

CUSTOMER CONTRACT REQUIREMENTS

Project AIR 5077 PH5A Interoperability Compliance Upgrade

CUSTOMER CONTRACT PH5A-CONT-000009

1. Language and Measurement

- a. All information delivered as part of the Supplies under the Contract shall be written in English. If such documentation is a translation into the English language, the translation shall be accurate and free from ambiguity.
- b. Measurements of physical quantity shall be in Australian legal units as prescribed under the National Measurement Act 1960, or, if Supplies are imported, units of measurement as agreed by the Commonwealth Representative.

2. Authorizations

Seller shall, and shall ensure that its Subcontractors:

- a. obtain and maintain in full force all Authorisations (including Export Approvals) required for provision of the Supplies and to meet the requirements of the Subcontract;
- b. provide a copy of any Authorisations to Buyer within three (3) Working Days of request by the Buyer; and
- c. ensure that the Supplies are provided in accordance with all Authorisations.

Nothing in this clause 2 shall release Seller from responsibility to take all reasonable steps to secure any export licence or other approval required for the provision of the Supplies.

3. Customer Property

Seller shall treat all customer property, which includes Commonwealth Funded Property, Commonwealth Property, Defence Property and Commonwealth Provided Property, as if it were Buyer's property in accordance with the "Buyer's Property" article of the General Provisions.

4. Intellectual Property

a. Ownership of Intellectual Property

- i. Nothing in the Contract affects ownership of Background IP or Third Party IP.
- ii. Ownership of all Foreground IP vests on its creation in Buyer, Seller, or Subcontractor as the case may be.

b. Intellectual Property Licence

- i. in addition to any licence granted to Buyer by Seller or any of its Related Body Corporate in any other contract, Seller grants to Buyer and Buyer's customer a Licence in respect of all Background IP (excluding the right to sublicense) and any Foreground IP (including the right to sublicense) that is owned by Seller:
 - a. to use, maintain and dispose of the Supplies (and reproduce Technical Data included with the Supplies) for Defence Purposes;
 - b. to modify and develop the Supplies and to manufacture the Supplies for Defence Purposes;

- c. to complete the Supplies upon termination of the Contract other than in accordance with the Termination for Convenience article of the General Provision and
 - d. to remedy defects or omissions in the Supplies in accordance with the Acceptance and Rejection and Warranty articles of the General Provisions.
 - ii. For the avoidance of doubt, the Licences granted under clause 4.b.i. are subject to limitations contained in export licences and do not permit the Buyer, Buyer's customer, or any person on behalf of the Buyer to commercialize the licenced IP.
 - iii. Seller shall before a Subcontractor commences work in relation to the Supplies (or within 28 days after the Effective Date or other date as agreed) use its best endeavours, taking into account all relevant commercial, economic and operational matters, to ensure that the Commonwealth, Buyer's customer, and Buyer are granted a licence from the Subcontractor on substantially the same terms as clause 4.b.i. unless otherwise agreed.
 - iv. Seller shall use its best endeavours, taking into account all relevant commercial, economic and operational matters to ensure that the Commonwealth, Buyer's customer, and Buyer are granted a licence to exercise all Third Party IP on the best available commercial terms. Buyer will be required to pay any fees including but not limited to any applicable royalties directly to the relevant third party.
 - v. Seller warrants that the only IP embodied in Supplies that has not been vested in the Commonwealth, Buyer's customer or the Buyer, or in respect of which the Commonwealth, Buyer's customer or the Buyer has not been granted a Licence as contemplated under clause 4.b.i. and 4.b.iii. is Third Party IP.
- c. Provision of Technical Data
 - i. Seller shall deliver Technical Data (TD) in accordance with the Statement of Work (SOW).
 - ii. Without limiting clause 4.c.i, Seller shall provide to Buyer TD required for delivery under the Contract that is necessary for the Commonwealth, Buyer's customer, and/or Buyer to evaluate the technical solution of the AEW&C Interoperability Compliance Upgrade.
 - iii. If the Commonwealth, Buyer's customer, or Buyer is granted a licence under clause 4.b., Seller shall provide with the Supplies all TD necessary for the Commonwealth, Buyer's customer, or Buyer to exercise its IP rights for the purposes permitted by that licence.
 - iv. If the Commonwealth, Buyer's customer, or Buyer is granted a licence under clause 4.b., the Commonwealth, Buyer's customer, and Buyer are authorized to provide all TD embedded in or relating to the Supplies to a third party to enable the Commonwealth, Buyer's customer, and Buyer to fully exercise their IP rights under clause 4.
 - v. Seller shall ensure that all TD delivered to Buyer will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by the Commonwealth, Buyer's customer, and/or the Buyer in exercise of its IP rights under clause 4.b.
 - vi. If Buyer requires additional TD to enable the Commonwealth, Buyer's customer, or Buyer to fully exercise its IP rights under clause 4, Seller shall deliver such TD to Buyer within three (3) months of receiving a written request and Buyer and Seller shall negotiate an equitable adjustment to the Contract.
- d. Seller IP-Release to Third Parties

If the Commonwealth, Buyer's customer, or Buyer makes available to another person any IP that is owned by Seller and which is Foreground IP or Background IP, the Commonwealth, Buyer's customer or Buyer shall obtain from that person a deed of confidentiality in the form set out in Annex B to this CCR.

e. Moral Rights

- i. Seller represents and warranty that the use of the Supplies for Defence Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of the officers, employees, or agents of the Seller or its Subcontractors.
- ii. Without limiting clause 4.e.i., Seller shall assist the Commonwealth, Buyer's customer, or Buyer in defending any claim or proceeding by any of its officers, employees, or agents of Seller or its Subcontractors, and Seller shall indemnify, defend and hold harmless the Commonwealth, Buyer's customer, and Buyer for any such Moral Rights claim in accordance with the Patent, Trademark and Copyright Indemnity article of the General Provisions.

5. Insurance and Liability

This article applies in lieu of the article titled "Indemnification, Insurance, and Protection of Property" found in The Boeing Company General Provisions (GP) applicable to and referenced in this Contract.

a. Seller's Employees

- i. Seller shall indemnify Buyer against liability of Buyer for death of, or personal injury to, any person employed by Seller on work under the Contract, except to the extent that such death or injury results from any wilful misconduct or unlawful or negligent act or omission or breach of contract on the part of Buyer, its officers, employees or agents.

b. Property Damage and Public Risk

- i. Seller shall indemnify Buyer, its officers, employees, and agents against:
 - a. claims by any person, in respect of personal injury or death, except to the extent that Seller's indemnity under clause 5.a.i. applies;
 - b. loss of, or damage to, any third party property, and claims by any person, in respect of loss of, or damage to, any third party property;
 - c. reasonable costs and expenses including the costs (on a solicitor and own client basis) of defending or settling any claim referred to in clauses 5.b.i.a or 5.b.i.b, to the extent such death, injury or property loss or damage was caused by any wilful misconduct or unlawful or negligent act or omission or breach of contract on the part of Seller, its officers, employees, agents; or its Subcontractors in connection with the performance of the Contract.
- ii. For the purpose of clause 5.b.i.b, the term third party property includes Commonwealth Property which is not Defence Property and also includes any cargo on an AMS that is not Defence Property, but excludes all Defence Property, GFX and ADP and AMS (and everything (excluding persons) attached to or on the AMS, other than cargo that is not Defence Property). Buyer acknowledges that in no event whatsoever shall any AMS, GFX or ADP ever be or become third party property.

c. Liability for Certain Defence Property

- i. Seller is liable and responsible for the following loss or damage:
 - a. physical loss of or damage to any AMS (and everything attached to or on the AMS, including any cargo that is Defence Property) when such AMS (and everything attached to or on the AMS, other than cargo that is not Defence Property) is lost or damaged while the AMS (and everything attached to or on the AMS, including any cargo this is Defence Property) is in the care, custody or control of Seller or its officers, employees, agents or Subcontractors during the performance of the Contract; and
 - b. physical loss of or damage to any ADP (excluding the AMS) when such ADP (excluding the AMS) is lost or damaged while the ADP (excluding the AMS) is in the care, custody or control of Seller or its officers, employees, agents or Subcontractors during the performance of the Contract; and
 - c. physical loss of or damage to any Defence Property or GFX when such Defence Property or GFX is lost or damaged by Seller or its officers, employees, agents or Subcontractors during the performance of the Contract,
to the extent that such loss or damage was caused by the wilful misconduct, negligence or breach of contract of Seller, its officers, employees, agents or its Subcontractors.
- ii. Seller is liable and responsible for loss of or damage to any GFX when such GFX is lost or damaged while the GFX is in the care, custody or control of Seller or its officers, employees, agents or Subcontractors during the performance of the Contract except to the extent that such a loss or damage results from:
 - a. Excepted Risk;
 - b. any acts of God, including lightning strikes, bushfires, earthquakes, floods, landslides, cyclones or other natural disasters not caused by Seller or any of its officers, employees, agents or Subcontractors; or
 - c. any negligent act or omission, wilful misconduct, or breach of Contract by Buyer or any of its contractors, officers, employees or agents (but not including Seller, its officers, employees, agents or Subcontractors).
- iii. Seller shall be liable and responsible for the following loss or damage: physical loss of, or damage to, any AMS (and everything attached to or on the AMS, other than cargo that is not Defence Property) (while it is not in the care, custody or control of Seller) to the extent such loss or damage is caused by Deliberate Misconduct, in connection with the performance of the Contract.
- iv. Notwithstanding any other provision of the Contract, Seller shall have no liability to Buyer under, arising out of or in connection with the performance or non-performance of the Contract or provision of Supplies, services or goods, whether arising:
 - a. from breach of contract, any indemnity or any undertaking of responsibility;
 - b. in tort (other than fraud) for negligence or otherwise;
 - c. otherwise at law (including by statute to the extent it is possible to exclude liability);
or
 - d. in equity generally,
for loss of or damage to AMS (and everything attached to or on the AMS, other than cargo that is not Defence Property), GFX, ADP, or Defence Property other than:

