



Section D2: Supplemental Subcontractor Terms and Conditions Applicable to Commonwealth of Australia Land 998 Replacement Aviation Fire Truck (RAFT) Program  
Revised: February 2, 2015

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## BACKGROUND

The Australia RAFT Land 998 Contract No. DMO/LSD/00003/2014 is a contract (“prime contract”) awarded to Oshkosh Airport Products, LLC by the Commonwealth of Australia represented by the Department of Defence (CoA DMO). The prime contract imposes legal requirements that must be observed by Oshkosh’s suppliers and subcontractors in the supply chain. Oshkosh Corporation and its affiliates (“Oshkosh”) therefore require that you accept certain additional prime contract terms and conditions. These terms and conditions are included in specific clauses contained in the text below and requirements found in referenced documents as indicated. In many cases, the clauses included in this Section D2 retain the format and numbering convention as they exist in the prime contract. Although these clauses and requirements are flowed down to suppliers, much like the U.S. Federal Acquisition Regulation clauses contained in U.S. Government contracts, their content is unique to Australian Government contracts. Accordingly, all suppliers and subcontractors under the RAFT program should carefully note the contents of these clause and requirements.

Many CoA DMO documents referenced in this Section D2 are available at:

<http://www.defence.gov.au/dmo/Multimedia/DPPM-9-5247.pdf>

<http://www.defence.gov.au/Publications/>

<http://www.defence.gov.au/DMO/>

## TERMS & CONDITIONS

The following terms and conditions are incorporated in their entirety into any Purchase Order designated on its face as an “Australia RAFT” Purchase Order awarded by Oshkosh. Further, certain terms and conditions are noted as only applicable to “Approved Subcontracts”, and such terms and conditions shall be incorporated when the Purchase Order is identified by Oshkosh as an “Approved Subcontract” or “Approved Subcontractor”. The referencing and reproduction, in this section of the Supplier Standards Guide, of the appropriate CoA DMO clauses and requirements shall conclusively establish their applicability, as well as their incorporation into the Purchase Order, with the same force and effect as though set forth in the Purchase Order itself. In the event of a conflict between this Section D2 and Section D - Commercial Terms and Conditions, Section D2 shall prevail to the extent of any inconsistency.

### 1. Definitions

In order to effect the parties’ intent to flow down and accept the listed clauses and requirements as between Oshkosh and the Supplier, the listed terms shall generally be given the following meanings,

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unless the context dictates otherwise or unless subject to an interpretive note as indicated in the clauses and requirements interpretive notes below:

- a. "Contractor" shall mean Supplier.
- b. "Contract" shall mean the Purchase Order between Oshkosh Corporation and Supplier.
- c. "Commonwealth" shall mean Oshkosh Corporation unless it is clear from the context of the clause or requirement that "Commonwealth" must refer to the Australian Government or the Department of Defence's Defence Materiel Organisation in order to effect the essential purpose of the clause or requirement as between Oshkosh Corporation and Supplier.
- d. "DPPM" shall mean the Government of Australia's Defence Procurement Policy Manual in effect at the date of the applicable Purchase Order.
- e. "Supplies" means the item or items to be furnished under the Purchase Order
- f. References to "clause" shall mean the prime contract clause referenced or otherwise included in this Section D2.

Subject to the above, words, words, abbreviations and acronyms have the meaning given to them by the Glossary at Attachment M of the prime contract (attached hereto). The Glossary also contains definitions of WBS elements, a list of documents referred to in the Contract and details of the version that is applicable to the Contract. The rules of interpretation in clause 1.2 of the Contract also apply to these terms.

## **2. Authorisations (prime contract clause 3.3).**

### **3.3.1 The Contractor shall:**

- a. obtain and maintain in full force all Authorisations (other than Export Approvals) required to perform all of the work under the Contract and for the provision of the Supplies;
- b. take all reasonable steps to obtain and maintain in full force all Export Approvals required for the provision of the Supplies;
- c. provide a copy of any Authorisations to the Commonwealth within 10 Working Days of request by the Commonwealth; and
- d. ensure that all work under the Contract is performed and the Supplies are provided in accordance with all Authorisations.

## **3. Australian Industry Capability (clause 4.1 and SOW clause 3.12).** This clause (clause 4.1 and SOW clause 3.12) is applicable only to Approved Subcontracts.

4.1.1 The Contractor shall comply with clause 3.12 of the SOW and achieve the Industry Requirements to the extent applicable to the Supplies to be provided by the Contractor under the Contract.

### **4.1.2 The Contractor acknowledges that:**

- a. compliance with the AIC Plan shall not relieve the Contractor 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;
- b. Acceptance of the Supplies shall not relieve the Contractor from meeting its obligations under the AIC Plan at Attachment E; and
- c. the Public AIC Plan section of the AIC Plan will be made publicly available on a Commonwealth internet website.

**Statement of Work (SOW) clause 3.12.**

3.12.1.1 The Contractor shall comply with the AIC Plan, as directed by Oshkosh in Supplier's statement of work.

3.12.1.2 The Contractor shall further develop, deliver and update the AIC Plan in accordance with CDRL Line Number MGT-700.

3.12.1.3 Where the Contractor proposes an update to the Approved AIC Plan, in accordance with 3.12.1.2 the Contractor shall submit a Contract change proposal in accordance with clause 10.1 of the conditions of Contract to incorporate the proposed change into the Contract.

3.12.1.4 The Contractor shall develop and deliver an AIC Progress Report to Oshkosh at ED + five Working Days and thereafter with every 2<sup>nd</sup> update to the PMP (in accordance with CDRL Line Number MGT-100) outlining progress toward the achievement of the requirements of the Contract, and on proposed remedies to any difficulties in meeting these requirements. Each report shall:

- a. provide financial and schedule data on Local Industry Activity (LIA) achievement and a forecast for the next reporting period;
- b. provide an explanation for over or under performance of the AIC Plan, including identifying which LIAs are causing the over or under performance;
- c. describe what actions will be taken to address under performance of the AIC Plan and identify any emerging risks that could prevent full achievement of the AIC Plan; and
- d. provide details of any mentoring, trade sponsorship, up-skilling and training activities that the LIA recipient has received and provide a forecast of what will be performed in the next reporting period; and shall include (in dollar amounts):
- e. AIC achievement for the reporting period;
- f. cumulative AIC achievement to date;
- g. the forecast AIC value for the next reporting period; and
- h. the total AIC value, for the Contract, and shall include, for the AIC program, graphical representations of:
- i. forecast values for each reporting period;
- j. achieved values for each reporting period to date; and
- k. cumulative actual and forecast values; for the Contract.

3.12.1.5 Prior to, or following, the submission of the first AIC Progress Report, a review may be conducted by the Commonwealth at the Contractor's premises to assess and verify the:

- a. implementation of the AIC Plan; and
- b. adequacy of the Contractor's financial management information system and data collection methods.

3.12.1.6 AIC progress reviews may be undertaken by the Commonwealth at the Contractor's and Subcontractors' premises upon provision of reasonable notice to verify the nature and a level of the work actually performed and the achievement of the AIC Plan and Industry Requirements as reported by the Contactor. The Contractor shall facilitate any review conducted by the Commonwealth.

3.12.1.7 [Omitted]

3.12.1.8 Not used.

3.12.1.9 The Contractor shall use reasonable endeavours to ensure that ANZ industry perform the activities set in Industry Requirement (IR) Activity Schedule Table 1:

IR No	IR Title	Nature of IR Activity
IR 1	Repairs and Maintenance	Periodic maintenance and other repairs beyond the scope or capacity of ADF.
IR 2	Upgrade of Aviation Fire Trucks	Implementation of system upgrades to maintain appropriate capacity, operation and sustainment of the system as per the Functional Performance Specification.
IR 3	Spares Support	Warehousing and distribution of spares.
IR 4	Systems Assurance	Undertake Certification activities to ensure that the Aviation Fire Trucks comply with all rules and regulations to allow import and use in Australia.
IR 5	Training	Provision of training materials in Contractor's format and documentation for operators and maintainers.
IR 6	Training	Provision of training services for operators and maintainers.
IR 7	Documentation	Customisation of manuals and other documentation into suitable ADF formats.

**Table 1: Industry Requirement Activity Schedule**

**4. Intellectual Property Licence (prime contract clause 5.3).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia.

- 5.3.1 The Contractor grants to the Commonwealth and to Oshkosh a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Background IP and any Foreground IP that is owned by the Contractor (other than IP in the Excluded Materials), including the right to sub-license:
- a. to use, maintain and dispose of the Supplies;
  - b. subject to the limitations listed in the IP Plan, to modify and develop the Supplies and to manufacture the Supplies for the purpose of use, maintenance and disposal of the Supplies without commercialising the licensed IP;

- c. to complete the Supplies upon termination of the Contract other than in accordance with clause 12.3; and
  - d. to remedy defects or omissions in the Supplies.
- 5.3.2 For the avoidance of doubt, the licence granted under clause 5.3.1 does not permit the Commonwealth or Oshkosh, or a person on behalf of the Commonwealth or Oshkosh, to commercialise the Background IP or Foreground IP licensed under that clause (Licensed IP). The licence permits the Commonwealth and Oshkosh to sub-license the Licensed IP to a third party for the sole purpose of providing goods and services to the Commonwealth for the Commonwealth's purposes specified in clause 5.3.1.
- 5.3.3 At the request of the Commonwealth or Oshkosh, a Contractor that is subject to an Approved Subcontract shall execute a deed substantially in the form set out at Annex A to Attachment H and provide the Deed to the Commonwealth or Oshkosh (as applicable). If the deed is requested by Oshkosh, the form of the deed will be amended so as to confer on Oshkosh rights consistent with clauses 5.3.1, 5.3.2 and 5.3.4. Such deed may be made available to an Approved Subcontractor upon request to Oshkosh.
- 5.3.4 The Contractor shall ensure that the Commonwealth and Oshkosh are granted a licence to exercise all Third Party IP on the best available commercial terms.
- 5. Moral Rights (prime contract clause 5.6).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia. The Contractor represents and warrants that the use of the Supplies for purposes permitted by the Contract will not infringe the Moral Rights of the officers, employees or agents of the Contractor. The Contractor shall ensure that none of its officers, employees or agents institute, maintain or support any claim or proceeding against the Commonwealth or its officers, employees or agents for infringement of any of their Moral Rights.
- 6. Insurance (prime contract clause 8.6).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia. Supplier shall ensure that it is insured as required by this clause 8.6, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by Supplier.
- 8.6.1 The Contractor shall effect and maintain the insurances (which, for the purposes of this clause 8.6 will be satisfied where the Contractor causes such insurances to be effected and maintained or where the Contractor is insured under such insurances) for the times and in the manner specified in this clause 8.6, without requiring insurance to be effected to the extent that a particular risk:
- a. is insured against under other insurance effected in compliance with this clause 8.6; or
  - b. has been expressly retained by the Commonwealth, except to the extent that such retention by the Commonwealth is dependent on the Contractor being liable only to the extent that it is insured for the liability.
- 8.6.2 [Omitted]
- 8.6.3 (workers compensation) The Contractor shall effect and maintain:
- a. workers compensation insurance or registrations as required by law. Where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance or registrations shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the Contractor. However, the requirements of this clause 8.6.3a do not apply to the

extent and for such time as the Contractor is a licensed self-insurer in the relevant jurisdiction; and

- b. in each jurisdiction where common law claims can be brought outside of the statutory workers compensation or accident compensation scheme referred to in clause 8.6.3a, employer's liability insurance with a limit of indemnity of not less than the amount customarily effected by prudent insureds for this risk in each relevant jurisdiction, covering any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Contractor in the work under the Contract (or their dependants). Such insurance shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the Contractor.

8.6.4 (public liability) The Contractor shall effect and maintain public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10 million each and every occurrence which covers:

- a. the Contractor, its officers, employees and agents (including for liability to each other); and
- b. the Commonwealth and the Commonwealth Representative for their vicarious liability for the acts or omissions of the Contractor, its officers, employees and agents,  
for their respective liabilities for any:
- c. loss of, damage to, or loss of use of, any tangible property (including GFF, GFE and any other Commonwealth property in the care, custody or control of the Contractor for a sublimit of not less than \$10 million each occurrence and in the aggregate for all occurrences in any 12 month policy period, unless that property is insured against the risks of loss and damage under the insurance referred to in clause 8.6.6 (property [or Industrial Special Risks])); or
- d. the bodily injury, disease, illness or death of any person,

caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Contract.

8.6.5 Not Used.

8.6.6 (property) The Contractor shall effect and maintain all risks property insurance covering:

- a. the tangible Supplies;
- b. GFE, GFF and any other property of the Commonwealth in the care, custody or control of the Contractor unless and to the extent that the liability of the Contractor for the loss or damage of that property is insured under the insurance referred to in clause 8.6.4 (public and products liability [or public liability]); and
- c. all other property, plant and equipment in the care, custody or control of the Contractor, its agents or Subcontractors, material to the Contractor's ability to perform its obligations under the Contract,

against the risks of loss, damage or destruction by all commercially insurable risks (including earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage and resulting loss or damage arising from faulty material, workmanship or design), for the full replacement or

reinstatement value of such insured property and including cover for consultant's fees, extra costs of reinstatement, and removal of debris. The insurance shall insure the Contractor and the Commonwealth, each for their respective interests in the property insured.

