

AG00025604-H10000929: Hunter Class Frigate Program

Supplemental Terms and Conditions The following supplemental terms and conditions apply to the Contract between BAE SYSTEMS and SELLER, and are required by BAE SYSTEMS' higher-tier contract with its customer and the Commonwealth of Australia (the "Commonwealth").

Defined terms shall have the meanings set forth in BAE SYSTEMS' NONUSGOV terms incorporated into the Contract. The following terms are included again for reference:

"Contract" means the instrument of contracting, such as the "Subcontract", "PO", "Purchase Order", or other such type designation, including these terms and conditions all referenced documents, exhibits and attachments.

"Customer" means the entity with whom BAE SYSTEMS has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work, and is also referred to as the "Purchaser".

"SELLER" means the party identified on the face of this Contract with whom BAE SYSTEMS is contracting.

"Work" means all required deliverables, articles, materials, supplies, goods and services, including, but not limited to, technical data and Software, constituting the subject matter of this Contract.

1.1 Earned Value Management System

BAE SYSTEMS' Customer may require that SELLER maintains and uses an earned value management system (EVMS) compliant with AS 4817-2006 and the Defence Supplement to AS 4817. SELLER shall comply with this EVMS requirement if BAE SYSTEMS notifies SELLER that the EVMS is applicable to SELLER.

1.2 CNS Industry Workforce Initiatives

This Section shall apply to SELLER only if it employs workers within Australia's naval shipbuilding industry.

1.2.1 *Redeployment Register*

The Commonwealth may establish a Redeployment Register to facilitate the redeployment of workers within the Continuous Naval Shipbuilding industry. The Redeployment Register is expected to be operated by (or on behalf of) the Commonwealth and will include details of any workers (**Relevant Workers**) engaged in the Continuous Naval Shipbuilding industry that are:

- a. considered to be excess (or potentially excess) to the requirements of the relevant employer; and
- b. likely to be made redundant if alternative employment is not obtained within the Continuous Naval Shipbuilding industry.

1.2.2 If the Commonwealth establishes the Redeployment Register, BAE SYSTEMS will give a notice to SELLER setting out details of the operation and procedures for using the Redeployment Register, including:

- a. the arrangements for accessing the Redeployment Register;
- b. the information to be stored on the Redeployment Register; and
- c. the process for contacting workers listed on the Redeployment Register and their employers.

1.2.3 SELLER shall utilise the Redeployment Register by:

- a. seeking permission from its Relevant Workers to include their personal information on the Redeployment Register prior to making them redundant;
- b. subject to obtaining permission from the Relevant Workers, arranging for the inclusion of those Relevant Workers on the Redeployment Register; and
- c. in relation to any vacant position relating to work under the Contract:
 - (i) searching the Redeployment Register for candidates that the SELLER determines are suitable before advertising a position externally;
 - (ii) offering positions to workers on the Redeployment Register who are determined to be suitable for a position before advertising the position externally; and
 - (iii) after advertising a position externally, giving priority to workers on the Redeployment Register who apply for a position and are found to be suitable for the position; and
- d. using reasonable endeavours to implement such additional reasonable requirements as BAE SYSTEMS may request in relation to the Redeployment Register.

1.2.4 Nothing in this Section:

- a. prevents SELLER from giving priority to existing employees (including employees of Related Bodies Corporate) over workers on the Redeployment Register; or
- b. requires SELLER to use the Redeployment Register if to do so will materially adversely affect the performance of the Contract.

Long Service Leave Scheme

- 1.2.5 The Commonwealth may establish a scheme which provides for portability of long service leave entitlements for workers within the Continuous Naval Shipbuilding industry in South Australia (**LSL Scheme**).
- 1.2.6 BAE SYSTEMS may direct SELLER to comply with the LSL Scheme. BAE SYSTEMS shall issue any such direction at least six (6) months' prior to commencement of the LSL Scheme (LSL Scheme Commencement Date).
- 1.2.7 SELLER will use all reasonable endeavours (and require each of SELLER's lower-tier subcontractors with workers in the Continuous Naval Shipbuilding industry to use all reasonable endeavours) to implement the LSL Scheme.

1.3 Non-Compliance with Industry Requirements

Without limiting BAE SYSTEMS' other rights under the Contract or at law, BAE SYSTEMS may issue written direction (hereinafter a "Workforce Direction") to SELLER if SELLER fails to comply with the CNS Industry Workforce Initiatives requirements contained in these terms. This Section shall apply to SELLER only if it employs workers within Australia's naval shipbuilding industry.

- 1.3.1 A Workforce Direction shall identify the non-compliance and may require SELLER to do any one or more of the following:

- a. to immediately perform an activity or undertaking the subject of the non-compliance in the manner described in, and in accordance with any timeframes set out in, the Workforce Direction;
 - b. to require SELLER to develop, and to submit to BAE SYSTEMS for its approval, a detailed plan of steps that SELLER shall take to address the identified non-compliance and the dates by which those steps will be completed, so that the impacts of the problem are avoided or mitigated to BAE SYSTEMS' satisfaction and so that the problem (or any similar or related problem) does not occur again; and
 - c. to require SELLER to develop, and to submit to BAE SYSTEMS for its approval, an amendment to the relevant plan to substitute an activity or undertaking the subject of the non-compliance with an alternative activity or undertaking of comparable value and material affect in respect to achieving the relevant Australian Industry requirement.
- 1.3.2 SELLER is not entitled to an equitable adjustment under the Changes clause of the Contract in respect of any additional costs or delay arising from compliance with a Workforce Direction.

2 TECHNICAL DATA, SOFTWARE AND CONTRACT MATERIAL

2.1 TD and Software Rights

- 2.1.1 This clause applies to all technical data (TD) and Software delivered or required to be delivered to the BAE SYSTEMS or any other person under the Contract, other than the following categories of TD or Software which are discussed later in these terms and conditions:
- a. Highly Sensitive TD or Highly Sensitive Software;
 - b. BAE SYSTEMS' Customer's TD or Software;
 - c. TD or Software provided as, or as a part of, GFM or PFM; and
 - d. TD and Software to the extent these terms assign ownership of that TD and Software to BAE SYSTEMS' Customer.
- 2.1.2 SELLER grants to BAE SYSTEMS' Customer Licences in respect of all TD and Software to which this clause applies, to:
- a. Use the TD or Software for any HCFP Purpose, and grant a Sublicence to any subcontractor of the BAE SYSTEMS for any HCFP Purpose; and
 - b. grant a Sublicence to the Commonwealth to:
 - (i) Use the TD or Software for any Defence Purpose; and
 - (ii) grant a Sublicence in accordance with the clause below and the "Sublicences" section to use the TD or Software.
- 2.1.3 The Commonwealth may grant a Sublicence of IP in respect of all TD and Software to which this clause applies to:
- a. a Commonwealth Service Provider to use the TD or Software for the purpose of enabling the Commonwealth Service Provider to perform its functions or duties to the Commonwealth; and

- b. any person to use the TD or Software, or to grant a further sublicense to use the TD or Software:
- (i) for any of the following purposes:
 - 1) installing or configuring the Supplies;
 - 2) integrating the Supplies with other systems;
 - 3) rectifying any Defect in the Supplies where SELLER, or BAE SYSTEMS, has failed to comply with its obligations to rectify the Defect;
 - 4) operating or maintaining the Supplies;
 - 5) undertaking training in relation to the Supplies;
 - 6) removing or uninstalling the Supplies;
 - 7) decommissioning or destroying the Supplies; and
 - 8) responding to a request for tender, proposal, quotation or information or similar request for the provision of goods or services for the purpose of engaging the person for any of the above purposes;
 - (ii) subject to any of SELLER's data rights assertions and restrictions specified in the Contract, for any other Defence Purpose including to modify and upgrade the Supplies; and
 - (iii) for disclosure to the extent that the disclosure is:
 - 1) required or authorised by law;
 - 2) necessary for the conduct of any legal proceedings arising in connection with the Contract, Subcontract or the Head Contract;
 - 3) made by BAE SYSTEMS' Customer to the Commonwealth, a Minister or Parliament for the purpose of the Commonwealth or a Minister satisfying statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister;
 - 4) made by BAE SYSTEMS' Customer to the Commonwealth for the express purpose of disclosure to the US or UK Government and any of their Government Agencies if required for export control purposes or to acquire any items to be provided as GFM;
- 5) to any of the following persons:
- 1. a legal adviser, insurer, financier, auditor or accountant of a party, to the extent required to enable them to perform those roles;
 - 2. a Related Body Corporate for internal management purposes;
 - 3. any employees or personnel of BAE SYSTEMS' Customer or Commonwealth Personnel (other than Commonwealth Service Provider or Excluded Party) who need to know the information in order to undertake their duties or functions;

4. an employee, officer or agent of SELLER who needs to know the information to enable SELLER to perform its obligations under the Contract; or
- 6) necessary to enable the party to comply with its obligations under the Contract, by:
 1. incorporating provisions related to TD or Software in this Contract or in BAE Systems' higher-tier contract in a contract or deed with a Subcontractor or a draft contract or deed included in any Request; or
 2. including any restrictions related to TD or Software in a sublicense granted or a draft sublicense included in any Request:

2.2 Highly Sensitive TD and Software

- 2.2.1 This clause applies to all Highly Sensitive TD or Highly Sensitive Software delivered or required to be delivered to BAE SYSTEMS or any other person under the Contract.
- 2.2.2 SELLER grants to BAE SYSTEMS' Customer a Licence in respect of all TD and all Software to which this clause applies, to:
- a. Use the TD or Software for any HCFP Purpose, and grant a Sublicence to any subcontractor of the BAE SYSTEMS for any HCFP Purpose; and
 - b. grant a Sublicence to the Commonwealth to:
 - (i) Use the TD or Software for any Defence Purpose; and
 - (ii) grant a Sublicence in accordance with the "Sublicenses" section to use the TD or Software, or to grant a further sublicense to use the TD or Software,

subject to the data rights assertions or any other restrictions specified in this Contract.

