

CUSTOMER CONTRACT REQUIREMENTS**Project AIR 5077 PH5A Interoperability Compliance Upgrade****CUSTOMER CONTRACT PH5A-CONT-000009**

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of Commercial Off the Shelf Items (COTS) or Military Off the Shelf Items (MOTS), only clause 6, Warranties and Support of the Supplies and clause 11, Policy Requirements, apply to the Contract.

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.

4A. Transitional Arrangements**a. Application of clause 4 (Technical Data, Software, and Contract Material)**

- i. Subject to clause 4A.a.ii, clause 4 applies to all IP in TD, Software, Contract Material or GFM delivered or required to be delivered under this Contract (including IP in TD, Software, Contract Material or GFM delivered under the Contract prior to 4 September 2018) (Relevant IP).
- ii. The specified provisions of clause 4 in column (b) of Table 1 do not apply to the Relevant IP identified in column (c) of Table 1 to the extent detailed in column (d) of Table 1.

| Item | Specified provisions | Relevant IP | Extent of exemption from application of clause S |
|------|----------------------|---|---|
| (a) | (b) | (c) | (d) |
| 1. | Clause 4.c.iii.b | IP owned by the Seller or any of its Related Bodies Corporate in any TD or Software delivered under this Subcontract prior to 4 September 2018. | <p>The specified provisions in column (b) do not apply to the IP identified in column (c), unless or until the:</p> <ul style="list-style-type: none"> a. TD or Software is delivered under this Subcontract after 4 September 2018; or b. the Seller agrees in writing to those provisions applying to that IP. |
| 2. | Clause 4 | IP owned by an Existing Subcontractor in any TD, Software or Contract Material delivered under a Subcontract prior to 4 September 2018. | <p>The specified provisions in column (b) do not apply to the IP identified in column (c), unless or until the:</p> <ul style="list-style-type: none"> a. TD or Software is specified in the MTDI or Software List and the Existing Subcontractor has become a Relevant Subcontractor; b. TD, Software or Contract Material is delivered under this Subcontract or a Subcontract after the Existing Subcontractor has become a Relevant Subcontractor for the Subcontract under which the TD, Software or Contract Material was delivered; or c. the Seller agrees in writing to clause 4 applying to that IP. |

| | | | |
|----|-------------|---|--|
| 3. | Clause 4.d. | IP in any Commercial TD or Commercial Software delivered under a Subcontract prior to 4 September 2018. | <p>The specified provisions in column (b) do not apply to the IP identified in column (c), unless or until the:</p> <ul style="list-style-type: none"> a. the Commercial TD or Commercial Software is delivered under this Subcontract or a Subcontract after 4 September 2018; or b. the Seller agrees in writing to clause 4.d. applying to that IP. |
|----|-------------|---|--|

Table 1 - Application of Clause 4

iii. Subject to clause 4A.a.ii. and 4A.a.iv., Seller shall use its best endeavours to seek amendments to Existing Subcontracts or other supplier arrangements, or enter new Subcontracts with Existing Subcontractors, to ensure that, within twelve (12) months of 4 September 2018, clause 4 applies to all Relevant IP owned by Existing Subcontractors.

iv. Seller shall, within six (6) months after 4 September 2018, propose a strategy for the transition of each of the following Existing Subcontractors (and their Subcontractors) to the provisions of clause 4:

- a. Northrop Grumman Systems Corporation;
- b. Airbus Defense & Space (ADS - Cassidian);
- c. UTAS; and
- d. Honeywell EMS Defense Technologies Inc.

v. Upon Buyer approval of Seller’s proposal under clause 4A.a.iv., Seller shall use its best endeavours to implement the transition strategies agreed under clause 4A.a.iv. with the objective of maximizing the extent to which clause 4 applies to Relevant IP owned by the Existing Subcontractors referred to in clause 4A.a.iv.

b. Relevant Subcontractors

i. A Subcontractor engaged directly by Buyer shall be taken to be a **Relevant Subcontractor** if the Subcontractor is engaged under a Subcontract entered into:

- a. on or after 4 September 2018; or

b. prior to 4 September 2018, if the Subcontract is amended on or after 4 September 2018 as contemplated under clause 4A.a.iii.

unless the parties agree otherwise.

ii. A Subcontractor engaged directly by another Subcontractor (**Head Subcontractor**) shall be taken to be a **Relevant Subcontractor** if the Subcontractor is engaged by the Head Subcontractor under a Subcontract entered into on or after the Head Subcontractor become a Relevant Subcontractor, unless the parties agree otherwise.

iii. A reference in clause 4 to a Subcontractor shall be taken to be a reference to a Relevant Subcontractor.

iv. A reference in clause 4.k.i. to the execution of a Subcontract shall be taken to be a reference to a Subcontractor becoming a Relevant Subcontractor in accordance with this clause 4A.b.

c. Existing IP Arrangements

i. The terms of Existing Phase 5A Contracts/Subcontracts will continue to apply (and will be taken to form part of the Phase 5A Contract/Subcontract) in respect of Existing Phase 5A IP unless and until clause 4 applies to that IP in accordance with clause 4A.a.

4. TECHNICAL DATA, SOFTWARE, AND CONTRACT MATERIAL

NOTE: Intellectual Property CCR Section 5 requirements associated with the Supplies delivered under Purchase Contract 1092116 will be performed under Purchase Contract 1125424.

a. Ownership of Intellectual Property

i. Nothing in the Contract affects the ownership of IP, except as expressly provided for in this clause 4.

ii. Subject to the other provisions of this clause 4.a., the parties agree that all IP created on or after 4 September 2018, in respect of TD, Software, or Contract Material is assigned to the Seller (or its nominee) immediately upon its creation.

iii. The parties agree that all IP created on or after 4 September 2018, in respect of:

a. Commonwealth TD or Commonwealth Software; and

b. GFM expressly specified in Attachment D to the Contract as requiring ownership by the Commonwealth; and

that is delivered or required to be delivered to the Buyer or any other person under this Contract is assigned to the Commonwealth (or its nominee) immediately upon its creation.

b. Highly Sensitive TD and Highly Sensitive Software

- i. This clause 4.b. applies to all Highly Sensitive TD or Highly Sensitive Software delivered or required to be delivered to Buyer, Buyer's Customer, or any other person under this Contract.
- ii. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a License in respect of all TD and all Software to which this clause 4.b. applies; to:
 - a. Use the TD or Software for any Defence Purpose; and
 - b. grant a Sublicense in accordance with clause 4.i. to Use the TD or Software, or to grant a further sublicense to USE the TD or Software.

Subject to the restrictions, specified in Annex A to the TDSR Schedule.

c. TD and Software

- i. This clause 4.c. applies to all TD and Software delivered or required to be delivered to the Buyer or Buyer's Customer, or any other person under this Subcontract, other than:
 - a. Highly Sensitive TD or Highly Sensitive Software to which clause 4.b. applies;
 - b. Commercial TD or Commercial Software to which clause 4.d. applies;
 - c. Commonwealth TD or Commonwealth Software to the extent that clause 4.e. applies to that TD or Software; and
 - d. TD or Software provided as, or as a part of, GFM where clause 4.f. applies to that GFM.
- ii. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a License in respect of all TD and all Software to which this clause 4.c. applies, to
 - a. Use the TD or Software for any Defence Purpose; and
 - b. grant a Sublicense to the Commonwealth to Use the TD or Software for any Defence Purpose; and
 - c. grant a Sublicense in accordance with clause 4.c.iii. and clause 4.i. to Use the TD or Software
- iii. Buyer and Buyer's Customer may grant a Sublicense in respect of all TD and all Software to which this clause 4.c. applies, to:
 - a. a Commonwealth Service Provider to Use the TD or Software to enable the Commonwealth Service Provider to perform its obligations, functions, or duties to the Commonwealth.;
 - b. any person to Use the TD or Software, or subject to clause 4.c.iv. to grant a further sublicense to Use the TD or Software to do any of the following:
 - (i) installing or configuring the Products Being Supported or the Supplier or Services;
 - (ii) physically integrating the Supplies or Services with the Products Being Supported;

- (iii) operating or maintaining the Products Being Supported or the Supplies or Services;
- (iv) rectifying any Defect in the Supplies or Services and any adverse effect of the Defect or the rectification on other Supplies or Products Being Supported where Seller has failed to comply with its obligations under the Contract in relation to the Defect;
- (v) undertaking training in relation to the Products Being Supported or the Supplies or Services;
- (vi) removing or uninstalling the Supplies or Services;
- (vii) decommissioning or destroying the Products Being Supported or the Supplies or Services
- (viii) for the person to respond to a request to be engaged for any of the above purposes; and
- (ix) for any other purpose (including to modify and upgrade any of the Products Being Supported), but subject to any restrictions specified in Annex B to the TDSR Schedule; and

c. any person for a purpose referred to in clause 8.a.