- 8.6.7 (transit) The Contractor shall effect and maintain insurance covering any tangible property referred to in clause 8.6.6, against the risks of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transits of such property by land, sea or air and during loading or unloading and storage during transit, where such transits are at the risk of the Contractor. The insurance shall insure the Contractor and the Commonwealth, each for their respective interests in the property insured.
- 8.6.8 Not Used.
- 8.6.9 Not Used.
- 8.6.10 Not Used.
- 8.6.11 Not Used.
- 8.6.12 Not Used.
- 8.6.13 Not Used.
- 8.6.14 Not Used.
- 8.6.15 Not Used.
- 8.6.16 The insurances and registrations referred to in:
  - a. the following clauses shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until all work under the Contract is completed:
    - i. clause 8.6.3 (workers compensation);
    - ii. clause 8.6.4 (public liability);
    - iii. clause 8.6.6 (property);
    - iv. not used;
    - v. not used;
    - vi. not used;
    - vii. not used;
    - viii. not used; and
    - ix. not used;
  - b. clause 8.6.7 (transit) shall be effected on or before the start of each conveyance and maintained until the end of each conveyance by delivery at the delivery point.

8.6.17 With the exception of statutory insurances, the insurances referred to in this clause 8.6 shall:

- a. be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Commonwealth, acting reasonably; and
- b. provide that the insurer agrees:
  - i. to provide at least 20 Working Days written notice of cancellation to the policyholder;
  - ii. that the policy operates (with the exception of limits of indemnity) as if there was a separate policy of insurance covering each party comprising the insured;
  - iii. that a failure by any insured to observe and fulfil the terms of the policy or to comply with the pre-contractual duty of disclosure does not prejudice the insurance of any other insured;
  - iv. that the state of mind and knowledge of one insured will not be imputed to any other insured for the purposes of determining the availability of cover under the policy;
  - v. to waive all rights of salvage in respect of property of the Commonwealth which the Commonwealth notifies to the Contractor at or before the time of loss is of a sensitive nature from a national security perspective, however this only applies to the insurances referred to in the following clauses:
    1. clause 8.6.4 (public liability);
    2. clause 8.6.6 (property);
    3. clause 8.6.7 (transit);
    4. Not Used;
    5. Not Used;
    6. Not Used;
    7. Not Used; and
  - vi. that a notice of a claim by any insured will be accepted as notice by all insureds.

8.6.18 The Contractor shall, on request, produce satisfactory evidence to the Commonwealth Representative of the currency and terms of the insurances referred to in this clause 8.6, including:

- a. certificates of currency issued by the insurer or by the Contractor's insurance broker which contains sufficient detail to enable the Commonwealth to ascertain whether the insurances are in compliance with this clause 8.6;
- b. copies of all policies (except for statutory insurances and provided that, in relation to commercially sensitive policies only, for the purpose of complying with this clause



8.6.18b, such policies may be made available for inspection by the Commonwealth or the Commonwealth's advisers, at a place and time reasonably convenient to the Commonwealth or the Commonwealth's advisers); and

c. other evidence of the insurances which the Commonwealth reasonably requires.

8.6.19 If the Contractor fails to comply with clause 8.6.18, the Commonwealth may, but is not obliged to, effect and maintain the relevant insurances and may:

a. recover the cost of doing so as a debt due to the Commonwealth; or

b. deduct the premiums payable for the relevant insurances from amounts payable to the Contractor under the Contract.

8.6.20 In the event the Commonwealth elects to exercise its rights under clause 8.6.19, the Contractor shall provide the Commonwealth with all reasonable assistance to allow the Commonwealth to exercise those rights, including by executing documents and providing insurance proposal information to the Commonwealth's insurance broker and proposed insurers.

8.6.21 In respect of each insurance referred to in this clause 8.6, the Contractor shall:

a. pay (or cause to be paid) all premiums and deductibles as and when they are due;

b. not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;

c. if necessary, rectify anything which might prejudice any insurance;

d. reinstate an insurance policy if it lapses;

e. not cancel, materially adversely vary or allow an insurance policy to lapse without the prior written consent of the Commonwealth;

f. promptly notify the Commonwealth of any event (including the issue of a notice of intension to cancel by the insurer to the policyholder) which may result in an insurance policy lapsing or being cancelled;

g. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by the Commonwealth;

h. give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payment of any claims under the insurance; and

i. do everything reasonably required by the Commonwealth or any other person in whose name the policy is effected to enable the Commonwealth or that other person to claim and to collect or recover monies due under any insurance policy.

- 8.6.22 The Contractor shall not do anything which has been notified to the Contractor in writing by the Commonwealth that may invalidate any insurance policy held by the Commonwealth or any indemnity to which the Commonwealth may be entitled.
- 8.6.23 The Commonwealth may increase or decrease the limits of indemnity required for the insurances referred to in, or change the types of insurances required by, this clause 8.6 at each renewal date of the relevant insurance by providing 3 months prior written notice to the Contractor. The Commonwealth shall only increase the limits of indemnity required for the insurances referred to in, or require additional insurances under, this clause 8.6 where it has obtained an opinion from a reputable insurance broker or otherwise appropriately qualified consultant that an increase is required in order to conform with current prudent insurance practice for a company with a risk profile comparable to the Contractor. The Contractor shall, within 30 days of receipt of a notice from the Commonwealth to increase or decrease the limits of indemnity required for the insurances referred to in, or change the types of insurances required by, this clause 8.6, submit a CCP to effect a change to the Contract.
- 8.6.24 If the Contractor becomes aware that a risk to be covered by an insurance policy referred to in this clause 8.6 has or is to become Uninsurable then:
- a. the Contractor shall immediately notify the Commonwealth in writing together with all details available to the Contractor as to the reason why the risk is Uninsurable, steps taken by the Contractor to obtain insurance for the risk, the date on which the risk became or will become Uninsurable, and details as to what the Contractor suggests is appropriate to mitigate, manage or control the risk while it remains Uninsurable;
  - b. the parties shall meet as soon as reasonably practicable, but (unless otherwise agreed between the parties) no later than 5 Working Days after the notification in clause 8.6.24a to discuss all practical means by which the risk shall be managed (including, if the risk is material, the option of the Commonwealth providing an indemnity to the Contractor covering substantially the risks which have become Uninsurable or varying the Contract);
  - c. if the parties cannot agree as to how an Uninsurable risk is to be managed then, if the Uninsurable risk is material, either party, acting reasonably and in good faith, may terminate the Contract with the exception that the Contractor shall not terminate the Contract if the Commonwealth offers an indemnity in substitution for insurance for the Uninsurable risk and that indemnity is no less broad than the insurance held by the Contractor for that risk immediately before the risk became Uninsurable;
  - d. the Contractor shall, in respect of any risk that has become Uninsurable:
    - i. monitor the insurance industry on a regular basis (and not less than twice a year) and attempt to obtain insurance for the risk which is Uninsurable;
    - ii. provide the Commonwealth with details of attempts made by the Contractor to obtain insurance for the Uninsurable risk; and
    - iii. as soon as it is able to do so, obtain insurance for Uninsurable risk;
  - e. the Contractor acknowledges that the Commonwealth may undertake its own enquiries as to the availability of insurance for Uninsurable risks and as to the terms and conditions, including price, on which it is available. If the Commonwealth's own enquiries show that the insurance for Uninsurable risks is available on terms and conditions that are

commercially reasonable in all of the circumstances, the Contractor shall obtain that insurance without unreasonable delay; and

- f. the Contractor is relieved of its obligations under clause 8.6 to effect insurance for any risk that is Uninsurable for the period that the risk remains Uninsurable.

8.6.25 For the purposes of clause 8.6.24, Uninsurable means, in relation to a risk, either that:

- a. insurance required pursuant to this clause 8.6 is not available in the international insurance markets with insurers with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another reputable rating agency); or
- b. the insurance premium for insuring that risk is at such a level or the terms and conditions are such that the risk is not generally being insured against in the international insurance market with reputable insurers by prudent corporates with a risk profile comparable to the Contractor.

8.6.26 The Contractor shall be:

- a. deemed compliant with the requirements of the following clauses:
  - i. clause 8.6.1;
  - ii. clause 8.6.3 (workers compensation);
  - iii. clause 8.6.4 (public liability);
  - iv. Not Used;
  - v. clause 8.6.6 (property);
  - vi. clause 8.6.7 (transit);
  - vii. Not Used;
  - viii. Not Used;
  - ix. Not Used;
  - x. Not Used;
  - xi. Not Used;
  - xii. Not Used;
  - xiii. Not Used;
  - xiv. Not Used; and
  - xv. clause 8.6.17; and
- b. relieved of its obligations under clauses 8.6.18 and 8.6.21 in relation to the insurances listed in clause 8.6.26a,

for any period during which the Contractor's insurance program holds Approved Contractor Insurance Program (ACIP) status under the Defence Materiel Organisation's centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval. The Contractor shall advise the Commonwealth Representative within 5 Working Days if its ACIP status is withdrawn by the Commonwealth.

8.6.27 In addition to any other rights the Commonwealth may have, Oshkosh reserves the right to withhold payments under the Contract if the Contractor has failed to remedy a breach of this clause 8.6.

**7. Privacy (prime contract clause 8.7).** The Contractor shall indemnify the Commonwealth against any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the Contractor's or Subcontractor's obligations referred to in clause **Error! Reference source not found.**

**8. Warranty (prime contract clause 9.2).**

9.2.1 For purposes of this clause 9.2.1, "Commonwealth" shall mean the Commonwealth of Australia. The Contractor warrants that the design, materials and workmanship in the Supplies conform with, and that the Supplies meet the requirements of the Contract. The Contractor shall remedy by repair, replacement or modification, defects in design, materials and workmanship in the Supplies notified to the Contractor by the Commonwealth Representative during the period of 12 months starting from Acceptance of the Supplies by the Commonwealth (for the purposes of clause 9.2 called the "warranty period"). For purposes of this clause 9.2.1, the date of "Acceptance of the Supplies" shall mean the date the Supplies, as incorporated into an end item delivery by Oshkosh to the Commonwealth under the prime contract, are accepted by the Commonwealth.

9.2.2 The Contractor shall remedy by repair, replacement or modification any other Supplies which are affected by the corrective actions taken by the Contractor to address a warranty claim notified to the Contractor under clause 9.2.

9.2.3 The liability of the Contractor to remedy defects under the warranty provided by the Contractor under clause 9.2.1 shall not apply to the extent that the defect arises from the Commonwealth's negligent or wilful damage of the Supplies.

9.2.4 The Contractor, unless the Commonwealth otherwise allows, shall meet all costs of, and incidental to, the performance of remedial work under clause 9.2, including any packing, freight (not exceeding the freight cost between the Contract delivery point and the agreed repair facility and return), disassembly and re-assembly costs.

9.2.5 The Commonwealth may at its discretion require the Contractor to carry out such tests as are relevant to the remedial work and provided for under the Contract. If such tests show that Supplies remedied by the Contractor do not comply with the Contract, the Contractor shall rectify the defect, and the costs of the rectification and tests shall be borne by the Contractor. The Commonwealth shall bear the cost of any test where the Supplies which have been remedied fulfil the Contract requirements.

9.2.6 If the Contractor fails within the period of 14 days (or any longer period proposed and justified by the Contractor and agreed to in writing by the Commonwealth) after notification by the Commonwealth, to rectify a defect pursuant to clause 9.2, the Commonwealth may, without limiting the Contractor's warranties and obligations under clause 9.2, perform or have performed the necessary remedial work at the expense of the Contractor and may recover such expense as a debt.

9.2.7 If a further defect in design, materials, and workmanship in an item of Supplies remedied in accordance with clause 9.2 is notified to the Contractor by the Commonwealth before the expiry of the warranty period or during a period commencing on the date the remedied Supplies are returned to the Commonwealth and extending for 6 months, whichever is the greater, the Contractor shall remedy the further defect.

9.2.8 The rights and remedies provided in clause 9.2 are in addition to, and shall not limit, any other rights of the Commonwealth under the Contract or otherwise.

9.2.10 In clause 9.2 the obligation to remedy defects in Supplies shall not extend to remedy of defects in GFM incorporated into the Supplies.

9.2.11 Any notification from Supplier that may be required by this clause 9.2 shall be directed to Oshkosh. Supplier is not authorized, without Oshkosh's written consent, to notify the Commonwealth of Australia pursuant to clause 9.2.

#### **9. Notification of Defects (prime contract clause 9.3)**

9.3.1 If during the period of fifteen (15) years commencing on the Effective Date, the Contractor becomes aware of any defect (including any Latent Defect) in the Supplies which adversely affects, or is likely to adversely affect:

- a. the safety of the Supplies or the safety of persons, the Contractor shall notify the Commonwealth of the defect within one Working Day; or
- b. the operation or capability of the Supplies, the Contractor shall notify the Commonwealth of the defect within five Working Days.

9.3.2 The Contractor shall within 20 Working Days of the initial notice provide a written statement of the nature of the defect, its cause and effect, and proposed remedial action.

9.3.3 Any notification from Supplier that may be required by this clause 9.3 shall be directed to Oshkosh. Supplier is not authorized, without Oshkosh's written consent, to notify the Commonwealth of Australia pursuant to clause 9.3.

#### **10. Latent Defects (prime contract clause 9.4)**

9.4.1 The Contractor shall, within the Contract Price, diagnose and correct any Latent Defects in Supplies if those Latent Defects are notified to it in writing by the Commonwealth within the period of fifteen (15) years commencing on Acceptance.

9.4.2 The Contractor shall, at its own expense:

- a. when 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 the Commonwealth under clause 9.4.1 and all similar items of Supplies by repair, modification or replacement of the Supplies or by any other means acceptable to the Commonwealth; and
- c. make any necessary correction, modification or replacement of any other Supplies which are affected by the Latent Defect,

whether or not those Supplies have already been Accepted or delivered.

9.4.3 If the Contractor fails to rectify a Latent Defect in the Supplies within the time specified by the Commonwealth in the notice referred to in clause 9.4.1, the Commonwealth may, without

limiting the Contractor's warranties and obligations under the Contract, perform or have performed at the expense of the Contractor any rectification work, and may recover such expense as a debt under clause 12.4.

9.4.4 Any notification from Supplier that may be required by this clause 9.4 shall be directed to Oshkosh. Supplier is not authorized, without Oshkosh's written consent, to notify the Commonwealth of Australia pursuant to clause 9.4.

