MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN TRANSPORT SAFETY BUREAU

AND

THE DEPARTMENT OF DEFENCE DIRECTORATE OF DEFENCE AVIATION AND AIR FORCE SAFETY

FOR COOPERATION RELATING TO TRANSPORT SAFETY INVESTIGATION
MoU – ATSB and DDAAFS

1. THE ORGANISATIONS

The Department of Defence, Directorate of Defence Aviation and Air Force Safety and Defence Science and Technology Organisation

1.1 The Directorate of Defence Aviation and Air Force Safety (DDAAFS) is an agency administered by the Deputy Chief of Air Force responsible for Department of Defence (DOD) aviation safety matters, including aircraft accident investigations and aviation safety promotion.

1.2 The DDAAFS mission is to support Chief of Air Force, as the Senior DOD Aviation Adviser, in the preservation of all human and materiel resources in the DOD aviation operations through facilitating continuous improvement in DOD aviation safety management, and to act as the DOD centre of excellence for aviation safety training; for aviation safety promotion; and the independent investigation of aircraft accidents.

1.3 The principal function of the Defence Science and Technology Organisation (DSTO) is to support the Australian Defence Force (ADF) through application of science and technology, and from time to time may have capacity to provide services to the Australian Transport Safety Bureau (ATSB). DSTO maintains a small group of experienced aircraft accident technical specialists that assists DDAAFS Aviation Accident Investigation Teams (AAIT) and the Defence Technical Airworthiness system. This DSTO group can access other diverse technical specialists available in DSTO.

The Australian Transport Safety Bureau

1.4 The Australian Transport Safety Bureau (ATSB) is established under the Transport Safety Investigation 2003 Act (TSI Act) as an independent Commonwealth statutory agency. The ATSB is governed by a Chief Commissioner and two part-time Commissioners. The ATSB is not subject to direction from anyone in relation to the performance of its functions or the exercise of its powers.

1.5 The ATSB’s function is to improve safety and public confidence in the aviation, marine and rail modes of transport through:
   a) investigation of transport accidents and other safety occurrences;
   b) safety data recording, analysis and research; and
   c) fostering safety awareness, knowledge and action.

1.6 Under the TSI Act, it is not a function of the ATSB to:
   a) apportion blame or provide a means for determining liability for transport safety matters;
   b) except as provided by the TSI Act, assist in court proceedings between parties; or
   c) allow any adverse inference to be drawn from the fact that a person was involved in a transport safety matter.

1.7 One of the ATSB’s functions is to cooperate with organisations such as DDAAFS that have functions or powers relating to transport safety.
2. PURPOSE AND STATUS OF THIS MOU

2.1 This MoU provides a framework to support the intention of the DOD and the ATSB to cooperate in the investigation of transport safety matters. With respect to each organisation's separate safety functions, this MoU through its provisions, addresses the following objectives:

a) Acknowledge the limited and dispersed national resources available for transport safety investigation should a major accident occur and the need to mutually provide a national transport safety investigation capability;

b) confirm that both DDAAFS and ATSB operate according to the objective enshrined in Annex 13 to the Convention on International Civil Aviation ('the Chicago Convention'), that the sole object of the investigation of an aircraft accident or incident shall be the prevention of accidents and incidents and that it is not the purpose of the investigation activity to apportion blame or provide a means of determining liability (and that this principle extends to all transport safety investigations by the parties);

c) maximisation of beneficial aviation safety outcomes;

d) encourage mutual assistance and the sharing of expertise, training opportunities, experience and equipment in transport safety investigations; and enhancement of public confidence in aviation safety;

e) commit the parties to build on their existing capabilities and professionalism;

f) support the adoption of systemic approaches to aviation safety; and

g) to the extent practicable, the avoidance of any impediments in the performance of each other's functions;

2.2 The parties acknowledge that this (MoU) is not legally binding and that nothing in this MoU can legally restrict the statutory duties, discretion and powers under relevant legislation.

2.3 In pursuing the objectives outlined in 2.1, both organisations agree to give effect to the following values:

a) cooperation,

b) honesty,

c) trust,

d) mutual respect,

e) openness, and

f) professionalism.

