

EXHIBIT A

PRIME CONTRACT FLOW DOWN REQUIREMENTS

CONTRACT NO.: C338318

1. Definitions [R/Rev. B]

In the Contract, unless the contrary intention appears, the term:

"Australian Industry Involvement (All) Milestone" means the achievement against the All Plan, to the satisfaction of the Project Authority, of an identified Local Content activity and/or Strategic Industry Development Activity.

"Australian Industry Involvement (All) Plan" means the plan which describes the activities and the methodology for the management, verification, reporting, auditing and validation of Local Content and Strategic Industry Development Activities to achieve the Industry Objectives.

"Attachment" means an attachment to the Contract listed in the Table of Contents.

"Australian and New Zealand 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.

"Background IP" means Intellectual Property which:

- a. is pre-existing IP brought to the Contract task at the Effective Date or IP subsequently brought into existence other than as a result of the performance of the Contract; or
- b. Results from or is otherwise created pursuant to or for the purposes of the performance of this Contract or a Subcontract, as the case may be, but is not the product of work funded by the Commonwealth under this Contract; and
- c. is embodied in, or attaches to, the Supplies or is otherwise necessarily related to the functioning of the Supplies.

"Commercial-in-Confidence Information" means information including (without limitation) trade secrets, know-how and any information comprised in Technical Information that:

- a. is by its nature confidential; or
- b. is identified in writing as being Commercial - in confidence, but does not include information which:
 - (i) is or becomes public knowledge other than by breach of the Contract;
 - (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
 - (iii) has been independently developed or acquired by the receiving party.

"Commonwealth IP" means Background IP which is or becomes owned by the Commonwealth and includes Foreground IP when Foreground IP is vested in the Commonwealth.

"Communications Security Supplement" means the supplement to the Defence Industrial Security Manual relating to communications security.

"COMSEC" means Communications Security.

"Contract" means this document including the Attachments, the Statement of Work and any document expressly incorporated as part of the Contract.

"Contractor" means The Boeing Company.

"Contractor IP" means Background IP which is or becomes owned by the Contractor and includes any Foreground IP which vests in the Contractor.

"day" means calendar day.

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

"Defence Purpose" means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth, but excludes commercial exploitation.

"Development Specifications" means the specifications to be developed by the Contractor on the basis of the Functional Specifications and delivered to the Commonwealth pursuant to CDR(I)-EM-31.

"Disposition of Non-Conformity" has the same meaning as in Australian/New Zealand Standard AS/NZS ISO 8402-1994.

"document" includes:

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

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

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

"Foreground IP" means Intellectual Property which:

a. results from or is otherwise created pursuant to or for the purposes of the performance of the Contract or a Subcontract as the case may be; and

b. is the product of work funded by the Commonwealth under this Contract.

"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 supplied by the Commonwealth.

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

"Local Content" means the value added by ANZ industry in satisfying the Statement of Work including any related profit.

"month" means calendar month.

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

"Priority One" means an Industry Objective which Defence has identified as strategically important.

"Priority Two" means, an Industry Objective which Defence has identified as highly beneficial for the Contract and/or longer-term industry sector development and sustainability.

"Project Authority" means the person holding or performing the office of AEW&C Project Director or any other person appointed pursuant to the 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.

"Small to Medium Enterprises" means those organizations where:

- a. For manufacturing, the annual turnover does not exceed \$20 million per year and the number of employees does not exceed 200; and
- b. For services, the annual turnover does not exceed \$20 million per year and the number of employees does not exceed 50.

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

"Subcontractor" means any person that, for the purposes of the Contract, furnishes Supplies directly to the Contractor or indirectly to the Contractor through another person. Seller is used in this document to designate a subcontractor to The Boeing Company under Contract No. C338318.

"Subcontractor IP" means Background IP which is or becomes owned by a Subcontractor and includes any Foreground IP which vests in a Subcontractor.

"Technical Information" means all technical know how and information (whether in recorded or unrecorded form) produced or acquired by the Contractor or a Subcontractor to be supplied under the Contract and includes (without limitation) all data, manuals, handbooks, design, standards,

specifications, reports, writings, models, sketches, plans, drawings, calculations, computer programs, software, Source Code, Software Design Data and other items describing or providing information relating to the Supplies or their operations.

"Third Party IP" means any Intellectual Property which is used in the performance of the Contract and which is:

- a. incorporated into commercial off the shelf equipment;
- b. not owned by the Buyer or the Seller; and
- c. not necessary to enable the Commonwealth to exercise the Foreground and Background IP referred to in clauses 9.2.1 and 9.2.2 for the purposes referred to in those clauses.

