

**CUSTOMER CONTRACT REQUIREMENTS**  
**UWISR**  
**CUSTOMER CONTRACT AD 1-226 - Beca**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**ACQUISITION OF UNDERWATER INTELLIGENCE SURVEILLANCE AND RECONNAISSANCE CAPABILITY**

**1.1 KEY DEFINITIONS:**

**“Acceptance”** means:

- a. in respect of any Contract Deliverable (other than Services), the issue of an Acceptance Certificate for that Contract Deliverable; and
- b. in respect of any Services, notice of acceptance of those Services by the Buyer in accordance with clause 25.3, and “Accept” and “Accepted” are to be construed accordingly;

**“Acceptance Test”** means the inspection and/or testing of a Contract Deliverable (other than Services), to ensure that it complies with the Specification, and meets the criteria set out in the Verification Cross Reference Index and the Airworthiness and Certification Plan (as applicable) and other requirements of this Contract;

**“Acceptance Plan”** means the acceptance test plan developed by the Buyer and the Seller in accordance with clause 25.1.2;

**“Agreement”** includes any contract, deed, lease, licence, franchise, undertaking, understanding or other arrangement (whether legally binding or not), whether written or oral, involving any benefit, protection, obligation, right or interest and includes any of these as amended, novated or substituted from time to time;

**“Business day”** means any day other than a Saturday, Sunday or a statutory public holiday in, as applicable, New Zealand or California and shall commence at 8:00 a.m. and end at 4:30 p.m.;

**“Contract Deliverables”** means all the Equipment, the Contract Data, the Publications, the Services and all the other items and services specified in the purchase contract to be provided by Seller to the Buyer under this Contract;

**“Contract Data”** means the data, including publications, analyses, reports, plans, engineering drawings, specifications, standards, and training material including those listed in the CDRL to be provided by the Seller to the Buyer under this Contract, and all updates to them;

**“Contract Data Requirements List”** or “CDRL” means the list of Contract Data to be delivered under this Contract as specified in the purchase contract

**“Defect”** includes any fault in, deviation from, or failure (including any random or latent failure) to comply with any configuration, standard, requirement or other functional, quantitative or qualitative characteristic or requirement under, and compared with, the standards or requirements of the Specification and the highest industry standards of good workmanship, quality and/or requirements of this Contract and “defective” is to be construed accordingly;

**“DMS Software”** means the set of computer programs, and associated documentation and data, described under that heading in DID-ENG-03 and includes all modifications to the current DMS, Mission Preparation and Analysis System (MPAS), Deployable MPAS (DMPAS), Data Warehouse and Mission Simulation System (MSS) software products;

**“Equipment”** means the UWISR System, Support Equipment and Spares and other equipment to be provided by the Seller to the Buyer under this contract

**“Existing Intellectual Property”** means any form of intellectual property in or relating to the Contract Deliverables (including any

software, embedded as firmware in the Contract Deliverables or otherwise) and existing as at the Contract Signing Date or subsequently created independently of, and not directly or indirectly arising under or from, this Contract, which is owned or licensed by the Seller or any Subcontractor and which is necessary to ensure the Buyer's ability to obtain the maximum benefit of the purposes set out in clause 31 is not limited in any way and includes Third Party Intellectual Property

**“Government Furnished Materiel”** or **“GFM”** means that equipment, software, publications, intellectual property, information (including Crown Information) and government to government licenses, which is to be provided by the Crown to the Seller or Subcontractor under clause 22 for incorporation into or interfacing with the Contract Deliverables, or for use or support in the production of the Contract Deliverables, as specified in GFM attachment

**“Intellectual Property”** includes all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (able to be protected by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, formula, drawing, programme, design, system, process, logo, mark, style or other matter or thing, existing or conceived, used, developed or produced by any person;

**“Latent Defect”** means a defect or failure which the Parties agree:

- a. was not discovered by the Crown prior to expiry of the relevant Warranty Period (including any extension to the Warranty Period in accordance with this Contract);
- b. is not the result of fair wear and tear or misuse by the Crown; and
- c. is the result of any manufacturing or design error or deficiency, and
- d. inhibits operation performance or reliability of any items on the Aircraft or otherwise affects airworthiness of the Aircraft

**“New”** means with respect to the Equipment or any component, other than raw materials, and consumables, that:

- a. the date of completion of manufacture and assembly is a date within the period of 12 months prior to delivery to the Crown;
- b. if a shelf life or a calendar life (being life specified by calendar time not by utilization) is applicable to any item of Equipment or component, at least 95 percent of that shelf life and calendar life remains at the time of delivery to the Crown; and
- c. the item concerned is unused except to the extent necessary for pre-delivery integrating, installing, testing or any Acceptance procedure conducted by or for the Crown or any training of Crown personnel pursuant to clause 9, in each case in accordance with the provisions of this Contract, or where components already existing on the Aircraft have been reused as part of the Contract Deliverable as specified in this Contract;

**“Project Intellectual Property”** means any form of intellectual property in or relating to the Contract Deliverables arising, conceived, developed or produced by any person in any jurisdiction under or in connection with, or directly or indirectly resulting from this Contract but does not include Existing Intellectual Property;

**“Quality Standard”** means the seller warrants and represents that:

- a. it holds the following quality standard certification NF EN ISO 9001:2008 or AQAP 21 10 and will continue to hold such certification or any higher standard the Seller may achieve, until the Seller has met all of its obligations under the Contract; and
- b. the standard of assembly, installation, construction and workmanship are identical at each site of the Seller where the same work is carried out.

**“Services”** in accordance with SOW means:

- a. design and development of the Equipment, including any Software embedded in the Equipment;
- b. manufacture, integration, installation, testing and commissioning of the Equipment;
- c. the Training Services;

- d. rectification work arising out of the Seller's warranty obligations;
- e. the services required for the performance of the Local Industry Programme; and
- g. any other services required to be performed by the Contractor from time to time under this Contract;

“**Specification**” means the specifications for the Contract Deliverables as described in the purchase contract;

“**Technical Data**” means those items of Contract Data of a technical nature including design data , specifications, material specifications, process specifications, interface control documents, installation instruction data, material data sheets, drawings or analyses, prepared in accordance with the Specification;

“**Warranty Period**” means in relation to:

- a. The warranty for Safe Air a period of 36 months commencing on the date that an Acceptance Certificate is given for the relevant time
- b. For Beca contract deliverables and Services will be 6 months from acceptance.

## 2 RESERVED

## 3 CONTRACT SCOPE

### 3.2 STANDARDS :

The Seller shall ensure that:

3.2.1 the standards of design, workmanship, quality of materials, production, installation and finish in respect of the Contract Deliverables conform to the requirements of this Contract or if not defined in this Contract, in accordance with Best Industry Practice resulting in Contract Deliverables that are fit for intended purpose to the extent that the purpose is defined by the Specifications.

