

Dated:
July 7,
2000

EXHIBIT A

to

WEDGETAIL PRIME CONTRACT SUMMARY

[Note: The numbers in parentheses at the end of a clause refer to the prime contract.]

1. Definitions

"Acceptance" means the certification by Boeing that the Subcontractor has fulfilled its contractual obligations in respect of any item or items of the Supplies, and that those Supplies conform with the requirements of the Subcontract; and "Accept" has a corresponding meaning.

"Act of Prevention" means a breach of the Subcontract resulting from an act or omission by the Commonwealth, acting in the context of the Prime Contract, which delays delivery of the Supplies beyond the times required by the Subcontract.

"Approve" means:

- a. in relation to a Contact Deliverable Requirement (CDR), the meaning ascribed to it by the Statement of Work; and
- b. in every other context, the act of Boeing approving a particular course of action as a basis for further work under the Subcontract.

"Australian dollar" or "\$A" means the monetary unit, or unit of currency, of Australia.

"Australian Industry Involvement (All) Plan" means the plan which describes the activities and the methodology for the management, verification, reporting, auditing and validation of actions required to satisfy the All requirements of the Prime Contract.

"Australian and New Zealand (ANZ) Industry" means industry carried on in Australia or New Zealand by:

- a. any body corporate registered under the *Corporations Law*, the Companies Act 1955 (New Zealand), or incorporated under any other law of the Commonwealth, or a State or Territory of Australia or a law of New Zealand; or
- b. a natural person; or
- c. any other person acceptable to the Project Authority.

"Baseline Aircraft" means the Boeing Business Jet variant of the B737-700 Increased Gross Weight aircraft configured at the time of manufacture.

"Calculations" includes, without limitation, the calculation, comparison, sequencing and any combination required, which accommodates same-century and multi-century formulas and date values and date data interface values including leap year calculations and date data century recognition.

"Commonwealth" means the Commonwealth of Australia.

"day" means calendar day.

"Defence Industrial Security Manual" means the Industrial Security Manual published by the Australian Department of Defence.

"Effective Date" means the date on which the Subcontract is signed by the parties, or if signed on separate days, the date of the last signature. [Note: Change if this is not consistent with Supplier Management practice.]

"Export Licence" means any export licence or other export approval.

"Government Furnished Data" or "GFD" means data in a recorded form which is listed as GFD in Attachment G of the Prime Contract, supplied by the Commonwealth and relied upon by the Subcontractor in the production of the Supplies including but not limited to specifications, calculations and Software but not including GFI.

"Government Furnished Equipment" or "GFE" means items and any associated manuals listed as GFE in Attachment G of the Prime Contract supplied by the Commonwealth for incorporation into, or use in production of, the Supplies.

"Government Furnished Information" or "GFI" means information in a recorded form including (without limitation) data, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, computer programs, software and other items describing and providing information which is listed as GFI in Attachment G of the Prime Contract, is supplied by the Commonwealth and relied upon by the Subcontractor at its own risk, but does not include Government Furnished Data.

"Government Furnished Material" or "GFM" means the items and information listed in Attachment G of the Prime Contract, and shall include GFE, GFD and GFI as appropriate.

"Government Titled Items" or "GTI" means those items of the Supplies which are owned by the Commonwealth and delivered to and Accepted at the Subcontractor's premises and which the Commonwealth has agreed to loan to the Subcontractor for the performance of this Subcontract or a subcontract under the Initial Support Contract.

"Government Titled Technical Information" or "GTTI" means Technical Information which is owned by the Commonwealth and delivered to and Accepted at the Subcontractor's premises and which the Commonwealth has agreed to loan to the Subcontractor for the performance of this Subcontract or a Subcontract under the Initial Support Contract.

"Hazardous Substance" means a substance which has the potential through being used at work to harm the health or safety of persons in the workplace as detailed in the National Occupational Health and Safety Commission's (NOHSC) Guidance Notes NOHSC 1008-1994: "Approved Criteria for Classifying Hazardous Substances" and NOHSC 10005-1994: "List of Designated Hazardous Substances."

"IBR Handbook" means the Australian Department of Defence publication titled "Integrated Baseline Review (IBR) Team Handbook", and dated December 1999.

"Independent Verification and Validation" or "IV&V" means the verification and validation of the Contractor's or a Subcontractor's work under the Prime Contract by an independent third party.

"Initial Export Licences" means the Export Licences listed in Attachment AHI of the prime contract.

"Intellectual Property" or "IP" means copyright, and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs and circuit layouts, and any other rights and Commercial-in-Confidence Information (including know-how and trade secrets) resulting from intellectual activity in the industrial, scientific, literary and artistic fields.

"Latent Defect" means a deficiency in design, materials or workmanship not discoverable by reasonable care or inspection prior to Acceptance which causes:

- a. a Software failure; or
- b. a failure of Supplies other than Software which falls outside the incidence of random failures to be expected from those Supplies.

"Modify" means the act of designing, manufacturing and installing a change to the Supplies and includes amending, adapting, integrating and developing the Supplies. "Modification" has a corresponding meaning.

"Month" means calendar month.

"Ozone Depleting Substance" means any ozone depleting substance within the meaning of the *Ozone Protection Act 1989*.

"Performance Measurement Baseline" or "PMB" has the same meaning as described in DEF(AUST)5655.

"Prime Contract" means the System Acquisition contract between Boeing and the Commonwealth.

"Progress Payment" means a payment made against the Subcontractor's Budgeted Cost For Work Performed.

"Project Authority" means the person holding or performing the office of Director General Aerospace Surveillance Systems of the Commonwealth or any other person appointed pursuant to the Prime Contract as the Project Authority.

"Quality Audit" has the same meaning as in Australian/New Zealand Standard AS/NZS ISO 8402-1994.

"Quality Plan" has the same meaning as in Australian/New Zealand Standard AS/NZS ISO 8402-1994.

"Quality Surveillance" has the same meaning as in Australian/New Zealand Standard AS/NZS ISO 8402-1994.

"Related Company" means a company that is a related body corporate (including, for the avoidance of doubt, a foreign body corporate) as defined in the *Corporations Law*.

"Related Products" means the products listed in Attachment L of the Prime Contract.

"Spares" has the meaning ascribed to it in the Glossary in the Prime Contract.

"Support and Test Equipment" or "S&TE" has the meaning ascribed to it in the Glossary in the Prime Contract.

"Subcontract" has a meaning corresponding to that of "Subcontractor."

"Subcontractor" means the party with whom Boeing has entered into this subcontract. The term "Subcontractor" means any person that, for the purposes of the subcontract, furnishes Supplies directly to the Subcontractor or indirectly to the Subcontractor through another person.

"Supplies" means the goods and services, Intellectual Property and Technical Information required to be supplied under the subcontract, and includes items acquired in order to be incorporated in the Supplies.

"Surveillance" means the process whereby a management control system is subject

to recurring examinations by the Commonwealth to check whether the system continues to meet the cost schedule control system criteria. The Surveillance process is described in DEF(AUST) 5657.

"Third Party IP" means Background Intellectual Property in COTS which is owned by a person other than the Contractor, a Subcontractor referred to in Attachment M of the prime contract, or the Commonwealth.

"U. S. dollar" or "\$US" means the monetary unit, or unit of currency, of the United States of America.

"Supplier Product" means any system, accessory, equipment, part or software that is procured by Boeing from a subcontractor and incorporated in a Baseline Aircraft and which is not manufactured to Boeing's detailed design. This includes but is not limited to any such parts manufactured to a specification/source control drawing, all standards, and other parts obtained from subcontractors. This does not include the engines.

"Validation" means, subject to the successful completion of a formal cost schedule control system review in accordance with DEF (AUST) 5657, the acceptance by the Commonwealth that a cost schedule control system is fully compliant with the criteria set out in DEF(AUST) 5657, clause 2.3. "Validate" has a corresponding meaning.

"Valid Date" means the date of an actual day which is represented with a four-digit year, two-digit month within year and two-digit day within month or any other equivalent representation.

"Works" means the whole of the work relating to the AEW&C Support Centre (ASC) to be executed in accordance with the Prime Contract.