"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. Claims for Payment [DELETED/Rev. B]

3. **Right of Buyer to Recover Money** [DELETED/Rev. B]

4. **Taxes and Duties**

- a. All duties and taxes payable on the Supplies in the country of origin shall be borne by the Seller.

5. **Government Furnished Material** [DELETED/Rev. A]

6. **Warranty** [Do not flowdown this provision for the IDA contract; however, a warranty provision may be required for System Acquisition.] [R/Rev. A]

7. **Indemnity and Insurance**

a. Seller's Employees

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

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

(3) The Seller shall ensure each Subcontractor is insured against the Subcontractor's corresponding liabilities.

b. Property Damage and Public Risk

(1) The Seller shall indemnify the Commonwealth, its officers, employees and agents against:

(a) loss of, or damage to, property of the Commonwealth (other than the Supplies) except to the extent that clause applies;

(b) claims by any person in respect of personal injury or death, except to the extent that the Seller's indemnity under clause 7a(1) applies;

(c) claims by any person in respect of loss of, or damage to, any property (other than the Supplies); and

(d) costs and expenses including the costs of defending or settling any claim referred to in clauses 7b(1)(b) and 7b(1)(c); arising out of or as a consequence of any work under the Contract by the Seller, its employees or 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 the Buyer or the Commonwealth or any person acting through the Buyer or the Commonwealth.

(2) Before commencing work under the Contract, the Contractor shall take out a public liability policy of insurance providing cover for an amount not less than [INSERT AMOUNT...] in the names of the Contractor and the Commonwealth in respect of the liabilities referred to in clause 7b(1).

(3) The public liability policy of insurance referred to in clause 7b shall include a cross liability provision in which the insurer shall agree to waive all rights of subrogation against the Commonwealth.

(4) The Seller shall maintain the public liability policy of insurance for the duration of the work under the Contract and, on request, shall produce satisfactory evidence of such insurance to the Project Authority.

8. Access and Security [R/Rev. A]

a. Commonwealth Access

1. Whenever work under the Contract is being performed, and otherwise at all other reasonable times, the Seller shall permit the Project Authority access to its premises, and access to any of its records or accounts in connection with performance of work under the Contract by the Seller or its Subcontractors. This clause does not entitle the Commonwealth to have access to financial information, except where necessary to verify All.
2. The Seller shall ensure that the provisions of Subcontracts provide the Project Authority with similar access to Subcontractors' premises, and to records and accounts in connection with the Subcontractor's performance of work under the Subcontract.
3. The Project Authority shall comply with, and shall require any delegate or person authorized by the Project Authority to comply with, any Contractor safety and security requirements or codes of behavior for the premises.
4. If Seller is required to have access to classified material, the Seller shall possess a facility clearance of the appropriate type and level of classification, issued by the Defence Security Branch if the Seller is Australian based or the relevant government industrial security authority if the Seller is not Australian based.

b. Contractor Access to Commonwealth Premises

1. The Commonwealth during the period of the Contract shall provide access to Commonwealth premises for persons approved under this clause as necessary for the Seller's performance of the Contract.
2. The Seller must seek written permission from the Project Authority, within the period of one month prior to entry being required, for each person the Seller wishes to have access to Commonwealth premises.
3. The Project Authority may by notice to the Seller withdraw access rights to any Commonwealth premises at any time for any period, and the extent that withdrawal of access delays delivery of the Supplies may be claimed as an Act of Prevention unless an act or omission of the Seller caused or contributed to the withdrawal of access.

4. The Seller must comply with, and require persons afforded access under clause b. to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behavior for the Commonwealth premises.

5. The Project Authority may notify the Seller of any special security or access provisions that apply to particular Commonwealth premises or sites relevant to the Contract.

c. Commercial-in-Confidence Information

1. The Seller shall not indiscriminately mark materials "Commercial-in-Confidence."

2. Where, in connection with the Contract, Commercial-in-Confidence Information is provided or produced then the party receiving or producing the Commercial-in-Confidence Information as the case may be shall:

a. observe the relevant obligation of confidentiality attached to such Commercial-in-Confidence Information;

b. subject to any contrary provision in the Contract, not without the prior consent in writing of the other party disclose such Commercial-in-Confidence Information to anyone other than persons having a need to know and who are required to safeguard the Commercial-in-Confidence Information; and

c. require its officers, servants and agents to observe the obligations referred to in clause c.

except to the extent that those provisions would prevent the Commonwealth from exercising the Intellectual Property rights accorded it pursuant to clause 9, or otherwise.