2.3 Commercial TD and Commercial Software—Reserved

2.4 BAE SYSTEMS' Customer's TD and Software

- 2.4.1 The provisions in this section apply to all BAE SYSTEMS TD and BAE SYSTEMS Software delivered or required to be delivered to BAE SYSTEMS' Customer or any other person under the Contract, to the extent that the IP in that TD or Software is assigned to the BAE SYSTEMS under BAE SYSTEMS' higher-tier contract.
- 2.4.2 BAE SYSTEMS' Customer grants to SELLER a non-exclusive, Royalty-free licence in respect of the TD or Software to which this section 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 of SELLER to Use the TD or Software for the purpose of enabling the Subcontractor to perform its obligations under a Subcontract; and
 - c. grant a sublicense to a person for a purpose referred to in clause 6.2.5,

subject to any restrictions specified in this Contract or as otherwise notified by the BAE SYSTEMS.

- 2.4.3 Without limiting any restrictions specified in this Contract or notified by the BAE SYSTEMS in this section, SELLER's right to grant a sublicense under this section 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 SELLER;
 - c. the rights granted under the sublicense shall expire when no longer required for granting a sublicense to a Subcontractor to Use the TD or Software for the purpose of enabling a Subcontractor to perform its obligations under a Subcontract; 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 .
- 2.4.4 The licence under this section (and any sublicense granted under it) expires on the earlier of the termination or expiry of the Contract or the relevant Subcontract.
- 2.4.5 SELLER shall ensure that any IP in TD or Software not assigned to BAE SYSTEMS' Customer is specified in the Contract and capable of being clearly distinguished from the IP assigned to BAE SYSTEMS' Customer.

2.5 Rights in Contract Material

- 2.5.1 This clause applies to all Contract Material other than to the extent that the clause assigns ownership of that Contract Material to BAE SYSTEMS or BAE SYSTEMS' Customer.
- 2.5.2 SELLER grants to BAE SYSTEMS' Customer (or shall ensure BAE SYSTEMS' Customer is granted) a Licence in respect of all Contract Material to:
- a. Use the Contract Material for any HCFP Purpose;
 - b. grant a Sublicense to the Commonwealth to:
 - (i) Use the Contract Material for any Defence Purpose; and
 - (ii) grant a Sublicense in accordance with the "Sublicenses" clause to:
 - 1) a Commonwealth Service Provider, other than an Excluded Party, that provides Professional Services to Defence to Use the Contract Material to perform its obligations, functions or duties to the Commonwealth;
 - 2) any other Commonwealth Service Provider, other than an Excluded Party, to Use the Contract Material to perform its obligations, functions or duties to the Commonwealth in connection with the Project;

- 3) 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 complies with the requirements of the applicable Proprietary Information Agreement between BAE SYSTEMS and SELLER; and
- 4) any person for a purpose referred to in clause 7.2.6.

2.6 Ownership of Intellectual Property

- 2.6.1 Nothing in the Contract affects the ownership of Intellectual Property, except as expressly provided for in this clause .
- 2.6.2 SELLER:
- a. agrees that all IP created under the Contract or a Subcontract in respect of TD, Software, Contract Material, BAE SYSTEMS' Customer's TD and Software) will automatically vest upon creation in BAE SYSTEMS' Customer;
 - b. acknowledges and agrees to assign all IP created under the Contract or a Subcontract in respect of the Commonwealth TD and Commonwealth Software will be assigned to the Commonwealth in accordance with the provision of this Contract immediately upon its creation;
 - c. agrees that all IP created under the Contract in respect of GFM will be assigned to the Commonwealth immediately upon its creation; and
 - d. shall ensure that all IP created under any Subcontract in respect of TD, Software, Contract Material, Commonwealth TD, Commonwealth Software, BAE SYSTEMS' Customer's TD or Software or GFM is assigned to SELLER immediately upon its creation so that SELLER can comply with the requirements of this section.
- 2.6.3 The parties agree that IP created under the Contract or a Subcontract in respect of GFM is assigned to BAE SYSTEMS' Customer if BAE SYSTEMS' contract specifies that BAE SYSTEMS' Customer is to own any IP created under the Contract or a Subcontract in respect of GFM.
- 2.6.4 SELLER acknowledges that BAE SYSTEMS' Customer may assign any of the IP created under the Contract or a Subcontract to the Commonwealth (or its nominee) in respect of Commonwealth TD, Commonwealth Software or GFM or to BAE Systems plc for any other IP immediately upon its creation.

2.7 Sublicences

- 2.7.1 BAE SYSTEMS' Customer's and Commonwealth's rights to grant a Sublicence to a person other than the Commonwealth (**Sublicensee**) in accordance with the prior sections 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 BAE SYSTEMS' Customer or 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, Software and Contract Material (as applicable) to efficiently perform its obligations, functions

or duties to BAE SYSTEMS' Customer, Commonwealth, a subcontractor of BAE SYSTEMS' Customer or a Commonwealth Contractor;

- c. the rights granted under the Sublicence shall expire when no longer required for the purposes referred to in the prior paragraph; 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

2.8 No Commercialisation

2.8.1 A Licence or Sublicence of IP granted in accordance with this Contract does not permit BAE SYSTEMS' Customer, Commonwealth or their sublicensees to Commercialise any IP in the TD, Software or Contract Material.

2.8.2 For the avoidance of doubt, the provision above does not prevent BAE SYSTEMS' Customer or the Commonwealth from granting a sublicense in accordance with the rights granted in this Contract to a person for the purpose of the person providing goods or services to BAE SYSTEMS' Customer for a HCFP Purpose or to the Commonwealth for a Defence Purpose.

2.9 IP Deeds

2.9.1 If SELLER qualifies as a relevant Approved Subcontractor in BAE SYSTEMS' higher-tier contract, SELLER shall execute and provide to BAE SYSTEMS an IP Deed before it provides any goods or services under this Contract. SELLER acknowledges and agrees that any such IP Deed signed by SELLER shall apply in respect of all TD, Software and Contract Material delivered or required to be delivered to BAE SYSTEMS or BAE SYSTEMS' Customer under the Contract.

2.9.2 For the purposes of this clause, a “**relevant Approved Subcontractor**” means an Approved Subcontractor identified in Schedule H of BAE SYSTEMS' high-tier contract as being required to provide an IP Deed.

2.10 TD and Software required to be delivered

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

2.10.2 Without limiting SELLER's obligation under this clause, if BAE SYSTEMS or its Customer is not specified as a recipient of any item of TD listed in the Approved TDL or CDRL, or any item of Software listed in the Approved Software List, BAE SYSTEMS may by notice to SELLER require the delivery of the item to BAE SYSTEMS or its Customer.

2.10.3 SELLER shall comply with a notice given under this clause unless compliance with the notice would be inconsistent with any restricted delivery requirements specified in the Contract.

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

2.10.5 BAE SYSTEMS shall act reasonably when giving a notice under this Article, including in relation to specifying a time for delivery of the item of TD or Software.

2.10.6 If the Contract is terminated, SELLER shall, within the period set out in the notice of termination (which shall be a reasonable period), deliver to the BAE SYSTEMS

all TD and Software required to be delivered under the Contract, each in its then current state of development.

- 2.10.7 An obligation under this Article or any other provision of the Contract that requires SELLER to deliver TD or Software, includes an obligation to create, develop or acquire the TD or Software to enable the TD or Software to be delivered to the BAE SYSTEMS at the times and in the manner required under the Contract.
- 2.10.8 The Approved TDL and the Approved Software List do not operate to affect or limit the rights of the BAE SYSTEMS under this Article or otherwise under the Contract.

2.11 Markings

- 2.11.1 If markings are used by SELLER in relation to TD, Software or Contract Material, SELLER:
- a. shall ensure that those markings accurately reflect the rights and obligations of the BAE SYSTEMS, the Commonwealth, SELLER or any other person; and
 - b. acknowledges that the markings are not determinative as to the rights and obligations of the parties.
- 2.11.2 SELLER shall comply, and shall ensure any of its subcontractors comply, with any document marking guide issued by the BAE SYSTEMS from time to time.

2.12 Technical Data and Software Warranties

- 2.12.1 SELLER warrants that:
- a. the TD and the Software provided to the BAE SYSTEMS under the Contract shall enable BAE SYSTEMS to meet its obligations in its higher-tier contract and for BAE SYSTEMS' Customer to meet its obligations under the Head Contract, as contemplated in the Contract, including in any AIC Plans.
 - b. the rights granted to the BAE SYSTEMS in accordance with Part 6, Technical Data, Software and Contract Material, will not prevent the Supplies from being used and supported as provided for in the Contract and the Commonwealth intentions to provide to SELLER (Support);
 - c. reserved; and
 - d. the TD listed in the DID E024 and the DID SUP024 (taken together) includes all of the TD used or generated by the Contractor and its Subcontractors in the performance of the Contract.
- 2.12.2 SELLER warrants that any data rights assertions or other restrictions in the Contract will not prevent BAE SYSTEMS to meet its obligations in its higher-tier contract and for BAE SYSTEMS' Customer from meeting its obligations under the Head Contract, as contemplated in the Contract, including any outcomes required from the AIC Plans, including after the expiry or termination of the Contract.
- 2.12.3 SELLER warrants and shall ensure that:
- a. all Software delivered or required to be delivered to the BAE SYSTEMS (or its nominee) under the Contract or a Subcontract is free from Malware at the time of delivery to the BAE SYSTEMS (or its nominee); and
 - b. no Malware will be installed on the Supplies or any other BAE Systems, BAE Systems' Customer's, Commonwealth or third party system as a result of an act or omission of any of SELLER's Personnel.

