

The Standing Offer made on the of 20.....between:

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

and the

<insert name of Contractor>

“the Contractor”

Collectively called the “Parties”

RECITALS

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

THE PARTIES AGREE AS FOLLOWS:

VERSION – 1.3

Date: Aug 2008.

CONDITIONS OF STANDING OFFER

TABLE OF CONTENTS

1.	STANDING OFFER FRAMEWORK.....	4
1.2	Definitions.....	4
1.3	Commencement of Operation & Term	4
1.4	Entire Agreement.....	4
1.5	Precedence of Documents.....	5
2.	SERVICES.....	5
2.1	Services Request and Services Contract.....	5
2.2	Sub-Contractors	5
3.	EQUIPMENT, FACILITIES AND PROTOTYPES	6
3.1	Conditions applicable to Transportable Equipment	6
3.2	Conditions applicable to Non-transportable Equipment or Facilities.....	6
3.3	Conditions applicable to all Equipment	7
3.4	Manufacture of Prototypes.....	8
3.5	Ownership and risk.....	8
4.	INTELLECTUAL PROPERTY, TECHNICAL DATA AND COMMERCIAL-IN-CONFIDENCE INFORMATION	9
5.	WARRANTIES AND REPRESENTATIONS.....	9
6.	PRICE & PAYMENT	10
6.1	Payment and invoice	10
6.2	Rates.....	11
6.3	Taxes and Duties.....	12
7.	INSURANCE AND LIABILITY	13
7.1	Indemnity.....	13
7.2	Insurance.....	14
8.	STANDING OFFER MANAGEMENT	14
8.1	Notices	14
8.2	Change to the Standing Offer	14
8.3	Waiver	14
8.4	Assignment and Novation.....	14
8.5	Negation of Employment and Agency.....	15
8.6	Commonwealth Audit Powers.....	15
9.	POLICY AND LAW	16
9.1	Applicable Law	16
9.2	Policy Requirements.....	16
9.3	Occupational Health and Safety.....	16

- 9.4 Post Defence Separation Employment17
- 9.5 Severability17
- 9.6 Privacy.....17
- 9.7 Survivorship.....18
- 10. DISPUTE RESOLUTION18
 - 10.1 Resolution of Disputes.....18
- 11. SUSPENSION AND TERMINATION.....19
 - 11.1 Cessation and Suspension of Services.....19
 - 11.2 Termination of Standing Offer19
- 12. RIGHT OF COMMONWEALTH TO RECOVER MONEY19
- Schedule A - Rates22
- Schedule B - Services Request Proforma25

1. STANDING OFFER FRAMEWORK

1.1.1 This Standing Offer constitutes a standing offer for the Term during which the Commonwealth may engage the Contractor to provide Services to the RPDE Program as and when required.

1.1.2 The Services provided include but are not limited to:

- a. Provision of Personnel to the RPDE Program;
- b. Provision of representatives to the Board;
- c. Support to RPDE Program Tasks;
- d. Provision of Equipment and Facilities; and
- e. Design, development and manufacture of Prototypes.

1.2 Definitions

1.2.1 In this Standing Offer:

- a. Rates means the rates in Schedule A.
- b. Glossary means the glossary of terms attached at Schedule 5 of the Relationship Agreement.
- c. Unless the contrary intention appears definitions and interpretations are set out in the Glossary.

1.3 Commencement of Operation & Term

1.3.1 This Standing Offer commences on the Effective Date, and continues in effect until terminated in accordance with these terms and conditions or until the Contractor ceases to be a party to the Relationship Agreement.

1.3.2 The Contractor will fulfil all Services Contracts let under this Standing Offer notwithstanding that the completion of the Services Contract may occur after the expiry or termination of this Standing Offer.

1.4 Entire Agreement

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

1.5 Precedence of Documents

- 1.5.1 If there is any inconsistency between provisions of this Standing Offer, any Services Contract, the Relationship Agreement and the Policies precedence will be as set out in the Relationship Agreement.
- 1.5.2 No pro forma conditions in any Services Request will have any binding effect on the Parties.

2. SERVICES

2.1 Services Request and Services Contract

- 2.1.1 The General Manager may request the Contractor to provide Services as set out in a Services Request.
- 2.1.2 The Contractor will respond to a Services Requests in accordance with the time frame specified in that Services Request.
- 2.1.3 The Contractor will then either:
 - a. offer to perform the Services Request in accordance with the Services Request;
 - b. propose amendments to the Services Request; or
 - c. decline to perform the Services Request.
- 2.1.4 If the Contractor offers to perform the Services Request, the General Manager will either accept the Contractor's offer or enter into further negotiations with the Contractor.
- 2.1.5 The parties agree that a binding contract is formed upon the General Manager or General Manager's authorised representative's acceptance of a Services Request as negotiated and including any special conditions and that the contract (the **Services Contract**) so formed incorporates:
 - a. the terms and conditions of this Standing Offer,
 - b. the details and requirements in the Services Request;
 - c. the Relationship Agreement; and
 - d. the Policies.
- 2.1.6 The Contractor is not to respond to any instructions regarding a Services Contract other than instructions from the Authorised Representative.