2.4 Attachment A does not form a part of this MoU and may be updated at any time by the organisation responsible for the information.
3. MEETINGS, COMMUNICATION AND TRAINING

3.1 Meetings
3.1.1 The Director of DDAAFS and the Chief Commissioner ATSB and/or their nominated representatives, will endeavour to meet regularly to discuss matters including but not limited to:

a) each organisation's strategic direction and corporate/operational plans;
b) relevant operating protocols of each organisation and any associated necessary or desirable interaction between the two organisations;
c) ATSB identified Safety Issues and Safety Recommendations and DDAAFS responses to these where they relate to Defence functions;
d) issues related to existing and proposed legislation;
e) trends and other developments bearing on aviation safety;
f) mutual staff training and development opportunities; and

g) annual review of the MoU.

3.2 Communication co-ordination and contact points
3.2.1 During the course of an ATSB investigation or ATSB research report related to a Defence matter, the ATSB will liaise in the first instance with the DDAAFS Deputy Director Aviation Safety. Further contact may be with a nominated representative as agreed for that investigation.

3.2.2 Where appropriate, DDAAFS will keep the ATSB informed of progress of Defence investigations involving civilian-registered aircraft.

3.2.3 The formal communication of DDAAFS position in response to matters raised by the ATSB, for inclusion in an ATSB investigation report, will normally be made by the Director DDAAFS or nominated representative.

3.2.4 The processes specified in paras 3.2.1 to 3.2.3 are not intended to impede communication between the Chief Commissioner ATSB and the Director DDAAFS.

3.2.5 Subject to the foregoing, interagency contact points for routine communications are set out in Attachment A.

3.3 Shared training opportunities
3.3.1 The ATSB will advise DDAAFS of its program of relevant training for a calendar period when it becomes available. DDAAFS, as soon as practicable, will advise the ATSB if there are any training opportunities in the program that it wishes to nominate DDAAFS staff members to attend. To the extent that resources are available, the ATSB will consider the capacity to accommodate the request and advise DDAAFS.

3.3.2 DDAAFS will advise the ATSB of its program of relevant training for a calendar period when it becomes available. The ATSB, as soon as practicable, will advise DDAAFS if there are any training opportunities in the program that it wishes to nominate ATSB staff to attend. To the extent that resources are available, DDAAFS will consider the capacity to accommodate the request and advise the ATSB.

3.3.3 DDAAFS and the ATSB will endeavour to advise one another of any changes to their respective annual training schedules as soon as practicable.
3.3.4 DDAAFS and the ATSB will consider opportunities for staff exchanges between the agencies to enhance professional development of staff members, subject to operational requirements.

4. **COOPERATION IN RELATION TO INVESTIGATIONS**

4.1 **Parallel investigations**

4.1.1 Where the circumstances of a transport safety matter result in the capacity for both the ATSB and DDAAFS to conduct a transport safety investigation, the ATSB and DDAAFS agree to consult with a view to conducting a joint transport safety investigation. Such consultation shall include determination of which agency will be the principal investigation agency for that transport safety investigation. The agreement to consult in these circumstances does not derogate from either the ATSB's or the DDAAFS's right to conduct its own, separate, investigation.

4.1.2 As soon as reasonably practicable after either the ATSB decides to conduct an investigation, or DDAAFS decides to conduct an investigation in relation to a matter that would be a reportable matter to the ATSB, each organisation will notify the other organisation.

4.1.3 The parties agree to the following where there is a joint investigation:

a) Where a transport safety matter occurs involving a non-exempt transport vehicle and an exempt transport vehicle that is operated by the DOD, the ATSB, where it elects to investigate, will be the principal investigation agency unless the circumstances reveal DDAAFS would be the most appropriate principal investigation agency.

b) Circumstances that may be taken into account include those that involve defence security matters or that will significantly involve specialist expertise resident in the DOD, and appropriate protection of investigation data and evidence.

4.1.4 Where there are separate investigations, both parties will cooperate to ensure, to the extent practicable, that an investigation conducted by one party does not impede on an investigation or functions of the other party.

4.1.5 If either party considers an investigation is creating an unreasonable impediment to the performance of their functions, they will raise the matter with the other party. If either organisation considers an investigation conducted by the other organisation is creating an unreasonable impediment to the performance of their functions, they will raise the matter with the other organisation.

4.2 **Protection and integrity of evidence**

4.2.1 When the ATSB notifies DDAAFS of its decision to investigate a transport safety matter relating to a Defence matter, the ATSB will also advise DDAAFS whether or not a Protection Order, with its associated requirements, has been issued over evidential material that DDAAFS may have possession or control of, or contact with.