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

2. Measurement

Measurements of physical quantity shall be in United States units or weights and measures (feet, pounds, etc.) or such other units of measurement as Boeing agrees to. (1.4)

3. Full Disclosure

The Subcontractor shall promptly notify and fully disclose to Boeing, in writing, any event or occurrence actual or threatened during the performance of the Subcontract which may materially affect the Subcontractor's ability to perform any of its obligations under this Subcontract. Examples of such events or occurrences include: any litigation or proceeding against the Subcontractor, the existence of any breach or default or alleged breach or default of any agreement or order binding the Subcontractor and any matters relating to the commercial, technical or financial capacity of the Subcontractor. (1.7)

4. Withholding of Progress Payments – PMB (include in first-tier subcontracts)

If unresolved deficiencies in the Performance Measurement Baseline (PMB) result wholly from the acts or failures to act of the Subcontractor, Boeing, may at its discretion, withhold those elements of the Progress Payments which are attributable to the Subcontractor. Such amounts will be paid as part of the next monthly Progress Payment claim following the closure of those corrective actions and the acceptance of the PMB by the Project Authority. (3.2.7c)

5. Withholding Payments - CSCS (include in first-tier subcontracts)

If a first-tier Subcontractor (as listed in Attachment M of the Prime Contract) fails to achieve Validation of its Cost Schedule Control System within 18 months from the effective date of the Prime Contract, Boeing shall be entitled to withhold the applicable elements of future Milestone Payments and Progress Payments until Validation of the Subcontractor's Cost Schedule Control System is achieved. For the purposes of this clause, the withheld amounts shall be those amounts that would otherwise be payable by the Contractor to the first-tier Subcontractor that failed to achieve Validation. (3.6.3)

Failure by a first-tier Subcontractor (as listed in Attachment M of the Prime Contract) to maintain a Cost Schedule Control System in accordance with DEF(AUST) 5657 shall entitle Boeing to withhold all future Milestone Payments and Progress Payments until the requirements of DEF(AUST) 5657 are met. For the purposes of this clause, the withheld amounts shall be those amounts that would otherwise be payable by Boeing to the first-tier Subcontractor that failed to maintain its Cost Schedule Control System. (3.6.4)

6. Cost Investigation

The Subcontractor shall until twelve months after the date Boeing submits an invoice for payment of the final Milestone under the Prime Contract, only and solely for the purpose of cost investigation relevant to the Subcontract and for no other purpose, permit and facilitate audit of the Subcontractor by:

- a. a mutually agreed independent accounting firm or the U.S. Defense Contract Audit Agency in respect of work performed by U.S. companies;
- b. the Commonwealth's Financial Consultancy Investigation Service for work performed by Australian companies; and
- c. a mutually agreed agency or an independent accounting firm in respect of all other work under the Contract. (3.13.1)

7. Import and Export

Export Approvals

- a. The Subcontractor shall obtain and maintain any Export Licence needed for the Subcontractor's performance of its obligations under this Subcontract.
- b. The Subcontractor shall, on request from the Project Authority, provide to Boeing and the Project Authority a copy of any Export Licence or other proof, reasonable in the circumstance and sufficient to demonstrate that an Export Licence has been obtained and remains current.
- c. The Subcontractor shall notify Boeing and the Project Authority of the occurrence of any of the following events within fourteen (14) days:
 1. application for;
 2. grant of; and
 3. refusal or revocation of,any Export Licence.
- d. If requested by the Subcontractor, Boeing shall coordinate with the Project Authority to give the Subcontractor all assistance reasonably required to facilitate the provision of an Export Licence including provision of a certificate by the Commonwealth as to the ultimate use of the Supplies. The parties agree to keep each other apprised of any significant issues which may affect Export Licences under the Subcontract.
- e. Nothing in clause 7.d. shall release the Subcontractor from responsibility to secure any Export Licence required for the Supplies.
- f. This subcontract shall terminate:
 1. Seven (7) days after the U.S. Congress denies approval of, or the U.S. Government decides not to grant, any Initial Export Licences; or
 2. Six (6) months after the parties sign the Subcontract if any Initial Export Licence has not been obtained by that date, unless the parties agree otherwise. Termination under this clause is not termination for convenience or default.
- g. If the Subcontract is terminated under clause 7.f, the Subcontractor shall within thirty (30) days refund to Boeing any amount paid to it under this Subcontract and not spent, or contractually committed, for the purposes of the Subcontract described in Attachment AH1, together with interest on the repaid amount calculated in accordance with _____.
- h. If before IOC an Export Licence has been refused or revoked and a material reason for that refusal or revocation is an unlawful act or omission of the Subcontractor then Boeing may give the Subcontractor a written notice under this clause. If the relevant Export Licence is not obtained or reinstated within one hundred fifty (150) days of the date of such a notice then unless the parties can reach agreement on an appropriate course of action (which may include an amendment to the Subcontract) Boeing may by further written notice to the Subcontractor immediately terminate this subcontract for default under clause 43 (18.2).
- i. If an Export Licence is not obtained and thereafter maintained as required by clause 7.f. (in circumstances other than those contemplated by clauses 7.g. and 7.h.) then Boeing may give the Subcontractor a written notice under this clause. If the relevant licence has not been obtained or reinstated within ninety (90) days of the date of such a notice then unless the parties can reach agreement on an appropriate course of action (which may include an amendment to the Subcontract) Boeing may by further written notice immediately terminate this Subcontract for convenience.

8. International Sale of Goods

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Subcontract.

9. Compatibility with Commonwealth Equipment

The Subcontractor shall be responsible for ensuring:

a. that the Supplies will interoperate with any existing or future Commonwealth voice communications, data links and intelligence links defined in the AMS Segment Specification of the Prime Contract;

b. that under normal operating modes and in normal operating environments (within Australia and its sovereign territories), the Supplies are capable of maintaining RF compatibility with any existing or future Commonwealth communications equipment in accordance with the spectrum allocations and guidelines defined by the Australian Communications Authority apparatus licence (described in CDR(S)-DID-EM-063 of the Prime Contract) or the operational procedures agreed upon between Boeing and the Commonwealth; and

c. that the Supplies are compatible with all Commonwealth equipment listed in Attachment L of the Prime Contract. In this clause, "compatible" means the ability of the Supplies to interface with Commonwealth equipment without an interruption to the operation of either the Supplies or that equipment and without affecting the ability of the Supplies to perform as required by the Subcontract. The Subcontractor's obligations under this clause are subject to Boeing providing to the Subcontractor, as GFD, sufficient interface definition documents, interface control documents, or equivalent, for Related Products or, where such documents are not available, access to the Related Products for interface testing and verification purposes, to meet the Subcontractor's obligations. (6.1.6)

10. Authorised Engineering Organisation Responsibilities

The Subcontractor shall accept design responsibility for the Supplies, and in particular certify compliance of its work, and that of its subcontractors with the requirements of the Statement of Work. (7.3.1)

The Subcontractor shall ensure that its subcontractors undertake design within engineering management and organisational infrastructure consistent with the Approved CEMP. (7.3.6)

The Subcontractor shall retain records of decisions and results of Reviews of Design Review and Design Approvals until completion of the performance of the Prime Contract. (7.3.8)

11. Maintenance of AEO Status

The Subcontractor will permit Boeing, on 10 days notice, to audit, examine or investigate any work performed under the subcontract, whether performed by the Subcontractor or its subcontractors, or visit premises where such work is being performed to verify compliance with the Approved CEMP, and substantiate that the organisation, implementation arrangements and procedures detailed in the speciality engineering plans delivered under the Subcontract are being applied effectively by the Subcontractor. (7.6.3)

The Subcontractor shall support and facilitate audit by Boeing including, without limitation, the provision of technical specialists and objective evidence including records related to the design, development, production and testing of the Supplies that Boeing may require during any AEO audit to ensure that the Approved CEMP requirements are being met, including that speciality engineering programs are being implemented as part of the design process. The Subcontractor shall, on request, supply Boeing with copies of the Subcontractor's records to facilitate the AEO audit. (7.6.4)

The Subcontractor shall audit, examine and investigate its subcontractor's design organisations, implementation arrangements and procedures in accordance with the Approved CEMP and shall make available to Boeing records of such audits, examinations and investigations. (7.6.5)

12. Withdrawal of AEO Status

Where Boeing identifies or anticipates a failure of the Subcontractor to comply with its obligations regarding AEO status, then Boeing shall:

a. provide written notice to the Subcontractor giving details of any such failure or anticipated failure and, if appropriate, any limitations to be imposed on, or any suspension or revocation of the Subcontractor's status; and

b. require the Subcontractor to take all steps that may be necessary to conform to the requirements regarding AEO status within the period specified in the notice. (7.7.1)