3.2.2 all Equipment is designed, constructed, delivered and operates, and all Services are provided, in accordance with the requirements of this Contract and applicable law;

3.2.3 all necessary or prudent inspections, checks, examinations and testing are and is conducted in respect of each item of Equipment, component, material and other goods and services to be supplied consistent with the requirements of this Contract and as defined per specification to ensure that they:

- a. are appropriate for the intended purpose and use, to the extent defined in this Contract;
- b. comply with all the requirements of this Contract and Best Industry Practice; and
- c. are without “Defects” as defined above and are otherwise in the required condition;

3.2.4 except to the extent precluded by existing variations in Aircraft structure, all components and assemblies comprising the Contract Deliverables which perform identical functions are physically, dimensionally, electrically and mechanically interchangeable and are reasonably capable of repair and maintenance using the same tools, test equipment and information;

3.2.5 all components comprising the Equipment conform with any applicable Specification or other requirements of this Contract and are integrated, are compatible with and do not at any time restrict or limit the performance or durability of any item or function that those components will be used with or for or integrated into;

3.2.6 GFM and the components comprising the Equipment or GFM, individually and in combination with any other Equipment, GFM or components, shall be capable of operation using the full range of functionality available in respect of that item of Equipment, GFM or component to the extent specified in the specifications;

3.2.7 all components comprising the Equipment and all Contract Data and Training Materials and all other goods, materials or articles to be supplied by the Seller to the Buyer under this Contract are New;

3.2.8 all components of the Equipment are identified individually by a unique part number;

- 3.2.9 all manufacturing drawings and applicable publications and specifications and standards used in the manufacture of the Equipment or any component of the Equipment or any Technical Data which are included in the Publications Package are cross referenced to the relevant part number for that Equipment or component;
- 3.2.10 all designs have due regard to, and result in compliance with, all applicable Manufacturers' or other noted specifications, instructions, ratings and limits in respect of the relevant component or material involved;
- 3.2.11 unless specified otherwise in the Specification, all Equipment (and each component of the Equipment) operates in accordance with, and has the full functionality specified in, all applicable Manufacturers' minimum specifications, instructions, ratings and limits;
- 3.2.12 all Equipment, GFM and the components of the Equipment or GFM shall be compatible with each other item of Equipment and GFM with which it is required to interact or with which it is integrated, without any loss of functionality to the extent specified in the Specification;
- 3.2.13 the Contract Deliverables incorporate maximized commonality of components, assemblies and construction techniques; and
- 3.2.14 all information and documentation provided or procured by the Seller under this Contract (including the Contract Data) is:
- a. held, and provided, in electronic form (except where otherwise agreed by the parties);
  - b. up to date and correct;
  - c. complete and accurate;
  - d. in English and legible;
  - e. in accordance with the requirements of this contract (including any relevant DID {"Data Item Description" or "DID" means the description and specification of each data item, to be delivered under the Statement of Work}).

#### **4-7 RESERVED**

#### **8 SPARES**

8.3 Obsolescence: If a spare becomes obsolete or unavailable prior to the delivery date for the spare then the Seller must replace that Spare at its cost with a spare of a similar type that is interchangeable and compatible with the Aircraft and Equipment. The replacement part must be of comparable or better quality to the obsolete or unavailable part.

#### **9-10 RESERVED**

**11. CODIFICATION:** The Seller shall ensure that:

- 11.1 all components of the Equipment are codified to an NATO Stock Number (NSN), or will be codified to an NSN, prior to delivery to Buyer to the extent that NSN codes exist for any such components. All components of the Equipment will be identified individually by a unique identifying number/original manufacturer part number;
- 11.2 all manufacturing drawings, applicable specifications and standards used in the manufacture of any component of the Equipment that are included in the Contract Data will be cross-referenced to the relevant part number for that component;
- 11.3 the Buyer is supplied, on the request of the Buyer at any time, with all necessary identification information to enable the Buyer to identify every component in accordance with the NATO Codification System and to enable codification by the Buyer; and
- 11.4 if requested by the Buyer at any time, the Buyer is supplied, in respect of each component and Spare, as soon as possible but in any event within three months of request, with:
- a. full details of actual/true Supplier;
  - b. full details of every Supplier's respective drawings, designs and part numbers, applicable technical data and item identifications (to the extent reasonably available to the Seller after proper enquiry by the Seller);

- c. full details of modifications to any of the above information; and
- d. updating information regarding all modifications or design changes.

## **12-16 RESERVED**

## **17. QUALITY PROCEDURES**

### Quality System:

17.1 The Seller shall maintain, and shall apply to the design, development, commissioning, manufacture, assembly, testing, performance, packaging, storage, delivery and support of the Contract Deliverables, and the performance of its other obligations, under this Contract, a quality system to the Quality Standard. The Seller shall also take all steps necessary to ensure that all Subcontractors also adhere to the Quality Standard with respect to any aspect of the Contract Deliverables that are to be supplied by any Subcontractor.

17.2 The Buyer/Customer may carry out any inspection, surveillance, examination, test or check at the Seller's or Subcontractor's premises, or elsewhere as necessary, to verify that the Seller (or that Subcontractor) is performing its obligations under this Contract in compliance with the Quality Standard. The Buyer shall be entitled to review the quality surveillance audits carried out for the Seller (or any Subcontractor) as part of compliance with the Quality Standard in so far as those audit reports are relevant to the Seller's (or Subcontractors') obligations under this Contract.

17.3 If at any time the Buyer determines (acting reasonably), through carrying out a quality inspection, from reviewing a quality audit report or otherwise, that the Seller (or any Subcontractor) is not performing its obligations under this Contract in accordance with the Quality Standard, the Buyer may give notice in writing to the Seller setting out such non-conformance and requiring the Seller to remedy the non-conformance within a reasonable specified period.

17.4 Upon receipt by the Seller of a notice given by the Buyer under clause 17.3, the Seller shall take all steps which are necessary to correct the non-conformance within the period specified in that notice (or such longer period as the parties may agree in writing). The Seller shall advise the Buyer promptly after remedying the relevant non-conformance. The Buyer may carry out a further inspection, surveillance, examination, test or check at the Seller's or the relevant Subcontractor's premises, or elsewhere as necessary, to verify that that non-conformance has been remedied.

17.5 The Buyer may, if the Seller's corrective action plan to correct the non-conformance is unsuccessful after a period of at least fifteen (15) business days, give a notice to the Seller directing the Seller to cease work, and to procure that all Subcontractors cease work, on any aspect of this Contract which the Buyer determines may be affected by any non-conformance to the Quality Standard. The Seller shall promptly comply with that direction and shall not recommence work on those aspects of this Contract unless and until directed to do so by notice in writing from the Buyer

17.6 Any delay directly attributable to the Seller caused by a cessation of work under clause 17.5 shall not constitute a delay of the Buyer.

17.7 Following any cessation of work under clause 17.5 the Seller and the Buyer shall discuss for a period not exceeding 20 days what steps can be undertaken by the Seller (at the Seller's cost) to rectify to the satisfaction of the Buyer the non-conformance with the Quality Standard.

17.8 The Seller must promptly notify the Buyer in writing of any loss or suspension by the Seller of its quality assurance certification.

17.9 The Buyer's rights under this clause 17 are without limitation to any of its other rights and remedies under this Contract or at law.