## **11. Spare Parts and Support Equipment (prime contract clause 9.5).**

9.5.1 The Contractor shall for the period of fifteen (15) years commencing immediately after delivery of the Supplies provide facilities for the supply of sufficient quantities of spare parts and support equipment to maintain the Supplies in effective operation.

9.5.2 If during the period set in clause 9.5.1 the Contractor becomes aware that its ability to provide spare parts or support equipment may be adversely affected it shall provide the Commonwealth with advance notice being not less twelve (12) months of that event. If there will be a final production run of spare parts or support equipment the Contractor shall nominate in the notice the date by which the Commonwealth may place final orders.

9.5.3 [Omitted]

9.5.4 The Commonwealth shall not be bound to order any, or any particular quantity of, spare parts or support equipment from the Contractor.

9.5.5 Any notification from Supplier that may be required by this clause 9.5 shall be directed to Oshkosh. Supplier is not authorized, without Oshkosh's written consent, to notify the Commonwealth of Australia pursuant to clause 9.5.

## **12. Condition as to Disclosure by the Contractor (prime contract clause 10.2).**

10.2.1 The Contractor shall promptly notify and fully disclose to the Commonwealth, in writing, any event or occurrence actual or threatened during the performance of the Contract which may materially affect the Contractor's ability to perform any of its obligations under the Contract.

10.2.2 Without limiting clause 10.2.1, the Contractor:

- a. warrants that, to the best of its knowledge after making diligent inquiries at the Effective Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any of its employees, officers or agents; and
- b. shall notify the Commonwealth in writing immediately if such a conflict of interest arises, or appears likely to arise.
- c. Within seven days after giving notice under clause 10.2.1 or 10.2.2, the Contractor shall notify the Commonwealth in writing of the steps it will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by the Commonwealth. If the Contractor fails to notify the Commonwealth in accordance with clauses 10.2.2b or 10.2.3 or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may give the Contractor a notice of termination for default.

10.2.3 [Omitted]

**Negation of Employment and Agency (prime contract clause 10.6).**

10.6.1 The Contractor shall not represent itself, and shall ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being employees, partners or agents of the Commonwealth.

10.6.2 The Contractor, its officers, employees, agents and Subcontractors shall not by virtue of the Contract be, or for any purposes deemed to be, an employee, partner or agent of the Commonwealth.

**13. Commonwealth Access (prime contract clause 10.7).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia or Oshkosh.

10.7.1 During the performance of the Contract, the Contractor shall permit the Commonwealth Representative or any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts relevant to or impacting on performance of work under the Contract. The Commonwealth may copy any records or accounts for the purposes of the Contract.

10.7.2 Without limiting the generality of clause 13, the purposes for which the Commonwealth Representative may require access include:

- a. inspecting CMCA, attending, checking or conducting stocktakes of CMCA, including viewing and assessing the Contractor's inventory control and stocktaking systems and any data stored or recorded in the Contractor's inventory control and stocktaking systems, or removing CMCA that are no longer required for the performance of the Contract;
- b. conducting audits under the *Auditor-General Act 1997*;
- c. performing Audit and Surveillance activities in relation to Quality;
- d. validating the Contractor's progress in meeting the AIC Plan;
- e. investigating the reasonableness of proposed prices or costs in any CCP submitted in accordance with [the prime contract]. For the purpose of this investigation, the Contractor shall permit the Commonwealth to, or facilitate the Commonwealth being able to, exercise its access rights in this clause 10.7 to access Related Bodies' Corporate records (including subsidiary and parent company records) relating to transfer pricing, cross-subsidisation with related bodies corporate and the allocation of overheads between the Contractor and the Related Bodies Corporate to the extent that such records relate to the CCP;
- f. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
- g. validating the Contractor's progress in meeting the IP Plan;
- h. auditing raw data, Software Design Data, software, and Source Code for the purpose of validating the Contractor's performance under the Contract;
- i. [Omitted];

- j. investigating the reasonableness of any cost claims made by the Contractor under the Contract, including any claims for postponement costs and schedule recovery costs; and
- k. monitoring the Contractor's work health and safety compliance in connection with the Supplies, and the work performed under the Contract, including the development and implementation of any systems, policies or procedures related to work health and safety as required under the Contract.

10.7.3 [Omitted]

10.7.4 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.

**14. 10.8 Contractor Access (prime contract clause 10.8).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia.

10.8.1 [Omitted]

10.8.2 Unless otherwise agreed, the Contractor shall seek written permission from the Commonwealth Representative, at least eight days prior to entry being required, for each person the Contractor wishes to have access to a Commonwealth place, area or facility.

10.8.3 The Commonwealth Representative may by notice to the Contractor withdraw access rights to any Commonwealth place, area or facility at any time for any period.

10.8.4 The Contractor shall comply with, and require persons afforded access under clause 10.8 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Commonwealth place, area or facility.

10.8.5 The Commonwealth Representative may notify the Contractor of, and the Contractor shall comply with, any special security or access provisions that apply to a particular Commonwealth place, area or facility relevant to the Contract.

10.8.6 Supplier shall not undertake any activities to access a Commonwealth place, areas or facility pursuant to the Contract without the advance written approval of Oshkosh.

**15. Subcontracts (prime contract clause 10.9).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia.

- a. Supplier acknowledges that Oshkosh may be required to disclose to the Commonwealth, and the Commonwealth may be required to publicly disclose to the public, Supplier's participation in the performance of the Contract.
- b. Supplier represents and warrants that Supplier is not named by the Workplace Gender Equality Agency of the Commonwealth of Australia as an employer currently not complying with the *Workplace Gender Equality Act 2012*.

**16. Defence Security (prime contract clause 10.10).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia. Where Supplier requires access to any Commonwealth Place, area or facility, or to any security classified information in order to perform the obligations of the Supplier, the following clause shall apply to Supplier.



- 10.10.1 If the Contractor requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence or the Australian Defence Force, the Contractor shall:
- a. comply with any security requirements (including those contained in the Defence Security Manual (DSM)) notified to the Contractor by the Commonwealth Representative from time to time; and
  - b. ensure that its officers, employees, agents and Subcontractors are aware of and comply with the Commonwealth's security requirements.
- 10.10.2 The Contractor shall:
- a. ensure that its officers, employees, agents and Subcontractors, undertake any security checks, clearances or accreditations as required by the Commonwealth;
  - b. notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide the Supplies in accordance with the Commonwealth's security requirements; and
  - c. provide a written undertaking in respect of security or access to the Commonwealth's place, area or facility in the form required by the Commonwealth.
- 10.10.3 Not used.
- 10.10.4 The security classification of work to be performed under the Contract will be up to and including SECRET level. The Contractor shall possess a facility clearance at SECRET level for document storage, information systems, equipment and COMSEC or equivalent, issued by the relevant government industrial security authority where Australia has a bilateral security arrangement in place, and shall comply with the relevant government industrial security policy.
- 10.10.5 Not used.
- 10.10.6 The Contractor shall classify all information in its possessions relating to the performance of the Contract according to the Security Classification Grading Document in Attachment I and shall ensure that such information is safeguarded and protected according to its level of security classification.
- 10.10.7 No security classified information furnished or generated under the Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative.
- 10.10.8 The Contractor shall promptly report to the Commonwealth Representative any instance in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of another country.
- 10.10.9 All security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Part 2:33 of the DSM, as amended from time to time.
- 10.10.10 All Communications Security (COMSEC) material transmitted between the parties or a party and a Subcontractor, in Australia, shall in addition to the provisions of clause 10.10.9 above, be

subject to the special security provisions of the Australian Department of Defence publication *Australian Communications Security Instruction 53*, as amended from time to time.

- 10.10.11 All security classified information transmitted between the parties or a party and a Subcontractor, located overseas, whether generated in Australia or by another country, shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
- 10.10.12 All Communications Security (COMSEC) material transmitted between the parties or a party and Subcontractor located overseas, shall be subject to approval in the first instance by the Director Defence Signals Directorate (DSD), in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries. Once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director DSD and to any bilateral security instrument between Australia and the overseas country.
- 10.10.13 If there has been a breach by the Contractor, a Subcontractor, or any of their officers, employees or agents, of clause 10.10, the Commonwealth Representative or Oshkosh may give the Contractor a notice of termination for default.
- 10.10.14 [Omitted]
- 10.10.15 Unless otherwise agreed in writing by the Commonwealth, the Contractor shall bear the cost of complying with the Commonwealth's security requirements under the Contract.

**17. Post Defence Separation Employment (prime contract clause 10.11).** For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia.

- 10.11.1 Except with the prior written Approval of the Commonwealth Representative, the Contractor shall not permit any Defence Personnel or Defence Service Provider who, at any time during the preceding 12 month period was engaged or involved in:
- a. the preparation or management of the Contract;
  - b. the assessment or selection of the Contractor; or
  - c. the planning or performance of the procurement or any activity relevant or related to the Contract,
  - d. to perform or contribute to the performance of the Contract.
- 10.11.2 To avoid doubt, the 12 month period referred to in clause 10.11.1 applies from the date which is 12 months before the date on which the Contractor proposes that the person start performing or contributing to the performance of the Contract.
- 10.11.3 The Commonwealth Representative shall not unreasonably withhold Approval of a person under clause 10.11.1 and, in making a decision, shall consider:
- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;

- b. any information provided by the Contractor about the character and duration of the services proposed to be performed by the person under the Contract;
- c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Contract in the manner proposed under 10.11.3b, and the arrangements which the Contractor proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
- d. any information provided by the Contractor concerning any significant effect that withholding Approval will have on the person's employment or remuneration opportunities or the performance of the Contract; and
- e. the policy requirements set out in DMI (PERS) 1/2007 and DI(G)PERS 25-4, as applicable.

10.11.4 [Omitted]

**18. Policy Requirements (prime contract clause 11.3).**

11.3.1 The Contractor shall comply with and require its officers, employees and agents to comply with the following Commonwealth policies of general application relevant or applicable to the Contract:

- a. Company ScoreCard policy as detailed in the *Defence Company ScoreCard Policy Statement*.
- b. Defence Equity and Diversity policy as detailed in the Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour; Departmental Personnel Instruction No 1/2001 Equity and Diversity in the Department of Defence; and Defence Instruction (General) Personnel 35-3 Management and Reporting of Unacceptable Behaviour;
- c. Conflicts of interest and Gifts, hospitality and sponsorship policies as detailed in DI(G) PERS 25-6 and DI(G) PERS 25-7;
- d. Workplace Gender Equality policy as detailed in the DPPM;
- e. Defence Stocktaking and Assurance Checking policy as detailed in DEFLOGMAN Part 2: Volume 5.
- f. Freedom of Information policy as detailed in the DPPM;
- g. Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in the DPPM;
- h. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM;
- i. Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in the DPPM;
- j. Industry Capability Network policy as detailed in the DPPM;
- k. Work Health and Safety policy as detailed in the DPPM; and
- l. Defence Environmental policy as detailed in the DPPM.

11.3.2 [Omitted]

11.3.3 The Contractor must fully comply with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

**19. Work Health and Safety (prime contract clause 11.4 and Statement of Work (SOW) clause 9).**

For purposes of this clause, "Commonwealth" shall mean the Commonwealth of Australia. Further, where in relation to a Contract:

- a. the WHS Legislation does not apply in respect of any work performed under such Contract; and
- b. the Commonwealth does not have any duties or obligations under the WHS Legislation in respect of the workers engaged or caused to be engaged by the Contractor,

the Contractor shall only be required to comply with clauses 11.4.2b, 11.4.3, 11.4.4, 11.4.5 and 11.4.12 to 11.4.17 in respect of that Contract.

11.4.1 Without limiting the Contractor's obligations under clause 11.4, the parties acknowledge that to the extent that work is performed by the Contractor outside of Australia, the WHS Legislation does not apply to the Contractor with respect to that work.

11.4.2 The Commonwealth and the Contractor:

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

in connection with the Supplies or work performed under the Contract.

11.4.3 Without limiting the application of the WHS Legislation, the Contractor acknowledges that to the extent that any Commonwealth Personnel:

- a. are located on the Contractor's or Subcontractor's premises in relation to the Contract; and
- b. whose activities in carrying out work in relation to the Contract are influenced or directed by the Contractor,

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

11.4.4 The Contractor represents and warrants that:

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

## 11.4.5 The Contractor shall:

- a. provide the Supplies in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Supplies (such as in relation to testing or auditing); and
- b. ensure that the Commonwealth and Commonwealth Personnel are able to make full use of the Supplies for the purposes for which they are intended, and to maintain, support and develop them,

without the Commonwealth or Commonwealth Personnel contravening any legislation relating to work health and safety including the WHS Legislation, any applicable standards relating to work health and safety or any policy relating to work health and safety identified in the Contract.

## 11.4.6 Without limiting the Contractor's obligations under the Contract or at law, the Contractor shall, in connection with the work carried out under the Contract, provide, and shall:

- a. ensure that its Subcontractors provide,
- b. [Omitted]

to the Commonwealth Representative:

- c. within 10 Working Days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Contractor or Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation;
- d. in respect of:
  - (i) Contractor or a Subcontractor, within 10 Working Days of receipt or submission of the notice, written communication or written undertaking by the Contractor or Subcontractor (as the case may be); or
  - (ii) [omitted],copies of:
  - (iii) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or Subcontractor (as the case may be) relating to work health and safety matters;
  - (iv) all formal notices issued by a health and safety representative of the Contractor or Subcontractor, under or in compliance with the applicable WHS Legislation; and
  - (iv) all formal notices, written communications and written undertakings given by the Contractor or Subcontractor (as the case may be), to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation; and
- e. within 10 Working Days of a request by the Commonwealth Representative written assurances specifying that to the best of the Contractor's or the Subcontractor's (as the case may be) knowledge that it and its officers, employees, agents and Subcontractors are compliant with:
  - (i) the applicable WHS Legislation; and

(ii) any relevant or applicable approved codes of practice under the Work Health and Safety Act 2011 (Cth) except where the Contractor complies with the WHS Legislation in a manner that is different from the relevant code of practice but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code of practice,

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

11.4.7 Without limiting clause 10.10 and any relevant foreign government restrictions, the Commonwealth shall provide to the Contractor in a timely manner any information or copies of documentation reasonably requested by the Contractor and held by the Commonwealth to enable the Contractor to comply with its obligations under the applicable WHS Legislation in relation to the Contract.

