



OneSKY Australia

Future Service Delivery (FSD)



PROBITY PLAN AND PROTOCOLS

FOR THE JOINT PROCUREMENT OF A NATIONAL ATM PLATFORM BETWEEN
AIRSERVICES AUSTRALIA (AS LEAD AGENCY) AND DEPARTMENT OF
DEFENCE (DEFENCE MATERIEL ORGANISATION)

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Document Approval

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Contents

1.	DEFINITIONS	5
2.	OBJECTIVES	7
3.	OVERVIEW AND APPLICATION	7
3.1	Overview	7
3.2	General Principles	8
3.3	Process Guidelines	8
3.4	Application	9
4.	KEY PROBITY ROLES	11
4.1	Role of the Manager Acquisition	11
4.2	Appointment and role of the Contact Officer	11
4.3	Appointment and role of the Defence Program Director and Defence Probity Administration Officer	11
4.4	Role of the Probity Advisor	12
4.5	Tasking of Probity Advisor	13
4.6	Sign off by the Probity Advisor	13
4.7	Probity Auditors	13
5.	ACCESS TO COMMERCIAL IN CONFIDENCE INFORMATION AND NOMINATION OF PROGRAM PARTICIPANTS	13
5.1	Authorisation to access Commercial in Confidence Information	13
5.2	List of Personnel authorised to access Commercial in Confidence Information	14
5.3	Only certain people may access Commercial in Confidence Information	14
5.4	Cessation of authority to access Commercial in Confidence Information	14
6.	RESPONSIBILITIES IN RELATION TO PROGRAM PARTICIPANTS	15
6.1	Briefing of Core Program Participants	15
6.2	Briefing of Non-Core Program Participants	15
6.3	Review of Program Participants	15
6.4	Management of Commercial in Confidence Information	16
6.5	Transfer of Information between Program Participants	16
7.	TREATMENT OF INDUSTRY RESPONDENTS	17
7.1	Communication with Industry Respondents or potential Industry Respondents	17
7.2	Ethical Principles	17
7.3	Appointment of Contact Officers	17
7.4	Consistency of information	17
7.5	Questions from Industry Respondents	18
7.6	Requests for meetings	18
8.	PROCESS DESIGN AND APPROVALS	18

9.	PROGRAM DOCUMENTS	19
9.1	Program documents	19
9.2	Evaluation criteria for RFT	19
10.	DEALINGS WITH THE INCUMBENT SUPPLIERS	19
10.1	Overview	19
10.2	When the Defence Program Director/Manager Acquisition must seek advice from Probity Advisor	20
	SCHEDULE TO THE PROBITY PLAN: CONTACT DETAILS	21
	ATTACHMENT A TO THE PROBITY PLAN:	23
	PROBITY PROTOCOLS	23
1.	INSTRUCTIONS FOR PROGRAM PARTICIPANTS	23
2.	COMPLIANCE WITH PROBITY PROTOCOLS	24
2.1	General obligation	24
2.2	Perception of breach	24
2.3	Reporting Breaches of Probity Protocols	24
3.	DECISION MAKING AND FAIR DEALING	25
3.1	Recording decisions	25
3.2	Fair dealing	25
4.	CONTACT WITH THE MEDIA AND INDUSTRY RESPONDENTS	25
4.1	Media	25
4.2	Communications with Industry Respondents	26
4.3	Record of Contact	28
4.4	Contact Officer	28
5.	CONFIDENTIALITY	28
5.1	Confidentiality – Commercial in Confidence	28
5.2	Confidentiality – Industry Respondents	28
5.3	List of People with Access to Commercial in Confidence Information	28
5.4	Duration of Confidentiality Obligations	29
6.	CONFLICT OF INTEREST	29
7.	PROTOCOLS FOR DEALINGS WITH THE INCUMBENT SUPPLIERS	30
7.1	Communications with the incumbent suppliers	30
7.2	Storage of information	30
8.	STRATEGIC ADVISORS TO DEFENCE OR AIRSERVICES	31
8.1	General Obligation	31
8.2	Requirement to notify Manager Acquisition	31

ANNEXURE A TO THE PROBITY PROTOCOLS – PROBITY UNDERTAKING	32
ANNEXURE B TO THE PROBITY PROTOCOLS – CONFLICT OF INTEREST DECLARATION	33
ANNEXURE C TO THE PROBITY PROTOCOLS – EMPLOYEE ACKNOWLEDGEMENT	34
ANNEXURE D TO THE PROBITY PROTOCOLS – DEED POLL OF CONFIDENTIALITY	36
ANNEXURE E TO THE PROBITY PROTOCOLS – NON-ACTIVE PROGRAM PARTICIPANT DECLARATION	42
ATTACHMENT B TO THE PROBITY PLAN:	43
DEFENCE AND AIRSERVICES PROBITY ARRANGEMENTS FUTURE AND CIVIL AND MILITARY AIR TRAFFIC MANAGEMENT	43
1. REQUESTS FOR ADVICE	43
1.1 Persons who may request advice	43
1.2 Requests by other persons	43
1.3 Approval requirement for common probity activities	43
1.4 Communication of requests	43
1.5 Requests for sign off	43
1.6 Requests for probity briefings	44
2. RESPONSES TO REQUESTS FOR ADVICE	44
2.1 Requests by or on behalf of the Airservices Board or Airservices CEO	44
2.2 Requests from DMO General Managers	44
2.3 Other requests for advice	44
2.4 Exceptions	45
ATTACHMENT C TO THE PROBITY PLAN:	46
SCRIPT FOR PROBITY BRIEFINGS OF NON-CORE PROGRAM PARTICIPANTS	46

1. Definitions

Airservices Australia or **Airservices** means the body corporate established by the *Air Services Act 1995*.

ATC Future Systems Program means the Airservices program to develop and implement a strategy to procure an Air Traffic Control System.

BAU contact has the meaning given in paragraph 10.1(b).

Commercial in Confidence Information means information (whether or not provided by Airservices or Defence) that:

- (a) is by its nature confidential; or
- (b) the receiving party knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,

but does not include information which:

- (c) is or becomes public knowledge other than by a breach of contract or obligation of confidentiality;
- (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.

Conflict of Interest means an incompatibility, or the possibility that there might be a reasonable perception of an incompatibility, between:

- (a) a Program Participant's public, professional or contractual duty in respect of the Program; and
- (b) a current or prospective material personal or financial interest that a Program Participant, his or her immediate family or any close associate has.

Contact Officer means those persons specified in the Schedule and appointed by the Manager Acquisition in accordance with paragraph 7.3.

Core Program Participant means a person as nominated by the Defence Program Director or the Manager Acquisition who:

- (a) is employed by, or seconded to, the Program; or
- (b) has:
 - (i) a high level of direct involvement with the Program; or
 - (ii) ongoing access to Commercial-in-Confidence Information.

Defence means the Department of Defence, Defence Materiel Organisation and the Australian Defence Force, as applicable.

Defence Probity Administration Officer means that person specified in the Schedule or such other person as is appointed by the Defence Program Director in accordance with paragraph 4.3.

Defence Program Director means the person specified in the Schedule.

Delegate means those persons specified in the Schedule or otherwise those persons holding the requisite authorities to undertake or authorise what is being asked of them.

Incumbent Suppliers has the meaning given in paragraph 10.1(a).

Industry Respondent means a respondent (or a potential respondent) to an approach to the market conducted as part of the Program including the current providers to Airservices and Defence of systems similar to the Program. A reference to the Industry Respondent includes related companies, subcontractors of and component providers to respondents (or potential respondents).

List of Industry Respondents means the list of Industry Respondents maintained by the Manager Acquisition.

Manager Acquisition means the person specified in the Schedule.

Non-Core Program Participant means a person, as nominated by the Defence Program Director or the Manager Acquisition, who will not be directly involved in the Program but may still require access to some Commercial in Confidence Information.

Note: Any person who has access to the Program's electronic drives (other than system administrators) must be nominated as a Core Program Participant.

Non-Active Program Participant means a person who is no longer involved with the Program.

OneSKY Australia means the joint Airservices and Defence program (Project AIR 5431 Phase 3) to develop and implement a strategy to procure an Air Traffic Control System.

Operating Level Agreement or **OLA** means the document of that name entered between Defence and Airservices relating to the acquisition and support of a future Air Traffic Management System.

Probity Advisor means the external probity advisor specified in the Schedule.

Probity Auditors has the meaning given in paragraph 4.7.

Probity Plan means this plan and includes all schedules, attachments and annexes.

Probity Protocols means the probity protocols found at Attachment A of the Probity Plan as applicable.

Program means the ATC Future Systems Program and Project AIR 5431 Phase 3 jointly known as OneSKY Australia and all activities which support the program including:

- (a) any supplier and/or industry engagement activities;
- (b) any approach to market;
- (c) evaluation of offers; and
- (d) contact negotiations.

Program Participant means a person nominated as a Core Program Participant or a Non-Core Program Participant by the Manager Acquisition in accordance with the procedure in paragraph 5.1(c).

Project AIR 5431 Phase 3 means the Defence project to acquire:

- (a) an Air Traffic Management and Control System to replace the existing systems at ADF fixed base locations; and
- (b) a radar simulator for the School of Air Traffic Control at RAAF Base East Sale.

RFT means the request for tender to be released, by Airservices to acquire a new air traffic management system for Defence and Airservices.

2. Objectives

This Probity Plan establishes the probity principles, procedures and protocols that will apply to the Program and Program Participants. This Probity Plan must be consistent with procurement documentation specific to key stages of the procurement lifecycle.

