

ANNEX C TO CONDITIONS OF SUBMISSION

DRAFT DEED OF TRANSFER

This DEED OF TRANSFER

BETWEEN

The Commonwealth of Australia represented by the Department of Defence ABN 68 706 814 312 (the "Commonwealth")

AND

[...INSERT RECIPIENT...][...INSERT ABN...][...INSERT ADDRESS...] (the "Recipient").

RECITALS

- A. The Commonwealth is the owner of the Assets.
- B. The Assets are no longer required for the Commonwealth's operational purposes.
- C. The Recipient has informed the Commonwealth that the Recipient has the capacity to purchase the Assets.
- D. The Recipient has offered to receive a transfer of the Assets from the Commonwealth so that the Assets can be used by the Recipient for the Permitted Use.
- E. The Commonwealth has agreed to the Recipient's offer on the terms set out in this Deed.

THE PARTIES AGREE AS FOLLOWS

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1 INTERPRETATION

1.1 Definitions

1.1.1 In this Deed, unless the contrary intention appears:

“AECA” means the *Arms Export Control Act 1976* (US).

“Aircraft” means an Asset identified in Annex A, Attachment A as an Aircraft.

“As Is, Where Is” means the Recipient acquires the Assets in the condition and state of repair in which, and at the location at which, they are offered for collection, with all faults and defects.

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

“Assets” means the asset or assets described in Item 1 of Attachment A.

“Authorisation” means a licence, accreditation, permit, registration, regulatory approval or other documented authority (however described), required by law and necessary for any Use of the Assets or the carrying out of activities referred to in clause 3.2.

“Collection Date” means, in relation to any particular Assets or Tranche, the time and date on which the Recipient actually commences collection of the Assets or Tranche.

“Collection Due Date” means, in relation to any particular Assets or Tranche, the time and date for collection of those Assets or that Tranche set out in Item 6 of Attachment A or such later date notified to the Recipient by the Commonwealth from time to time in writing.

“Collection and Transportation Plan” means the plan prepared by the Recipient regarding the collection of the Assets if required by, and as referred to in, Item 9 of Attachment A.

“Commonwealth Representative” means the person holding or performing the office identified in Item 3 of Attachment A or any other person appointed pursuant to this Deed as the Commonwealth Representative from time to time.

“Corporations Act” means the *Corporations Act 2001* (Cth).

“Deed” means this document and includes all attachments, schedules and annexes.

“Defence Location” has the meaning given in Item 2 of Attachment A.

“EAR” means USA Export Administration Regulations.

“Effective Date” means the day on which this Deed is signed by the last party to sign it.

“FMS” means acquisition via the USA Foreign Military Sales process which makes the materiel acquired subject to Section 3 of AECA.

“Government Furnished Equipment” means any equipment or material which is loaned by the Commonwealth to the Recipient on a temporary basis to assist the Recipient to collect, transport or otherwise make Use of the Assets.

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated taxation legislation.

“Insolvency Event” means, in respect of a person:

- a. the person becoming bankrupt or insolvent;
- b. the person becoming subject to one of the forms of external administration provided for in Chapter 5 of the Corporations Act, including:
 - (i) the appointment of a person to administer a scheme or compromise in relation to the person in accordance with Part 5.1 of the Corporations Act;
 - (ii) the appointment of a controller or managing controller to the whole or any part of the assets or undertakings of the person in accordance with Part 5.2 of the Corporations Act;
 - (iii) the appointment of an administrator under Part 5.3A of the Corporations Act in relation to the person; or
 - (iv) the appointment of a liquidator or provisional liquidator in relation to the person;

- c. the person becoming subject to any form of administration under the laws of a non-Australian jurisdiction which is the same as, or substantially equivalent to, one of those referred to in paragraph b of this definition;
- d. the person is wound up by resolution or an order of the court;
- e. the person suffers execution against any of its assets which has an adverse effect on the Recipient's ability to perform its obligations under this Deed;
- f. the person makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- g. the person becomes an insolvent under administration; or
- h. the person ceases to carry on business.

"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.

"Inventory Items" means Assets other than Aircraft or data, as further described in Item 1 of Attachment A.

"ITAR" means the International Traffic in Arms Regulations (USA).

"Jurisdiction" means the jurisdiction set out in Item 5 of Attachment A.

"Loss" means any liability, loss (including economic loss), damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense.

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

"Payment Due Date" means the date on which payment for the Assets, or payment of an instalment for a Tranche of the Assets, is due as specified in Item 7 of Attachment A.

"Permitted Use" means the use which the Recipient is permitted to make of the Assets, as set out in Item 8 of Attachment A.

"PPS Security Interest" means a security interest that is subject to the PPSA.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

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

"Problematic Substances" means:

- a. any substance identified as having ozone depleting potential, or any gas identified as a Synthetic Greenhouse Gas, in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act;
- b. any dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (extant edition and as amended); or
- c. any hazardous chemicals as defined in sub-regulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

"Purchase Price" means the price specified in Item 7 of Attachment A, but if Item 7 of Attachment A does not specify a Purchase Price then the Purchase Price is taken to be nil.

"Recipient Representative" means the person holding or performing the office identified in Item 4 of Attachment A or any other person appointed pursuant to this Deed as the Recipient Representative from time to time.

"Relevant Documents" means any documents included in Attachment E, if any.

"Special Conditions" means the conditions set out in Item 11 of Attachment A.

"Specific Requirements" means the requirements set out in Attachment D.

"Tranche" has the meaning given in Item 1 of Attachment A.

“Transfer Authorisation” means authorisation in writing given or required to be given by the United States Government, in accordance with the ITAR, EAR or the AECA authorising retransfer and new end use of the Assets.

“USA” means the United States of America.

“Use” means any activity which the Recipient performs in relation to the Assets, and which may include the collection, transportation, remediation, maintenance, storage, Permitted Use, display, destruction or disposal of the Assets, whether or not such Use is authorised or permitted by this Deed or constitutes a breach of this Deed.

“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).

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

- a. a Saturday, Sunday or public holiday; or
- b. any day within the two-week period beginning on the first Saturday that falls before Christmas Day (or beginning on Christmas Day when it falls on a Saturday).

1.2 Interpretation

1.2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this Deed;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes the others;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- f. a reference to an Act (other than AECA) is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a ‘dollar’, ‘\$’, ‘\$A’ or ‘AUD’ means the Australian dollar unless otherwise stated;
- i. a reference to a ‘day’ means a calendar day;
- j. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- k. the word ‘includes’ in any form is not a word of limitation; and
- l. a reference to a party includes that party’s administrators, successors, and permitted assigns, including any person to whom that party novates any part of this Deed.

2 DEED IS EFFECTIVE

2.1 Effective Date

2.1.1 This Deed comes into effect on the Effective Date.

2.1.2 It is a condition of this Deed that Transfer Authorisation for the transfer of the Assets to the Recipient is obtained within 6 months of the Effective Date.

2.1.3 If the Transfer Authorisation described in clause 2.1.2 is not obtained within 6 months of the Effective Date, the Commonwealth may terminate this Deed at any time thereafter immediately upon giving written notice to the Recipient.

2.1.4 Following a termination described in clause 2.1.3, neither party will be liable to the other for any loss, costs or expenses arising from a termination of the Deed under this clause 2.1. Termination of this Deed under this clause 2.1 is without fault by either party.

2.1.5 For the avoidance of doubt, the parties may at any time agree in writing to extend the period of time described in clauses 2.1.2 and 2.1.3 by which Transfer Authorisation may be obtained.