11.4.8 The Contractor shall ensure that if the WHS Legislation requires that:

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

11.4.9 If the Contractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an Authorisation relating to work health and safety, it shall immediately notify the Commonwealth giving full particulars (so far as they are known to it).

11.4.10 Without limiting clause 10.7, the Contractor shall give and ensure that a Subcontractor gives the Commonwealth Representative and any person authorised by the Commonwealth Representative access to:

- a. premises to conduct site inspections for the purpose of monitoring the Contractor's or the Subcontractor's (as the case may be) compliance with any applicable laws, Authorisations or Approved plans in connection with work health and safety in relation to the Contract; and
- b. all internal and third party audit results in relation to work health and safety in relation to the Supplies or work performed under the Contract.

11.4.11 To the extent not inconsistent with the express requirements of the Contract, the Commonwealth Representative may direct the Contractor to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with applicable legislation relating to work health and safety including the WHS Legislation in relation to the performance of the work under the Contract. The Contractor shall comply with the direction unless the Contractor demonstrates to the reasonable satisfaction of the Commonwealth Representative that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS

Legislation. The Contractor shall not be entitled to claim an extension of time as a result of compliance with the direction.

11.4.12 The Contractor shall comply with clause 9 of the prime contract Statement of Work SOW (the text of that clause is reproduced below).

11.4.13 The Contractor shall not provide Supplies containing ACM and shall not take ACM onto Commonwealth Premises in connection with providing the Supplies.

11.4.14 The Contractor shall ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who:

- a. use the Supplies for a purpose for which they were designed or manufactured;
- b. handle or store the Supplies;
- c. carry out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which they were designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; or
- d. may be exposed to the Supplies or whose health or safety may be affected by a use or activity referred to in this clause 11.4.14(a) to (c).

11.4.15 The Contractor shall carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary to comply with clause 11.4.14.

11.4.16 The Contractor shall give adequate information to the Commonwealth concerning:

- a. each purpose for which the Supplies were designed or manufactured;
- b. the results of any calculations, analysis, testing or examination referred to in clause 11.4.15, including any hazardous properties identified by testing; and
- c. any conditions necessary to ensure that the Supplies are without risks to health and safety when used for a purpose for which they were designed or manufactured or when carrying out any activity referred to in clauses 11.4.14(a) to (c).

11.4.17 The Contractor shall, on request, so far as is reasonably practicable, give current relevant information on the matters referred to in clause 11.4.16 to the Commonwealth.

11.4.18 The Contractor acknowledges and agrees that as the manufacturer of the Supplies, the Contractor is aware of the risks and hazards associated with the Supplies and that it has or will obtain all relevant information necessary to comply with section 25 of the *Work Health and Safety Act 2011* (Cth). The Contractor shall supply such information to its Subcontractors to carry out any activity in respect of this Contract, to the extent the Contractor makes a supply under the Contract within the meaning of section 25 of the WHS Act.

11.4.19 [Omitted]

11.4.20 To the extent that work to be performed by the Contractor under the Contract is construction work for the purposes of the:

- a. WHS Legislation, in accordance with Regulation 293 of the Work Health and Safety Regulations 2011 (in respect of the Commonwealth and the harmonised WHS Legislation of each of the States or Territories in which the construction work is carried out), the Contractor is engaged as the principal contractor for the construction work the subject of the Contract and is authorised to have management or control of the workplace and discharge the duties imposed on a principal contractor for the purpose of the WHS Legislation;

- b. Occupational Health and Safety Regulations 2007 (Vic), in accordance with Regulation 5.1.14 of the Occupational Health and Safety Regulations 2007 (Vic), the Contractor is appointed as the principal contractor for the construction work the subject of the Contract and is authorised to have management or control of the workplace and discharge the duties imposed on a principal contractor for the purpose of the Occupational Health and Safety Regulations 2007 (Vic); and
- c. Occupational Health and Safety Regulations 1996 (WA), in accordance with Regulation 1.3 of the Occupational Health and Safety Regulations 1996 (WA), the Contractor is the main contractor for the construction work the subject of the Contract and is taken to have control of the site and the workplace and is required to discharge the duties imposed on a main contractor for the purpose of those Regulations.

## **Statement of Work (SOW) Clause 9**

### **9. HEALTH, SAFETY AND ENVIRONMENT**

#### **9.1 Problematic Substances and Problematic Sources**

##### 9.1.1 Use of Problematic Substances

###### 9.1.1.1 Not Used.

###### 9.1.1.2 The Contractor:

- a. shall not, and shall ensure its Subcontractors do not, use, handle or store a Problematic Substance on Commonwealth Premises in connection with the Contract unless the Problematic Substance is an Approved Substance that is used, handled or stored for the purpose for which it is Approved in the Project Management Plan (PMP), and
- b. shall not, and shall ensure its Subcontractors do not deliver Supplies containing or emitting a Problematic Substance unless the Problematic Substance is an Approved Substance identified in, and is only used for the purposes specified in, the Hazard Log.

9.1.1.3 Where Approved Substances are proposed to be brought onto Commonwealth Premises by the Contractor, or a Subcontractor, the Contractor shall notify the Commonwealth Representative of the maximum quantities or volumes (as applicable) and location(s) at least 10 Working Days before the Approved Substances are to be brought onto Commonwealth Premises.

9.1.1.4 Without limiting clause 9.1.1.2, the Contractor may, in connection with work on Commonwealth Premises, discover or identify the need for a new Problematic Substance or propose a new purpose for an Approved Substance and, in such circumstances, the Contractor shall notify the Commonwealth Representative as soon as practicable thereafter and, in any event, within five Working Days.

9.1.1.5 Where the Contractor notifies the Commonwealth Representative under clause 9.1.1.4, the Contractor shall:

- a. not use the Problematic Substance, except as otherwise Approved by the Commonwealth Representative;
- b. within 10 Working Days of the notice provided in accordance with clause 9.1.1.4, provide to the Commonwealth Representative: (i) an updated HSMP, in accordance with CDRL Line Number



MGT-1110, that includes details of the new Problematic Substance or new purpose for an Approved Substance; (ii) for a newly identified Problematic Substance, a Safety Data Sheet prepared in accordance with CDRL Line Number MGT-1100; and (iii) where a new Authorisation is required, evidence that the Contractor has, or will obtain in a timely manner, that Authorisation; and

c. where the Commonwealth Representative does not Approve a Problematic Substance discovered under clause 9.1.1.4, take whatever measures are considered necessary or prudent by the Commonwealth Representative to remove the Problematic Substance from Commonwealth Premises and to avoid or mitigate the impact of that Problematic Substance.

9.1.1.6 The Contractor shall advise the Commonwealth of the existence of a substance that is not a Problematic Substance, and which could be substituted for any Approved Substance without significant detriment to the performance of work under the Contract, as soon as practicable.

## **9.2 Not Used**

## **9.3 Work Health and Safety**

### **9.3.1 Acknowledgement of WHS Advice - GFE**

9.3.1.1 The Contractor acknowledges that hazards may be present within GFE, which may be relevant to the Supplies or the work to be performed under the Contract.

9.3.1.2 The Contractor further acknowledges that hazards within or relating to the installation, use, operation or maintenance of GFE are identified within the associated Technical Data (including operator and maintenance manuals, installation instructions, maintenance records and test results, as applicable), which provide warnings that were, at the time of publishing, considered suitable for competent persons that are trained in similar or related trades and professions.

### **9.3.2 Acknowledgement of WHS Advice – Commonwealth Premises**

9.3.2.1 The parties acknowledge and agree that the Commonwealth Premises at which work will be undertaken is not known as at the Effective Date, and as such, information relating to the Commonwealth Premises in this clause 9.3 is incomplete. The Contractor acknowledges and agrees that the Commonwealth shall provide to the Contractor a CCP to complete this clause 9.3. For clarity, although clause 9.3 is not complete, obligations contained within this clause 9.3 shall be binding to the extent that they can be met without the knowledge of the Commonwealth Premises at which work will be undertaken.

9.3.2.2 The Contractor acknowledges that Annex E to the SOW, which is available from Oshkosh upon request, provides a list of known hazards that are present on Commonwealth Premises where work may be performed under the Contract ('the applicable Commonwealth Premises').

9.3.2.3 If the Contractor is in doubt as to the location of hazards (including those specified in Annex E) at the applicable Commonwealth Premises that could represent a risk to safety in the performance of the Contract, the Contractor shall perform its obligations under the Contract on the basis that these hazards are present, unless and until it is verified that these hazards are not present.

### **9.3.3 Planning for and Management of WHS Duties**

9.3.3.1 Without limiting the Contractor's obligations under clause 11 of the prime contract, the Contractor shall ensure work to be performed under the Contract involving Commonwealth Personnel on Contractor

or Subcontractor premises, or undertaken at the applicable Commonwealth Premises, is performed in accordance with the:

a. Defence WHS Manual:

- (i) Volume 1, Part 1, Chapter 8, Contractor Safety Management;
- (ii) Volume 1, Part 3, Management of Risks; and
- (iii) Not Used;

b. RAAFSFS site specific safety induction procedures and plans; and

c. Not Used.

9.3.3.2 Not Used.

9.3.3.3 The Contractor shall address WHS compliance and management issues as part of the PMP.

9.3.3.4 The Contractor shall provide the Supplies and perform the work under the Contract in accordance with clause 11.4 of the prime contract and this clause 9 of the SOW and in accordance with the WHS management elements of the Approved PMP.

9.3.3.5 Not Used.

9.3.3.6 Not used.

9.3.3.7 Not used.

9.3.3.8 Not used.

9.3.3.9 The Contractor shall ensure that the Contractor's representative consults, co-operates and co-ordinates activities with the Commonwealth Representative and Associated Parties in relation to the management of WHS issues and shall ensure that Contractor and Subcontractor personnel consult, co-operate and co-ordinate activities with Commonwealth Personnel and other workers in order to ensure that the work required to be performed under the Contract is performed safely.

9.3.4 Work on Commonwealth Premises

9.3.4.1 The Contractor shall ensure that Contractor and Subcontractor personnel who will perform work at the applicable Commonwealth Premises participate in safety-related induction training or site induction briefings provided by Defence, or Associated Parties, as applicable. The Contractor shall ensure that Contractor and Subcontractor personnel attending the safety-related training or site induction briefings are required to sign an attendance form and site safety induction form, when applicable.

9.3.4.2 The Contractor shall participate in the Commonwealth's WHS management programs for RAAFSFS and shall attend WHS management meetings, which shall be held on request.

9.3.4.3 When the Contractor discovers a hazard at the applicable Commonwealth Premises, which is additional to the hazards identified under clauses 9.3.1 and 9.3.2 of the SOW, the Contractor shall:

- a. immediately provide notice to the Commonwealth Representative detailing the hazard;

- b. if applicable, take action in accordance with clause 9.1 of the SOW;
- c. follow all instructions and directions of the Commonwealth Representative (if any) and take all reasonable steps to eliminate the hazard or minimise the safety risks associated with the identified hazard; and
- d. where a hazard cannot reasonably be eliminated, provide notice to the Commonwealth Representative, within 20 Working Days of discovery, that describes the risk mitigation strategy or strategies to be implemented by the Contractor to address the safety risks associated with the identified hazard.

### 9.3.5 Work Health and Safety of Commonwealth Personnel on Contractor or Subcontractor Premises

9.3.5.1 Where Commonwealth Personnel will be present at Contractor and/or Subcontractor premises, the Contractor shall, so far as is reasonably practicable, ensure that the physical work environment is without risks to health and safety and that adequate facilities are provided for the welfare of those Commonwealth Personnel. For Contractor and/or Subcontractor premises in locations where:

- a. the WHS Legislation applies to work performed under the Contract at that location, the workplace shall be managed in accordance with the code of practice approved under section 274 of the *Work Health and Safety Act 2011 (Cth)*, *Managing the Work Environment and Facilities*, except where the Contractor and/or Subcontractor complies with the WHS Legislation in a manner that is different from the relevant code of practice but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code of practice; or
- b. otherwise, the Contractor shall, and shall ensure that Subcontractors, co-operate with the Commonwealth so far as is reasonably practicable to enable the Commonwealth to fulfil its obligations under the WHS Legislation to Commonwealth Personnel.

9.3.5.2 Prior to the Commonwealth Personnel entering the Contractor's and/or Subcontractors' premises, the Contractor shall, when requested, facilitate WHS-related inspections, by the Commonwealth Representative or authorised delegate(s), of the work locations where Commonwealth Personnel will be present.

9.3.5.3 The Contractor shall ensure, before or as soon as practicable after Commonwealth Personnel enter a Contractor's or Subcontractor's premises, that Commonwealth Personnel are provided with:

- a. induction training and/or other safety briefings applicable to the work and location; and
- b. access to safety procedures applicable to the work and location.

9.3.5.4 The Commonwealth shall ensure that Commonwealth Personnel who are required to be present at the Contractor's or Subcontractor's premises participate in any safety induction training and site safety induction briefings that are provided by the Contractor in accordance with clause 9.3.5.3.

9.3.5.5 The Contractor shall notify the Commonwealth Representative of corrective action requirements and remediation activities resulting from WHS audits applicable to the Contractor's and Subcontractors' premises where Commonwealth Personnel will be present and those corrective action requirements or remediation activities are related to hazards or risks that may affect the Commonwealth Personnel.