This Probity Plan provides the authority and structure for the way probity issues will be addressed in relation to the Program. It establishes standards of practice and behaviour for personnel as well as assigning responsibilities to individuals with specific roles in ensuring the established probity standards are met. This Probity Plan will underpin and foster a culture of ethics and fair dealing in which documented processes are applied, a clear audit trail is established and decision making is fair, transparent and defensible.

The objectives of this Probity Plan and the attached Probity Protocols are to:

- (a) identify probity issues relevant to the Program;
- (b) determine the most appropriate controls to deal with the identified probity issues;
- (c) publish, and make Program Participants aware of, the potential probity issues and their responsibilities; and
- (d) ensure that Airservices and Defence adopt and implement a process which will sustain any internal or external scrutiny of the Program.

3. Overview and Application

3.1 Overview

Airservices and Defence both have Air Traffic Management (ATM) systems that are approaching end of life. Both Airservices and Defence have commenced planning for renewal or replacement of their respective system. With both systems facing a major upgrade and/or replacement there is a real opportunity to align the replacement of both systems with the aim of creating synergies to deliver a range of operational and financial efficiencies. The harmonisation of the ATM systems is supported through the directions set in the Government's 2009 Aviation White Paper, where it has been recognised that increased harmonisation of civil and military ATM systems and services will provide operational benefits and efficiencies for airspace users, both military and civil, as well as to Airservices and Defence.

To achieve this harmonisation, Defence and Airservices issued a joint Request for Information (RFI) to gather information about possible service delivery solutions and anticipated pricing for the upgrade or replacement of respective ATM systems.

Defence and Airservices have agreed that Airservices will be the "lead agency" in relation to a further approach to market. Airservices (as lead agency) will:

- (a) prepare an approach to market to solicit tenders incorporating Defence requirements and input;
- (b) lead evaluation of tenders; and
- (c) enter into a contract with the successful tenderer (if any) and an appropriate contractual arrangement with Defence in relation to the joint ATM solution.

3.2 **General Principles**

All procurement activities are to be undertaken in a manner consistent with relevant legislative and regulatory requirements applicable to Airservices.

As lead agency Airservices is responsible for developing and administering the probity plan and protocols. Defence is bound to comply with the probity protocols under the OLA. Airservices intends to conduct the approach to market in accordance with high standards of probity and ethical behaviour as set out in this Probity Plan and the attached Probity Protocols. For the purposes of this Probity Plan, probity is defined as "integrity, uprightness and honesty as exemplified in the evidence of ethical behaviour in a particular process".

Probity also applies to the standard of personal behaviour required of those involved in the procurement.

3.3 **Process Guidelines**

All Program Participants must read this Probity Plan and be aware of their obligations.

In adhering to this Probity Plan the following guidelines are to be adopted:

- (a) there is to be a clear and fair procurement process that is conducted in accordance with applicable Commonwealth legislation and policy;
- (b) all Industry Respondents are to be treated equitably, and all interactions with tenderers or potential tenderers are to be conducted with honesty, fairness and in good faith;
- (c) all Program activities are to be conducted in accordance with any relevant, approved plan, procedure, protocol or like document;
- (d) Commercial in Confidence Information is to be protected at all times and all Program Participants are to comply with processes established to protect and secure Commercial in Confidence Information;
- (e) there must be a clear audit trail; and
- (f) any Conflicts of Interest must be identified and addressed.

3.4 Application

(a) *Who do the Probity Plan and Probity Protocols apply to?*

The Probity Plan and Probity Protocols apply to Program Participants and any person involved in the Program or authorised to access Commercial in Confidence Information under paragraph 5.3.

Whilst the Probity Plan is only directly applicable to those responsible for conducting the procurement, the Probity Plan is to be provided to those members of the Australian Public Service (APS), Australian Defence Force (ADF) or external service providers working external to the procurement (including advisers, stakeholders and delegates) who are privy to Commercial in Confidence Information. The provision of the Probity Plan to external personnel constitutes advice as to the behavioural standards and procedural requirements expected of personnel involved with the procurement.

Where appropriate, persons external to Airservices and Defence who are involved in the Program may be required to sign a Deed Poll of Confidentiality in the form of Annexure D or a similar format acceptable to the Manager Acquisition, where they become involved in Program activities requiring them to have access to Commercial in Confidence Information.

The Probity Plan and the Probity Protocols do not apply to members of the Airservices Board, except where specifically otherwise mentioned.

(b) *When do the Probity Plan and Probity Protocols apply?*

The Probity Plan and Probity Protocols take effect from the date this document is approved by the Delegate and apply until the earlier of the date that the Probity Advisor provides written advice that they are no longer applicable or the date the Delegate determines that they are no longer to apply.

Any obligations or requirements applicable to Program Participants under previous versions of the Probity Plan and Protocols (including the Joint Probity Plan and Protocols) continue to apply until they:

- (i) end in accordance with the terms of the relevant version of the Probity Plan and Protocols; or
- (ii) are replaced by obligations under a subsequently approved version of the Probity Plan which is provided to Program Participants.

(c) *Purpose of the Probity Plan and Probity Protocols*

Probity of the Program is the responsibility of all Program Participants and any person authorised to access Commercial in Confidence Information under paragraph 5.3. The purpose of this Probity Plan and Probity Protocols is to assist Airservices to establish and maintain high standards and to ensure the overall fairness and integrity of the Program activities. Acting in accordance with this Probity Plan is intended to:

- (i) contribute to a procedurally sound and auditable procurement process;
- (ii) improve accountability;

- (iii) encourage commercial competition on the basis that all responses to approaches to the market are subject to a fair and equitable assessment;
 - (iv) preserve public and industry confidence in Airservices' procurement processes; and
 - (v) minimise Airservices' potential liability when conducting a procurement process and improve defensibility of decisions against legal challenge.
- (d) *Legislation, policy, and relationship with other documents*

The Probity Plan and Probity Protocols do not replace, but are in addition to, any other obligations applying to Program Participants including those under:

- (i) for Airservices:
 - A. *Air Services Act 1995*;
 - B. *Crimes Act 1914*;
 - C. *Privacy Act 1988*;
 - D. *Archives Act 1983*;
 - E. *Commonwealth Authorities and Companies Act 1997*;
 - F. Airservices Australia Procurement Policy;
 - G. Airservices Australia Management Instructions;
 - H. Airservices Australia Gift and Hospitality Policy; and
 - G. Airservices Australia Code of Conduct.
- (ii) for Defence:
 - A. *Crimes Act 1914*;
 - B. *Privacy Act 1988*;
 - C. *Archives Act 1983*;
 - D. *Financial Management and Accountability Act 1997 (FMA Act)*;
 - E. *Financial Management and Accountability Regulations 1997 (FMAR)*;
 - F. *Public Service Act 1999*;
 - G. *Defence Force Discipline Act 1982*;
 - H. Chief Executive Instructions (CEIs);
 - I. APS Values;
 - J. APS Code of Conduct;
 - K. Defence Materiel Instructions (DMI's); and

L. Defence Gifts and Hospitality Policy and Code of Conduct.

All APS employees are bound by the standard of conduct and the obligations as stated in the APS Values and the APS Code of Conduct (*Public Service Act 1999*). In addition, ADF Personnel must comply with their duties and obligations under the *Defence Force Discipline Act 1982*.

External service providers engaged to work on the procurement must comply with this Plan and note that any obligations contained in this Plan are in addition to and not in derogation of any of their contractual obligations (such as those relating to Conflict of Interest).

(e) *Review of Probity Plan*

A review of the suitability of these probity arrangements will be conducted by the Manager Acquisition at any time and otherwise no later than 12 months after the signing date of this document. Any amendments to these probity arrangements will be provided to Defence.

4. Key Probity Roles

4.1 Role of the Manager Acquisition

The Manager Acquisition is responsible for taking reasonable steps to ensure that the Program is at all times conducted in a manner that is consistent with this Probity Plan, the Probity Protocols and any other approved Program plans.

In particular, the Manager Acquisition must:

- (a) provide for access to Commercial in Confidence Information to Program Participants or authorise access in accordance with paragraph 5.1;
- (b) ensure Program Participants meet the requirements set out in paragraph 6 prior to accessing Commercial in Confidence Information;
- (c) ensure that a list of all Program Participants and other people authorised to access Commercial in Confidence Information under paragraph 5.1(d) is maintained and kept current;
- (d) appoint a Contact Officer in accordance with paragraph 7.3; and
- (e) consider any requests for meetings from Industry Respondents in accordance with paragraph 7.6.

4.2 Appointment and role of the Contact Officer

Subject to paragraph 7.3, the Contact Officer is the point of contact for Industry Respondents for the Program. The Contact Officer's role is to ensure that all Industry Respondents receive consistent and uniform information to ensure that any one Industry Respondent does not receive an unfair advantage over another.

4.3 Appointment and role of the Defence Program Director and Defence Probity Administration Officer

The Defence Program Director is the person specified in the Schedule. The Defence Program Director is responsible for:

- (a) nominating persons to the Manager Acquisition who require access to Commercial in Confidence Information in accordance with paragraph 5.1 in respect of Defence's role in the Program; and
- (b) referring any requests for meetings from Industry Respondents in relation to the Program or RFT to the Manager Acquisition for approval in accordance with paragraph 7.6.

The Defence Probity Administration Officer is the person specified in the Schedule or such other person as is appointed by the Defence Program Director. The roles and responsibilities of the Defence Probity Administration Officer are:

- (c) to liaise with all Defence personnel who are Program Participants in relation to any probity issues, including acting as the point of contact for Defence personnel to declare any probity issues in accordance with the Probity Protocols in accordance with paragraph 1(e) of the Probity Protocols;
- (d) to notify the Manager Acquisition of any probity issues raised by or in relation to Defence personnel and to work with the Manager Acquisition to address any such issues in accordance with paragraph 1(f) of the Probity Protocols; and
- (e) as otherwise outlined in Attachments A and B.