3 TERMS OF TRANSFER

3.1 Transfer of Assets

- 3.1.1 Subject to this Deed:
- a. the Recipient accepts the Assets on the terms and conditions of this Deed;
 - b. the Recipient owns the Assets on and from the date on which title passes to the Recipient in accordance with clause 3.11; and
 - c. the Recipient accepts all cost, risk and responsibility arising from, and in connection with, the Assets on and from the Collection Due Date.

3.2 Use of the Assets

- 3.2.1 The Recipient shall:
- a. only use the Assets for the Permitted Use;
 - b. not use the Assets in a manner that, in the Commonwealth's reasonable opinion, brings, or is likely to bring, the Commonwealth into disrepute;
 - c. not undertake any action which may constitute an infringement of Intellectual Property rights in respect of the Assets or permit or authorise any person to do so;
 - d. Use the Assets in a manner that ensures, so far as reasonably practicable, the health and safety of persons and complies with the Collection and Transportation Plan, this Deed and all applicable laws including the WHS Legislation and export control laws (foreign and domestic);
 - e. ensure the Assets are secured in accordance with this Deed and all applicable laws; and
 - f. not transfer or dispose of the Assets other than in accordance with clause 3.12.
- 3.2.2 The Commonwealth may immediately terminate this Deed (in whole or in part) for default under clause 3.26 by giving notice in writing to the Recipient if the Recipient fails to comply with any of its obligations under clause 3.2.1.

3.3 Specific Requirements

- 3.3.1 Each party shall comply with the Specific Requirements applicable to that party.

3.4 Special Conditions

- 3.4.1 Each party shall comply with the Special Conditions applicable to that party.
- 3.4.2 The Commonwealth may immediately terminate this Deed for default under clause 3.26 by giving notice in writing to the Recipient if the Recipient fails to comply with any of the Special Conditions which are applicable to the Recipient.

3.5 Relevant Documents

- 3.5.1 Each party shall comply with the obligations applicable to that party set out in, or in any document specified in, Attachment E.
- 3.5.2 To the extent that any documents forming part of Attachment E do not contain obligations, then they are provided or referenced for information only.

3.6 Purchase Price and Payment

- 3.6.1 All prices specified in this Deed are unalterable.
- 3.6.2 The Recipient shall pay the Purchase Price to the Commonwealth in accordance with Item 7 of Attachment A and in full, without any set-off, counter-claim, condition, abatement, deduction or withholding for any reason.
- 3.6.3 If Attachment A specifies or references a Payment Due Date or a number of Payment Due Dates for instalments, then the Recipient must ensure that the Commonwealth receives the relevant amount(s) in cleared funds by the applicable Payment Due Date(s). If the Purchase Price is stated to be payable in instalments, then without limiting its other rights under this Deed, the Commonwealth may suspend its performance of this Deed if the Recipient fails to pay any instalment.
- 3.6.4 Unless expressly stated otherwise in Item 7 of Attachment A:
- a. the Purchase Price is exclusive of all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed; and
 - b. all such taxes, duties and government charges shall be paid by the Recipient.

3.7 Goods and Services Tax

- 3.7.1 In this Deed, “tax invoice” and “GST” have the meanings given in the GST Act.
- 3.7.2 Unless indicated otherwise, the Purchase Price is exclusive of GST and the GST amount, if applicable, must be paid by the Recipient in addition to the Purchase Price at the same time and in the same manner as the consideration, or relevant part of it, is provided.
- 3.7.3 To the extent that there is any non-monetary consideration provided for the supply of the Assets (in addition to, or in place of, money) the Commonwealth will be entitled to recover from the Recipient any additional GST payable as a result.
- 3.7.4 The Commonwealth shall issue any tax invoice which is required to be issued to the Recipient under this Deed in accordance with the GST Act. The tax invoice shall state the amount of GST payable by the Recipient.
- 3.7.5 Any amount of GST to be paid by the Recipient under this clause 3.7 shall be a debt recoverable by the Commonwealth in accordance with clause 3.29.
- 3.7.6 If a party has a claim for an amount under this Deed, the claim is for the amount less any input tax credit to which that party is entitled in respect of the claim. The Commonwealth may treat the Recipient as entitled to full input tax credits for GST included in an amount unless the Recipient satisfies the Commonwealth otherwise.

3.8 Condition of Assets

- 3.8.1 The Recipient accepts the Assets on an As Is, Where Is basis in the condition and state of repair that the Assets are in at the Collection Date.
- 3.8.2 The Assets may contain (in or on the Assets) risks and hazards. On and from the Collection Date, the Recipient assumes all risk and responsibility for identifying and locating any risks and hazards in or on the Assets or arising from the Use of the Assets and ensuring that no damage, loss or injury is sustained by any person (including to workers, as defined in the WHS Legislation and other persons) by or arising from the presence of risks and hazards in or on the Assets, including when workers perform activities associated with the Use of the Assets.
- 3.8.3 Without limiting any other provision of this Deed, the Commonwealth shall provide to the Recipient written notice of any known risks and hazards present in or on the Assets on or before the Collection Date, to the extent necessary to comply with the applicable WHS Legislation (including any information in this Deed). No representation, warranty or guarantee is provided by the Commonwealth that the information in the notice is accurate or complete or identifies all risks and hazards in or on the Assets.
- 3.8.4 The Recipient acknowledges and agrees that it has made, or will make, its own independent inquiries, inspections and assessments of, and has satisfied itself in relation to, the risks and hazards that may be in or on the Assets prior to performing any activities associated with the Assets or their Use.
- 3.8.5 If, at the Collection Date, all or any part of the Assets are unfit for the purposes for which they were purchased by the Commonwealth, the Recipient shall not, at any time, restore, or attempt to restore, the Assets so that they are wholly or partly operable for that purpose unless that purpose is a Permitted Use.
- 3.8.6 The Recipient shall not reject the Assets, or make any claim for compensation or damages, on the grounds that the Assets are defective or vary from the description in this Deed or any information provided by the Commonwealth to the Recipient as part of the RFS process or otherwise published by the Commonwealth, or any other person, regarding the Assets.

3.9 Collection and Delivery

- 3.9.1 The parties shall comply with the requirements for delivery and collection of the Assets set out in Item 9 of Attachment A.
- 3.9.2 Without limiting clause 3.9.4, the Recipient shall comply with the Collection and Transportation Plan.
- 3.9.3 Subject to clause 3.9.6, the Recipient shall collect, or arrange for the collection of, the Assets from the Defence Location on the Collection Due Date, or as otherwise agreed by the parties in writing.
- 3.9.4 The Recipient shall comply with, and require its employees, officers, contractors and agents to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders and codes of behaviour for the Defence Location.
- 3.9.5 The Recipient shall not take possession of the Assets prior to the Collection Due Date.

- 3.9.6 Unless otherwise agreed in writing between the Commonwealth and the Recipient, the Recipient shall not take possession of the Assets until the Purchase Price is received in full by the Commonwealth in cleared funds in accordance with this Deed. However, if the Commonwealth has agreed to release particular Assets on payment of an instalment of the Purchase Price, then the Recipient shall not take possession of those particular Assets until the relevant instalment of the Purchase Price is received in full by the Commonwealth in cleared funds in accordance with this Deed.
- 3.9.7 The Recipient shall ensure that it has paid the Purchase Price or relevant instalment of the Purchase Price no less than 48 hours prior to the Collection Due Date so as to enable the Commonwealth to have received cleared funds prior to the Collection Due Date. The Commonwealth shall not be responsible for any Loss incurred by the Recipient as a consequence of any refusal by the Commonwealth to release the Assets for collection because the Commonwealth has not received the full Purchase Price or instalment of the Purchase Price in cleared funds.
- 3.9.8 The Recipient shall reimburse the Commonwealth for the cost of rectification of any damage to the Defence Location or Commonwealth equipment or assets caused by the Recipient or anyone acting on behalf of the Recipient during the Recipient's collection of the Assets.
- 3.9.9 If the Recipient fails to collect the Assets within 20 Working Days after the Collection Due Date, the Commonwealth may immediately terminate this Deed for default under clause 3.26 by giving notice in writing to the Recipient.
- 3.9.10 The Recipient acknowledges and agrees that:
- a. the condition of the Assets may affect the costs incurred by the Recipient in collecting the Assets or how the collection may occur; and
 - b. the Commonwealth will not be liable for any costs incurred by the Recipient in connection with collecting or arranging collection of the Assets from the Defence Location, even if additional costs are incurred by the Recipient as a result of the condition of the Assets.