3. The provisions of clause c.1 shall not apply to the Commonwealth wherever the Commercial-in-Confidence Information:

a. relates to the decision to award the Contract to the Contractor;

b. is information or data that the Commonwealth is required by law to make public;

c. is data or information in a material form in respect of which an interest whether by licence or otherwise in the Intellectual Property rights vest in or is assigned to the Commonwealth under a Contract or otherwise; or

d. is required to be disclosed by a Court, Tribunal or Royal Commission.

9. **Intellectual Property (IP)** [R/Rev. A]

Prior to award, Sellers shall be required by the Commonwealth to enter a "Deed of Agreement to Assign and Licence Intellectual Property Rights (Subcontractor)," which incorporates the terms of this provision. For this provision, "Subcontractor" is the same as "Seller."

9.1. Interpretation

9.1.1. Definitions

Unless the contrary intention appears or the context otherwise requires or admits, the following expressions shall have the following meanings:

"Acceptance" has the same meaning as in the Contract.

"Background IP" means Intellectual Property which:

a. is pre-existing IP brought to the Subcontract task at the commencement of the Subcontract or IP subsequently brought into existence other than as a result of the performance of the Contract or Subcontract; or

b. results from or is otherwise created pursuant to or for the purposes of the performance of this Subcontract but is not the product of work funded by the Commonwealth under this Subcontract; and

c. is embodied in, or attaches to, the Supplies or is otherwise necessarily related to the functioning of the Supplies.

"Commercial-in-Confidence Information" means information, including (without limitation) trade secrets, know-how and any information comprised in Technical Information, that:

a. is by its nature confidential; and

b. is identified in writing as being Commercial-in-Confidence; but does not include information which:

(i) is or becomes public knowledge other than by breach of the Deed;

(ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or

(iii) has been independently developed or acquired by the receiving party.

"Commonwealth IP" means Background IP which is or becomes owned by the Commonwealth and includes Foreground IP when Foreground IP is vested in the Commonwealth.

"Defence Purpose" means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth but excludes commercial exploitation.

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

"Foreground IP" means Intellectual Property which:

- a. results from, or is otherwise created pursuant to or for the purposes of the performance of the Subcontract; and
- b. is the product of work funded by the Commonwealth under this Subcontract.

"Intellectual Property" means all 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 all Commercial-in-Confidence Information, including know-how and trade secrets) resulting from intellectual activity in the industrial, scientific, literary and artistic fields.

"Supplies" means aspects of the design of the AEW&C capability and all other documentation, services and Technical Information required to be supplied by the Subcontractor under the Subcontract.

"Technical Information" means all technical know-how and information (whether in recorded or unrecorded form) produced or acquired by the Subcontractor in relation to the Supplies and includes (without limitation) all data, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, computer programs, software, Source Code, Software Design Data, and other items describing or providing information relating to the Supplies or their operations.

"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.

9.1.2. General

Unless the contrary intention appears:

- a. A reference to "dollar" or "\$" means the monetary unit, or unit of currency of Australia.
- b. Headings are for the purpose of convenient reference only and do not form part of the Deed.

c. A reference to a clause includes a reference to a subclause of that clause.

d. The singular includes the plural and vice-versa.

e. A word importing a gender includes every other gender.

f. A reference to a person includes a body politic or corporate and a partnership.

g. A reference to a clause or subclause is a reference to a clause or subclause of this provision.

h. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

9.2. Survival

The Deed will survive the termination or expiry of either or both of the Contract and the Subcontract.

9.3. Commonwealth Intellectual Property

9.3.1. Assignment of Foreground IP

9.3.1.1. All foreground IP shall immediately upon creation vest in and become the property of the Commonwealth and is by force of the Deed assigned by the Subcontractor to the Commonwealth.

9.3.1.2. The Commonwealth shall have the exclusive right to apply for registration of any Foreground IP in all countries of the world.

9.3.1.3. The Subcontractor shall:

a. provide access to the Commonwealth, including without limitation, its patent attorney, to all work carried out in the performance of the Subcontract, and to all records of such work as is reasonably required by the Commonwealth for the purpose of determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;

b. provide all information, execute all documents and do all acts and things reasonably necessary in assisting the Commonwealth to:

(i) secure the adequate and timely preparation of the applications for registration or other protection of Commonwealth IP;

(ii) prosecute, maintain, enforce or defend such registrations or other protection; and

c. refrain from publication, dissemination or other communication of any Commercial-in-Confidence Information constituting Commonwealth IP, and from any other action which might compromise any Commonwealth IP or threaten the subsistence, registration or exploitation of any Commonwealth IP.

9.3.2. Licence Commonwealth to Subcontractor

9.3.2.1. The Subcontractor may seek a licence from the Commonwealth to use any invention or process or other Intellectual Property contained in the Commonwealth IP subject to such terms as are mutually agreed.