iv. Buyer shall notify Seller of any further sublicenses granted by Sublicenses under clause 4.c.iii.b over the preceding 12 month period.

d. Commercial TD and Commercial Software

i. This clause 4.d. applies to all Commercial TD and Commercial Software delivered or required to be delivered to Buyer or any other person under this Contract.

ii. Seller shall ensure that each Commercial Item (and related Commercial TD or Commercial Software) delivered or required to be delivered under this Contract is specified as a Key Commercial Item in Annex C to the TDSR Schedule, if the IP in the related Commercial TD or Commercial Software is owned by:

- a. Seller
 - b. an Approved Subcontractor
 - c. a Related Body Corporate of Seller;
- unless otherwise agreed by Buyer in writing.

iii. Seller shall ensure that Buyer and Buyer's Customer is granted a license in respect of all Commercial TD and all Commercial Software to which this clause 4.d. applies on the following terms:

- a. For TD and Software relating to a Key Commercial Item, a license to Use the TD or Software, or to grant a sublicense to any person to Use the TD or Software, to perform any of the activities set out in clause 4.c.iii.(b)(i)-4.c.iii(b)(viii) subject to any restrictions specified in Annex C to the TDSR Schedule for that item; and
- b. for all other TD and Software, on the best commercial terms available to Seller.

iv. Seller shall notify Buyer of any requirement of Buyer or Buyer's Customer to pay a Royalty or other fee in respect of Commercial TD and Commercial Software to which this clause 4.d. applies prior to such license being granted to Buyer or Buyer's Customer.

e. Commonwealth TD and Commonwealth Software

- i. This clause 4.e. applies to all Commonwealth TD and Commonwealth Software delivered or required to be delivered to the Commonwealth or any other person under this Contract, to the extent that the IP in that TD or Software is assigned to the Commonwealth under clause 4.a.iii.
- ii. Buyer grants to Seller a non-exclusive, Royalty-free licence in respect of the Commonwealth TD and Commonwealth Software to the extent that this clause 4.e. applies to:
 - a. Use the TD and Software for the purpose of enabling Seller to perform its obligations under this Contract;
 - b. grant a sublicense to a Subcontractor to Use the TD and Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
 - c. grant a sublicense to a person for a purpose referred to in clause 8.a.;subject to any restrictions specified in Annex D to the TDSR Schedule or as otherwise notified by Buyer.
- iii. Seller shall ensure that any IP in Commonwealth TD or Commonwealth Software not assigned to the Commonwealth under clause 4.a.iii. is specified in Annex D to the TDSR Schedule and capable of being clearly distinguished from the IP assigned to the Commonwealth.

f. GFM License

- i. This clause 4.f. applies to all TD or Software that is:
 - a. provided as, or as a part of, GFM; or
 - b. created under this Contract, in respect of GFM.Except to the extent that IP in the TD or Software is owned by Seller or a Subcontractor.
- ii. Buyer grants to Seller (or shall ensure Seller is granted), a non-exclusive, Royalty-free license in respect of the TD or Software to the extent that this clause 4.f. applies to:
 - a. Use the TD or Software for the purpose of enabling Seller to perform its obligations under the Contract;
 - b. grant a sublicense to a Subcontractor to Use the TD or Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
 - c. grant a sublicense to a person for a purpose referred to in a clause 8.a.subject to any restrictions specified in Attachment D to this Contract or as otherwise notified by Buyer.
- iii. Without limiting any restrictions specified in the Contract or as otherwise notified by the Buyer under clause 4.f.ii., the Seller's right to grant a sublicense under clause 4.f.ii.b is subject to the following conditions:

- a. the sublicense shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to Seller;
- b. the rights granted under the sublicense shall be limited to the rights that are reasonably necessary to enable the sublicensee to Use the TD or Software to efficiently perform its obligations, functions or duties to the Seller;
- c. the rights granted under the sublicense shall expire when no longer required for the purposes referred to in clause 4.f.ii.b.; and
- d. any right of the sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 4.f.iii.

iv. The licence under clause 4.f.ii.a (and any sublicense granted under clause 4.f.ii.b) expires upon the expiry or termination (whichever is the earlier) of this Contract, or the relevant Subcontract.

g. Contract Material

i. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a Licence in respect of all Contract Material to:

- a. Use the Contract Material for any Defence Purpose;
- b. grant a Sublicense in accordance with clause 4.i. to:

(i) the Commonwealth to Use the Contract Material for any Defence Purpose;

(ii) a Commonwealth Service Provider to Use the Contract Material to perform its obligations, functions or duties to the Commonwealth;

(iii) any person to Use the Contract Material, or to grant a further sublicense to Contract Material, provided that any related disclosure of Confidential Information in the Contract Material is provided with the written consent of the other party (and such consent may be subject to conditions); and

(iv) any person for a purpose referred to in clause 8.a.

h. Required for Airworthiness Investigations

i. This clause 4.h.applies to all TD that is made available to Buyer or Buyer's Customer for the purpose of an Airworthiness Investigation to the extent that IP in the TD is owned by or licensed to Seller or any of its Related Bodies Corporate.

ii. The licences under clauses 4.b, 4.c., 4.d. and 4.g. shall not apply to any TD made available for the purpose of an Airworthiness Investigation.

iii. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a Licence in respect of any TD to which this clause 4.h. applies, to use (or grant a Sublicence to the Commonwealth or a Commonwealth Service Provider in accordance with clause 4.i.) for the purpose of the relevant Airworthiness Investigation.

i. Buyer Sublicenses

i. Buyer's and Buyer's Customer's right to grant a Sublicence to a person ("Sublicensee") in accordance with clause 4.b., 4.c. or 4.g. is subject to the following conditions:

a. the Sublicence shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to Buyer ;

b. the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD, Software and Contract Material (as applicable) to efficiently perform its obligations, functions or duties to Buyer or a Buyer Contractor;

c. in the case of a Commonwealth Service Provider, the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD, Software and Contract Material (as applicable) to efficiently perform its obligations, functions or duties to the Commonwealth or a Commonwealth Contractor;

d. the rights granted under the Sublicence shall expire when no longer required for the purposes referred to in clause 4.i.i.b. or c; and

e. any right of the Sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 4.i.

j. No Commercialization

i. A Licence or Sublicence granted in accordance with this clause 5 does not permit Buyer or Buyer's Customer or its sublicensee to Commercialise any IP in the TD, Software or Contract Material.

ii. For the avoidance of doubt, clause 4.j.i, does not prevent Buyer or Buyer's Customer from granting a sublicense in accordance with the rights granted in this clause 4 to a person for the purpose of the person providing goods or services to Buyer or Buyer's Customer for a Defence Purpose.

k. Approved Subcontractor IP Deed

i. Seller shall obtain and provide to the Buyer an IP Deed duly executed by a relevant Approved Subcontractor before any goods or services are provided by that Approved Subcontractor and no later than 15 Working Days after executing the relevant Subcontract.

- ii. For the purposes of this clause 4.k., "a relevant Approved Subcontractor" means an Approved Subcontractor identified, as being required to provide an IP Deed to the Buyer.