3.10 Government Furnished Equipment

- 3.10.1 Subject to clauses 3.10.3 and 3.10.4, the Commonwealth may make available on loan at no cost to the Recipient such items of Government Furnished Equipment (GFE) as are agreed by the Commonwealth and the Recipient at the time and for the period agreed by the Commonwealth and the Recipient.
- 3.10.2 If the Commonwealth has agreed, at the Effective Date, to provide GFE, details of that GFE may be set out in the Special Conditions. However, this clause 3.10 applies to any GFE, regardless of whether or not the GFE is listed in this Deed.
- 3.10.3 The Recipient acknowledges that the Commonwealth and other entities may require access to the GFE. The Commonwealth makes no guarantee, and the Recipient should not assume, that all or any of the items of GFE which the Recipient wishes to use will be available at the time the Recipient wishes to use them.
- 3.10.4 The Commonwealth is under no obligation to provide the GFE. The Recipient will not be excused from performing its obligations under this Deed by reason of the Commonwealth not providing any item of GFE at the time or for the period the Recipient wishes to use it.
- 3.10.5 The Recipient must use the GFE only for the purposes for which it was provided by the Commonwealth and only in relation to the Assets.
- 3.10.6 The Recipient must not remove the GFE or allow the GFE to be removed from the Defence Location unless with the prior, written consent of the Commonwealth.
- 3.10.7 The Recipient must, at all times operate the GFE in accordance with:
- a. any guidelines, regulations or requirements issued by the Commonwealth;
 - b. all work, health and safety or other regulations which are applicable to the GFE or its operation; and
 - c. the specifications or requirements of the manufacturer of the GFE as provided with the GFE or of which the Recipient ought to be aware.
- 3.10.8 Without limiting clause 3.10.7, the Recipient must ensure that the GFE is, at all times kept in the possession or control of the Recipient, and operated in a professional, proper and safe manner and so as to avoid injury of damage to the GFE and any persons operating, using or handling the GFE.
- 3.10.9 The Recipient must:

- a. store and use the GFE in a responsible, competent, proper and skillful manner and comply with all instructions given by the Commonwealth regarding the manner in which this should be done;
 - b. take all reasonable steps to ensure the proper protection and security of the GFE; and
 - c. not make any alteration, addition or modification to any of the GFE.
- 3.10.10 The Recipient acknowledges and agrees that it shall be solely liable and responsible for all costs and expenses arising out of or in connection with the performance of all activities necessary to comply with its obligations under this clause 3.10.
- 3.10.11 The Recipient must ensure that the GFE is not in any way lost, damaged or destroyed as a result of its use by the Recipient.
- 3.10.12 The GFE must be returned to the Commonwealth at the Defence Location on the earlier of:
 - a. the time for return agreed by the Commonwealth and the Recipient; or
 - b. demand by the Commonwealth,in the same condition (including its form and functionality) as when it was provided to the Recipient.
- 3.10.13 If, in the Commonwealth's opinion, the GFE has been lost, damaged or destroyed by the Recipient, the Commonwealth will notify the Recipient and may make whatever arrangements (including entering into contracts with third party repairers or suppliers of the GFE) as the Commonwealth, in its discretion, considers necessary to replace or restore the GFE to the same condition as it was in when it was provided to the Recipient.
- 3.10.14 The Recipient will be solely responsible for all costs and expenses incurred by the Commonwealth in replacing or restoring the GFE in accordance with clause 3.10.13. All such amounts may be recovered by the Commonwealth as a debt owing to the Commonwealth from the Recipient.
- 3.10.15 If the Recipient fails to return any GFE, the Commonwealth may repossess the GFE and may enter any Recipient premises for this purpose.
- 3.10.16 Nothing in this Deed is taken to vest title to the GFE in the Recipient. For the avoidance of doubt, the GFE does not form part of the Assets.
- 3.10.17 The provision of the GFE by the Commonwealth does not convey any licence to use any trade marks, patents or patentable inventions which are disclosed by, or comprised in, or included on, the GFE.

3.11 Title and Risk

- 3.11.1 Title to the Assets will pass to the Recipient on the Collection Date, unless agreed otherwise by the parties in writing. The Commonwealth may require the Recipient to sign a receipt for the Assets upon collection.
- 3.11.2 Whether or not the Assets are collected on the Collection Due Date, the Recipient is solely responsible for all costs and risks associated with the Assets on and from the Collection Due Date.
- 3.11.3 The Commonwealth's release of the Assets, or facilitation of their collection by the Recipient, does not limit or reduce the Recipient's obligations under this Deed, nor does it amount to an agreement that the Recipient is complying, or has complied, with any law.
- 3.11.4 Transport of the Assets and possession of the Assets after collection are at the Recipient's sole risk.

3.12 Further Transfer or Disposal

- 3.12.1 If the Recipient wishes to transfer or dispose of the Assets, the Recipient shall ensure that it complies with this Deed (including clause 3.17) and all applicable laws.
- 3.12.2 The Recipient shall not:
 - a. sell, transfer, lease or otherwise dispose of the Assets;
 - b. transfer possession of the Assets; or
 - c. create or allow a PPS Security Interest (other than an interest granted in favour of the Commonwealth) to subsist in the Assets,

except as expressly permitted by this Deed or with the prior, written consent of the Commonwealth, such consent not to be unreasonably withheld, and if the Assets are FMS acquired, or ITAR or EAR controlled, also with the prior, written consent of the United States Government.

- 3.12.3 The Commonwealth may, as a condition of any consent granted under clause 3.12.2 to a sale, transfer, lease or other disposal, require that the relevant recipient, purchaser, transferee or lessee enter into a deed with the Commonwealth in relation to the condition and use of the Assets and to ensure that the Commonwealth has rights to retake possession of the Assets on termination of that deed.
- 3.12.4 The Recipient shall not, directly or indirectly, transfer or provide the Assets, or allow the Assets to be transferred or provided, to an individual or entity on the Consolidated List to which the *Charter of the United Nations Act 1945* and the *Autonomous Sanctions Act 2011* currently applies, as published by the Australian Government Department of Foreign Affairs and Trade.
- 3.12.5 If the Recipient fails to fully comply with this clause 3.12, the Commonwealth may immediately terminate this Deed for default under clause 3.26 by giving notice in writing to the Recipient.

3.13 Costs

- 3.13.1 Each party will bear its own costs of negotiating, entering and performing this Deed.

3.14 Audit

- 3.14.1 The Recipient shall grant the Commonwealth or its nominees access to the Recipient's premises, records and accounts relevant to this Deed, including to conduct audits under the *Auditor-General Act 1997* (Cth). The Commonwealth and its nominees may make copies of documents for the purposes of this clause 3.14.1.
- 3.14.2 Nothing in this clause 3.14 shall limit or affect the rights of the Auditor-General or the Australian Information Commissioner under law.