2.2 Sub-Contractors

- 2.2.1 The Contractor may sub-contract any part of a Services Contract in accordance with this clause 2.2 and the Policies.

- 2.2.2 The Contractor, by sub-contracting any part of the Services, will not be relieved of its liabilities or obligations under the Relationship Agreement or Standing Offer and will be responsible for all sub-contractor work and services.
- 2.2.3 The Contractor will not enter into a sub-contract with an organisation named by the Director of Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*.
- 2.2.4 The Contractor agrees that where the value of a sub-contract or multiple sub-contracts with the same sub-contractor is 25% or more of the value of the Services Contract the Contractor will use its best endeavours to include provisions within the sub-contract granting the Commonwealth substantially the same rights as available to the Commonwealth under clause 8.6 (Commonwealth Audit) and clause 11 (Suspension and Termination) in respect of the sub-contractor. Where the Contractor is unable to include these provisions the Contractor will consult with the Commonwealth as to an appropriate course of action.

3. EQUIPMENT, FACILITIES AND PROTOTYPES

3.1 Conditions applicable to Transportable Equipment

- 3.1.1 Where a Party provides Transportable Equipment (**the Owing Party**) to the other Party (**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 in 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 Owing Party upon collection of the Transportable Equipment from the Receiving Party; and
 - c. the Receiving Party must comply with any reasonable written instructions provided by the Owing Party about use and storage of the Transportable Equipment by the Receiving Party, including any instructions contained in a Services Request.

3.2 Conditions applicable to Non-transportable Equipment or Facilities

- 3.2.1 Where a Party provides access to and use of Non-transportable Equipment or Facilities (**the Owing Party**) to another party under 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; and
- 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 clause 3.2.1a.

3.3 Conditions applicable to all Equipment

3.3.1 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 by the Owing Party in appropriate working order 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.

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

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

3.3.4 Subject to clause 7.1, if:

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

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

3.4 Manufacture of Prototypes

- 3.4.1 In accordance with a Services Request and clause 2 the General Manager may request the Contractor to provide Services being the design, development and manufacture of a Prototype.
- 3.4.2 The Contractor 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 Contractor will comply with those requirements.
- 3.4.3 Unless otherwise stated in the Services Contract, the design, development and manufacture of any Prototype will include the delivery of the Prototype to the Commonwealth at the RPDE Program Facilities.
- 3.4.4 The Contractor will not provide Prototypes containing any Ozone Depleting Substances or Hazardous Substances except for those substances authorised in writing by the General Manager.
- 3.4.5 The Contractor 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.
- 3.4.6 To the extent possible and 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.
- 3.4.7 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.

3.5 Ownership and risk

- 3.5.1 Unless otherwise specified in a Services Contract ownership of any Prototype or material manufactured or created under a Services Contract will pass to the Commonwealth upon final payment relating to that Services Contract in accordance with clause 6.

- 3.5.2 At the time ownership of a Prototype or material passes to the Commonwealth, that Prototype or material must be free of any registered or unregistered charge, lien, mortgage or other encumbrance.
- 3.5.3 Risk of loss of or damage to the Prototype or material resides with the Contractor until the Prototype or material has been delivered in accordance with the Services Contract.
- 3.5.4 Where the General Manager returns the Prototype for further work, risk of loss of, or damage to, that Prototype will revert to the Contractor on repossession or 7 days after notification of return, whichever is the earlier.
- 3.5.5 Where required the Contractor will undertake all reasonable assistance to confirm the Commonwealth's ownership of a Prototype or material in accordance with clause 3.5.1.

4. INTELLECTUAL PROPERTY, TECHNICAL DATA AND COMMERCIAL-IN-CONFIDENCE INFORMATION

- 4.1.1 The Parties agree to comply with the provisions in the Relationship Agreement in relation to Intellectual Property, Technical Data and Commercial- in- Confidence Information.