I. Failure to Obtain IP Rights

- i. Seller shall promptly notify Buyer if Seller considers it will be unable to comply with any of its obligations under this clause 4 in respect of IP (an "IP Issue"), including if Seller is not able to ensure that Buyer or Buyer's Customer is:
 - a. assigned any IP as required under clause 4.a.iii.;
 - b. granted rights to TD, Software or Contract Material as required by this clause 4; or
 - c. provided with an IP Deed as required under clause 4.k.
- ii. Seller shall ensure that a notice under clause 4.l.i. includes details of:
 - a. the relevant IP Issue, including the steps taken by Seller to ensure compliance with this clause 4 or to mitigate the effects of the IP Issue;
 - b. the Products Being Supported or the Supplies or Services (and related TD, Software or Contract Material) to which the IP Issue relates;
 - c. the rights that Seller is able to ensure are granted to Buyer and Buyer's Customer in respect of the relevant TD, Software or Contract Material; and
 - d. options available to remedy, or mitigate the effects of, the IP Issue.
- iii. If Seller gives a notice of an IP Issue, or Buyer or Buyer's Customer considers that an IP Issue has occurred, the JMT shall promptly meet to consider strategies to minimize disruption to the Contract. Buyer may, taking into account any advice of the JMT or the JAB if applicable, by notice to Seller, without limiting any of its other rights under the Contract, do any one or more of the following:
 - a. require that the Seller:
 - (i) use alternative goods or services, or obtain the goods or services from another supplier, to ensure that Seller complies with the requirements of this clause 4; or
 - (ii) modify the Supplies, TD, Software or Contract Material to the extent necessary to ensure that Seller complies with the requirements of this clause 4;
 - b. agree to waive a requirement of this clause 4 on such conditions as the Buyer may determine;
 - c. reduce the scope of the Contract to exclude the Supplies, TD, Software or Contract Material to which the IP Issue relates; or

d. require the Seller to submit a SCP to amend the Contract to implement any of the actions required under this clause 4.l.iii. or any other option to remedy the IP Issue, or mitigate the effects of the IP Issue.

iv. Seller shall comply with a notice issued by Buyer under clause 4.l.iii.

v. Any notice issued by Buyer under clause 4.l.iii. is not an event or circumstance beyond the reasonable control of Seller for the purposes of the Force Majeure, unless otherwise agreed by the JMT, or the JAB if applicable.

m. TDSR Schedule

i. Seller shall take all reasonable steps (including by submitting a SCP) to ensure the TDSR Schedule is up to date and contains an accurate description of all restrictions applicable to Buyer's and Buyer's Customer's rights in respect of TD, Software and Contract Material, delivered or required to be delivered under the Contract.

ii. Buyer's rights and Buyer's Customer's rights in respect of TD, Software and Contract Material under this clause 4 are not subject to any restrictions, unless such restrictions are permitted under the Contract and expressly set out in the TDSR Schedule.

n. TD and Software Required to be Delivered

i. Seller shall deliver all TD and Software required to be delivered under this Contract to the recipients at the times and locations, and in the manner, specified in the Contract.

ii. Without limiting the Seller's obligation under clause 4.n.1 (and subject to clause 4.n.iii.), if Buyer is not specified as a recipient of any item of TD listed in the MTDI, or any item of Software listed in the Approved Software List (if any), Buyer, may by notice to the Seller, require the delivery of the item to Buyer.

iii. Seller shall comply with a notice given under clause 4.n.ii. unless compliance with the notice would be inconsistent with any restricted delivery requirements specified in Annex A or B (as applicable) to the TDSR Schedule.

iv. If the time, location or manner of delivery of any item of TD or Software required to be delivered is not specified in the Contract, Seller shall deliver the relevant item in accordance with a notice given by Buyer.

v. Buyer shall act reasonably when giving a notice under clause 4.n.ii. or clause 4.n.iv. including in relation to specifying a time for delivery of the item of TD or Software.

vi. If a Contract is terminated Seller shall, within the period set out in the notice of termination (which shall be a reasonable period), deliver to Buyer all TD and Software required to be delivered under that Contract, each in its then current state of development.

vii. An obligation under this clause 4.n. or any other provision under this Contract or a Contract that requires Seller to deliver TD or Software (other than under clause 4.n.vi.)

includes an obligation to create, develop or acquire the TD or Software to enable the TD or Software to be delivered to Buyer at the times and in the manner required under this Contract or the relevant Contract.

viii. The MTDI and the Approved Software List (if any) do not operate to restrict the rights of Buyer in respect of IP in any TD or Software under this clause 4 or otherwise under this Contract.

ix. For the purposes of this clause 4, an item of TD, Software or Contract Material is not taken to have been delivered under this Contract if, at the time it is provided:

- a. Seller identifies that the item is provided for the information of Buyer only; and
- b. the item is not otherwise required to be delivered under the Contract,

o. Electronic Delivery of TD, Software, and Contract Material

i. If an item of TD, Software or Contract Material is permitted by this Contract to be delivered in electronic form to Buyer, the item is deemed to have been delivered:

a. if the item is to be delivered by access to an information system of Seller - when all of the following requirements are met:

- (i) the item is present in the information system;
- (ii) Buyer has been notified that the item is present in the information system; and
- (iii) the item is accessible for use by Buyer in accordance with the SOW; or

b. if the item is to be delivered by an electronic communication or by transfer into an information system nominated by the Buyer - when all of the following requirements are met:

- (i) the electronic communication or transferred item enters the information system, unless Seller receives notification within one Working Day that the electronic communication or transfer has not been successful; and
- (ii) Buyer has been notified that the item has been successfully sent or transferred to the information system.

p. Markings

i. Where markings are used by Seller or a Subcontractor in relation to TD, Software or Contract Material, Seller:

- a. shall ensure that those markings accurately reflect the rights and obligations of Buyer, Buyer's Customer, Seller or any other person; and

b. acknowledges that the markings are not determinative as to the rights and obligations of the parties.

g. TD and Software Warranties

i. Seller warrants that:

- a. the rights granted to Buyer or Buyer's Customer in accordance with this clause 4 (including in relation to Commercial TD or Commercial Software) will not prevent the Products Being Supported or the Supplies from being used as provided for in the Contract;
- b. the rights granted to Buyer in accordance with clause 4.d.iii. a. in relation to a Key Commercial Item shall be on terms that are no less favourable than the best commercial terms available to Seller; and
- c. the TD listed in the MTDI includes (at a minimum) all of the TD used or generated by Seller and its Subcontractors in the performance of this Contract on and from 4 September 2018.

ii. Seller shall use its best endeavours to ensure that:

- a. all Software delivered or required to be delivered to Buyer under this Contract is free from Malware, at the time of delivery to Buyer; and
- b. no Malware will be installed on the Products Being Supported or the Supplies or any other Commonwealth or Buyer, or Buyer's Customer's system as a result of an act or omission of any of Seller Personnel.

r. Intellectual Property Warranties

i. Seller warrants and shall ensure that, in respect of any IP assigned or licensed to Buyer under or in connection with this Contract, at all times:

- a. the relevant assignor or licensor (as applicable) has the right, title or authority to assign or license, and has been made aware of, the rights granted in respect of IP under this clause 4 or under an IP Deed; and
- b. Seller shall notify Buyer if t Seller becomes aware of any challenge, claim or proceeding referred to in clause 4.r.iii. arising in respect of any IP after the relevant TD, Software or Contract Material is delivered to the Buyer.

ii. If Buyer, Buyer Personnel, Buyer's Customer or a sublicensee of Buyer infringes the IP or any Moral Rights of any third party as a consequence of:

- a. an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in this Contract (including in this clause 4); or

b. a failure by Seller to grant (or ensure the grant) of a licence or assign (or ensure the assignment) of IP rights under or referred to in this Contract (including in this clause 4);

Seller shall, without limiting Seller's obligations under clause 5.d., use its best endeavours to:

c. modify the item in order to avoid continuing infringement and so that the Supplies meet the requirements of this Contract with the modified item;

d. procure the rights or additional rights necessary to ensure that Buyer, Buyer Personnel, Buyer's Customer and sublicensees are entitled to exercise the rights under this clause 4 or an IP Deed in respect of the item; or

e. remove the item from the Supplies and modify the Supplies to the extent necessary to ensure that the Supplies meet the requirements of this Contract without the item.

iii. Seller warrants and shall ensure that, in respect of any IP in any TD, Software or Contract Material delivered or required to be delivered under this Contract, and as at the time of delivery to Buyer of the relevant TD, Software or Contract Material and after making diligent inquiries:

a. the IP is licenced to, or owned by, Buyer or Buyer's Customer as required by this clause 4;

b. Seller has no notice of any challenge to the validity or enforceability of any of the IP and has no knowledge of any actual or threatened claim or proceeding in relation to any of the IP;

c. neither Seller, nor any Approved Subcontractor is engaged in litigation, arbitration or other proceedings in relation to any of the IP; and

d. there are no proceedings threatened by or against Seller or any Approved Subcontractor in relation to any of the IP and there is nothing that is likely to give rise to any such proceedings.

iv. The warranty under clause 4.r.i. and the obligations under clause 4.r.ii. do not apply to the extent that the infringement arises from a failure by Buyer, Buyer Personnel, Buyer's Customer, or a sublicensee of Buyer to comply with a relevant restriction specified in the TDSR Schedule.

s. Patents, Registrable Designs and Circuit Layouts

i. Seller warrants and shall ensure that a licence is granted or obtained under this Contract for Buyer and Buyer's Customer to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use or support the Supplies for the purposes provided for in this Contract.