## **18. CONFIGURATION MANAGEMENT**

18.1 Reserved

18.2 Departures:

18.2.1 The Seller shall record in writing each Departure ("Departure" means any change, alteration or departure from the requirements of the Specification or Statement of Work, including without limitation any Concession or Modification) which

has been made or is proposed to be made, in a document signed by an authorized signatory of the Seller which sets out, in respect of that Departure:

- e. the serial number, or numbers, of the Equipment or component of the Equipment concerned;
- f. the drawing number, or numbers, to which that Departure relates;
- g. a full and accurate description of that Departure including, where applicable, any necessary sketches and photographs;
- h. a detailed analysis of the effect of that Departure on the operation, functionality, interoperability with other Equipment and/or components of Equipment, margin of safety, safety, interchangeability, maintenance and/ or logistic support requirements of the relevant component of the Equipment and any other Equipment (as applicable);
- i. Details of remedial or repair action and materials;
- j. Follow-on corrective action actions; and
- k. Material Review Board authorizations,
- l. ("Record of Departure").

18.2.2 The Seller shall promptly deliver each Record of Departure to the Buyer for the Buyer's review.

18.2.3 Subject to clause 18.2.5, notwithstanding that a Departure may have already been incorporated in the construction of the Equipment by the Seller or its Subcontractors or agents, the Buyer may reject that Departure if the Buyer reasonably determines that the Departure:

- a. may adversely affect, or increase the cost to the Buyer of, the ongoing operation, maintenance or service of a component of the Equipment;
- b. may increase the cost to the Buyer of acquiring, or maintaining in stock, any parts or components for the Equipment.

The Buyer shall notify the Seller of any Departure which it rejects within six business days of receipt of the Record of Departure relating to that Departure.

18.2.4 Without limiting clause 18.2.2 above, the Seller shall deliver to the Buyer all approved Records of Departure relating to an item of Equipment prior to Acceptance of that item of Equipment.

18.2.5 Once a Contract Deliverable has been delivered to the Buyer:

- a. the Seller may not incorporate a Departure into that Contract Deliverable without the Buyer's prior written approval; and
- b. without limiting a. above, the Buyer may require that the Seller deliver to the Buyer the approved amendments to the Contract Data under clause 18.5 before the Buyer approves the incorporation of a Departure into that Contract Deliverable.

18.3 Rectification: If the Buyer rejects a Departure, then the Seller or its Subcontractor engaged or employed by the Seller in connection with the Contract, at its or their cost in all respects, shall perform such work as is necessary to procure that the relevant item of Equipment, which was the subject of that Departure, is modified to conform with the applicable requirements of clause 18.1 or is otherwise modified in a manner which the Buyer has previously agreed to in writing.

18.4 No Impact on Acceptance: The failure of the Buyer to reject a Record of Departure shall not affect, or prejudice in any way, the Buyer's rights to reject a Contract Deliverable

18.5 Amendment to Contract Data: The Seller shall amend the Contract Data from time to time to take into account any Departure (excluding any mistakes in the construction of a component of the Equipment) which have not been rejected by the Buyer under this clause 18 and shall promptly provide the revised Contract Data to the Buyer. Each such amendment to the Contract Data shall be prepared to the same standard as the relevant Contract Data of which that amendment is to form part.

18.6 Amendment to Specification: The Specification may only be amended with the prior written consent of the Buyer, which

maybe given or withheld by the Buyer at its absolute discretion. The Seller agrees that it shall deliver to the Buyer, free of charge, an electronic and hard copy of the final form of the Specification, which incorporates all Departures not rejected by the Buyer no later than the delivery of the last item of Equipment to New Zealand in accordance with this Contract.

## **19-21 RESERVED**

## **22. GOVERNMENT FURNISHED MATERIEL**

### **22.1 Provision of GFM:**

22.1.1 The Buyer undertakes to provide the GFM described in the Government Furnished Materiel and Personnel List to the Seller in accordance with the provisions of this Contract.

22.1.2 The Seller shall incorporate the appropriate GFM into or interface the GFM (as required) with the Contract Deliverables in accordance with the Specification ("Specification" means the specifications for the Contract Deliverables).

### **22.2 Examination by Buyer: The Buyer shall, before delivering any GFM to the Seller, examine that GFM to confirm:**

22.2.1 that each item of that GFM meets the relevant description for that item set out in the Government Furnished Materiel and Personnel List;

22.2.2 that the correct quantity (as specified in the Government Furnished Materiel and Personnel List) of each item of that GFM is available to be delivered to the Seller; and

22.2.3 (to the extent practicable) that each item of that GFM is serviceable. The Buyer shall prepare appropriate documentation setting out the results of that examination.

### **22.3 Delivery:**

22.3.1 The Buyer shall deliver, at its care and expenses, the GFM at the location specified by the Seller, together with the Buyer's documentation referred to in clause 22.2, to the Seller on or before the respective dates for delivery of the GFM which are specified in the Government Furnished Materiel and Personnel List.

#### **22.3.2 Where:**

a. GFM is not delivered by the relevant date for delivery of that GFM as specified in the Government Furnished Materiel and Personnel List; or

b. the Seller has commenced work on the GFM and the Buyer requires the Seller to cease work and return the GFM to the Buyer, due to the Buyer's urgent need for such GFM,

then until the date of actual delivery (or redelivery), the Seller shall be relieved of its obligations under this Contract only to the extent that performance is not possible as a result of the failure to provide (or requirement to return) that GFM and the Seller must notify the Buyer within thirty business days of the daily direct costs the Seller expects will be incurred and demonstrate that such costs will be incurred and that the Seller has used, and will continue to use, its reasonable endeavours to mitigate those costs and such costs shall be dealt with as outlined in terms and conditions of the Contract.

### **22.4 Examination by the Seller:**

22.4.1 On receiving a delivery of GFM from the Buyer, the Seller shall promptly examine the GFM to confirm:

a. that each item of that GFM meets the relevant description for that item set out in the Government Furnished Materiel and Personnel List;

b. that the correct quantity (as specified in the Government Furnished Materiel and Personnel List) of each item of that GFM has been delivered to it; and

c. (to the extent practicable) that each item of that GFM is serviceable (log card) at the time of examination and is likely to remain serviceable until returned to the Buyer.

Representatives of the Buyer are entitled to be present during that examination.

22.4.2 If the Seller is satisfied as to the matters referred to in clause 22.4.1.a. to c, the Seller shall acknowledge that it is so

satisfied by acknowledging acceptance to the Buyer in writing. However, the Buyer acknowledges that some non-serviceable elements of the GFM may not be easily identifiable. If, after the Seller acknowledges acceptance to the Buyer, some non-serviceable element is identified after an in-depth examination and/or tear-down of the GFM, the Seller will advise the Buyer as soon as it becomes aware of the non-serviceable concern which will be handled in accordance with clause 22.4.3 below.

22.4.3 If the Seller is not satisfied as to any of the matters referred to in clause 22.4.1a. to c, the Seller shall not commence any work in connection with the GFM concerned and shall promptly report to the Buyer in detail on the matters as to which it is not satisfied. The Buyer shall, within twenty (20) business days of receiving that report, use all reasonable endeavors to make good any defect or deficiency in the GFM which is referred to in that report. If the Buyer does not remedy any such defect or deficiency, the Seller shall be relieved of its obligations under this Contract only to the extent that performance is not possible as a direct result of that defect or deficiency.