5. WARRANTIES AND REPRESENTATIONS

- 5.1.1 Each Party warrants that:
 - a. any Personnel supplied by that Party under a Services Contract will be appropriately, skilled, qualified and experienced to fulfil the requirements of the Services Contract;
 - b. the Services by that Party will meet the requirements of its Standing Offer and any Services Contract;
 - c. it has the necessary expertise, experience, capacity and capability required to perform the Services in accordance with this Standing Offer;
 - d. any Equipment or Facilities that it provides meets the technical specifications detailed in the relevant Services Contract;
 - e. it will undertake the manufacture of any Prototype specified in a Services Contract with the appropriate skill, incorporating the appropriate materials and to the appropriate standards; and
 - f. it will ensure that the design, materials and workmanship in any Prototype or Equipment will conform with, and meet, the requirements of the Services Contract under which the Party supplies the Prototype or Equipment.
- 5.1.2 Clause 5.1.1f does not apply to the extent that Equipment provided by the Contractor is Commercial Off the Shelf (**COTS**) Equipment in which instance the Contractor warrants that the COTS Equipment is appropriate and provides to the Commonwealth the full extent of any warranty available to the Contractor.

- 5.1.3 The warranty provided under clause 5 will not apply to the extent that the error or defect arises from the other Party's or another contractor's negligence or wilful misconduct.
- 5.1.4 Each Party will remedy any errors or defects in Services that are notified to that Party by the Commonwealth during the period specified in the Services Contract.
- 5.1.5 Each Party, unless otherwise agreed, will meet all costs of, and incidental to, the performance of remedial work to ensure its compliance with this clause 5.
- 5.1.6 Each Party will meet all costs of, and incidental to the discharge of its warranties under clause 5.
- 5.1.7 Subject to clause 7 the rights and remedies provided in clause 5 are the sole remedies available to a Party for any breach of this clause.

6. PRICE & PAYMENT

6.1 Payment and invoice

- 6.1.1 When the Contractor submits a claim for payment it will:
 - a. be a correctly rendered Tax Invoice;
 - b. be accompanied by any documentation necessary to establish, to the satisfaction of the General Manager, that the claim is in accordance with the Services Contract; and
 - c. indicate the:
 - (i) Services Contract number;
 - (ii) Task number or name; and
 - (iii) amount and method of calculation of any Goods and Services Tax payable by the Contractor in relation to that claim for payment as a separate item.
- 6.1.2 The maximum price of a Services Contract will be as specified in the Services Contract.
- 6.1.3 The Contractor agrees that invoices will be submitted in accordance with the timing and dates identified in the Policies (but not more frequently than monthly or in accordance with a Services Contract's milestones).
- 6.1.4 On receipt of a claim for payment the General Manager will either:
 - a. approve the claim where it is submitted in accordance with clause 6.1; or
 - b. reject the claim where the claim is not submitted in accordance with clause 6.1 or the General Manager is not satisfied that the Services have been provided in accordance with the Services Contract.
- 6.1.5 Where a claim is approved under clause 6.1.3, the Commonwealth will make payment within 30 days of submission of the invoice into the bank account specified

within the applicable Services Contract. Where an invoice refers to more than one Services Contract payment will be made into the bank account specified in the invoice, or, where no account is specified into any account specified in any of the Services Contracts.

- 6.1.6 Where the General Manager rejects the claim, the General Manager will, within 14 days of receipt of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.
- 6.1.7 Upon receipt of a notice issued pursuant to clause 6.1.6, the Contractor will immediately take all necessary steps to make the Services and the claim for payment conform to the requirements and will submit a revised claim to the General Manager when such action is complete. The resubmitted claim will be subject to the same conditions as if it were the original claim.

6.2 Rates

- 6.2.1 The Rates applicable to a Services Contract will be the Rates in force at the date the Services are provided.
- 6.2.2 The Contractor is responsible for ensuring the adequacy of any workers' compensation, payment of any sick pay, holiday pay, PAYE tax, fringe benefit tax, payroll tax, superannuation and other statutory charges in relation to any Seconded or Personnel working under a Services Contract. None of these amounts are recoverable by the Contractor from the Commonwealth other than in accordance with the Rates.
- 6.2.3 The Contractor agrees to indemnify the Commonwealth in respect of any fine, penalty or other charge imposed on the Commonwealth as a result of the non-compliance with clause 6.2.2.
- 6.2.4 Where a requirement for the provision of equipment or facilities is identified in a Services Request the price, payment structure and method of payment will be specified in the applicable Services Contract.
- 6.2.5 Where the Contractor is authorised by the General Manager or through a Services Contract to purchase goods or services (except travel) on behalf of the RPDE Program then such purchases are to be made in accordance with the Policies and, unless otherwise stated in the Services Contract, will be reimbursed on the basis of cost + 10%.
- 6.2.6 Where a Services Contract involves:
- a. Personnel wholly based in a country other than Australia;
 - b. Equipment or Facilities wholly based in a country other than Australia; or,
 - c. components or raw materials sourced entirely from a country other than Australia,
- the relevant components of the price will be expressed in the Source Currency.
- 6.2.7 Commencing in 2006 the Commonwealth will review and adjust the Rates at 1st August each year, to reflect changes in the cost of labour, and the revised rates will

take effect retrospectively from 30 June. Rates will be reviewed in accordance with the following formula:

The Formula:

$$RP = AP \times \frac{V}{V0}$$

where:

RP is the revised price;

AP is the initial price at the Effective Date;

V is the index numbers for the quarter preceding the quarter containing the price revision date; and

V0 is the index number for the quarter containing the Effective Date.