3.15 Intellectual Property

- 3.15.1 The Recipient acknowledges that a third party or third parties may own Intellectual Property rights comprised in the Assets, and that it may constitute an infringement of those rights to undertake certain activities, or authorise the undertaking of certain activities, in relation to the Assets.
- 3.15.2 If the Commonwealth has granted any Intellectual Property rights to the Recipient in relation to the Assets, those Intellectual Property rights are expressly set out in this Deed. No other Intellectual Property rights are granted to the Recipient in relation to the Assets, and all such rights are expressly excluded, including any licences which may otherwise have been implied.
- 3.15.3 Unless this Deed expressly provides otherwise, the Recipient is responsible for obtaining any Intellectual Property rights required in relation to the Assets or their Use.
- 3.15.4 To avoid doubt, the Commonwealth has not authorised the Recipient to undertake any activities in relation to the Assets which may infringe the Intellectual Property rights of any third party.

3.16 Licenses and Permits

- 3.16.1 If Item 10 of Attachment A requires the Recipient to hold specific licenses or permits, the Recipient shall obtain such licenses and permits prior to the Collection Date and maintain them as required by law. The Recipient acknowledges that the list in Item 10 of Attachment A may not be exhaustive of the licences, permits or other approvals or authorisations required.
- 3.16.2 The Recipient shall provide evidence of any licences and permits referred to in clause 3.16.1 to the Commonwealth upon request.
- 3.16.3 Even if no licences or permits are listed in Item 10 of Attachment A, the Recipient acknowledges that this does not indicate that no licences, permits or other approvals or authorisations are required. The Recipient is responsible for identifying all licences, permits, approvals and authorisations required in relation to the Assets and their Use or the carrying out of activities referred to in clause 3.2, and for obtaining and maintaining them at its own cost, whether or not they are listed in Item 10 of Attachment A.

3.17 Export Controls

- 3.17.1 If the Commonwealth has obtained Transfer Authorisation in relation to the transfer of the Assets which it has agreed to provide to the Recipient, these are set out in Attachment C. If Transfer Authorisations are obtained after the Effective Date, the Commonwealth shall promptly provide a copy of the Transfer Authorisations to the Recipient.
- 3.17.2 The Recipient shall comply with all Transfer Authorisations relating to the Assets.

- 3.17.3 The Recipient shall not act, or allow any third party to act, in a manner which may result in the Commonwealth contravening any applicable export controls laws (domestic or foreign) or any condition or requirement of any Transfer Authorisation given in relation to the Assets.
- 3.17.4 If the Recipient breaches this clause 3.17, the Commonwealth may immediately terminate this Deed for default under clause 3.26 by giving notice in writing to the Recipient.
- 3.17.5 For the avoidance of doubt, no Assets will be transferred under this Deed unless Transfer Authorisation has been obtained for those Assets. This clause 3.17.5 takes priority over any inconsistent provision of this Deed.

3.18 Problematic Substances and Problematic Sources

- 3.18.1 The Recipient acknowledges that the Assets may contain Problematic Substances or Problematic Sources.
- 3.18.2 The Commonwealth has provided to the Recipient (or shall provide prior to the Collection Date) the Problematic Substance and Problematic Sources Register for the Assets as set out in, or in the form of, Attachment B, if any Problematic Substances or Problematic Sources are known to be present on or in the Assets. No representation, warranty or guarantee is provided by the Commonwealth that the Problematic Substance and Problematic Sources Register is accurate or complete or identifies all Problematic Substances or Problematic Sources on or in the Assets.
- 3.18.3 The Recipient acknowledges and agrees that it has made or will make its own independent inquiries, inspections and assessments of, and has satisfied itself in relation to, the Problematic Substances and Problematic Sources that may be on or in the Assets prior to performing activities associated with the Use of the Assets.
- 3.18.4 On and from the Collection Due Date, to the extent permitted by law, the Recipient assumes all risk, liability and responsibility for:
- a. verifying and locating any Problematic Substances or Problematic Sources on or in the Assets;
 - b. the presence of any Problematic Substances or Problematic Sources that may be on or in the Assets and anything incidental to them, including compliance with all applicable laws, including the WHS Legislation, and the requirements of any government agency; and
 - c. ensuring no damage, Loss or injury is sustained (including to workers, other persons or the environment) by or as a result of Problematic Substances or Problematic Sources that may be on or in the Assets.
- 3.18.5 The Recipient shall not breach areas or disturb any component of the Assets which may contain Problematic Substances or Problematic Sources unless such disturbance or breach is reasonably necessary to safely undertake the Permitted Use and such disturbance or breach is carried out by a person who is licensed, authorised and qualified to carry out such activities, including in accordance with clause 3.19.5.

3.19 Work Health and Safety (WHS)

- 3.19.1 The Recipient shall comply with all reasonable directions and Commonwealth procedures relating to work health and safety and security in effect or as notified by the Commonwealth Representative to the Recipient from time to time, so far as these directions concern the safe collection of the Assets.
- 3.19.2 The Recipient:
- a. shall comply with, and shall ensure that all its contractors comply with, the applicable WHS Legislation including the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth or contractors and any other person who, concurrently with the Commonwealth, Recipient or the contractor, has a work health and safety duty under the WHS Legislation in relation to the same matter; and
 - b. acknowledges, in carrying out any obligations under this Deed, that it has a duty to ensure, so far as is reasonably practicable, the health and safety of:
 - (i) Commonwealth personnel;
 - (ii) Recipient personnel; and
 - (iii) other persons,in connection with the Use of the Assets.

- 3.19.3 The Recipient represents and warrants that:
- a. it has given careful, prudent and comprehensive consideration to the work health and safety implications of taking possession of the Assets;
 - b. its proposed method of Use of the Assets 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 applicable WHS Legislation; and
 - c. it will apply (and review, amend and apply, as appropriate) the work health and safety risk management plans and processes it prepared and submitted to the Commonwealth in relation to the Assets.
- 3.19.4 To the extent not inconsistent with the express requirements of this Deed, the Commonwealth Representative may direct the Recipient to provide particular information or documentation that the Commonwealth considers reasonably necessary to enable it to comply with applicable legislation relating to work health and safety, including the WHS Legislation.
- 3.19.5 The Recipient shall ensure that if the WHS Legislation requires that:
- a. a person (including a contractor):
 - (i) be authorised or licensed in accordance with the WHS Legislation to carry out any works at a workplace, that that person is so authorised or licensed and complies with any conditions of such Authorisation; 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 that person has the required qualifications or experience or is so supervised; or
 - b. a workplace, plant, substance or design, or work (or class of work) be authorised or licensed, that that workplace, plant, substance or design, or work (or class of work) is so authorised or licensed.
- 3.19.6 To the extent the WHS Legislation applies, the Recipient shall report to the Commonwealth any Notifiable Incident in connection with the Assets, their Use or the performance of this Deed that involves:
- a. Recipient personnel or the Recipient's contractor personnel on Commonwealth premises;
 - b. Commonwealth personnel on the Recipient or the Recipient's contractors' premises; or
 - c. any person (including Commonwealth, Recipient or Recipient's contractor personnel), where the incident arises out of the conduct of the Commonwealth's business or undertaking, and the Commonwealth owes such person a duty under the WHS Legislation.
- 3.19.7 Where practicable, the Recipient shall report Notifiable Incidents in accordance with Department of Defence Form AE527, as amended from time to time.
- 3.19.8 The Recipient shall promptly provide copies of notices or any other documentation provided to or issued by the regulator and provide such other information and reasonable assistance as may be required to ensure the Commonwealth complies with its reporting obligations to Comcare, if any, regarding the Notifiable Incident.