## 9.4 Incident Reporting and Remediation

9.4.1 Without limiting the Contractor's and Subcontractors' obligations under the WHS Legislation, if a Notifiable Incident occurs in relation to:

- a. Commonwealth Personnel at Contractor or Subcontractor premises; or
  - b. work performed under the Contract in relation to which the Commonwealth has duties or obligations under the WHS Legislation in respect of any workers engaged or caused to be engaged by the Contractor to perform that work or other persons,
- the Contractor shall, in respect of the Notifiable Incident:
- c. immediately provide the Commonwealth Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
  - d. promptly provide the Commonwealth Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
  - e. within 10 Working Days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Commonwealth Representative with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the Notifiable Incident.

9.4.2 The Contractor shall report, in accordance with the *Defence WHS Manual*, Volume 2, Part 5, Chapter 1, any Notifiable Incident that involves:

- a. Contractor or Subcontractor personnel at Commonwealth Premises;
- b. Commonwealth Personnel at Contractor or Subcontractor premises; or
- c. GFM.

9.4.3 The Commonwealth shall immediately inform the Contractor of any Notifiable Incident involving Contractor personnel on Commonwealth Premises in relation to work performed under the Contract of which it is aware, and provide the Contractor with a copy of the notice that is provided by the Commonwealth to the Commonwealth regulator about the Notifiable Incident.

9.4.4 Not Used.

9.4.5 Not Used.

## **20. Privacy (prime contract clause 11.7)**

11.7.1 The Contractor shall:

- a. if it obtains Personal Information in the course of performing the Contract, use or disclose that Personal Information only for the purposes of the Contract;
- b. comply with its obligations under the Privacy Act 1988 (Cth); and
- c. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.

11.7.2 The Contractor shall notify the Commonwealth as soon as practicable if:

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 11.7, whether by the Contractor, Subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the Contract; or
- b. in relation to Personal Information obtained in the course of performing the Contract:
  - (iv) it becomes aware that a disclosure of such Personal Information may be required by law; or
  - (v) it is approached by the Privacy Commissioner or by any individual to whom such Personal Information relates.

11.7.3 The Contractor shall ensure that its officers, employees and agents who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this clause 11.7.

11.7.4 The Contractor shall ensure that any Subcontract entered into for the purposes of fulfilling its obligations under the Contract, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Contractor has under this clause 11.7, including the requirement in this clause 11.7.4 in relation to Subcontracts.

## **21. Termination for Convenience (prime contract clause 12.3).**

12.3.1 In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing.

12.3.2 If the Commonwealth Representative issues a notice under clause 12.3.1, the Contractor shall:

- a. stop work in accordance with the notice;
- b. comply with any directions given to the Contractor by the Commonwealth; and
- c. mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected Subcontracts.

12.3.3 The Commonwealth shall only be liable for:

- a. payments under the payment conditions of the Contract for work conducted before the effective date of termination; and
- b. any reasonable costs incurred by the Contractor that are directly attributable to the termination,
- c. when the Contractor substantiates these amounts to the satisfaction of the Commonwealth Representative.

12.3.4 The Contractor shall not be entitled to profit anticipated on any part of the Contract terminated.

12.3.5 [Omitted]

## Attachment M of prime contract

Contract No. DMO/LSD/00003/2014

**GLOSSARY****1. ACRONYMS AND ABBREVIATIONS****Abbreviation Description**

A.B.N. Australian Business Number  
 A.C.N. Australian Company Number  
 A.R.B.N. Australian Registered Business Number  
 ABS Australian Bureau of Statistics  
 ACM Asbestos Containing Material  
 ADF Australian Defence Force  
 ADF AA ADF Airworthiness Authority  
 AEO Authorised/Accredited Engineering Organisations  
 AIC Australian Industry Capability  
 AMO Authorised/Accredited Maintenance Organisations  
 AMTC Australian Military Type Certificate  
 ANZ Australia and New Zealand  
 ATO Australian Taxation Office  
 ATPocs Acceptance Test Procedures  
 ATPs Acceptance Test Plans  
 ATR Acceptance Test Reports  
 AV&V Acceptance Verification and Validation  
 CAGE Commercial and Government Entity  
 BMS Battle Management System  
 C3 Command, Control and Communications.  
 CALS Continuous Acquisition and Life Cycle Support  
 CASA Civil Aviation Safety Authority  
 CASP Commonwealth Assets Stocktaking Plan  
 CBT Computer Based Training  
 CCB Configuration Control Board  
 CCP Contract Change Proposal  
 CCR Configuration Change Register  
 CDRL Contract Data Requirements List  
 CEI Chief Executive Instructions  
 CI Configuration Item  
 CITIS Contractor Integrated Technical Information Service  
 CM Configuration Management  
 CMP Configuration Management Plan  
 CMCA Contractor Managed Commonwealth Assets  
 CMS Contract Master Schedule  
 COC Conditions of Contract  
 COMSEC Communications Security  
 COTS Commercial-Off-The-Shelf  
 CP Contract Price  
 CPRs Commonwealth Procurement Rules – July 2014  
 CSA Configuration Status Accounting  
 CSCI Computer Software Configuration Item  
 CTXP Contractor Transition Plan  
 CWBS Contract Work Breakdown Structure

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DDR Detailed Design Review  
DGTA-SCI Director General Technical Airworthiness – System Certification and Integrity section  
DID Data Item Description  
DI(G) Defence Instruction (General)  
DISP Disposal Plan  
DMO Defence Materiel Organisation  
DOR Description of Requirement  
DPPM Defence Procurement Policy Manual October 2014 Edition  
DRB Defence Reference Book  
DWRM Defence Workplace Relations Manual  
DSM Defence Security Manual  
ECARS Equipment Certification to Access Radio Frequency Spectrum  
ECP Engineering Change Proposal  
ED Effective Date  
EIS Engineering Information System  
ENVMS Environmental Management System  
ET Electrical Technical  
FA Final Acceptance  
FACRR Facilities Readiness Review  
FCA Functional Configuration Audit  
FPS Function and Performance Specification  
FRAR Facilities Requirements Analysis Report  
G&A General and Administrative  
GFE Government Furnished Equipment  
GFI Government Furnished Information  
GFM Government Furnished Material  
GFS Government Furnished Services  
GST Australian Goods and Services Tax  
GTI Government Titled Item  
HAR Hazard Analysis Report  
HCI Human-Computer Interface  
HE Human Engineering  
HEPP Human Engineering Program Plan  
HL Hazard Log  
HRI Hazard Risk Index  
HSMP Health and Safety Management Plan  
ILS Integrated Logistic Support  
ILSR Integrated Logistic Support Requirements  
IP Intellectual Property  
ISP Integrated Support Plan  
JAS-ANZ Joint Accreditation System for Australia and New Zealand  
KPIs Key Performance Indicators  
LCC Life Cycle Cost  
LOT Life-of-Type  
LSA Logistic Support Analysis  
LSAR Logistic Support Analysis Record  
MILIS Military Integrated Logistics Information System  
MOTS Military-Off-The-Shelf  
MSR Mandated System Reviews  
NTE Not To Exceed

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OCD Operational Concept Document  
OEM Original Equipment Manufacturer  
PB Project Budget  
PCA Physical Configuration Audit  
PDR Preliminary Design Review  
PHS&T Packaging, Handling, Storage and Transportation  
PMP Project Management Plan  
PPE Personal Protective Equipment  
PPR Provisioning Preparedness Review  
PRRL Personnel Resource Requirements List  
PSR Project Status Reports  
PV&VRP Previous V&V Results Package  
QA Quality Assurance  
QMS Quality Management System  
RAFT Replacement Aviation Fire Truck  
RFT Request For Tender  
RMP Risk Management Plan  
RPL Recommended Provisioning List  
RP Resident Personnel  
RTM Requirements Traceability Matrix  
S&Q Survey and Quote  
S&TE Support and Test Equipment  
SCR Safety Case Report  
SDD Software Design Document  
SDR System Definition Review  
SDS Safety Data Sheet  
SDSS Standard Defence Supply System  
SE Systems Engineering  
SEMP Systems Engineering Management Plan  
SIDA Strategic Industry Development Activity  
SME Small Medium Enterprises  
SMP Software Management Plan  
SOW Statement of Work  
SRR System Requirement Review  
SS System Specification  
SSPP System Safety Program Plan  
TAMM Technical Airworthiness Management Manual  
TAR Technical Airworthiness Regulator  
TD Technical Data  
TDL Technical Data List  
TDP Technical Data Plan  
TDRL Tender Data Requirement List  
TDT Technical Documentation Tree  
TEMP Test and Evaluation Management Plan  
TNGRR Training Readiness Review  
TRA Technical Regulatory Authority  
TRR Test Readiness Review  
V&V Verification and Validation  
V&VP Verification and Validation Plan  
VCRM Verification Cross Reference Matrix  
WBS Work Breakdown Structure

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WHS Work Health and Safety  
WHSMS Work Health and Safety Management System

## 2. DEFINITIONS

### Term Definition

Acceptance means acceptance of the Supplies in accordance with clause 6.5 of the conditions of contract signified by the Commonwealth Representative's signature of the Supplies Acceptance Certificate; and "Accept" has a corresponding meaning.

Acceptance, Verification and Validation or Acceptance V&V means V&V activities conducted in accordance with clause 7.2 of the SOW for the purposes of achieving Acceptance of Supplies; "Verify" and "Validate" has a corresponding meaning.

Allocated Baseline means the currently Approved documentation describing a Configuration Item's functional, interoperability, and interface characteristics that are allocated from those of a system or higher level Configuration Item, interface requirements with interfacing Configuration Items, additional design constraints, and the Verification required to demonstrate the achievement of those specified characteristics.

Allowable Costs means a cost incurred by the Contractor that is an allowable cost in accordance with the principles set out in the Defence Materiel Organisation (DMO) Cost Principles.

Approval a. for a data item, has the meaning given by clause 2.3.4 of the SOW; and  
b. in every other context, means the act of the Commonwealth Representative approving a particular course of action as a basis for further work under the contract.

Approval in either case does not constitute Acceptance; and "Approve" has a corresponding meaning.

Approved Subcontractor means a Subcontractor listed in Attachment G; and "Approved Subcontract" has a corresponding meaning.

Approved Substance means a Problematic Substance that is Approved and:  
a. identified in the Hazard Log or Materiel Safety Assessment, as applicable, for inclusion in the Supplies; or  
b. identified and used for the purpose(s) specified in the Approved Health and Safety Management Plan.

Asbestos Containing Material or ACM has the meaning given in sub regulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Associated Parties means other entities (including other contractors and Commonwealth organizations) performing activities related to the Supplies, the Capability, or otherwise having a connection with the work performed under the Contract.

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Attachment means an attachment to the Contract listed in the table of contents.

Audit means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

Australian Industry Capability Plan means the plan set out at Attachment E which describes the activities and the methodology for the management, monitoring, verification, reporting, auditing and validation of the Industry Requirements set out at Attachment E.

Australian Privacy Principles has the same meaning as in the *Privacy Act 1988* (Cth)

Authorization means a license, accreditation, permit, registration, regulatory approval or other documented authority (however described), required by law and necessary for the delivery of the Supplies or work to be performed under the Contract.

Background IP means IP, other than Third Party IP, that:

- a. is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Contract or any Approved Subcontract (or both); and
- b. is embodied in, or attaches to, the Supplies or is otherwise necessarily related to the functioning or operation of the Supplies.

Base Date means 13 January 2013.

Breakdown Spare means anything other than Consumables and includes individual parts, components, kits, or non-repairable assemblies that are required to complete or maintain a system or end item of equipment. A Repairable Item is not a Breakdown Spare; however, Breakdown Spares are used to repair Repairable Items.

C-130J means the definition as provided in the Specification, Annex A to SOW.

C-17 means the definition as provided in the Specification, Annex A to SOW.

Capability means the ability resulting from the employment of the Mission System and the Support System. Capability is the power to achieve a desired operational effect in a nominated environment within a specified time and to sustain that effect for a designated period.

Certification means the act of issuing a certificate that provides assurance that an entity, including product, service or organization, complies with a stated specification, standard or other requirement.

Codification Data means:

- a. for items of Supplies (other than data, services, or Intellectual Property) not already codified in the NATO Codification System, the engineering drawings, standards, specifications and/or technical documentation required to fully identify the items designated by the Commonwealth to support the equipment covered by the Contract; or

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b. for items of Supplies already codified in the NATO Codification System, the details of that codification.

**Command Control and Communications (C3)**

Means the provision of a capability to allow Command and Control functions with support from Communication technologies.

**Commercial and Government Entity (CAGE) Code**

means the code that identifies the manufacturer of an item.

**Commercial-in-Confidence Information**

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

- a. is by its nature confidential; or
  - b. the receiving party knows or ought to know is confidential,
- and includes Technical Data that is marked as Commercial-in-Confidence, but does not include information which:
- c. is or becomes public knowledge other than by breach of the Contract;
  - d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
  - e. has been independently developed or acquired by the receiving party.

**Commonwealth Personnel**

means any officers, Defence Personnel, agents or advisers of the Commonwealth.

**Commonwealth Premises**

means any of the following that is owned or occupied by the Commonwealth:

- a. an area of land or any other place (whether or not it is enclosed or built on);
- b. a building or other structure; and
- c. a vehicle, vessel or aircraft.

**Commonwealth Representative**

means the person holding or performing the office of LAND 998 Project Manager or any other person appointed pursuant to the Contract as the Commonwealth Representative.

Company ScoreCard has the meaning given by the Defence Company ScoreCard Policy Statement.

**Conditions of Contract or CoC**

means the terms in the part of the Contract identified as the 'conditions of contract'

Conditions of Lease means the terms in the part of the Lease identified as the 'conditions of lease'

Configuration Audit means product configuration verification accomplished by inspecting documents, products and records; and reviewing procedures, processes, and systems of operation to verify that the product has achieved its required attributes (performance requirements and functional constraints) and the product's design is accurately documented. Includes both functional and physical configuration audits.