The Index:

Description of Index	Table	Group
Total Hourly Rates of Pay Excluding Bonuses	ABS 6345 - Wage Cost Index - Table 7(b)	Private Professionals

6.3 Taxes and Duties

- 6.3.1 Subject to clause 6.3.2 all taxes, duties and government charges imposed or levied in Australia or overseas in connection with a Services Contract will be met by the Contractor and will be included within the Rates.
- 6.3.2 The Rates will include Goods and Services Tax (GST) for Services to be delivered under the Services Contract which are Taxable Supplies within the meaning of the GST Act.
- 6.3.3 Where the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid Tax Invoice, the Contractor will issue to the Commonwealth a valid Adjustment Note in accordance with the GST Act.
- 6.3.4 If the Commonwealth makes, or is assessed by the ATO as having made, a Taxable Supply to the Contractor under or in connection with this Standing Offer or Services Offer, the Commonwealth will be entitled to recover from the Contractor upon presentation of a valid Tax Invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 6.3.5 Any amount of GST to be paid by the Contractor under clause 6.3.4 will be a debt recoverable by the Commonwealth.
- 6.3.6 To avoid doubt, any GST levied in Australia upon any Taxable Importation, made in connection with a Services Contract, will be borne by the Party importing the goods and entering the goods for home consumption (within the meaning of the *Customs Act 1901*). The GST levied upon any Taxable Importation will not be included in Rates.

7. INSURANCE AND LIABILITY

7.1 Indemnity

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

- a. subject to 7.1.2:
 - (i) under the direction of the Contractor; or
 - (ii) by the officers, employees and agents of a Participant to the extent that they are not engaged under a Services Contract; or .
- b. outside the RPDE Program.

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

7.1.2 The Contractor is not liable for any acts or omissions undertaken in accordance with:

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

7.1.3 The Contractor's liability to and obligation to indemnify the Commonwealth under clause 7.1.1 will be reduced proportionately to the extent that any acts or omissions on the part of the Commonwealth, including the Commonwealth's officers, employees or agents, directly contributed to the Proceedings.

7.1.4 Where a Services Contract may require the Contractor to manufacture and deliver a Prototype:

- a. the Contractor agrees to assist the Commonwealth, at the Commonwealth's expense under a Services Contract, to undertake any necessary risk assessments regarding the Prototype; and
- b. provided the Contractor has complied with clause 7.1.4a and the Commonwealth proceeds with a part of the Services Contract relating to the Prototype, the Commonwealth will indemnify the Contractor including the Contractor's officers, employees or agents against Proceedings arising out of or as a consequence of the design, manufacture, delivery, use or operation of the Prototype.

7.1.5 The Commonwealth's liability to indemnify the Contractor under clause 7.1.4 will be reduced proportionately to the extent that any acts or omissions on the part of the Contractor, including the Contractor's officers, employees or agents, is covered by clause 7.1.1.

7.2 Insurance

- 7.2.1 Before commencing work under this Standing Offer, the Contractor will:
- a. be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Contractor, including liability under statute and common law;
 - b. have and maintain professional indemnity insurance for an amount of not less than AUD5 million; and
 - c. have current public liability insurance for an amount of not less than AUD20 million.
- 7.2.2 Unless otherwise agreed by the Commonwealth the Contractor will ensure each sub-contractor is insured against the sub-contractor's corresponding liabilities.
- 7.2.3 The Contractor will maintain the insurance required by this clause 7.2 for the term of this Standing Offer or until completion of all Services Contracts, whichever ever occurs last.
- 7.2.4 On request by the Commonwealth or the General Manager the Contractor will provide satisfactory evidence of the insurance referred to in clause 7.2 to the Contract Authority.

8. STANDING OFFER MANAGEMENT

8.1 Notices

- 8.1.1 Any notice or communication under this Standing Offer will be valid if it is:
- a. in writing, signed; and
 - b. delivered in accordance with the Policies.

8.2 Change to the Standing Offer

- 8.2.1 Any variation to this Standing Offer must be in writing and signed by both parties.
- 8.2.2 Except for any variation to Rates, this Standing Offer may only be varied in accordance with the Policies.

8.3 Waiver

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

8.4 Assignment and Novation

- 8.4.1 Neither Party may assign in whole or in part, its rights under the Standing Offer.
- 8.4.2 A Contractor may only novate this Standing Offer with the written agreement of the Commonwealth.