4.2.2 A Protection Order issued by the ATSB may authorise DDAAFS to make copies of recorded or stored data where such access or copying does not affect the integrity of the primary record. The ATSB will normally grant such permission; however, it may refuse in its absolute discretion.

4.2.3 Prior to the ATSB's issuing a Protection Order, the ATSB acknowledges that DDAAFS will make decisions about the handling of evidence for its own purposes. In doing so, DDAAFS agrees it will be mindful of the potential effects of its decisions on ATSB investigations, including the need to preserve
the integrity of evidence, and will liaise with the ATSB as necessary to ensure the integrity of evidence is maintained.

4.2.4 When the ATSB notifies DDAAFS of its decision to conduct an investigation, or as soon as practicable after that notification, the ATSB will inform DDAAFS whether or not the ATSB will need to interview DOD staff members. At that time, the parties agree to discuss whether it is preferential that the DOD staff members are interviewed by the ATSB before they are interviewed by DDAAFS (for DDAAFS investigation purposes).

4.2.5 The parties agree that DOD staff who are to be interviewed by the ATSB will not be given access to audio or radar data associated with the investigation, prior to being interviewed by the ATSB.

4.2.6 Refer also to section 6.4 of this MOU for additional guidance in relation to physical evidence.

4.3 Request for assistance or involvement

4.3.1 DDAAFS and the ATSB may request assistance from each other in the performance of their respective functions. Resources permitting, and after consideration of any internal policies and legal requirements, as well as any conflicts of interest, each organisation will seek to accommodate a request from the other.

4.3.2 Where assistance is provided, each party will normally bear its own costs. However, if the party providing assistance at the request of the other party does so primarily or exclusively for the benefit of the requesting party, some or all of the costs of the party providing that assistance may be borne by the party to whom that assistance is provided and a formal agreement may be entered into for this purpose.

4.3.3 Sections 5 and 6 of this MoU provide guidance where the assistance provided involves participation in an investigation or where one organisation seeks to be involved in the other organisation’s investigation.

5. ATSB PARTICIPATION AS A TEAM MEMBER IN A DOD INVESTIGATION

5.1 Team Members

5.1.1 At the request of the DOD and subject to ATSB commitments and available resources, the ATSB agrees to provide TSI(s) to participate in a DDAAFS AAIT, or other DOD Investigation Teams, when formed. Where participation is agreed, the ATSB will seek to make the TSI(s) from the requested speciality available within 24 hours, or sooner if they are urgently required.

5.1.2 Where DOD has not requested ATSB participation in an investigation, the ATSB, if it seeks more than an Observer role as detailed under clause 7, may make a request to DDAAFS for active participation of its personnel. DDAAFS will consider the request, and will take into account that an Observer role would not satisfactorily meet the needs of the ATSB.

5.1.3 The TSI(s) will be attached to the AAIT and will be responsible to the Officer-in-Charge (OIC) AAIT while attached. ATSB TSI contribution to the DOD investigation will be determined by the DOD and will be to the extent necessary to ensure effective participation.
5.1.4 Any ATSB participation in a DOD investigation will be initiated by the ATSB as an investigation under the TSI Act, and therefore subject to the TSI Act information protection provisions. At the time of negotiating ATSB TSI participation in a DOD transport safety investigation, DOD shall advise the ATSB of any possibility of ATSB TSI(s) subsequently being required to give evidence at a proceeding that apportions blame or determines liability such as a DOD Commission of Inquiry. The ATSB may take this into account when making its decision about participation of TSI(s) in a DOD transport safety investigation.

5.2 Confidentiality

5.2.1 A TSI will be required to sign a confidentiality agreement prior to participating in or observing a DOD investigation. A TSI may also be excluded from some aspects of a DOD investigation due to the security classification of some information.

5.2.2 Information gained during a DOD investigation can only be released by the relevant Aviation Accident Investigation Team (AAIT) Appointing Authority, with initial requests for release of information being referred to DDAAFS.

