, all Associates, and request the Obstructive Board Member be replaced.
- 7.12 Each Participant agrees to comply with any request from the Chair received under this item.

## **Duties of the Board**

7.13 The duties of the Board are to:

- (1) provide overall governance and leadership to the RPDE Program;
- (2) recommend to the Commonwealth the appointment, removal or replacement of the General Manager;
- (3) monitor and report to the Commonwealth on the performance of, the General Manager;
- (4) issue directives to the General Manager;
- (5) monitor the performance of the RPDE Program including endorsing and monitoring the implementation of strategies and undertaking liaison with the Commonwealth to monitor customer satisfaction;
- (6) approve and disseminate the Annual Report and approve the budget in accordance with the Policies;
- (7) approve or amend Policies nominated by a Board Member as requiring approval or amendment by the Board;
- (8) endorse strategies developed by the General Manager and monitor their implementation;
- (9) undertake a review of the RPDE Program in accordance with clause 2.3;
- (10) resolve RPDE Program disagreements in accordance with clause 24 (Dispute Resolution);
- (11) ensure that the RPDE Program is involved in continuous improvement of the RPDE Program's processes and practices, including, the structure and processes of the Board; and
- (12) convene general meetings of the Participants, at least bi-annually.

7.14 The Board is responsible for ensuring that Policies are established to facilitate the smooth running of the RPDE Program.

7.15 The Board must not discuss nor pass any resolution regarding:

- (1) Industry Member Criteria or Associate Criteria;
- (2) Rates under any Standing Offer;
- (3) access to or licensing of Intellectual Property; or

(4) any other matter which would be contrary to law.

7.16 The Board will be required to adopt as a minimum, policies to cover:

- (1) occupational health and safety;
- (2) risk management;
- (3) roles of Core Team (including the General Manager);
- (4) Intellectual Property management; and
- (5) conflicts of interest.

### **Voting and decision making protocols**

7.17 Once made a resolution of the Board is binding on Participants and cannot be overturned or reversed except by resolution of the Board.

7.18 If a resolution of the Board becomes unlawful or compliance with a resolution for any Participant becomes unlawful that resolution will be immediately addressed by the Board and a new resolution made.

7.19 All resolutions are to be by unanimous agreement.

7.20 A Board Member may not abstain from voting but may be excused on the unanimous agreement of the Board from voting on the basis of a conflict of interest or other satisfactory reason.

7.21 The following decisions are beyond the authority of the Board:

- (1) incorporation of the RPDE Program; and
- (2) termination of the RPDE Program.

### **Meetings of the Board**

7.22 The Board will meet at least quarterly and may conduct other meetings as agreed by the Board.

7.23 Subject to the prior agreement of the Board Members (or, in relation to Non-Voting Industry Members, item 8.13 of Schedule 8), observers may from time to time attend Board meetings but will have no voting rights.

## **Technology meetings**

- 7.24 A Board meeting may be held using telephone or video technology or any other technology agreed by the Board.
- 7.25 The following provisions apply to a technology meeting:
- (1) each of the Board Members taking part in the meeting must be able to hear and be heard or otherwise understood by each of the other Board Members taking part in the meeting;
  - (2) at the commencement of the meeting each Board Member must announce or indicate their presence, and the presence of any other person, to all the other Board Members taking part in the meeting; and
  - (3) a Board Member is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Board Member has previously obtained the express consent of the Chair to leave the meeting.
- 7.26 A Board Member may not deliberately leave a technology meeting by disconnecting their link to the meeting unless that Board Member has previously notified the Chair.
- 7.27 If, despite item 7.26, a link to a meeting is broken during the meeting so that a quorum is no longer present, those Board Members who remain in the meeting may make and minute provisional resolutions. Those provisional resolutions may be confirmed subsequently if all Board Members who were not at the meeting sign a document containing a statement that they are in favour of the provisional resolutions.

## **Circulating resolutions**

- 7.28 The Board Members may pass a resolution without a Board meeting being held if all the Board Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 7.29 Separate copies of a document may be used for signing by Board Members if the wording of the resolution and statement is identical in each copy.
- 7.30 The resolution is passed when the last Board Member signs.
- 7.31 A facsimile addressed to or received by the RPDE Program Board Secretariat and purporting to be signed or sent by a Board Member will be treated as a document in writing signed by that Board Member.