- 8.4.3 Where a Contractor proposes to enter into any arrangement that will require the novation of the Standing Offer, it will notify the Commonwealth within a reasonable period prior to the proposed novation.

8.5 Negation of Employment and Agency

- 8.5.1 Except when acting with the express written authority of the Commonwealth, the Contractor will not represent itself, and will ensure that its officers, employees, and agents do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 8.5.2 The Contractor, its officers, employees and agents will not by virtue of this Standing Offer be, or for any purpose be deemed to be, an employee, partner, agent or trustee of the Commonwealth.
- 8.5.3 Except as otherwise specifically provided in a Services Contract, the Contractor does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of the Commonwealth.
- 8.5.4 This Standing Offer is not intended to create nor will it be construed as creating any legal partnership, joint venture or fiduciary relationship between the Commonwealth and the Contractor.

8.6 Commonwealth Audit Powers

- 8.6.1 During the performance of the Standing Offer, the Contractor will permit the Commonwealth or any person authorised by the Commonwealth access to its Facilities, and access to any of its records or accounts in connection with performance of work under the Standing Offer. The Commonwealth may copy any relevant records or accounts for the purposes of this clause.
- 8.6.2 Without limiting the generality of clause 8.6.1, the purposes for which the Commonwealth may require access include:
- a. investigating the reasonableness of proposed prices or costs or rates;
 - b. ensuring that the Contractor is still compliant with the Industry Member Criteria or Associate Criteria;
 - c. inspecting, conducting or checking Commonwealth provided Equipment or Facilities or other material; and
 - d. determining whether and to what extent steps should be taken to register or otherwise protect Foreground IP.
- 8.6.3 The Commonwealth will comply with, and will require any delegate or person authorised by the Commonwealth to comply with, any reasonable Contractor's safety and security requirements or codes of behaviour for the Contractor's Facilities.
- 8.6.4 Where the Commonwealth authorises a third party that is a direct commercial competitor of the Contractor (whether or not they are a Participant) to undertake any action under this clause the Contractor may refuse to give that third party access to the Contractor's premises or information.

9. POLICY AND LAW

9.1 Applicable Law

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

9.2 Policy Requirements

- 9.2.1 The Contractor will comply with and require its officers, employees, agents and sub-contractors to comply with the following Commonwealth policies of general application relevant or applicable to the Standing Offer:
- a. Australian Industry Involvement as detailed in Defence and Industry Strategic Policy Statement, June 1998, and Australian Industry Involvement Manual January 2001;
 - b. Defence Equity and Diversity policy as detailed in the Defence plain-English guide to Managing and Eliminating Unacceptable Behaviour in the Workplace, May 2000 and Departmental Personnel Instruction No 1/2001;
 - c. Defence Fraud Control Plan and Defence CEIs 2.1 Fraud Control in Defence;
 - d. Equal Opportunity for Women in the Workplace policy as detailed in the Defence Procurement Policy Manual, Version 5.0, 2004;
 - e. Freedom of Information policy as detailed in the Defence Procurement Policy Manual, Version 5.0, 2004;
 - f. Hazardous Substances policy as detailed in the Defence Procurement Policy Manual, Version 5.0, 2004;
 - g. Information Management policy as detailed in Defence Information Management Policy Instruction No 4/2001 and Defence Information Environment Provision of Defence Email and Internet Services detailed in Defence Information Management Policy Instruction No 5/2001;
 - h. Information Privacy Principles of the Privacy Act 1988;
 - i. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the Defence Procurement Policy Manual, Version 5.0, 2004; and
 - j. Ozone Depleting Substances Policy as detailed in the Defence Procurement Policy Manual, Version 5.0, 2004.

9.3 Occupational Health and Safety

- 9.3.1 The Contractor will perform its obligations under the Standing Offer in such a way that:
- a. Commonwealth employees (as defined in Section 9(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*) are able to

participate in any necessary inspections of work in progress and tests and evaluations of the Services without the Commonwealth being in breach of; and

- b. the Commonwealth is, as from delivery of the Services, or any part of the Services, able to maintain and to make full use of the Services for the purposes for which they are intended without being in breach of,

any Occupational Health and Safety statutory requirements which apply to the Services.

9.4 Post Defence Separation Employment

9.4.1 The Contractor will ensure that any employee who is a former Defence Employee complies with the requirements of DRB19 and DI(G) PERS 25-4 (as amended or replaced) and the Policies as applicable.

9.4.2 In this clause:

- a. "Defence" means the Department of Defence and/or the Australian Defence Force;
- b. "Employee" means an employee of Defence or a member of the Australian Defence Force.