3.20 Exclusion of Warranties and Guarantees

- 3.20.1 The Recipient acknowledges and agrees that the Commonwealth has not given or made, and does not give or make, any warranties or guarantees of any kind in relation to the Assets or GFE or any information or documentation provided with the Assets or GFE, and this Deed expressly excludes all such warranties or guarantees, whether express or implied, to the maximum extent permitted by law. The Recipient accepts the transfer of the Assets, and takes possession and makes use of the Assets and GFE, entirely at its own risk.
- 3.20.2 Without limiting clause 3.20.1, to the extent permitted by law, the Commonwealth does not warrant, guarantee or represent that:
- a. the Assets are capable of being registered or certified, safe, compliant with any laws, complete, of merchantable quality or fit for any purpose (including the Permitted Use); or
 - b. the GFE is safe, compliant with any laws, complete or fit for any purpose.
- 3.20.3 To the extent permitted by law, the Commonwealth will not be liable for any Loss, including any special, indirect or consequential damages (including loss of profits or anticipated profits, or loss of revenue) arising from the transfer of the Assets to the Recipient or the possession or Use of the

Assets or GFE by or on behalf of the Recipient, however caused, whether in tort (including negligence), contract, statute, equity or otherwise.

- 3.20.4 The Recipient hereby irrevocably releases and discharges the Commonwealth from any liability in relation to the Assets and GFE, including Problematic Substances or Problematic Sources that may be on or in the Assets or GFE, from the Collection Due Date.

3.21 Insurance

- 3.21.1 The Recipient shall ensure that it effects and maintains insurance arrangements that are appropriate, given the nature and risks associated with the Assets and the Permitted Use.
- 3.21.2 If required by the Commonwealth, the Recipient shall promptly provide evidence of the insurance arrangements referred to in clause 3.21.1 to the Commonwealth's satisfaction.

3.22 Indemnity

- 3.22.1 The Recipient shall indemnify and hold harmless the Commonwealth and the Commonwealth's officers, employees, contractors and agents ("those indemnified") against any Loss suffered, sustained or incurred by those indemnified arising out of or in connection with:
- a. the performance of this Deed by the Recipient, including the carrying out of activities referred to in this Deed or any act or omission of the Recipient or its officers, employees, contractors or agents;
 - b. any Use of the Assets or GFE by or on behalf of the Recipient or any person who receives an Asset or GFE from or through the Recipient or its successors in title; or
 - c. the breach of any of the terms of this Deed by the Recipient,
- except to the extent that such Loss results from any unlawful or negligent act or omission on the part of those indemnified. The Commonwealth will hold the rights of those indemnified (other than the Commonwealth) on trust and may exercise the rights on behalf of those indemnified.
- 3.22.2 In addition to the indemnity in clause 3.22.1, the Recipient shall indemnify the Commonwealth for any Loss suffered by the Commonwealth arising out of or in connection with a failure by the Recipient to comply with its obligations under this Deed or any laws applicable to the Use of the Assets or GFE.

3.23 Limitation of Liability

- 3.23.1 The liability of the Commonwealth under or in connection with this Deed (including any liability for breach of this Deed, in tort (including negligence), under statute in equity or otherwise) is limited to the minimum amount permitted by law.

3.24 Privacy

- 3.24.1 In this Deed, "Privacy Act" means the *Privacy Act 1988* (Cth) and "Australian Privacy Principles", "Information Commissioner" and "personal information" have the meanings given in the Privacy Act.
- 3.24.2 The Recipient shall:
- a. if it obtains personal information from the Commonwealth in the course of performing this Deed, use or disclose that personal information only for the purposes of this Deed;
 - b. comply with the Privacy Act; and
 - c. in the course of performing this Deed, 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.
- 3.24.3 The Recipient shall notify the Commonwealth as soon as reasonably practicable if:
- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 3.24, whether by the Recipient or any other person to whom the personal information has been disclosed for the purposes of this Deed; or
 - b. in relation to personal information obtained in the course of performing this Deed:
 - (i) it becomes aware that a disclosure of such personal information may be required by law; or
 - (ii) it is approached by the Information Commissioner.
- 3.24.4 The Recipient shall ensure that its contractors and personnel who deal with personal information for the purposes of this Deed are aware of, and comply with, this clause 3.24.

- 3.24.5 Without limiting this clause 3.24, prior to the Recipient disclosing the contents of this Deed to current or prospective investors, customers, purchasers or other persons, the Recipient must first remove or obscure the Commonwealth Representative's details in Attachment A, to the extent these details include personal information.

3.25 Dispute Resolution

- 3.25.1 A party shall not commence court proceedings relating to any dispute in relation to this Deed except after following the process in this clause 3.25.
- 3.25.2 The parties shall negotiate in good faith and use all reasonable efforts to resolve disputes in relation to this Deed as quickly as practicable.
- 3.25.3 If a dispute in relation to this Deed cannot be settled by negotiation within 30 days, the parties shall escalate the dispute to their senior management.
- 3.25.4 The parties shall at all times during the dispute continue to fulfil their obligations under this Deed.
- 3.25.5 Nothing in this clause prevents any party from exercising a right to terminate this Deed or reduce the scope of this Deed, or from seeking urgent interlocutory relief in relation to a dispute.

3.26 Termination for Default

- 3.26.1 In addition to its other rights under this Deed or at law, the Commonwealth may immediately terminate this Deed (in whole or in part) by notice in writing to the Recipient, if the Recipient:
- a. fails to pay the Commonwealth the Purchase Price, or if the Purchase Price is stated to be payable in instalments, fails to pay the Commonwealth any instalment of the Purchase Price, by the Payment Due Date in accordance with clause 3.6;
 - b. suffers an Insolvency Event; or
 - c. commits a breach of this Deed which cannot be remedied or commits a breach of this Deed for which this Deed provides a notice of termination for default may be given; or
 - d. commits any breach of this Deed and fails to remedy that breach within a reasonable time after receiving notice from the Commonwealth requiring the Recipient to remedy that breach.
- 3.26.2 If this Deed is terminated under this clause 3.26.1, then the Commonwealth may, subject to any provision of this Deed to the contrary and subject to obtaining any necessary Transfer Authorisations, do one or more of the following:
- a. refuse to allow collection of the Assets, or any of them, by the Recipient;
 - b. sell, transfer or otherwise dispose of the Assets, including to a third party, or destroy the Assets;
 - c. recover from the Recipient all Loss incurred by the Commonwealth as a result of a breach of this Deed by the Recipient;
 - d. if the Commonwealth sells, transfers or disposes of the Assets to a third party for less than the Purchase Price, recover from the Recipient an amount equal to the difference between the Purchase Price and any sale proceeds received by the Commonwealth;
 - e. retake possession of the Assets or require the Recipient to deliver the Assets (at no charge to the Commonwealth) to the Commonwealth at a location, time and date notified by the Commonwealth; and
 - f. retain any amount paid to the Commonwealth by the Recipient and use that amount to offset any Loss incurred by the Commonwealth or other amount due to the Commonwealth from the Recipient under this Deed or otherwise.
- 3.26.3 Title to the Assets will pass to the Commonwealth if the Commonwealth retakes possession of the Assets or the Assets are delivered to the Commonwealth under this clause 3.26.
- 3.26.4 The Recipient shall pay to the Commonwealth any amount notified as owing under clause 3.26.2 within 30 days of the date of the notice and receipt of a correctly rendered invoice.
- 3.26.5 The Commonwealth shall not be liable to the Recipient for any Loss suffered by the Recipient or any refund of the Purchase Price as a result of a termination under this clause 3.26.