## 22.5 Care of GFM:

22.5.1 The Seller shall take all reasonable care of each item of GFM in its possession or control and shall handle and use each item of GFM skilfully and solely for the purpose for which that item came under the possession or control of the Seller (or any Subcontractor) consistent with the terms of this Contract.

22.5.2 The Seller shall, in consultation with the Buyer, institute, maintain and apply a suitable system for the security, accounting for, control, handling, preservation (being the normal preservation practices of a reasonable and prudent contractor which are necessary to prevent deterioration in the GFM while in the possession of that contractor), protection, installation, setting to work, inspection, test or trial, of all GFM, and shall comply with any directions given to it by the Buyer in relation to these matters.

22.5.3 If the Seller becomes aware that any item of GFM that comes into its (or any Subcontractor's) possession or control is lost, destroyed, damaged or becomes unserviceable, it shall promptly give written notice to the Buyer of that fact. Subject to clause 10.6, the Buyer:

- a. shall repair if practicable, or, at its sole discretion, replace any GFM which has been damaged or has become unserviceable while in the Seller's or any Subcontractor's possession or control.

22.5.4 GFM Insurance: The Seller shall ensure that:

- a. all GFM in its or any Subcontractor's possession or control is insured in accordance with the requirements of clauses 34.1 and 34.2 (as if the GFM were Contract Deliverables for the purposes of those clauses); and
- b. a loss payable provision applies to all insurances effected by the Seller in respect of all GFM in its or any Subcontractor's possession or control, to the intent that the insurer shall pay to the Buyer the amount of any claim the Buyer has against the Seller which is covered by such insurance in priority over the Seller and any other person, and shall, on receiving a written request from the Buyer to do so, forthwith provide to the Buyer written evidence to the satisfaction of the Buyer of the currency and extent of such insurances.

22.5.5 Inspection of GFM: The Buyer, in its absolute discretion, may conduct inventory and utilization reviews of GFM in the Seller's or any Subcontractor's possession or control.

## 22.6 Indemnity:

22.6.1 The Seller undertakes to indemnify, and keep indemnified, the Buyer against all costs, losses, claims, damages and expenses (including legal costs and expenses) suffered or incurred by the Buyer, or which may be made against it, in relation to any item of GFM (excluding Aircraft as provided in Article 34.2.4 "Title and Risk of Loss of Aircraft" below) which comes into the Seller's (or any Subcontractor's) possession or control under this Contract to the extent such GFM indemnified liabilities are directly caused by:

- a. a negligent failure by the Seller or any Subcontractor to conduct properly an examination of any GFM on delivery of the GFM to the Seller except for GFM failures that could not be reasonably be known or uncovered;
- b. a negligent failure by the Seller or any Subcontractor to institute, maintain or apply the system described in clause 22.5.2; or
- c. any loss, destruction, damage or unserviceability (in the case of unserviceability to the extent caused by a negligent or unlawful act or omission by the Seller (or any Subcontractor) while in the Seller's (or any Subcontractor's) possession or control).



- 22.6.2 The Buyer may, by notice in writing to the Seller, permit the Seller to transport, dispose of, or repair any damaged or unserviceable GFM in the possession or control of the Seller in circumstances where the Seller has the necessary capacity to do so, in complete or partial discharge of the Seller's liability under the indemnity in clause 22. The determination of the value of the work so carried out by the Seller will be based upon the Parties mutual agreement and will be final and conclusive and binding on the Seller.
- 22.7 Title and risk: Title to GFM shall remain at all times with the Crown during the period of time in which the GFM is in the possession of or under the care, custody or control of Seller, or any Subcontractor; Seller shall assume risk of physical loss of or damage to the GFM (excluding Aircraft as provided in Article 34.2.4 "Title and Risk of Loss of Aircraft" below) when such loss or damage occurs due to the negligence of, or breach of this Contract by, Seller, or any Subcontractor while the GFM is in the care, custody or control of the Seller, or any Subcontractor (which shall include when any of their personnel are working on the GFM under the Contract). The Seller shall ensure that, to the extent practicable, all GFM is stored separately from material owned by the Seller or any Subcontractor (or other third party) and that GFM is clearly identified as the property of the Buyer.
- 22.8 Restrictions: The Seller and Subcontractors shall not, without the prior written approval of the Buyer:
- 22.8.1 use the GFM, other than for the purposes of, and in accordance with, this Contract;
  - 22.8.2 modify the GFM (except as required under the Contract);
  - 22.8.3 transfer possession or control of the GFM to a third party (including any Subcontractor); or
  - 22.8.4 create or suffer to be created any lien, charge, mortgage or other encumbrance whatsoever over any GFM.
- 22.9 Return of GFM: The Seller shall return to the Buyer any GFM which it does not use or incorporate into the Contract Deliverables, as and when directed to do so by the Buyer.
- 22.10 Contract Variation: If the Buyer demands the return of GFM still required by the Seller for the performance of this Contract then that return of GFM constitutes a change to the Contract.
- 22.11 Crown Facility: If the Seller determines that it wishes to include a Crown facility as additional GFM under this Contract, the Seller shall seek the prior consent in writing of the Buyer to the inclusion of that Crown facility as additional GFM at least four (4) months prior to the date on which the Seller wishes to have access to the relevant facility. The Crown may withhold that consent at its absolute discretion. If a Crown facility is included as additional GFM, the maintenance of the facility shall remain the responsibility of the Crown and the Seller shall only be liable for damage to the facility where such damage is caused by the negligence of the Seller's personnel.

## **23-24 RESERVED**

## **25 ACCEPTANCE**

### 25.1 Acceptance Plan:

25.1.1 The Buyer shall carry out Acceptance of each Contract Deliverable (other than Services) delivered to it under this Contract in accordance with the provisions of this clause.

25.1.2 The Buyer, in consultation with the Seller, shall develop a detailed Acceptance Plan for each Contract Deliverable (other than the Services). The Acceptance Plan shall comprise:

- a. the Master Test Plan, Verification Cross Reference Index and the Certification Plan;
- b. airworthiness certification in accordance with the Airworthiness Certification Plan; and
- c. any Acceptance Test incorporated by the Crown pursuant to clause 25.1.6 25.1.5.

25.1.3 The Airworthiness Certification Plan shall be finalised by the Buyer.

25.1.4 Subject to clause 25.6, the costs incurred by the Buyer in undertaking the Acceptance Tests shall be met by the Buyer unless specified otherwise in the Acceptance Plan.

25.1.5 The Buyer reserves the right to incorporate an Acceptance Test into the Acceptance Plan where the Buyer considers

that such a test is necessary to ensure compliance of the Contract Deliverables (other than the Services) with the Specification and other requirements of the Contract and is not, or has not been, confirmed to the satisfaction of the Buyer through the conduct of activities prescribed in clauses 25.1.2a and 25.1.2b, above. If the incorporation of this Acceptance Test into the Acceptance Plan requires additional work for the Seller that was not originally contemplated by the Seller then this will be considered a change and the Seller will be entitled to an equitable adjustment to the price and delivery in accordance with terms and conditions as outlined in the Contract.

25.1.6 Without limiting their scope, Acceptance Tests for Contract Deliverables may vary from simple visual inspections of minor spares and consumables, through to full specified bench testing to ensure serviceability of more complex components, and flight, inventory and in-depth technical inspections of the Contract Deliverables.