5.2.3 The ATSB acknowledges that any confidentiality agreement signed by a TSI prevents disclosure of confidential investigation information gained by that TSI during an investigation to the ATSB or any other party without authorisation. The DOD recognises that a TSI participating in a DOD investigation has a responsibility to inform the ATSB of any matter that is relevant to an ATSB investigation or civil aviation safety more generally. Where a TSI participating in a DOD investigation believes that such information is evident, the TSI should bring the matter to the attention of the OIC of the AAIT. Where the DOD, in consultation with the TSI, agrees that the information indicates a need for safety action, the DOD agrees to release it to the appropriate authority as expeditiously as possible to enable safety action to be taken.

6. DOD PARTICIPATION IN AN ATSB INVESTIGATION

6.1 External Investigator

6.1.1 An external investigator is someone who is to contribute to the investigation as an active participant. Their participation is to be to the extent necessary to fulfil the agreed functions under this MoU, or to the extent necessary to fulfil the needs of the ATSB's investigation.

6.1.2 Before participating in an ATSB transport safety investigation, an external investigator will be required to sign an External Investigator Agreement (EIA) as required under ATSB policy and procedures. The EIA is an ATSB administrative arrangement under which the external investigator acknowledges their rights and duties appropriate to their level of involvement in the investigation and agrees to follow ATSB requirements.

6.2 Team Members

6.2.1 At the request of the ATSB and subject to DOD commitments and available resources, DDAAFS agrees to provide ASI(s) to participate in an ATSB Investigation Team, when it is formed. Where participation is agreed, DDAAFS shall endeavour to make the ASI(s) from the requested speciality available within 24 hours, or sooner if they are urgently required.

6.2.2 Where the ATSB has not requested DOD participation in an investigation, DDAAFS, if it seeks more than an Observer role as detailed under clause 8, may make a request to the ATSB for active participation of its personnel. The ATSB will consider the request, and will take into account that an Observer role would not satisfactorily meet the needs of DDAAFS.
6.2.3 An ASI will be attached to the ATSB Investigation Team and will be responsible to the Investigator in Charge (IIC) while attached. The ASI(s) will be required to sign an EIA. DOD ASI contribution to the ATSB investigation will be determined by the ATSB and will be to the extent necessary to ensure effective participation.

6.2.4 At the discretion of the Chief Commissioner, an ASI may be delegated powers under the TSI Act to facilitate the ASI's participation in an investigation. The ASI may also be appointed as a consultant under section 16B of the TSI Act.

6.3 Confidentiality

6.3.1 Depending on an ASI's status of involvement in an investigation, the ASI may be required to sign specific confidentiality agreements as part of the EIA that permit access to different forms of confidential information gathered during the investigation process.

6.3.2 Where the ASI is delegated powers or provided access to restricted information or OBR as defined under the TSI Act, the confidentiality provisions with respect to the TSI Act shall apply.

6.3.3 The DOD acknowledges that any confidentiality agreement signed by an ASI prevents disclosure of confidential investigation information gained by an ASI during an investigation to the DOD or any other party without authorisation. The ATSB recognises that an ASI participating in an investigation has a responsibility to inform the DOD of any matter that indicates a need to take safety action. Where an ASI participating in an ATSB investigation believes that such information is evident, the ASI should bring the matter to the attention of the ATSB IIC. Where the ATSB, in consultation with the ASI, agrees that the information indicates a need for DOD to take safety action, the ATSB agrees to release it to DOD as expeditiously as possible to enable appropriate safety action to be taken.

6.4 Physical evidence

6.4.1 In order to facilitate cooperation and coordination in relation to physical evidence (including documents) relating to an investigation, each organisation agrees to the following:

a) When both the ATSB and DDAAFS seek to remove and/or retain the same physical evidence, the organisations will consult with each other with a view to the achievement of each organisation's objectives. However, where considered necessary, the ATSB may exercise priority over the removal and custody of evidence.

b) Each organisation will ensure that the removal and/or retention of evidence is conducted in accordance with appropriate chain-of-evidence protocols.

c) ATSB requests to DDAAFS for physical evidence will normally be made through a Notice to Produce, issued under Section 32 of the TSI Act.

6.5 Disclosure of information relating to investigations

6.5.1 It is understood that the provision of all information will be subject to the legal obligations and policies applicable to both organisations.

6.5.2 DDAAFS and the ATSB will consult with each other in the development of their policies and procedures regarding the disclosure and use of safety information, including the mechanisms for disclosure and protections to be applied to information received from the other agency.