- ii. Seller warrants and shall ensure that any restriction on a right referred to in clause 4.s.i. is specified in Annex F to the TDSR Schedule.

t. Export Approvals

- i. Nothing in this clause 4 affects the obligations of either party to comply with any export control laws or the terms of any Export Approval that is binding on it (including the International Traffic In Arms Regulations of the United States of America and any other similar Australian or United States of America legislation or subordinate legislation).

u. Existing IP Licences

- i. The licences, rights and obligations under this clause 4 are in addition to, and do not affect, any other licences, rights or obligations relating to IP under any other contracts between the parties, unless expressly stated otherwise for the purposes of this clause.

v. Notice of Sublicence Infringement

- i. Subject to clause 4.v.ii. , each party agrees to use their best endeavours to notify the other party if it becomes aware of an act or omission of a sublicensee that is an infringement of, and could not have been authorised by the party under, a sublicense granted in accordance with this clause 4 (a Sublicence Infringement).

- ii. The parties agree that:

- a. clause 4.v.i. does not require a party give a notice if to do so would breach an obligation of confidence, a contract or deed, a statutory requirement or a Commonwealth policy applicable to it; and

- b. a failure to provide a notice under clause 4.v.i. does not affect the party's other rights or obligations under this Contract or constitute an act of authorisation for the purposes of the Copyright Act 1968.

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 Defence Property, GFX, or ADP (excluding the AMS) when such Defence Property, GXX or ADP (excluding the AMS) 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 or ADP (excluding AMS) when such GFX or ADP (excluding AMS) is lost or damaged while the GFX or ADP (excluding AMS) 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 AUD184,064,780 for liability under clause 5.c.i.a. of this CCR;
 - b. to an aggregate amount of AUD159,237,440 for liability under clause 5.c.i.b. and liability for loss of or damage to GFX or ADP (excluding AMS) under clauses 5.c.ii and clause 5.c.i.c. of this Contract;
 - c. to an aggregate amount of AUD149,820,170 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 AUD55,647,493 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 and products 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 \$20 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 \$20 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 Contract 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 and products 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. AUD184,064,780 each and every occurrence for aviation liability claims; and
- b. AUD184,064,780 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. (hangarkeepers) Seller shall effect and maintain hangarkeepers liability insurance written on an occurrence basis with a limit of indemnity of not less than AUD184,064,780 each and every occurrence which covers the liability (including premises liability and airside liability) of:
 - a. Seller, its officer, employees, and agents (including for liability to each other), and
 - b. Buyer and Buyer Representative for their vicarious liability for the acts or omissions of Seller, its officers, employees, and agents,caused by, arising out of, or in connection with, the occupation, use or ownership of any hangar, runways or related infrastructure and facilities used in the performance of the work under the Contract by Seller or its officers, employees, agents or Subcontractors.
- xi. 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. clause 5.f. vi. (property);
 - ii. clause 5.f.x. (hangarkeepers)
 - b. clause 5.f.iv (public and products 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 and products liability)
 2. clause 5.f.vi. (property);
 3. clause 5.f.vii (transit);
 4. clause 5.f.x. (hangarkeepers); and
 - vi. that a notice of a claim by any insured will be accepted as notices by all insureds.
- xiv. 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.
- xv. 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.
- xvi. 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.
- xvii. 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.
- xviii. 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.
- xix. 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.

- xx. 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.
- xxi. For the purposes of clause 5.f.xx., 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.

xxii. 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 and products liability); 5.f.v. (professional indemnity); 5.f.vi (property); 5.f.vii. (transit); 5.f.viii. (motor vehicle); 5.f.ix. (aviation liability); 5.f.x (hangarkeepers), 5f.xi., 5f.xii., and 5.f.xiii. and
- b. be relieved of its obligations under clauses 5.f.x.iv. and 5.f.x.v.ii.

in respect of a particular insurance listed in clause 5.f.xxii.a. for any period during which Seller's insurance program holds Approved Contractor Insurance Program (ACIP) status under the Defence'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.

xxiii. 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.

xxiv. 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.

xxv. For the purposes of this clause 5.f.xxiv., 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 cooperate 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. 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.
- b. For a period of seven (7) years following the expiration of the Contract warranty, Seller shall correct or replace Latent Defects in Goods accepted under this Contract. Seller shall be reimbursed actual and reasonable costs, less fee, for such correction or replacement of Latent Defects. For the purposes of this paragraph 6.b., the term "Latent Defect" means a deficiency in design, materials or workmanship not discoverable by reasonable care or inspection prior to payment for the Goods that causes a failure in the Goods which falls outside the incidence of random failures to be expected from those Goods.

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 Australian Signals Directorate (ASD), 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 ASD 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, where the place of performance is in Australia:
 - i. Company ScoreCard policy as detailed in the *DMO Company ScoreCard Policy Statement*.
 - ii. *Unacceptable Behaviour*; as detailed in: DI(G) PERS 35-3;
 - iii. Conflicts of Interest and Gifts, Hospitality and Sponsorship; and the reporting and management of notifiable incidents policies as detailed in DI(G) PERS 25-6, DI(G) PERS 25-7 and DI(G)ADMIN 45-2; ;
 - iv. Workplace Gender Equality policy as detailed in the DPPM;
 - v. Public Interest Disclosure policy as detailed in the DPPM;
 - vi. Hazardous Substances policy as detailed in the DPPM;
 - vii. Ozone Depleting Substances Policy and Synthetic Greenhouse Gases policy as detailed in the DPPM;
 - viii. Defence Stocktaking and Assets Assurance Checking policy as detailed in DEFLOGMAN Part 2: Volume 5;
 - ix. Work Health and Safety policy as detailed in the DPPM; and
 - x. Defence Environmental policy as detailed in the DPPM.
- 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.

Annexes:

A) IP Deed

B) Deed of Confidentiality and Fidelity

C) Glossary

ANNEX A TO CUSTOMER CONTRACTS REQUIREMENTS PH5A-CONT-000009

IP DEED

This Deed is made on **(INSERT DATE)**

PARTIES

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

| | | |
|-------------------------------------|-------------------------|-------------------------------|
| Commonwealth Representative: | (INSERT DETAILS) | |
| Notice Details: | Address: | (INSERT ADDRESS) |
| | Fax: | (INSERT FAX NUMBER) |
| | Email: | (INSERT EMAIL ADDRESS) |

BOEING DEFENCE AUSTRALIA LTD ABN 64 006 678 119 having its registered office at Level 10 Exchange House, 10 Bridge Street, Sydney (**the Contractor**)

| | | |
|-----------------------------------|-------------------------|--|
| Contractor Representative: | (INSERT DETAILS) | |
| Notice Details: | Address: | AEW&C Support Centre Building 586 RAAF Base Williamtown NSW 2314 |
| | Fax: | (INSERT FAX NUMBER) |
| | Email: | (INSERT EMAIL ADDRESS) |

AND

(INSERT NAME OF COMPANY) (INSERT ACN/ABN AND ABN AS APPLICABLE) a company duly incorporated under the laws of **(INSERT JURISDICTION)** and having its registered office at **(INSERT DETAILS) (Approved Subcontractor)**.

| | | |
|---|----------|--|
| Approved Subcontractor Representative: | | |
| Notice Details: | Address: | |
| | Fax: | |
| | Email: | |

RECITALS

- A. The Commonwealth has entered into a Contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE) (Contract)** with the Contractor for the supply of **(INSERT BRIEF DESCRIPTION)**.
- B. The Contractor has entered into a contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE) (Approved Subcontract)** with the Approved Subcontractor for the supply of **(INSERT BRIEF DESCRIPTION)**.
- C. The parties intend that TD and Software containing the IP of the Approved Subcontractor be licensed or assigned to the Commonwealth subject to the terms of this Deed.

AGREED TERMS

INTERPRETATION

1.1 Definitions

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

“Approved Subcontractor Personnel” means the officers, employees and agents of the Approved Subcontractor.

“Circuit Layout” means a circuit layout that is protected under the *Circuit Layouts Act 1989* (Cth) or the corresponding laws of any other jurisdiction.

"Claim" means a claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings (whether or not before a tribunal).

"Commercial Item" means an item that is:

- a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and
- b. able to be used for its intended purpose under the Approved Subcontract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item).

"Commercial Software" means Software that is:

- a. a Commercial Item;
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item under the standard commercial terms applicable to that item; or
- c. Free and Open Source Software.

"Commercial TD" means TD that is:

- a. a Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that item or software.