## **General Manager & other positions**

- 7.32 The Board will recommend to the Commonwealth a General Manager who may be employed by one of the Participants and seconded to the RPDE Program pursuant to a Services Contract.
- 7.33 The General Manager:
- (1) will be an agent of the Commonwealth within the limits specified in the relevant Services Contract;
  - (2) subject to item 7.35 is responsible for staffing, performance and management of the RPDE Program;
  - (3) may request a Participant provide a specifically qualified person or a specified person under a Services Contract to undertake work for the RPDE Program including being seconded to the RPDE Program; and
  - (4) must report to the RPDE Board.
- 7.34 The General Manager's role will be set out in more detail in the Policies.
- 7.35 The Board may recommend to the Commonwealth the appointment of other senior executive positions within the RPDE Program.

## **Schedule 8 –Representatives on Board**

### **8. Appointment of Board Representatives**

#### **Part A – Appointment of Industry Member Representative on Board**

##### ***Board seats available to Industry Members***

8.1 The total number of seats available on the Board for Industry Members is:

- (1) 4 seats, where there are less than 10 Industry Members in total at any time, or
- (2) 6 seats, where there are 10 or more Industry Members in total at any time.

##### ***Nomination of Board representatives***

8.2 Within 1 month from the date on which this variation takes effect (**Variation Date**), the Commonwealth will notify the existing Industry Members, as at that date, that each may nominate a representative (and an alternate representative) to sit as its representative on the Board in accordance with this Schedule.

8.3 The Commonwealth will also, within 1 month from the date on which a new Industry Member joins the RPDE Program, notify a new Industry Member that it may nominate a representative (and an alternate representative) to sit as its representative on the Board in accordance with this Schedule.

##### ***Creation and update of Industry Member Board List***

8.4 The nominations must be provided in writing to the Commonwealth within 14 days after the date on which the Commonwealth calls for nominations under items 8.2 or 8.3. The Commonwealth will then:

- (1) randomly draw each of the nominated representatives received from existing Industry Members under item 8.2 and create a written list of those representatives (**Industry Member Board List**), recording the order they are drawn (eg 1st, 2nd, 3rd etc).

- (2) add any nominated representatives received from new Industry Members under item 8.3 to the bottom of Industry Member Board List (created under item 8.4(1) above). Where there is more than 1 new Industry Member at any one time, each of their nominated representatives will be added to the bottom of the Industry Member Board List in the order they are randomly drawn by the Commonwealth.
- 8.5 Each Industry Member may substitute its nominated representative (or alternate representative) on the Industry Member Board List with another nominated representative (or alternate representative, as the case may be) at any time by notifying the Commonwealth in writing.
- 8.6 In the event than an Industry Member ceases to be an Industry Member (for whatever reason), the representative (and any alternate representative) of that Industry Member will be removed from the Industry Member Board List and any representatives listed below will be moved up one place on the list.
- 8.7 The Commonwealth will notify all Industry Members within 21 days of the creation of, or any amendment to, the Industry Member Board List.

***Allocation of seats at the Board for Industry Members***

- 8.8 The number of seats made available on the Board for Industry Members under item 8.1 will be allocated to those representatives on the Industry Member Board List in the order those representatives appear on that list (as amended from time to time) and in accordance with the following terms (as applicable):
  - (1) where a seat on the Board is made available for allocation to an Industry Member representative for any reason (eg due to an increase in the number of seats available under item 8.1, the expiry of a term of appointment under items 8.9 or 8.10 or removal of an Industry Member representative on the Board by operation of item 7.8) the next Industry Member representative on the Industry Member Board List (not already on the Board) will be appointed to the Board; and
  - (2) where:
    - (a) a seat on the Board is made available for allocation to an Industry Member representative; and
    - (b) there is no Industry Member representative remaining at the bottom of the Industry Member Board List to fill that seat,  
then, subject at all times to item 8.4(2), the representative at the top of the Industry Member Board List (as amended from time to time) will be rotated to the bottom of the List to fill that seat.