Upon receipt of a notice issued pursuant to this clause the Subcontractor shall, within fourteen (14) days of the receipt of the plan from Subcontractor, define and deliver to Boeing a corrective action plan that incorporates all steps that are necessary to comply with the requirements regarding AEO status. Boeing shall, within fourteen (14) days of receipt of the plan from the Subcontractor notify the Subcontractor of the appropriateness (or otherwise) of the plan taken and any further corrective action to be taken to rectify the failure. Boeing may, at its discretion, perform an AEO audit to verify that the failure has been corrected. (7.7.2)

Boeing may direct the Subcontractor in a notice issued pursuant to this clause to cease work on any aspect of the subcontract which Boeing determines may be affected by a non-compliance of the Subcontractor with the Approved CEMP. The Subcontractor shall comply with any such direction and shall not recommence work on the specified aspect of the Subcontract until directed to do so by notice in writing from Boeing. (7.7.3)

Delay caused by cessation of work under this clause or the time that the Contractor takes to restore its organisation and processes to conform with the Approved CEMP or the time taken to deliver a revised CEMP for Boeing's Approval, including the time required to regain EAC, shall not entitle the Subcontractor to an extension of the date for delivery under the clause entitled "Postponement of the Date for Delivery of the Supplies) of the Contract." (7.7.4)

Should a failure of compliance still exist and provided Boeing has complied with the provisions of this clause Boeing may at its absolute discretion:

- a. issue a notice of revocation of the EAC (should such notice or revocation not already have been provided); and
 - b. withhold part or all payments to the Subcontractor under the Subcontract from the date of notification by Boeing under this clause, until such time as Boeing is reasonably satisfied that the Subcontractor has and shall comply with its AEO obligations; and
- c. elect not to consider for review, Approval or Acceptance any development or design deliverable subsequently produced by the Subcontractor. (7.7.5)

Should the Subcontractor fail to develop a corrective action plan acceptable to Boeing within 2 months of EAC revocation or fail to complete that plan within that plan's schedule, then Boeing may by written notice terminate the subcontract for default. (7.7.6)

In this clause, the terms Authorised Engineering Organisation (AEO), Letter of Engineering Authority (LEA), Senior Design Engineer, Design Review and Design Approval have the meanings given in the RAAF publication DI(AF)AAP 7001.053 Issue 3. (7.7.7)

13. Year 2000 Compliance

The Subcontractor warrants that the Supplies comply with the applicable Australian or New Zealand Standard relating to Year 2000 conformity or, if there are no applicable Australian or New Zealand Standards, the applicable international standard relating to Year 2000 conformity (if any). (7.8.1)

The Subcontractor further warrants that the date (and century) and clock fields within the Supplies:

- a. generate and otherwise perform Calculations using Valid Dates, for all intervals of time whether before, during or after the Year 2000; and
- b. are compatible with all related products listed in Attachment L that reference years until the end of 1999 by two digits or four digits. (7.8.2)

In this clause, "compatible" means the ability of the Supplies to interface with Related Products without an interruption to the operation of either the Supplies or the Related Products and without affecting the ability of the Supplies to perform as warranted in this clause. The Subcontractor's obligations under this clause are subject to Boeing providing to the Subcontractor, as GFD, sufficient interface definition documents, interface control documents, or equivalent, for Related Products or, where such documents are not available, access to the Related Products for interface testing and verification purposes, to meet the Subcontractor's obligations. (7.8.3)

Any provision of this subcontract that has the effect of limiting the Subcontractor's liability shall have no application with respect to this clause. The Subcontractor shall indemnify Boeing and the Commonwealth against any loss, damage, costs (including legal costs on a solicitor and own client basis) and expenses incurred by Boeing or the Commonwealth which is caused by a breach of the

Subcontractor's obligations under this clause. (7.8.4)

14. Quality System

The Subcontractor shall ensure that a representative of the Commonwealth may visit the premises of the Subcontractor or any of its subcontractors for the purpose of performing source Quality Audits or Quality Surveillance at those premises in relation to this contract. (8.1.8)

The Subcontractor shall maintain records pertaining to the planning and verification of the quality of the Supplies in accordance with the Approved Quality Plan. (8.3.8)

15. Control of Non-Conforming Supplies

The Subcontractor shall control non-conforming Supplies by establishing and maintaining a Material Review Board to disposition material or work which does not conform to the requirements of the Subcontract. (8.4.1)

The Subcontractor shall obtain Boeing's Approval to use non-conforming materials (including repaired materials) or work in the Supplies when such use would result in a deviation from a requirement of the subcontract or could significantly reduce, prevent, or affect the inspection, rework or repair of the Supplies after Acceptance. (8.4.2)

For non-conformances which result in a deviation from a requirement of the Subcontract (Major or Critical Non-conformances), the application to Boeing for Approval to use non-conforming materials or work in the Supplies shall be made using a Request for Deviation/Request for Waiver in accordance with CDR(S)-CM-08 of the Prime Contract. (8.4.3)

For non-conformances, other than non-conformances referred to in the prior paragraph, which could significantly reduce, prevent, or affect the inspection, rework or repair of the Supplies after Acceptance (Significant Rework Items), Approval shall be sought in accordance with the procedure contained in the Approved Quality Plan. (8.4.4)

The Subcontractor shall not be required to seek Boeing's Approval for non-conformances not covered by this clause (Minor Non-conformances and Non Significant Rework Items). (8.4.5)

Boeing is under no obligation to approve an application made under this clause. (8.4.6)

16. Government Furnished Material (GFM)

Boeing shall deliver Government Furnished Material (GFM) to the Subcontractor at the places and times stated in Attachment G of the Prime Contract. (9.1.1)

The Subcontractor shall, within 10 working days of delivery, inspect GFM for physical damage and any defects or deficiencies which impact on the intended use of the GFM. The Subcontractor shall report, in writing, any dissatisfaction with the GFM to Boeing within a further 3 days. The Subcontractor shall not commence work on or with GFM which has been found on inspection to be damaged, defective or deficient. (9.1.3)

If GFM is:

- a. not delivered to the Subcontractor on the dates stated in Attachment G of the Prime Contract; or
- b. delivered as, or subsequently becomes damaged, defective or deficient, and the Subcontractor has promptly reported the matter to Boeing,

the Subcontractor may claim an Act of Prevention except to the extent that an act or omission of the Subcontractor caused or contributed to the non-delivery, damage, defectiveness or deficiency of the GFM. (9.1.4)

Boeing shall be responsible for the removal, repair and return or replacement of damaged, defective or deficient GFM reported to Boeing in accordance with this clause. (9.1.5)

17. Use of GFM

The Subcontractor shall, in a skillful manner, incorporate the GFM into the Supplies or utilise the GFM in production of the Supplies in accordance with the Statement of Work. (9.2.1)

The Subcontractor shall return GFM that is not incorporated into the Supplies (other than consumable items of GFM) to Boeing. (9.2.2)

18. Care of GFM

The Subcontractor shall take all reasonable care of GFM. (9.3.1)

The Subcontractor shall institute, maintain and apply a system for, and comply with the provisions of the subcontract and any directions of Boeing, in respect of the accounting for and control, handling, preservation, protection and maintenance of GFM and any installation, setting to work, inspection, test or trial of GFM required under the Subcontract. (9.3.2)

Where the Subcontractor becomes aware that any GFM in its care is lost, destroyed or damaged, it shall promptly inform Boeing to that effect in writing. (9.3.3)

Where in the opinion of Boeing the Subcontractor has the necessary capacity, Boeing may require the Subcontractor by notice in writing to:

- a. transport;
- b. dispose of; or
- c. repair;

damaged, defective or deficient GFM in the care of the Subcontractor. Where, under the indemnity in this clause, the Subcontractor is liable for the damage, defect or deficiency, the work performed by the Subcontractor pursuant to this clause shall discharge or partially discharge the Subcontractor's liability. Where the indemnity in this clause does not apply, the Subcontractor shall submit a change proposal for the performance of the work. (9.3.4)

The Subcontractor shall indemnify Boeing against any loss, damage, costs (including costs of defending or settling any claim) and expenses incurred by Boeing in relation to GFM, arising out of:

- a. a failure by the Subcontractor to conduct or properly conduct an examination or test of GFM on delivery;
- b. a failure to institute, maintain or apply the system described in the clause entitled "Use and Care of GFM;"
- c. loss or destruction of, damage to or defects or deficiencies in the GFM except to the extent that such loss, destruction, damage defects or deficiencies results from any unlawful or negligent act or omission on the part of Boeing or the Commonwealth or any person acting on behalf of Boeing or the Commonwealth; and
- d. any conclusions, assumptions or interpretations made by the Subcontractor on the basis of the GFM (excluding GFD if appropriate), or its application or use. (9.8.1)

Boeing shall not be liable for and the Subcontractor hereby indemnifies Boeing against any loss, damage, costs (including costs of defending or settling any claim) and expenses incurred by Boeing in relation to GFI, arising out of:

- a. the Subcontractor's application or use of the GFI; and
- b. any conclusions, assumptions or interpretations made by the Subcontractor on the basis of the GFI, or its application or use thereof. (9.8.2)

19. Ownership and Restrictions

GFM remains the property of the Commonwealth. The Commonwealth retains the right to affix or incorporate to the GFM such plates or other marks as the Commonwealth may think fit indicating that the GFM is the property of the Commonwealth and the Contractor shall ensure that such plates or marks remain affixed or incorporated and shall not obliterate, deface, cover or remove such plates or marks. (9.4.1)

The Subcontractor shall not without the prior written approval of Boeing: (i) use GFI or other than for the purposes of performing the Subcontract; (ii) Modify GFM; (iii) transfer possession or control of GFM to a third party other than a subcontractor who needs to use the GFM solely for the performance of the Subcontractor's work under the subcontract; or (iv) move GFM from the location to which it was delivered. The Subcontractor shall not create or allow to be created any lien, charge, mortgage or encumbrance over any GFM. (9.4.2)

Boeing shall notify the Subcontractor of any Intellectual Property rights applicable to the GFM and the Subcontractor shall not act in any way that is contrary to the existence of such rights. (9.4.3)

20. Government Furnished Equipment (GFE)

The Subcontractor shall functionally test any GFE item or part thereof to determine that it is fit for its purpose under the Subcontract. Any deficiency significantly affecting the function of any GFE item shall be reported in writing to Boeing by the Subcontractor and Boeing shall take such rectifying action as Boeing considers necessary to correct such deficiency at Boeing's cost. (9.5.1)

The Subcontractor shall have available adequate warehouse facilities to store and handle all GFE as it is received. (9.5.2)

The Subcontractor shall permit officers authorised by Boeing or the Project Authority to enter upon its premises at reasonable times for the purposes of inspecting GFE, conducting stocktakes of GFE, checking stocktakes of GFE or removing GFE that is no longer required for performance of the Subcontract. (9.5.3)

The Subcontractor shall at its expense carry out such physical stocktakes and certification of the GFE as Boeing may by notice in writing from time to time require. (9.5.4)

21. Government Furnished Information (GFI)

GFI is not furnished to the Subcontractor for the purpose of either directing or guiding the Subcontractor's task under the Subcontract. Neither Boeing nor the Commonwealth warrant the suitability of such GFI for any particular use or application, nor does Boeing or the Commonwealth warrant the accuracy or precision of the GFI. (9.6.1)

22. Government Furnished Data

GFD is furnished for the purpose of enabling the Subcontractor to perform certain of its obligations under the Subcontract. Boeing warrants that all GFD is, and will be, fit for its intended purpose. The GFD shall be deemed to be fit for its intended purposes unless the Subcontractor submits a written fully-substantiated claim prior to the Acceptance of the relevant item of Supplies that is designed or produced by the Subcontractor using the GFD. (9.7.1)

For the purposes of this clause, the "intended purpose" of any item of GFD shall be the purpose specified against that item in Attachment G of the Prime Contract. (9.7.2)

23. Government Titled Items

The provisions of the clauses entitled "Care of GFM," "Ownership and Restrictions" and "Government Furnished Equipment" shall apply to GTI. (9.9.1)

The Subcontractor agrees to sign a loan agreement with Boeing on reasonable commercial terms in respect of GTI. (9.9.2)

GTI shall be returned to Boeing by the Subcontractor within 15 days of any written request from Boeing. (9.9.3)

24. Postponement of the Date for Delivery of the Supplies

The Subcontractor shall take all reasonable steps to prevent and minimise delay and to mitigate its losses due to delay. (11.3.1)

Within 7 days of the Subcontractor becoming aware that it will be delayed in delivery of the Supplies by any cause (including a cause for which the Subcontractor is not entitled to an extension of the date for delivery under the Subcontract) it shall notify Boeing of the cause and nature of the delay, describe the steps it shall take to contain the delay, and advise whether it will be claiming entitlement to postponement of the date of delivery. (11.3.2)

If the cause of delay is one for which the Subcontractor is entitled to claim a postponement of the date for delivery of the Supplies, it may, no later than 10 days after giving the notice under this clause, give a further notice to Boeing claiming the period of postponement of the date of delivery. (11.3.3)

If the Subcontractor wishes to claim postponement of the date for delivery but, by reason of continuing delay cannot ascertain the period of delay, 10 days after notifying Boeing of a delay under this clause the Subcontractor may claim there is a continuing delay, in which case the Subcontractor shall promptly provide a further notice when the event giving rise to the delay has ceased. (11.3.4)

The Subcontractor shall only be entitled to postponement of the date for delivery of the Supplies to the extent that the event giving rise to the claim:

- a. is beyond the reasonable control of the Subcontractor;
- b. delays the Subcontractor in the performance of its obligations under the Subcontract;
- c. could not have been reasonably contemplated or allowed for by the Subcontractor before entering into the Subcontract; and
 - a. is not provided for elsewhere in the Subcontract,

and provided that the Subcontractor:

- e. claims a postponement of the date for delivery of the Supplies in accordance with this clause;
- f. demonstrates to Boeing's satisfaction that work under the Subcontract cannot be performed in such a way as to meet the date for delivery;
- g. takes all reasonable steps within its control to prevent the delay and to minimise or reduce the continuance of the delay and to mitigate its losses due to delay; and
- h. supports the claim referred to in this clause with substantiating documentation to Boeing's satisfaction. Without limiting the generality, this shall include the latest critical path information available. (11.3.5)

For the purposes of subclause b and c above, the following, where and to the extent that they affect the performance of the Subcontract, are events beyond the reasonable control of the Subcontractor or its subcontractors which could not have been reasonably allowed for by the Subcontractor or its subcontractors before entering into the Subcontract;

- a. war (declared or undeclared) or hostilities,
- b. riots, revolutions or sabotage or civil commotion,
- c. Acts of God, such as earthquake, flood or other natural physical disaster,
- d. United States labour strikes relating to contract re-negotiation of the Subcontractor's or its subcontractor's unionised workforce which occur at multiple sites including multiple facilities in a single geographic location,
- e. failure to obtain and maintain Export Licences, provided the Subcontractor uses its best endeavors to obtain and maintain those Export Licences;

f. acts or omissions of any government in its sovereign capacity,

g. epidemics,

h. perils of the sea.

In this clause an act or omission of a government in its sovereign capacity is an act or omission in the exercise of executive or legislative power but does not include an act or omission at the instigation of the Subcontractor or its subcontractor. (11.3.6)

The Subcontractor shall not be entitled to claim a postponement of the date for delivery for a period greater than the duration of the delay. (11.3.7)

Any delay resulting from delay by a subcontractor shall be taken into account for the purposes of this clause only to the extent that the reasons for the late delivery are beyond the reasonable control of the Subcontractor and its subcontractor. (11.3.12)

25. Cost of Postponement

When the date for delivery of the Supplies is postponed and the delay to which the postponement relates is caused by an Act of Prevention, the Subcontractor shall be entitled to postponement costs equal to the unavoidable additional costs incurred by the Subcontractor as a direct consequence of the Act of Prevention. (11.4.1)

The Subcontractor shall not be entitled to postponement costs unless the delay is caused by an Act of Prevention. (11.4.2)

If the Subcontractor wishes to claim postponement costs it shall stipulate the amount of costs in any notice claiming a postponement of the date for delivery. In support of its claim for postponement costs the Subcontractor shall provide substantiating documentation to the satisfaction of Boeing. (11.4.3)

26. Support of the Supplies (Warranties)

General Warranty

The Subcontractor warrants that the Supplies are free from defects in design, materials and workmanship for twelve (12) months starting from acceptance or, in the case of the ASC, starting from the date for practical completion (for the purposes of this clause, the "warranty period").