6.5.3 If the ATSB requests information from DDAAFS, including interviews with DDAAFS staff, such requests will normally be directed to and through the
Chief of Staff (COS) DDAAFS in the first instance. Thereafter, further and/or related communications may be directed to another relevant officer or group within DDAAFS.

6.5.4 DDAAFS agrees to assist the ATSB in relation to the provision of documents and other evidence or specialist participation concerning transport safety matters that the ATSB is investigating. Normally, the request will be made pursuant to Section 32 notice to ensure that information provided is protected as restricted information under Division 2 of Part 6 of the TSI Act. When a request for information is not directed to DDAAFS by a Section 32 notice, DDAAFS may request the issue of a notice prior to the release of the requested information.

Note: DDAAFS and the ATSB recognise and acknowledge their respective obligations under the Privacy Act 1988.

6.5.5 The ATSB will inform DDAAFS at the time of a request as to whether or not 'originals' of any documents or data are required. However, the ATSB recognises there may be limitations on the availability of original data dependent on the recording medium utilised by DDAAFS. In circumstances where retrieval of original data is not possible or extensively not practical, DDAAFS shall inform the ATSB accordingly. DDAAFS will seek concurrence from the ATSB in such circumstances, permitting copies of data to be made in such a manner where copying does not affect the integrity of the original record.

6.5.6 Unless otherwise agreed, a notice issued under Section 32 will allow DDAAFS ten (10) working days (as applicable in the ACT) to respond. DDAAFS acknowledges that there may be exceptional circumstances where shorter time frames may be required and will seek to cooperate in meeting those time frames.

6.5.7 DDAAFS agrees that if a DDAAFS Officer is known to have information that could assist the ATSB in the performance of its investigative functions, DDAAFS will undertake to advise the ATSB of the existence of the information.

6.5.8 The ATSB recognises that DDAAFS needs to be advised as soon as practicable where an investigation reveals information that indicates a need to take urgent safety-related action. In such cases, the ATSB will determine the most appropriate mechanism under the TSI Act to release the information in consultation with the COS DDAAFS.

6.5.9 DDAAFS agrees that, whenever it conducts a parallel investigation into a transport safety matter and the ATSB is also investigating, DDAAFS will, subject to any legal or other applicable requirements, provide the ATSB with a copy of the DDAAFS final investigation report or other compilation of relevant details as soon as it is practicable to do so.

7. PREREQUISITE TRAINING AND REQUIRED EQUIPMENT

7.1.1 Before DOD personnel will be permitted onto an ATSB accident site, the DOD personnel should have completed a Blood Borne Pathogens course or advise the ATSB IIC if they have not. Failure to have completed a course will not preclude the DOD from participating in the investigation; however, mitigating strategies (such as remaining outside any identified contaminated area) will be undertaken to ensure the safety of all personnel.

7.1.2 The ATSB will ensure that TSI(s) participating in a DOD investigation have adequate personal protection equipment (PPE). TSI(s) will be required to
present evidence of inoculation status to the OIC AAIT before deployment to a DOD accident investigation site.

7.1.3 DDAAFS will ensure that ASI(s) participating in an ATSB investigation have adequate PPE. ASI(s) will be required to present evidence of inoculation status to the IIC before deployment to an ATSB accident investigation site.

8. REQUESTS FOR OBSERVER STATUS AT AN INVESTIGATION

8.1.1 An Observer is a person who is present to watch a transport safety investigation, or parts of it, for their own interests or those of their organisation, rather than for the purpose of contributing to the investigation. Observers will not be authorised to:

a) interview witnesses and survivors,
b) seek information from a person who is the subject of an investigation, or
c) observe the output (in any form) of an OBR.

8.1.2 The DOD and the ATSB agree to facilitate arrangements for Investigators of the other party to observe an investigation, or aspects of an investigation, that it is conducting, where such observation results in a safety or training benefit for that organisation.

8.1.3 The extent to which an Observer may view an investigation, or aspects of an investigation, will be at the discretion of the party conducting the investigation.

8.1.4 The confidentiality requirements expressed in clauses 5 and 6 of this MoU apply with respect to Observers.

9. SPECIALIST ASSISTANCE

9.1 DOD may request specialist assistance from the ATSB during the course of a DOD investigation. The specialist assistance may include but is not limited to: materials failure analysis; cockpit voice recorder and flight data recorder analysis; analysis of heads-up display and maintenance tapes; computer graphics etc. Having regard to the seriousness of the occurrences and the resources available at the time, the ATSB will seek to give priority to the request.