***Term of appointment to the Board for Industry Members (and transition arrangements)***

- 8.9 Subject to the transition arrangements under item 8.10, Board appointments for Industry Member representatives under this Item A of Schedule 8 are for a maximum term of 12 months from the date of their appointment.
- 8.10 To ensure that half the Industry Member representative seats on the Board are rotated on a bi-annual basis, the Participants agree that the first allocation of seats following the Variation Date to Industry Member representatives under item 8.8, will be limited on the following terms:
- (1) the first 2 Industry Member representatives listed on the Industry Member Board List are subject to a limited term of appointment to the Board of 6 months, in the event that item 8.1(1) applies as at the date 6 months after the Variation Date; or
  - (2) the first 3 Industry Member representatives listed on the Industry Member Board List are subject to a limited term of appointment to the Board of 6 months, in the event that item 8.1(2) applies as at the date 6 months after the Variation Date.
- 8.11 Where the number of seats available on the Board for Industry Members decreases from 6 to 4 at any time pursuant to item 8.1:
- (1) the Industry Member representatives on the Board will be entitled to serve out any existing terms of appointment (subject to this Agreement); and
  - (2) the number of seats on the Board available for allocation to Industry Member representatives under item 8.8 will be restricted so as to reduce the number of seats made available on the Board for Industry Members in accordance with item 8.1 (as at the date of the relevant allocation).

***Non-Voting Industry Members' access to Board business***

- 8.12 The Board must, subject to any restrictions on the provision of confidential or classified information, provide the following information to each Industry Member that does not have a representative on the Board (**Non-Voting Industry Member**):
- (1) general reports and other materials being considered by the Board, and
  - (2) meeting agendas, minutes and resolutions of the Board.

- 8.13 A Non-Voting Industry Member may, subject to the prior consent of the Chair and to any restrictions on the provision of confidential or classified information, attend a Board meeting (or part of a Board meeting) as an observer. Where a Non-Voting Industry Member attends a Board meeting under this item, that Non-Voting Board Member will not have any right to vote at the meeting, but may contribute to Board deliberations on a matter before the Board (including by way of submission or report to the Board), only where the contribution is either:
- (1) listed on the agenda for the meeting by the Chair; or
  - (2) otherwise accepted by the Chair of the meeting.

### **Part B – Appointment of Commonwealth Representatives on Board**

- 8.14 The total number of seats available on the Board for the Commonwealth is:
- (1) 3 seats, where there are less than 10 Industry Members in total at any time, or
  - (2) 2 seats, where there are 10 or more Industry Members in total at any time.
- 8.15 The Commonwealth may allocate the number of seats made available on the Board for it under item 8.14 in any manner it sees fit, but will use its best endeavors to maintain representation from two or more of the following areas within the Department of Defence:
- (1) Capability Development Group (CDG);
  - (2) Defence Material Organisation (DMO); and
  - (3) Defence Science and Technology Organisation (DSTO).

### **Part C – Appointment of Associate Representatives on Board**

#### ***Board seats available to Associates***

- 8.16 The total number of seats available on the Board for Associate Representatives is:
- (1) 2 seats, where there are less than 10 Industry Members in total at any time, or
  - (2) 3 seats, where there are 10 or more Industry Members in total at any time.

### ***Nomination of Associate Representatives***

- 8.17 The Commonwealth will, within 1 month from the date on which a seat becomes available on the Board for Associate Representatives (eg due to an increase in the number of seats available under item 8.16, the expiry of a term of appointment under item 8.25 or removal of an Associate Representative by operation of item 7.8), notify each Associate, as at that date, that they may nominate a candidate to sit as an Associate Representative on the Board in accordance with this Schedule.
- 8.18 The nominations, together with a short resume of the nominee, must be provided in writing to the Commonwealth within 30 days after the date on which the Commonwealth calls for nominations. The Commonwealth will distribute the nominations to all Associates in the same way that a notice is given to Associates.