The Subcontractor shall remedy defects in the Supplies covered by the warranty repair, replacement or modification, at the Subcontractor's option, provided that the Subcontractor has received written notice of any such defects from Boeing during the warranty period.

If at any time after acceptance the Subcontractor becomes aware that the Supplies are not Year 2000 compliant, the Subcontractor shall immediately notify Boeing. The Subcontractor shall immediately on demand by Boeing remedy any breach of the warranty for Year 2000 compliant Supplies, whether or not such defect has resulted in any failure of the Supplies at the time of the demand being made by Boeing.

The Subcontractor, unless Boeing otherwise allows, shall meet all costs of and incidental to the performance of remedial work under this clause, including any packing, freight (not exceeding the freight cost between the Subcontract delivery point and the Subcontractor's nominated repair facility and return), disassembly and reassembly costs.

If any remedial work is of such a character as in the opinion of Boeing may affect the ability of the Supplies to fulfill the Subcontract requirements, Boeing may, after completion of remedial work, by notice to the Subcontractor, require that tests which are relevant to the remedial work be carried out to the satisfaction of Boeing. If the tests show that Supplies remedied by the Subcontractor do not comply with the Subcontract, the Subcontractor shall rectify the defect, and the costs of the tests shall be borne by the Subcontractor. Boeing shall bear the cost of any test where the Supplies which have been remedied fulfill the subcontract requirements.

Where the Subcontractor fails, within the period of thirty (30) days after notification by Boeing, to rectify a defect covered by a

warranty of the Supplies provided in this clause, Boeing may perform or have performed the necessary remedial work, and all costs and outgoings incurred shall be reimbursed on demand to Boeing by the Subcontractor and if not reimbursed shall be a debt recoverable by Boeing.

Any item of the Supplies remedied under the general warranty in this clause, shall be further warranted until the expiry of the warranty period or a period of half the original warranty, whichever is the greater.

The rights and remedies provided in this clause are in addition to, and shall not limit, any other rights of Boeing or the Commonwealth.

The obligation to remedy defects in Supplies shall not extend to remedy of defects in GFM incorporated into the Supplies.

Additional Warranties on Products: In addition to the general warranty on Supplier Products in this clause, Subcontractor shall use diligent efforts to obtain additional warranties enforceable by Boeing against Subcontractors providing Supplier Products that are incorporated into an Air Vehicle. Subcontractor shall furnish to Boeing prior to acceptance of the first AMS a copy of each of the agreements with such Subcontractors that contain such additional warranties in respect of Supplier Products.

27. Notification of Defects

If, at any time during the period commencing on the effective date of the Prime Contract and ending 35 years after Acceptance of the last item of Supplies by the Commonwealth under the Prime Contract, the Subcontractor becomes aware of any defect in the Supplies which adversely affects, or is likely to adversely affect, the operation of the Supplies or the safety of personnel, the Subcontractor shall give notice of the defect to Boeing. (12.3.1)

When the adverse affect or likely adverse affect is critical to the operation of the Supplies or the safety of personnel, the Subcontractor shall give a notice to Boeing immediately on becoming aware of the defect and shall provide a fully documented confirmation of the notice within 10 Working Days after so becoming aware. (12.3.2)

In any other case the Subcontractor shall give fully documented notice to Boeing of the defect within 20 Working Days after becoming aware of the defect. (12.3.3)

In fully documented notices given under this clause, the Subcontractor shall include a statement of the cause and effect of the defect and the remedial action it proposes. (12.3.4)

28. Latent Defects

The Subcontractor shall diagnose and correct any Latent Defects in Supplies where those Latent Defects and the time within which the Latent Defects are to be remedied are notified to it in writing by Boeing within the period commencing on the date of Acceptance of the first AMS under the Prime Contract and ending 15 years after the date of Acceptance of the last AMS under the Prime Contract. (12.4.1)

The Subcontractor shall, at its own expense:

- a. where the Latent Defect is the result of a design deficiency, redesign the Supplies (including provision of effective test procedures to demonstrate the rectification of the deficiency);
- b. correct the Supplies notified by Boeing under this clause and all similar items of Supplies by repair, Modification or replacement of the Supplies or by any other means acceptable to Boeing; and
- c. make any necessary redesign, correction, Modification or replacement of any other Supplies (including Technical Information) which are affected by the Latent Defect,

whether or not those Supplies have already been Accepted or delivered. (12.4.2)

If the Subcontractor fails to rectify a Latent Defect in the Supplies within the time specified by Boeing in the notice referred to in this clause, Boeing may perform or have performed the work of rectification and all costs and outgoings shall be reimbursed to Boeing by the Subcontractor on demand. (12.4.3)

29. Warranties Not Voided

The Subcontractor shall be released from its warranty and Latent Defect responsibilities under this Subcontract to the extent that the defect, deficiency or failure which is the subject of the warranty or Latent Defect claim was caused or contributed to by:

- a. acts or omissions of Boeing, the Commonwealth or a third party; or
- b. a Modification to the Supplies by Boeing or the Commonwealth implemented notwithstanding the Subcontractor's or Boeing's technical objection. (12.5.1)

This clause does not apply to:

- a. acts or omissions by Boeing or the Commonwealth in compliance with Technical Information; or
- b. acts of omissions of:
 - (1) the Subcontractor's subcontractor in the context of this Subcontract; or
 - (2) the Subcontractor or a Related Company in its capacity as an ISC subcontractor in that context. (12.5.2)

30. Support Period

The Subcontractor undertakes to support the Supplies for a period of 35 years (for the purposes of this clause called the "Support Period") commencing on Acceptance of the last AMS under the Prime Contract by:

- a. providing or maintaining facilities for the supply of quantities of Spares and Support and Test Equipment as are necessary to meet orders by Boeing or the Commonwealth or a Commonwealth appointed support contractor to maintain the Supplies in effective operation; and
- b. providing engineering and Technical Information services at reasonable rates to be agreed; and
- c. by providing such support as is otherwise required by this clause. (12.6.1)

Where during the Support Period the Subcontractor intends to disperse or close a facility for the supply of any of Spares or Support and Test Equipment, it shall provide Boeing with advance notice being not less than two months of the dispersal or closure, and shall nominate in the notice the date by which Boeing or the Commonwealth may place orders for the final production run. (12.6.2)

In the event that the Subcontractor during the Support Period decides to disperse or close its facilities for manufacture of items in respect of which it has Proprietary Rights or is for any other reason unable to continue to supply (or arrange for another company to supply) such items, the Subcontractor agrees, to the extent permitted by U. S. law, to grant to Boeing and the Commonwealth, within 45 days of the dispersion or close of the facilities, a royalty free, non-exclusive, irrevocable licence to manufacture or have manufactured such Spares and Support and Test Equipment in Australia to maintain the Supplies in effective operation. In that event, the Subcontractor shall also supply to Boeing and the Commonwealth, and to third persons nominated by Boeing or the Commonwealth, within 45 days of the dispersion or close of the facilities, such Technical Information as the Subcontractor possesses that is necessary for the manufacture of such items. (12.6.3)

In this clause, "Proprietary Rights" means the Intellectual Property in the Supplies or any Spares and Support and Test Equipment for the Supplies. (12.6.4)

The Subcontractor shall use its best endeavors to include the rights of Boeing and the Commonwealth contained in this clause in all subcontracts. (12.6.5)

Neither Boeing nor Commonwealth shall be bound to order any, or any particular quantity of, Spares and Support and Test Equipment from the Subcontractor. (12.6.6)

31. Indemnity and Insurance - Subcontractor's Employees

The Subcontractor shall indemnify Boeing and the Commonwealth against liability of Boeing or the Commonwealth for death of or injury to any person employed by the Subcontractor on work under the Subcontract, except to the extent that such death or injury results from any unlawful or negligent act or omission on the part of Boeing or the Commonwealth or any person acting through Boeing or the Commonwealth. (13.1.1)

Before commencing work under the Subcontract, the Subcontractor shall fully insure or register with the appropriate statutory authority against liability for death of or injury to persons employed by the Subcontractor, including liability by statute and common law. The insurance shall be maintained until all work under the Subcontract is completed. (13.1.2)

The Subcontractor shall ensure each of its subcontractors is insured against their corresponding liabilities. (13.1.3)