4.4 Role of the Probity Advisor

The broad probity objectives for the Probity Advisor are to advise on the conduct of processes for the Program, including involvement in the development and review of procurement documentation to ensure:

- (a) fair competition, accountability and conformity of practices which are designed to achieve best value for money;
- (b) the defensibility of the process from legal challenge;
- (c) applicable rules and procedures are followed;
- (d) information and offers received in response to any approach to market are assessed in accordance with the relevant approved plan;
- (e) processes for managing communication with parties external to the Program, including tenderers and potential tenderers, are established and complied with; and
- (f) that all Commercial in Confidence Information is secured.

The role of the Probity Advisor is to independently monitor procedural aspects of the Program to ensure compliance with Program documentation (including this Probity Plan and the Probity Protocols) and Program governance documents and to advise Airservices and Defence in relation to such matters.

Members of the Airservices Board, will be briefed by the Probity Advisor with respect to their duties and obligations in terms of the Commonwealth Authorities and Companies Act, 1997 (CAC Act), to the extent that these relate to the probity of the Program. The Probity Advisor will provide Board Members with the list of Industry Respondents to assist them in declaring conflicts of interest that may arise in terms of their CAC Act obligations.

The Probity Advisor does not participate in the assessment or evaluation of information and responses to any approach to market or negotiation with Industry Respondents as this

would conflict with their role to provide unbiased and impartial advice, but will be consulted prior to any decision being taken to exclude any response from the procurement process.

4.5 Tasking of Probity Advisor

The tasking of the Probity Advisor is outlined in Attachment B. Attachment B addresses:

- (a) who may task the Probity Advisor;
- (b) who may arrange probity briefings;
- (c) subject to the paragraph below, how probity clearance is to be obtained for relevant documentation, correspondence and like documents; and
- (d) to whom and how advice is to be given.

4.6 Sign off by the Probity Advisor

The Probity Advisor will provide sign off at key stages throughout the Program lifecycle including sign off on:

- (a) all protocols or procedures for interaction with Industry Respondents;
- (b) all documentation prior to release to industry;
- (c) any processes or plans for assessing industry responses;
- (d) any reports on the assessment of industry responses; and
- (e) the outcome of the procurement process prior to the execution of any contract(s).

The Probity Advisor will assist with resolving any probity issues and also provide a probity report on the Program on request by Airservices.

4.7 Probity Auditors

A probity audit may be conducted by either or both of Airservices and Defence to review the appropriateness and effectiveness of this Probity Plan, the Probity Protocols and the associated processes and controls in place to minimise probity risks for the Program.

The Manager Acquisition or Defence Program Director will appoint the Probity Auditor for Airservices or Defence (respectively) and define the scope of the Probity Auditor's audit. If the Manager Acquisition or Defence Program Director appoints a Probity Auditor, that person will notify the Defence Program Director or Manager Acquisition (respectively).

5. Access to Commercial in Confidence Information and Nomination of Program Participants

5.1 Authorisation to access Commercial in Confidence Information

Where the Manager Acquisition believes that a person within Airservices or Defence:

- (a) requires access to Commercial in Confidence Information (of either Defence or Airservices); or
- (b) needs to deal with a person who could affect the probity of the Program,

the Manager Acquisition (as appropriate) may:

- (c) nominate the person as a **Core or Non-Core Program Participant** for the purposes of this Plan; or
- (d) authorise the person to have access to the Commercial in Confidence Information or conduct those dealings without being a Program Participant on such conditions (if any) as the Manager Acquisition determines. (The Manager Acquisition may consult with the Probity Advisor to add, withdraw or vary conditions as the probity of the Program requires.)

Note: If a person within Airservices or Defence requires access to the Program's electronic drives then that person should be nominated as a Core Program Participant.

Where the Defence Program Director believes that a person within Defence:

- (e) requires access to Commercial in Confidence Information (of either Defence or Airservices); or
- (f) needs to deal with a person who could affect the probity of the Program,

the Defence Program Director will notify the Manager Acquisition and the Manager Acquisition may nominate or authorise the person under paragraphs (c) or (d) (respectively). The Manager Acquisition must advise the Defence Program Director of the decision made in relation to that person.

5.2 **List of Personnel authorised to access Commercial in Confidence Information**

The Manager Acquisition must maintain, and make available to persons involved in the Program, a list of all:

- (a) Program Participants from both Airservices and Defence (or engaged by one of them); and
- (b) people authorised by them to have access to Commercial in Confidence Information under paragraph 5.1(d).

5.3 **Only certain people may access Commercial in Confidence Information**

No person will be permitted access to Commercial in Confidence Information unless the person at that time:

- (a) is a Program Participant and has satisfied the requirements of paragraph 6; or
- (b) has been authorised in accordance with paragraph 5.1(d).

5.4 **Cessation of authority to access Commercial in Confidence Information**

Where the Manager Acquisition believes that a person granted authorisation to Commercial in Confidence Information or a Program Participant should no longer be granted access to Commercial in Confidence Information the Manager Acquisition may:

- (a) notify the person that he or she is no longer authorised to access Commercial in Confidence Information and, in the case of a Program Participant, that he or she has become a Non-Active Program Participant;
- (b) require that the person sign a Non-Active Program Participant Declaration as set out in Annexure E to the Probity Protocols;

- (c) arrange for the return or destruction of any Commercial in Confidence Information held by or in the control of that person or Program Participant; and
- (d) amend the list maintained in accordance with paragraph 5.2 to reflect that the Program Participant or person has become a Non-Active Program Participant.

Where the Defence Program Director believes that a person granted authorisation to Commercial in Confidence Information or a Program Participant should no longer be granted access to Commercial in Confidence Information the Defence Program Director will inform the Manager Acquisition, who will then take the steps outlined in paragraphs (a) to (d) in relation to the person.

6. Responsibilities in relation to Program Participants

6.1 Briefing of Core Program Participants

Where the Manager Acquisition nominates a person as a Core Program Participant (in accordance with paragraph 5.1(c)), the Manager Acquisition must ensure that the person promptly:

- (a) receives a probity briefing in accordance with Attachment B;
- (b) receives a copy of this Probity Plan and the Probity Protocols at Attachment A;
- (c) signs a Probity Undertaking;
- (d) receives the latest List of Industry Respondents and completes a Conflict of Interest Declaration; and
- (e) signs an Employee Acknowledgement or Deed Poll of Confidentiality as appropriate.

6.2 Briefing of Non-Core Program Participants

Where the Manager Acquisition nominates a person as a Non-Core Program Participant (in accordance with paragraph 5.1(c)), the Manager Acquisition must ensure that the person promptly:

- (a) receives an internal probity briefing from the Manager Acquisition, the Defence Program Director or their nominated representative (using the script at Attachment C) in accordance with Attachment B;
- (b) receives a copy of this Probity Plan and the Probity Protocols at Attachment A;
- (c) signs a Probity Undertaking;
- (d) receives the latest List of Industry Respondents and completes a Conflict of Interest Declaration; and
- (e) signs an Employee Acknowledgement or Deed Poll of Confidentiality as appropriate.

6.3 Review of Program Participants

The Manager Acquisition will review the status of all Program Participants at least once every three months to determine:

- (a) whether there are any Program Participants whose status should be changed from Non-Core to Core or vice versa, in which case the Manager Acquisition:
 - (i) may change the status of that Program Participant; and
 - (ii) if the Program Participant is changed from being a Non-Core to a Core Program Participant, must ensure the Program Participant is informed of this change and complies with paragraph 6.1; and
- (b) whether there are any Program Participants who should no longer be granted access to Commercial in Confidence Information in accordance with paragraph 5.4.

6.4 Management of Commercial in Confidence Information

- (a) Program Participants involved in the procurement should only have access to Commercial in Confidence Information on an appropriate "need to know" basis. Commercial in Confidence Information needs to be managed in accordance with the information's commercial sensitivity and/or classification level.
- (b) All Program Participants involved in the procurement that may be privy to Commercial in Confidence Information are obliged to ensure that all such information remains confidential and is not disclosed to anyone other than other personnel who:
 - (i) are authorised to receive it; and
 - (ii) require such disclosure in order to perform their duties for the procurement.
- (c) Program Participants having access to Commercial in Confidence Information must ensure that documents and information, including electronically stored information, that is in their possession or control and which contains Commercial in Confidence Information is:
 - (i) kept in locked offices or locked filing cabinets when not in use;
 - (ii) not left unattended for any period at a place that is accessible by a person not authorised;
 - (iii) not displayed at times or in places where they could be read by a person who is not authorised; and
 - (iv) not made available to a person who is not authorised.

6.5 Transfer of Information between Program Participants

- (a) All Program Participants must comply with the requirements to keep Commercial in Confidence Information confidential in the manner outlined in this Probity Plan and otherwise in accordance with the obligations of confidence.
- (b) Documents containing Commercial in Confidence Information that need to be exchanged between Airservices and Defence must only be sent via appropriately secured channels (such as, the Defence Restricted Network (DRN) or Govdex).
- (c) Unclassified documents and information may be exchanged via Airservices' and Defences' standard means of communication.

7. Treatment of Industry Respondents

7.1 Communication with Industry Respondents or potential Industry Respondents

As part of treating all tenderers and potential tenderers fairly and equitably and consistently with the rules of procedural fairness and natural justice, Program Participants must not communicate with the Industry Respondents in a manner which:

- (a) gives, or gives rise to the perception of, an unfair advantage to that Industry Respondent;
- (b) reveals proprietary or confidential information of another Industry Respondent; or
- (c) unfairly disadvantages an Industry Respondent.