### ***Election***

- 8.19 Within 14 days after nominations close, the Commonwealth will provide an opportunity for each Associate Member to vote via a secret ballot for nominated candidates to occupy the available seats on the Board for the Associate Representative.
- 8.20 The Chair of the Board will tally the votes for the Associate Representative.
- 8.21 The candidate(s) receiving the greatest number of votes cast in their favour will be declared by the Chair of the Board to be elected as the Associate Representative(s), according to the number of seats available on the Board to Associate Representatives at that time.
- 8.22 The candidate receiving the next greatest number of votes cast in their favour (from the candidate(s) declared as the Associate Representative(s), by the Chair under item 8.21) must be declared by the Chair to be elected as the first alternate Associate Representative (**first alternate Associate Representative**).
- 8.23 The candidate receiving the next greatest number of votes cast in their favour (from the candidate declared as the first alternate Associate Representative by the Chair under item 8.22) must be declared by the Chair to be elected as the second alternate Associate Representative (**second Alternate Associate Representative**).
- 8.24 If a successful candidate cannot be declared because votes are equal, the Chair will ask for the votes to be recast.

### ***Term and Replacement (and transition arrangements)***

- 8.25 An Associate Representative is appointed for a term of 12 months and is eligible to be nominated for re-election.

- 8.26 At the end of each term of appointment of an Associate Representative the Commonwealth will arrange for an election to be held in accordance with items 8.17 to 8.24 of this Schedule to enable the Associate Representative to be replaced or re-appointed.
- 8.27 Where the number of seats available on the Board for Associate Representatives decreases from 3 to 2 at any time pursuant to item 8.16:
- (1) the Associate Representatives on the Board will be entitled to serve out any existing terms of appointment (subject to this Agreement); and
  - (2) the number of seats on the Board available for election under item 8.26 will be restricted so as to reduce the number of seats available on the Board for Associate Representatives in accordance with item 8.16 (as at the date of that election).

### ***Vacancy***

- 8.28 If the position of Associate Representative becomes vacant for whatever reason, the first alternate Associate Representative will be declared by the Chair to be the Associate Representative until the end of the term of appointment of the initial Associate Representative.
- 8.29 If the first alternate Associate Representative is unable to fill the position of Associate Representative, or has been declared by the Chair to be the Associate Representative but for whatever reason has vacated that position, the Chair will declare the second alternate Associate Representative to be the Associate Representative until the end of the term of appointment of the initial Associate Representative.
- 8.30 If there is no Associate Representative and there are no alternate Associate Representatives able to fill the position, the Commonwealth will appoint an independent person to act as Associate Representative pending election of an Associate Representative and will promptly arrange for an election to be held in accordance with items 8.17 to 8.24 of this Schedule.

### ***Voting Rights***

- 8.31 The Associate Representative has the same voting rights as any other Board Member.

## Schedule 9 – Memorandum of Understanding

### 9. Commonwealth MOU

- 9.1 When the Commonwealth tasks another part of the Commonwealth (**the Agency**) to provide services to the RPDE Program, a Memorandum of Understanding will be formed along the terms of this Schedule 9. The Memorandum of Understanding falls within the definition of a ‘Services Contract’.
- 9.2 The General Manager may request the Agency to provide Services as set out in a Services Request.
- 9.3 The Agency will respond to a Services Request in accordance with the time frame specified in that Services Request.
- 9.4 The Agency will then either:
- (1) offer to perform the Services Request in accordance with the Services Request;
  - (2) propose amendments to the Services Request; or
  - (3) decline to perform the Services Request.
- 9.5 If the Agency offers to perform the Services Request, RPDE will either accept the Agency’s offer or enter into further negotiations with the Agency.
- 9.6 The Services Request will be in the form attached.

### Sub-contracting

- 9.7 The Agency may sub-contract any part of a Services Contract in accordance with this the Policies.
- 9.8 The Agency, by sub-contracting any part of the Services, will not be relieved of their obligations under the Services Contract and will be responsible for all sub-contractor work and services.

### Conditions applicable to Transportable Equipment

- 9.9 Where the Agency provides Transportable Equipment (**the Owning Party**) to a Participant (**the Receiving Party**) under a Services Contract the following clauses will apply:

- (a) Responsibility for the Transportable Equipment will pass from the Owing Party to the Receiving Party when the Receiving Party accepts the delivery of the Transportable Equipment to the Facilities detailed on the Services Contract 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 from the Facilities specified in the Services Contract. Where return or delivery is to Facilities other than that specified in the Services Contract the Receiving Party will be entitled to be compensated for any additional costs incurred in delivery or return. Responsibility for the Transportable Equipment will pass to the Receiving Party upon collection of the Transportable Equipment from the Owing Party.
- (c) The Receiving Party must comply with any reasonable written instructions provided by the Owing Party about use and storage of the Transportable Equipment by the Receiving Party, including any instructions contained in a Services Request.