9.3.3. Licence to Commonwealth of Background IP

9.3.3.1. Unless clause 9.3.3.5. applies, the Subcontractor hereby grants to the Commonwealth a royalty free, irrevocable, world-wide, perpetual, non-exclusive licence, (including, subject to the provisions of clause 9.2.3.2. of the Contract a right

to sub-licence) to exercise all Background IP which is or becomes vested in the Subcontractor so as to enable the Commonwealth, or another person on behalf of the Commonwealth to:

- a. evaluate the Supplies; and
- b. otherwise exercise the Foreground IP for Defence Purposes.

9.3.3.2. Where, pursuant to the Deed, the Commonwealth makes available to another person any Background IP owned by the Subcontractor ("the Rights") the Commonwealth shall obtain from that person a deed of confidentiality, which deed shall:

a. impose an obligation on such person to use the Rights solely for the purposes provided for in clause 9.3.3.1. and to observe appropriate confidentiality requirements; and

b. obtain an acknowledgment from such person that:

(i) the Rights belong to, and at all times remain the property of the Subcontractor; and

(ii) that misuse of the Rights will cause harm to the Subcontractor; and

c. provide that the Subcontractor is a third party beneficiary of the undertakings and may enforce the same.

9.3.3.3. The Commonwealth will cooperate with the Subcontractor, as the case may be, in any reasonable action that they take to enforce their ownership of the Rights against a person to whom the Commonwealth makes the Rights available.

9.3.3.4. If:

a. the Commonwealth enters into the System Acquisition Contract with a person other than the Contractor; or

b. the Commonwealth does not proceed with the AEW&C project, then ownership of the Foreground IP shall transfer to the Subcontractor.

9.3.3.5. On transfer of Foreground IP to the Subcontractor in accordance with clause 9.3.3.4. the licences to Background IP granted to the Commonwealth or obtain for the Commonwealth under clause 9.3.3. shall terminate.

9.3.3.6. The Commonwealth shall provide all information, execute all documents and do all acts and things reasonably necessary to give effect to clauses 9.3.3.4. and 9.3.3.5.

9.3.3.7. If the Commonwealth enters into the System Acquisition Contract with the Contractor, the Commonwealth will negotiate with the Subcontractor in good faith for:

a. a licence giving the Subcontractor the exclusive right to exploit the Foreground IP commercially; or

b. a grant of ownership of the Foreground IP to the Subcontractor, without detracting from the right of the Commonwealth, or a person on behalf of the Commonwealth, to exercise the Foreground IP for the purposes of:

(i) the use, repair, maintenance, modification, adaptation and development of the system developed under the System Acquisition Contract including its integration with other systems; or

(ii) the completion of that system if the System Acquisition Contract were terminated for the Contractor's default; or

(iii) otherwise for Defence purposes.

9.4. Intellectual Property Rights Issues

9.4.1. The Subcontractor shall warrant that acts done by the Commonwealth (or by another person on its behalf), in accordance with the Deed and in relation to the Supplies do not infringe the Intellectual Property rights or right to confidentiality of any person.

9.4.2. The Subcontractor shall indemnify, and keep indemnified the Commonwealth, and any other person acting on its behalf against any and all liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor/client basis), compensation, or expense whatsoever incurred by them, arising out of any action, claim or proceeding brought by a third party in respect of:

a. an infringement or alleged infringement of that third party's Intellectual Property; or

b. breach or alleged breach of a duty of confidentiality owed to that third party, where the breach is caused by an act or omission on the part of the Subcontractor or its officers, servants or agents (whether or not such act or omission constitutes a breach of the Deed).

9.4.3. The Commonwealth shall notify the Subcontractor in writing as soon as practicable of any claim or demand made, or action, suit or proceeding threatened or brought, against the Commonwealth arising from the infringement or alleged infringement referred to in clause 9.4.2. and shall consult with the Subcontractor as to the ongoing conduct of the defence and settlement of the matter.

9.4.4. For the purposes of clause 9.4. "infringement" includes (without limiting the generality of the foregoing) unauthorised acts which would, but for the operation of section 163 of the *Patents Act* 1990, Section 40A of the *Designs Act* 1906, Section 183 of the *Copyright Act* 1968, and Section 25 of the *Circuits Layout Act* 1989 (or any sections that replace those sections from time to time), constitute an infringement.

9.5. Not Used

9.6. No Exclusion of Law or Equity

The Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Commercial-in-Confidence Information.