9.2 The ATSB may request specialist assistance from DOD, through DDAAFS, during the course of an ATSB investigation. The request may be made in the areas of, but not limited to, aviation medicine, flight safety, systems engineering, avionics, etc. Having regard to the seriousness of the occurrence and the resources available at the time, the DOD will seek to give priority to the request.

9.3 At the request of the ATSB, DOD agrees to provide DSTO Services to the ATSB. Such agreement will be subject to DSTO priorities and its principal obligation to the DOD. Unless agreed on a quid pro quo basis, the ATSB will contract for the DSTO Services provided in accordance with the Financial Management and Accountability Act 1997, relevant regulations and other legislative instruments, as well as Department of Infrastructure Chief Executive Instructions. Both parties will implement and maintain appropriate evidence handling procedures.

10. OCCURRENCE NOTIFICATION AND INVESTIGATION REPORTS

10.1 Notification of Transport Safety Matters and provision of reports
10.1.1 Notification to ATSB:

a) DDAAFS Officers, in fulfilling their reporting requirements for immediately reportable matters (IRMs) and routine reportable matters (RRMs) under the TSI Act should normally use the contacts identified in Attachment A.

b) It is acknowledged that a written report from DDAAFS, either as a follow up to an IRM or the submission of a RRM, will normally be in the form of an Electronic Safety Incident Report (ESIR).

10.1.2 Notification and reports to DDAAFS:

a) The ATSB will notify the COS DDAAFS as soon as reasonably practicable of an IRM that appears to relate to DDAAFS' functions.

b) In addition to providing the initial notification, where the ATSB conducts an investigation, reports released to DDAAFS will include:

i. preliminary factual reports released approximately 30 days after the occurrence (if issued);

ii. interim factual reports, released approximately every six months after the release of the preliminary factual report until the draft report is ready for release to Directly Involved Parties (DIPs) (if issued);

iii. draft reports; and

iv. final reports.

c) Attachment A contains the relevant contact points for notification and investigation reports.

10.2 Directly Involved Party process

10.2.1 DDAAFS will be deemed to be a DIP in relation to ATSB aviation investigations that involve or relate to DOD functions. In the case of a Level 4 investigation, there may be no DIP response required by DDAAFS. However, if DDAAFS does wish to respond, it must respond within the notified time frames outlined in paragraph 10.2.4.

10.2.2 In the case of a Short (office based) investigation, there may be no DIP response required by DDAAFS. However, unless otherwise agreed, if DDAAFS wishes to respond, it will do so within the period (usually seven (7) days) as detailed in the ATSB's covering letter/email.

10.2.3 The ATSB will provide a copy of the Draft report to DDAAFS and other DIPs for the purpose of making a submission to the ATSB on the report or to address any factual inaccuracies or analytical or safety issue incongruities identified in the report's findings. DDAAFS is encouraged to make comment and where possible DDAAFS is expected to support any comments with relevant evidence.

10.2.4 Unless otherwise agreed, and with the exception of Level 5 investigations, all submissions from DDAAFS as a DIP are expected to be made in writing within 28 working days (as applicable in the ACT) of the date of the ATSB's covering letter.

10.2.5 Submissions from DDAAFS will be considered by the ATSB and, where considered appropriate, the ATSB report will be amended accordingly.

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1 ESIRs are an electronically submitted air safety occurrence report, which forms part of the ESIR system, maintained by DDAAFS, which permits systemic analysis and trend monitoring.
10.2.6 Where the ATSB seeks to publish a DDAAFS submission in whole or in part, the ATSB will consult with DDAAFS before doing so.

10.2.7 The ATSB acknowledges that nothing prevents DDAAFS from commenting publicly on the final version of the report.

10.2.8 The ATSB will normally provide DDAAFS with a copy of the final report eight (8) working days (as applicable in the ACT) prior to the date on which that report is to be publicly released.

10.3 Safety action

10.3.1 The ATSB understands actions may be taken by DDAAFS in response to safety issues during the course of an ATSB or DDAAFS investigation, and the ATSB will include this information in the investigation report to the extent it is practicable to do so. The ATSB encourages safety action that obviates the need to make safety recommendations.

10.3.2 In order to ensure that any safety action is properly acknowledged by the ATSB, DDAAFS will advise the ATSB of any safety action taken or intended to be taken by DDAAFS.