"Commercialise" means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in TD or Software in return for payment of a Royalty or a commercial return to the Commonwealth or the sublicensee.

"Commonwealth Contractor" means a person (other than the Contractor or any of its Subcontractors or Related Bodies Corporate) engaged by the Commonwealth to provide goods or services to the Commonwealth.

“Commonwealth Default” means any of the following:

- a. a breach of an express or implied provision of the Deed by the Commonwealth or Commonwealth Personnel;
- b. a breach of a general law duty (including under legislation), in tort (including negligence) or in equity, in relation to the Deed by any of the following:
 - (i) the Commonwealth or Commonwealth Personnel;

(ii) a Commonwealth Contractor or an officer or employee of a Commonwealth Contractor.

A breach of a general duty (including negligence) or an applicable law (at common law, in equity or under statute) by Commonwealth Personnel, a Commonwealth Contractor or an officer or employee of a Commonwealth Contractor is taken to be a Commonwealth Default.

"Commonwealth Officer" means any of the following:

- a. a Minister of State for the Commonwealth;
- b. a person employed or engaged under the Public Service Act 1999 (Cth) or the Members of Parliament (Staff) Act 1984 (Cth);
- c. a person who is included in Defence Personnel; and
- d. a member of the Australian Federal Police

"Commonwealth Personnel" means any Commonwealth Officers, Defence Personnel or agents of the Commonwealth.

"Commonwealth Service Provider" means a person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth, including a person engaged to provide:

- a. professional, administrative, contract management or project management services to Defence; or
- b. technical management or assurance services, including verification and validation, safety, certification, security or capability development,

but does not include a person specified in Annex F to the TDSR Schedule.

"Commonwealth Software" means

- a. any Software of the type described in Annex D to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and
- b. any developments, modifications or improvements to that Software.

"Commonwealth TD" means

- a. any TD of the type described in Annex D to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and
- b. any developments, modifications or improvements to that TD.

"Confidential Information" means:

- a. any information provided by the Approved Subcontractor that is identified in Attachment 3 to the IP Deed; or
- b. any other information :
 - (i) that is commercially sensitive (not generally known or ascertainable); and
 - (ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and
 - (iii) that was provided with an express or implied understanding that it would remain confidential,

but does not include information that:

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

"Contractor Personnel" means the officers, employees and agents of the Contractor.

"Copyright" means any existing or future copyright as defined under the *Copyright Act 1968* (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.

"Defence" means the Department of Defence and/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 *Defence Act 1903* (Cth)) and the equivalents from other organisations on exchange to Defence.

"Defence Purpose" means a purpose related to any of the following:

- a. the defence and defence interests of Australia;
- b. the national security of Australia;
- c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and
- d. peacekeeping or peace enforcement activities.

"Effective Date" means the date on which this Deed is signed by the parties, or if signed on separate days, the date of the last signature.

"Failure" means the inability of a system or component to perform its required functions within specified performance requirements. The fault tolerance discipline distinguishes between a human action (a mistake), its manifestation (a hardware or software fault), the result of the fault (a failure), and the amount by which the result is incorrect (the error).

"Free and Open Source Software" means Software that:

- a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and
- b. may be used, modified, developed or adapted by any person subject to specified conditions,

and includes open source software, public domain software, shareware, community source software and freeware.

"Highly Sensitive Software" means Software listed in Annex A to the TDSR Schedule.

"Highly Sensitive TD" means TD listed in Annex A to the TDSR Schedule.

"Intellectual Property" or "IP" means all present and future rights conferred by law in or in relation to any of the following:

- a. Copyright;
- b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); and

c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered.

"Key Commercial Item" means a Commercial Item listed in Annex C to the TDSR Schedule.

"Licence" means a non-exclusive licence of IP in respect of TD or Software, being a licence that:

- a. is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee;
- b. cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term;
- c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;
- d. operates on a world-wide basis; and
- e. binds each successor in title to the owner of the IP in respect of the TD or Software.

"Loss" means any liability, loss, damage, compensation, costs and expenses. Without limiting what "Loss" means or any provisions of the Approved Subcontract limiting or excluding a particular type of Loss, Loss will include losses that might be determined by a competent authority to be recoverable in respect of an act or omission, for example, economic loss.

"Moral Rights" means any of the following:

- a. a right of attribution of authorship;
- b. a right not to have authorship falsely attributed; and
- c. a right of integrity of authorship.

"Patent" means the rights and interests in any registered, pending, or restored standard or innovation patent under the *Patents Act 1990* (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.

"Products Being Supported" means the products identified in Schedule 4..

"Registrable Design" means a design able to be protected under the *Designs Act 2003* (Cth) or the corresponding laws of any other jurisdiction.

"Request" means a request for tender, proposal, quotation or information or similar request for the provision of goods or services to the Commonwealth.

"Royalty" means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use any IP, however calculated.

"Software" means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result (including using a computer programming language to control a computer or its peripheral devices), and includes computer programs, firmware and applications, but excludes Source Code.

"Source Code" means the expression of Software in human readable form which is necessary to understand, maintain, modify, correct and enhance that Software.

"Sublicence" means, in respect of a Licence of IP granted to the Commonwealth under clauses 2.2.2 or 2.3.2, a sublicense of that IP on terms that comply with the requirements of clause 2.5 of this Deed.

"Supplies" means goods and services required to be supplied under or in connection with the Approved Subcontract.

"TDSR Schedule" means Schedule 1 of this Deed.

"Technical Data" or "TD" means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to the Products Being Supported or the Supplies, and includes calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, training materials, test results and writings, and includes Source Code.

"Trade Mark" means a trade mark protected under the *Trade Marks Act 1995* (Cth) or corresponding laws of any other jurisdiction.

"Use" means, in relation to a licence of any TD or Software granted to a licensee, to:

- a. use, reproduce, adapt and modify the TD or Software in accordance with the licence; and
- b. disclose, transmit and communicate the TD or Software:
 - c. to the licensee's employees, officers and agents; and
 - d. to a sublicensee under a sublicense granted in accordance with the licence.

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

- a. a Saturday, Sunday or public holiday in that place; and
- b. any day within the two-week period that starts on:
 - c. the Saturday before Christmas Day; or
 - d. if Christmas Day falls on a Saturday, Christmas Day.

1.2 Interpretation

1.2.1 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. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the next Working Day;
- 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. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a "dollar", "\$", "\$A" or "\$AUD" means the Australian dollar;
- i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word "includes" in any form is not a word of limitation; and
- k. a reference to a party includes that party's administrators, successors, and permitted assigns.

1.3 Precedence

- 1.3.1 Unless expressly provided for, the terms of this Deed prevail over the provisions of any Schedule to this Deed to the extent of any inconsistency.

1.4 Survival

- 1.4.1 The rights and obligations created under or in connection with this Deed survive the termination or expiry of the Contract or the Approved Subcontract.

2 TECHNICAL DATA AND SOFTWARE

2.1 Ownership of Intellectual Property

- 2.1.1 Nothing in this Deed or an Approved Subcontract affects the ownership of IP, except as expressly provided for in this clause 2.1.
- 2.1.2 The parties agree that all IP created under or in connection with the Approved Subcontract in respect of Commonwealth TD and Commonwealth Software that is delivered or required to be delivered as part of the Supplies, is assigned to the Commonwealth (or its nominee) immediately upon its creation.

2.2 Highly Sensitive TD and Highly Sensitive Software

- 2.2.1 This clause 2.2 applies to all Highly Sensitive TD or Highly Sensitive Software delivered or required to be delivered under the Approved Subcontract.
- 2.2.2 The Approved Subcontractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all TD and all Software to which this clause 2.2 applies, to:
- a. Use the TD or Software for any Defence Purpose; and
 - b. grant a Sublicence in accordance with clause 2.5 to Use the TD or Software or to grant a further sublicence to Use the TD or Software,
- subject to the restrictions specified in Annex A to the TDSR Schedule.