9.7. Waiver

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

9.8. Remedies Cumulative

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

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

9.9. Variations and Amendments

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

9.10. Applicable Law

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

10. Affirmative Action

- a. The Seller shall comply with its obligations, if any, under the Affirmative Action (Equal Opportunity for Women) Act of 1986 ("the Act"). (Applicable only if the Seller is performing work in Australia.)
- b. The Seller shall not enter into a Subcontract with a Subcontractor named by the Director of Affirmative Action as an employer currently not complying with the Act.

11. **Australian Industry Involvement (All)** [Those Subcontractors participating in All should be provided a copy of Attachment U. [R/Rev. A]

11.1. All Plan

11.1.1. The Seller shall implement its portion of the All Plan as set out in Attachment U.

11.1.2. The Seller shall work with the Buyer to achieve the level of Local Content and Strategic Industry Development Activity as set out in Attachment U.

11.1.3. Completion of the All Plan shall not relieve the Seller from responsibility to complete the Supplies, or from liability for any defect in the Supplies arising from the design, workmanship, or materials provided by Australian and New Zealand (ANZ) Industry.

11.2. Administration of the All Plan

11.2.1. The All Plan shall be administered in accordance with the All Plan in Attachment U.

11.2.2. Where a change to the Contract affects its part of the All Plan, the Seller shall submit a Contract Change Proposal specifying the extent to which the All Plan is affected.

- a. If an activity identified in the Industry Objective Summary Schedule in Attachment U is affected, the Seller shall specify the corrective action necessary to ensure that the All Plan is achieved.

b. If there is any probable or actual shortfall in Local Content, which is not identified in the Industry Objective Summary Schedule in Attachment U, the Seller shall identify an acceptable way to make good the shortfall.

11.2.3. The Seller shall maintain adequate records of its All Achievement Schedule activities as set out in Attachment U. The Seller shall also permit the Project Authority 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 Commonwealth shall co-ordinate all access to Seller records and facilities through the Buyer.

11.2.4. The Seller shall provide All Progress Reports to the Buyer.

11.2.5. All Plan achievement shall be reviewed at Project Management Review meetings or other meetings.

11.3. Failure to Achieve the All Plan

11.3.1. Achievement of the All Plan is fundamental to the Contract and the Project Authority may reject any Supplies or parts thereof, which do not comply with the requirements of the All Plan.

11.3.2. Not Used.

11.3.3. Not Used.

11.3.4. If the Seller fails to achieve the All Plan, including the agreed levels of Local Content and Strategic Industry Development Activity, and the Project Authority, after consultation with the Buyer and Seller, is satisfied that:

a. the shortfall can be achieved in a System Acquisition Contract; and

b. the failure is due to circumstances beyond the reasonable control of the Buyer and Seller which could not have reasonably been foreseen at the Effective Date;

and the Commonwealth issues an RFT to the Buyer for System Acquisition, any subsequent System Acquisition Subcontract awarded Seller against this clause will contain an obligation to achieve the shortfall.

11.3.5. If the Seller fails to achieve its part of the All Plan, including the agreed levels of Local Content and Strategic Industry Development Activity, and the Project Authority is not satisfied that the failure is due to circumstances beyond the reasonable control of the Seller which could not have reasonably been foreseen at the Effective Date, the Buyer may determine not to issue an RFT to the Seller for a subsequent System Acquisition.

12. **Ozone Depleting / Substances** [DELETED Rev. A]

13. **Total System Performance Responsibility (TSPR)** [If your Subcontractor is providing a subsystem, include this provision.] [A/Rev. B]

13.1. The Seller accepts TSPR. The Seller has represented and this subcontract has been executed on the basis that the Seller:

a. agrees to the practicability and feasibility of the Statement of Work and Functional Specifications;

b. provides all warranties contained in the subcontract; and

c. agrees that the obligations defined in this subcontract are not diminished by:

(i) its reliance in whole or in part on Subcontractors to provide Supplies or services;

(ii) the selection of certain Subcontractors to satisfy the Commonwealth's All requirements;

(iii) its reliance in whole or in part on GFI; or

(iv) any conflict or inconsistency which may be found between achievement of the Statement of Work and Specifications and the Seller's proposed AEW&C design.

14. **Maximising Employment Opportunities for Aboriginals and Torres Strait Islanders**

14.1 The Seller shall use its best endeavors to provide employment opportunities to Aboriginal and Torres Strait Islander people.

15. **Year 2000 Compliance** [Include if your Subcontractor will be providing any computing equipment or software.]

15.1 The Seller shall ensure that the design of the AEW&C system to be developed under this Subcontract as part of the Supplies shall be specifically designed to accommodate and implement the transition from year 1999 to the year 2000 including leap year calculations.