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Configuration Baseline (or 'Baseline') may have one of four possible meanings:

- a. in the context of a product means an agreed-to description of the attributes of a product, at a point in time, which serves as a basis for defining change;
- b. in the context of documentation means an approved and released document, or a set of documents, each of a specific revision; the purpose of which is to provide a defined basis for managing change;
- c. in the context of Configuration Management documents means the currently approved and released configuration documentation; or
- d. in the context of a software product means a released set of files comprising a software version and associated configuration documentation.

Configuration Control may mean either:

- a. in the context of configuration documentation means a systematic process that ensures that changes to released configuration documentation are properly identified, documented, evaluated for impact, approved by an appropriate level of authority, incorporated, and verified; or
- b. in the context of a product means the configuration management activity concerning: the systematic proposal, justification, evaluation, coordination, and disposition of proposed changes; and the implementation of all approved and released changes into:
  - (i) the applicable configurations of a product,
  - (ii) associated product information, and
  - (iii) supporting and interfacing products and their associated information.

Configuration Identification

- a. in the context of an identification process, the unique identifiers for a product and its configuration documents; and
- b. in the context of a Configuration Management activity, the systematic process of selecting the product attributes, organizing associated information about the attributes, and stating the attributes. This Configuration Management activity encompasses the :
  - (i) selection of Configuration Items,
  - (ii) determination of the types of configuration documentation required for each Configuration item,
  - (iii) issuance of numbers and other identifiers affixed to the Configuration Items and to the technical documentation that defines the Configuration Item's configuration,
  - (iv) release of Configuration Items and their associated configuration documentation, and establishment of Configuration Baselines for Configuration Items.

Configuration Item means an aggregation of hardware/software, or any of its discrete proportions which satisfies an end item use function and is designated for configuration management.

Configuration Management (CM) means a process for establishing and maintaining consistency of a product's performance, functional, and physical attributes with its requirements, design and operational information throughout its life.

Configuration Status Accounting means the configuration management activity concerning capture and storage of , and access to, configuration information needed to manage products and product information effectively.

Consumable has the same meaning as Expendable Item.

Contamination means the presence in, on or under land, air or water of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under the land, air or water in the same locality, that presents a risk of

Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any statutory requirement for the protection of the Environment.

Continuation Training means training that users can voluntarily undergo, or training that unit commanders can direct staff to undergo, on an as-required basis, in order to maintain currency and skill in relation to the Capability.

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

Contract Change Proposal or CCP means a proposal in the format required by and submitted in accordance with clause 10.1 of the conditions of contract.

Contract Price means the amount set out in Annex A to Attachment B.

Contractor Managed Commonwealth Assets (CMCA) means any item of goods owned by the Commonwealth in the care, custody or control of the Contractor, its officers, employees, agents or Subcontractors and may include, but is not limited to, Government Furnished Material, assets stored as spares, assets under repair, or assets loaned to the Contractor.

Conversion Training means training on the systems being provided under the Contract, which occurs after the Introduction into Service Training, and which is conducted throughout the Life-Of-Type (LOT) of the Mission System to cover attrition and replacement Personnel.

Corrective Maintenance means those actions necessary to restore items or systems (both hardware and software) to a satisfactory condition or level of performance after failure or other unsatisfactory condition has been detected. It may be performed on any item, irrespective of whether another form of maintenance, (such as Preventive Maintenance), is also defined for the item. In some cases the Corrective Maintenance action necessary may be equivalent to a Preventive Maintenance task defined for the item. Corrective Maintenance may also occur as a result of a suspected failure, even if further investigation indicates that no actual failure occurred.

Dangerous Goods has the meaning given in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (extant edition and as amended).

Day means a calendar day.

Defence means the Department of Defence or the Australian Defence Force.

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Defence Personnel means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the *Defence Act 1903* (Cth)) and the equivalents from other organisations on exchange to Defence.

Defence Purposes means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes purposes that are necessary or incidental to that purpose.

Description of Requirement means the document set out at Annex A to the SOW.

Developmental System Components means all items of Support and Test Equipment (S&TE), Training Equipment and Packaging that either need to be developed or modified to satisfy the requirements of the Contract.

Deviation means written authorisation to depart from the originally specified requirements for a product before its production. An application for a Deviation is submitted before the event, when a condition is identified as not being able to be achieved, such as a:

- a. test requirement,
- b. process requirement,
- c. material requirement, and
- d. quality system requirement.

document includes:

- a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and
- b. any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device.

Earned Value Management System means the compliant management system detailed in clause 3.2.4 of the Statement of Work.

Earned Value Management means the program set out in clause 3.2.4 of the SOW for integrating scope, schedule, and resources and for measuring project performance under the Contract. It compares the amount of work that was planned with what was actually earned and what was actually spent to determine if cost and schedule performance are as planned. It also includes the management action to correct deviations from the plan.

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

Engineering Information System or EIS means the Contractor's system, as required under clause 4.5.3 of the SOW, which is used and generated by the systems engineering processes to provide access to the relevant technical information, decisions and rationale that describe the current state of system development and evolution. The EIS includes information produced by the Contractor and Approved Subcontractors.

Engineering Support means the organisation of hardware, software, materiel, facilities, Personnel, processes, and TD needed to enable engineering and design-management services to be competently provided for the Materiel System throughout its life.

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Engineering Support includes software support.

Environment in the context of environmental management, means:

- a. ecosystems and their constituent parts;
- b. natural and physical resources;
- c. the qualities and characteristics of locations, places and areas;
- d. noise; and
- e. the social, economic, aesthetic and cultural aspects of a thing mentioned

in paragraphs a, b or c.

Environmental Harm means any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident means any Environmental Harm or Contamination caused by or in relation to the Contractor's activities.

Environmental Management System has the meaning given to that term in AS/NZS ISO 14001:2004.

Environmental Outcomes means the minimisation of Environmental Harm wholly or partially caused by the Materiel System or its use, achieved through the elimination of environmental hazards and minimisation of environmental risks.

excepted risk for clause 8.3 of the conditions of contract, has the meaning given by clause 8.3.2.

Exchange Rate for clause 7.3 of the conditions of contract, has the meaning given by clause 7.3.2

Excluded Materials means drafts, prototypes, notes, and level 2 engineering drawings or any other production level (including prototype or limited production) engineering drawings or designs. For the avoidance of doubt Excluded Materials do not include drawings that specifically show interface information, space claim, dimensional boundaries or other information of sufficient detail to enable the use,

maintenance and disposal of Supplies existing equipment for clause 3.2 of the conditions of contract, has the meaning given by clause 3.2.2.

Expendable Item Means items which are expended, or used beyond recovery in normal use that includes items such as ammunition, adhesives, rivets, paint, fuel, lubricant, sealants, sheet metal, lock wire, nuts, bolts, cleaning materials and electrical wiring cables.

Export Approval means an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of the Supplies.

Facilities means all mobile, fixed, permanent and semi-permanent buildings, structures, installations, and the associated machinery, plant and utilities for the operating, engineering, maintenance, supply, training, and administrative elements of a Materiel System.

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Final Acceptance means acceptance of the Materiel System in accordance with clause 6.5 of the conditions of contract signified by the Commonwealth Representative's signature of the Final Acceptance Certificate.

**Final Acceptance**

Certificate means the certificate issued under clause 6.5 of the conditions of contract and as set out at Annex D of Attachment H.

Fitted For means that the capability is not delivered with the Mission System, but the Mission System shall be delivered with the capability to integrate (including stowage, mounting, power and cable routing) the item(s) specified as Fitted For.

Fitted With means in addition to any specific requirements set out in the Specification, that the capability is delivered with the Mission System.

Foreground IP Means IP which is created under or otherwise in connection with the Contract or any Approved Subcontract (or both), other than Third Party IP.

Function and Performance Specification or FPS means the specification set out in Part A of Annex A to the SOW.

Functional Baseline means documentation describing a system's/segments functional characteristics and the verification required to demonstrate the achievement of those specified functional characteristics.

The system or segment specification establishes the functional baseline for the Mission System and Developmental Support System Components.

Glossary means this glossary.

Government Furnished Equipment or GFE means the equipment listed in Annex A to Attachment D under the heading "Government Furnished Equipment".

Government Furnished Information or GFI means the information referred to in Annex A to Attachment D under the heading "Government Furnished Material".

Government Furnished Material or GFM is the collective name for the GFE and GFI to be provided to the Contractor under the Contract and which is listed in Annex A of Attachment D.

GST Act for clause 7.11 of the conditions of contract, has the meaning given by clause 7.11.7. The expressions "adjustment note", "taxable supply" and "tax invoice" also have the meanings given by clause 7.11.7.

Hazardous Chemical has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Integrated Logistic Support Requirements (ILSR) means the specification set out in Annex C to the SOW

Imported Content means that part of the Supplies that is not Local Content or Australian Government charges or duties, including GST. This includes that part of the Supplies that is of overseas (other than New Zealand) origin and comprises all associated costs including, but not limited to,

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international freight and cartage (by other than Australian and New Zealand industry carriers), agent's fees, and overseas storage.

Industry Requirement means the statement in Attachment E describing a capability in technology, skills or equipment supportability terms, which is necessary in Australian New Zealand industry to satisfy Defence requirements.

infringement for clause 8.4 of the conditions of contract has the meaning given by clause 8.4.

Integration means the Contractor's integration tasks to deliver all (including functional) RAFT Mission Systems to the Commonwealth as described in the SEMP. This includes, but is not limited to:

- a. integration of Fitted For GFE to the Vehicle(s); and
- b. integration of Fitted With GFE to the Vehicle(s).

Intellectual Property means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Internal System Review means a System Review, other than a Mandated System Review, that the Contractor or Subcontractor conducts as part of the program of activities for the Contract.

Introduction into Service Training means Training that is designed to train Personnel, who are already competent and qualified on existing equipment, on the new systems being provided under the Contract to enable those Personnel to competently operate and support the new systems. This type of Training would also be provided to Training Personnel.

IP Plan means the plan specified in accordance with clause 3.13 of the SOW and included in Attachment F.

Key Person means a person filling a Key Staff Position

Key Staff Position means a project position that requires a person with highly specialised skills or such capabilities that are crucial to the success of the project, as identified in accordance with clause 3.4 of the SOW.

Latent Defect means a deficiency in design, materials or workmanship not discoverable by reasonable care or inspection prior to Acceptance or Final Acceptance, as the case may be 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.

Lease Means the conditions of lease, the Attachments including the Statement of Work, and any document expressly incorporated as part of the Lease

Life Cycle Cost or LCC means the total cost to the Commonwealth of acquisition and ownership (both direct and indirect) of the Mission System and Support System over the Life Of Type (LOT) of the Mission System. The LCC includes all costs associated with acquisition, In-Service operations, logistics support, and disposal.

Life-of-Type or LOT means the planned duration of the service life of the Mission System. For this

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Contract, the LOT is the period of fifteen (15) years following Final Acceptance.

Maintenance means all actions taken to retain material in or restore it to a specified condition or to restore it to serviceability. It includes inspection, condition monitoring, servicing, repair, overhaul, testing, calibration, rebuilding, reclamation, upgrades, modification, recovery, classification and the salvage of technical equipment.

Maintenance Support means the organisation of hardware, software, materiel, facilities, Personnel, processes, and Technical Data needed to enable Maintenance services to be competently provided for the Materiel System.

Mandated System Review means a System Review that is mandated in the Contract.

Materiel Safety means that the Materiel Systems, including elements thereof, are, so far as is reasonably practicable, without risks to the health and safety of persons who:

- a. use those Materiel Systems or elements for a purpose for which they were designed and manufactured;
- b. handle those Materiel Systems or elements;
- c. store those Materiel Systems or elements;
- d. construct those Materiel Systems or elements;
- e. carry out any reasonably foreseeable activity in relation to the manufacture, assembly or use of the Materiel Systems or elements or proper storage decommissioning, or disposal (eg, inspection, operation, cleaning, maintenance or repair of Materiel Systems or elements); and
- f. are at or in the vicinity of a workplace and who are exposed to Materiel Systems or elements at that workplace or whose health or safety is affected by any activity referred to in sub-paragraph (a) to (e) above.

Materiel System means the combination of the Mission System and the Support System. Maximum Probable Loss means the financial consequence (to the Commonwealth and to any third party) of a risk event occurring after taking into account any risk treatments that mitigate consequence – it is NOT discounted by the likelihood of it occurring.

Mission System means that element of the Capability that directly performs the operational function. For this Contract, Mission System specifically means the RAFT Vehicle system and all systems there in, it encompass requirements for both Army and RAAF.

month means a calendar month.

Moral Rights means:

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

New Resources means Support Resources that require development, and may include Support and Test Equipment, Facilities, new or restructured personnel skills, Training Equipment or Training Materials, new or special transportation systems, new computer resources, and new repair, test, or inspection techniques or procedures to support new design plans or technology.

Non-Development Item means material available from a wide variety of sources (including COTS items).

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An NDI does not require any development effort to meet specific Commonwealth requirements.

Notifiable Incident has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth).

Operating Support means the organisation of hardware, software, materiel, facilities, Personnel, processes and TD needed to enable the Mission System to be competently operated throughout its LOT.

Other Capabilities means Capabilities that are currently maintained or that will be introduced by the Commonwealth and/or by third parties under separate contractual arrangements with the Commonwealth, and which interoperate and/or integrate with the Materiel System.

Ozone Depleting Substance means any substance identified as having ozone depleting potential in the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 or any regulations made under that Act.

Packaging means the wrapping, container, cushioning materials, and palletisation materials, as required, in which an item is delivered, handled, stored or distributed until required for use or to be disposed of.

Personal Information has the same meaning as in the *Privacy Act 1988*.

Personnel means all staff required to operate, support, and dispose of the Materiel System, including Commonwealth, Contractor (Support), and Subcontractors (Support).