10.3.3 In making recommendations for safety action by DDAAFS, the ATSB will clearly and explicitly identify the safety issue(s) involved. The ATSB will consult with DDAAFS prior to a recommendation being made.

10.3.4 DDAAFS response to safety recommendations. In accordance with section 25A of the TSI Act, DDAAFS will respond to the ATSB in writing within 90 days of the date on which the report is published, and include in that response the information required under section 25A. The DDAAFS response should clearly identify which part of the written response is intended for publication on the ATSB website and/or in the final report. Where consideration and implementation by DDAAFS of an ATSB recommendation is or may be protracted, DDAAFS will inform the ATSB of progress at regular intervals as agreed between the organisations.

10.3.5 The ATSB will seek to ensure that information posted about the status of ATSB recommendations on its website is accurate and current.

10.4 ATSB Investigation Reports

10.4.1 The ATSB will provide a copy of the draft final report for every investigation it conducts into an aviation transport safety matter that involves functions carried out by DOD. The report will be provided to DOD for the purpose of DOD making a submission to the ATSB on the report, or to take safety action on the basis of the report’s findings.

10.4.2 All submissions are to be made in writing within 28 days (or as otherwise agreed) of the date of the ATSB's covering letter. If DOD requires an extension, DOD agrees to make a request to the ATSB five working days before the closing date for submissions.

10.4.3 DOD agrees to provide comment on any errors of fact, exclusion of factual information and any inconsistencies with any concurrent investigation being conducted by DOD.

10.4.4 Submissions from DOD will be considered and may be incorporated into the final report if the ATSB considers this appropriate and where supporting evidence has been provided. DOD may make suggestions to the ATSB in respect of the inclusion of safety recommendations or acknowledgement of safety actions taken.

10.4.5 The ATSB will provide DOD with a copy of the final report, relevant to DDAAFS functions, prior to its public release.
11. FINANCIAL MATTERS

11.1 Unless otherwise agreed, each Party should bear its own cost for the implementation of the matters set out in this MoU.

11.2 Participation Costs

11.2.1 Where the ATSB seeks to participate in a DOD investigation, or it is agreed that participation is of mutual benefit, the ATSB will bear its own costs.

11.2.2 Where DOD seeks to participate in an ATSB investigation, or it is agreed that participation is of mutual benefit, DOD will bear its own costs.

11.2.3 Where the ATSB requests that DOD participate in an ATSB investigation and DOD’s participation will be solely for the purpose of the ATSB investigation, the ATSB will cover the reasonable costs of DOD’s participation.

11.2.4 Where DOD requests that the ATSB participate in a DOD investigation and the ATSB’s participation will be solely for the purpose of the DOD investigation, DOD will cover the reasonable costs of ATSB’s participation.

11.3 Observer Costs. Costs of personnel attending investigations as Observers will be borne by the parent agency.

11.4 Training Costs. The cost of any specialist or generalist training will be borne by the participant’s parent agency.

11.5 DSTO Services. The cost of any DSTO services will be met in accordance with contractual obligations as detailed under clause 9.3.

11.6 Special Assistance Costs. Any unique equipment or training required to carry out the replay and analysis of DOD aircraft flight recorders will be provided to the ATSB, by the DOD, at no cost to the ATSB.

12. DURATION, VARIATIONS & DISPUTE RESOLUTION

12.1 This MoU will remain in effect for three years from the date of its execution.

12.2 This MOU may be extended, varied or terminated by exchange of letters between the ATSB and DOD.

12.3 In the event that any disagreements or disputes arise in respect to any of the provisions of this MoU, the dispute/disagreement will initially be referred to the GM ASI, ATSB and COS DDAAFS. Should a mutually satisfactory resolution not be forthcoming, the issue will be referred to the Chief Commissioner, ATSB and Director DDAAFS, for resolution.
CONTACTS

12.4 To establish such cooperation, the Parties will maintain details of direct working contacts. The contact points are detailed in Appendix A. Amendments to the contact details may be made at any time by the organisation responsible for the information. Changes will be notified to the other party within 7 days of making the change.

AVM Gavin Neil Davies  
Deputy Chief of the Air Force  
Royal Australian Air Force

February 2013

Martin Nicholas Dolan  
Chief Commissioner  
Australian Transport Safety Bureau

February 2013