25.1.7 The Buyer shall use all reasonable endeavours to ensure that each Contract Deliverable is Accepted or Rejected 20 business days of delivery of that Contract Deliverable by the Seller to the Buyer under this Contract.

25.2 Acceptance Certificate: If a Contract Deliverable (other than the Services) has successfully completed the relevant Acceptance Test in accordance with the Acceptance Plan, the Buyer shall issue an Acceptance Certificate to the Seller in respect of that Contract Deliverable.

25.3 Acceptance of Services: The Acceptance of the Services shall not be subject to a formal Acceptance Test. Instead, Services will be deemed to be Accepted for the purposes of this Contract as follows:

25.3.1 in relation to the Training Services, the Buyer shall give written notice to the Seller of its Acceptance of each training course to be provided under this Contract within [30] business days of the completion of that course to the reasonable satisfaction of the Crown; and

25.3.2 for all other Services, the Buyer shall give written notice to the Seller of its Acceptance or otherwise of those Services within [35] business days of the provision of such Services, where Acceptance shall not be unreasonably withheld and is independent of any other factors outside the control of the Seller.

If the Buyer notifies the Seller that it does not Accept a Service which the Seller has provided under this Contract, the Buyer shall provide a written notice explaining the reason(s) for its non-acceptance and the Seller will be provided an opportunity to respond to such explanation. If a disagreement with regard to such completion of the service still exists, then the Parties will handle such dispute in accordance with terms and conditions specified in the purchase contract. If the Seller agrees with the Buyer's explanation or the Buyer's explanation is substantially upheld, without limiting the Buyer's rights under this Contract, the Seller shall perform that Service again at such time, and to such standard, as the Buyer may reasonably require.

25.4 Accompanying Documentation and Support Equipment: Notwithstanding any other provision of this clause 25, the Seller shall ensure that each item of Equipment is made available for all relevant Acceptance Tests by the Buyer at the same time as all Support Equipment required in relation to that item of Equipment is made available for all relevant Acceptance Tests together with all relevant and related Contract Data Publications (in accordance with clause 7) for that Equipment including (where applicable) certificates.

25.5 Failure of Acceptance: The Buyer shall notify the Seller of any Contract Deliverable (other than Services) which it does not Accept in accordance with this Contract promptly following the conclusion of all relevant Acceptance Tests. The Buyer will provide a detailed explanation of the reasons for not accepting the Deliverable and will identify the specific Acceptance criteria that the Seller failed to meet. The Seller shall accept the return to it of any Contract Deliverable (other than Services) which the Buyer does not Accept ("Failed Deliverable"), with the Buyer giving reasons for that rejection. The Seller shall resubmit that Failed Deliverable for Acceptance Testing as soon as possible.

25.6 Seller to bear costs: The Seller acknowledges and agrees that it (and not the Buyer) shall be responsible for all reasonable costs and expenses incurred as a result of retesting any Failed Deliverable, if it is deemed that the failure is directly attributable to the Seller, including those incurred by the Buyer and the costs of undertaking the retesting.

25.7 Rejected Deliverables: The Seller and the Buyer shall repeat Acceptance Testing with respect to each Failed Deliverable until the Deliverable meets the Acceptance criteria identified in the Acceptance Plan or until the Buyer Accepts the item, or the Buyer, at its sole discretion, advises that the Seller that it considers that the Seller is unable to meet the Acceptance Tests in respect of that item within a reasonable period of time ("Rejected Deliverable").

25.8 Returned Deliverables: The Seller must accept the return to it of any:

25.8.1 Rejected Deliverables; and

25.8.2 any Contract Deliverables supplied by the Seller pursuant to this Contract which are rejected by the Buyer because it fails to meet the requirements of the Contract (with the Project Director giving reasons therefor) within one month after an

Acceptance Certificate is issued for the Contract Deliverables, whether or not title and ownership thereof has passed to the Buyer, ("Returned Deliverables") notwithstanding that title and ownership of Returned Deliverable has passed to the Buyer. If the Buyer has paid for a Returned Deliverable:

25.8.3 the Seller shall immediately refund to the Buyer the Contract Value of the Returned Deliverable; or

25.8.4 the Buyer may set off the Contract Value of the Returned Deliverable against any amount that is otherwise payable by the Buyer to the Seller, and the Returned Deliverable thereafter shall, if title and ownership thereof had passed to the Buyer, become the property of the Seller and at the Seller's risk. The Buyer shall deliver any Returned Deliverable to the Seller's representative at the location agreed by the Parties at the time.

25.9 Other Rights: The Acceptance or Provisional Acceptance by the Buyer of any Contract Deliverable (whether by the issue of an Acceptance Certificate, the entry into a Provisional Acceptance Deed, or otherwise) shall not affect, or prejudice in any way, any warranty claims or other rights or remedies which the Buyer may have in respect of that Contract Deliverable, to the intent and with the effect that those claims, rights and remedies shall continue to be available to the Buyer.

## 26 RESERVED

## 27. ON-GOING SUPPORT

### 27.1 Expiry of Through Life Support Agreement:

27.1.1 The Seller undertakes and agrees that, at the expiry or termination of the Through Life Support Agreement ("Through Life Support Agreement" means the agreement for the provision through life support entered into by the Crown and the Buyer on or about the date of Crown Acceptance of Prototype Aircraft (AC-1) ) and with the establishment of a separate time and materials based contract, it shall ensure that the Buyer continues to have access to all spares, technical support and technical information that the Buyer may reasonably require to operate and maintain the Contract Deliverables until withdrawal from service of the relevant Equipment.

### 27.2 Rights of Supply:

27.2.1 The Seller agrees and undertakes that it shall not unreasonably dispose of, or terminate its access to, any facilities, dies, tooling or other items necessary for the manufacture or supply of spares without:

- a. first giving reasonable prior notice to the Buyer of its intention to do so, so that the Buyer has sufficient time within which to acquire spares prior to that disposal or termination of access; and
- b. assisting the Buyer with obtaining:
  - i. available alternative long-term source of supply of spares on reasonable and fair terms and conditions to the Buyer; or
  - ii. an irrevocable, transferable, non-exclusive license to manufacture any spares itself and has all information necessary to manufacture spares itself; and
  - iii. a first right of refusal to acquire any dies, tooling and other items required to manufacture spares at the then book value of those items in the Seller's books of account and otherwise on reasonable and fair terms and conditions to the Buyer.

### 27.3 Spares support: If the Through Life Support Agreement expires or is terminated prior to the expiry of the Back Up Support End Date:

27.3.1 The Buyer may until the Back Up Support End Date (December 31 2028), select and order spares from the Seller at the prices the Seller would charge its most favored customer under similar terms and conditions and timeframe. The Seller must source and supply spares to Buyer as soon as possible after receiving a written order from Buyer therefore.

27.3.2 The Seller will at all times up to the Back Up Support End Date, use its best endeavors to procure the repair of components which are outside warranty cover under this Contract and which the Buyer requests the Seller to carry out, on reasonable and competitive terms and conditions as the Seller would for its most favored customer under similar terms and conditions and timeframe, and as soon as possible.