3.27 Termination for Convenience

- 3.27.1 In addition to any other rights it has under this Deed or otherwise at law, the Commonwealth may at any time terminate this Deed (in whole or in part) by notifying the Recipient in writing.
- 3.27.2 If this Deed is terminated under this clause 3.27, then the Commonwealth may, subject to any provision of this Deed to the contrary and subject to any necessary Transfer Authorisations, do one or more of the following:

- a. refuse to allow collection of the Assets by the Recipient;
- b. sell, transfer or otherwise dispose of the Assets; and
- c. retake possession of the Assets or require the Recipient to deliver the Assets to the Commonwealth at a location, time and date notified by the Commonwealth.

- 3.27.3 If the Commonwealth Representative issues a notice under clause 3.27.1, the Recipient's sole remedy against the Commonwealth shall be:
- a. a refund of payments made by the Recipient under this Deed for any part of the Assets not supplied to, or collected by, the Recipient or which are returned to the Commonwealth in accordance with clause 3.27.2; and
 - b. the payment of reasonable costs which are:
 - (i) directly incurred by the Recipient as a result of the termination of this Deed including costs directly incurred by the Recipient in delivering any Assets to the Commonwealth as required by clause 3.27.2); and
 - (ii) which were unable to be mitigated by the Recipient, as substantiated to the reasonable satisfaction of the Commonwealth.
- 3.27.4 Without limiting clause 3.27.3, the Commonwealth shall not be liable for any Loss (including loss of profits, loss of revenue or loss of business opportunity) as a result of the termination of this Deed under this clause 3.27, other than as specified in clause 3.27.3.
- 3.27.5 The refund or payment described in clause 3.27.3 shall be made by the Commonwealth by electronic funds transfer within 60 days of Commonwealth receipt of the Recipient's account details and a correctly-rendered tax invoice.

3.28 Notices

- 3.28.1 Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing and sent from and delivered to the Commonwealth Representative or Recipient Representative, in accordance with the details specified in Items 3 or 4 of Attachment A.
- 3.28.2 A notice or communication shall be deemed to have been delivered:
- a. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another;
 - b. if hand delivered, when received at the address, or by the addressee if sooner;
 - c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within one Working Day after that transmission, the addressee informs the sender that it has not received the entire notice; or
 - d. if sent as an email, when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee,

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

3.29 Right of Commonwealth to Recover Debts

- 3.29.1 Without limiting the Commonwealth's rights under this Deed, if the Recipient owes any debt to the Commonwealth in relation to this Deed, the Commonwealth may exercise one or both of the following:
- a. deduct the amount of the debt from payment of any amount otherwise due to the Recipient under this Deed or any contract or otherwise at law; or
 - b. give the Recipient written notice of the existence of a debt recoverable which shall be paid by the Recipient within 30 days after receipt by the Recipient of notice and a correctly-rendered tax invoice.
- 3.29.2 If the Commonwealth deducts the amount of a debt from any payment, it shall notify the Recipient in writing that it has done so.
- 3.29.3 If any sum of money owed to the Commonwealth is not received by its due date for payment, the Recipient shall pay to the Commonwealth interest at the Australian Tax Office sourced General Interest Charge rate current at the date the payment was due, for each day the payment is late.

3.29.4 Nothing in this clause 3.29 shall affect the right of the Commonwealth to recover from the Recipient the whole of any debt owed by the Recipient, or any balance that remains owing after deduction.

3.30 General

- 3.30.1 Either party may propose a variation to this Deed. This Deed shall only be varied in writing and when signed by both parties.
- 3.30.2 If any of clauses 1 to 3.31 of this Deed are inconsistent with any provision in an Attachment or Schedule to this Deed, then clauses 1 to 3.31 of this Deed take precedence to the extent of the inconsistency.
- 3.30.3 If any part of this Deed is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Deed shall not be affected and shall be read as if that part had been severed.
- 3.30.4 The laws of the Jurisdiction shall apply to this Deed. The courts of the Jurisdiction shall have non-exclusive jurisdiction to decide any matter arising out of this Deed and each party submits to the jurisdiction of those courts for any proceedings in connection with this Deed.
- 3.30.5 The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Deed.
- 3.30.6 The Recipient shall not represent itself, and shall ensure that its personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 3.30.7 The Recipient may not, without the prior, written consent of the Commonwealth, and if the Assets are FMS acquired, or ITAR or EAR controlled, without the prior, written consent of the United States Government, assign in whole or in part, its rights under this Deed or novate this Deed.
- 3.30.8 Failure by either party to enforce a term of this Deed shall not be construed as in any way affecting the enforceability of that term or this Deed as a whole.
- 3.30.9 A clause of this Deed shall not be interpreted against a party merely because that party was responsible for drafting the clause.
- 3.30.10 Each party shall do all things, including execute all documents, necessary to give effect to this Deed.
- 3.30.11 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Commonwealth, the Commonwealth is unable to perform in whole or in part any obligation under this Deed, the Commonwealth is relieved of that obligation to the extent and for the period that it is unable to perform that obligation. No liability of the Commonwealth arises from any such delay or non-performance of the obligation.
- 3.30.12 This Deed represents the parties' entire agreement in relation to its subject matter and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 3.30.13 This Deed may be executed in counterparts and all executed counterparts, taken together, constitute one document.
- 3.30.14 Any time or date specified in this Deed is for the benefit of the Commonwealth. The Commonwealth shall endeavor to meet such times and dates, but shall not be liable for any Loss caused by a failure by the Commonwealth to meet any particular time or date specified in this Deed.
- 3.30.15 The Recipient:
- a. shall take all reasonable measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under this Deed; and,
 - b. acknowledges and agrees that its obligation in clause 3.30.15a extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by its personnel or contractors in relation to this Deed.
- 3.30.16 If the Recipient knows that any fraud described in clause 3.30.15 is occurring or has occurred, it shall, as soon as practicable, provide written details to the Commonwealth, and provide such further information and assistance as the Commonwealth, or any person authorised by the Commonwealth, reasonably requires in relation to the fraud.

3.31 Survival

3.31.1 The following clauses survive the expiry or termination of this Deed:

- a. clause 3.2 (Use of the Assets);
- b. clause 3.3 (Specific Requirements);
- c. clause 3.4 (Special Conditions);
- d. clause 3.12 (Further Transfer or Disposal);
- e. clause 3.14 (Audit);
- f. clause 3.15 (Intellectual Property);
- g. clause 3.17 (Export Controls);
- h. clause 3.20 (Exclusion of Warranties and Guarantees);
- i. clause 3.22 (Indemnity);
- j. clause 3.23 (Limitation of Liability);
- k. clause 3.24 (Privacy); and
- l. any other provision which expressly or by implication from its nature is intended to survive the termination or expiration of this Deed, and any rights arising on termination or expiration, including provisions relating to exclusion of warranties, indemnities, costs, GST, ITAR and export controls, dispute resolution and termination.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE DEPARTMENT OF DEFENCE

(signature) (print name and position) (date)

In the presence of:

(signature of witness) (print name of witness) (date)

SIGNED, SEALED AND DELIVERED for and on behalf of

[...INSERT RECIPIENT NAME...]

in accordance with s.127 of the *Corporations Act 2001* (Cth):

(signature) (print name) Director/Sole Director (date)

(signature) (print name) Director/secretary (date)

SIGNED, SEALED AND DELIVERED for and on behalf of

[...INSERT RECIPIENT NAME...]