7.2 Ethical Principles

- (a) All Industry Respondents must be dealt with as equitably and fairly as possible. Procedures must be put in place to ensure this equitable and fair treatment.
- (b) The process rules associated with the approach to market must be clear, open, well understood and applied equitably to all participants.
- (c) The Manager Acquisition must manage any Conflicts of Interest or perceived Conflicts of Interest as soon as possible after he or she becomes aware of them.

7.3 Appointment of Contact Officers

The Manager Acquisition will appoint a Contact Officer who will, subject to this paragraph 7.3, be the Airservices and Defence point of contact for Industry Respondents in relation to the Program. The Manager Acquisition may authorise other persons to act as a point of contact for particular portions of the Program. If the Manager Acquisition authorises other points of contact this needs to be disclosed to the Probity Advisor.

7.4 Consistency of information

- (a) From the time of publication of an approach to market (whether a request for information or otherwise) until completion of the RFT, consistent and uniform information must be provided to all Industry Respondents, whether or not such information is requested by one or all Industry Respondents, to ensure that any one Industry Respondent does not receive an unfair advantage over another.

- (b) Responses to:

- (i) clarification questions from Industry Respondents; and
- (ii) requests for additional information by Industry Respondents,

will usually be provided to all Industry Respondents (as the case may be). Where necessary, in order to maintain confidentiality, Airservices may edit questions and answers if a failure to make such edited changes could compromise the confidentiality or the probity of any aspect of the Program.

- (c) In exceptional circumstances a communication may be provided to an individual Industry Respondent only, and not to all Industry Respondents. This may only occur after prior consultation with the Probity Advisor, in circumstances where a

communication solely relates to an individual Industry Respondent and the information provided would not have any relevance or provide any benefit to any other potential Industry Respondent.

7.5 Questions from Industry Respondents

- (a) Participants should refer queries from Industry Respondents to the Contact Officer in the first instance and also provide copies of any communications with the Industry Respondents to the Probity Advisor.
- (b) Where an Industry Respondent asks a question about the Program, the Contact Officer must ensure that any answer provided to one Industry Respondent is provided to all Industry Respondents on a basis that cannot be attributed to any Industry Respondent. In preparing a response, the Contact Officer may consult with the Probity Advisor if necessary and must, where the Contact Officer considers input from Defence is necessary, consult with the Defence Program Director in relation to the response to be provided.
- (c) Industry documentation released with an approach to market must inform Industry Respondents that any questions they ask, and any answers, will be made available to other Industry Respondents in accordance with paragraph 7.4(a).

7.6 Requests for meetings

- (a) Subject to paragraph 10, where an Industry Respondent requests a meeting with Aircservices or Defence personnel in relation to the Program or RFT, that request must be referred to the Manager Acquisition who will consult with the Probity Advisor. The Manager Acquisition will consult with the Defence Program Director in relation to requests directed to Defence personnel.
- (b) The Manager Acquisition, where relevant after consultation with the Probity Advisor, will:
 - (i) consult with the Defence Program Director where the Manager Acquisition considers it necessary; and
 - (ii) consider each request on a case-by-case basis, taking into account the ethical principles outlined in paragraph 7.1.
- (c) If a meeting with an Industry Respondent is held:
 - (i) the Probity Advisor may attend; and
 - (ii) the Manager Acquisition (and, where applicable, the Defence Program Director) must ensure detailed notes of the meeting are recorded, retained on file and provided to the Probity Advisor.

8. Process design and approvals

- (a) Any documentation released to the market must be reviewed and approved, for probity purposes, by the Probity Advisor.
- (b) The Tender Evaluation Plan (if any) and any other similar plans or accompanying reports, must be approved by, and may be amended by, the Delegate (where the Delegate has such authorisation) after taking into account:

- (i) any recommendation from the appropriate governance board or forum; and
 - (ii) advice provided by the Probity Advisor.
- (c) The Delegate may amend this Probity Plan and the Probity Protocols.

9. Program documents

9.1 Program documents

The Probity Advisor will provide probity clearance and sign off for key documents, plans, processes, reports and such other documents that support the Program in so far as they relate to the approach to market.

9.2 Evaluation criteria for RFT

Criteria for assessing any responses to the RFT must reflect the requirement for competition and open, effective assessment. Care should be taken that the criteria are not couched in a way so as to unfairly advantage or disadvantage a particular tenderer or tenderers in its or their ability to compete effectively with all other tenderers. The Probity Advisor will provide probity clearance and sign off of the RFT evaluation criteria prior to the RFT being released to market.

10. Dealings with the Incumbent Suppliers

10.1 Overview

- (a) This part of the Probity Plan is intended to specifically address probity risks surrounding the current providers to Airservices and Defence of systems and components similar to those under consideration for the Program, given that they may respond to any approach to market conducted by Airservices as part of the Program.
- (b) The Probity Plan recognises that, subject to the process set out in paragraph 10.2, Airservices and Defence, including some Program Participants, must be able to continue to communicate with the Incumbent Suppliers and their subcontractors, to enable the performance and administration of the current contracts to continue unhindered. These Probity Protocols refer to such communication as Business as Usual contact (**BAU contact**).
- (c) The Probity Protocols also recognise that specific communication will be required between Program Participants and the Incumbent Suppliers in order to facilitate access to information which will be required for any market approach.
- (d) It is important that BAU contact does not provide the Incumbent Suppliers with any advantage or perception of advantage as against other Industry Respondents in relation to the Program. The Protocols accordingly set in place a regime which, as far as possible, will ensure equal opportunity of access to information about the Program by the Incumbent Suppliers and all other Industry Respondents.
- (e) The Defence Program Director or the Manager Acquisition (as applicable) must inform the other if either the Defence Program Director or the Manager Acquisition intends to authorise contact with an Incumbent Supplier for the purposes of access

to information for the RFT or otherwise for the Program. All such contact with an Incumbent Supplier needs to be approved by the Manager Acquisition.

10.2 When the Defence Program Director/Manager Acquisition must seek advice from Probity Advisor

Prior to authorising contact with an Incumbent Supplier for the purposes of access to information for the RFT or otherwise for the Program (see paragraph 10.1(c)), the Manager Acquisition must seek advice from the Probity Advisor. The Probity Advisor will consider:

- (a) whether the proposed contact with an Incumbent Supplier, and the information to be provided, could provide the Incumbent Supplier with an advantage over other Industry Respondents;
- (b) whether Airservices' or Defence's requirement could be met in another way; and
- (c) whether any potential advantage to the Incumbent Supplier will be addressed by other processes arising during the course of the RFT (for example, by the provision of the same information to all Industry Respondents at a time when they would have sufficient opportunity to consider the information and tailor their responses (as the case may be) having regard to the information).

Schedule to the Probity Plan: Contact Details

Role	Current Contact
Delegate, Airservices	Mr Jason Harfield, Executive General Manager Future Service Delivery Phone: 02 6268 4601 Email: jason.harfield@airservicesaustralia.com
Delegate, Defence	Air Commodore, Michael Walkington, Director General Surveillance and Control Phone: 02 6265 7450 Email: michael.walkington@defence.gov.au
Contact Officer, Airservices	Mr Johann Baard, Senior Procurement Strategist Phone: 02 6268 5766 Email: johann.baard@AirservicesAustralia.com
Probity Advisor	Ms Georgina Adams, Partner, Ashurst Australia Phone: 02 6234 4059 Email: georgina.adams@ashurst.com
Manager Acquisition	Mr Ian Cassidy, Manager Acquisition Phone: 02 6268 5608 Email: ian.cassidy@airservicesaustralia.com
Defence Program Director	Mr Tim Malone, Project Director AIR5431 Ph 3 Phone 02 6268 5584 Email: timothy.malone@airservicesaustralia.com

Probity Plan and Protocols
For the joint procurement for OneSKY Australia

Role	Current Contact
Defence Probity Administration Officer	FLTLT Geoffrey Lee, Logistics Officer Phase 3, DMO Phone: 02 6268 4315 Email: Geoffrey.lee@airservicesaustralia.com

ATTACHMENT A TO THE PROBITY PLAN:

PROBITY PROTOCOLS

1. Instructions for Program Participants

- (a) These Probity Protocols relate to the Program and apply to you until you are informed by the Manager Acquisition that they no longer apply.
- (b) The confidentiality obligations, set out in paragraph 5, apply indefinitely. Please note that, on becoming a Non-Active Program Participant, you will be requested to sign a Non-Active Program Participant Declaration at Annexure E to these Protocols.
- (c) You should read these Probity Protocols carefully and comply with all requirements. If you have any questions in relation to them, including whether or why they apply to you, please contact:
 - (i) Manager Acquisition:
Ian Cassidy 02 6268 5608 or
ian.cassidy@airservicesaustralia.com
 - (ii) Probity Administrator
Johann Baard 02 6268 5766 or
johann.baard@airservicesaustralia.com
 - (iii) Defence Probity Administration Officer
Geoffrey Lee 02 6268 4315 or
geoffrey.lee@airservicesaustralia.com
- (d) After you have read these Probity Protocols, you must as soon as is practicable:
 - (i) contact the Probity Administrator to arrange for a probity briefing;
 - (ii) once you have had a probity briefing (whether for a Core or Non-Core Program Participant), sign a Probity Undertaking in the form of Annexure A to these Protocols;
 - (iii) review the list of potential Industry Respondents and sign a Conflict of Interest Declaration in the form of Annexure B of these Protocols;
 - (iv) if:
 - (A) you are employed by Airservices as an employee, by Defence as an Australian Public Service employee or you are an Australian

Defence Force member, sign the Employee Acknowledgement at Annexure C to these Protocols; or

- (B) you are not employed by Airservices as an employee, by Defence as an Australian Public Service employee or you are not an Australian Defence Force member, sign the Deed Poll of Confidentiality at Annexure D to these Protocols; and
- (v) return the original signed documents to the Probity Administrator .
- (e) When these Probity Protocols refer to a need to notify, obtain approval from or other action involving the Manager Acquisition if you are a Defence personnel – you should contact the Defence Probity Administration Officer in the first instance, unless the Defence Probity Administration Officer has instructed you to contact the Manager Acquisition in the first instance.
- (f) The Defence Probity Administration Officer will inform the Manager Acquisition of any approaches from Defence personnel under these Probity Protocols.