9.5 Severability

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

9.6 Privacy

9.6.1 The Parties will:

- a. use or disclose Personal Information obtained during the course of providing Services under the Standing Offer, only for the purposes of the Standing Offer;
- b. not do any act, or engage in any practice that would breach an Information Privacy Principle contained in section 14 of the **Privacy Act 1988** (the **Act**), which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
- c. not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the Act, or a National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Standing Offer; or
 - (ii) in the case of a National Privacy Principle or an Approved Privacy Code – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Standing Offer, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;

- d. notify individuals whose Personal Information is held by a Party or sub-contractor, as the case may be, of the complaints mechanism outlined in the Act that may apply to the Party;
- e. disclose in writing to any person who asks, the content of the provisions of this Standing Offer (if any) that are inconsistent with a National Privacy Principle or an Approved Privacy Code, binding a Party to the Standing Offer;
- f. carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Act; and
- g. ensure that any employee or agent of a Party who is required to deal with Personal Information for the purposes of the Standing Offer, is made aware of the obligations of the Party as set out in this clause 9.6.

9.6.2 Each Party will promptly notify the Commonwealth where:

- a. it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in clause 9.6, whether by the Party or a sub-contractor;
- b. it becomes aware that a disclosure of Personal Information may be required by law; or
- c. it is approached by the Privacy Commissioner, or by any individual to whom any Personal Information relates.

9.6.3 Each Party will ensure that any sub-contract entered into for the purposes of fulfilling its obligations under the Standing Offer, contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Parties have under this clause, including the requirement in relation to sub-contracts.

9.6.4 Nothing in this clause is intended to prevent the Parties from complying with their obligations in relation to *International Traffic in Arms Regulations (USA)* or similar. Where compliance with such regulations may result in the breach of clause 9.6 the Party will consult with and follow the directions of the Commonwealth and, if necessary, the Privacy Commissioner.

9.7 Survivorship

9.7.1 Any provision of the Standing Offer which expressly or by implication from its nature is intended to survive the termination or expiration of the Standing Offer and any rights arising on termination or expiration will survive, including Commercial-in-Confidence Information, Privacy, Intellectual Property and the right of the Commonwealth to recover money, Defence Security and any warranties, guarantees, licences, indemnities, limitation of liability or financial and performance securities given under the Standing Offer.

10. DISPUTE RESOLUTION

10.1 Resolution of Disputes

10.1.1 The Parties agree to resolve any dispute in accordance with the Relationship Agreement and the Policies.

10.1.2 This clause 10 applies even where the Standing Offer is otherwise void or voidable.

10.1.3 Unless otherwise agreed, the Contractor and the Commonwealth will at all times during the dispute proceed to fulfil its obligations under the Standing Offer except where such obligations directly relate to the matter in dispute.

11. SUSPENSION AND TERMINATION

11.1 Cessation and Suspension of Services

11.1.1 The Commonwealth may terminate any Services Contract or reduce the scope of any Services Contract or suspend the operation of a Services Contract for convenience by issuing a written notice to the Contractor.

11.1.2 Where the Commonwealth issues a notice under clause 11.1.1 the Contractor shall:

- a. stop work in accordance with notice;
- b. comply with any directions given to the Contractor by the Commonwealth; and
- c. mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in accordance with the termination including those arising from affected subcontracts.

11.1.3 The Commonwealth shall only be liable for:

- a. payments under the payment provisions of the Services Contract for work conducted before the effective date of termination; and
- b. any reasonable costs incurred by the Contractor that are directly attributable to the termination,

where the Contractor substantiates these amounts to the satisfaction of the Contract Authority.

11.1.4 The Contractor will not be entitled to profit anticipated on any part of the Services Contract terminated.

11.2 Termination of Standing Offer

11.2.1 This Standing Offer terminates automatically upon termination of the Relationship Agreement or the Contractor's expulsion or retirement from the Relationship Agreement.

12. RIGHT OF COMMONWEALTH TO RECOVER MONEY

12.1.1 Without limiting the Commonwealth's rights under the Standing Offer or a Services Contract where the Contractor owes any debt to the Commonwealth in relation to a Services Contract, the Commonwealth may at its discretion exercise one or both of the following:

- a. deduct the amount of the debt from payment of any claim under the Standing Offer or a Services Contract; or
- b. provide the Contractor with written notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days of receipt of notice.

12.1.2 Where any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor shall pay to the Commonwealth interest at the Department of Finance and Administration sourced overdraft rate current at the date the payment was due for each the payment is late.

12.1.3 Nothing in clause 12 shall affect the right of the Commonwealth to recover from the Contractor the whole of any debt owed by the Contractor, or any balance that remains owing after the deduction.