32. Indemnity and Insurance - Property Damage and Public Risk

The Subcontractor shall indemnify Boeing and the Commonwealth, and their respective officers, employees and agents against:

- a. loss of, or damage to, property of the Commonwealth (other than the Supplies) except to the extent that the indemnity in the clause entitled "Care of GFM" applies;
- b. claims by any person in respect of personal injury or death, except to the extent that the Subcontractor's indemnities under the clauses entitled "Subcontractor's Employees" and "Hazardous Substances" apply;
- c. claims by any person in respect of loss of, or damage to, any property (other than the Supplies) except to the extent the Subcontractor's indemnity under the clause entitled "Hazardous Substances" applies; and
- d. costs and expenses including the costs of defending or settling any claim referred to in this clause;

arising out of or as a consequence of any work under the Subcontract by the Subcontractor, its employees or its subcontractors except to the extent that such death, injury or property loss or damage results from any unlawful or negligent act or omission on the part of Boeing or the Commonwealth or any person acting through Boeing or the Commonwealth. (13.2.1)

33. Limitation of Liability

Other liability excluded: The Subcontractor shall not be liable in contract, tort (including negligence or otherwise), at law, under statute or in equity (except as

provided in the subclause entitled "Liability for unlawful misconduct, etc.") for loss of or damage to an item of Supplies occurring after Acceptance of the Supplies by the Commonwealth under the Prime Contract and resulting from a defect or deficiency in the Supplies. (13.4.4)

Liability for unlawful misconduct, etc.: The subclause entitled "Other liability excluded" does not limit the Subcontractor's liability for loss of or damage to Supplies caused by a defect or deficiency in the Supplies resulting from unlawful misconduct, willful misconduct, fraud or criminal negligence on the part of the Subcontractor. (13.4.5)

Exclusion of economic loss: The Subcontractor shall not be liable for economic loss or other damages caused by loss of use of Supplies as a result of any defect or deficiency in the Supplies. (13.4.6)

Implied warranties: All implied warranties of merchantability and implied warranties of fitness for purpose cease to apply to the Supplies upon Acceptance of the Supplies by the Commonwealth under the Prime Contract. (13.4.7)

Application to Subcontractors, etc: The limitations on the Subcontractor's liability in this clause entitled "Limitation of Liability" extends to the Subcontractor and its subcontractors, including their respective directors, officers, employees, agents, Related Companies and assigns. (13.4.8)

Preservation of warranty and other rights: Nothing in this clause entitled "Limitation of Liability" affects the warranty and Latent

Defects rights under this Subcontract. (13.4.9)

34. Integrated Baseline Review (IBR) (applicable to first tier subcontractors)

During IBR the Subcontractor shall demonstrate to Boeing's satisfaction that the following requirements are met:

- a. the complete Subcontract scope of work is covered in the Subcontract Work Breakdown Structure (SWBS);
- b. the technical scope can be accomplished within cost and schedule baseline constraints and that resources have been appropriately distributed to the Subcontract tasks;
- c. there is a logical sequence of effort that supports the Subcontract schedule;
- d. identified risk assessments are adequately represented in cost and resource allocations, and in the Integrated Master Schedule;
- e. the Subcontractor's Performance Measurement Baseline is valid and accurate, through examination of at least one Cost Performance Report (CPR); and
- f. the Subcontractor's cost schedule control system reflects a sound performance management process. (14.6.6)

35. Subcontractor Cost Schedule Control Systems Criteria Flowdown Requirements

Unless otherwise agreed to by Boeing, if this Subcontract (or any group of Subcontracts with the Subcontractor) or any subcontract under this Subcontract requires work in excess of 12 months and the Subcontract or subcontract price exceeds:

- a. \$A460M for development subcontracts and \$A200M for all other subcontracts, the Subcontractor (and its subcontractor when applicable) shall maintain and use in the performance of the Subcontract (or subcontract when applicable) a Cost Schedule Control System compliant with DEF(AUST) 5655 and in the same terms as required of Boeing under the Prime Contract and as described in DEF (AUST) 5657; or
- b. \$A20M, but less than the thresholds at a. above, or contains critical tasks as agreed between the Boeing and the Commonwealth, the Subcontractor (and its subcontractor when applicable) shall implement, use and maintain a CSSR system as specified in DEF (AUST) 5658, Para 5.2.

The application of CSCS and CSSR to the Subcontractor (and its subcontractors when applicable) is set out in Attachment M of the Prime Contract. (14.7.1)

If the Subcontractor is a first tier subcontractor to Boeing, the Validation and subsequent Surveillance of its Cost Schedule Control Systems shall be in accordance with DEF(AUST) 5657 and DEF(AUST) 5658 as appropriate. (14.7.2)

If the Subcontractor is a first tier subcontractor to Boeing, it shall make available to Boeing on request records of any Validation or Surveillance of its CSCS. (14.7.3)

The Subcontractor shall permit representatives of Boeing and the Commonwealth to participate in any Validation or Surveillance of its CSCS. The Subcontractor shall give Boeing written notice at least 45 days prior to the conduct of such Validation or Surveillance. (14.7.4)

A first tier Subcontractor to whom the flowdown requirements of this clause are to be applied shall, within two months of the effective date of the Prime Contract, provide Boeing with a schedule for CSCS or CSSR system review. The Subcontractor shall advise Boeing of any changes to the review schedule prior to the conduct of any review. (14.7.5)

The Subcontractor shall incorporate data from its subcontractors' reports in its own CPR to Boeing and upon request, shall provide Boeing with a copy of its subcontractors' reports. (14.7.6)

A first tier Subcontractor may report in the reports they submit to Boeing, the selling price of their Supplies, provided that the Subcontract requires the Subcontractor, when requested, to provide cost information directly to the Commonwealth. The

cost information in a Subcontractor's reports to Boeing shall be converted into the Subcontractor's selling price for inclusion in Boeing's Cost Performance Reports submitted to the Commonwealth. (14.7.7)

The Subcontractor shall establish procedures which furnish for all of its subcontractors (other than those requiring work in excess of 12 months and exceeding the dollar thresholds set forth above):

- a. adequate indicators of subcontractor performance; and
- b. identification, cause and impact of subcontractor schedule or technical problems. (14.7.8)

36. Cost Performance Reports

The Subcontractor shall allow visibility to the lowest level in all CPRs of both the Subcontractor and its subcontractors, including the provision of additional Format 5 data, if requested in writing to do so by Boeing. (14.8.4)

37. Change to the Contract

All Change Proposals shall contain a full cost breakdown and certification by the Subcontractor, that the Subcontractor, and if applicable its subcontractors, costs are reasonable. The Subcontractor shall provide:

- a. access to its records to enable the investigation of the reasonableness of proposed costs and profit under the clause entitled "Cost Investigation;" and
- b. evidence to Boeing to support any other aspect of a Change Proposal including the labour hours by labour category estimated for the performance of the work. (15.1.4)

38. Subcontracts

The Subcontractor shall ensure that:

- a. all subcontracts contain quality requirements corresponding to the Quality management requirements of the Subcontract as appropriate for the nature of the work being subcontracted; and
- b. all subcontracts with subcontractors involved in the design of the Supplies contain AEO requirements functionally equivalent to the AEO requirements of the Subcontract. (16.1.7)

Where Subcontractors are required to have access to classified material, the Subcontractors shall possess a facility clearance of the appropriate type and level of classification, issued by the Defence Security Branch in the case of an Australian based Subcontractor or the relevant government industrial security authority in the case of an overseas based Subcontractor. The Subcontractor shall make compliance by its subcontractors with the provisions of this clause and the clause entitled "Defence Security," a condition of any subcontract. (16.1.8)

Subject to the clause entitled "Applicable Law," the Subcontractor agrees that Boeing may provide the Commonwealth with access to and a copy of the terms and conditions and statement of work of the Subcontract (except for Subcontract prices). This requirement does not apply to Subcontracts pertaining to the Baseline Aircraft. (16.1.9)

The Subcontractor shall ensure that all of its subcontracts contain Year 2000 compliance requirements functionally equivalent to the Year 2000 compliance requirement of the Subcontract. (16.1.10)

The Subcontractor warrants that all subcontractors, employees, consultants or agents engaged by the Subcontractor in the performance of the Subcontract shall be suitably qualified and experienced to perform the tasks or work allocated to them and (where appropriate) shall hold such licences, permits or registrations as are required under any applicable legislation to carry out work under the Subcontract. (16.1.11)