- e. as provided for in clauses 5.c.i, 5.c.ii., and 5.c.iii., but in each case subject to any applicable limits to or exclusions of liability contained in clause 5.e. or
 - f. to the extent liabilities arise under and in accordance with clause 5h.
- v. Where:
- a. Buyer Representative by written notice to Seller rejects Supplies (excluding AMS, GFX, or ADP) as not conforming to the requirements of this Contract; or
 - b. Seller retakes possession of the Supplies (excluding AMD, GFX or ADP) in accordance with this Contract,
- risk of loss of, or damage to, those Supplies will revert to Seller on repossession by Seller or its Subcontractors or seven (7) days after issues of a notice under clause 5.c.v.a., whichever is the earlier.
- vi. Where pursuant to clause 5.c.v. the risk of loss or damage has reverted to Seller and where Supplies are lost or damages, Seller shall at no cost to Buyer make good such loss or damage except to the extent that such loss or damage was caused by an Excepted Risk in which case the Buyer may either:
- a. provide notice in writing to Seller terminating so much of this Contract as is related to such loss or damage; or
 - b. direct Seller at Buyer expense to make good the loss or damage.
- d. Intellectual Property Indemnity
- i. Seller must indemnify Buyer and its officers, employees, agents and contractors against any liability, loss, damage, cost (including the reasonable legal costs and expenses on a solicitor and own client basis), compensation or expense, sustained or incurred by the Buyer with respect to any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
 - a. infringement or alleged infringement of that third party's IP where the infringement or alleged infringement arises out of any activity within the scope of any licence or assignment given by Seller that is referred to in clause 4 or otherwise under the Contract; or
 - b. breach or alleged breach of any duty of confidentiality owed to that third party, where the breach is caused by any act or omission on the part of Seller or any of its officers, employees, agents or Subcontractors (whether or not such act or omission constitutes a breach of the Contract),(each a Third Party IP Claim) to the extent that such liability, loss, damage, cost, compensation or expense has been finally determined by a properly constituted independent tribunal or is incurred or sustained by the Buyer pursuant to a settlement that has received the prior written approval of Seller.
 - ii. The indemnity in clause 5d.i.does not apply to the extent that a Third Party IP Claim arises as a result of:
 - a. any wilful misconduct or unlawful act on the part of Buyer, its officers, employees, agents or contractors (other than Seller, its officers, employees, agents or Subcontractors); or

- b. infringement or alleged infringement of that third party's IP arising by reason of Seller's compliance with an express instruction of Buyer provided that Seller was not required to obtain IP rights for the Commonwealth or Buyer under this Contract or the SAC to authorise the otherwise actual or alleged infringing conduct.
- e. Limitation of Liability
- i. To the fullest extent permitted by law, subject to clause 5.e.i., 5.e.ii. and the exclusions and limitations of liability provided elsewhere in this Contract, the liability of Seller (including liability for its officers, employees, Subcontractors or agents) to Buyer for the payment of money for all claims, losses, expenses and damages arising out of or in connection with Seller's performance (and the performance of its officers, employees, Subcontractors or agents) of this Contract is limited:
 - a. to an aggregate amount of AUD175,000,000 for liability under clause 5.c.i.a. of this CCR;
 - b. to an aggregate amount of AUD150,000,000 for liability under clause 5.c.i.b. and liability for loss of or damage to GFX under clauses 5.c.ii and clause 5.c.i.c. of this Contract;
 - c. to an aggregate amount of AUD137,000,000 for liability for loss of or damage to Defence Property under clause 5.c.i.c. of this Contract;
 - d. to an aggregate amount of AUD175,000,000 for liability under clause 5.c.iii. of this Contract; and
 - e. to a total cumulative aggregate amount of AUD50,000,000 for all other liabilities that are not the liabilities set out in clauses 5.e.i.a., 5.e.i.b. 5.e.i.c and 5.e.i.d. of this Contract, including, but not limited to, liabilities for all claims, actions, damages, costs, expenses, suits, proceedings and compensation made, incurred or sustained by Buyer against Seller for all and any wilful misconduct or unlawful or negligent act or omission or breach of contract arising out of or in connection with this Contract.
 - ii. The limitations in clause 5.e.i do not apply to limit the liability of Seller, under this Contract only, to Buyer for:
 - a. the indemnity provided by Seller under clause 5.d. for Third Party IP Claims;
 - b. personal injury and death to any person;
 - c. physical loss of, or damage to, third party property under clause 5.b.i.b.;
 - d. physical loss of, or damage to Commonwealth Property which is not Defence Property, AMS (and everything attached to or on the AMS, including cargo that is Defence Property) GFX or ADP under clause 5.b.i.b. and as set out in clause 5.b.ii.
 - e. a liability under clause 5.h. but only to the extent liabilities arise under and in accordance with clause 5.h.
 - f. breach of IP rights, confidentiality, privacy or security obligations under this Contract;
 - g. fraud;
 - h. the privacy indemnity provided by the Seller under clause 5.g. of this CCR;
 - i. criminal acts;

- j. wilful misconduct.
- iii. Notwithstanding any other provision of this Contract, except for any liability under clauses 5.a., 5.b., and 5.d., Seller shall have no obligation or liability to Buyer under, arising out of or in connection with the performance or non-performance of the Contract or provision of Supplies, services or goods, whether arising:
 - a. from a breach of contract, any indemnity or any undertaking of responsibility;
 - b. in tort (other than fraud) for negligence or otherwise;
 - c. otherwise at law (including by statute to the extent it is possible to exclude such liability); or
 - d. in equity generally,for any Consequential Loss suffered by Buyer in connection with or arising out of:
 - e. any non-conformance or defect in any Supplies (including data, services, training, parts and supplies) and any other work performed or goods provided under the Contract; or
 - f. any loss, damage or destruction of any Defence Property, AMS (and everything attached to or on the AMS, including any cargo that is Defence Property), Supplies, GFX or ADP.
- f. Insurance
 - i. Seller shall effect and maintain the insurances (which, for the purposes of this clause 5.f. will be satisfied where Seller causes such insurances to be effected and maintained or where Seller is insured under such insurances) for the times and in the manner specified in this clause 5.f., without requiring insurance to be effected to the extent that a particular risk:
 - a. is insured against under other insurance effected in compliance with this clause 5.f.; or
 - b. has been expressly retained by Buyer, except to the extent that such retention by Buyer is dependent on Seller being liable only to the extent that it is insured for the liability.For the avoidance of doubt, the terms of this clause 5.f. do not alter the allocation of risk or liability between the parties as provided for under any other clause of the Contract.
 - ii. Seller shall use its best endeavours to ensure that its Subcontractors are insured as required by this clause 5.f, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were Seller.
 - iii. (workers compensation) Seller shall effect and maintain:
 - a. workers compensation insurance or registrations as required by law, in respect of Seller's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Contract. Where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance or registrations shall extend to cover the vicarious liability of Buyer for the acts or omissions of Seller. However, the requirements of this clause 5.f.iii.a. do not apply

- to the extent and for such time as Seller is a licensed self-insurer or exempt employer in the relevant jurisdiction; and
- b. in each jurisdiction where common law claims can be brought outside of the statutory workers compensation or accident compensation scheme referred to in clause 5.f.iii. a., employer's liability insurance with a limit of indemnity of not less than the amount customarily effected by prudent insureds for this risk in each relevant jurisdiction, covering any work-related injury, damage, expense, loss or liability suffered or incurred by any person engaged by Seller in the work under the Contract (or their dependants). Such insurance shall extend to cover the vicarious liability of Buyer for the acts or omissions of Seller.
- iv. (public liability) Seller shall effect and maintain public liability insurance written on an occurrence basis with a limit of indemnity of not less than:
- a. \$60 million each and every occurrence for public liability claims; and
 - b. \$60 million each occurrence and in the aggregate for all occurrences in any 12 month policy period for products liability claims,
- which covers:
- c. Seller, its officers, employees and agents (including liability to each other); and
 - d. Buyer and the Buyer Representative for their vicarious liability for the acts of omissions of Seller, its officers, employees and agents;
- for their respective liabilities for any;
- e. loss of, damage to, or loss of use of, any tangible property (including GFF, GFE and any other Commonwealth property in the care, custody or control of Seller or its Subcontractors for a sub-limit of not less than \$20 million each occurrence and in the aggregate for all occurrences in any 12 month policy period, unless that property is insured against the risks of loss and damage under the insurance referred to in clause 5.f.xi. (property); and
 - f. the bodily injury, disease, illness or death of any person,
- caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Contract or under any GFF licence entered into for the purposes of this Contract by Seller or its officers, employees, agents or Subcontractors, including in respect of the manufacture, processing, alteration, repair, installation, supply, distribution or sale of any product. This insurance must have a worldwide territorial limit.
- v. (professional indemnity) Seller shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than \$6 million per claim and in the aggregate for all claims in any 12 month policy period, and including an automatic right of reinstatement, which covers the liability of Seller at general law arising from a negligent breach of duty owed in a professional capacity, by reason of any act or omission of Seller, its officers, employees, agents or Subcontractors. Such insurance shall:
- a. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by Seller, its officers, employees, agents and Subcontractors under the Contract;