**28 RESERVED****29 NEW ZEALAND GOVERNMENT POLICY REQUIREMENTS**

29.1 NZ law: The Seller shall itself, and shall ensure that each of its agents, employees and other representatives and Subcontractors, comply with and observe all applicable New Zealand laws in connection with this Contract.

29.2 Reserved

29.3 Reserved

29.4 Health and Safety: When performing work in New Zealand, the Seller shall, and shall ensure that its Subcontractors, at all times comply with the Health and Safety of Work Act 2015 and, without limiting such obligations, shall and shall ensure that each Subcontractor:

29.4.1 has policies and procedures in place to ensure compliance with all health and safety legislation;

29.4.2 supplies and maintain all safety equipment used in relation to the Contract Deliverables and required to minimize the risk of injury; and

29.4.3 takes responsibility for any loss or injury that may occur if its safety equipment or procedures fail or are unavailable.

29.5 HSE audits: The Seller will permit the Buyer and the Crown to carry out random health and safety audits of any of the Seller's (or Subcontractor's) premises in New Zealand at which any Buyer or Crown personnel are located.

29.6 Incident Reports: In the event of any accident or serious harm involving Buyer and Crown personnel or significant hazards identified at any of the Seller's (or Subcontractor's) premises in New Zealand at which any Buyer or Crown personnel are located, the Seller shall promptly provide a written report to the Buyer describing the incident and the steps taken by the Seller to prevent reoccurrence of such incident.

**30 RESERVED****31 INTELLECTUAL PROPERTY**

31.1 Project IP: Project Intellectual Property shall be owned by the Buyer and the Seller shall perform all necessary acts to effect the assignment of the Project Intellectual Property to the Buyer.

31.2 Use of Buyer/Crown Property: The Buyer hereby grants to the Seller a non-transferable, non-exclusive, royalty-free, license to use, modify, retain and reproduce:

31.2.1 any Buyer/Crown Information; and

31.2.2 any other Government Furnished Materiel that is software or intellectual property; only to the extent necessary to enable it to comply with its obligations under this Contract.

31.3 Use of Project Intellectual Property: The Buyer hereby grants to the Seller an irrevocable, transferable, non-exclusive, royalty free, perpetual license to access, possess, use, modify, retain, reproduce, and disclose the Project Intellectual Property to the extent necessary to enable it to comply with its obligations under this Contract.

31.4 License: To the extent that the Seller has title to Existing Intellectual Property, the Seller hereby grants to the Buyer, and shall ensure that the Buyer has, from the relevant date of delivery an irrevocable, non-transferable, non-exclusive, royalty-free, perpetual license to access, possess, use, modify, retain and disclose any Existing Intellectual Property for the purposes of:

31.4.1 possessing, installing, operating, supporting, modifying, using and maintaining the Contract Deliverables;

31.4.2 training any person in connection with the possession, installation, operation, support, modification, use or maintenance of the Contract Deliverables;

31.4.3 producing any amendments to the Contract Data;

31.4.4 doing any other reasonable act or thing consistent with the ownership of the Contract Deliverables to which title has transferred to the Buyer in accordance with clause 30.1, or training in respect of such Contract Deliverables.

31.5 Sublicensing : The Buyer may sublicense its rights under clause 31.4 to its Sellers, subcontractors and agents provided that it obtains from them a confidentiality undertaking requiring them to treat the intellectual property that is the subject of the sublicense as confidential and acknowledges that it can only be used to operate, use and/or maintain the Contract Deliverables.

31.6 Commonly Available Material: To the extent that any rights of the Seller in Existing Intellectual Property are held by the Seller pursuant to a license agreement with a third party and relate to Commonly Available Material of that third party:

31.6.1 Any grant of any license or right in respect of that Existing Intellectual Property is limited to the extent of the of the Seller's authority to grant that license or right under that license agreement as specified in Existing Intellectual Property Attachment with each Seller; provided that

31.6.2 The specific Existing Intellectual Property in respect of which such restrictions exist, and the nature and extent of those restriction, is specified in the Existing Intellectual Property Attachment with each Seller; and

31.6.3 The Seller must use all reasonable endeavors to secure licensing rights from the relevant third party that will allow it, to the maximum extent possible, to grant to the Buyer the licenses described in clause 31.4.

31.7 Delivery of executables: The Seller shall, promptly on request by the Buyer, deliver to the Buyer the executables of all software comprising Existing Intellectual Property and/or Project Intellectual Property.

31.8 Delivery of DMS Software source code: Beca shall, promptly on request by the Buyer, deliver to the Crown the source code, byte code and object code of the DMS Software.

31.9 Proprietary Notices: The Parties acknowledge that all intellectual property proprietary notices and marks attaching to Existing Intellectual Property at the time it is provided in accordance with this Contract shall be maintained in respect of that intellectual property including copies thereof provided such notices and marks do not interfere with the operation or use by the Buyer of any Contract Deliverable.

31.10 Perfection of License:

31.10.1 Where any Third Party Intellectual Property is used in relation to this Contract, the Seller shall take such steps and enter into such agreements as are required in order for the Buyer and the Seller to have the rights to such Third Party Intellectual Property required under this Contract. Where any Third Party Intellectual Property is used and not required for operations and maintenance the Seller shall use reasonable endeavors to enter into such agreements to have the rights to such Third Party Intellectual Property.

31.10.2 If requested by the Buyer at any time, and to the extent Seller has the authority to do so, the Seller shall forthwith provide to the Buyer a written irrevocable copyright release in respect of any Contract Data signed by the Seller and, where applicable, by Subcontractors and any other interested person in such copyright allowing use and reproduction thereof by the Buyer.

31.11 Disposal of Existing Intellectual Property: If the Seller wishes to dispose of its interests in or rights to any Existing Intellectual Property owned by it or any third party then the Seller shall:

- a) immediately advise the Buyer in writing, providing full details of the proposed or actual acquirer thereof; and
- b) take all steps necessary to ensure that the Buyer at all times has full access to, and has the rights to the Existing Intellectual Property.

Nothing in clause 31.11 shall affect the continued operation of the license granted under 31.4.

31.12 Payments: For the avoidance of doubt, the Contract Price includes all consideration (for the grant, use, reproduction, transferor otherwise) payable by the Buyer in respect of the license granted under clause 31.4.

31.13 Infringement: The Seller represents and warrants to the Buyer that the enjoyment of the licence granted under clause 31.4 by the Crown of any Existing Intellectual Property does not infringe any person's proprietary rights or interests in the Existing Intellectual Property. If there is any breach or infringement by the Seller of this representation and warranty then, without limiting any other right of the Crown, the Seller:

31.13.1 undertakes to indemnify the Crown against any loss, damage, costs (including legal costs), expense or other liability incurred or sustained at any time by the Crown to the extent caused by any such breach or infringement; and

31.13.2 without derogating from the indemnity in clause 31.13.1 shall, in consultation with the Crown and at its cost, settle any infringement claim by any person against the Crown or the Seller in respect of any breach or infringement of the Seller's representation and warranty concerning the Existing Intellectual Property. If there is such a breach or infringement, the Seller shall at its cost in addition to promptly settling the matter, procure for the Crown the right to continue to use, modify, retain, reproduce and disclose the relevant intellectual property or software for the purposes set out in 31.4.1 to 31.4.4 above.