2.3 TD and Software

- 2.3.1 This clause 2.3 applies to all TD and Software delivered or required to be delivered to the Contractor or any other person under the Approved Subcontract, other than:
- a. Highly Sensitive TD or Highly Sensitive Software to which clause 2.2 applies;
 - b. Commercial TD or Commercial Software delivered or required to be delivered under the Approved Subcontract; and
 - c. Commonwealth TD and Commonwealth Software to the extent that the IP in that TD or Software is assigned to the Commonwealth under clause 2.1.2.
- 2.3.2 The Approved Subcontractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all TD and all Software to which this clause 2.3 applies, to:
- a. Use the TD or Software for any Defence Purpose; and
 - b. grant a Sublicence in accordance with clauses 2.3.3 and 2.5 to Use the TD or Software.
- 2.3.3 The Commonwealth may grant a Sublicence in respect of all TD and all Software to which this clause 2.3 applies, to:
- a. a Commonwealth Service Provider to Use the TD or Software to enable the Commonwealth Service Provider to perform its obligations, functions or duties to the Commonwealth;
 - b. any person to Use the TD or Software, or to grant a further sublicence to Use the TD or Software, to do any of the following:

- (i) installing or configuring the Products Being Supported or the Supplies or;
 - (ii) physically integrating the Supplies with the Products Being Supported;
 - (iii) operating or maintaining the Products Being Supported or the Supplies;
 - (iv) rectifying any defect in the Products Being Supported or the Supplies;
 - (v) undertaking training in relation to the Products Being Supported or the Supplies;
 - (vi) removing or uninstalling the Supplies;
 - (vii) decommissioning or destroying the Products Being Supported or the Supplies;
 - (viii) for the person to respond to a Request to be engaged for any of the above purposes; and
 - (ix) for any other purpose (including to modify and upgrade any of the Products Being Supported) but subject to any restrictions specified in Annex B to the TDSR Schedule; and
- c. any person for a purpose referred to in clause 3.1.3.

2.4 Commercial TD and Commercial Software

- 2.4.1 This clause 2.4 applies to all Commercial TD and Commercial Software delivered or required to be delivered to the Contractor or any other person under the Approved Subcontract if the IP in the TD or Software is owned by the Approved Subcontractor.
- 2.4.2 The Approved Subcontractor shall ensure that the Commonwealth is granted a licence in respect of all TD and Software to which this clause 2.4 applies to Use the TD and Software, or to grant a sublicense to any person to Use the TD or Software, to perform any of the activities set out in clause 2.3.3b(i) to (viii), but subject to any restrictions specified in Annex C to the TDSR Schedule for that item.

2.5 Commonwealth Sublicences

- 2.5.1 The Commonwealth's right to grant a Sublicence to a person ("**Sublicensee**") in accordance with clauses 2.2.2, 2.3.2 or 2.4.2 is subject to the following conditions:
- a. the Sublicence shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to the Commonwealth;
 - b. the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD or Software (as applicable) to efficiently perform its obligations, functions or duties to the Commonwealth or a Commonwealth Contractor;
 - c. the rights granted under the Sublicence shall expire when no longer required for the purposes referred to in clause 2.5.1b; and
 - d. any right of the Sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 2.5.

2.6 Approved Subcontractor to deliver TD and Software

- 2.6.1 The Commonwealth may by notice to the Approved Subcontractor require the delivery to the Commonwealth (or its nominee) of all TD and Software required to be delivered under the Approved Subcontract.
- 2.6.2 The Approved Subcontractor shall comply with a notice given under clause 2.6.1 unless compliance with the notice would be inconsistent with any restricted delivery requirements specified in respect of the relevant TD of Software in Annex A or B (as applicable) of the TDSR Schedule.
- 2.6.3 The Commonwealth shall act reasonably when giving a notice under clause 2.6.1, including in relation to specifying a time for delivery of the item of TD or Software.

2.7 Patents, Registrable Designs and Circuit Layouts

- 2.7.1 The Approved Subcontractor warrants and shall ensure that a licence is granted or obtained under this Deed for the Commonwealth to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use or support the Supplies for the purposes provided for under the relevant Approved Subcontract.
- 2.7.2 The Approved Subcontractor warrants and shall ensure that any restriction on a right referred to in clause 2.7.1 is specified in Annex E to the TDSR Schedule (Attachment 1 to the IP Deed)

2.8 No Commercialisation

- 2.8.1 A Licence or Sublicence granted in accordance with this clause 2 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the TD or Software.
- 2.8.2 For the avoidance of doubt, clause 2.8.1 does not prevent the Commonwealth from granting a Sublicence, in accordance with a right granted in this clause 2, to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.

3 CONFIDENTIAL INFORMATION

3.1 Confidential Information

- 3.1.1 Each party shall ensure that Confidential Information provided by the other party under or in connection with the Deed is not disclosed, except to the extent that:
- a. the disclosure is permitted under clause 3.1.3;
 - b. the Confidential Information is in TD or Software and the disclosure is in connection with the exercise of the rights provided for in clause 2; or
 - c. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).
- 3.1.2 Each party shall ensure that, before disclosing Confidential Information under clause 3.1.1b, the recipient:
- a. executes a confidentiality deed poll; or
 - b. is otherwise subject to an obligation not to disclose the Confidential Information to any other person on terms substantially equivalent to those in Schedule 2.
- 3.1.3 Clause 3.1.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is for any of the following purposes:
- a. as required or authorised by law;
 - b. as necessary for the conduct of any legal proceedings arising in connection with the Deed, the Contract or the Approved Subcontract;
 - c. is made by the Commonwealth, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister; or
 - d. is to any of the following persons:
 - (i) a legal adviser, insurer, financier, auditor or accountant of a party, to the extent required to enable them to perform those roles;
 - (ii) a Related Body Corporate for internal management purposes;
 - (iii) any Commonwealth Personnel who needs to know the information in order to undertake their duties or functions; and
 - (iv) any of the Contractor Personnel or Approved Subcontractor Personnel who need to know the information to enable the Contractor or Approved Subcontractor to perform their obligations under the Contract or Approved Subcontract.

- 3.1.4 The Approved Subcontractor shall not, in marking information supplied to the Commonwealth, misuse the term "Confidential Information" or equivalent terms.
- 3.1.5 Subject to clause 3.1.6, the Approved Subcontractor shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
- a. the date specified in a notice given by the Commonwealth (acting reasonably); and
 - b. the time the documents and other material are no longer required for the purposes of the Approved Subcontract or this Deed.
- 3.1.6 The Approved Subcontractor may retain, and will not be required to return or destroy, any documents containing or relating to Confidential Information of the Commonwealth, where such documents are:
- a. retained in order to comply with any legal, professional or insurance obligations; or
 - b. stored in electronic backups or records that are produced in the normal course of business where it is not reasonably practicable to destroy such backups or records.
- 3.1.7 If the Commonwealth gives a notice under clause 3.1.5a and the Approved Subcontractor has placed or is aware that documents containing the Confidential Information are beyond its possession or control, the Approved Subcontractor 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.
- 3.1.8 The Approved Subcontractor, 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 of the Commonwealth.
- 3.1.9 Return or destruction of the documents referred to in this clause 3.1 does not release the Approved Subcontractor from its obligations under the Approved Subcontract or this Deed.

4 INDEMNITIES AND WARRANTIES

4.1 Intellectual Property and Confidentiality Indemnity

- 4.1.1 The Approved Subcontractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim by a third party in respect of the following:
- a. an infringement or alleged infringement of the third party's IP rights (including Moral Rights) arising out of or as a consequence of an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in this Deed; and
 - b. a breach or alleged breach of any obligation of confidentiality owed to that third party arising out of or as a consequence of any act or omission of the Approved Subcontractor or Approved Subcontractor Personnel.
- 4.1.2 The liability of the Approved Subcontractor under clause 4.1.1 shall be reduced to the extent that the Loss arose out of or as a consequence of a Commonwealth Default.
- 4.1.3 In this clause 4.1:
- "infringement" of a right includes an act or omission that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), or section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement of the right.

4.2 Intellectual Property Warranties

- 4.2.1 The Approved Subcontractor warrants and shall ensure that, in respect of any IP in the TD or Software delivered or required to be delivered under this Deed or the Approved Subcontract, and as at the time of the delivery to the Contractor or, if delivered directly to the

Commonwealth, the Commonwealth, of the relevant TD or Software and after making diligent inquiries:

- a. the IP is licenced to, or owned by, the Commonwealth as required by this Deed;
- b. the Approved Subcontractor has no notice of any challenge to the validity or enforceability of any of the IP and has no knowledge of any actual or threatened claim or proceeding in relation to any of the IP; and
- c. the Approved Subcontractor is not engaged in litigation, arbitration or other proceedings in relation to any of the IP; and
- d. there are no proceedings threatened by or against the Approved Subcontractor in relation to any of the IP, and there is nothing that is likely to give rise to any such proceedings.

- 4.2.2 The warranty under clause 4.2.1 does not apply to the extent that the infringement arises from a failure by the Commonwealth, Commonwealth Personnel or a sublicensee of the Commonwealth to comply with a restriction specified in the TDSR Schedule.