39. Commonwealth Access

Except as provided in the clauses entitled "Cost Investigation," "Cost Performance Reporting" and "Changes to the Contract," whenever work under the Subcontract is being performed, and otherwise at all other reasonable times, the Subcontractor shall provide to the Project Authority, the Resident Project Team, Commonwealth IV&V contractors, and other Commonwealth representatives notified to the Subcontractor, with:

- a. prompt access to its premises and access to all of its records, documentation and accounts in connection with performance of work under the Subcontract by the Subcontractor or its subcontractors; and
- b. such reasonable clarification as may be required. (17.1.1)

The Subcontractor shall ensure that the provisions of its subcontracts (other than subcontracts solely for COTS Items) provide the Project Authority, the Resident Project Team, Commonwealth IV&V contractors, and other Commonwealth representatives notified to the Subcontractor, with similar prompt access to its subcontractors' premises, and to records, documentation and accounts in connection with such subcontractor's performance of work under the subcontracts and such reasonable clarification as may be required. (17.1.2)

The Subcontractor warrants that in any event access to premises pursuant to this clause, whether Subcontractor or its subcontractor's premises, will be provided within 15 days of Boeing's request. (17.1.3)

Boeing shall require the Commonwealth to comply with, and shall require any delegate or person authorised by the Commonwealth to comply with, any Subcontractor or subcontractor safety and security requirements or codes of behaviour for the premises. (17.1.4)

The Subcontractor shall, within 15 days of the effective date of the Prime Contract, provide the Commonwealth with on-line access to the Contractor's Management Systems as set out in Attachment N of the Prime Contract. The on-line access shall:

- a. be on a continuous (24 hour) basis except for down time due to maintenance;
- b. be available through a login procedure; and
- c. enable the user to display and print information. (17.1.5)

The Subcontractor shall supply all hardware, Software, training and maintenance necessary for provision and utilisation of the on-line access required under this clause. (17.1.6)

The Commonwealth's access under this clause pertaining to either the manufacture of the Baseline Aircraft and to other COTS Items (including COTS Items which incorporate Minor Modifications) shall be limited to access described in Attachment I of the Prime Contract. (17.1.7)

40. Clearances for Commonwealth Personnel

Boeing shall be responsible for arranging any clearances required for Commonwealth personnel by the relevant national authorities for access to the Subcontractor's and its subcontractors' premises where these are located outside Australia. The Subcontractor shall provide all reasonable assistance necessary to facilitate this process. (17.2.4)

The Commonwealth shall comply with, and require persons afforded access under the clause entitled "Commonwealth Access" to comply with, any relevant safety and security arrangements and regulations and codes of behaviour that apply to premises or sites of the Subcontractor or its subcontractors that are relevant to the Subcontract. (17.2.5)

41. Subcontractor Access to Commonwealth Premises

During the period of performance of the Prime Contract, the Commonwealth has agreed to provide access to Commonwealth premises for persons approved under this clause as necessary for the Subcontractor's performance of the Subcontract. (17.3.1)

The Subcontractor must seek written permission from Boeing, at least two months prior to entry being required, for each person the Subcontractor wishes to have access to Commonwealth premises. (17.3.2)

Boeing may by notice to the Subcontractor withdraw access rights to any Commonwealth premises at any time for any period, and the extent to which that withdrawal of access delays delivery of the Supplies may be claimed as an Act of Prevention except to the extent that an act or omission of the Subcontractor caused or contributed to the withdrawal of access. (17.3.3)

The Subcontractor must comply with, and require persons afforded access under this clause to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for Commonwealth premises. (17.3.4)

Boeing may notify the Subcontractor of any special security or access provisions that apply to particular Commonwealth premises or sites relevant to the Subcontract. (17.3.5)

42. Defence Security

All matter of a classified nature transmitted between any two of the Commonwealth, Boeing, the Subcontractor and other subcontractors, in Australia, whether generated in Australia or overseas, shall be subject to the provisions of the Defence Industrial Security Manual – SECMAN 2, as amended from time to time. (17.5.5)

All Communications Security (COMSEC) material passing between any two of the Commonwealth, Boeing, the Subcontractor and other subcontractors, in Australia, shall in addition to the provisions of this clause, be subject to the special security provisions of the Australian Department of Defence publication "Communications Security Handbook ASCI 53," as amended from time to time. (17.5.6)

All matter of a classified nature transmitted between any two of the Commonwealth, Boeing, the Subcontractor and other subcontractors, overseas, whether generated in Australia or overseas, shall be subject to the laws of the overseas country regarding the custody and protection of classified material, and to any bilateral security instrument between Australia and the overseas country. (17.5.7)

All COMSEC material passing between any two of the Commonwealth, Boeing, the Subcontractor and other subcontractors overseas, shall be subject to agreement in the first instance by the Director Defence Signals Directorate, Department of Defence, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material of those countries. In such cases, the material shall be subject to the laws of the overseas countries regarding the custody and protection of COMSEC material. (17.5.8)

Where there has been a breach or non-observance by the Subcontractor, its subcontractors, or any of their respective servants or agents of the obligations under this clause, Boeing may notify the Subcontractor that in the opinion of Boeing or the Commonwealth, the said breach or non-observance is of a fundamental nature and is incapable of being remedied by the Subcontractor, whereupon Boeing may issue to the Subcontractor a notice of termination for default and terminate the Subcontract in accordance with the provisions of the clause entitled "Subcontractor Default." (17.5.9)

43. Subcontractor Default

Boeing, in addition to any other right or remedy it may have, by notice in writing to the Subcontractor, terminate the Subcontract, in whole or in part, in the event that the Subcontractor:

- a. becomes bankrupt or insolvent;
- b. makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, or a receiver and manager, appointed on behalf of debenture holders or creditors;
- c. being a company, goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or being subject to any petition or proceedings in a court for the compulsory winding-up of the Subcontractor or being subject to the supervision of the court either voluntarily or otherwise;
- d. suffers execution against any assets of the Subcontractor which has an adverse effect on the Subcontractor's ability to perform its obligations under the Subcontract;

e. commits any breach for which the Subcontract provides a notice of termination for default may be given;

f. fails;

(1) to commence work under the Subcontract, or proceeds at a rate of progress so as to endanger the due and proper completion of the Subcontract; or

(2) to take action to remedy a default by the Subcontractor of another obligation to be performed or observed under the Subcontract;

within thirty (30) days of being given notice in writing by Boeing requiring the Subcontractor to remedy the default, or fails to remedy the default within sixty (60) days of being given that notice;

g. assigns its rights otherwise than in accordance with the requirements of the Subcontract;

h. has AEO status withdrawn, and not reinstated within two (2) months.

If the Subcontract is terminated under this clause:

a. the parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination; and

b. rights to recover damages, including full contractual damages, shall not be affected.

The references in clause b. above to "full contractual damages" means damages for all losses (including the loss of benefits which would have been conferred on Boeing and the Commonwealth by the Subcontract as a whole and in the future) resulting from the failure of the Subcontractor to carry out all its obligations under the Subcontract notwithstanding the fact that the Subcontractor may have been both willing and able to perform those obligations but for the notice terminating the Subcontract.

44. Termination for Convenience

The Subcontractor shall comply with such written directions as Boeing may provide concerning the termination for convenience of the Subcontract.