Physical Configuration Audit (PCA) means the formal examination of the "as-built" configuration of a Configuration Item against its technical documentation to establish or verify the Configuration Item's Product Baseline.

Prescribed Activities means:

- a. the use, handling or storage of:
    - (i) a prohibited carcinogen, restricted carcinogen or lead, each as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth); or
    - (ii) Hazardous Chemicals the use of which is restricted under regulation 382 of the *Work Health and Safety Regulations 2011* (Cth) including polychlorinated biphenyls;
  - b. unless otherwise agreed by the Commonwealth, Hazardous Chemicals that are defined in the *Work Health and Safety Regulations 2011* (Cth) as:
    - (i) Schedule 11 Hazardous Chemicals exceeding manifest quantities;
- or
- (ii) Schedule 15 Chemicals where the applicable State or Territory regulator has determined the storage facility to be a major hazard facility;
- c. the use, handling or storage of a Problematic Source;
  - d. the use, handling or storage of ordnance;
  - e. high risk work as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth) that requires dedicated work plans;
  - f. electrical work on energised electrical equipment as contemplated by the *Work Health and Safety Regulations 2011* (Cth);

- g. high risk construction work, demolition work or excavation work, each as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
- h. work involving ACM as defined in subregulation 419(2) of the *Work Health and Safety Regulations 2011* (Cth);
- i. work that requires a confined space entry permit in accordance with *Work Health and Safety Regulations 2011* (Cth); or
- j. remote or isolated work as detailed in subregulation 48(3) of the *Work Health and Safety Regulations 2011* (Cth).

Preventive Maintenance means all scheduled Maintenance actions performed to retain the systems in a serviceable condition, to ascertain the condition and correct functioning of the system hardware or software, and to improve the reliability of the systems by providing systematic inspection, detection, prevention and delaying of known failure modes. Preventive Maintenance tasks include:

- a. scheduled inspection on-condition tasks;
- b. scheduled inspection Failure-finding tasks;
- c. scheduled removal rework tasks; and
- d. scheduled removal discard tasks.

Price Adjustment Date means the last Working Day of the month that is twelve calendar months from the Base Date and the last Working Day of the month occurring each twelve calendar months thereafter.

Privacy Commissioner has the same meaning as in the *Australian Information Commissioner Act 2010* (Cth)

Problem Resolution System means the Contractor's closed-loop system, as required under clause 7.1.6 of the SOW, for collecting, classifying, and documenting data in relation to failures, problems and faults, and for defining corresponding corrective actions and V&V activities.

Problematic Source means a source of ionising or non-ionising radiation, from a material or apparatus, that is required to be licenced with the Australian Radiation Protection and Nuclear Safety Authority.

Problematic Substance means an Ozone Depleting Substance, Synthetic Greenhouse Gas, Dangerous Good or Hazardous Chemical.

Process Audit means a systematic, independent and documented review of a process (a process being a set of interrelated or interacting activities which transforms inputs into outcomes) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the process complies with stated requirements. The review may include any documentation and records associated with the process.

Product Audit means a systematic, independent and documented review of a product (a product being the result of a process) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the product complies with stated requirements. The review may include the inspection of the product and analysis of its processes documentation and records.

Product Baseline means the Approved documentation describing all of the necessary functional and physical characteristics of the Configuration Item including product specification, drawings, interface control documents and comparable elements of software specific documentation necessary for production. The Product Baseline for prototypes will be set following successful completion of the Detailed Design Review. The Product Baseline for production will be set

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following successful completion of the Physical Configuration Audit.

Project of Concern means any project or sustainment activity identified by the Minister for Defence and/or the Minister for Defence Materiel as a Project of Concern on the list held by Defence known as the Projects of Concern list.

Quality means the degree to which a set of inherent characteristics fulfils requirements.

Quality Assurance means that part of Quality Management focused on providing confidence that Quality Requirements will be fulfilled.

Quality Management means coordinated activities to direct and control an organisation with regard to Quality.

Quality Management System (QMS) means a management system to direct and control an organisation with regard to Quality.

Related Body Corporate Has the meaning as given by section 9 of the *Corporations Act 2001*.

Repairable Item means an item that when unserviceable can be reconditioned or economically repaired to a serviceable state for further use.

Resident Personnel means the Commonwealth Personnel and Commonwealth engaged contractors and representatives located at the Contractor's and Subcontractor's premises for the purpose of the Contract.

Review in relation to a data item, means the process of verifying that a data item complies with its documented requirements.

S&Q Services means the items identified as S&Q Services in the SOW.

Safety Outcomes means the achievement of Materiel Safety through the identification of foreseeable hazards that could give rise to risks to health and safety and the elimination, so far as is reasonably practicable, of risks to health and safety and where elimination is not reasonably practicable, the minimisation of risks to health and safety so far as is reasonably practicable.

Schedule 11 Hazardous Chemical has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Schedule 15 Chemical has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Service Provider means a person, other than Defence Personnel, involved in Defence work or engaged by the Department of Defence or the Australian Defence Force.

Software Design Data means data which describes the internal design and operation of a software program and its interface with the external software and hardware systems in which it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).

Software Update means, in relation to software (including Software Design Data and Source

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Code):

- a. a new release of or change to that software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the software); or
- b. a new version of that software (which is designed to enhance or provide extra functionality to that software).

Source Code means the expression of software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that software. Spare means an item that is a Repairable Item (RI), Breakdown Spare (BDS), or Consumable that is not currently fitted to an end item or system.

Specification a detailed statement of a set of requirements to be satisfied by a material, product, system or process, indicating the procedures for checking compliance with these requirements. It may take the form of either a standard produced for common and repeated use, or a publication, which defines a unique product or process, and may incorporate reference to published standards.

Standard a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context.

Statement of Work means the statement of the work at Attachment A including the Annexes to the SOW and any specifications referred to in the SOW.

Strategic Industry Development Activity means an activity that:

- . provides Australian industry with the skills, technology and infrastructure to support the Australian Defence Force and its equipment throughout its service life;

- b. does not form part of the Supplies; and

- c. complements specified Local Content in achieving the Industry

Requirements.

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 and includes Approved Subcontractors; and "Subcontract" has a corresponding meaning.

Subcontractor(S) means a subcontractor to the Contractor (Support).

Supplies means goods and services including Intellectual Property and Technical Data required to be supplied under the Contract and includes items acquired in order to be incorporated in the Supplies.

Supplies Acceptance Certificate means the certificate issued under clause 6.4 of the conditions of contract as set out at Annex F to Attachment H.

Supply Support means the organisation of hardware, software, materiel, facilities, Personnel, processes, and Technical Data needed to enable supply services to be competently provided for the Materiel System throughout its LOT. Supply Support also includes the Supply Resources of spares, piece parts, consumables and packaging materials.

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Support and Test Equipment means the equipment needed to support the operation, support and disposal of the Mission System and Support System Components, as and when required, throughout the life of the Materiel System. S&TE includes ground handling equipment, tools, personal protective equipment, metrology and calibration equipment, test equipment and automated test equipment, and diagnostic software for support equipment maintenance. S&TE does not include either Training Equipment or Mission System equipment that is used by the Mission System when it is directly engaged in the performance of its mission.

Support Resources means the physical products (including Spares), equipment, materials, facilities, Technical Data, Personnel, and any other physical resources required to operate and support all or a particular part of the Mission System as the case requires.

Support System means the sum of the existing support infrastructure (including that of the Commonwealth, the Contractors (Support) and Subcontractors (Support)) and the additional support elements being generated under the Contract to enable the Mission System to be effectively supported so that can meet its operational requirements. The Support System includes support required for Support System Components.

Support System Components means the physical end-items of the Support System that can be defined using a specification. Support System Components are a subset of Support Resources and include packaging, Technical Data, equipment, materials, and facilities, as well as spares and other physical components required for the support of those Support System end-items. Support System Components do not include personnel or spares for the Mission System.

Support System Constituent Capabilities Means the five subsystems of the Support System, including Operating Support, Engineering Support, Maintenance Support, Supply Support, and Training Support.

Each Support System Constituent Capability involves the following organisations: the Commonwealth, in-service support contractors (including the Contractor) and in-service support subcontractors (including Subcontractors).

Supportability means the degree to which the Mission System design characteristics and the planned or existing Support System enable preparedness requirements to be met.

Supportability Related Design Factors means those supportability factors that affect the design of an item. Examples include inherent reliability and maintainability values, testability values, and transportability characteristics.

Surveillance means continual monitoring and verification of the status of an entity and analysis of records to ensure that specified requirements are being fulfilled (the entity could be a system, process, product, project, contract etc).

Sustainment Training means training that is conducted as part of career, trade and specialist courses in the Australian Defence organisation in relation to the Capability.

Synthetic Greenhouse Gas means any gas identified as a Synthetic Greenhouse Gas in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or in any regulations made under that Act.

System Audit means a systematic, independent and documented review of a system (a system being a set of interrelated or interacting elements) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the system and its associated processes, documentation and records comply with stated requirements. The review may include any elements of the system [derived from AS NZS ISO 9000:2000].

System Review means an event at which the progress of the technical effort (including that of engineering and integrated logistics support) is assessed relative to its governing plans and technical and contractual requirements.

Systems Engineering includes the technical and management efforts of directing and controlling a totally integrated engineering effort of a system or program. SE includes the effort to define the system and the integrated planning and control of the technical program efforts of design engineering, specialty engineering, production engineering, and integrated test planning. SE also includes the effort to transform an operational need or statement of deficiency into a description of system requirements and a preferred system configuration.

Technical Data or TD means all technical know-how and information reduced to a material form produced, acquired or used by the Contractor or Subcontractors in relation to the Supplies and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, Source Code, Software Design Data, test results, software and Software Updates and other items describing or providing information relating to the Supplies or their operations.

Technical Integrity refers to an item's fitness for service, safety and compliance with regulations for environmental protection.

Technical Regulatory Authority is organisation authorised by a single Service Chief to issue instructions for the technical regulation of a nominated type of Defence materiel.

Party IP means that IP which is owned by a party other than the Commonwealth, Contractor or Approved Subcontractors and is embodied in the Supplies, or attaches to the Supplies or is otherwise necessarily related to the functioning or operation of the Supplies, and is not limited to COTS items.

Training means the processes, systems, materials, resources, and services for bringing Personnel to the required standard of competency by instruction, practice or other prescribed methodology.

Training Equipment means any item of equipment required to perform training.

Training Materials means material, not contained in a Publication, necessary for a suitably qualified instructor to effectively and efficiently conduct a sequence of training given a body of students who meet the defined entry requirements. This material includes lesson scripts, assessment instruments (including recording/tracking tools), training aids, student precis, exams, mass briefs, sorties, and, if applicable, computer-based training hardware, software and manuals.

Training Support means the organisation of hardware, software, material, facilities, Personnel, processes, and Technical Data needed to enable training services to be competently provided for the Materiel System.



Turn-Around-Time means that element of time needed to transport, service, repair, or check out an item for recommitment. This constitutes the time that it takes a Spare to go through the complete cycle from dispatch to the Contractor, through Contractor repair and return to the Spares inventory ready for use.

Validation means confirmation by examination and provision of objective evidence that the specific intended use or application of a product or service, or aggregation of products and services, is accomplished in an intended usage environment.

“Validate” and “Validated” have corresponding meanings.

Verification means confirmation by examination and provision of objective evidence that specified requirements to which a product or service, or aggregation of products and services, is built, coded, assembled and provided have been fulfilled; and “Verify” has a corresponding meaning.

WHS Legislation means:

- a. the Work Health and Safety Act 2011 (Cth) and the Work Health and Safety Regulations 2011 (Cth); and
- b. any corresponding WHS law as defined in section 4 of the Work Health and Safety Act 2011 (Cth).

WHS Management System has the meaning given to OHS Management System in AS/NZS 4801:2001. Warranty period for clause 9.2 of the conditions of contract, has the meaning given by clause 9.2.1.

Work Breakdown Structure (WBS) has the meaning given in DEF(AUST) 5664A – Work Breakdown Structures for Defence Materiel Projects.

Workforce Development Threshold means the minimum percentage of the total ANZ Defence industry staff involved in the Contract, who are required to participate in Workforce Development for the duration of the 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.