4.3 Operation of indemnity and liability clauses

- 4.3.1 For the purposes of each indemnity given by the Approved Subcontractor, or any liability of the Approved Subcontractor, under this Deed in respect of Loss suffered by the Commonwealth:

- a. the Commonwealth shall bear the onus of proving that it has suffered the relevant Loss and (where applicable) that the Loss arose out of or as a consequence a Contractor Default; and
- b. the Approved Subcontractor shall bear the onus of proving that its liability is to be reduced, limited or excluded in accordance with this Deed to any extent.

- 4.3.2 For avoidance of doubt, whether the matters referred to in clause 4.3.1 have been proven will be determined by a court of competent jurisdiction and any court that may hear appeals from such court.

5 LAW

5.1 Goods and Services Tax

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

- 5.1.2 If a party to this Deed ("the Supplier") makes a taxable supply under 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.

- 5.1.3 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.

- 5.1.4 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.

5.2 No Exclusion of Law or Equity

- 5.2.1 Subject to its terms, 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.

5.3 Waiver

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

5.4 Remedies

- 5.4.1 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.
- 5.4.2 Subject to the terms of this Deed, the rights and obligations of the parties under 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.

5.5 Variation

- 5.5.1 This Deed may only be varied by written agreement of the parties.

5.6 Applicable Law

- 5.6.1 The laws of the **[INSERT RELEVANT STATE OR TERRITORY]** apply to this Deed, and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter relating to this Deed.

5.7 Notices

- 5.7.1 Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing and sent from and delivered to the relevant party, at the following address:

[INSERT COMMONWEALTH ADDRESS, FAX NUMBER AND EMAIL]

(INSERT APPROVED SUBCONTRACTOR ADDRESS, FAX NUMBER AND EMAIL)

- 5.7.2 A notice or communication is deemed to be delivered:
- a. if sent by pre-paid post, when received at the address;
 - b. if hand delivered, when received at the address, or by the addressee if sooner;
 - c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within one Working Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
 - d. if sent as an email, when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee,

but if the receipt, transmission or entry into the information system is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the notice is taken to be received at 9.00am (recipient's local time) on the next Working Day.

SIGNED AS A DEED POLL

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 APPROVED SUBCONTRACTOR:

Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the 'Executing Agreements Fact Sheet', found on the Procurement and Contracting intranet page at:

<http://drnet.defence.gov.au/DMO/Commercial/Commercial%20Policy%20Framework/Pages/Fact-sheets-and-Guidance.aspx>

This guidance should be used to assess the Contractor's execution of the Deed.

(INSERT APPROPRIATE SUBCONTRACTOR'S EXECUTION CLAUSE)

Attachment 1 the IP Deed
TD & SOFTWARE RIGHTS (TDSR) SCHEDULE

- 1.1 This Schedule consists of the following Annexes:
- a. Annex A – Highly Sensitive TD and Highly Sensitive Software;
 - b. Annex B – Delivery and Licence Restrictions on Use of TD and Software;
 - c. Annex C – Key Commercial Items;
 - d. Annex D – Commonwealth TD and Commonwealth Software;
 - e. Annex E – Patents, Registrable Designs and Circuit Layouts; and
 - f. Annex F – Excluded Parties.

ANNEX A – HIGHLY SENSITIVE TD AND HIGHLY SENSITIVE SOFTWARE (CORE)

| Unique Line Item Description | Item Reference within MTDI / Software List | Owner or Licensor | System/ Subsystem/ Component/CI Name | Description of TD or Software | Restrictions on Commonwealth's rights to Use or Sublicense the TD or Software | Justification for Restriction (s) |
|------------------------------|--|-------------------|--------------------------------------|-------------------------------|---|-----------------------------------|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| | | | | | | |
| | | | | | | |

ANNEX B – DELIVERY AND LICENCE RESTRICTIONS ON USE OF TD AND SOFTWARE (CORE)

| Unique Line Item Description | Owner or Licensor | System/ Subsystem/ Component/ CI Name | Description of TD or Software subject to Restriction (refer Unique Line Item Description from Annex D if appropriate) | Restricted Delivery Arrangements? (Yes/No) If yes, specify identity of recipient(s) or nature of the restrictions in column (g) | Restrictions on Commonwealth rights to Use or Sublicense the TD or Software | Justification for Restriction (s) |
|------------------------------|-------------------|--|--|---|---|-----------------------------------|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

ANNEX C – KEY COMMERCIAL ITEMS

| Unique Line Item Description | Description of Key Commercial Item System/ Subsystem/ Component/CI Name | Description of related TD or Software (including version number and use) | Details of Approved Subcontractor or relevant Related Body Corporate | Owner or Licensor | Licence Terms |
|-------------------------------------|--|---|---|--------------------------|----------------------|
| (a) | (b) | (c) | (d) | (e) | (f) |
| | | | | | |
| | | | | | |

ANNEX D – COMMONWEALTH TD AND COMMONWEALTH SOFTWARE (CORE)

| Unique Line Item Description | Item References within MTDI / Software List | Equipment System/ Subsystem/ Component/CI Name | Category of TD or Software | Name of Assignee | Restrictions on non-Commonwealth owned IP (refer Unique Line Item Description from Annex B if required) | Restrictions on licences granted by the Commonwealth to Commonwealth TD or Commonwealth Software |
|------------------------------|---|--|----------------------------|------------------|--|--|
| (a) | (b) | (b) | (c) | (d) | (e) | (f) |
| | | | | | | |
| | | | | | | |
| | | | | | | |

ANNEX E – PATENTS, REGISTRABLE DESIGNS AND CIRCUIT LAYOUTS (CORE)

| Unique Line Item Description | Supplies containing a Patent, Registrable Design or Circuit Layout (pending or registered) | Type of IP (Patent, Registrable Design or Circuit Layout) | Owner / IP Applicant | Application / Registration No (if applicable) | Countries or regions of permitted use | Restriction |
|------------------------------|--|---|----------------------|---|---------------------------------------|-------------|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| | | | | | | |
| | | | | | | |

ANNEX F – EXCLUDED PARTIES (CORE)

| Unique Line Item Description | Excluded Party (party must be capable of being clearly identified by the Commonwealth) | Period of Restriction (must not be perpetual) | Justification for Non-Disclosure Restriction |
|-------------------------------------|---|--|---|
| (a) | (b) | (c) | (d) |
| | | | |

ATTACHMENT 2 TO THE IP DEED
CONFIDENTIALITY DEED POLL
(INSERT NEGOTIATED FORM OF CONFIDENTIALITY DEED)

ATTACHMENT 3 TO THE IP DEED

CONFIDENTIAL INFORMATION

(INSERT LIST OF CONFIDENTIAL INFORMATION)

ATTACHMENT 4 TO THE IP DEED
PRODUCTS BEING SUPPORTED
(INSERT LIST OF PRODUCTS BEING SUPPORTED)

ANNEX B 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:

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

- g. 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 C 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 |
| APP | Australian Privacy Principles |
| ASD | Australian Signals Directorate |
| 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 |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Abbreviation | Description |
|---------------------|--|
| DoD | Department of Defence |
| DPPM | Defence Procurement Policy Manual |
| DSM | Defence Security Manual |
| ECP | Engineering Change Proposal |
| ED | Effective Date |
| FAR | Federal Acquisition Regulation |
| 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 |
| MTDI | Master Technical Data Index |
| 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 |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Abbreviation | Description |
|---------------------|---|
| S&TE | Support and Test Equipment |
| SCP | Subcontract Change Proposal |
| SDRL | Subcontract Data Requirements List |
| SOW | Statement of Work |
| TD | Technical Data |
| TDSR | Technical Data Software Rights |
| TDSTS | Technical Data Software Rights Schedule |
| USG | United States Government |
| WBS | Work Breakdown Structure |
| WHS | Work Health and Safety |
| WLM | Williamtown |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