2. Compliance with Probity Protocols

2.1 General obligation

You must act strictly in accordance with these Probity Protocols and the applicable Airservices or APS, Code of Conduct in relation to the Program.

All Program Participants must comply with any instructions or directions of the Manager Acquisition in relation to the Program.

If there is any conflict between:

- (a) an instruction or direction given to a Defence Program Participant by the Manager Acquisition in relation to the Program; and
- (b) an instruction or direction given to that Program Participant by an authorised person within Defence,

then that Program Participant should notify the Manager Acquisition and the Defence Program Director.

2.2 Perception of breach

In addition to acting in accordance with these Probity Protocols, you must also ensure your conduct does not give rise to a perception that would allow for the erosion of industry and community confidence in the way in which the Program and its associated activities are implemented.

You must avoid any conduct which has a tendency to increase the risk of issues of integrity being raised as a matter of public concern.

2.3 Reporting Breaches of Probity Protocols

If you:

- (a) become aware of any breach of these Probity Protocols either by you or any other person;

- (b) are encouraged by any person (including an Industry Respondent) to breach these Probity Protocols; or
- (c) are concerned that the probity of the Program may have been compromised or that such a perception may exist,

you must record all details and immediately raise the matter with, as relevant, the Manager Acquisition or the Defence Probity Administration Officer. If the Defence Probity Administration Officer receives notification under this paragraph 2.3 he or she must immediately notify the Manager Acquisition.

The Manager Acquisition will notify the Probity Advisor of any concerns raised.

3. Decision making and fair dealing

3.1 Recording decisions

You must record all decisions on substantial issues made during Program activities, and the basis on which you made those decisions. Where a decision is made by a group of people, the decision must be recorded by one person on behalf of the group.

3.2 Fair dealing

At all times during the Program activities, you must treat Industry Respondents in a fair, honest and equitable manner. You are expected to display the highest integrity and ensure equality of opportunity for all Industry Respondents.

4. Contact with the media and Industry Respondents

4.1 Media

- (a) If you are contacted by the media, you must:
 - (i) not say anything about the Program to the enquiring media;
 - (ii) act in accordance with relevant and applicable Airservices or Defence public affairs and media handling policies;
 - (iii) inform the Manager Acquisition of the media contact; and
 - (iv) make a record of that contact in accordance with paragraph 4.3.

- (b) You must not contact the media about the Program without the prior written approval of the Manager Acquisition.

4.2 **Communications with Industry Respondents**

- (a) *Contact initiated by Airservices or Defence*

You must not contact any Industry Respondent in relation to any aspect of the Program without prior written approval of the Manager Acquisition. Where you are authorised to contact an Industry Respondent in relation to the Program, you must:

- (i) comply with any instructions in relation to the conduct of the contact (such as the content and method of the communication); and
- (ii) make a record of contact in accordance with paragraph 4.3.

- (b) *Contact initiated by an Industry Respondent*

If you are contacted by any Industry Respondent, you:

- (i) must not say anything about the Program to the enquiring Industry Respondent, other than to direct the enquirer to the Contact Officer;
- (ii) must make a written record of contact in accordance with paragraph 4.3; and
- (iii) must report the contact to the Manager Acquisition immediately.

- (c) *Employment relationships with Industry Respondents*

You must immediately notify the Manager Acquisition or Defence Probity Administration Officer in writing, if during the Program, you are approached by an Industry Respondent regarding the possibility of employment or providing services or goods to an Industry Respondent (whether the approach is in writing or not). The Defence Probity Administration Officer will notify the Manager Acquisition of any such notifications.

If you intend to accept any offer of employment or offer to provide services to an Industry Respondent, you should be aware that the RFT may contain restrictions on use of former Airservices or Defence personnel or contractors in the preparation of tenders. These requirements may include obligations on Industry Respondents to obtain Airservices' permission before involving any former Airservices or Defence personnel or contractors who have been involved in the Program, in preparation of tender responses. It may also include a discretion to exclude tenders that have been prepared with assistance from any former Airservices or Defence personnel or contractors who have been involved in the Program.

You must immediately notify the as relevant, Manager Acquisition or Defence Probity Administration Officer in writing if you have been employed by an Industry Respondent within the last five years, or if a member of your immediate family is, or has within the last five years been employed by or provided services or goods to, an Industry Respondent. The Defence Probity Administration Officer will notify the Manager Acquisition of any such notifications.

(d) *Conferences, Seminars and Training Sessions*

You must not attend a conference, seminar or training session that is primarily sponsored or organised by an Industry Respondent or where an Industry Respondent pays for your attendance without the prior written permission of the Manager Acquisition.

Defence personnel should contact the Defence Probity Administration Officer in relation to a request to attend such a conference, seminar or training session in the first instance. The Defence Probity Administration Officer will refer a request to the Manager Acquisition.

Prior to permitting such an attendance, the Manager Acquisition may consult with the Probity Advisor.

If you attend a conference, seminar or training session and there are representatives of an Industry Respondent present, you must not discuss the Program with them other than in accordance with speaking notes agreed to by the Manager Acquisition. If you have any contact with a representative of an Industry Respondent, you must report the contact in accordance with paragraph 4.3.

(e) *Social Functions*

You must not attend or participate in a social function that is primarily sponsored or organised by an Industry Respondent or where an Industry Respondent pays for your attendance without the prior written permission of the Manager Acquisition. (An example of such a social function would be Christmas drinks hosted by an Industry Respondent.)

Prior to permitting such an attendance, the Manager Acquisition may consult with the Probity Advisor.

Defence personnel should contact the Defence Probity Administration Officer in relation to a request to attend such a function in the first instance. The Defence Probity Administration Officer will refer a request to the Manager Acquisition. The Defence Probity Administration Officer will refer a request to the Manager Acquisition.

If you attend a social function and there are representatives of an Industry Respondent present, you must not discuss the Program with them. If you have any contact with a representative of an Industry Respondent, you must report the contact in accordance with paragraph 4.3.

(f) *Gifts, Hospitality and Other Benefits*

You must not seek or receive any gifts, discounts, hospitality or other benefits (including sponsorship of conferences, attendance at sporting or cultural events, catered seminars) from any Industry Respondent without the prior written permission of, as relevant, the Manager Acquisition.

You must notify the Manager Acquisition or the Defence Probity Administration Officer immediately in writing if an Industry Respondent offers you any gifts, hospitality or other benefits by making a record of contact in accordance with paragraph 4.3. The Defence Probity Administration Officer will refer a notification to the Manager Acquisition.

4.3 Record of Contact

Where you are authorised to contact an Industry Respondent, other than a BAU contact, or the media, or where you are contacted by an Industry Respondent or the media, you must make a record of contact as soon as is practicable after the contact. The record must include details of:

- (a) the date and time of the communication;
- (b) the name of the enquirer and organisation that they represent;
- (c) the request; and
- (d) the response to any request for information.

You must provide the record of contact to, as relevant, the Manager Acquisition or the Defence Probity Administration Officer as soon as practicable following the contact. The Manager Acquisition or the Defence Probity Administration Officer will provide a copy of the record of contact to the Probity Advisor for record-keeping purposes and the Defence Probity Administration Officer will also notify the Manager Acquisition.

4.4 Contact Officer

Airservices has appointed a Contact Officer to act as the single point of contact for all enquiries from Industry Respondents.

5. Confidentiality

5.1 Confidentiality – Commercial in Confidence

Program information or documentation may be classified as "Commercial in Confidence Information" in accordance with the Probity Plan.

Program Participants must only disclose Commercial in Confidence Information or discuss the Program:

- (a) with other Program Participants or Airservices or Defence personnel or other people who have been authorised to access it; and
- (b) on a "need to know" basis.

5.2 Confidentiality – Industry Respondents

You may not always be aware of the identity of Industry Respondents.

Program Participants should only disclose Commercial in Confidence Information in accordance with paragraph 5.1.

You must treat all Commercial in Confidence Information and any responses from industry as confidential. You must not use Commercial in Confidence Information for personal gain or to prejudice fair, open and effective competition.

5.3 List of People with Access to Commercial in Confidence Information

As relevant, the Probity Administrator will provide you with or give you access to a list of Program Participants and authorised people on request.

5.4 Duration of Confidentiality Obligations

Your confidentiality obligations will continue after the conclusion of the RFT and after your involvement in the Program, unless you are advised by the Manager Acquisition that the information is no longer confidential. They do not automatically end on your ceasing to be employed by, or contracted to, Airservices or Defence.

If you become a Non-Active Program Participant, you will be required to complete the Non-Active Program Participant Declaration at Annexure E to these Protocols.

6. Conflict of interest

(a) *What is a Conflict of Interest?*

Conflict of Interest means an incompatibility, or the possibility that there might be a reasonable perception of an incompatibility, between:

- (i) your public, professional or contractual duty in respect of the Program; and
- (ii) a current or prospective material personal or financial interest that you, your immediate family or any close associate has.