(signature) (print name and position) (date)

In the presence of:

(signature of witness) (print name of witness) (date)

ATTACHMENT A - PARTICULARS OF TRANSFER

- 1. DESCRIPTION OF ASSETS (CLAUSE 1.1)**
 - 1.1 [SEPARATE LIST OF ASSETS, INCLUDING TAIL NUMBERS OF AIRCRAFT AS KNOWN, TO BE INCLUDED AS A SEPARATE ANNEX A]. The Assets comprise:
 - a. the S-70A-9 Black Hawk Aircraft as described in Annex A (Aircraft);
 - b. such data relating to the Aircraft as the Commonwealth provides from time to time; and
 - c. associated Commonwealth-owned unique Inventory Items, as the Commonwealth identifies as available and surplus from time to time and which the Commonwealth elects to include as part of the Assets by notice to the Recipient.
 - 1.2 The Assets will be provided to the Recipient in tranches as specified in Annex A (**Tranches**), subject to Item 11.5.
- 2. DEFENCE LOCATION (CLAUSE 1.1)**
 - 2.1 Meeandah, Brisbane QLD, Australia, or such other location for particular Assets or Tranches notified by the Commonwealth in writing from time to time.
- 3. COMMONWEALTH REPRESENTATIVE (CLAUSE 1.1 AND 3.28)**
 - 3.1 [NAME]
[ORGANISATION]
[ADDRESS]
[EMAIL ADDRESS]
- 4. RECIPIENT REPRESENTATIVE (CLAUSE 1.1 AND 3.28)**
 - 4.1 [NAME]
[ORGANISATION]
[ADDRESS]
[EMAIL ADDRESS]
- 5. JURISDICTION (CLAUSE 1.1 AND 3.30.4)**
 - 5.1 Australian Capital Territory, Australia.
- 6. COLLECTION DUE DATE (CLAUSE 1.1)**
 - 6.1 The Commonwealth shall notify the Recipient in writing of the Collection Due Date for particular Assets.
- 7. PURCHASE PRICE AND PAYMENT (CLAUSE 1.1 AND 3.6)**

The price for each S-70A-9 Black Hawk Aircraft is fixed at [...PRICE OF ASSET...] exclusive of GST. The price of the Inventory is fixed at [...INSERT PRICE OF ASSET...] exclusive of GST.

 - 7.1 The Recipient shall pay the Purchase Price in instalments as set out in Annex A within 30 days of receipt of a tax invoice issued by the Commonwealth (each, a **“Payment Due Date”**).
 - 7.2 The Recipient shall pay each instalment of the Purchase Price using one of the payment methods set out in the tax invoice.
 - 7.3 For the avoidance of doubt, the Purchase Price is unalterable and remains due and payable in full even if the Assets are in a different condition to that anticipated or even if the Recipient rejects, or is deemed to reject, any particular Aircraft or Inventory Items. However, if the Commonwealth does not make an Aircraft or Tranche available, the cost of that Aircraft or Tranche will be removed from the Purchase Price and Annex A will be updated accordingly by the Commonwealth.
- 8. PERMITTED USE (CLAUSE 3.2)**
 - 8.1 [DETAILS OF AGREED PERMITTED USE TO BE INSERTED]
- 9. COLLECTION REQUIREMENTS (CLAUSE 3.9)**
 - 9.1 The Recipient shall provide a Collection and Transportation Plan to the Commonwealth no later than 10 Working Days prior to the Collection Due Date and shall update the Collection and

Transportation Plan as required by the Commonwealth from time to time 10 Working Days in advance of any proposed Collection Due Date.

- 9.2 The Collection and Transportation Plan shall include the Recipient's risk assessment for collection of the Assets, transporting the Assets from the Defence Location and undertaking the Permitted Use in respect of the Assets.
- 9.3 The Recipient is required to collect the Assets from the Defence Location and transport the Assets from the Defence Location in accordance with the Collection and Transportation Plan, unless agreed otherwise in writing.
- 9.4 The Commonwealth is under no obligation to provide assistance to the Recipient in respect of the collection or transportation of the Assets.

10. LICENCES AND PERMITS (CLAUSE 3.16)

- a. All civil aviation or other regulatory authority permits and licences that are required by law for the collection and transportation of the Assets or for the Recipient's personnel to fly the Assets.
- b. All permissions required to access, and collect Assets from, the Defence Location.

11. SPECIAL CONDITIONS (CLAUSE 3.4)

Security and Sanitisation

- 11.1 The Recipient acknowledges that the Commonwealth will be required to conduct sanitisation of the Assets to remove any data, equipment or systems which may, in the Commonwealth's opinion:
- a. present a security risk to the Commonwealth if they were retained on the Assets; or
- b. result in the unauthorised disclosure of confidential information.
- 11.2 The Recipient acknowledges that the sanitisation process may adversely affect the value, appearance and functionality of the Assets.
- 11.3 Notwithstanding any other provision of this Deed, the Commonwealth shall not be obliged to include any item as part of the Assets if, in the Commonwealth's opinion:
- a. the sanitisation process has been unsuccessful; or
- b. including an item as part of the Assets may present a security risk to the Commonwealth.
- 11.4 If the Commonwealth elects to remove a Tranche from the Assets as described in Item 11.3, then the Commonwealth shall notify the Recipient in writing and this Deed (including Annex A) will be updated by the Commonwealth to remove that Tranche from the Assets and remove the corresponding instalment of the Purchase Price. All other provisions of the Deed will remain in full force and effect.

Priority of Assets in Tranches

- 11.5 The Recipient may, from time to time, request the Commonwealth to include particular Inventory Items in any Tranche of Inventory Items, except that the total value of Inventory Items in a particular Tranche which comprises only Inventory Items must be in approximate proportion to the total value of Inventory Items in each other Tranche which comprises only Inventory Items.
- 11.6 The Commonwealth may, but is not obliged to, comply with a request made under Item 11.5.
- 11.7 Subject to clause 3.8.6 of the Deed, Tranches must be collected in the order set out in Annex A.

Further Transfer or Disposal (clause 3.12)

- 11.8 [Clause to be inserted, depending on agreed 'Permitted Use', which may permit resale of some Inventory Items.]
- 11.9 The Recipient acknowledges that the Commonwealth's consent to a sale, transfer, lease or disposal of Assets to a third party under clause 3.12.1 of the Deed is subject to the third party entering into a deed with the Commonwealth in relation to the condition and use of the Assets and to provide for the Commonwealth's rights to retake possession of the Assets, or any of them, on termination of that deed.

Confidentiality

- 11.10 The Recipient acknowledges that the Commonwealth is subject to government reporting and disclosure obligations which may require the Commonwealth to disclose (publicly or to Commonwealth officers, Ministers, Parliament or Parliamentary Committees) certain content of this Deed, including the name of the Recipient and the Purchase Price.
- 11.11 The Recipient must obtain the prior, written consent of the Commonwealth to the disclosure of any content of this Deed or details of any transaction described in or contemplated by this Deed, other than:
- a. content previously publicly disclosed by the Commonwealth;
 - b. disclosures required by law or the rules of any stock exchange or similar body on which the Recipient is listed; or
 - c. disclosures by the Recipient for the purposes of the Recipient's compliance with, or in order to obtain, Authorisations required by this Deed.

Public Announcements

- 11.12 The Recipient shall not make any public announcement or other statement which refers or is connected to either this Deed or the Assets without the prior, written consent of the Commonwealth, except if such disclosure is required by any law or the rules of any stock exchange or similar body on which the Recipient is listed. This clause does not apply to routine marketing activities promoting the Recipient's products or services or prevent the disclosure of information that is public knowledge other than by breach of this clause, a breach of law or a breach of any obligation of confidentiality.

Photographs

- 11.13 The Recipient must not, and must ensure that its personnel and contractors do not, take any photographs whilst on Commonwealth premises or of Commonwealth-owned equipment or assets, except with the prior, written consent of the Commonwealth. For the avoidance of doubt, this Item does not apply to the Assets once title in those Assets has transferred to the Recipient, however ITAR and EAR restrictions continue to apply.

Asset Disposal

- 11.14 [To be inserted – Recipient's planned method of disposing of the Assets when they are no longer required for Permitted Use – e.g. scrapping.]