2.13 Intellectual Property Warranties

- 2.13.1 SELLER warrants and shall ensure that, in respect of any Intellectual Property assigned or licensed to BAE SYSTEMS, BAE SYSTEMS' Customer, or the Commonwealth under or in connection with the 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 Intellectual Property under this Contract and/or under an IP Deed; and
 - b. SELLER shall notify BAE SYSTEMS and the Commonwealth if SELLER becomes aware of any challenge, claim or proceeding referred to in clause 6.18.3 arising in respect of any Intellectual Property after the relevant TD, Software or Contract Material is delivered to the BAE SYSTEMS or the Commonwealth.
- 2.13.2 If the BAE SYSTEMS, Commonwealth, Commonwealth Personnel or a sublicensee of the Customer or Commonwealth 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 the Contract (including in this Part 6); 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 the Contract (including in this Article 6), except where the relevant requirement has been waived by the BAE SYSTEMS in writing,
- 2.13.3 SELLER shall, without limiting SELLER's obligations under Article 6 and at BAE SYSTEMS' election, use its reasonable endeavours to:
- a. modify the item in order to avoid continuing infringement and so that the Supplies meet the requirements of the Contract with the modified item;
 - b. procure at its own cost the rights or additional rights necessary to ensure that BAE SYSTEMS, BAE SYSTEMS' Customer, Commonwealth, Commonwealth Personnel and any sublicensees are entitled to exercise the rights under Clause 2 or an IP Deed in respect of the item; or
 - c. remove the item from the Supplies and modify the Supplies to the extent necessary to ensure that the Supplies meet the requirements of the Contract without the item.
- 2.13.4 SELLER warrants and shall ensure that, in respect of any Intellectual Property in any TD, Software or Contract Material delivered or required to be delivered under the Contract, and as at the time of delivery to BAE SYSTEMS (or its nominee) of the relevant TD, Software or Contract Material and after making diligent inquiries:
- a. the IP is licenced to, or owned by, BAE SYSTEMS or the Commonwealth as required by this Clause 2 or an IP Deed;
 - b. SELLER has no notice of any challenge to the validity or enforceability of any of the Intellectual Property and has no knowledge of any actual or threatened claim or proceeding in relation to any of the Intellectual Property;
 - c. neither SELLER, nor any of its Subcontractors, is engaged in litigation, arbitration or other proceedings in relation to any of the Intellectual Property; and

- d. there are no proceedings threatened by or against SELLER, or any of its Subcontractors, in relation to any of the Intellectual Property, and there is nothing that is likely to give rise to any such proceedings.

2.13.5 The warranty under this Article and its obligations do not apply to the extent that the infringement arises from a failure by BAE SYSTEMS' Customer or a sublicensee of BAE SYSTEMS' Customer to comply with a data rights assertion or other relevant restriction specified in the Contract.

2.14 Patents, Registrable Designs and Circuit Layouts

2.14.1 SELLER warrants and shall ensure that a licence is granted or obtained under the Contract for the BAE SYSTEMS or 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 Contract.

2.14.2 SELLER warrants and shall ensure that any relevant data rights assertion or other relevant restriction on a right referred to in this Article is specified in the Annex F to the TDSR Schedule of BAE SYSTEMS' higher-tier contract.

2.15 Use of Free and Open Source Software

2.15.1 SELLER shall not, without the BAE SYSTEMS's prior written consent (which may be withheld in its sole discretion), include, incorporate use or link (whether statically or dynamically) to any Free and Open Source Software including any software distributed under the GNU General Public License , GNU Lesser General Public License or GNU Affero General Public License , Mozilla Public Licence , the Apache Licence, the Sun Community Source Licence, Berkeley Software Distribution licences or Sun Industry Standards Licence.

2.15.2 The SELLER must immediately notify BAE SYSTEMS in writing if it becomes aware that any Free and Open Source Software is included, incorporated, used or linked to, in any part of the Supplies.

2.15.3 The SELLER warrants that:

- a. the Supplies do not include, incorporate, use or link (whether statically or dynamically) to any:
 - (i) Free and Open Source Software as described in clause 1.1.1, except with the BAE SYSTEMS' prior written consent; or
 - (ii) computer program or software code that is subject to terms that, as a condition of use, copying, modification or redistribution, may require any of the SELLER's, BAE SYSTEMS' or any third party's Intellectual Property and/or derivative works thereof to be:
 - 1) disclosed or distributed in source code form;
 - 2) licensed for the purpose of making derivative works; or
 - 3) redistributed free of charge; and

where

- b. BAE SYSTEMS has provided prior written consent under clause 2.15.1, there is full compliance, and there will remain full compliance for the duration of this Contract, with:
 - (i) all and any licensing terms which may apply to the Free and Open Source Software as described in clause 2.15.1 and
 - (ii) any conditions attaching to BAE SYSTEMS' consent under this clause.

- 2.15.4 The SELLER shall indemnify BAE SYSTEMS, in respect of any Loss in connection with the incorporation of Free and Open Source Software into the Supplies.
- 2.15.5 The liability of the SELLER under clause 2.15.4 shall be reduced to the extent that the SELLER demonstrates that the Loss arose as a consequence of BAE SYSTEMS conducting an activity not permitted under the Contract, except to the extent that the Loss could have been prevented or mitigated by reasonable care on the part of the SELLER or SELLER Personnel.

3 DELIVERY, ACCEPTANCE AND OWNERSHIP

3.1 Delivery

- 3.1.1 SELLER shall deliver the Supplies in accordance with the Contract. If applicable, SELLER shall achieve the Milestones by the relevant Milestone Dates.
- 3.1.2 Without limiting BAE SYSTEMS' other rights and remedies under the Contract or at law, if SELLER does not comply with its obligations under this clause, BAE SYSTEMS may be entitled to:
- a. suspend a payment;
 - b. recover liquidated damages or accept compensation under clause 6.1 (Liquidated Damages and Other Compensation); and
 - c. terminate the Contract.
- 3.1.3 Without limiting SELLER's obligations above, SELLER shall, for each Milestone, ensure that the BAE SYSTEMS is placed in a position where it can perform the BAE SYSTEMS's tasks required for achievement of that Milestone, in sufficient time before the Milestone Date.

3.2 Delay

- 3.2.1 Without affecting SELLER's delivery obligations under the prior clause, SELLER shall take all reasonable steps to prevent and minimise delay and to mitigate both parties' losses due to delay.
- 3.2.2 If SELLER becomes aware that delivery of Supplies or the achievement of a Milestone will or may be delayed for any reason, SELLER shall provide BAE SYSTEMS with an initial notice of delay within two Working Days.
- 3.2.3 SELLER shall provide a notice characterising the delay as soon as practicable after the notice provided under the prior clause, but no later than 10 Working Days after SELLER becomes so aware of the following matters, to the extent that SELLER is aware of them:
- a. the cause and nature of the delay;
 - b. the steps that SELLER and its Subcontractors are taking and will take to minimise the delay;
 - c. the anticipated duration of the delay.
- 3.2.4 SELLER shall notify the BAE SYSTEMS as soon as practicable after SELLER becomes aware of a material change to information notified under the prior clause.

- 3.2.5 SELLER shall comply with any request by the BAE SYSTEMS Representative for information concerning a delay or potential delay in the delivery of Supplies or the achievement of a Milestone.

4 DEFECT NOTIFICATION AND RECTIFICATION

4.1 Spare Parts and Support Equipment

- 4.1.1 This clause applies if SELLER's Work involves providing spares and Support & est Equipment to BAE SYSTEMS. SELLER shall use reasonable endeavours to:
- a. maintain the ability to supply Spares and S&TE to BAE SYSTEMS, BAE SYSTEMS' Customer and such Customer's contractors in sufficient quantities to enable the Supplies to be maintained for the period of 10 years after the date of the last delivery of Spares and S&TE in the Contract; and
 - b. notify BAE SYSTEMS if SELLER's or its supplier's ability to supply Spares and S&TE may be adversely affected, with at least seven months' prior notice and nominating in the notice the date by which the BAE SYSTEMS may place final orders.
- 4.1.2 If prior to completion and acceptance of SELLER's work, SELLER becomes aware that its ability, or the ability of its suppliers, to supply Spares and S&TE may be adversely affected, it shall give BAE SYSTEMS at least seven months' prior notice of that event. If there will be a final production run of Spares and S&TE, SELLER shall nominate in the notice the date by which BAE SYSTEMS may place final orders.
- 4.1.3 SELLER shall notify the BAE SYSTEMS if, despite its reasonable endeavours, a supplier of Spares and S&TE delivered under a Scope does not agree to maintain the ability to supply as contemplated in this Article.
- 4.1.4 SELLER shall ensure that provisions corresponding to this Article are included in all Subcontracts under which spare parts or support equipment may be provided.
- 4.1.5 The BAE SYSTEMS is not bound to order any, or any particular quantity of, spare parts or support equipment from SELLER.