- b. extend to cover claims related to software and IT risks;
 - c. extend to cover claims for unintentional breaches of intellectual property rights;
 - d. extend to cover claims for unintentional breaches of trade practices laws;
 - e. extend to cover document recreation costs for lost documents with a sub-limit of indemnity of not less than \$6 million each claim and in the aggregate for all claims in any 12 month policy period;
 - f. have a retroactive date of no later than the earlier of the commencement of the work under the Contact or any preparatory work by Seller, its officers, employees, agents and Subcontractors; and
 - g. have worldwide territorial and jurisdictional limits.
- vi. (property) Seller shall effect and maintain all risks property insurance covering:
- a. the tangible Supplies, unless and to the extent that the liability of Seller for the loss or damage of that property is insured under the insurance referred to in clause 5.f.iv. (public liability);
 - b. GFE, GFF and any other property of the Commonwealth in the care, custody or control of Seller or its Subcontractors unless and to the extent that the liability of Seller for the loss or damage of that property is insured under the insurance referred to in clause 5.f.iv. (public liability); and
 - c. all other property, plant and equipment in the care, custody or control of Seller or its agents, material to Seller's ability to perform its obligations under the Contract, against the risks of loss, damage or destruction by all commercially insurable risks (including earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage and resulting loss or damage arising from faulty material, workmanship or design), for the full replacement or reinstatement value of such insured property and including cover for professional fees, extra costs of reinstatement, and removal of debris. The insurance shall insure the respective interests of Seller, Buyer and the Commonwealth in the property insured. Where the GFF constitutes only a part of a building or facility, the requirement for insurance for GFF under this clause 5.f.vi. only applies in respect of the Licensed Fittings.
- vii. (transit) Seller shall effect and maintain insurance covering any tangible property referred to in clause 5.f.vi., against the risks of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transits of such property by land, sea or air and during loading or unloading and storage during transit, where such transits are at the risk of Seller. The insurance shall insure the respective interests of Seller and Buyer in the property insured.
- viii. (motor vehicle) Seller shall effect and maintain:
- a. compulsory third party insurance as required by law in respect of all registered plant and motor vehicles used by Seller, its officers, employees and agents in connection with the work under the Contract; and
 - b. comprehensive motor vehicle liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20 million each and every occurrence covering:

- i. third party property loss or damage arising out of the use by Seller, its officers, employees and agents of any registered or unregistered plant or vehicles; and
 - ii. third party bodily injury, disease, illness or death arising out of the use by Seller, its officers, employees and agents of any unregistered plant or vehicles and, any registered vehicles not required to be insured under compulsory third party insurance in a foreign jurisdiction,

in connection with the work under the Contract or on or around any GFF by Seller or its officers, employees, agents or Subcontractors.
- ix. (aviation liability) Seller shall effect and maintain aviation and aviation products liability insurance written on an occurrence basis with a limit of indemnity of not less than:
 - a. \$5 million each and every occurrence for aviation liability claims; and
 - b. \$10 million each occurrence and in the aggregate for all occurrences in any 12 month policy period for aviation products liability claims,which covers:
 - c. Seller, its officers, employees and agents (including for liability to each other); and
 - d. Buyer and Buyer Representative for their vicarious liability for the acts or omissions of Seller, its officers, employees and agents, for their respective liabilities for any:
 - e. loss of, damage to, or loss of use of, any tangible property (including GFE, GFF and any other property of the Commonwealth in the care, custody or control of Seller or its Subcontractors for a sub-limit of not less than \$5 million each occurrence and in the aggregate for all occurrences in any 12 month policy period, unless that property is insured against the risks of loss and damage under the insurance referred to in clause 5.f.vi. (property); and
 - f. bodily injury, disease, illness or death of any person caused by, arising out of, or in connection with, the manufacture, processing, alteration, supply, distribution, sale, use, operation, repair, maintenance or ownership of any aircraft or aviation products in the performance of the Contract by Seller or its officers, employees, agents or Subcontractors. Such insurance shall:
 - g. cover all aviation activities and services to be provided by Seller, its officers, employees and agents under the Contract;
 - h. not exclude claims related to the effects of noise or wind produced as a result of the use, operation or ownership of any aircraft;
 - i. not exclude claims arising from an alleged breach of duty owed in a professional capacity;
 - j. cover war risks as provided by AVN52E
 - k. cover third party passenger liability
 - l. cover claims by pilots and operational crew as provided by AVN73
 - m. include confirmation that the insurance is compliant with requirements of the Civil Aviation (Carriers Liability) Act 1959 (Cth) as provided by AVN57A.
- x. The insurances and registrations referred to in:

- a. the following clauses shall be effected before Seller commences work under the Contract, and thereafter be maintained until all work under the Contract is completed:
 - i. clause 5.f.iii. (worker's compensation); and
 - ii. clauses 5.f. vi. (property);
 - b. clause 5.f.iv (public liability) shall be effected before Seller commences work under the Contract, and thereafter be maintained until all work under the Contract is completed;
 - c. clause 5.f.ix. (aviation liability) shall be effected before Seller commences work under the Contract, and thereafter be maintained until all work under the Contract is completed and, in respect of product liability for 10 years following completion of the work under the Contract;
 - d. clause 5.f.v. (professional indemnity) shall be effected before Seller commences work under the Contract, and thereafter be maintained until the earlier of:
 - i. 10 years following completion of the work under the Contract; or
 - ii. 10 years following earlier termination of the Contract;
 - e. clause 5.f.vii. (transit) shall be effected on or before the start of each conveyance and maintained until the end of each conveyance by delivery at the within Australia;
 - f. clauses 5.f.viii. (motor vehicle) shall (if required) be effected on or before the date the plant or vehicle is used in connection with the work under the Contract or on or around the GFF (whichever is the earlier) and maintained until such plant or vehicle ceases to be so used
- xi. To the extent that Seller's insurances and registrations required by clause 5.f. of this Contract are in fact written on a claims made basis (notwithstanding any requirements of this Contract for such insurances to be written on an occurrence basis) then Seller must maintain those insurances and registrations until the earlier of:
- a. 10 years following completion of the work under the Contract; or
 - b. 10 years following earlier termination of the Contract;
- xii. With the exception of statutory insurances, the insurances referred to in this clause 5.f. shall:
- a. be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by Buyer, acting reasonably;
 - b. provide that the insurer agrees:
 - i. to provide at least 20 Working Days written notice of cancellation to the policyholder;
 - ii. that the policy operates (with the exception of limits of indemnity) as if there was a separate policy of insurance covering each party comprising the insured;
 - iii. that a failure by any insured to observe and fulfil the terms of the policy or to comply with the pre-contractual duty of disclosure does not prejudice the insurance of any other insured;

- iv. that the state of mind and knowledge of one insured will not be imputed to any other insured for the purposes of determining the availability of cover under the policy;
 - v. to waive all rights of salvage in respect of property of the Commonwealth which Buyer notifies to Seller at or before the time of loss is of a sensitive nature from a national security perspective. Where Buyer obtains proceeds from the salvage sale from any such property of the Commonwealth insured under Seller's insurance, the insurer may deduct the actual payment of such salvage sale proceeds obtained by Buyer from the amount of claim payment. Where Buyer does not sell but instead reuses such property, the insurer may deduct a reasonable amount from the amount of the claim payment to reflect the value Buyer has obtained from the reuse of the property. However this clause 5.f.xii.b.v. only applies to the insurances referred to in the following clauses:
 - 1. clause 5.f.iv. (public liability)
 - 2. clause 5.f.vi. (property); and
 - 3. clause 5.f.vii (transit)
 - vi. that a notice of a claim by any insured will be accepted as notices by all insureds.
- xiii. Seller shall, on request, produce evidence satisfactory to Buyer Representative of the currency and terms of the insurances referred to in this clause 5.f. including:
- a. certificates of currency issued by the insurer or by Seller's insurance broker which contains sufficient detail to enable Buyer to ascertain whether the insurances are in compliance with this clause 5.f.
 - b. copies of all policies (except for statutory insurances and provided that, in relation to commercially sensitive policies only, for the purpose of complying with this clause 5.f.xiii., such policies may be made available for inspection by Buyer and the Commonwealth or the Commonwealth's advisers, at a place and time reasonably convenient to Buyer, Commonwealth or the Commonwealth's advisers); and
 - c. other evidence of the insurances which Buyer reasonably requires.
- xiv. If Seller fails to comply with clause 5.f.xiii, Buyer may, but is not obliged to, effect and maintain the relevant insurances and may:
- a. recover the cost of doing so as a debt due to Buyer; or
 - b. deduct the premiums payable for the relevant insurances from amounts payable to Seller under the Contract.
- xv. In the event Buyer elects to exercise its rights under clause 5.f.xiv., Seller shall provide Buyer with all reasonable assistance to allow Buyer to exercise those rights, including by executing documents and providing insurance proposal information to Buyer's insurance broker and proposed insurers.
- xvi. In respect of each insurance referred to in this clause 5.f., Seller shall:
- a. pay (or cause to be paid) all premiums and deductibles as and when they are due;
 - b. not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
 - c. if necessary, rectify anything which might prejudice any insurance;

- d. reinstate an insurance policy if it lapses;
 - e. not cancel, materially adversely vary or allow an insurance policy to lapse without the prior written consent of Buyer;
 - f. promptly notify Buyer of any event (including the issue of a notice of intention to cancel by the insurer to the policyholder) which may result in an insurance policy lapsing or being cancelled;
 - g. promptly inform Buyer if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by Buyer against Seller) which could materially reduce the available limits of indemnity or which may involve Buyer, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by Buyer;
 - h. give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payment of any claims under the insurance; and
 - i. do everything reasonably required by Buyer or any other person in whose name the policy is effected to enable Buyer or that other person to claim and to collect or recover monies due under any insurance policy.
- xvii. Seller shall not do anything which has been notified to Seller in writing by Buyer that may invalidate or prejudice any insurance policy held by Buyer or any indemnity to which Buyer may be entitled.
- xviii. If a change to the Contract is proposed by either party that varies the Statement of Work, the parties must negotiate in good faith to make appropriate amendments to the limits of indemnity required for the insurances referred to in this clause 5.f.
- xix. If Seller becomes aware that a risk to be covered by an insurance policy referred to in this clause 5.f. has or is to become Uninsurable then:
- a. Seller shall promptly notify Buyer in writing together with all details available to Seller as to the reason why the risk is Uninsurable, steps taken by Seller to obtain insurance for the risk, the date on which the risk became or will become Uninsurable, and details as to what Seller suggests is appropriate to mitigate, manage or control the risk while it remains Uninsurable;
 - b. the parties shall meet as soon as reasonably practicable, but (unless otherwise agreed between the parties) no later than 5 Working Days after the notification in clause 5.f.xix. to discuss all practical means by which the risk shall be managed (including, if the risk is material, the option of Buyer providing an indemnity to Seller covering substantially the risks which have become Uninsurable or varying the Contract);
 - c. if the parties cannot agree as to how an Uninsurable risk is to be managed then, if the Uninsurable risk is material, either party (provided that the party is adversely affected by the Uninsurable risk), acting reasonably and in good faith, may terminate the Contract by written notice with the exception that Seller shall not terminate the Contract if Buyer offers an indemnity in substitution for insurance for the Uninsurable risk and that indemnity is no less broad than the insurance held by Seller for that risk immediately before the risk became Uninsurable. For the avoidance of doubt, termination pursuant to this clause is not to be treated under

any circumstances as the exercise of a termination right under any other provision of this Contract, even if such a right may otherwise exist;