## **32 RESERVED**

## **33 CONFIDENTIALITY AND SECURITY**

33.1 Confidentiality: Each Party shall at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure of, or use of, any provision of this Contract or any information relating to any provision or subject matter of this Contract, or any information directly or indirectly obtained from the other Party under or in connection with this Contract, except to the extent:

33.1.1 required by law or the order of a court of competent jurisdiction;

33.1.2 that the Parties otherwise agree in writing;

33.1.3 necessary to obtain the benefit of, and to carry out obligations under, this Contract; or

33.1.4 that the information is or becomes available in the public domain without breach by a Party of its confidentiality obligations under this clause or at law, provided that either Party may not comment on that publicly available information without the prior written consent of the other Party.

33.2 Restrictions on release: Without limiting this clause, the Parties undertake:

33.2.1 not to release any confidential, commercially sensitive, security classified or classified information to any unauthorized party, including a representative of another country, unless expressly permitted by this Contract; and

33.2.2 to promptly report to the Project Manager any instance in which it is known or suspected that confidential commercially sensitive or classified information or any other material furnished or generated pursuant to this Contract has been lost or disclosed to an unauthorized party, including a representative of another country.

33.3 Security Classified Work: The Seller shall, in relation to security classified work, comply with:

33.3.1 the secrecy and security undertakings set out in this Contract; and

33.3.2 such other security requirements as the Buyer may deem necessary and which the Buyer notifies to the Seller from time to time.

33.4 Classification of Work:

33.4.1 The classification of work to be undertaken under this Contract shall be up to and including SECRET. The Seller shall, on or prior to the Contract Effective Date, obtain an appropriate Facility Clearance at the necessary classification level for Document Storage / Information Systems / Equipment / communications security ("COMSEC"), or equivalent, issued by the relevant government industrial security authority and shall comply with the relevant government industrial security regulations.

33.4.2 The Seller shall:

a. within 90 days of the Contract Signing Date classify all information in its possession relating to the performance of this Contract according to the security classification grading criteria and Program Security Instructions set out in the Security Instructions; and

b. ensure that that information is safeguarded and protected according to its level of classification.

33.5 Compliance by Subcontractors:

33.5.1 The Seller shall make compliance by each Subcontractor with the provisions of this clause 33 a condition of any subcontract entered into between the Seller and that Subcontractor in relation to this Contract.

33.5.2 Where a Subcontractor is required to have access to classified material, that Subcontractor shall, prior to receiving that access, obtain a facility clearance of the appropriate type and level of classification for the classified material to which it

is required to have access, issued by the Directorate of Defence Security of the NZDF (in the case of a New Zealand based Subcontractor) or the relevant government industrial security authority (in the case of an overseas based Subcontractor).

33.6 Security Procedures:

33.6.1 All matters of a classified nature passing between the Buyer, the Seller and a Subcontractor in New Zealand, whether generated in New Zealand or overseas, shall be subject to the provisions of the latest issue of the NZDF publication "Defence Force Orders Number 51 (DFO 51) For Security, Volumes 1, 2, 4, 5 and 7" which promulgates the procedures for the safeguarding and protection of classified matter and for the protection of NZDF assets in private industry.

33.6.2 All matters of a classified nature passing between the Buyer, the Seller and a Subcontractor outside New Zealand, whether generated in New Zealand or overseas, shall be subject to the provisions of the laws of the relevant overseas country regarding the custody and protection of classified matter and to the security agreement, arrangement, or assurance existing between New Zealand and that overseas country.

33.7 COMSEC Security:

33.7.1 All COMSEC matters passing between the Buyer, the Seller and a Subcontractor in New Zealand shall, in addition to the provisions of clause 33.6.1, be subject to the special security provisions contained in the latest issue of the publication "New Zealand Security of Information Technology, Volumes 1 and 2".

33.7.2 All COMSEC matters passing between the Buyer, the Seller and a Subcontractor outside New Zealand shall, in addition to the provisions of clause 33.6.2, be subject to the approval of the Buyer, who shall take advice from the Director of Defence Security of the NZDF (in respect of New Zealand COMSEC matters) and the respective COMSEC authorities in other countries (in respect of COMSEC matters in those countries). In such cases, the matter shall be subject to the provisions of the laws of the overseas country regarding the custody and protection of COMSEC matters.

33.8 Security Requirements:

33.8.1 The Seller may not release any classified information or material furnished or generated pursuant to this Contract to a representative of another country without the prior written consent of the Buyer.

33.8.2 The Seller shall promptly report to the Buyer any instance in which it is known or suspected that classified information or material furnished or generated pursuant to this Contract has been lost or disclosed to unauthorized persons.

33.9 Termination due to Security Breach:

33.9.1 Where there has been a breach within New Zealand or overseas by the Seller or its Subcontractors or their respective consultants or employees of:

- a. the provisions of the publications referred to in clauses 33.6.1 and 33.7.1; or
- b. if the breach is overseas, the laws of the relevant overseas country regarding the custody and protection of classified matter as specified in clauses 33.6.2 and 33.7.2 in respect of which breach the Buyer has been notified by the Government of the overseas country concerned, which is of such a fundamental nature that the consequences of that breach are incapable of being remedied by the Seller, the Buyer may terminate this Contract forthwith for default without prior delivery by the Buyer of a notice requiring the Seller to remedy that breach.

33.9.2 The Buyer shall provide to the Seller copies of the publications referred to in clauses 33.6.1 and 33.7.1 within 30 business days after the Contract Effective Date. The Buyer shall retain ownership of those publications, whether issued by or on behalf of the Buyer and whether issued prior or subsequent to the Contract Effective Date. The Seller shall return those documents to the Buyer forthwith upon demand by the Buyer.

## 34 INSURANCE

34.1 Cover: The Seller shall, within the Contract Price, insure and ensure that its Subcontractors insure, using insurers of international standing, the Contract Deliverables (other than Services) for their full replacement value against loss or damage or destruction, and against malicious damage, until the date or dates of Acceptance of that Contract Deliverable by the Buyer under this Contract, and thereafter during each period that the Contract Deliverable is in the Seller's or Subcontractor's possession or control during the term of this Contract.

34.2 Extent of cover:

34.2.1 Commercial General Liability. Throughout the period when services are performed and until final Acceptance by the Buyer, Safe Air shall carry and maintain, Commercial General Liability insurance with available limits of not less than Ten Million Dollars (\$10,000,000) per occurrence, for bodily injury and property damage combined. Such insurance shall be in a form and with insurers acceptable to Buyer, and shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph 34.2.4 herein). Such insurance shall not be maintained on a per project basis unless Safe Air does not maintain blanket coverage.

34.2.2 RESERVED

34.2.3 RESERVED

34.2.4 Title and Risk of Loss of Aircraft: Title to the Aircraft shall remain at all times with the Crown during the period of time in which the Aircraft is in the possession of or under the care, custody or control of Safe Air, or any of its Subcontractors; Safe Air shall assume risk of physical loss of or damage to the Aircraft when such loss or damage occurs due to the negligence of, or breach of this Contract by, Safe Air, or any of its Subcontractors, while the Aircraft is in the care, custody or control of the Safe Air, or any of its Subcontractors (which shall include when any of their personnel are on, or are working on, the Aircraft under the Contract).