5 INSURANCE

5.1 Shipbuilders' All Risk

Commonwealth Shipbuilders' Insurance Program

- 5.1.1 The parties acknowledge that, under the Contract, the Commonwealth shall effect and maintain ship builders' all risks insurance written on an occurrence basis, under a separate insurance transaction for each Ship which covers tangible Supplies under construction and any plant and equipment used in the construction of those Supplies (including GFF, GFE and any other property of the Commonwealth in the care, custody or control of SELLER) against the risks of loss, damage or destruction by all commercially insurable risks (including war risks) for its full replacement or reinstatement value (or, where it is the practice for such property to be insured for its market or agreed value by prudent insureds in accordance with insurance market practice for this type of risk, then for such market or agreed value), which insures

SELLER, Contractor Personnel (other than Subcontractors and Subcontractor Personnel unless expressly agreed between the parties) and the BAE SYSTEMS or the Commonwealth, each for their respective interests in the property insured. The insurance shall include:

- a. Institute Clauses for Builders Risks (1/6/88) subject to the following amendments:
 - (i) clause 5.1 (perils) amended to include cover for the cost of renewing faulty welds;
 - (ii) clause 6 (earthquake and volcanic eruption exclusion) deleted;
 - (iii) clause 10 (deductible) amended in respect of claims for total loss or constructive total loss, the deductible should not apply to clause 17, 18, 19 or 20 if claim arising from same incident;
 - (iv) clauses 17.4.5 and 19.3.10 (pollution exclusion) deleted;
 - (v) clause 19.3.4 (cargo exclusion) deleted;
 - (vi) clause 23 (malicious acts exclusion) deleted;
- b. seepage and pollution buy back clause;
- c. leased equipment clause;
- d. prefabrication risk cover;
- e. guarantee cover;
- f. consequential loss following insured loss (but excluding delay due to lack of performance);
- g. ammunition risks cover;
- h. loss or damage caused by aircraft;
- i. additional expenses;
- j. protection and indemnity cover for sea trials; and
- k. worldwide transit cover for items to be incorporated into the Supplies for an amount not less than their full replacement value plus 15% 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.

5.1.2 The Commonwealth, BAE SYSTEMS and SELLER shall and, where relevant, SELLER shall ensure that Approved Subcontractors who are insured in accordance with this clause 5.1 (collectively referred to as the **Insureds**), complete an underwriting information questionnaire which is prepared by the insurance broker, retained by the Commonwealth or BAE SYSTEMS.

- a. For the purposes of these Supplemental Terms, “Approved Subcontractor” means the SELLER and any of SELLER’s lower-tier suppliers who are specifically identified in BAE SYSTEMS’ Customer contract. SELLER and BAE SYSTEMS shall identify any of SELLER’s lower-tier suppliers who are “Approved Subcontractors” prior to Contract award.

5.1.3 The Commonwealth, BAE SYSTEMS and SELLER shall and, where relevant, SELLER shall ensure that Approved Subcontractors who are Insureds will, provide responses to any underwriting information questionnaire with information relevant

to establish a risk profile for the purposes of naval ship construction and any other information reasonably requested.

Notification of Claims

- 5.1.4 SELLER shall, and shall ensure that Approved Subcontractors who are Insureds will, notify the BAE SYSTEMS and the Commonwealth (in the form prescribed by the Commonwealth, if any, for this purpose from time to time) without undue delay from the time the Insured becomes aware that the Insured has a claim, or is reasonably likely to have a claim, under the insurances, with such information (other than sensitive technical information or matters of national security) as is at that time available to the Insured as to the cause and nature of the claim and, if known, its' likely quantum. For the purposes of this clause, an Insured that is not a natural person is aware of a claim, or a likely claim, when the insurance manager of the Insured (or a person in an equivalent position) becomes aware of a claim, or a likely claim.
- 5.1.5 Where SELLER or an Approved Subcontractor who are Insureds notify the Commonwealth of a claim, SELLER shall, and shall ensure that the relevant Approved Subcontractor (as applicable) will, provide the Commonwealth and the BAE SYSTEMS with any additional information (other than sensitive technical information or matters of national security) reasonably requested in relation to the claim without undue delay.

Conduct of Claims

- 5.1.6 Claims under the insurances will be managed by the Commonwealth unless an Insured exercises its option to take over conduct of the claim on its own behalf as set out in clause 5.1.8.
- 5.1.7 Where the Commonwealth manages a claim under the insurances on behalf of an Insured it will:
- a. in managing the claim, have regard to the interests of all Insureds who have an interest in the claim (the **Interested Insureds**);
 - b. keep all Interested Insureds informed as to claim progress and confer with Interested Insureds in relation to the conduct and resolution of the claim;
 - c. not make any admission, waive rights of subrogation, or settle or compromise a claim of an Insured without the prior consent of the Insured, such consent not to be unreasonably withheld;
 - d. share incident investigation reports (or similar reports) with Interested Insureds (subject to the redaction of sensitive technical information or matters of national security);
 - e. to the extent reasonably practicable and subject to its duties to other Insureds, provide prior notice to an Insured (the **first Insured**) before making any admission, settlement or compromise of a claim of another Insured, where that other claim is related to the claim of the first Insured; and
 - f. immediately inform an Insured if a conflict of interest has or is likely to arise with the Commonwealth continuing to manage the claim of that Insured.
- 5.1.8 An Insured may elect to assume conduct of its claim by providing notice in writing to the Commonwealth where:

- a. its interests in relation to the claim are, or are likely to be, in legal or commercial conflict with the Commonwealth's or with any other Insured; or
 - b. where the claim is of no interest to any other Insured.
- 5.1.9 Where an Insured assumes conduct of the claim, the Insured will, subject to their legitimate conflicting interests:
- a. have regard to the interests of all Interested Insureds in managing the claim;
 - b. keep the Commonwealth and all Interested Insureds informed as to claim progress;
 - c. share incident investigation reports (or similar reports) with the Commonwealth and all Interested Insureds (subject to the redaction of sensitive technical information or matters of national security); and
 - d. to the extent reasonably practicable without compromising its own interests, provide prior notice to the Commonwealth and any other Interested Insured before making any admission, settlement or compromise of a claim, where that claim is related to another claim made by the Commonwealth or that other Insured.
- 5.1.10 SELLER shall, and shall ensure that Approved Subcontractors who are Insureds, cooperate with each other as reasonably required, subject to their own legitimate conflicting interests, in order to facilitate and progress acceptance and payment of the claim by insurers including by providing insurers (and their appointed surveyor(s) and the appointed loss adjuster(s)) and other Insureds interested in the claim with access to sites, people and information and by completing and executing required documents. To the extent reasonably practicable, without compromising differing interests, the Insureds will use common loss adjusters, investigators and other experts.
- 5.1.11 SELLER shall, and shall ensure that Approved Subcontractors who are Insureds, will not provide a third party with access to any document or information which is the subject of a claim for legal professional privilege by another Insured under the insurances without the consent of the Insured with the claim for legal professional privilege unless reasonably required to protect the disclosing Insured's legitimate interests or where the disclosing Insured is required to produce the information by law, in which cases the disclosing Insured shall to the extent practicable provide prior notification to the Insured with the claim for legal professional privilege of the intended production of the information.

Proceeds of claims

- 5.1.12 Upon payment of a claim under the insurances by insurers in respect of loss of or damage to the Supplies or items that will in the future constitute or be integrated into the Supplies, the claim proceeds will be applied as follows:
- a. to the extent that replacement or reinstatement of the lost or damaged property has been the subject of a payment or allowance by the BAE SYSTEMS to SELLER, the claim proceeds will be paid to the Commonwealth for repayment to BAE SYSTEMS; and
 - b. where clause 5.1.12a above does not apply, if SELLER has not completed such replacement or reinstatement as required by the Contract, insurance moneys received shall, if requested by BAE SYSTEMS, be paid into an escrow account.

As SELLER replaces or reinstates the loss or damage in accordance with the Contract, the Commonwealth's Representative shall certify against the escrow account for the cost of replacement or reinstatement to be paid to SELLER.

5.2 Insurance Requirements

- 5.2.1 The SELLER shall:
- a. effect the insurance policies set out Public and Products liability; comprehensive general liability (Professional Indemnity); and automotive liability (Motor Vehicle Insurance) in amounts reasonably acceptable to BAE SYSTEMS, and all insurances required by law, before the SELLER provides any Supplies pursuant to this Contract and maintain those policies for the periods described in that Schedule, including:
 - (i) public and products liability insurance, which shall be written on an occurrence basis with a limit of indemnity of not less than the amount specified 5.2.1 for each occurrence and in the aggregate for all occurrences in any 12 month policy period, which covers the SELLER and the SELLER Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent manufacture, processing, alteration, repair, installation, supply, distribution or sale of any product (including the Supplies themselves) by the SELLER or SELLER Personnel and Subcontractor;
 - (ii) workers compensation insurance or registration, in respect of the SELLER's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Contract as per statutory requirements and customary amount for non-statutory liability; and
 - (iii) compulsory third party motor vehicle insurance, as per statutory requirements and customary amount for non-statutory liability.
- 5.2.2 The SELLER shall rely on its existing corporate insurance coverage to the extent reasonably practicable to satisfy its obligations under this clause 5.2 and the costs of doing so are not to be charged to BAE SYSTEMS (other than as a component of general overhead costs). If the SELLER requires additional insurance coverage, the SELLER shall comply with clause 5.1.12 prior to effecting any additional cover.
- 5.2.3 With the exception of statutory insurances, the insurances referred to in this clause shall 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 BAE Systems, acting reasonably.
- 5.2.4 In respect of each insurance referred to in this clause 5.2, the SELLER shall:
- a. on request, produce evidence satisfactory to BAE SYSTEMS Representative, acting reasonably, of the currency and terms of the insurances;
 - b. promptly inform BAE SYSTEMS if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by BAE SYSTEMS against the SELLER) which could materially reduce the available limits of indemnity or which may involve BAE SYSTEMS, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under this Contract, if requested to do so in writing by BAE SYSTEMS; and
 - c. do everything reasonably required by BAE SYSTEMS to enable BAE SYSTEMS to claim and to collect or recover monies due under any insurance policy.
- 5.2.5 In addition to any other rights BAE SYSTEMS may have under other terms of this Contract, BAE SYSTEMS reserves the right to withhold payments under this Contract if the SELLER has failed to remedy a breach of this clause.
- 5.2.6 BAE SYSTEMS, in specifying levels of insurance in this Contract accepts no liability for the completeness of their listing, the adequacy of the sums insured, limits of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.