- d. Seller shall, in respect of any risk that has become Uninsurable:
 - i. monitor the insurance industry on a regular basis (and not less than twice a year) and attempt to obtain insurance for the risk which is Uninsurable;
 - ii. provide Buyer with details of attempts made by Seller to obtain insurance for the Uninsurable risk; and
 - iii. as soon as it is able to do so, obtain insurance for the Uninsurable risk;
 - e. Seller acknowledges that Buyer may undertake its own enquiries as to the availability of insurance for Uninsurable risks and as to the terms and conditions, including price, on which it is available. If Buyer's own enquiries show that the insurance for Uninsurable risks is available on terms and conditions that are commercially reasonable in all of the circumstances, Seller shall obtain that insurance without unreasonable delay;
 - f. Seller is relieved of its obligations under clause 5.f. to effect insurance for any risk that is Uninsurable for the period that the risk remains Uninsurable.
- xx. For the purposes of clause 5.f.xix., Uninsurable means, in relation to risk, either that:
- a. insurance required pursuant to this clause 5.f. is not available in the international insurance markets with insurers with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another reputable rating agency); or
 - b. the insurance premium for insuring that risk is at such a level or the terms and conditions are such that the risk is not generally being insured against in the international insurance market with reputable insurers by prudent corporates with a risk profile comparable to Seller.
- xxi. Seller shall be:
- a. deemed compliant with the requirement of the following clauses: 5.f.i., 5.f.iii., (worker's compensation); 5.f.iv. (public liability); 5.f.v. (professional indemnity); 5.f.vi (property); 5.f.vii. (transit); 5.f.viii. (motor vehicle); 5.f.ix. (aviation liability); and 5.f.xii. and
 - b. be relieved of its obligations under clauses 5.f.x.iii and 5.f.x.v.i.
- in respect of a particular insurance listed in clause 5.f.xxi.a. for any period during which Seller's insurance program holds Approved Contractor Insurance Program (ACIP) status under the Defence Materiel Organisation's centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether Seller's ACIP status extends to that type of insurance). Seller shall advise Buyer Representative within 5 Working Days if its ACIP status is withdrawn or suspended by Buyer.
- xxii. In addition to any other rights Buyer may have under the Contract, Buyer reserves the right to withhold payments under the Contract if Seller has failed to remedy a breach of this clause 5.f.
- xxiii. The parties acknowledge and agree that should Seller be required to obtain any third party insurance, and Buyer and Seller shall negotiate an equitable adjustment to the Contract.

xxiv. For the purposes of this clause 5.f.xxiii., a third party insurer means any insurer that is not a Related Body corporate of The Boeing Company.

g. Privacy Indemnity

Seller shall indemnify Buyer against any loss, liability or expense suffered or incurred by Buyer which arises directly or indirectly from a breach of any of Seller's or Subcontractor's obligations referred to in clause 15.

h. Liability for AMS while it's not in the care, custody or control of Seller

i. Liability if the Buyer funds insurance: Buyer may within 2 weeks of the Effective Date of the Contract seek that Seller procure insurance in accordance with this clause 5.h.i. If Buyer elects under clause 5.i.vi. to pay for insurance to cover the loss of or damage to any AMS while it is not in the care, custody or control of Seller then Seller shall be liable, to Buyer to the extent that it is recoverable under that insurance, for any loss of or damage to such AMS covered by that insurance (Insured AMS) which:

- a. occurs while the Insured AMS (as specified by Buyer under clause 5.h.i.) is not in the care, custody or control of Seller; and
- b. results from a defect or deficiency in the Supplies to the extent such defect or deficiency was caused by any wilful misconduct or negligent act or omission or breach of Contract on the part of Seller,

but the value of that insurance is limited in respect of the Insured to AMS to:

- c. \$US200million for any one occurrence or any series of occurrences arising from a single cause, provided that such amount shall be subject to adjustment based upon the availability of such escalated coverage at the time Buyer makes its election under clause 5.h.iii. for: price variation using the formula set out in this Contract; and changes in the AMS configuration after the Effective Date; and
- d. \$US400million in the aggregate, subject to the same adjustment as provided for in clause 5.h.i.c,

and further limited to an amount to be agreed in respect of any other AMS after Buyer makes its written request under clause 5.i.iii.

For the purposes of this clause 5.h.i. an amount is "recoverable" under a policy of insurance to the extent a claim made under a policy is recovered under the terms of such policy or would have been recovered had the Seller complied with its obligations under clause 5.f. in respect of such insurance and otherwise diligently pursued recovery in accordance with the terms of the policy.

ii. Liability under the repair/replacement remedy: Buyer may within 2 weeks of the Effective Date of the Contract seek that Seller procure insurance in accordance with this clause 5.h.ii. If Buyer chooses under clause 5.i.i. to have the right to require Seller to repair or replace any AMS which is lost or damaged while it is not in the care, custody or control of Seller and an AMS which Buyer chooses to be covered by that remedy (Covered AMS) is:

- a. lost or damaged while it is not in the care, custody or control of Seller of the Covered AMS (as specified by Buyer under clause 5.i.i. and
- b. to the extent the loss or damage is a result of a defect or deficiency in the Supplies,

then Seller shall to the extent that it recovers moneys under that insurance (on the basis that the insurer is not entitled to rely on the exclusion of liability under clause 5.c.iv. (except with respect to the inclusion of Consequential Loss under clause 5.e.iii.) to avoid or reduce its liability under that insurance):

- c. in the event of partial loss or damage - repair the Covered AMS to the condition they were in at the time of loss or damage or to such other form and condition as the parties may agree upon, in accordance with applicable industry practices and standards; and
- d. in the event of a total loss - replace the Covered AMS with an asset of similar form and condition as the Covered AMS at the time of the loss, or such other form and condition as the parties may agree upon,

but that liability is limited in respect to the Covered AMS to:

- e. one Covered AMS for any one occurrence or any series of occurrences arising from a single cause; and
- f. two covered AMS in the aggregate

and further limited to an amount to be agreed in respect of any other AMS after Buyer makes its written request under clause 5.i.iii.

- iii. Before Seller performs work under clause 5.h.ii., the parties shall agree upon the configuration of the replacement AMS, their delivery schedule and other relevant matters. Seller shall not be required to replace an AMS if Seller no longer manufactures the AMS (or a substantially similar 737 AEW&C AMS). In such event, Seller shall pay Buyer the replacement cost of the lost AMS subject to the limits set out in clause 5.h.i.c. and 5.h.i.d. and to the extent that it recovers moneys under that insurance.
- iv. If Buyer elects to have Seller procure insurance pursuant to the terms of clause 5.h.i. and/or clause 5.h.ii., Buyer shall have the right to participate in the placement of the insurances including the right to confer with brokers for Seller for the placement and to meet with underwriters with respect to the placement in order to ensure that the placement is on the best available commercial terms and that the policy meets the requirements of Buyer in providing value for money. Buyer shall have the right to require Seller to seek alternative quotes for the insurances to be procured by Seller. Buyer and Seller will co-operate with each other in order to ensure the effective placement of insurances to be placed pursuant to provisions of clause 5.h.i. and 5.h.ii. including in relation to the provision of relevant information to brokers and underwriters for the purposes of underwriting the risks to be insured.
- v. Seller elected insurance: If Seller chooses, in order to satisfy Buyer's election under clause 5.i.vi. to:
 - a. carry insurance; or
 - b. establish a reserve for self-insurance,
covering liability for loss of or damage to the AMS to the extent resulting from a defect or deficiency in the Services, Seller shall be liable to Buyer for any such loss or damage to the extent of recovery by Seller under the insurance or reserve. If Buyer makes a claim against Seller for such loss or damage, Seller shall disclose to Buyer the details of any relevant insurance or reserve.

i. Election of Remedies

- i. Choice of Remedies: If Buyer wishes to elect:
 - a. to have the insurance remedy referred to in clause 5.h.i. or
 - b. the repair/replacement remedy referred to in clause 5.h.ii.,

it shall request Seller in writing no later than 2 weeks after Effective Date of the Contract to obtain indications from underwriters as to whether they are willing to underwrite such a policy and, if so, the terms on which they would underwrite it including a premium indication, underwriters specification (including a premium indication) and proposed policy wording on alternative insurance limits of cover and periods of coverage stipulated in the request. Seller shall not be required to obtain any insurance related information earlier than 2 weeks after Effective Date of the Contract.

- ii. Underwriters specification: Seller shall within 1 month of the date it receives the request from Buyer under clause 5.i.i. prepare and submit to Buyer for its consideration the information sought in that request.
- iii. Insurance quotes: If Buyer wishes to proceed with insurance or a repair/replacement remedy it shall notify Seller in writing of:
 - a. the chosen limit of cover;
 - b. whether it applies to all or part of the AMS; and
 - c. whether it applies while it is not in the care, custody, or control of Seller,

no later than 2 weeks after receiving the information sought under clause 5.i.i. Within 2 weeks of such notification Seller shall request quotes for the chosen limit of cover including details of the level of coverage and any proposed exclusions from at least three underwriters and provide copies of any quotes received to Buyer.