### **Conditions applicable to Non-transportable Equipment**

9.10 Where access to and use of Non-transportable Equipment or Facilities is provided to a Participant as part of a Services Contract the following clauses will apply:

- (a) Any person using the Non-transportable Equipment or Facilities or accessing the Owing Party's Facilities to facilitate or observe the use must agree to comply with all policies and procedures of the Owing Party and to comply with all lawful and reasonable directions of the Owing 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 Owing Party to immediately remove that person from their Facilities.
- (b) The Owing Party may require any level of security clearance and/or veto any person or class of persons from using their Non-transportable Equipment or Facilities and must give notice of any requirements/limitations under this clause within their response to the Services Request.

- (c) A Party must use its best endeavours to ensure that its Personnel using the Non-transportable Equipment or Facilities or accessing the Owing Party's Facilities complies with any requirement under this Schedule.

### **Conditions applicable to all Equipment**

9.11 The Owing 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 in appropriate working order by the Owing Party while provided for use under a Services Contract,

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

### **Manufacture of Prototypes**

9.12 In accordance with a Services Request the General Manager may request the Agency to provide Services being the design, development and manufacture of a Prototype.

9.13 The Agency will manufacture the Prototype in accordance with the Services Contract and any directions or instructions from the General Manager and will package the Prototype so to ensure its safe delivery. Where the Services Contract provides requirements for packing, labelling or marking the Agency will comply with those requirements.

9.14 Unless otherwise stated in the Services Contract the design, development and manufacture of any Prototype will include the delivery of the Prototype to RPDE Program Facilities or other Facilities stated in the Services Contract.

9.15 The Agency will not provide Prototypes containing any Ozone Depleting Substances or Hazardous Substances except for those substances authorised in writing by the General Manager.

9.16 The Agency will ensure that, for all Hazardous Substances:

- (a) full details of the authorised substances incorporated into the Prototypes, including the location and protective measures adopted, are provided to the Commonwealth in the format of a Material Safety Data Sheet in accordance with NOHSC 2011 (1994) 'National Code of Practice for the Preparation of Material Safety Data Sheets';

- (b) all documentation supporting the Prototypes clearly identifies the nature of the hazard; and
  - (c) all Prototypes containing the authorised substance are labelled to clearly identify the nature of the substance and its associated hazards.
- 9.17 To the extent possible consistent with their function as a Prototype the Prototypes will not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to Personnel, the environment or the operation of other equipment.
- 9.18 All information delivered as part of the Prototypes will be written in English. Measurements of physical quantity will be in Australian legal units as prescribed under the *National Measurement Act 1960* or if Prototypes are imported, units of measurement as agreed by the General Manager.

#### **Intellectual Property, Technical Data and Commercial-in-Confidence information**

- 9.19 The Agency agrees to comply with the provisions in the Relationship Agreement in relation to Intellectual Property, Technical Data and Commercial-in-Confidence Information.

#### **Warranties and Representations**

- 9.20 The Agency warrants that:
- (a) any Personnel supplied by the Agency in response to a Services Contract will be appropriately, skilled, qualified and experienced to fulfil the requirements of the Services Contract;
  - (b) it has the necessary expertise, experience, capacity and capability required to perform the Services;
  - (c) any Equipment or Facilities that it provides meets the technical specifications detailed in the relevant Services Contract;
  - (d) it will undertake the manufacture of any Prototype specified in a Services Contract with the appropriate skill, incorporating the appropriate materials and to the appropriate standards; and

(e) it will ensure that the design, materials and workmanship in any Prototype or Equipment will conform with, and meet, the requirements of the Services Contract under which the Agency supplies the Prototype or Equipment.