- 5.2.7 The SELLER acknowledges and agrees that it is the SELLER's responsibility to assess and consider the risks and scope of insurances required under this Contract.
- 5.2.8 The parties acknowledge and agree that:
- a. the Commonwealth has implemented a Maritime Insurance Program (**MIP**);
 - b. if the SELLER requires coverage in addition to its existing corporate insurance coverage, the parties will work together to:
 - (i) assess the proposed coverage of the SELLER's insurance;
 - (ii) determine the extent to which the SELLER may, at the Commonwealth's sole discretion, be insured under the MIP instead of effecting coverage in addition to its existing corporate insurances; and
 - (iii) agree, prior to providing any Supplies pursuant to this Contract:
 - 1) if any coverage type, terms or limits are required in addition to the SELLER's existing corporate insurance cover, which party will affect the insurances specified in accordance with the principle in clause 5.1.8 (b); and
 - 2) any changes to the insurance policies required under this clause in consideration of the MIP.
 - c. if the parties do not reach agreement under clause 5.1.8b, the SELLER shall be responsible for effecting cover to the fullest extent required under clause 5.1, in addition to its existing corporate insurance cover.
- 5.2.9 The SELLER shall not do anything which has been notified to the SELLER by BAE SYSTEMS that may invalidate or prejudice any insurance policy held by BAE SYSTEMS or the Commonwealth or any indemnity to which BAE SYSTEMS or the Commonwealth may be entitled.
- 5.2.10 The SELLER shall:
- a. use its reasonable endeavours to ensure that its Subcontractors are insured as required by this clause 5.2, as is appropriate (including with respect to the amount, types, and period, of insurance) given the nature of supplies or work to be performed by them, as if they were the SELLER.
 - b. ensure that insurances are, and shall use reasonable endeavours to ensure that Subcontractors insurances effected by Subcontractors in accordance with clause 5.2 (other than statutory insurances) are, primary and without rights of contribution from any insurances effected in accordance with clause 5.2.
 - c. ensure that its SELLER Personnel, Related Bodies Corporate and Approved Subcontractors insured under the insurance effected in accordance with clause 5.2 comply with the protocol in this clause 5.2.
- 5.2.11 In the event of loss of or damage to tangible property owned or leased by, or in the possession of, the SELLER or a Subcontractor, the SELLER shall (and shall ensure that its Subcontractors) first make, if available, a first party loss claim which may cover the loss or damage before pursuing a liability claim against BAE SYSTEMS or the Commonwealth in respect of that loss or damage.

5.3 Liquidated Damages and Other Compensation

- 5.3.1 The parties acknowledge that, if SELLER causes BAE SYSTEMS to fail to achieve a Milestone in its higher-tier contract by the applicable Milestone Date:
- a. BAE SYSTEMS and its customer will suffer loss and damage; and
 - b. such loss and damage will, having regard to the governmental and non-commercial nature of the Supplies and their significance to the defence of Australia, be impossible, complex or expensive to quantify accurately in financial terms,

and therefore, the parties agree that the applicable Liquidated Damages Amount is:

- c. a genuine pre-estimate of the Loss that would be suffered by BAE SYSTEMS resulting from any of SELLER's acts, omissions, or failures to timely perform the Work required by the Contract that result in a delay by BAE SYSTEMS in achieving a Milestone in its higher-tier contract; and
 - d. an appropriate protection of BAE SYSTEMS's legitimate interests in relation to the performance of the Contract.
- 5.3.2 If SELLER's acts, omissions, or failures to timely perform the Work required by the Contract result in a delay by BAE SYSTEMS in achieving a Milestone in its higher-tier contract and BAE SYSTEMS's customer requires BAE SYSTEMS to pay liquidated damages, BAE SYSTEMS shall be entitled to recover from SELLER, as liquidated damages and not as a penalty, an amount equal to the amount of liquidated damages required by BAE SYSTEMS' Customer (hereinafter the " Liquidated Damages Amount").
- 5.3.3 No amount shall be owing to BAE SYSTEMS under this Article until BAE SYSTEMS elects, in accordance with this Article, to recover the amount.
- 5.3.4 BAE SYSTEMS may elect:
- a. to recover a Liquidated Damages Amount in one amount;
 - b. to recover a Liquidated Damages Amount in two or more amounts;
 - c. to accept compensation (instead of the Liquidated Damages Amount) as agreed in writing between the parties; or
 - d. to accept compensation as agreed between the parties and to recover part of the Liquidated Damages Amount as agreed in writing between the parties in one or more amounts.
- 5.3.5 If BAE SYSTEMS makes an election under this Article to require a Liquidated Damages Amount from SELLER, BAE SYSTEMS may make one or more further elections in relation to the failure (up to any applicable cap on the Liquidated Damages Amount).
- 5.3.6 An election by BAE SYSTEMS under this Article to require a Liquidated Damages Amount from SELLER shall, unless otherwise agreed in writing between the parties, be made and notified to SELLER no later than:
- a. if an applicable cap on the Liquidated Damages Amount is reached before BAE SYSTEMS achieves the relevant milestone in its higher-tier contract, the end of four months after BAE SYSTEMS receives notice from SELLER that the cap has been reached; or
 - b. if BAE SYSTEMS achieves its relevant milestone before BAE SYSTEMS provides SELLER with a notice regarding a Liquidated Damages Amount, the end of four months after BAE SYSTEMS achieves the relevant milestone in its higher-tier subcontract.
- 5.3.7 If BAE SYSTEMS does not elect before the end of the period determined in accordance with the clause 5.3.6 in respect of all or some of the Liquidated Damages Amount, BAE SYSTEMS will be taken to have elected and notified SELLER at that time to recover the whole or the balance of the Liquidated Damages Amount (as relevant). BAE SYSTEMS will be taken to have elected and notified SELLER at that

time to recover the whole or the balance of the Liquidated Damages Amount (as relevant).

- 5.3.8 Unless BAE SYSTEMS expressly agrees otherwise, a change to BAE SYSTEMS' higher-tier contract does not affect BAE SYSTEMS' entitlement to liquidated damages already accrued.
- 5.3.9 If BAE SYSTEMS elects to accept compensation instead of liquidated damages (whether in the form of further supplies or services or otherwise), SELLER shall prepare a change request to effect a change to the Contract and any other contract between BAE SYSTEMS and SELLER that may be affected.

6 CONTRACT MANAGEMENT

6.1 Conflicts of Interest and Other Disclosures

- 6.1.1 RESERVED.
- 6.1.2 SELLER warrants that, to the best of its knowledge after making diligent inquiries, no conflict of interest exists or is likely to arise in connection with the performance of its obligations under the Contract by SELLER, its subcontractors, or the employees and officers of either of them.
- 6.1.3 SELLER shall promptly notify and fully disclose to BAE SYSTEMS, any event or occurrence actual or threatened during the performance of the Contract which may materially adversely affect SELLER's ability to perform any of its obligations under the Contract.
- 6.1.4 SELLER shall promptly notify BAE SYSTEMS if a conflict of interest arises or appears likely to arise.
- 6.1.5 Within three Working Days after giving notices outlined above, SELLER shall notify BAE SYSTEMS of the steps SELLER shall take to resolve the issue. If BAE SYSTEMS considers those steps are inadequate, it may direct SELLER to resolve the issue in a manner proposed by BAE SYSTEMS.
- 6.1.6 If SELLER fails to notify BAE SYSTEMS in accordance with the obligations set forth in this Article or fails to resolve the issue in the required manner, BAE SYSTEMS may give SELLER a notice of termination for default.

6.2 Confidential Information

As contemplated by BAEDOC NONUSGOV: If the parties have entered into a Proprietary Information Agreement, the terms and conditions of such Proprietary Information Agreement shall govern the protection and exchange of proprietary information between the parties. In addition, the following terms shall apply to "Confidential Information" exchanged or disclosed in support of the Contract, and the rights provided to BAE Systems' Customer in the performance of the Work.

- 6.2.1 Each party (**disclosing party**) shall ensure that Confidential Information provided by the other party under or in connection with the Contract or identified in Schedule N as Confidential Information of the other party is not disclosed by the disclosing party, except to the extent that:
- a. the disclosure is permitted under clause 7.2.6;

- 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;
- c. the Confidential Information is in Contract Material and the disclosure is in connection with the exercise of the rights provided for in clause 2. Clause 2.5.2b(ii)3) does not permit the sublicensing of Confidential Information in Contract Material to an Excluded Party unless there is consent under clause 0f;
- d. the Confidential Information is not TD, Software or Contract Material and:
 - (i) the disclosure is made by:
 - 1) SELLER (or a Subcontractor) to a Subcontractor that needs to know the information to enable the Subcontractor recipient to perform its obligations under a Subcontract (or to a person responding to a Request for the purpose of being engaged as a Subcontractor);
 - 2) BAE SYSTEMS to a Customer Contractor that needs to know the information to enable the Customer Contractor to perform its obligations under its contract with BAE SYSTEMS or its Customer (or to a person responding to a Request for the purpose of being engaged as such a contractor); or
 - 3) BAE SYSTEMS to the Commonwealth in connection with the Hunter Class Frigate Program or to a Commonwealth Contractor that needs to know the information to enable the Commonwealth Contractor to perform its obligations under its contract with the Commonwealth (or to a person responding to a Request for the purpose of being engaged as a Commonwealth Contractor);
- e. the disclosure is to a Commonwealth Service Provider (other than an Excluded Party) that needs to know the information to enable the Commonwealth Service Provider to perform its functions or duties to the Commonwealth; or
- f. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).