Your "immediate family" includes your parents, children, spouse, siblings and anyone else in your household.

(b) *Conflict of Interest Declaration*

- (i) Prior to undertaking duties in relation to the Program, and at other times requested by, as relevant, the Manager Acquisition or the Defence Probity Administration Officer, you must provide a Conflict of Interest declaration in the form of Annexure B to these Probity Protocols.
- (ii) The Manager Acquisition may:
 - (A) require you to make such changes to any of the proposals set out in clause 5 of the Conflict of Interest declaration to ensure that a Conflict of Interest does not arise; or
 - (B) make such changes that the Manager Acquisition sees fit to any of the proposals set out in clause 5 of the Conflict of Interest declaration, to ensure that a Conflict of Interest does not arise.
- (iii) You must inform the, as relevant, Manager Acquisition or Defence Probity Administration Officer, in writing, if after you have signed a Conflict of Interest declaration, you become aware that you may have an actual or perceived Conflict of Interest. The Defence Probity Administration Officer will notify the Manager Acquisition.

(c) *Advisors*

If deemed necessary by the Manager Acquisition, advisors are also required to declare any Conflicts of Interest.

(d) *Business Relationships*

Where you have a recent or existing business (including employment) or commercial relationship with an Industry Respondent, or develop such a relationship during the Program, you must immediately declare the nature of that relationship in writing to, as relevant, the Manager Acquisition or the Defence Probity Administration Officer. The Defence Probity Administration Officer will notify the Manager Acquisition of any such declarations.

(e) *Decisions in relation to Conflicts of Interest*

Where you declare a Conflict of Interest the Manager Acquisition in consultation with the Probity Advisor (if required) will consider that declaration and make a decision regarding your on-going involvement in the Program, including by restricting your involvement or imposing conditions. The Manager Acquisition may take other action, as appropriate, to manage the Conflict of Interest.

(f) *Record of Conflicts of Interest*

The Manager Acquisition will ensure that a record of all declared Conflicts of Interest is kept, including any mitigation actions taken.

7. Protocols for dealings with the Incumbent Suppliers

7.1 Communications with the incumbent suppliers

- (a) You must avoid discussing the Program with the Incumbent Suppliers. In particular, you must not discuss details regarding requirements, selection criteria, terms and conditions of any approach to market, scope of services, timing of any approach to market process, proposed responses and membership of any Defence or Airservices teams.
- (b) Other than BAU contact, you may only communicate with an Incumbent Supplier if you have been authorised by the Manager Acquisition.
- (c) If you are approached by an Incumbent Supplier to discuss matters relating to the Program, you should inform the Incumbent Supplier that such discussions are inappropriate and cannot be continued. The Incumbent Supplier should be referred to the Contact Officer for all further communications relating to the Program.
- (d) You must immediately report in writing to the Contact Officer any approach by an Incumbent Supplier to discuss matters relating to the Program in accordance with paragraph 4.3.

7.2 Storage of information

- (a) You must ensure that any information concerning the Program held by Airservices or Defence is stored in a designated secure area to which Incumbent Suppliers are not permitted access under any circumstances.
- (b) If you become aware of any unauthorised access to the designated secure area by an Incumbent Supplier, you must immediately report it in writing to the Contact Officer.

8. Strategic Advisors to Defence or Airservices

8.1 General Obligation

Notwithstanding any other provision of these Probity Protocols, if you are engaged to provide advice **directly** to:

- (a) in the case of Airservices – persons holding the position of Executive General Manager, Chief Executive Officer or the Board; or
- (b) in the case of Defence – persons in the Senior Executive Service (or equivalent),

and these Probity Protocols (including an Annexure) refer to a need to notify, obtain approval from or other action involving as relevant, the Manager Acquisition or the Defence Probity Administration Officer then these provisions are to be read as referring to the person and/or body which engaged you to provide the advice rather than to the Manager Acquisition or the Defence Probity Administration Officer (as the case may be).

8.2 Requirement to notify Manager Acquisition

If any persons in Defence's Senior Executive Service (or equivalent) engages an adviser under paragraph 8.1, they will inform the Defence Program Director who will inform the Manager Acquisition.

ANNEXURE A TO THE PROBITY PROTOCOLS – PROBITY UNDERTAKING

- 1 I confirm the following in relation to the Program:
- (a) I have attended a probity briefing;
 - (b) I have received a copy of the Probity Plan and Probity Protocols; and
 - (c) I have read and understood my obligations as they relate to probity, including understanding the matters raised in the probity briefing and set out in the Probity Plan and Probity Protocols.
- 2 I make the following undertakings in relation to my probity obligations:
- (a) I will act in accordance with the Probity Plan and Probity Protocols as they apply to my role in the Program; and
 - (b) I will immediately report any breach of the Probity Plan or Probity Protocols, whether by myself or any other person of which I am or become aware, to (unless clause 8 of the Probity Protocols applies) the Manager Acquisition or the Defence Probity Administration Officer, as appropriate.

Signed: _____

Name: _____

Date: _____

ANNEXURE B TO THE PROBITY PROTOCOLS – CONFLICT OF INTEREST DECLARATION

1. I have been asked to disclose any interest that I may have which would preclude me from undertaking my duties in respect of the Program.
2. I have reviewed the list of Industry Respondents provided to me and to the best of my knowledge and belief, no Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of Airservices and Defence, any of my duties in respect of the Program, **except** as provided for in the declaration under clause 5.
3. I will use my best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest.
4. I will immediately report to the Manager Acquisition or the Defence Probity Administration Officer ~~[delete position not relevant to you]~~ (unless paragraph 8 of the Probity Protocols applies), any conflict or potential Conflict of Interest that arises during the Program and will comply with all directions given for dealing with that Conflict of Interest.
5. I declare that the following interests, circumstances, relationships and positions I hold may result in a Conflict of Interest and I set out my proposals for managing any such conflict:

Declared interest etc:	Proposal:
[insert]	[insert]

Signed: _____

Name: _____

Date: _____

Witnessed: _____

Name of witness: _____

ANNEXURE C TO THE PROBITY PROTOCOLS – EMPLOYEE ACKNOWLEDGEMENT

I acknowledge that I will be given access to Commercial in Confidence Information and that:

1. all Commercial in Confidence Information (whether acquired by verbal or written means) that is provided to me or acquired by me is strictly confidential;
2. I will only disclose Commercial in Confidence Information or discuss the Program with other Program Participants or people who have been authorised to access it on a "need to know" basis;
3. I will not use Commercial in Confidence Information for personal gain or to prejudice fair, open and effective competition;
4. all documents, reports and information discussed as part of, or in conjunction with, the assessment process for the Program will be treated as confidential (where such documents, reports and information are confidential) and will not be given to any other person other than Program Participants and people who have been authorised to access the information on a "need to know" basis; and
5. my confidentiality obligations will continue after the conclusion of the RFT and after my involvement in the Program, unless I am advised in writing by the Manager Acquisition that the information is no longer confidential. They will not automatically end if I cease to be employed by Airservices or Defence.

For this acknowledgement, **Commercial in Confidence Information** means information (whether or not provided by Airservices or Defence) that:

- (a) is by its nature confidential; or
- (b) the receiving party knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,

but does not include information which:

- (c) is or becomes public knowledge other than by a breach of contract or obligation of confidentiality;
- (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.

Signed: _____

Name: _____

Position and Employee
Number: _____

Date: _____

Witnessed: _____

Probity Plan and Protocols
For the joint procurement for OneSKY Australia

Name of Witness:

ANNEXURE D TO THE PROBITY PROTOCOLS – DEED POLL OF CONFIDENTIALITY

THIS DEED POLL OF CONFIDENTIALITY made 20

BY:

..... (the Recipient)
[Insert full name]

.....
[Insert address]

IN FAVOUR OF: the Department of Defence on behalf of the Commonwealth of Australia and Airservices Australia

RECITALS:

- A. Airservices is undertaking the Program on behalf of itself and Defence.
- B. The Recipient may be granted access to Commercial in Confidence Information about the Program.
- C. Defence and Airservices disclose Commercial in Confidence Information to the Recipient on the condition that the Recipient keeps all such Commercial in Confidence Information strictly confidential.
- D. Improper use or disclosure of Commercial in Confidence Information will hinder Defence and Airservices in the performance of their functions including the conduct of the Program and RFT.

THE RECIPIENT DECLARES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Deed Poll of Confidentiality, unless the contrary intention appears:

Airservices and Defence means Airservices Australia and Defence either jointly and severally as the context requires.

Airservices Australia or **Airservices** means the body corporate established by the *Air Services Act 1995*.

OneSKY Australia means the joint Airservices Australia and Defence program to develop and implement a strategy to procure an Air Traffic Control System.

Commercial in Confidence Information means information (whether or not provided by Airservices or Defence) that:

- (a) is by its nature confidential; or
- (b) the receiving party knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,

but does not include information which:

- (c) is or becomes public knowledge other than by a breach of contract or obligation of confidentiality;
- (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.

Defence means the Department of Defence, Defence Materiel Organisation and the Australian Defence Force, as applicable.

Document includes:

- (a) any paper or other material on which there is writing or printing or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; and
- (b) any disk, tape or other article, or any material from which sounds, images or writings or messages are capable of being reproduced with or without the aid of any other article or device.

Future Civil and Military Air Traffic Management Request for Tender or RFT means the Request for Tender to be released by Airservices Australia to acquire a new air traffic management system for Defence and Airservices.

Industry Respondent means a respondent (or a potential respondent) to an approach to the market conducted as part of the Program, including the current providers to Airservices Australia and Defence of systems similar to the RFT. A reference to an Industry Respondent includes related companies, subcontractors of and component providers to respondents (or potential respondents).