34.2.5 Aviation Liability Insurance (including aviation products and completed operations coverage) and Hangar-keepers Legal Liability insurance. Safe Air warrants and represents to Buyer and the Crown at all times during the performance of the Contract, Safe Air shall maintain the following insurance and shall provide to Buyer no later than twenty (20) working days after Contract award, certificates of insurance evidencing coverage satisfactory to the Crown in compliance with the following:

Aviation Liability Insurance (including aviation products and completed operations) of Safe Air in an amount not less than Fifty Million Dollars \$50,000,000 combined single limit for bodily injury and property damage each occurrence; and Hangarkeepers Legal Liability insurance in an amount not less than Fifty Million \$50,000,000 each occurrence covering damage to, loss of or destruction of the subject Aircraft which occurs due to the negligence of, or breach of this Contract by, Safe Air and its Subcontractors, while the Aircraft is in the care, custody or control of Safe Air.

34.2.6 To the extent that the Seller carries out any design work in relation to the Contract Deliverable, it shall ensure that it has professional indemnity insurance of an appropriate amount in place to cover any such work.

34.2.7 The insurance policies referenced under clause 34.4.1 (all-risk property insurance) must include a waiver of the Seller's and its insurers' rights of subrogation except to the extent caused by the negligence of the Buyer. To the extent a claim is made under any insurance by the Seller the Buyer shall have no liability to the Seller.

34.2.8 If the Seller's insurers or the Seller wish to make any material change to, or the Seller fails to pay any premium when due and payable in relation to the insurance policies required by this Contract, the Seller shall notify the Buyer.

34.2.9 If, at any time, the insurance policies required to be held under this Contract contain any material exclusions (e.g., terrorism) the Seller must notify the Buyer as soon as it becomes aware of any such exclusions.

34.3 Evidence:

34.3.1 The Seller must provide evidence of the insurances set out in this clause 34.3.1 being in place and in full force and effect (subject only to the required premium being paid in relation to each such insurance). If the Seller fails to do so the Buyer may withhold the next payment due under the Performance Milestones and Payment Schedule until such evidence is provided.

34.3.2 After delivery of evidence required under clause 34.3.1 the Seller shall, on receiving a written request from the Buyer to do so, forthwith provide to the Buyer written evidence to the satisfaction of the Buyer of the currency and extent of insurances taken out and maintained by the Seller under this Contract.

34.4 Loss payable provisions: If requested in writing by the Buyer, the Seller shall ensure that:

34.4.1 a loss payable provision applies to the all-risk property insurances effected by the Contractor to the intent that the insurer shall pay to the Buyer the amount of any claim the Buyer has against the Seller which is covered by such insurance in priority over the Seller and any other person except to the extent caused by the negligence of the Buyer; and

34.4.2 written evidence to the satisfaction of the Buyer of the existence of the loss payable provision is provided to the Buyer.



**35 SELLER INDEMNITIES AND EXCLUSION OF LIABILITIES**

35.1 The Seller Indemnity: The Seller unconditionally and irrevocably indemnifies the Buyer from and against any direct or indirect liability of the Buyer, any losses incurred or sustained by the Buyer, any proceedings, actions or claims brought or made against the Buyer, and any costs (including legal costs), expenses or charges incurred or sustained by the Buyer:

35.1.1 for third party claims to the extent caused by any negligent act or omission of the Seller or any Subcontractor;

35.1.2 in respect of any damage to any property of the Seller (excluding Aircraft as provided in Article 34.2.4 "Title and Risk of Loss of Aircraft" above) or any other person to the extent caused by the negligent act or omission of the Seller or any Subcontractor;

35.1.3 in respect of any failure by the Seller to obtain any necessary Approval;

35.1.4 for the death of, damage to the health of or injury to any person directly or indirectly engaged or employed by the Seller or any Subcontractor to the extent caused by the negligent act or omission of the Seller or its Subcontractors.

35.2 Notwithstanding any other provisions of the Contract, the Buyer acknowledges that Seller will only be responsible for physical loss of or damage to any GFM owned by the Crown, whether arising:

35.2.1 Under Warranty or indemnity, except to the extent expressly stated in this Contract:

35.2.2 In tort (other than fraud) for negligence or otherwise:

35.2.3 Otherwise at law (including by statute to the extent possible to exclude such liability); and

35.2.4 In equity generally only to the extent set out in this clause 35 or clauses 22.6 or 22.7.

35.3 Notwithstanding any other provision of this Contract, Seller will have no obligation or liability to the Buyer whether arising:

35.3.1 Under Warranty or indemnity, except to the extent expressly stated in this Contract:

35.3.2 In tort (other than fraud) for negligence or otherwise:

35.3.3 Otherwise at law (including by statute to the extent possible to exclude such liability); and

35.3.4 In equity generally, for any loss of the Aircraft any loss of use, any loss of revenue, loss of profits, loss of opportunity to make a profit, loss of business or loss of business opportunity or consequential loss, any indirect damages, cost or expenses, or any special, exemplary, punitive or incidental damages or any other pure economic loss damages suffered by the Buyer in connection with this Contract.

35.4 To the fullest extent permitted by law, Sellers total liability in aggregate to the Buyer for the payment of money for all claims, losses, expenses and damages arising out of or in connection with this Contract whether arising:

35.4.1 under or in connection with the Contract (including under any indemnity) or otherwise;

35.4.2 in tort (other than fraud) for negligence or otherwise;

35.4.3 otherwise at law (including by statute to the extent it is possible to exclude such liability); and

35.4.4 in equity generally, shall be limited to the amount stated in the relevant Contract Price. This limit applies to the combined total of all claims, suits and proceedings made by the Buyer on Seller on any of the above bases.

**36-39 RESERVED****40 GENERAL PROVISIONS**

40.8 Excusable delay: A Party shall not be liable to the other Party for any failure or delay in performing an obligation under this Contract to the extent that:

40.8.1 the failure or delay arises from a cause:

a. reasonably unforeseeable or beyond that Party's control and not due to the fault of, or from the insolvency or an intentional act or omission of, that Party (which may include Acts of God or the public enemy, civil war, insurrections or riots, acts or threats of terrorism, earthquakes, floods, unusually severe weather, epidemics, quarantine restrictions, governmental allocation regulations); and

b. which could not have been avoided or foreseen by that Party by the application, in the case of

the Contractor, of the resources and skills which are, or should be, available to a leading and experienced aircraft designer, integrator and constructor applying Best Industry Practice.

Excusable delays shall not include an act or omission of any Subcontractor of the Party claiming relief unless and to the extent that Subcontractor was itself affected by such an excusable delay;

40.8.2 that Party, immediately on becoming aware of the cause, notifies the other Party in writing of the nature and expected duration of, and the obligation affected by, the cause and, within 10 business days discloses all steps which that Party has taken to avoid the effect of the cause; and

40.8.3 that Party uses reasonable endeavours to:

- a. mitigate the effects of the cause on that Party's obligations under this Contract; and
- b. perform that Party's obligations under this Contract on time despite the cause.

40.9 – 40.10 RESERVED

40.11 Governing law: This Contract is governed by New Zealand law and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

40.12 - 40.28 RESERVED