SIGNED AS AN AGREEMENT

Signed for and on behalf of **THE
COMMONWEALTH OF AUSTRALIA:**

in the presence of:

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

Address of witness

Signed for and on behalf of
XXXXXXXPTY LTD

in the presence of:

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

Address of witness

Schedule A - Rates**TABLE OF RATES (PER DAY, GST INCLUSIVE) - August 2008**

Skills Category	Technician		Professional		Specialist	
	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term
Audit	933	846	1124	1010	1310	1179
Commercial	873	785	1032	922	1245	1124
Communications/Electronics	999	894	1184	1064	1369	1238
Data Analysis/Management	807	731	933	846	1124	1010
Electronic Systems	1059	950	1245	1124	1495	1348
Engineering (other than specified)	933	846	1092	998	1282	1163
Environmental Engineering	998	894	1124	1010	1282	1163
Human Resources	807	731	933	846	1495	1064
Human Sciences	1059	950	1245	1124	1495	1348
Information Security/Intelligence	1124	1010	1310	1179	1528	1369
Information Systems	1059	950	1245	1124	1436	1294
Integrated Logistics	1059	950	1217	1097	1342	1201
Networks	1097	998	1282	1163	1468	1321
Operations Analysis/Research	1059	950	1310	1179	1561	1391
Project Management	1124	1010	1310	1179	1561	1391
Requirements Analysis	1097	998	1282	1163	1495	1348
Risk Analysis	933	846	1124	1010	1310	1179
Safety	873	785	1032	922	1233	1114
Sensors and Effectors	1059	950	1217	1097	1408	1267
Software Engineering	1124	1010	1310	1179	1621	1458
Strategic Analysis	1124	1010	1245	1124	1561	1391
Systems Engineering	1097	998	1282	1163	1468	1321
Systems/Platform Integration	1097	998	1178	1163	1468	1321
Test and Evaluation	998	894	1184	1064	1369	1238
Training/Training Needs	807	731	966	862	1217	1097

Definitions:

Per Day means a standard 8 hour day

Qualifications must demonstrate relevance to the skill category

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

Technician:

- Vocational/NATA/Post-Secondary Accreditation with a minimum of 3 years experience, or
- Graduate/Post Graduate

Professional:

- Technician with 8 years experience, or
- Graduate qualifications with 3 years experience, or
- Post Graduate qualifications with 1 year experience

Specialist:

- Technician with 15 years experience, or
- Graduate qualifications with 8 years experience, or
- Post Graduate qualifications with 4 years experience

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

Long Term – All assignments longer than 12 months where the work is performed at facilities provided by, or on behalf of, the RPDE Program.

Rates will be reviewed in accordance with clause 6.2.7.

CORE RATES – August 2008

Salary ranges are per annum based on a two-year contract with up to three one-year options.

Salary ranges are sell rates to the Commonwealth including GST.

General Manager	\$ 249,521 – 374,555
Operations Manager	\$ 218,400 – 312,311
Industry/R&D Liaison Manager	\$ 218,400 – 312,311
Commercial Manager	\$ 174,720 – 249,521
Senior Analyst	\$ 199,836 – 249,521
Task Leader	\$ 187,278 – 249,521
Commercial Staff	\$ 124,487 – 156,156
Technical Staff	\$ 137,045 – 174,720
Administrative Staff	\$ 99,918 – 124,487
Board Member	\$ 1779 per meeting day, GST inclusive

Travelling Allowance Rate (allowances)

The following allowances shall be paid to the Contractor under a Services Contract:

Where the Commonwealth has provided its prior consent, the Contractor shall be entitled to reimbursement of travel and accommodation expenses for the following Contractor Personnel categories engaged under a Services Contract:

- a. **Core Team Personnel and Personnel performing Tasks** - up to the Commonwealth Non SES Travelling Allowance rates which have been adjusted to include an element for GST. All claims for such allowances shall be submitted on a valid tax invoice showing the GST exclusive price, with GST then being charged on the total amount. The total GST inclusive claim for such allowances shall not exceed that of the total allowable Commonwealth Non SES Travelling Allowances.

As an alternative to reimbursement of such expenses, and at the discretion of the Commonwealth, the Commonwealth may undertake to arrange travel and accommodation required by the Contractor for the purposes of the Services Contract. The Contractor shall promptly supply all necessary information required by the Commonwealth to make these arrangements.

- b. **Board Members and the General Manager** - up to the Commonwealth SES Travelling Allowance rates which have been adjusted to include an element for GST. All claims for such allowances shall be submitted on a valid tax invoice showing the GST exclusive price, with GST then being charged on the total amount. The total GST inclusive claim for such allowances shall not exceed that of the total allowable Commonwealth SES Travelling Allowances.

As an alternative to reimbursement of such expenses, and at the discretion of the Commonwealth, the Commonwealth may undertake to arrange travel and accommodation required by the Contractor for the purposes of the Services Contract. The Contractor shall promptly supply all necessary information required by the Commonwealth to make these arrangements.