6.2.2 For the purposes of clauses 7.2.1 and 7.2.14:

- a. if a party provides the other party (or its officers, employees or agents) with access to Confidential Information or Project Information via an information system (including the DMS), such access shall be taken to be provision of the Confidential Information or Project Information by that party to the other party; and
- b. if a party provides a Subcontractor, BAE SYSTEMS or Commonwealth Contractor or Commonwealth Service Provider (or any of their officers, employees or agents) with access to Confidential Information or Project Information via an information system (including the DMS) at the written request of the other party, such access shall be taken to be a disclosure of that Confidential Information or Project Information by the other party to the Subcontractor, BAE SYSTEMS or Commonwealth Contractor or Commonwealth Service Provider.

- 6.2.3 The disclosing party may consent to a further disclosure of Confidential Information of the other party (under the terms of the deed poll or equivalent arrangements referred to in clause 7.2.3 if:
- a. the disclosing party would not have been prevented from making such a disclosure under clause 7.2.1; or
 - b. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).
- 6.2.4 Not Used
- 6.2.5 The restrictions in clauses 7.2.1 and 7.2.14 do not apply to a disclosure to the extent that the disclosure is:
- a. required or authorised by law;
 - b. necessary for the conduct of any legal proceedings arising in connection with the Contract, Subcontract or the Head Contract;
 - c. made by BAE SYSTEMS to the Commonwealth, a Minister or Parliament for the purpose of the Commonwealth or a Minister satisfying statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister;
 - d. made by BAE SYSTEMS to the Commonwealth for the express purpose of disclosure to the US or UK Government and any of their Government Agencies if required for export control purposes or to acquire any items to be provided as GFM;
 - e. 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 Customer Personnel or Commonwealth Personnel (other than Commonwealth Service Provider or Excluded Party) who need to know the information in order to undertake their duties or functions;
 - (iv) an employee, officer or agent of SELLER who needs to know the information to enable SELLER to perform its obligations under the Contract; or
 - f. necessary to enable the party to comply with its obligations under the Contract, by:
 - (i) incorporating provisions of the COC, Glossary, Confidentiality Deed Poll and IP Deed in a contract or deed with a Subcontractor or a draft contract or deed included in any Request; or
 - (ii) including any restrictions in Schedule I or Annex A to Schedule F1 in a sublicense granted in accordance with clause 6, or a draft sublicense included in any Request.
- 6.2.6 The parties shall not, in marking information supplied to each other, misuse the term "Confidential Information" or "Project Information" or equivalent terms.
- 6.2.7 Subject to clause 7.2.9, SELLER shall (and shall ensure that its Subcontractors) use reasonable endeavours to return or destroy all Confidential Information of BAE

SYSTEMS, BAE SYSTEMS Contractor, the Commonwealth or a Commonwealth Contractor in its possession, power or control as a result of this Contract on the earlier of:

- a. the date specified in a notice given by BAE SYSTEMS (acting reasonably); and
- b. the time the Confidential Information is no longer required for the purposes of the Contract.

6.2.8 SELLER or a Subcontractor may retain, and will not be required to destroy, any Confidential Information of BAE SYSTEMS, BAE SYSTEMS Contractor, the Commonwealth or a Commonwealth Contractor where such Confidential Information is:

- 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 where it is not reasonably practicable to destroy such backups or records.

6.2.9 If BAE SYSTEMS gives a notice under clause 7.2.8a, and SELLER has placed or is aware that the Confidential Information of BAE SYSTEMS, BAE SYSTEMS Contractor, the Commonwealth or a Commonwealth Contractor is beyond its possession or control, SELLER shall provide full particulars of the whereabouts of the Confidential Information, and the identity of the person with custody or control of it.

6.2.10 Subject to clause 7.2.12, BAE SYSTEMS shall use reasonable endeavours to destroy all Confidential Information of SELLER or a Subcontractor in its possession, power or control as a result of this Contract on the termination or expiry of the Contract.

6.2.11 BAE SYSTEMS may retain, and will not be required to return or destroy, any Confidential Information of SELLER or a Subcontractor, where such information is:

- a. retained in order to comply with any legal, professional or insurance obligations;
- b. stored in electronic backups or records that are produced in the normal course where it is not reasonably practicable to destroy such backups or records;
- c. retained to enable the conduct of audits under the Auditor-General Act 1997 (Cth);
- d. required by the Commonwealth to fulfil its statutory or portfolio duties or functions, or for public accountability reasons;
- e. required to be archived in accordance with the Archives Act 1983 (Cth); or
- f. included in any Technical Data or Software.

6.2.12 The retention, return or destruction of the documents referred to in this clause 7.2.4 does not release either party from its obligations under the Contract.

Project Information

6.2.13 Each party shall ensure that Project Information provided by the other party under or in connection with the Contract is not disclosed except to the extent that:

- a. disclosure is in connection with the exercise of the rights provided for in clause 6;

- b. disclosure is to a recipient that needs to know the information, and agrees in writing only to use the information, to undertake their obligations, duties or functions to BAE SYSTEMS, the Commonwealth, a Commonwealth or Customer Contractor, SELLER, a Subcontractor or an Associated Party or to respond to a Request by any of them, in each case in connection with the Project or any other Defence Purpose;
 - c. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions); or
 - d. disclosure is permitted under clause 7.2.6.
- 6.2.14 Each party shall ensure that before it discloses, Project Information to a recipient under clauses 7.2.14a, 7.2.14b or 7.2.14c, the recipient agrees in writing to keep the Project Information secure and not to further disclose Project Information except to the extent that:
- a. the disclosure meets the requirements of clause 7.2.14a, 7.2.14b or 7.2.14c and the recipient obtains a written agreement on terms equivalent to this clause 7.2.15; or
 - b. the disclosure meets the requirements of clause 7.2.6.

6.3 Negation of Employment and Agency

- 6.3.1 SELLER shall not represent itself, and shall ensure that its personnel do not represent themselves, as being employees, partners or agents of BAE SYSTEMS, its Customer, or the Commonwealth.
- 6.3.2 None of SELLER or its personnel shall, by virtue of the Contract, be, or for any purpose be taken to be, an employee, partner or agent of BAE SYSTEMS, its Customer, or the Commonwealth.

6.4 BAE SYSTEMS and Customer Access

- 6.4.1 SELLER shall give BAE SYSTEMS, its Customer, and the Commonwealth (and any person authorised by any of them) access to SELLER's premises, and to records and accounts in connection with the performance of work under the Contract, including the right to copy. However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, BAE SYSTEMS may require, and SELLER shall provide, immediate access to the premises by BAE SYSTEMS, its Customer, and the Commonwealth, and records or accounts for any purpose related to such emergency, investigation or threat. SELLER shall permit BAE SYSTEMS, its Customer, and the Commonwealth may copy (and remove such copies of) records or accounts for such purposes.
- 6.4.2 SELLER acknowledges and agrees that:
- a. To give BAE SYSTEMS, its Customer and/or the Commonwealth (and any person authorised by the Customer or the Commonwealth) access to its premises, and to records and accounts in connection with the performance of work under the Subcontract;
 - b. give BAE SYSTEMS access to its premises, and to technical works, quality records or other non-financial records in connection with the performance of work under the Contract or Subcontract (as applicable)

- c. in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, provide immediate access to the premises by the Customer and the Commonwealth, and records or accounts for any purpose related to such emergency, investigation or threat;
- d. give BAE SYSTEMS, its Customer, and/or the Commonwealth the right to copy (and remove such copies of) records or accounts for the above purposes.
- e. the Auditor-General has the power under the *Auditor Act 1997* (Cth) to conduct audits (including performance audits) of SELLER;
- f. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Contract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
- g. the Commonwealth may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts as outlined in the Contract and applicable law 6.4.1.

6.4.3 BAE SYSTEMS, its Customer, and/or the Commonwealth shall comply with, and shall require any delegate or person authorised by BAE SYSTEMS, its Customer, and/or the Commonwealth to comply with, any reasonable SELLER safety and security requirements or codes of behaviour for the premises.

6.5 Subcontracts

6.5.1 SELLER acknowledges and agrees that BAE SYSTEMS' Customer or the Commonwealth may be required to publicly disclose SELLER's participation in the performance of the Contract.

6.6 Defence Security

6.6.1 If SELLER or its personnel require access to any of Premises belonging to BAE SYSTEMS' Customer or Commonwealth Premises under the control or responsibility of Defence, this Article shall apply. SELLER shall:

- a. comply with any security requirements (including those contained in the Defence Security Principles Framework (**DSPF**)) notified to SELLER by BAE SYSTEMS or its Customer from time to time; and
- b. ensure that Contractor Personnel are aware of and comply with the Commonwealth's security requirements.

6.6.2 SELLER shall:

- a. ensure that Contractor Personnel undertake any security checks, clearances or accreditations as required by BAE SYSTEMS or the Commonwealth;
- b. promptly notify BAE SYSTEMS of any changes to circumstances which may affect SELLER's capacity to provide the Supplies in accordance with the security requirements; and
- c. provide a written undertaking in respect of security or access to BAE SYSTEMS or the Commonwealth Premises in the form required by BAE SYSTEMS or the Commonwealth.