- iv. Discussion with underwriters: On request Seller shall arrange discussions between Buyer or its advisers and the underwriters in the presence of Seller and its brokers. Buyer may request any additional information it reasonably needs to understand any aspect of the proposed policies.
 - v. Audit: On request from Buyer, Seller shall give the U.S. Defense Contract Audit Agency, on behalf of Buyer, access to the quotations to verify that the quotations and conditions were incorporated properly and represent the cost to Seller for such insurance.
 - vi. Election: Within 2 weeks after provision of quotes for the chosen limit of cover (including details of the level of coverage and any proposed exclusions) Buyer shall notify Seller whether it elects to proceed with the chosen limit of cover including any additional considerations. The insurance remedy shall not be available to Buyer if no quotes can be obtained. If Buyer has chosen the repair/replacement remedy and no quotes can be obtained, no insurance remedy shall be available to Buyer.
 - vii. CCP: Within 2 weeks after Buyer has elected to proceed, Seller shall submit to Buyer and the parties shall negotiate a CCP to incorporate the chosen limit of cover into the Contract. The Contract Price does not include any amount for either remedy referred to in clause 5.h.i.
- j. Enforcement of Indemnities

The indemnities in this clause 5 in favour of Buyer officers, employees or agents may be enforced by Buyer on their behalf and for their benefit.

k. Incurring of Expense Not Necessary

It is not necessary for a party to have incurred any expense or made any payment before enforcing an indemnity given in its favour by any other party under this Contract.

6. Warranties and Support of the Supplies

- a. Notwithstanding the time period stated in the General Provisions, the warranty shall survive inspection, test and payment for the Goods and shall begin upon delivery of Goods to Buyer and shall extend for a period of one (1) year following Buyer's customer's final acceptance.
- b. Seller must enforce all manufacturers' and vendors' warranties in respect of all materials, components, systems and parts incorporated into or provided as part of the Supplies, except to the extent that the Buyer agrees otherwise in writing. For the purposes of this clause 6.b., manufacturers' and vendors' warranty includes commercially equivalent arrangements, guarantees and service life policies.

7. Confidential Information

- a. If it is necessary for Seller to disclose Confidential Information, provided or produced by or on behalf of Buyer, to a third party, other than a legal adviser, Seller shall obtain the written consent of Buyer and obtain a Deed of Confidentiality and Fidelity in the form of Annex B to the CCR from the third party recipient.
- b. Where Seller and Subcontractor personnel are not already covered by an overarching company confidentiality requirement (e.g. Terms of Employment), Buyer may require Seller or Subcontractor engaged in the performance of the Contract to enter into a Deed of Confidentiality and Fidelity set out in Annex B to the CCR prior to the disclosure of Confidential Information. Seller shall provide properly executed Deeds of Confidentiality and Fidelity as required by this clause.
- c. The parties agree that the CCR are Confidential Information for the relevant party as at the Effective Date.
- d. Seller agrees to deliver to Buyer, as required by Buyer, all documents in its possession, power, or control which contain or relate to any information that is Confidential Information or Buyer on the earlier of;
 - i. demand by Buyer; or
 - ii. the time the documents and other material are no longer required for the purposes of the Contract.
- e. If Buyer makes a demand under clause 7.d. and Seller has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then Seller shall provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- f. Seller, when directed by Buyer in writing, agrees to destroy any document in its possession, power or control which contains or relates to any Confidential Information.
- g. Return or destruction of the documents referred to in this clause 8 does not release Seller from its obligations under the Contract.

8. Independent Contractor

Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall Seller or its

agents, representatives or employees be deemed to be agents, representatives or employees of Buyer. Seller's employees shall be paid exclusively by Seller for all Services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.

9. Subcontracts

- a. Seller, if requested by Buyer, shall provide Buyer with names of all Subcontractors and a copy of any Subcontract, which copy need not contain prices. Seller acknowledges and agrees (and shall ensure that its Subcontractors also acknowledge and agree) that Buyer or Buyer's customer may be required to publicly disclose Seller's and Subcontractors' participation in the performance of the Contract.
- b. Seller shall not enter into a subcontract with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012.

10. Defence Security

- a. If Seller requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence or the ADF, Seller shall:
 - i. comply with any security requirements (including those contained in the Defence Security Manual (DSM)) notified to Seller by the Buyer Representative from time to time; and
 - ii. ensure that its officers, employees, agents and Subcontractors are aware of and comply with the Commonwealth's security requirements.
- b. Seller shall:
 - i. ensure that its officers, employees, agents and Subcontractors, undertake any security checks, clearances or accreditations as required by the Commonwealth or National Industrial Security Program Operating Manual (NISPOM), as applicable;
 - ii. notify Buyer of any changes to circumstances which may affect Seller's capacity to provide the Supplies in accordance with the Commonwealth's security requirements or NISPOM security requirements, as applicable; and
 - iii. provide a written undertaking in respect of security or access to the Commonwealth's place, area or facility in the form required by Buyer.
- c. The security classification of work to be performed under the Contract will be up to and including SECRET level. Seller shall:
 - i. possess a facility accreditation to meet the requirements of document storage, information systems, equipment and Communications Security (COMSEC) up to and including SECRET level, or equivalent; and
 - ii. comply with the relevant government industry security policy.
- d. For the purposes of clause 10c., accreditations shall be issued by the relevant overseas government security authority, and shall be verified by the Defence Security Authority (DSA) (through a bilateral security instrument or otherwise).

- e. Seller and its Subcontractors shall classify all information in its possession relating to the performance of the Contract according to the Security Classification and Categorisation Guide in Attachment I or US Security Classification Guide (SCG), 737 Airborne Early Warning and Control Core US Security Classification Guide dated 31 August 2010, as applicable and shall ensure that such information is safeguarded and protected according to its level of security classification. If information relating to the performance of the Contract is not covered for classification purposes in an Attachment to the Contract, Seller performance is subject to clause 10.n.
- f. No security classified information furnished or generated under the Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through the Buyer Representative.
- g. Seller shall promptly report to the Buyer Representative any instance in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of a country other than Australia or the United States of America.
- h. All security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Part 2:33 of the DSM, as amended from time to time.
- i. All Communications Security (COMSEC) material transmitted between the parties or a party and a Subcontractor, in Australia, shall in addition to the provisions of clause 0 above, be subject to the special security provisions of Part 2:53 of the DSM, as amended from time to time.
- j. All security classified information transmitted between the parties or a party and a Subcontractor located overseas, whether generated in Australia or by another country, shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
- k. All COMSEC material transmitted between the parties or a party and Subcontractor located overseas shall be subject to approval in the first instance by the Director Defence Signals Directorate (DSD), in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries. Once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director DSD and to any bilateral security instrument between Australia and the overseas country.
- l. If there has been a breach by Seller, a Subcontractor, or any of their officers, employees or agents, of clause 10.e. the Buyer Representative may give Seller a notice of termination for default under the Contract.
- m. Seller shall ensure the requirements of clause 10 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to any security classified information, in order to perform the obligations of the Subcontract.
- n. Seller may be entitled to relief for any impact associated with clause 10.e. or changes to the DSM or NISPOM during Seller's performance of this Contract.

11. Policy Requirements

- a. Subject to clause 11.b and 11.c, Seller shall comply with and require its officers, employees, agents and Subcontractors to comply with the following Commonwealth policies of general application where relevant or applicable to the Contract in the place of performance:
 - i. Company ScoreCard policy as detailed in the *DMO Company ScoreCard Policy Statement*.
 - ii. Defence Equity and Diversity policy as detailed in the *Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour*; DPI 1/2001; and DI(G) PERS 35-3;
 - iii. Conflicts of Interest and Gifts, Hospitality and Sponsorship policies as detailed in DI(G) PERS 25-6 and DI(G) PERS 25-7;
 - iv. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
 - v. Hazardous Substances policy as detailed in the DPPM;
 - vi. Ozone Depleting Substances Policy as detailed in the DPPM;
 - vii. Defence Stocktaking and Assurance Checking policy as detailed in DEFLOGMAN Part 2: Volume 5;
 - viii. Public Comment and dissemination of official information by Defence personnel, as detailed in DI (G) ADMIN 08-1;
 - ix. Work Health and Safety policy as detailed in the DPPM;
 - x. Defence Environmental policy as detailed in the DPPM; and
 - xi. Use of social media by Defence personnel as detailed in DI(G) ADMIN 08-2.
- b. If the SOW is inconsistent with a policy mentioned in clause 11.a, Seller shall comply with the SOW to the extent of the inconsistency.
- c. Seller shall, and shall ensure that each of its Subcontractors, fully comply with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

12. Privacy

- a. Seller shall where relevant and applicable to place of performance of the Contract:
 - i. use or disclose Personal Information obtained during the course of performing the Contract, only for the purposes of the Contract,
 - ii. 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;
 - iii. 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:
 - a. in the case of section 16F, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Subcontract; or
 - b. in the case of a National Privacy Principle or an Approved Privacy Code, if the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Subcontract, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;

- iv. notify individuals whose Personal Information is held by Seller or Subcontractor, as the case may be, of the complaints mechanism outlined in the Act that may apply to Seller;
 - v. disclose in writing to any person who asks, the content of the provisions of the Contract (if any) that are inconsistent with a National Privacy Principle or an Approved Privacy Code binding a party to the Contract;
 - vi. carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Act; and
 - vii. ensure that any officer, employee or agent of Seller who is required to deal with Personal Information for the purposes of the Contract, is made aware of the obligations of Seller as set out in this clause 12.
- b. Seller shall promptly notify the Buyer Representative if Seller:
- i. becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 12, whether by Seller or a Subcontractor;
 - ii. becomes aware that a disclosure of Personal Information may be required by law; or
 - iii. receives a request or inquiry from the Privacy Commissioner, or by any individual to whom any Personal Information held by the Seller or Subcontractors relates, in respect of Personal Information.
- c. Subject to clause 12.d., Seller shall ensure that Subcontracts entered into for the purposes of fulfilling its obligations under the Contract contain provisions to ensure that each Subcontractor has the same awareness and obligations as Seller has under this clause 12, including the requirement in relation to Subcontracts.
- d. Clause 12.c. does not apply to a Subcontract where the work of the Subcontractor under the Subcontract is wholly carried out outside Australia (which for this purpose includes the external Territories of Australia). For the avoidance of doubt, Subcontracts where the work of the Subcontractor under the Subcontract is wholly carried out outside Australia shall comply with the relevant Privacy legislation from the country in which the work is carried out.