If requested by the Commonwealth, the Contractor shall provide satisfactory evidence to substantiate any specified claim for allowances prior to any payment of the related claim.

Travelling Allowance rates provided to the Contractor under a Services Contract have been supplied to the Department of Defence under licence by the Department of Employment and Workplace Relations for Defence Purposes only. The Contractor shall not make public or disclose the Travelling Allowance Rates to other agencies, organisations or individuals without the prior written consent of the Department of Defence. This obligation shall survive the expiration or termination of the Services Contract and shall apply regardless of whether the Travelling Allowance Rates are or become public knowledge.

Schedule B - Services Request Proforma

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

Services Contract No:	
Task Number:	
Authorised Representative (cl. 2.1.6)	
Task Team:	[NAME OF TEAM]
Commencement Date:	[DATE ON WHICH WORK UNDER THIS SERVICES REQUEST SHOULD COMMENCE]
Conclusion Date:	DATE ON WHICH WORK UNDER THIS SERVICES REQUEST SHOULD CEASE OR BY WHICH ALL DELIVERABLES SHOULD BE PROVIDED]
Maximum value	[MAXIMUM VALUE OF REQUEST AUD FOR AUD BASED SERVICES AND O/S DOLLARS FOR O/S BASED SERVICES AND MATERIALS]
Introduction	[...INSERT SUMMARY OF REQUIREMENT...]
Background	[...INSERT BACKGROUND TO REQUIREMENT...]
Scope of Work	<p>Option A: If a Contractor 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 Contractor 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 Phase 1: [...INSERT DETAILS OF PHASE/NAME...] The Contractor will..... The Contractor will</p> <p>Phase 2: [...INSERT DETAILS OF THE PHASE/NAME...] The Contractor will</p> <p>The Contractor will</p> <p>Option B: If a Contractor is performing ongoing duties rather than a specific discrete job, you may choose to use clauses similar to the following: Contractor Responsibilities The Contractor will: [...INSERT DETAILS AS APPROPRIATE. ...]; and draft and staff documentation including: Plans Reports</p>						
Review Points	[INDICATE POINTS AT WHICH THE TASK MAY BE SUBJECT TO REVIEWS. NOT ALL MAY BE RELEVANT TO THIS SERVICES REQUEST]						
Authorised Representative							
Deliverables (include any technical data that needs to be specified)	No.	Deliverable	Ownership to pass to Cth on final payment? If not specify when ownership is to pass	Format	Location (to be delivered to)	Delivery Date	For Prototypes Cth Indemnity granted? If so please specify the amount of indemnity.

Warranty	Period of warranty						

Access to Facilities/Non-transportable Equipment	Name of Facilities/Equipment/Technical specification¹	Maintenance² Standard (S) Or Other (O) If Other indicate who is responsible for maintenance and to what standard.	Dates of access		Proposed uses		Insurance³ Indicate if proposed uses will incur additional insurance premiums

Use of Transportable Equipment	Name of equipment/Technical specifications	Maintenance Standard (S) Or Other (O) If Other indicate who is responsible for maintenance and to what standard.	Date of delivery	Place of delivery	Date of pick-up	Place of pick-up	Insurance Indicate if proposed uses will incur additional insurance premiums and/or any limitations on the insurance coverage.

Specified Personnel	Position	Name

¹ If equipment must meet technical specification please detail these specifications (see clause 5.1.1(d) of the Standing Offer.
² Standard is the default position under the Standing Offer – namely that the owning party maintains the equipment.
³ Additional premiums may be paid by the Commonwealth refer to clause 3.3 of the Standing Offer.

Sub-contractors	[INDICATE IF SUB-CONTRACTORS MAY BE USED AND IF SO ANY APPLICABLE LIMITATIONS ON THEIR USE]					
Payment	Personnel (position and grade)	Rate (AUD or source currency)/ per hr or per day	Hours/days	GST	Total	Notice period/ payment in lieu of notice
	Equipment	Rate (AUD or source currency)/ per hr or per day	Hours/days	GST	Total	
	Prototype	Fee		GST	Total	
Travel	Applicable travel (include routes and class)		Payment (indicate if reimbursable or if provided by RPDE Program)			
Allowances	Position	Allowance (per hr/per day)	Total	To be paid or reimbursed?		
Payment plan	Date	Payment				

(if other than in accordance with policies or Standing Offer)		
Bank details (into which payment will be made)	Account name	
	Account number	
	Bank	
	Branch name and BSB	
Special Conditions		

Accepted on behalf of the Contractor:

(Signature of Authorised Officer) (date)	(Signature of Witness) (date)
(Position/Title)	(Position/Title)