Information means all information in any form or media:

- (a) which may be disclosed or made available to the Recipient, whether by Airservices or by any of its officers; employees, agents, contractors or advisors; and
- (b) which is relevant to the Program or RFT.

Intellectual Property or IP means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trade marks (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.

Program means the ATC Future Systems Program and Project AIR 5431 Phase 3 jointly known as OneSKY Australia and all activities which support the program including:

- (a) any supplier and/or industry engagement activities;
- (b) any approach to market;
- (c) evaluation of offers; and
- (d) contract negotiations.

Project Air 5431 Phase 3 or Project means the Defence project to acquire:

- (a) an Air Traffic Management and Control System to replace the existing systems at ADF fixed base locations; and
- (b) a radar simulator for the School of Air Traffic Control at RAAF Base East Sale.

2. COMMERCIAL IN CONFIDENCE INFORMATION

In consideration of Defence and Airservices disclosing certain Commercial in Confidence Information to the Recipient, the Recipient acknowledges and agrees with Defence and Airservices:

- (a) that all the Commercial in Confidence Information is confidential, is the property of Defence and/or Airservices, and is of value to it, and that any Commercial in Confidence Information disclosed to the Recipient is disclosed to the Recipient only pursuant to the terms of this Deed Poll of Confidentiality;
- (b) to keep Commercial in Confidence Information confidential at all times;
- (c) that it must not, other than with the prior written approval of Defence and/or Airservices (as applicable to whether it is Defence's or Airservices' Commercial in Confidence Information or both) use, disclose, divulge or deal with any Commercial in Confidence Information, nor allow any act, matter or thing to be done or occur whereby any Commercial in Confidence Information may be ascertained or used by, or disclosed or communicated to, any other person, except in accordance with the terms of this Deed Poll of Confidentiality; and
- (d) that it must observe and be bound by the provisions of this Deed Poll of Confidentiality.

3. RESTRICTION ON USE

3.1 The Recipient agrees to use Commercial in Confidence Information only for the purpose of performing his or her duties in relation to the Program or RFT.

3.2 The Recipient must:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by:
 - (i) in the case of material provided to the Recipient – Defence and/or Airservices, whichever the material was provided by or on behalf of; or
 - (ii) in the case of new material created by the Recipient for Defence and/or Airservices – whichever of Defence or Airservices employed or engaged the Recipient to create that material or where employed or engaged by both Defence and Airservices comply with the more onerous obligation required by either Defence or Airservices,

to keep Commercial in Confidence Information, and all Documents, and all other things recording, containing, setting out or referring to any Commercial in Confidence Information, under effective control of the Recipient;

- (b) immediately notify Defence and Airservices in the event that the Recipient becomes aware of any unauthorised access to, or use or disclosure of, any Commercial in Confidence Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or

referring to any Commercial in Confidence Information otherwise than for the purposes specified in this clause 3;

- (d) take all reasonable steps to ensure that Commercial in Confidence Information and all Documents and all other things recording, containing, setting out or referring to Commercial in Confidence Information are protected at all times from any unauthorised use or access;
- (e) subject to clauses 3.2(f) and clause 3.3, if required at any time by Defence or Airservices (as applicable) to do so:

- (i) deliver up to:

- (A) in the case of material provided to the Recipient – Defence or Airservices, whichever the material was provided by or on behalf of; or
 - (B) in the case of new material created by the Recipient for Defence or Airservices – whichever of Defence or Airservices employed or engaged the Recipient to create that material unless in the case of new material created by the Recipient for both Defence and Airservices (irrespective of the party who employed or engaged the Recipient) either Defence or Airservices notifies the Recipient that the material should not be delivered to the other in which case the material must not be delivered to Defence or Airservices (as applicable); or

- (ii) at the option of:

- (A) in the case of material provided to the Recipient – Defence or Airservices, whichever the material was provided by or on behalf of; or
 - (B) in the case of new material created by the Recipient for Defence or Airservices – whichever of Defence or Airservices employed or engaged the Recipient to create that material,

destroy, all Commercial in Confidence Information provided by or on behalf of or created for Airservices or Defence (as applicable) in all forms and media, including without limitation all Documents containing, setting out or referring to any Commercial in Confidence Information in the possession, custody or control of the Recipient; and

- (f) if required by Defence or Airservices (as applicable):

- (i) permit Defence or Airservices or a nominee or nominees of Defence and Airservices reasonable access to the premises of the Recipient to ensure or check compliance with this Deed Poll; and/or
 - (ii) provide to Defence and/or Airservices a statutory declaration of an officer of the Recipient stating that clause 3.2 has been complied with.

3.3 The Recipient may retain a copy of any Commercial in Confidence Information if, and only to the extent to which:

- (a) the Recipient is required by law to do so; or

- (b) in the case of a Recipient that provides professional services to Airservices or Defence:
 - (i) the Recipient is required to do so under the terms of its professional indemnity insurances (provided that if required by Defence and/or Airservices the Recipient must provide evidence of the requirement under its professional indemnity insurance) or a professional standard which is published by the body governing the relevant profession; or
 - (ii) the Recipient created the copy by routine computer backup systems or the copy is located on backup servers or backup media, provided that the Confidential Information retained is kept confidential in accordance with this Deed Poll.

4. DISCLOSURE AS REQUIRED BY LAW

- 4.1 The Recipient may disclose any Commercial in Confidence Information which the Recipient is required by law to disclose, but only to the extent and manner the disclosure is required by law.
- 4.2 The Recipient must:
 - (a) give Defence and Airservices sufficient notice to enable Defence and Airservices to seek a protective order or other relief from disclosure; and
 - (b) provide all assistance and co-operation which Defence and Airservices reasonably consider necessary for that purpose.

5. COMMENCEMENT

This Deed Poll of Confidentiality shall be taken to have commenced on the date of the execution of this Deed Poll of Confidentiality.

6. SURVIVAL

This Deed Poll of Confidentiality shall survive the termination or expiry of the procurement process.

7. APPLICABLE LAW

This Deed of Confidentiality will be governed by and construed in accordance with the laws of the Australian Capital Territory.

8. NO EXCLUSION

- 8.1 This Deed Poll of Confidentiality does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of Commercial in Confidence Information.
- 8.2 The rights and remedies provided under this Deed Poll of Confidentiality are cumulative and not exclusive of any rights or remedies provided by law.

9. WAIVER

Failure by Defence and Airservices to enforce a provision of the Deed Poll of Confidentiality will not be construed as in any way affecting the enforceability of that provision or of the Deed Poll of Confidentiality as a whole.

EXECUTED as a Deed Poll.

Signed, sealed and delivered by the
Recipient in the presence of:

Signature of witness

Signature of Recipient

Name of Witness (printed)

Name of Recipient (printed)

ANNEXURE E TO THE PROBITY PROTOCOLS – NON-ACTIVE PROGRAM PARTICIPANT DECLARATION

1. I have been a Program Participant for the ATC Future Systems Program / AIR 5431 Phase 3 project (Project), jointly known as OneSKY Australia being undertaken by Airservices Australia as lead agency with the Department of Defence (Defence Materiel Organisation) in my capacity as:

(Insert role on Project)

2. I have become a Non-Active Program Participant because:

(Insert reasons for becoming a Non-Active Program Participant)

3. I confirm that I have destroyed or returned to the Manager Acquisition or the Defence Program Director (as applicable) any documents in my possession or control relating to the Project that contain Commercial in Confidence Information (as defined in the Probity Plan and Protocols (v2.0) for the Joint Procurement of a National ATM Platform).
4. I acknowledge my continuing obligation to treat Commercial in Confidence Information as confidential and to only use it in accordance with the Probity Protocols. In particular, I acknowledge and agree that any Commercial in Confidence Information cannot be used for personal gain or to prejudice fair, open and effective competition.
5. I will take any necessary steps to ensure any ongoing Program Participants with whom I have dealings are aware that I have become a Non-Active Program Participant and that I cannot be provided with Commercial in Confidence Information unless expressly authorised by the Manger Acquisition.

Signed: _____

Name: _____

Date: _____

Witnessed: _____

Name of Witness: _____

ATTACHMENT B TO THE PROBITY PLAN:

DEFENCE AND AIRSERVICES PROBITY ARRANGEMENTS FUTURE AND CIVIL AND MILITARY AIR TRAFFIC MANAGEMENT

1. Requests for advice

1.1 Persons who may request advice

The following persons may request advice from the Probity Advisor:

- (a) any member of the Airservices Board;
- (b) the Airservices CEO or members of her office;
- (c) the Airservices Executive General Manager, Future Service Delivery (currently Jason Harfield);
- (d) the Airservices Joint Program Director, OneSKY (currently Ron Dempster) , ;
- (e) the Airservices General Counsel (currently John Dicer) or a nominated representative allocated to the project
- (f) the Airservices, Manager Acquisition (currently Ian Cassidy);
- (g) DMO General Managers: GM Commercial (currently Harry Dunstall) and GM Systems (currently Shireane McKinnie);
- (h) Director General Surveillance and Control (currently Air Commodore Mike Walkington); and
- (i) the SCCEO (currently Liesl O'Meara) or a nominated representative allocated to the Program.

1.2 Requests by other persons

Where any other persons request advice the Probity Advisor will refer them to the Manager Acquisition or, if this is not appropriate given the nature of the request, another person listed in paragraphs 1.1(a) to (d) above.

1.3 Approval requirement for common probity activities

All probity activities, excluding requests under paragraphs 2.1 (Requests by or on behalf of the Airservices Board or Airservices CEO) and 2.2 (Requests from DMO General Managers) below, must be pre approved by the Manager Acquisition.