- 6.6.3 SELLER shall ensure that SELLER and SELLER Personnel comply with the cyber security requirements as provided by BAE SYSTEMS.
- 6.6.4 The security classification of the Supplies will be up to and including the level specified in the BAE SYSTEMS' higher-tier contract. SELLER shall:
- a. if required, obtain and maintain membership of DISP in accordance with Principle 16 of the DSPF if located in Australia;
 - b. if not required to be a member of the DISP, comply with the classification and protection of official information requirements of Principle 10 of the DSPF;
 - c. If required, ensure that all required personnel (if any) possess a personnel security clearance, and comply with the requirements and procedures of Principle 40 of the DSPF; and
 - d. possess the facility accreditation (if any) and ICT system accreditation (if any) specified by BAE SYSTEMS and comply with the requirements and procedures of Principle 73 of the DSPF.
 - e. Comply with the requirements stipulated in the Security Aspect Letter (SAL) when handling, storing and processing UK data.
- 6.6.5 Where work under the Contract is performed overseas, SELLER shall comply with:
- a. the requirements for the classification level (if any) specified by BAE SYSTEMS, its Customer, or the Commonwealth, or equivalent classification; and
 - b. comply with the relevant overseas government industry security policy.
- 6.6.6 Accreditations shall be issued by the relevant overseas government security authority, and shall be verified by the DSVS (through a bilateral security instrument or otherwise).
- 6.6.7 SELLER shall classify all information in its possession relating to the performance of the Contract according to the Security Classification and Categorisation Guide provided by BAE SYSTEMS and the Security Aspects Letter (SAL) and shall ensure that such information is safeguarded and protected according to its level of security classification.
- 6.6.8 With respect to security classified information, SELLER shall:
- a. ensure that 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 BAE SYSTEMS Representative;
 - b. promptly report to BAE SYSTEMS Representative any security incident, as defined by the DSPF, including instances 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 another country; and
 - c. ensure that 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 Principle 73 of the DSPF.
- 6.6.9 Where COMSEC material is transmitted in Australia, SELLER shall ensure that:

- a. with all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia shall be subject to the special security provisions of Principle 13 of the DSPF; and
 - b. 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.
- 6.6.10 Where COMSEC material is transmitted overseas, SELLER shall ensure that
- a. all COMSEC material transmitted between the parties or a party and Subcontractor located overseas shall be subject to approval in the first instance by the Director 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; and
 - b. 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.
- 6.6.11 If there has been a breach by SELLER or Contractor Personnel of this Article, BAE SYSTEMS Representative may give SELLER a notice of termination for default.
- 6.6.12 SELLER shall ensure the requirements of this Article are included in all Subcontracts where the Subcontractor requires access to any premises belonging to BAE SYSTEMS' Customer or Commonwealth Premises, or to any security classified information, in order to perform the obligations of the Subcontract.

6.7 Post Defence Separation Employment

- 6.7.1 SELLER shall not permit any Defence Personnel or Defence Service Provider who, at any time during the preceding 12 month period was engaged or involved in:
- a. the preparation or management of the Head Contract;
 - b. the assessment or selection of BAE SYSTEMS or its Customer; or
 - c. the planning or performance of the procurement or any activity relevant or related to the Head Contract,
- to perform, contribute to or advise on the performance of the Contract.
- 6.7.2 For the avoidance of doubt, the 12 month period referred to above applies from the date which is 12 months before the date on which the SELLER proposes that the person start performing or contributing to the performance of the Contract.
- 6.7.3 BAE SYSTEMS shall not unreasonably withhold approval of a person under this Article and will consider:
- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;
 - b. any information provided by seller about the character and duration of the services proposed to be performed by the person under the Contract;
 - c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Contract and the

arrangements which SELLER proposes to put in place to manage or reduce those conflicts of interest or probity concerns;

- d. any information provided by SELLER concerning any significant effect that withholding approval will have on the person's employment or remuneration opportunities or the performance of the Contract; and
- e. the policy requirements set out in DI(G) PERS 25-4, as applicable.

6.7.4

7 POLICY AND LAW

7.1 Bribery and Fraud

7.1.1 SELLER warrants and shall ensure that neither it, nor any of its Related Bodies Corporate which are related to the Contract, have provided, offered or promised a benefit to another person that is not legitimately due to that person with the intention of influencing a foreign public official in the exercise of his or her duties in order to obtain or retain business or a business advantage not legitimately due to its recipient other than:

- a. conduct that is lawful in the foreign public official's country (as set out in section 70.3 of the Code); or
- b. facilitation payments (as set out in section 70.4 of the Code) that are notified to the other party.

7.1.2 For the purpose of this Article, expressions defined in section 70.1 of the Criminal Code (contained in a schedule to the *Criminal Code Act 1995* (Cth)) (**Code**) have the meanings given to those expressions in that division.

7.1.3 SELLER:

- a. shall take all reasonable measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under the Contract; and
- b. acknowledges and agrees that its obligation above extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by its personnel.

7.1.4 If SELLER becomes aware that any fraud is occurring or has occurred, it shall, as soon as practicable, provide written details to BAE SYSTEMS, and provide such further information and assistance as BAE SYSTEMS, or any person authorised by BAE SYSTEMS, reasonably requires in relation to the fraud.

7.2 Policy Requirements

7.2.1 SELLER shall comply with, and shall ensure that SELLER Personnel comply with, the following Commonwealth policies of general application relevant or applicable to the Contract:

- a. Conflicts of interest; Gifts, hospitality and sponsorship; Notification of post separation employment; Management and reporting of unacceptable behaviour; and Incident reporting and management policies as detailed in the DPPM, DI(G) PERS 25-6, DI(G) PERS 25-7, DI(G) PERS 25-4, DI(G) PERS 35-3 and Interim Defence Instruction ADMIN 45-2;

- b. Australian Defence Force alcohol policy as detailed in DI(G) PERS 15-1;
- c. Public Interest Disclosure policy as detailed at:
[http://www.ombudsman.gov.au/about/making-a-disclosure](http://www.ombudsman.gov.au/about/making-a-disclosure;);
- d. Performance Exchange Scorecard policy as detailed at:
<http://www.defence.gov.au/casg/DoingBusiness/Industry/Industryprograms/PerformanceExchangeScorecard/default.aspx>; and
- e. Defence Stocktaking and Assets Assurance Checking policy as detailed in DEFLOGMAN Part 2 Volume 5.

7.2.2 Reserved.

7.2.3 SELLER shall use its reasonable endeavours to increase its:

- a. purchasing from Indigenous Enterprises; and
- b. employment of Indigenous Australians,

in the performance of the Contract. For the purposes of this clause, **Indigenous Enterprise** means an organisation that is 50 per cent or more Indigenous owned that is operating a business. Supply Nation maintains a list of enterprises that meet the definition of Indigenous Enterprises (www.supplynation.org.au).

7.2.4 SELLER shall comply with its obligations under the Workplace Gender Equality Act 2012 (Cth) (WGE Act).

7.2.5 If SELLER becomes non-compliant with the WGE Act during the period of the Contract, SELLER shall notify BAE SYSTEMS Representative.

7.3 Work Health and Safety

7.3.1 SELLER:

- a. shall, where applicable, comply with, and ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with BAE SYSTEMS, its Customer, and the Commonwealth (as the case may be) and any other person who, concurrently with BAE SYSTEMS, SELLER or its Customer, and the Commonwealth (as the case may be), has a WHS duty under the WHS Legislation in relation to the same matter; and
- b. acknowledge that they have a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
 - (i) BAE SYSTEMS Personnel;
 - (ii) SELLER's Personnel; and
 - (iii) other persons,

in connection with the Work performed under the Contract.

7.3.2 Without limiting the application of the WHS Legislation, SELLER acknowledges that to the extent that any BAE Systems, Customer Personnel or Commonwealth Personnel:

- a. are located on Contractor Premises in relation to the Contract; and

- b. whose activities in carrying out work in relation to the Contract are influenced or directed by SELLER,

such Customer Personnel or Commonwealth Personnel will be taken to be workers for the purposes of the WHS Legislation.

7.3.3 SELLER represents and warrants that:

- a. it has given careful, prudent and comprehensive consideration to the WHS implications of the work to be performed by it under the Contract; and
- b. the proposed method of performance of that work complies with, and includes a system for identifying and managing WHS risks which complies with all applicable legislation relating to WHS including the WHS Legislation.

7.3.4 SELLER shall:

- a. provide the Supplies in such a way that BAE SYSTEMS and Customer Personnel are able to undertake any roles or obligations in connection with the Supplies (such as in relation to testing or auditing); and
- b. ensure that BAE SYSTEMS and Customer Personnel are able to make full use of the Supplies for the purposes referred to in this Article, and to maintain, support and develop the Supplies,

without Customer or Customer Personnel contravening any legislation relating to WHS including the WHS Legislation, any applicable standards relating to WHS or any policy relating to WHS identified in the Contract.

7.3.5 Without limiting the application of the WHS Legislation (and subject to any relevant foreign government restrictions), SELLER shall, in connection with or related to the Supplies or the work performed under the Contract, provide, and shall:

- a. use its reasonable endeavours to ensure that any other Subcontractor engaged in any Prescribed Activities provides in respect of those Prescribed Activities,

to BAE SYSTEMS Representative:

- b. within 7 Working Days (or another period agreed in writing by BAE SYSTEMS) of a request by BAE SYSTEMS Representative any information or copies of documentation requested by the Customer Representative and held by SELLER or Subcontractor (as the case may be) to enable BAE SYSTEMS to comply with its obligations under the WHS Legislation;
- c. in respect of:

- (i) SELLER, within 7 Working Days after receipt or submission of the notice, written communication or written undertaking by SELLER or Approved Subcontractor (as the case may be); or

- (ii) any other Subcontractor engaged in any Prescribed Activities, within 7 Working Days of a request by BAE SYSTEMS,

copies of:

- (iii) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to SELLER or Subcontractor (as the case may be) relating to WHS matters;

- (iv) all formal notices issued by a health and safety representative of SELLER or Subcontractor (as the case may be), under or in compliance with the applicable WHS Legislation; and
 - (v) all formal notices, written communications and written undertakings given by SELLER or Subcontractor (as the case may be) to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation; and
- d. within 7 Working Days of a request by BAE SYSTEMS Representative, written assurances specifying that to the best of SELLER's or the Subcontractor's (as the case may be) knowledge that SELLER and SELLER Personnel are compliant with:
- (i) the applicable WHS Legislation; and
 - (ii) any relevant or applicable approved codes of practice under the *Work Health and Safety Act 2011* (Cth) except where SELLER complies with the WHS Legislation in a manner that is different from the relevant code of practice but provides a standard of WHS that is equivalent to or higher than the standard required in the code of practice,

and that SELLER or Subcontractor (as the case may be) has made reasonable enquiries before providing the written assurances.