### **3. REFERENCED DOCUMENTS**

#### **Reference Description**

AAP 2002.001 Manual of Training Policies and Procedures  
AAP 5030.001 RAAF Publication System – Technical and Non-Technical Manuals  
AAP 5102.003 Military Standard 1388-1A/2B and ADF Unique Requirements  
AAP 7001.048 ADF Airworthiness Manual  
AAP 7001.053 Technical Airworthiness Management Manual  
AAP 7001.054 Airworthiness Design Requirements Manual  
AAP 7001.059 ADF Aviation Maintenance Management Manual  
ACSI 53 Australian Department of Defence publication –Australian Communications Security Instruction 53  
ADFP 561 – Joint Communications Radio Frequency Spectrum Management  
ANSI/AIAA G-043-1992 American National Standards Institute / American Institute of Aeronautics and Astronautics, Guide for the Preparation of Operational Concept Documents, 1993  
ANSI/EIA-649 National Consensus Standard for Configuration Management

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ARPANSA Radiation Protection Series No. 3  
*Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3 kHz to 300 GHz (2002)*  
AS 3925.1 Software Quality Assurance Part 1 : Plans  
AS/NZS 3907:1996 (ISO 10007:1995)  
Quality Management Guidelines for Configuration Management  
AS/NZS 4360 – 1999 Risk Management  
AS/NZS 4801:2001 *Occupational health and safety management systems—Specification with guidance for use*  
AS/NZS ISO 10005:1995  
Quality Management – Guidelines for Quality Plans  
AS/NZS ISO 8402:1994 Quality Management and Quality Assurance  
AS/NZS ISO 9000.2 Quality management and quality assurance standards  
AS/NZS ISO 9001:2000 Quality Systems – Model for quality assurance in design, development, production, installation and servicing  
AS/NZS ISO 9002:1994 Quality Systems – Model for quality assurance in production, installation and servicing  
AS/NZS ISO 9000:2000 Quality Management Systems - Fundamentals and Vocabulary  
AS/NZS ISO 9004:2000 Quality Management Systems – Guidelines for Performance Improvements  
AS/NZS ISO 14001:2004 *Environmental management systems—Requirements with guidance for use*  
AS/NZS ISO 19011: 2003 Guidelines for Quality and/or Environmental Management Systems Auditing  
AS/NZS ISO/IEC 12207: 1997 Information Technology – Software Life Cycle Processes  
AS/NZS 15939:2003 (ISO/IEC 15939:2002) Information Technology - Software Measurement Process  
ASD S1000D International Specification for Technical Publications Utilizing a Common Source Database  
CPGs Commonwealth Procurement Guidelines – January 2005 *Auditor-General Act 1997*  
Code of Practice, *Managing the Work Environment and Facilities*  
(an approved code of practice under section 274 of the WHS Act)  
Code of Practice, *Preparation of Safety Data Sheets for Hazardous Chemicals*  
(an approved code of practice under section 274 of the WHS Act)  
Copyright Act 1968  
Corporations Act 2001  
DEF STAN 05-57 Ministry of Defence, Defence Standard, Configuration Management of Defence Materiel  
DEF(AUST) 1000C ADF Packaging  
DEF(AUST) 5085B Engineering Drawing - Acquisition and Preparation for Defence Equipment  
DEF(AUST) 5629B Production of Military Technical Manuals  
DEF(AUST) 5664 Work Breakdown Structures for Defence Materiel Projects - Policy and Guidelines  
DEF(AUST) 5679 The Procurement of Computer-Based Safety Critical Systems  
DEF(AUST) 5692 Logistic Support Analysis Record Requirements for the Australian Defence Organisation  
DEF(AUST) 9009A Designing for Aerial Delivery of Equipment by Fixed and Rotary Wing Aircraft  
DEFLOGMAN Part 2: Vol. 5  
Defence Logistics Manual: Defence Inventory and Assets Manual  
Defence Company ScoreCard Policy Statement, July 2001

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*Defence Corporate Radiation Safety Management System*  
 Defence IP Policy "Getting Smarter about Knowledge Rights"  
*Defence Work Health and Safety (WHS) Manual Designs Act 2003*  
 DI(AF) AAP 2002.001 Manual of Training Policies and Procedures  
 DI(AF) AAP 5030.001 RAAF Publication System Technical & Non-Technical Manuals  
 DI(AF) AAP 7001.006-1 Technical Maintenance Control and Associated Documentation  
 DI(AF) AAP 7001.006-2 Technical Maintenance Control and Associated Documentation  
 DI(AF) AAP 7001.025 Configuration Management Manual  
 DI(G) LOG 03-2 Defence Policy on Acquisition and Management of Technical Data  
 DI(G) LOG 03-4 Defence Policy on Life Cycle Costing Analysis  
 DI(G) LOG 4-3-008 Disposal of Defence Assets  
 DI(G) OPS 07-14 Management of Defence Use of the Radio Frequency Spectrum  
 DI(G) LOG 08-16 Defence Policy on Codification  
 DI-HFAC-80740A Human Engineering Program Plan (HEPP) DID  
 DI-IPSC-81427A Software Development Plan (SDP) DID  
 DI-IPSC-81428A Software Installation Plan (SIP) DID  
 DI-IPSC-81429A Software Transition Plan (STrP) DID  
 DI-IPSC-81431A System/Subsystem Specification (SSS) DID  
 DI-IPSC-81432A System/Subsystem Design Description (SSDD) DID  
 DI-IPSC-81433A Software Requirements Specification (SRS) DID  
 DI-IPSC-81434A Interface Requirements Specification (IRS) DID  
 DI-IPSC-81435A Software Design Description (SDD) DID  
 DI-IPSC-81436A Interface Design Description (IDD) DID  
 DI-IPSC-81437A Database Design Description (DBDD) DID  
 DI-IPSC-81438A Software Test Plan (STP) DID  
 DI-IPSC-81439A Software Test Description (STD) DID  
 DI-IPSC-81440A Software Test Report (STR) DID  
 DI-IPSC-81441A Software Product Specification (SPS) DID  
 DI-IPSC-81442A Software Version Description (SVD) DID  
 DI-SESS-81632 Interface Specification  
 DI-IPSC-81443A Software User Manual (SUM) DID  
 DI-IPSC-81444A Software Center Operator Manual (SCOM) DID  
 DI-IPSC-81445A Software Input/Output Manual (SIOM) DID  
 DI-IPSC-81446A Computer Operation Manual (COM) DID  
 DI-IPSC-81447A Computer Programming Manual (CPM) DID  
 DI-IPSC-81448A Firmware Support Manual (FSM) DID  
 DIMPI 9/99 Policy for the Payment of Radio Frequency Spectrum Charges  
 DPPM Defence Procurement Policy Manual October 2014 Edition  
 DWRM Defence Workplace Relations Manual  
 DSM Defence Security Manual, in force from time to time  
 EIA-632-1998 Processes for Engineering a System  
 EIA-649 National Consensus Standard for Configuration Management  
 EIA-836 Configuration Management Data Exchange and Interoperability  
 General A 021 Preparation of Electrical And Mechanical Engineering Instructions  
 (EMEI)  
 GHS *Globally Harmonised System of Classification and Labelling of Chemicals*, Third Revised Edition  
 GST Act *A New Tax System (Goods and Services Tax) Act 1999*  
 Hazardous Substances Information System (HSIS)  
 IEEE Std 1471-2000 Recommended Practice for Architectural Description of Software- Intensive Systems  
 Interim Defence Procurement Complaints Handling Policy  
 ISO 10007:1995(E) Quality Management - Guidelines for Configuration Management

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ISO 10918 JPEG  
ISO 216 Writing Paper and Certain Classes of Printed Matter – Trimmer Sizes – A and B series  
ISO 9001:2000 Quality Management Systems Requirements  
ISO/IEC 15939 Information Technology - Software Measurement Process  
Judiciary Act 1903  
MIL-HDBK-1467 Acquisition of Software Environments and Support Software  
MIL-HDBK-2165 Testability Handbook for Systems and Equipment  
MIL-HDBK-217F Reliability Prediction of Electronic Equipment  
MIL-HDBK-46855A Human Engineering Guidelines for Military Systems, Equipment and Facilities  
MIL-HDBK-470A Designing and Developing Maintainable Products and Systems Vol 1 & Vol 2  
MIL-HDBK-472 Maintainability Prediction  
MIL-HDBK-502 Acquisition Logistics  
MIL-HDBK-61A (SE) Configuration Management Guidance  
MIL-HDBK-727 Design Guidance for Producibility  
MIL-HDBK-781A Reliability Test Methods, Plans, and Environments for Engineering Development, Qualification, and Production  
MIL-HDBK-881 Work Breakdown Structure  
MIL-M-38781 Manual of Checklists and Source data, Storage and Maintenance Procedures  
MIL-PRF-28000 Digital Representation for Communication of Product Data: IGES Application Subsets and IGES Application Protocols  
MIL-PRF-28001 Markup Requirements and Generic Style Specification for Electronic Printed Output and Exchange of Text  
MIL-PRF-28002 Raster Graphics Representation in Binary Format  
MIL-PRF-28003 Digital Representation for Communication of Illustration Data: CGM Application Profile  
MIL-PRF-87268A Interactive Electronic Technical Manuals: General Content, Style, Format, and User-Interaction Requirements  
MIL-PRF-87269 Database Revisable: For the Support of Interactive Electronic Technical Manuals  
MIL-STD- 2361A Interface Standard, Digital Publication Development  
MIL-STD-1388-1A Logistic Support Analysis  
MIL-STD-1388-2B DOD Requirements for a Logistics Support Analysis Record  
MIL-STD-1390D Level of Repair Analysis (LORA)  
MIL-STD-1472F Human Engineering  
MIL-STD-1521B Technical Reviews and Audits for Systems, Equipment and Computer Software  
MIL-STD-1629A Procedures for Performing a Failure Mode, Effects & Critically Analysis  
MIL-STD-1818A Electromagnetic Effects Requirements for Systems  
MIL-STD-1840 Automated Interchange of Technical Information  
MIL-STD-2165A Testability Program for Systems and Equipment  
MIL-STD-2173 Reliability-Centered Maintenance Requirements for Naval Aircraft, Weapons Systems and Support Equipment  
MIL-STD-2549 Configuration Management Data Interface  
MIL-STD-38784A Standard Practice for Technical Manuals: General Style and Format Requirements  
MIL-STD-40051A Preparation of Digital Technical Information for Multi-Output Presentation of Technical Manuals  
MIL-STD-461 Requirements for the Control of Electromagnetic Interference Emissions and Susceptibility

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MIL-STD-464 Electromagnetic Environmental Effects Requirements for Systems  
 MIL-STD-470B Maintainability Program for Systems and Equipment  
 MIL-STD-471A Maintainability Verification/Demonstration/Evaluation  
 MIL-STD-490A Specification Practices  
 MIL-STD-704E Aircraft Electric Power Characteristics  
 MIL-STD-756B Reliability Modelling and Prediction  
 MIL-STD-781D Reliability Testing for Engineering Development, Qualification & Production  
 MIL-STD-785B Reliability Program for Systems and Equipment Development & Production  
 MIL-STD-882E *Department of Defense Standard Practice – System Safety*  
 MIL-STD-961E Defense and Program-unique Specifications Format and Content  
 MIL-STD-973 Configuration Management  
 MIL-STD-974 Contractor Integrated Technical Information Service  
 MLW 3.4.2 Manual of Land Warfare  
 MSDI Log 07-1 Maritime Systems Division Instruction, Configuration Management  
 NATO Standardisation Agreement (STANAG) 4177  
*Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)*  
 Patents Act 1990  
*Privacy Act 1988*  
 Radiocommunications Act 1992  
 RAN Training System Manual  
 RTCA/DO-178B Software Considerations in Airborne Systems and Equipment Certification  
 SAE ARP4754 Certification Considerations for Highly Integrated or Complex Aircraft Systems  
 STANAG 4177 Codification of Items of Supply - Uniform System of Data Acquisition  
 TRAMM Technical Regulation of Army Materiel Manual  
 United Nations Convention on Contracts for the International Sale of Goods  
 United Nations Convention on Contracts for the International Sale of Goods  
 WHS Act *Work Health and Safety Act 2011 (Cth)*  
 WHS Regulations *Work Health and Safety Regulations 2011 (Cth)*  
*Workplace Gender Equality Act 2012 (Cth)*  
 DMO Cost Principles, as amended from time to time  
 Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010*)

#### 4. WBS DICTIONARY FOR ELECTRONIC/AUTOMATED SOFTWARE SYSTEM

##### WBS Element Definition

###### Mission System

This element includes the hardware and software used to accomplish the primary mission of the defence materiel item.

This element includes all integration, assembly, test and checkout, as well as all technical and management activities associated with individual hardware/software elements

This element also includes the integration, assembly, test and checkout associated with the overall MS. When the electronic/automated software system comprises several MSs, each will be listed separately at level 2.

**Support System** This element includes all of the physical support deliverables being generated under the Contract, including any effort associated with the acquisition of, and/or the design, development and production of those physical deliverables.

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Includes any effort associated with delivery, installation, integration, and check out.

Includes the acquisition, design, development and production of any logistics resources associated with those physical deliverables (ie, the logistics resources required for the support of Support System elements such as Facilities, S&TE, etc).

#### Integrated Logistics Support

This element includes the overall planning, directing, and controlling of the ILS function.

This element includes the effort associated with the logistics-analysis processes, the outcome of which result in the identification of the logistics resources (both range and scale) required to support both the Mission System and the Support System.

Excludes the acquisition of, and/or the design, development and production of specific Support System Components (eg, S&TE, Facilities, Software Support Environment, Training Equipment and Materials, etc). These activities are covered under the individual Support System elements themselves.

Excludes the acquisition, design, development and production of the logistics resources required for the support of the individual Support System elements themselves.

#### Platform Integration

This element includes the effort involved in providing technical and engineering services to the platform manufacturer or integrator during the installation and integration of the Mission System into the host vehicle. Project Management This element includes the business and administrative planning, organising, directing, coordinating, controlling, and approval actions designated to accomplish overall program objectives which are not associated with specific hardware elements and are not included in systems engineering.

This element includes cost, schedule, performance measurement management, warranty administration, contract management, data management, vendor liaison, subcontract management, risk, IV&V activities, lifecycle cost, transition to operational service, Australian Industry Capability, intellectual property.

#### Systems Engineering

This element includes the technical and management efforts of directing and controlling a totally integrated engineering effort of a system or program.

This element includes the effort to define the system and the integrated planning and control of the technical program efforts of design engineering, specialty engineering, production engineering, and integrated test planning.

This element also includes the effort to transform an operational need or statement of deficiency into a description of system requirements and a

preferred system configuration.

#### Verification and Validation

This element includes V&V management and infrastructure for both the Mission System and the Support System as well as the actual V&V for all phases of the project.

This element includes processes that demonstrate that the engineering design and development process is complete, demonstrate that the design risks have been minimized, demonstrate that the system will meet specifications and determine whether the engineering design is supportable (practical, maintainable, safe, etc.) for operational use.

This element includes such tests as system demonstration, flight tests, sea trials, mobility demonstrations, stability tests, qualification operational test and evaluation, etc., and support thereto, required to prove the operational capability of the deliverable system

This element also includes logistics testing efforts to evaluate the achievement of supportability goals and the adequacy of the support for the system (e.g., deliverable maintenance tools, test equipment, technical publications, maintenance instructions, personnel skills and training requirements, and software support facility/environment elements).