Annexes:

A) Deed of Confidentiality and Fidelity

B) Glossary

ANNEX A TO CUSTOMER CONTRACTS REQUIREMENTS PH5A-CONT-000009**DEED OF CONFIDENTIALITY AND FIDELITY**

This Deed of Confidentiality and Fidelity is dated the (...INSERT DATE...)

between

THE COMMONWEALTH OF AUSTRALIA represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth')

and

(...INSERT CONFIDANT, ACN/ARBN AND ABN IF APPLICABLE...) having its registered office at (...INSERT CONFIDANT'S REGISTERED OFFICE IF APPLICABLE...) ('the Confidant').

RECITALS:

- A. The Commonwealth has entered into a contract (...INSERT NUMBER...) with (...INSERT CONTRACTOR...) ('the Contractor') and dated (...INSERT DATE...) ('the Contract') for the supply of [...INSERT BRIEF DESCRIPTION...].
- B. In order to assist the performance of the Contract, the Contractor and the Confidant have entered into a subcontract, employment or agency arrangement for the supply of (...INSERT PURPOSE OF ARRANGEMENT AND/OR CONTRACT/ORDER NUMBER AS APPROPRIATE...) ('the Agreement').
- C. In performance of the Agreement, the Confidant may become aware of information belonging to the Commonwealth or a third party that is the subject matter of the Contract. The Confidant agrees to keep the information confidential pursuant to the following terms and conditions.

THE PARTIES AGREE AS FOLLOWS:**1. DEFINITIONS**

1.1 In the interpretation of this Deed, unless the contrary intention appears:

'Confidential Information' means information (whether or not owned by the Commonwealth) that:

a. is by its nature confidential; and

b. is marked as "confidential",

but does not include information which:

c. is or becomes public knowledge other than by breach of this Deed;

d. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

e. has been independently developed or acquired by the receiving party.

'Documents' includes:

a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and

- b. any article or material from which sound, images or writings are capable of being reproduced with or without the aid of any other article or device.

'Permitted Purposes' mean [...INSERT PURPOSES FOR WHICH THE CONFIDENTIAL INFORMATION MAY BE USED...].

'Working Day' in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

2. INTERPRETATION

2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed;
- b. the singular includes the plural and vice versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. a reference to a clause includes a reference to a subclause of that clause;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. the word 'includes' in any form is not a word of limitation; and
- h. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract.

3. CONFIDENTIALITY UNDERTAKINGS

3.1 The Confidant:

- a. acknowledges and agrees that improper use, or disclosure of any Confidential Information provided to the Confidant pursuant to or in connection with the Agreement would be detrimental to the Commonwealth in the performance of its functions and would cause harm to any third parties with an interest in the Confidential Information;
- b. shall take all reasonable steps to ensure that such Confidential Information is kept confidential in accordance with this Deed;
- c. shall only use the Confidential Information for the Permitted Purposes; and
- d. shall not without the prior written consent of the Commonwealth, disclose or permit any person to disclose any of the Confidential Information to any person other than to any of its officers, employees, agents, advisers or independent contractors who:
 - (i) have a need to know the Confidential Information in order for the Confidant to carry out the Permitted Purposes; and
 - (ii) when required by the Commonwealth, have executed a similar undertaking to this Deed in favour of the Commonwealth,

and the Commonwealth may grant or withhold its consent in its discretion.

4. CONFIDANT'S REPRESENTATIVES

4.1 The Confidant shall ensure that its officers, employees, agents, advisers and independent contractors (whether or not still employed or engaged in that capacity) do not do or omit to do anything which, if done or omitted to be done by the Confidant, would be a breach of the Confidant's obligations under this Deed.

4.2 The Confidant shall give the Commonwealth all assistance it reasonably requires to take any action or bring any proceedings for breach of the undertaking contained in clause 3.1.

5. RETURN OF CONFIDENTIAL INFORMATION

5.1 The Confidant agrees to deliver to the Commonwealth or the Contractor, as required by the Commonwealth, all Documents in its possession, power or control which contain or relate to any Confidential Information on the earlier of:

- a. demand by the Commonwealth; and
- b. the time the documents and other material are no longer required for the Permitted Purposes.

5.2 If the Commonwealth makes a demand under clause 5, and the Confidant has placed or is aware that Documents containing the Confidential Information are beyond its possession or control, then the Confidant must provide full particulars of the whereabouts of the Documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.

5.3 The Confidant, when directed by the Commonwealth in writing, agrees to destroy any Document in its possession, power or control which contain or relate to any Confidential Information.

5.4 Return or destruction of the Documents referred to in this clause does not release the Confidant from its obligations under this Deed.

6. SURVIVAL

6.1 This Deed shall survive the termination or expiry of the Contract and the Agreement.

7. CONFLICT OF INTEREST

7.1 The Confidant warrants that before entering into this Deed it has disclosed to the Commonwealth all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing the obligations under this Deed for the Commonwealth fairly and independently.

7.2 The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing the obligations under this Deed to the Commonwealth fairly and independently.

8. INDEMNITY

8.1 The Confidant indemnifies the Commonwealth, its officers, employees and agents against all liability or loss arising from, and any costs, charges and expenses incurred in connection with, to the extent of:

- a. any breach by the Confidant of this Deed; or
- b. any act or omission by any of the Confidant's officers, employees, agents, advisers or independent contractors which, if done or omitted to be done by the Confidant, would breach of the Confidant's obligations under this Deed.

9. INJUNCTIVE RELIEF

9.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Commonwealth for any breach of this Deed and that the Commonwealth may be entitled to injunctive relief (as appropriate) as a remedy for any breach or suspected or threatened breach by the Confidant, in addition to any other remedies available at law or in equity.

10. NO EXCLUSION OF LAW OR EQUITY

10.1 This Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

11. WAIVER

11.1 Failure by either party to enforce a provision of the Deed shall not be construed as in any way affecting the enforceability of that provision or the Deed as a whole.

12. REMEDIES CUMULATIVE

12.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

13. OTHER INSTRUMENTS

13.1 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

14. VARIATIONS AND AMENDMENTS

14.1 No term or provision of this Deed shall be amended or varied unless such amendment or variation is reduced to writing and signed by the parties hereto in the same manner as this instrument.

15. APPLICABLE LAW

15.1 The laws of Australian Capital Territory shall apply to the Deed. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Deed.

16. GOODS AND SERVICES TAX

16.1 In this clause, 'GST' means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* and the expressions 'adjustment event', 'input tax credits', 'taxable supply' and 'tax invoice' have the meaning as in that Act.

16.2 If a party to this Deed (the 'Supplier') makes a taxable supply under or in connection with this Deed or in connection with any matter or thing occurring under this Deed to another party to this Deed (the 'Recipient') and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.

16.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment shall be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier shall refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient shall pay the deficiency to the Supplier.

16.4 If a party to this Deed is entitled, under or in connection with this Deed or in connection with any matter or thing occurring under this Deed, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any input tax credits available in respect of those costs.

16.5 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.

17. NOTICES

17.1 Any notice or other communication required to be given under this Deed shall be deemed to have been duly served on the Commonwealth and on the Contractor if served on the Confidant at an address for service at (...INSERT CONFIDANT’S ADDRESS...).

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA:

(signature) (print name and position) (date)

In the presence of:

(signature) (print name) (date)

SIGNED for and on behalf of

THE CONFIDANT:

(...INSERT CONFIDANT’S EXECUTION CLAUSE...)

ANNEX B TO CUSTOMER CONTRACT REQUIREMENTS PH5A-CONT-000009**GLOSSARY**

NOTE: Both parties acknowledge that this attachment requires further review and amendment to align to the Contract. This includes cross-referencing of terms between ISSC and this Phase 5A Subcontract where relevant.

1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
ADF	Australian Defence Force
ADP	AEW&C Defence Property
AEW&C	Airborne Early Warning and Control
AEWCSPPO	AEW&C Systems Program Office
AMS	Airborne Mission Segment
ASF	AEW&C Support Facility
BDS	Boeing Defense, Space & Security
CDRL	Contract Data Requirements List
CCR	Customer Contract Requirements
COMSEC	Communications Security
CONUS	Continental United States
COTS	Commercial-Off-The-Shelf
CSCI	Computer Software Configuration Item
CSR	Contract Status Report
CTSA	Contractor Training Support Agency
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DMO	Defence Materiel Organisation
DMSS	Deployable Mission Support Segment
DoD	Department of Defence
DPPM	Defence Procurement Policy Manual
DSM	Defence Security Manual
ECP	Engineering Change Proposal
ED	Effective Date
FAR	Federal Acquisition Regulation

Abbreviation	Description
FMSS	Fixed Mission Support Segment
GFD	Government Furnished Data
GFE	Government Furnished Equipment
GFF	Government Furnished Facilities
GFI	Government Furnished Information
GFM	Government Furnished Material
GFS	Government Furnished Services
GFX	Government Furnished Support
GSS	Ground Support Segments
IP	Intellectual Property
ISS	In-Service Support
ISSC	In-Service Support Contract AEWC-012 dated 19 Jan 2010
JEWOSU	Joint Electronic Warfare Operational System Unit
MSS	Mission Support Segment
NISP	National Industrial Security Program
NISPOM	National Industrial Security Program Operating Manual
NRE	Non Recurring Expenses
NSA	National Security Agency
OFT	Operational Flight Trainer
OMS	Operational Mission Simulator
RFQ	Request for Quotation
RMT	Reliability, Maintainability & Testability
RPL	Recommended Provisioning List
RP	Resident Personnel
RTM	Requirements Traceability Matrix
SAC	System Acquisition Contract
S&TE	Support and Test Equipment
SCP	Subcontract Change Proposal
SDRL	Subcontract Data Requirements List
SOW	Statement of Work
TD	Technical Data
USG	United States Government