1.4 Communication of requests

All requests issued by the persons noted in paragraph 1.1(a) to 1.1(e) above are to be copied to the Manager Acquisition.

1.5 Requests for sign off

All requests for sign off will be issued by Airservices.

The Probity Advisor may ask the Defence Program Director to confirm that Defence considers the document to be ready for sign off.

1.6 Requests for probity briefings

The procedures set out above are not intended to apply to requests for probity briefings.

All probity briefings are organised by the Manager Acquisition or a nominated representative.

Probity briefings for Non-Core Program Participants will be conducted internally by the Manager Acquisition, Defence Program Director or their nominated representatives in accordance with the script in Attachment C. All such briefings will be recorded in the probity register and a monthly update provided to the Probity Advisor.

The Manager Acquisition will determine whether probity briefings for Core Program Participants are to be conducted:

- (a) by the Probity Adviser; or
- (b) internally by the Manager Acquisition, Defence Program Director or their nominated representatives (in accordance with the script in Attachment C).

All briefings will be recorded in the probity register.

The Probity Adviser will be provided with a monthly update of any briefings conducted internally.

2. Responses to requests for advice

2.1 Requests by or on behalf of the Airservices Board or Airservices CEO

Defence acknowledges that the Probity Advisor is not required to provide copies of advice given to the Airservices Board or the Airservices CEO to Defence.

Where the Probity Advisor considers that the advice raises issues that are relevant to Defence, the Probity Advisor will recommend to Airservices that Airservices disclose some or all of the advice to Defence.

2.2 Requests from DMO General Managers

Airservices acknowledges that the Probity Advisor is not required to provide copies of advice given to the DMO General Manager Commercial (currently Harry Dunstall), General Manager Systems (currently Shireane McKinnie), Director General Surveillance and Control (currently Air Commodore Mike Walkington) or SCCEO (currently Liesl O'Meara) or SCCEO's nominated representative allocated to the Program.

Where the Probity Advisor considers that the advice raises issues that are relevant to Airservices or that may raise a probity risk to the Program, the person requesting the advice must raise the probity risk with the Manager Acquisition and agree on a course of action.

2.3 Other requests for advice

Subject to paragraph 2.4 below, responses to all other requests for advice are to be sent to the Manager Acquisition.

2.4 Exceptions

Defence and Airservices each recognise that the Probity Advisor will be receiving personal and sensitive information such as:

- (a) names of individuals receiving probity briefings;
- (b) information disclosed in conflict of interest declaration; and
- (c) information relating to workforce planning.

Accordingly the Probity Advisor:

- (a) generally will not provide Defence with details of probity briefings and advice on conflict of interest declarations for Airservices staff (and vice versa); and
- (b) may choose to provide a summary version of advice.

However, the Probity Advisor will provide a monthly report to Airservices setting out:

- (a) the number of probity briefings given in that month (if any);
- (b) the number of persons who attended from each organisation; and
- (c) the general nature of conflicts of interest disclosed and mitigation strategies recommended.

ATTACHMENT C TO THE PROBITY PLAN:

SCRIPT FOR PROBITY BRIEFINGS OF NON-CORE PROGRAM PARTICIPANTS

1. INTRODUCTION

You have been nominated as a Non-Core Program Participant in the OneSKY Australia Program.

You have been given a copy of the Probity Plan and Probity Protocols for the Program. These require you to have a probity briefing and to sign documents attached to the Protocols, including:

- (a) **First**, a probity undertaking (Annexure A);
- (b) **Second**, a formal declaration of conflicts of interest (Annexure B); and
- (c) **Third**, one of two forms of confidentiality document, being:
 - (i) an **acknowledgement** (Annexure C) if you are an Airservices or Defence employee or member of the Australian Defence Force; or
 - (ii) a **confidentiality deed** (Annexure D) if not.

This probity briefing covers:

First, what probity is and why it is important in a tender process.

Second, your obligations in relation to maintaining the probity of the process.

2. WHAT IS 'PROBITY'?

2.1 Definition

'Probity' is a process concept. It is about ensuring the process is conducted with integrity, uprightness, honesty and fairness. Probity is as much about whether the process is seen to be fair as if it is actually fair.

Probity is a number of six principles. At the core of these is "fairness" and impartiality. It is also necessary that there are proper processes sitting around the Program. The Plan and Protocols are the first layer of these processes.

As a Program Participant, you have a range of obligations under the Probity Protocols. These have been designed to ensure that the probity principles are met.

2.2 Why Does Probity Matter?

Probity matters for three key reasons.

- (a) **First**, Airservices, Defence and their employees must fulfil their legal and policy obligations, including individuals' obligations as part of their employment which (now) includes complying with the probity arrangements we have put in place.
- (b) **Second**, effectively probity helps to promote public and industry confidence in the way procurements are conducted
- (c) **Thirdly**, it reduces the legal risks for Airservices and Defence. This Program is an important opportunity for the industry, both because of the size of the job that could be won and the infrequency with which it is tendered. As a result, Airservices and Defence can expect that the procurement process will be fairly heavily scrutinised and good probity helps to ensure it will withstand this scrutiny, and will not be vulnerable to legal challenge or complaint.

3. KEY ISSUES RELEVANT TO MAINTAINING PROBITY THROUGHOUT THE PROCESS

Now that you have a general background about probity concepts, I will outline your key probity obligations as a Program Participant.

3.1 Individual Awareness of Requirements

The starting point is for all personnel involved to read and be familiar with the Probity Plan and Protocols. I will talk about some of these obligations in a little bit of detail, but it is important that you read and comply with all of your obligations under the Protocols.

3.2 Conflicts of Interest

The **first** individual obligation is to declare any actual, potential or perceived conflict of interest with "Industry Respondents". These terms are defined in the Probity Plan and Protocols, but you have also been given a list of "Industry Respondents" who may tender for the Program.

A conflict of interest is any interest or relationship that connects you to an Industry Respondent in a way that means you cannot exercise unbiased judgement for the Program or (as is more commonly the case) where you may be perceived as being biased. You are asked to think about any interests and disclose them in the Declaration at Annexure B to the Protocols. We want to know about any material personal interests and material financial interests.

- (a) An example of a **material personal interest** is where you or a member of your immediate family are employed by an Industry Respondent.
- (b) An example of a **material financial interest** is where you or a member of your family owns shares in an Industry Respondent.

You are also asked to propose a mitigation strategy for the disclosed interest (eg "I will not discuss the Program or my role in it with [X]."). Each conflict of interest declaration will be considered by the Manager Acquisition, in consultation with the Probity Advisor, on a case-by-case basis and you may be asked to take some additional steps where Airservices thinks that is necessary.

You need to continue to disclose any new actual or perceived conflicts of interest for as long as you are a Program Participant.

3.3 Confidentiality

The **second** individual obligation I want to flag is confidentiality.

So that all Industry Respondents get fair access to information about the Program, you must make sure that you only disclose Program information with people who are authorised to receive it (ie other Program Participants) where those people "need to know" the information.

This also means making sure you do not accidentally disclose Program information. Please make sure you do not discuss the Program where you can be overheard (eg avoid discussions in the local café) and that you are not carrying sensitive information on you, unless you absolutely need to.

There are also obligations in the Protocols to keep Program documents secure. Please make sure you meet those obligations.

3.4 Interactions with Industry

Finally, I want to talk to you about how you are permitted to interact with Industry Respondents. There are four points to cover here.

- (a) **Point 1:** Do not answer questions about the Program asked by non-authorized individuals. Any questions should be referred to the Contact Officer (currently, Johaan Baard).
- (b) **Point 2:** If you are asked questions about the Program or receive any unsolicited contact in relation to the Program (whether from an Industry Respondent, a friend, a member of the public or the media), in addition to not answering any questions, you should:

- (i) let the Contact Officer know about the contact; and
 - (ii) make a file note of what was discussed in the conversation – this is to protect you as well as the Program.
- (c) **Point 3:** You are permitted to continue with any normal business interactions you have with an Industry Respondent. This is considered to be "Business as Usual" or "BAU" contact. However, you must make sure:
- (i) you do not intermingle your BAU and your Program work – eg do not discuss the Program with any of your BAU contacts unless the Manager Acquisition has given you permission; and
 - (ii) that your BAU contact is "business appropriate" – if you receive any invitations (eg to a sporting event or an "end of project" dinner hosted by an Industry Respondent) you must get permission before you attend.
- (d) You must not accept any gifts, hospitality or other benefits from Industry Respondents and must report any offers to the Manager Acquisition or Defence Probity Administration Officer. Offers of employment from a tenderer must also be notified. You must also get the Manager Acquisition's permission before you attend an event hosted by an Industry Respondent (eg a conference).

4. CONCLUSIONS

In summary:

- (a) read the Probity Protocols and remind yourself of your obligations from time to time;
- (b) provide your declarations to the Probity Administrator (currently Annette Sloan-Gardner). To recap, this includes Annexure A (Probity Undertaking), Annexure B (Conflict of Interest Declaration) and either Annexure C (Confidentiality Acknowledgement – if you are a Defence or Airservices employee) or Annexure D (Confidentiality Deed Poll);
- (c) document any interactions you have with suppliers, the procurement process and any decisions that you take part in; and
- (d) if in doubt, contact the Manager Acquisition or the Defence Probity Administration Officer (as applicable). You can also contact the Probity Advisor if you require. All details are in the Schedule to the Probity Plan.

If you cease to be involved in the Program, you will become a "Non-Active Program Participant". Your confidentiality obligations continue, however, and (at the time) you will be asked to sign a further declaration to this effect.

ATTACHMENT B

Revised version of the Probity Plan and Protocols