- 9.21 Item 9.20(e) does not apply to the extent that the Equipment is Commercial Off the Shelf (**COTS**) Equipment in which instance the Agency warrants that the COTS Equipment is appropriate and provides to the Commonwealth the full extent of any warranty available to the Agency.
- 9.22 The Agency will remedy any errors or defects in Services that are notified to the Agency by the Commonwealth during the period specified in the Services Request.
- 9.23 The Agency, unless the Commonwealth otherwise allows, will meet all costs of, and incidental to, the performance of remedial work to ensure its compliance with this Schedule 9.
- 9.24 The Agency will meet all costs of, and incidental to the discharge of its warranties under this Schedule 9.

## Services Request

*Nb. The format of this Services Request may be amended provided the content remains the same.*

<b>Services Request No.</b>	
<b>Task Number:</b>	
<b>Task Team:</b>	[NAME OF TEAM]
<b>Commencement Date:</b>	[DATE ON WHICH WORK UNDER THIS SERVICES REQUEST SHOULD COMMENCE]
<b>Conclusion Date:</b>	[DATE ON WHICH WORK UNDER THIS SERVICES REQUEST SHOULD CEASE OR BY WHICH ALL DELIVERABLES SHOULD BE PROVIDED]
<b>Maximum Value:</b>	[MAXIMUM VALUE OF RQUEST AUD FOR AUD BASED SERVICES AND O/S DOLLARS FOR O/S BASED SERVICES AND MATERIALS]
<b>Introduction</b>	[...INSERT SUMMARY OF REQUIREMENT ...]
<b>Background</b>	[...INSERT BACKGROUND TO REQUIREMENT ...]
<b>Scope of Work</b>	<p><b>Option A:</b> If an Agency is performing a specific job (produce a report etc) you may choose to use clauses similar to the following:</p> <p>Outline of Phases</p> <p>The Agency will undertake the work in the following phases:</p> <p>Phase 1:      [...INSERT DETAILS...];</p> <p>Phase 2:      [...INSERT DETAILS...];</p>

	<p>Phase 3: [...INSERT DETAILS...]; etc</p> <p>Phase 1: [...INSERT DETAILS OF PHASE/NAME...]</p> <p>The Agency will .....</p> <p>The Agency will .....</p> <p>Phase 2: [...INSERT DETAILS OF THE PHASE/NAME...]</p> <p>The Agency will .....</p> <p>The Agency will ....</p> <p><b>Option B:</b> If an Agency is performing ongoing duties rather than a specific discrete job, you may choose to use clauses similar to the following:</p> <p>Agency Responsibilities</p> <p>The Agency will:</p> <p>[...INSERT DETAILS AS APPROPRIATE...]; and</p> <p>draft and staff documentation including: Plans Reports</p>			
<b>Review Points</b>	[INDICATE POINTS AT WHICH THE TASK MAY BE SUBJECT TO REVIEWS, NOT ALL MAY BE RELEVANT TO THIS SERVICES REQUEST]			
<b>Authorised Representative</b>				
<b>Deliverables</b>	<b>Deliverable</b>	<b>Format</b>	<b>Location (to be delivered to)</b>	<b>Delivery Date</b>

<b>Warranty</b>	Period of Warranty			

Access to Facilities/Non-transportable Equipment	Name of Facilities/Equipment	Dates of access		Proposed uses	

Use of Transportable Equipment	Name of Equipment	Date of Delivery	Place of Delivery	Date of pick-up	Place of pick-up

Specified Personnel	Position	Name

<b>Sub-contractors</b>	[INDICATE IF SUB-CONTRACTORS MAY BE USED AND IF SO ANY APPLICABLE LIMITATIONS ON THEIR USE]
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Rates	Personnel (position and grade)	Rate (AUD or source currency)/ per hr or per day	Hours/days	GST	Total
	Equipment	Rate (AUD or source currency)/ per hr or per day	Hours/days	GST	Total

	Prototype		Fee	GST	Total
<b>Travel</b>					
	Applicable travel (include routes and class)		Payment (indicate if reimbursable or if provided by RPDE Program)		
Allowances	Position	Allowances (per hr/per day)	Total	To be paid or reimbursed?	
<b>Special Conditions</b>					

Accepted on behalf of the Agency:

.....  
 (Signature of Authorised Officer) (date)

.....  
 (Signature of Witness) (date)

(Position/Title)

(Position/Title)