Abbreviation	Description
WBS	Work Breakdown Structure
WHS	Work Health and Safety
WLM	Williamtown

2. DEFINITIONS

Term	Definition
Accounts	means a financial report or other Record generated for performance of this Contract and must be kept in accordance with the terms of this Contract.
AEW&C Interoperability Compliance Upgrade or Phase 5A	means the upgrades to the AEW&C System under the Contract.
AEW&C Defence Property (ADP)	means the AMS, OFT, OMS, MSS and ASF identified in Attachment D of AEW&C In-Service Support Subcontract.
AEW&C In-Service Support Contract (AEW&C ISSC)	means the contract between the Commonwealth and Boeing Defence Australia Limited ABN 64 006 678 119, for AEW&C In-Service Support between the Commonwealth and The Boeing Company and later between the Commonwealth and Boeing Defence Australia Limited ABN 64 006 678 119 all of which are identified by Contract No. AEWC-012.
AEW&C Support Centre (ASC)	means the RAAF Base Williamtown facility that accommodates the ASF, OMS, OFT, and CTSA.
AEW&C Support Facility	means the AEW&C software support capability accommodated within the AEW&C Support Centre at Royal Australian Air Force Base Williamtown and Joint Electronic Warfare Operational System Unit at Royal Australian Air Force Base Edinburgh.
AEW&C Support Facility – Electronic Warfare Squadron (ASF-EWSQN)	means the portion of the ASF installed at JEWOSU.
AEW&C Support Facility – Home Maintenance Base (ASF-HMB)	means the portion of the ASF installed at Royal Australian Air Force Base Williamtown.
AEW&C System	means six Airborne Mission Segments (AMS), the Operational Flight Trainer (OFT), the Operational Mission Simulator (OMS), two Fixed Mission Support Segments (FMSS) and two Deployable Mission Support Segments (DMSS) (collectively the MSS), the AEW&C Support Facility (ASF), and the AEW&C S&TE, Spares, Training Equipment and Technical Data
AEW&C Weapon System	means the system comprising the AEW&C System and any additional equipment, systems or information that relates to the deployment of the AEW&C System.
Agency	means for clause 15 of the CCR, has the same meaning as in the <i>Privacy Act 1988</i> .

Term	Definition
Airborne Mission Segment or AMS	means the E-7A aircraft
Annex	means an Annex to an Attachment.
Application	means an application software, also known as an application, is computer software designed to help the user to perform singular or multiple related specific tasks.
Approval	means the act of Buyer Representative approving a particular course of action as a basis for further work under the Contract. Approval in either case does not constitute Acceptance; and 'Approve' and 'Approved' have a corresponding meaning.
Approved Privacy Code	has the same meaning as in the <i>Privacy Act 1988</i> .
Approved Subcontractor	means a Subcontractor approved by Buyer's customer; and 'Approved Subcontract' has a corresponding meaning. Subcontractors furnishing COTS products are not Approved Subcontractors.
Audit	means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
Authorisation	means a licence, accreditation, permit, registration, regulatory approval or other documented authority (however described), required by law and necessary for the provision of Supplies.
Background IP	means IP, other than Third Party IP, that: a. is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Contract or any Approved Subcontract (or both); and b. is embodied in, or attaches to, the Supplies or is otherwise necessarily related to the functioning or operation of the Supplies.
Breakdown Spare	means anything other than expendable items and includes individual parts, components, kits, or non-repairable assemblies that are required to complete or maintain a system or end item of equipment. A Repairable Item is not a Breakdown Spare, however, Breakdown Spares are used to repair Repairable Items.
Buyer	means Boeing Defense, Space & Security
Buyer Representative	means the person appointed as the Buyer Representative.
Commencement Date	has the same meaning as Effective Date
Commercial Off the Shelf	means a commercial item available from the commercial marketplace and is available at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

Term	Definition
Commercial Off-The-Shelf (COTS) Software	means software that can be purchased from a commercial vendor.
Commonwealth	means the Commonwealth of Australia
Commonwealth Funded Property	means plant, equipment and other goods purchased by Seller for use in performing the Services where the purchase price of the plant, equipment or other goods is reimbursed by Buyer under the Contract
Commonwealth Mandated GFM	means GFM mandated by Buyer to be used in the provision of Services under this Contract
Commonwealth Premises	<p>means any of the following that is owned or occupied by the Commonwealth:</p> <ul style="list-style-type: none"> c. an area of land or any other place (whether or not it is enclosed or built on); d. a building or other structure; or e. a vehicle, vessel or aircraft.
Commonwealth Property	means any Property owned by or vested in the Commonwealth and includes any Property owned by someone other than the Commonwealth that is subject to the control or direction of the Commonwealth pursuant to any lease, service contract or other public private partnership arrangement.
Commonwealth Provided Property	means any material provided by Buyer to Seller under this Contract including GFM, GFF, ADP and any items being supported under this Contract
Commonwealth Representative	means the person holding or performing the office of Officer Commanding AEWCSPO or any other person appointed as the Commonwealth Representative.
Computer Software	means computer programs including computer programs embedded in firmware, application programs, operating systems and databases
Component	means any self-contained part, combination of parts, subassemblies or units, that perform a distinctive function necessary to the operation of the system.

Term	Definition
Confidential Information	<p>means information (whether or not owned by the Commonwealth) that:</p> <ul style="list-style-type: none"> a. is by its nature confidential; or b. the receiving party knows or ought to know is confidential, <p>but does not include information which:</p> <ul style="list-style-type: none"> c. is or becomes public knowledge other than by breach of the Contract; d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or e. has been independently developed or acquired by the receiving party.
Consequential Loss	<p>means:</p> <ul style="list-style-type: none"> a. any indirect damages, costs or expenses, except to the extent that such arise naturally according to the usual course of things; b. any loss of use; c. any direct or indirect loss of revenue or profit or loss of opportunity to make profit, loss of business or loss of business opportunity; or d. any special, exemplary, punitive or incidental damages.
Contract	Means the Contract between Buyer and Seller
Covered AMS	Has the meaning given in clause 5.h. of the CCR.
day	means a calendar day.
Defence	means the Department of Defence or the Australian Defence Force.
Defence Personnel	means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the <i>Defence Act 1903</i> (Commonwealth)) and the equivalents from other organisations on exchange to Defence.

Term	Definition
Defence Property	<p>means:</p> <ul style="list-style-type: none"> a. any Property owned or vested in the Commonwealth that is administered by or within the responsibility of or subject to the direction or control of Defence; and b. any Property owned by someone other than the Commonwealth as represented by Defence that is subject to the control or direction of Defence pursuant to any lease, license, service contract or other public private partnership arrangement by which the Property is made available to Defence; and c. any Property that has at any point in time been Property that was the subject of either paragraphs (a) or (b), <p>but excludes any:</p> <ul style="list-style-type: none"> d. AMS and everything attached to or on the AMS, including any cargo that is Defence Property; and e. GFX and ADP.
Defence Purposes	means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peacekeeping and emergency aid to the civil community, and purposes that are necessary or incidental to any of those purposes.
Defence Service Provider	means a person, other than Defence Personnel, involved in Defence work or engaged by the Department of Defence or the Australian Defence Force.
Deliberate Misconduct	means where an individual in a managerial position with Seller or a Subcontractor wilfully misconducts herself or himself and that individual understands and intends the adverse consequences of his or her wilful misconduct.
Deliverable(s)	means any information (including Technical Information), document (including report, manuals, designs, drawings and the like), hardware, software or other physical thing which is, or is required by the Subcontract to be, delivered or provided by Seller or its agents to Buyer or its agents in the course of the performance of the Subcontract.
Effective Date or ED	means the date on which the Contract is signed by the parties, or if signed on separate days, the date of the last signature.

Term	Definition
Excepted Risk	<p>means:</p> <ul style="list-style-type: none"> a. any negligent act or omission, wilful misconduct, or breach of Contract by Buyer, the Buyer Representative or officers, employees or agents of Buyer; b. war, invasion, acts of foreign enemies, hostilities between nations (whether war be declared or not), civil war, insurrection, rebellion, revolution or militarily usurped power; c. terrorist act as defined in the Terrorism Insurance Act 2003 (Cth) (TIA) but only to the extent, if any, that an insurer has validly excluded cover despite the provisions of the TIA for any liability of Seller to Buyer arising out of a terrorist act. For the avoidance of doubt, Buyer releases the Seller from liability to Buyer arising out of a terrorist act except to the extent to which Seller's insurance policies effected in accordance with any Contract provide or are legally obliged to provide cover in respect of a terrorist act by operation of the TIA; d. confiscation, expropriation or nationalisation by governments or public authorities; or e. ionising radiation, contamination by radioactivity from nuclear weapons material, nuclear fuel or waste, or combustion of nuclear fuels, <p>which in the case of paragraphs c and d of this definition is not caused by Seller, its officers, its employees, its agents or its Subcontractors.</p>
Export Approvals	means an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of Services.
Facilities	means all mobile, fixed, permanent and semi-permanent buildings, structures, installations, and the associated machinery, plant and utilities for the operating, engineering, maintenance, supply, training, and administrative elements of a Materiel System.
Foreground IP	means IP which is created under or otherwise in connection with the performance of the Subcontract or any Approved Subcontract (or both), other than Third Party IP.
Glossary	means this glossary.
Government Furnished Data or GFD	means data in a recorded form which is provided by Buyer for Seller's use in performing the Services.
Government Furnished Equipment or GFE	means equipment provided by Buyer to Seller for the Seller's use in performing the Services.
Government Furnished Facilities or GFF	means Optional Government Furnished Facilities (OGFF) and Mandated Government Furnished Facilities (MGFF).