The Subcontractor, in each of its subcontracts of a value in excess of \$A1,000,000, shall secure the right of termination and provisions for compensation functionally equivalent to that of Boeing under the termination for convenience provisions of this Subcontract. (18.3.6)

45. Assignment

Neither party may, without the prior written consent of the other party, assign in whole or in part its rights, obligations or liabilities under the Subcontract, except that Boeing may make such an assignment to any wholly-owned subsidiary. (18.4.1)

46. Applicable Law

The Subcontractor, in the performance or amendment of the Subcontract, must comply with all applicable laws of Australia, the United States of America and any other relevant country, and must obtain all necessary approvals from the appropriate governmental agencies. (18.6.3)

47. Intellectual Property

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48. Administration of the Australian Industry Involvement (All) Plan

The Subcontractor shall maintain adequate records of All activities as set out in Attachment U of the Prime Contract. The Subcontractor shall also permit the Commonwealth to have access to these records and to its premises, as is necessary to allow validation of its progress in meeting the All Plan. The Subcontractor, in all of its subcontracts, shall require Subcontractors to maintain and provide access for the Commonwealth to its records and premises to the same extent as required from the Subcontractor by this clause. For the purposes of this clause, Boeing shall coordinate all access to Subcontractor records and facilities through the Subcontractor. (20.2.3)

The Subcontractor shall provide All Progress Reports to Boeing in accordance with the requirements of the Statement of Work. (20.2.4)

49. Affirmative Action

The Subcontractor shall comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* ("the Act"). (21.1.1)

The Subcontractor shall not enter into any subcontract under the Subcontract with a subcontractor named by the Director of Affirmative Action as an employer currently not complying with the Act. (21.1.2)

50. Maximising Employment Opportunities for Aboriginals and Torres Strait Islanders

The Subcontractor shall use its best endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people in accordance with the terms of Attachment V of the Prime Contract. The Subcontractor shall not contract out of this obligation. (21.2.1)

51. Hazardous Substances

Hazardous Substances except for those substances listed in Attachment W of the Prime Contract shall not be used in the Supplies without the prior written consent of Boeing. In granting consent, Boeing may impose such conditions as Boeing thinks fit. (21.3.1)

Where such consent is given, the subcontractor shall ensure in respect of the Supplies that:

- a. full details of any Hazardous Substances as identified in accordance with this clause, and included in the Supplies, are provided to Boeing in the format of a Material Safety Data Sheet (MSDS). The subcontractor shall comply with NOHSC 2011 (1994): "National Code of Practice for the Preparation of Material Safety Data Sheets."
- b. all documentation, including that related to operation, maintenance, assembly, shipping/handling, etc., is clearly endorsed to identify the presence and nature of the hazard;
- c. all Supplies containing Hazardous Substances bear appropriate labels which clearly identify the nature of the substances, the associated hazards and appropriate safeguards; and
- d. the Subcontractor is responsible for all materials used by its subcontractors in respect of this clause. (21.3.2)

The Subcontractor hereby indemnifies and shall keep indemnified Boeing and the Commonwealth against any and all liability, loss, damages, costs (including the costs of any reasonable settlement), compensation or expense whatsoever incurred by Boeing or the Commonwealth which arises out of any action, claim or proceeding in respect of incorporation or use in the Supplies of the Hazardous Substance which is the subject of the request for consent. (21.3.3)

The liability of the Subcontractor under this clause shall be reduced to the extent that any liability, loss, damages, costs, compensation or expense referred to in that clause was contributed to by the Modification or alteration of the Supplies by Boeing or the Commonwealth or any other person (other than the Subcontractor or its subcontractors or a servant or agent of either of them) contrary to the Subcontractor's reasonable instructions. (21.3.4)

The Subcontractor shall promptly (and no later than three calendar days after discovery) advise Boeing if, at any time during the

production of the Supplies, it becomes aware of a non-Hazardous Substance which could be substituted for the content without significant detriment to the performance of the Supplies. (21.3.5)

All Supplies for delivery under the subcontract shall conform to all laws relating to any Hazardous Substances included therein which apply in the country of manufacture, during transit and within Australia. To the extent consistent with their function, the Supplies shall not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to personnel, the environment or the operation of other equipment. (21.3.6)

52. Ozone Depleting Substances

The Subcontractor shall not provide Supplies containing a substance which is proscribed by the *Ozone Protection Act* (1989) except for those substances listed in Attachment X of the Prime Contract. Additional Ozone Depleting Substances shall not be used in the Supplies without the prior written consent of Boeing. (21.4.1)

Boeing shall not authorise the provision of Ozone Depleting Substances unless the import or manufacture of the substance is licensed, and the Subcontractor does not in the import or manufacture exceed the quota applying to the Subcontractor for the substance. (21.4.2)

Supplies containing an unauthorised Ozone Depleting Substance may be rejected by Boeing. (21.4.3)

53. Industrial Relations Policy (for subcontracts for construction work)

The Subcontractor shall establish, maintain and administer an industrial relations policy for the site, which conforms in all respects with the Industrial Relations Component of the National Code of Practice for the Construction Industry and so as to ensure the timely and economical completion of the Works and in particular, without limiting the generality of the foregoing, shall ensure that all persons employed or engaged in the Works or any part thereof whether by the Subcontractor or by any of its subcontractors or suppliers are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be or become entitled to as a result of their employment on the Works by virtue of any statute, ordinance, subordinate legislation, award, building industry agreement, determination, judgment, order of any competent court, board, commission or other industrial tribunal or any site agreement from time to time in force in relation to the Works. (22.2.1.1)

54. Industrial Disputes (for subcontracts for construction work)

The Subcontractor shall take all reasonably necessary steps to prevent any industrial dispute arising which is likely to affect the carrying out of the Works (22.2.2.1)

55. Possession of Site (for subcontracts for construction work)

Boeing shall within 15 months after the effective date of the Prime Contract give to the Subcontractor and its subcontractors possession of the site to enable it to commence work and thereafter to execute the work under the subcontract in accordance with the requirements of the Subcontract. For the purposes of this clause, "site" means the site described in the ASC Functional Design Brief at Attachment H to the Statement of Work of the Prime Contract. (22.4.1)

56. Liability of the Subcontractor after Date of Practical Completion (for subcontracts for construction work)

After the Date of Practical Completion of the Works under the Prime Contract, the Subcontractor shall indemnify and keep indemnified Boeing and the Commonwealth against all loss or damage to the Works arising out of or resulting directly or indirectly from any negligent act or omission of the Subcontractor or its subcontractors or any employee or agent of the Subcontractor or of any of its subcontractors or out of any default of the Subcontractor under the Subcontract. For the purposes of this clause "default" shall include (without limitation) faulty design, workmanship or materials. (22.8.1)

57. Site Aspects (for subcontracts for construction work)

Subject to Boeing's and the Commonwealth's rights under the clause entitled "Possession of Site," the Subcontractor and its subcontractors shall have adequate and unrestricted access to the site during all hours of each day of the year during which time work remains to be performed at the site. The route from the main road to both the site and the facility to be constructed on the site will be suitably paved and adequate to allow for the passage of fully laden 18-wheel semi-trailers up to within 20 metres of the facility

perimeter. The Subcontractor agrees to share access to the site with others performing work for Boeing and the Commonwealth, provided that if such sharing of access materially impacts the performance of the Subcontractor's or its subcontractor's work on the site the Subcontractor will be entitled to relief under the clause entitled "Price and Schedule Impact of Site Changes." (22.9.6)

58. Price and Schedule Impact of Site Changes

The Subcontractor shall be entitled to price and schedule relief for:

- a. changes to the site (whether above or below the surface) after the effective date of the Prime Contract to the extent that the Subcontractor, by reference to the site survey, can demonstrate to the reasonable satisfaction of Boeing that the changes occurred after such effective date and were not reasonably foreseeable;
- b. changes to the quality or quantity of utilities or services or the time by which they are available;
- c. reduced access to or possession of the site or a material increase in any interference with the Subcontractor's or its subcontractor's performance of work at the site; and
- d. below surface conditions of the site to the extent that the Subcontractor can demonstrate to the reasonable satisfaction of Boeing that those conditions were not revealed by a site survey conducted with due care and skill. (22.10.1)

The Subcontractor shall apply for schedule changes in accordance with the clause entitled "Postponement of the Date for Delivery of the Supplies." The Contractor shall apply for cost relief by submitting a separate price claim to Boeing and shall permit investigation of the claim under the clause entitled "Cost Investigation." (22.10.2)

59. GST

Boeing and the subcontractor acknowledge that, with the introduction of the Australian Goods and Services Tax (GST) on 1 July 2000, GST will arise in respect of Australian taxable supplies made in connection with this subcontract.

Prices stated in this agreement do not include GST unless otherwise stated.

To the extent that GST is to be charged to Boeing, the subcontractor shall ensure that any invoice for payment of taxable supplies provided by it to Boeing under this contract shall constitute a tax invoice within the meaning of the GST Act enabling Boeing to obtain input tax credits in respect of the taxable supplies to which the invoice relates. All tax invoices presented to Boeing shall have the GST component separately and clearly itemized. No GST amount shall be due and payable by Boeing to the subcontractor in respect of taxable supplies under this contract until such a tax invoice has been received by Boeing.

Where the subcontractor incorrectly states the amount of GST paid or payable by Boeing on an otherwise valid tax invoice, the subcontractor shall issue Boeing a valid adjustment note in accordance with the GST Act.