ANNEX A TO ATTACHMENT A- ASSETS AND PAYMENTS

[LIST OF ASSETS, TRANCHES AND PAYMENT AMOUNTS TO BE INSERTED BASED ON NEGOTIATED OUTCOMES.]

ATTACHMENT B - PROBLEMATIC SUBSTANCES AND PROBLEMATIC SOURCES REGISTER

1. DESCRIPTION OF PROBLEMATIC SUBSTANCES

- 1.1 The known Problematic Substances contained in the Assets as at the Effective Date are as detailed in the following documents:
- a. Problematic Substances and Problematic Sources Register
 - b. Safety Data Sheets
 - c. Special Technical Instructions

ATTACHMENT C - EXPORT CONTROLS

1. EXPORT CONTROLS

- 1.1 The following export controls are applicable to the Assets:
- a. [List of Configurations regarding S-70A-9 Black Hawk ITAR and EAR classified items to be provided.]

2. TRANSFER AUTHORISATIONS

- 2.1 The following Transfer Authorisations are applicable to the Assets and are included in this Attachment C:
- a. [Letter from US Department of State to be referenced and attached when obtained].

ATTACHMENT D - SPECIFIC REQUIREMENTS

1. SPECIFIC REQUIREMENTS

1.1 The following Schedules are included in this Attachment D:

- a. Schedule 1 – Security Interests
- b. Schedule 2 – Not used.

ATTACHMENT D
SCHEDULE 1
SECURITY INTERESTS

PERSONAL PROPERTY SECURITIES REGISTRATION

1. DEFINITIONS

1.1 For the purposes of this Schedule:

- a. “PPS Register” means the Personal Property Securities Register established under the PPSA; and
- b. unless the context requires otherwise, terms have the meanings given to them in the PPSA.

2. SECURITY PROVISION

2.1 The Recipient grants a first-ranking security interest in the Assets to secure the due and punctual performance of the Recipient’s obligations under this Deed (the “Secured Obligations”). This security interest is a fixed charge.

2.2 Without limiting any other provision of this Deed, if the Recipient breaches any of the Secured Obligations, the Commonwealth may, in its absolute discretion and without limiting any other rights it may have under this Deed or otherwise:

- a. enter any premises occupied by the Recipient where any Asset is kept and repossess the Asset (including by detaching it from any item to which it may be attached, or by detaching it from any land to which it may be fixed);
- b. exercise any of the rights of a secured party under the PPSA, including to seize, to retain or to dispose of any Asset (or any part of it), except to the extent that the parties agree for the purposes of clause 8 of this Schedule that a right does not apply; and
- c. appoint any person or any two or more persons jointly and severally to be a receiver or receiver and manager of any Asset (and remove any such person).

2.3 If the Commonwealth exercises its rights under clause 2.2a or 2.2b of this Schedule, the Commonwealth will not have any liability to the Recipient in relation to any Loss suffered as a result of the repossession, seizure, retention or disposal of the Assets.

2.4 If the Commonwealth exercises its rights under clause 2.2a or 2.2b of this Schedule, title to the Assets will pass to the Commonwealth on repossession. The Commonwealth is not required to dispose of the Assets within a specified period or at all.

2.5 The Recipient shall provide the Commonwealth with all reasonable assistance required to enable it to exercise its rights under clause 2 of this Schedule.

2.6 This clause 2 survives the termination or expiry of this Deed.

3. PPSA INFORMATION UNDERTAKINGS

3.1 The Recipient shall give the Commonwealth:

- a. **(registration information)** promptly on request all information required by the Commonwealth to ensure that any registration of any PPS Security Interest provided for by this Deed is, and remains, fully effective or perfected (or both), and that each PPS Security Interest has the priority required by the Commonwealth; and
- b. **(change in name or other details):**
 - (i) at least 30 Working Days' prior notice of any change to its name, together with details of the proposed new name; or
 - (ii) at least 30 Working Days' notice before anything happens in respect of the Recipient or any Asset that would cause any information in a financing statement in relation to the Commonwealth's PPS Security Interest to be different if it were re-registered.

4. NO POSTPONEMENT OF ATTACHMENT

4.1 Nothing in this Deed may be taken as an agreement that any PPS Security Interest provided for by this Deed attaches later than the time contemplated by section 19(2) of the PPSA.

5. PPS SECURITY INTEREST CONTINUES DESPITE DEALING

5.1 If, in breach of this Deed, the Recipient attempts to dispose of or otherwise deal with any of the Assets, the Recipient acknowledges that, despite the disposal or dealing:

- a. the Commonwealth has not authorised the disposal or agreed that the dealing would extinguish the Commonwealth's security interest; and
- b. the Commonwealth's security interest continues in that Asset.

6. LIABILITY FOR LOSS

6.1 Without limiting the Commonwealth's other rights under this Deed or otherwise at law, to the extent permitted by law, the Commonwealth will not be liable for any Loss that the Recipient suffers as a direct or indirect result of the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this Schedule.

7. AUTHORITY TO REGISTER AND WAIVER OF RIGHT TO RECEIVE VERIFICATION STATEMENTS

7.1 The Recipient acknowledges that the Commonwealth may, at the Recipient's cost, register one or more financing statements in relation to any PPS Security Interests provided for by this Deed. If permitted by the PPSA, the Recipient waives its rights to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

8. PPSA CONFIDENTIALITY

8.1 In this clause 8, all references to sections are to sections in the PPSA.

8.2 The parties shall not disclose information of the kind mentioned in section 275(1), except in the circumstances required by sections 275(7)(b) to (e). The Recipient shall obtain the Commonwealth's consent before authorising the disclosure of information under section 275(7)(c) or requesting information under section 275(7)(d). Nothing in this paragraph prevents any disclosure by the Commonwealth that it believes is necessary to comply with its other obligations under the PPSA, or any other law or statutory or portfolio duties, or required for public accountability reasons, including following a request by a minister, parliament or a parliamentary committee.

8.3 To the extent that it is not inconsistent with clause 2.2 of this Schedule, constituting a "confidentiality agreement" for the purposes of section 275(6)(a), the Recipient agrees that the Commonwealth may disclose information of the kind mentioned in section 275(1) to the extent that the Commonwealth is not doing so in response to a request made by an "interested person" (as defined in section 275(9)) pursuant to section 275(1).

9. CONTRACTING OUT OF THE PPSA

9.1 To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Commonwealth of any PPS Security Interest provided for by this Deed, the parties agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- a. **(enforcement methods)** sections 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral) and 137 (Persons entitled to notice may object to proposal);
- b. **(notices)** sections 95 (Secured party must give notice of removal of accession), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- c. **(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

INTERESTS IN MOBILE EQUIPMENT

10. DEFINITIONS

10.1 For the purposes of this Schedule:

- a. **“Cape Town Convention”** has the meaning given to that term in the International Interests in *Mobile Equipment (Cape Town Convention) Act 2013* (Cth);
- b. **“International Registry”** has the meaning given in the Cape Town Convention; and
- c. unless the context requires otherwise, terms have the meanings given to them in the Cape Town Convention.

11. CAPE TOWN CONVENTION

- 11.1 The Recipient authorises and consents to the registration of any international interest constituted by this clause, for the purposes of the Cape Town Convention.
- 11.2 The Recipient agrees to cooperate and to take such actions as are necessary to enable the Commonwealth to register each international interest created under this clause, with the International Registry.

ATTACHMENT E - RELEVANT DOCUMENTS

1. RELEVANT DOCUMENTS

1.1 The following additional documents are applicable to this Deed:

a. [ANY RELEVANT DOCUMENTS WILL BE LISTED AND COPIES ATTACHED]