Term	Definition
Government Furnished Information or GFI	means information provided by Buyer to Seller for Seller's use in performing the Services.
Government Furnished Material or GFM	means any and all of the GFE, GFD, GFI, and Commonwealth Mandated GFM.
Government Furnished Services	means Optional Government Furnished Services (OGFS) and Mandated Government Furnished Services (MGFS).
Government Furnished Support (GFX)	means all GFF, GFS, and GFM to be provided by Buyer under this Contract.
Ground Support Segments or GSS	forms part of the AEW&C System that includes the Operational Flight Trainer (OFT)(which includes the Part Task Trainer (PTT)), the Operational Mission Simulator (OMS), the Mission Support System (MSS) (which consists of two Fixed Mission Support Systems (FMSS) and two Deployable Mission Support Systems (DMSS)),and the AEW&C Support Facility (ASF).
Intellectual Property or IP	means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Intellectual Property Deed	means a deed in the form set out at Annex A the CCR
International Traffic in Arms Regulations (ITAR)	means the International Traffic in Arms Regulations govern the export and temporary import of defense articles and services under U.S. State Department jurisdiction. The regulations are set forth in Parts 120-130 of Title 22 of the Code of Federal Regulations (CFR) and issued by the U.S. Department of State to implement the Arms Export Control Act (AECA) and other statutory requirements. The ITAR is amended by rules published in the Federal Register.
Licence	means a royalty-free, fully paid up, irrevocable, world-wide, perpetual and non-exclusive licence, including a right to sub-licence to the extent set forth in Clause 4.b.

Term	Definition
Licensed Fittings	means a. all fixed internal partitioning and panelling; b. floor coverings, window blinds and awnings, c. any signage supporting the function or intended function of the facility, d. any other items as detailed in GFX attachment not being part of the GFE as defined in the Contract, in the condition in which they were immediately prior to the Commencement Date and includes any replacement of these during the continuation of the License.
Mandated Government Furnished Equipment	means equipment provided by the Buyer for the Seller and necessary to the Seller in performing the Services. MGFE is listed in Attachment D under the heading "Mandated Government Furnished Equipment" in Table 3.
Mandated Government Furnished Facilities (MGFF)	means Facilities provided by Buyer for t Seller and necessary to Seller in performing the Services.
Mandated Government Furnished Services (MGFS)	means services provided by Buyer for Seller and necessary to Seller in performing the Services.
Materiel System	means the AEW&C System
Mission Support System	means the Mission Support System used by the Commonwealth to support Mission planning and data analysis as provided under the Systems Acquisition Contract and modified over time. It consists of two Fixed Mission Support Systems (FMSS) and two Deployable Mission Support Systems (DMSS).
Mission System	means the AMS and GSS elements of the Materiel System that directly contribute to the operational function.
Mobilisation, or Mobilisation Contract (Mob)	means the contract between the Commonwealth and The Boeing Company for In-Service Support Contract Mobilisation Services, Contract No. AEW-009.
month	means a calendar month.
Moral Rights	means: f. a right of attribution of authorship; g. a right not to have authorship falsely attributed; or h. a right of integrity of authorship.
Operational Flight Trainer (OFT)	means the AEW&C Operational Flight Trainer acquired under the System Acquisition Contract and modified over time.

Term	Definition
Operational Mission Simulator (OMS)	means the Operational Mission Simulator provided under the SAC and modified over time.
Optional Government Furnished Facilities (OGFF)	means Facilities provided by Buyer for Seller to assist Seller in performing the Services.
Personal Information	has the same meaning as in the <i>Privacy Act 1988</i> .
Personnel	means all staff involved in the operation and support of the AEW&C System and Support System, including Buyer, Seller (Support), and Subcontractors (Support).
Property	means any real or personal property or any chose-in-action and any interest in any real or personal property or any chose-in-action.
Records	means recorded information, regardless of medium or characterists, that relates to, is evidence of, or is generated for, the performance of this Contract or the work undertaken under this Contract.
Related Bodies Corporate	Has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth) and "Related Body Corporate" has a corresponding meaning.
Repairable Item	means an item that when unserviceable can be reconditioned or economically repaired to a serviceable state for further use.
Request for Deviation	means written request for a Deviation.
Required Insurance	means: a. each insurance specified in clause 5.f, but excludes any self-insurance arrangements permitted under clause 5.f; and b. any insurance required to be procured by the Seller under clause 5.h.
Seller	means Airbus Defence & Space
Seller Representative	means the person fulfilling the duties of the contract appointed pursuant to the Contract as the Seller Representative
Services	means services and goods including Deliverables, Intellectual Property and Technical Data, and includes items acquired in order to be incorporated in the Services.
Software	means a collection of computer code or language that comprises a set of instructions or statements used directly or indirectly by a computer to bring about a certain result or to control a computer terminal or a peripheral device and includes computer programs, rules, Source Code, object code, macros, procedures, firmware, applications and Software Updates.

Term	Definition
Software Design Data or Software Design Description	means data which describes the internal design and operation of a software program and its interface with the external software and hardware systems in which it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).
Software Update	means, in relation to software (including Software Design Data and Source Code): <ul style="list-style-type: none"> i. a new release of or change to that software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the software); or j. a new version of that software (which is designed to enhance or provide extra functionality to that software).
Source Code	means the expression of software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that software.
Spare	means an item that is a Repairable Item (RI), Breakdown Spare (BDS), or expendable item that is not currently fitted to an end item or system.
Specification	means a detailed statement of a set of requirements to be satisfied by a material, product, system or process, indicating the procedures for checking compliance with these requirements. It may take the form of either a standard produced for common and repeated use, or a publication, which defines a unique product or process, and may incorporate reference to published standards.
Statement of Work or SOW	means the statement of the work at Attachment A including the Annexes to the SOW and any specifications referred to in the SOW.
Subcontract	Where the context involves Seller entering into a contract with a Subcontractor, a contract under which a Subcontractor is engaged.
Subcontract Change Proposal (SCP)	means a proposal submitted by Seller
Subcontractor	means any person that for the purposes of the Contract, furnishes Supplies directly to Seller or indirectly to Seller through another person and includes Approved Subcontractors; and 'Subcontract' has a corresponding meaning.
Supplies	means goods and services including Technical Data required to be supplied under the Contract.

Term	Definition
Support and Test Equipment or S&TE	means the equipment needed to support the operation, support and disposal of the AEW&C System, as and when required, throughout the life of the Materiel System. S&TE includes ground handling equipment, tools, metrology and calibration equipment, test equipment and automated test equipment, and diagnostic software for support equipment maintenance. S&TE does not include either Training Equipment or Mission System equipment that is used by the AEW&C System when it is directly engaged in the performance of its mission.
Support Segments	means each of the OMS, OFT, ASF and MSS.
Support System	means the sum of the existing support infrastructure (including that of the Commonwealth, Buyer, Seller and Subcontractors) and the additional support elements being generated under the Contract to enable the AEW&C Weapon System to be effectively supported so that it can meet its operational requirements and includes the Support System Components.
System	means: <ul style="list-style-type: none"> a. an assembly of methods, procedures, or techniques united by regulated interaction to form an organised whole. b. an organised collection of personnel, machines and methods required to accomplish a set of specific functions. c. the organisation of hardware, software, materiel, facilities, personnel, data, and services needed to perform a designated function with specified results, such as the gathering of specified data, its processing, and delivery to users. d. a combination of two or more interrelated equipment (sets) arranged in a functional package to perform an operational function or to satisfy a requirement.
System Acquisition Contract (SAC)	means the contract between the Commonwealth and The Boeing Company under which the AEW&C System was acquired, Contract No. C338364, as amended from time to time.
Technical Data or TD	means all technical know-how and information reduced to material form produced, acquired or used by the Seller or Subcontractors in relation to the Supplies and includes all data, databases, manuals, handbooks, designs, standards, Specifications, reports, writings, models, sketches, plans, drawings, calculations, Software, Source Code in accordance ITAR, Software Design Data in accordance with ITAR, test results, Software Updates and other items describing or providing information relating to the Supplies or their operations. This includes data relating to Training.
Third Party IP	means that IP which is owned by a party other than the Commonwealth, Buyer, Seller or Approved Subcontractors and is embodied in the Supplies, or attaches to the Supplies or is otherwise necessarily related to the functioning or operation of the Supplies, and is not limited to COTS items.

Term	Definition
Training	means the processes, systems, materials, resources, and services for bringing Personnel to the required standard of competency by instruction, practice or other prescribed methodology.
Training Equipment	means any item of equipment required to perform Training.
Uninsurable	Has the meaning given to that term in clause 5.f.xx. of the CCR.
Warranty period	for clause 6 of the CCR, has the meaning given by 6.a.
WHS Legislation	<p>means:</p> <ul style="list-style-type: none"> k. the <i>Work Health and Safety Act 2011</i> (Cth) and the <i>Work Health and Safety Regulations 2011</i> (Cth); l. the Work Health and Safety Act and Work Health and Safety Regulations in each of the applicable States and Territories including the: <ul style="list-style-type: none"> (i) <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2011</i> (NSW); (ii) <i>Work Health and Safety Act 2011</i> (QLD) and the <i>Work Health and Safety Regulations 2011</i> (QLD); (iii) <i>Work Health and Safety Act 2011</i> (ACT) and the <i>Work Health and Safety Regulations 2011</i> (ACT); (iv) <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> (NT) and the <i>Work Health and Safety (National Uniform Legislation) Regulations</i> (NT); (v) <i>Work Health and Safety Act 2012</i> (SA) and the <i>Work Health and Safety Regulations 2012</i> (SA); and (vi) <i>Work Health and Safety Act 2012</i> (TAS) and the <i>Work Health and Safety Regulations 2012</i> (TAS).
Working Day	<p>in relation to the doing of an action in a place, means any day in that place other than:</p> <ul style="list-style-type: none"> m. a Saturday, Sunday or public holiday; and n. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or from Christmas Day when it falls on a Saturday).