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. AEW&C-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. |
| Airborne Mission Segment or AMS | means the E-7A aircraft |
| Annex | means an Annex to an Attachment. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|-------------------------------|--|
| 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 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. |
| Australian Privacy Principles | Has the same meaning as in the Privacy Act 1988 (Cth) |
| 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. |
| Breakdown Spare | a. 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. |
| Circuit Layout | means a circuit layout that is protected under the <i>Circuit Layouts Act 1989</i> (Cth) or the corresponding laws of any other jurisdiction. |
| Commercial Item | means an item that is: a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and b. able to be used for its intended purpose under the relevant Contract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item). |
| Commercial Software | means Software that is: a. a Commercial Item; or b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item under the standard commercial terms applicable to that item; or c. Free and Open Source Software. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|--------------------------------|--|
| Commercial TD | means TD that is: a. a Commercial Item; or b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that Item or Software. |
| Commercialise | means, in respect of the Buyer or any of its sublicensees, to exploit the IP in TD, Contract Material or Software in return for payment of a Royalty or a commercial return to the Buyer or the sublicensee. |
| Commencement Date | has the same meaning as Effective Date |
| 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 | means any of the following that is owned or occupied by the Commonwealth: a. an area of land or any other place (whether or not it is enclosed or built on); b. a building or other structure; or 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. |
| Commonwealth Service Provider | means a person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth, including a person engaged to provide: a. professional, administrative, contract management or project management services to Defence; or b. technical management or assurance services, including verification and validation, safety, certification, security or capability development, but does not include a person specified in Annex E to the TDSR Schedule. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|--------------------------|---|
| Commonwealth Software | means: a. any Software of the type described in Annex D to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and b. any developments, modifications or improvements to that Software. |
| Commonwealth TD | means: a. any TD of the type described in Annex D to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and b. any developments, modifications or improvements to that TD. |
| 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. |
| Confidential Information | means information (whether or not owned by the Commonwealth) that: a. is by its nature confidential; or b. the receiving party knows or ought to know is confidential, but does not include information which: 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 | means: 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 |
| Contract Material | means information, other than TD or Software, reduced to a material form (whether stored electronically or otherwise) that is delivered or required to be delivered to Buyer under this Contract |
| Copyright | means any existing or future copyright as defined under the <i>Copyright Act 1968</i> (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|--------------------------|--|
| 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. |
| 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 | <p>means a purpose related to any of the following:</p> <ul style="list-style-type: none"> a. the defence and defence interests in Australia b. the national security of Australia; c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and d. peacekeeping or peace enforcement activities. |
| 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. |
| 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. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| 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> |
| Existing Phase 5A | means the prime contract between Buyer and Buyer's Customer for the support of the AEW&C System identified as Subcontract No. PH5A-CONT-000009, in force immediately prior to 4 September 2018. |
| Existing Phase 5A IP | means any Foreground IP, Background IP or Third Party IP, as each of those terms are defined under the Existing Phase 5A Contracts. |
| Existing Phase 5A Subcontractor | means a Subcontractor for the purposes of the Existing Phase 5A immediately prior to 4 September 2018; and "Existing Phase 5A Subcontract" has a corresponding meaning. |
| Existing Contract/Subcontract | means an Existing Phase 5A Contract/Subcontract. |
| Existing Subcontractor | means an Existing Phase 5A Subcontractor. |
| 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 Supplies or 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. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|---|---|
| Free and Open Source Software | means Software that: a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and b. may be used, modified, developed or adapted by any person subject to specified conditions, and includes open source software, public domain software, shareware, community source software and freeware. |
| 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). |
| 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). |
| Highly Sensitive Software | means Software listed in Annex A to the TDSR Schedule |
| Intellectual Property or IP | means all present and future rights conferred by law or in relation to any of the following: a. Copyright; b. Rights in relation to a Circuit Layout, Patent, Registrable Design or Trademark (including service marks); and c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered. |
| Intellectual Property (IP) Deed | means a deed in the form set out at Annex A the CCR |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|--|--|
| 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. |
| Key Commercial Item | Means a Commercial Item listed (or required to be listed) in Annex C to the TDSR Schedule |
| Licence | means a non-exclusive licence of IP in respect of TD, Software, or Contract Material, being a license that: a. is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee; b. cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term; c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence; d. operates on a world-wide basis; and e. binds each successor in title to the owner of the IP in respect of the TD, Software or Contract Material. |
| 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. |
| Malware | means Software or Source Code the intent or effect of which is malicious, i.e., software that may appear to be dormant or perform a useful or desirable function, but that actually gains unauthorised access to system resources or induces the user to execute other malicious logic. Malware is a generic term for a number of different types of malicious code including adware, spyware, bots, ransomware, rootkits, trojans, viruses and worms. |
| 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. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|---|---|
| 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: a. a right of attribution of authorship; b. a right not to have authorship falsely attributed; or c. 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. |
| 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. |
| Patent | means the rights and interests in any registered, pending, or restored standard or innovation patent under the Patents Act 1990 (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates. |
| 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). |
| Product | means any item which makes up a capability, including elements of both the AEW&C System and the Support System. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|---|---|
| Products Being Supported | means, in respect of the Phase 5A Contract, the Products identified in the SOW and includes, where applicable, subordinate components. |
| 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 clause 4 of the CCR, means a request for tender, proposal, quotation or information or similar request for the provision of goods or services to the Commonwealth. |
| 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. |
| Royalty | means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use, any IP, however calculated. |
| 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 (SW) | means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result (including using a computer programming language to control a computer or it's peripheral devices) and includes computer programs, firmware and applications but excludes source code. |
| 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 List | means a list of that name required by the Contract, if applicable. |

CUSTOMER CONTRACT REQUIREMENTS
Project AIR 5077 PH5A Interoperability Compliance Upgrade
CUSTOMER CONTRACT PH5A-CONT-000009

| Term | Definition |
|------------------------------------|---|
| Software Update | means, in relation to software (including Software Design Data and Source Code): a. 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 b. 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 form which is necessary to understand, maintain, modify, correct and enhance 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 or Services directly to Seller or indirectly to Seller through another person and includes Approved Subcontractors. |
| Sub-licence | in respect of a Licence of IP granted to Buyer or Buyer's Customer in accordance with clauses 4.b, 4.c. and 4.g. of the CCR, means a sublicense of that IP on terms that comply with the requirements of clause 4.i. of the CCR |
| Supplies | means goods and services including Technical Data required to be supplied under the Contract. |
| 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. |

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| Term | Definition |
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| 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 or scientific data, know-how or information, reduced to material form (whether stored electronically or otherwise) in relation to the Materiel System, and includes calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, training materials, test results and writings, and includes Source Code. |
| Technical Data and Software Rights (TDSR) Schedule | means the Technical Data and Software Rights Schedule included in the Contract. |
| Technical Information (TI) | means Technical Data. |
| Trade Mark | means a trade mark protected under the Trade Marks Act 1995 (Cth) or corresponding laws of any other jurisdiction. |
| 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.xxi. of the CCR. |

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| Term | Definition |
|--------------------|---|
| Use | <p>means, in relation to a licence of any TD, Software or Contract Material granted to a licensee, to:</p> <p>a. use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence; and</p> <p>b. disclose, transmit and communicate the TD, Software or Contract Material:</p> <p style="padding-left: 40px;">(i) to the licensee's employees, officers and agents; and</p> <p style="padding-left: 40px;">(ii) to a sublicensee under a sublicense granted in accordance with the licence.</p> |
| Warranty period | for clause 6 of the CCR, has the meaning given by 6.a. |
| WHS Legislation | <p>means:</p> <p>a. the <i>Work Health and Safety Act 2011</i> (Cth) and the <i>Work Health and Safety Regulations 2011</i> (Cth);</p> <p>b. the Work Health and Safety Act and Work Health and Safety Regulations in each of the applicable States and Territories including the:</p> <p style="padding-left: 40px;">(i) <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2011</i> (NSW);</p> <p style="padding-left: 40px;">(ii) <i>Work Health and Safety Act 2011</i> (QLD) and the <i>Work Health and Safety Regulations 2011</i> (QLD);</p> <p style="padding-left: 40px;">(iii) <i>Work Health and Safety Act 2011</i> (ACT) and the <i>Work Health and Safety Regulations 2011</i> (ACT);</p> <p style="padding-left: 40px;">(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);</p> <p style="padding-left: 40px;">(v) <i>Work Health and Safety Act 2012</i> (SA) and the <i>Work Health and Safety Regulations 2012</i> (SA); and</p> <p><i>Work Health and Safety Act 2012</i> (TAS) and the <i>Work Health and Safety Regulations 2012</i> (TAS).</p> |
| Willful Misconduct | means an intentional act or omission of an officer, employee, or agent of Seller or a Subcontractor with the intention of causing, or with recklessness as to whether it will cause, harmful, and avoidable consequences, but does not include mere negligence, an error of judgement, a mistake or an act done or an omission made in good faith. |
| Working Day | <p>in relation to the doing of an action in a place, means any day in that place other than:</p> <p>a. a Saturday, Sunday or public holiday; and</p> <p>b. 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).</p> |