7.3.6 Subject to this Article and any relevant foreign government restrictions, BAE SYSTEMS shall provide to SELLER in a timely manner any information or copies of documentation reasonably requested by SELLER and held by BAE SYSTEMS to enable SELLER to comply with its obligations under the applicable WHS Legislation in relation to the Contract.

7.3.7 SELLER shall ensure that if the WHS Legislation requires that:

- a. a person (including a Subcontractor):
 - (i) be authorised or licensed (in accordance with the WHS Legislation) to carry out any works at the workplace, that person is so authorised or licensed and complies with any conditions of such Authorisation; and/or
 - (ii) has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- b. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed.

7.3.8 If SELLER becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an Authorisation relating to WHS, it shall immediately notify BAE SYSTEMS giving full particulars (so far as they are known to it).

7.3.9 Contractor shall give and ensure that an Approved Subcontractor gives BAE SYSTEMS and Commonwealth Representative and any person authorised by BAE SYSTEMS Representative access to:

- a. premises to conduct site inspections for the purpose of monitoring SELLER's or the Approved Subcontractor's (as the case may be) compliance with any applicable laws, Authorisation or Approved plans in connection with WHS in relation to the Contract; and
 - b. all internal and third party audit results in relation to WHS in relation to the Supplies or work performed under the Contract.
- 7.3.10 To the extent not inconsistent with the express requirements of the Contract, BAE SYSTEMS Representative may direct SELLER to take specified measures that BAE SYSTEMS Representative considers reasonably necessary to comply with applicable legislation relating to WHS including the WHS Legislation in relation to the Supplies or the work performed under the Contract. SELLER shall comply with the direction unless SELLER demonstrates to the reasonable satisfaction of BAE SYSTEMS Representative that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 7.3.11 SELLER shall not provide Supplies containing ACM and shall not take ACM onto BAE SYSTEMS Premises or Commonwealth Premises in connection with providing the Supplies.
- 7.3.12 SELLER shall ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who:
- a. use the Supplies for a purpose for which they were designed or manufactured;
 - b. handle or store the Supplies;
 - c. carry out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which they were designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; or
 - d. may be exposed to the Supplies or whose health or safety may be affected by a use or activity referred to in clause 7.3.12a to 7.3.12c.
- 7.3.13 SELLER shall carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary to comply with this Article.
- 7.3.14 SELLER shall give adequate information to BAE SYSTEMS concerning:
- a. each purpose for which the Supplies were designed or manufactured;
 - b. the results of any calculations, analysis, testing or examination referred to in this Article, including any hazardous properties identified by testing; and
 - c. any conditions necessary to ensure that the Supplies are without risks to health and safety when used for a purpose for which they were designed or manufactured or when carrying out any activity referred to in this Article.
- 7.3.15 SELLER shall, on request, so far as is reasonably practicable, give current relevant information on the matters referred to in this Article to BAE SYSTEMS.
- Reserved.
- 7.3.16 Reserved.

7.4 Privacy

- 7.4.1 This Article applies to the Contract if SELLER has access to Personal Information in the course of performing the Contract. Personal Information is defined in *Privacy Act 1988* (Cth).
- 7.4.2 SELLER shall:
- a. if it obtains Personal Information in the course of performing the Contract, use or disclose that Personal Information only for the purposes of the Contract subject to any applicable exceptions in the *Privacy Act 1988* (Cth);
 - b. comply with its obligations under the *Privacy Act 1988* (Cth); and
 - c. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by BAE SYSTEMS, would be a breach of the Australian Privacy Principles.
- 7.4.3 SELLER shall notify BAE SYSTEMS as soon as reasonably practicable if:
- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this Article, whether by SELLER, Contractor Personnel or any other person to whom the Personal Information has been disclosed for the purposes of the Contract; or
 - b. in relation to Personal Information obtained in the course of performing the Contract:
 - (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
 - (ii) it is approached by the Privacy Commissioner.
- 7.4.4 SELLER shall ensure that Contractor Personnel who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this Article.
- 7.4.5 SELLER shall ensure that any Subcontract entered into for the purposes of fulfilling its obligations under the Contract, contains provisions to ensure that the Subcontractor complies with this Article.

7.5 Public Announcements

- 7.5.1 This Article applies if SELLER is an Approved Subcontractor in BAE SYSTEMS' higher-tier subcontract.
- 7.5.2 SELLER shall not make any public announcement or other statement which refers or is connected to the Contract or the Project, including on any matter related to the Supplies, without first consulting BAE SYSTEMS Representative. This Article does not apply to the extent that SELLER would be prevented from consulting with BAE SYSTEMS Representative by any law or the rules of any stock exchange or similar body on which SELLER, or the relevant Approved Subcontractor is listed.
- 7.5.3 This Article does not apply to routine marketing activities promoting a Contractor's product or to information that is public knowledge other than by breach of the Contract.
- 7.5.4

8 REMEDIES, DISPUTES AND TERMINATION

8.1 Reserved

8.2 Step In Rights

- 8.2.1 If the Commonwealth gives a Head Contract Step In Notice to the Customer, then:
- (a) the Commonwealth may give notice to BAE SYSTEMS that the Commonwealth has given a Head Contract Step In Notice; and
 - (b) the Commonwealth or its nominee (as set out in the Commonwealth's notice) may:
 - (i) give any directions under this Contract (including Customer directions) to the Contractor, as if the Commonwealth or its nominee is the Customer under this Contract; and
 - (ii) exercise any of the rights, and perform any of the obligations, of the Customer under the Contract.

8.2.2

8.3 Consequences of Step in Rights

- 8.3.1 With effect from the date of the notice given under clause 14.2.1(a) (or later date specified in such notice) until the date that the Commonwealth gives a further notice to BAE SYSTEMS that the Commonwealth has given a Step Out Notice under the Head Contract, SELLER shall, and shall ensure that SELLER Personnel:
- (a) cooperate fully and in good faith with the Commonwealth or its nominee, and comply with any directions given by the Commonwealth or its nominee under clause 14.2.1;
 - (b) provide all assistance and information to documents reasonably requested by the Commonwealth or its nominee to enable the Commonwealth or its nominee to exercise the rights under clause 14.2.1; and
 - (c) mitigate all Loss in complying with its obligations under clauses 14.3.1(a) and 14.3.1(b).
- 8.3.2 The SELLER shall ensure that each subcontract includes sufficient provisions to ensure that the Commonwealth or its nominee can fully exercise its rights in clause 9.3 in relation to the subcontract and the subcontractor

8.4 Liability and Costs

- 8.4.1 The SELLER acknowledges and agrees that if the Commonwealth or its nominee exercises its rights in clause 14.2.1:
- a. BAE SYSTEMS, its customer and/or the Commonwealth or its nominee will not have any liability to the SELLER and the SELLER shall not be entitled to make any Claim arising out of or in connection with the Commonwealth or its nominee's exercise of Step in Rights;
 - b. the Commonwealth or its nominee may enforce any Security Interest provided by the SELLER to BAE SYSTEMS or their Customer to the extent that the Commonwealth or its nominee is prevented from exercising its Step in Rights

- 8.4.2 The SELLER:
- a. has no right to damages or other compensation from BAE SYSTEMS, its Customer and/or the Commonwealth or its nominee for any Loss it suffers because of the Commonwealth or its nominee's exercise its Step in Rights
 - b. releases, to the maximum extent permitted by law, BAE SYSEMS, its Customer and/or the Commonwealth or its nominee from any claims in respect of such Loss.
- 8.4.3 For the avoidance of doubt:
- a. Step in Rights does not limit the SELLER's existing rights or obligations under this Contract;
 - b. clauses in the Contract relating to liabilities between BAE SYSTEMS and the SELLER remain the same; and
 - c. the Commonwealth, in exercising its Step in Rights, does so as if the Commonwealth is the Customer under this Contract.

8.5 Stop Work

- 8.5.1 This Article applies if SELLER qualifies as an Approved Subcontractor in BAE SYSTEMS' higher-tier contract.
- 8.5.2 BAE SYSTEMS may, at any time, issue a direction to suspend all or a specified part of SELLER's work under the Contract, with effect from the date of BAE SYSTEMS direction (or a later date specified in BAE SYSTEMS Direction). The Stop Work notice may require SELLER to do any of the following:
- a. re-schedule specified work;
 - b. take specified steps to minimise Loss associated with the suspension; or
 - c. take other specified action in relation to Subcontracts.
- 8.5.3 If BAE SYSTEMS gives a Stop Wfsork notice:
- a. SELLER shall stop work in accordance with the Stop Work notice;
 - b. SELLER's obligations in relation to the work specified in the Stop Work notice, are suspended and remain suspended until BAE SYSTEMS issues a notice to resume work is issued;
 - c. SELLER shall, if required to do so by BAE SYSTEMS, take all reasonable steps to maintain, so far as practicable, the capacity of SELLER and its Subcontractors to recommence work with minimum delay and cost; and
 - d. SELLER shall mitigate all Loss in connection with the suspension, including by suspending relevant work under affected Subcontracts.
- 8.5.4 Reserved
- 8.5.5 BAE SYSTEMS may, at any time:
- a. by notice to SELLER (**Resumption Notice**) require SELLER to recommence all or a specified part of SELLER's work under the Contract, as specified in the Resumption Notice; and

- b. give directions to SELLER for the purpose of carrying the Resumption Notice into effect.
- 8.5.6 If BAE SYSTEMS issues a change order during a stop work period, costs and expenses incurred by SELLER during the stop work period will be reimbursed by BAE SYSTEMS as calculated and payable in accordance with the Changes clause.
-