

CUSTOMER CONTRACT REQUIREMENTS
RAAF Hornet Upgrade
CUSTOMER CONTRACT C338399

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Customer clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Customer clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Customer clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Customer clauses contemplated by Article 31. The term "Commonwealth" and "Project Authority" shall mean Government of Australia and its agencies and instrumentalities

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."

52.215-14 Integrity of Unit Prices (excluding subparagraph (b)) (OCT 1997). This clause applies except for contracts at or below \$100,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.230-2, Cost Accounting Standards (APR 1996), excluding paragraph (b). This clause applies only if this contract exceeds \$500,000 and is not otherwise exempt. In this clause, "Contractor" shall mean Seller, and any reference to "disputes" or the "Contract Disputes Act" shall mean the Disputes clause of this contract.

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer in paragraph (f).

2. The following prime contract special provisions apply to this purchase order to the extent indicated:

A. INSPECTION AND TESTING

The Article set forth in Buyer's General Provision entitled "RIGHTS OF BUYER'S CUSTOMERS AND REGULATOR TO PERFORM INSPECTION, SURVEILLANCE AND TESTING" extends to and includes the Government of Australia and its agencies and instrumentalities.

B. TECHNICAL COMPLIANCE

For those subcontractors identified in Attachment M (see Article 2. P. below) of the customer's contract, such subcontractor shall maintain for the performance of any engineering design:

- (1) documented engineering management and configuration management systems and plans which meet the ADF TAR requirements set out in AAP 7001.053;
- (2) effectively implemented the systems and plans referred to in subparagraph (1) above with respect to the work to be performed under the Subcontract;
- (3) access to:
 - (a) critical technology and design expertise required for the scope and level of design effort to be performed;
 - (b) appropriate design, development and test and evaluation infrastructures; and
 - (c) necessary Technical Information within the Contractor's export authority.

C. RESPONSIBILITY FOR GOVERNMENT FURNISHED MATERIAL (GFM)

The Seller shall be responsible under this Article 2. C. for the rectification at no cost to the Commonwealth of any unserviceabilities, defects, damage or deficiencies in the GFM and Aircraft which occur while such GFM and Aircraft are in the care of the Seller or Subcontractor or revisions to data items or other documentation, which arise as a result of the negligence or unlawful act or omission or wilful misconduct of the Seller (including all persons engaged by the Seller or any Subcontractor) in any work whether classified as Ancillary Services or not, performed by Seller or Subcontractor personnel under this Contract.

D. SUPPORT PERIOD

(1) The Seller undertakes to support the Supplies for the period of time as set out in this Contract (for the purposes of this Article 2. D. called the "Support Period") commencing immediately after delivery of the Supplies by providing or maintaining facilities for the supply of quantities of spare parts and support equipment as are necessary to meet orders by the Buyer to maintain the Supplies in effective operation, and by providing such support as is otherwise provided in this Article 2. D.

(2) The Seller undertakes during the Support Period to meet orders placed by the Buyer for items of spare parts and support equipment at prices no greater than those applying to the Seller's most favored customer for like quantities and materially similar purchase conditions.

(3) Where during the Support Period the Seller intends to disperse or close a facility for the supply of any spare parts and support equipment, to the extent possible using reasonable efforts, it shall provide the Buyer with advance notice being not less than 6 months of the dispersal or closure, and shall nominate in the notice the date by which the Buyer may place orders for the final production run.

(4) In the event that the Seller during the Support Period decides to disperse or close its facilities for manufacture of items in respect of which it has Proprietary Rights or is for any other reason unable to continue to supply such items, the Seller agrees to grant to the Commonwealth a royalty free, non-exclusive, irrevocable license to manufacture or have manufactured such spare parts and support equipment in Australia to maintain the Supplies in effective operation. In that event, the Seller shall also supply to the Commonwealth and to third persons nominated by the Commonwealth, such data as the Seller possesses that is necessary for the manufacture of such items.

(5) In this Article 2. D. "Proprietary Rights" means the Intellectual Property in the Supplies or any spare parts or support equipment for the Supplies.

(6) The Seller shall use its best endeavors to include the rights of the Commonwealth contained in this Article 2. D. in all applicable Subcontracts.

(7) The Buyer shall not be bound to order any, or any particular quantity of, spare parts and support equipment from the Seller.

E. INSURANCE

(1) The Seller shall in accordance with statutory requirements effect any workers' compensation policy or register with any appropriate authority (whichever the law requires) to provide insurance cover in respect of the Seller's liability for the death of or injury to any person employed by the Seller or any person engaged to carry out work for the Seller.

(2) Any policies or registration effected pursuant to this Article 2. E. shall be kept in full force and effect during the full period of the Contract.

(3) Where any policy effected pursuant to paragraph (2) above is effected with commercial Underwriters the policy shall if the relevant workers' compensation regulations permit be extended to cover any liability for working contractors and working directors and shall be endorsed to cover the Commonwealth as Principal.

(4) The Seller shall arrange insurance or register in as many jurisdictions as may be necessary whether in Australia or overseas to provide statutory and common law liability protection in respect of workers compensation claims made by its employees or persons engaged to carry out work, wherever situated, arising in connection with the Contract.

(5) The Seller shall ensure that every Subcontractor engaged for the purpose of carrying out work under the Contract effects insurance or registration in protection of the Subcontractor's liability to its employees or persons engaged by it to carry out work for the Subcontractor in the same manner as specified for the Contractor pursuant to the provisions of paragraphs (1) through (4) above.

(6) The Seller shall be liable for and shall pay the premiums in respect of the policies to be effected under Article 2. D. and should the Seller fail to obtain or subsequently maintain any insurance required pursuant to the said clauses or fail to have its Subcontractors obtain or subsequently maintain any insurance required to be effected and maintained pursuant to the said clauses, the Buyer may obtain and maintain such insurance. The cost of obtaining or maintaining any such insurance shall be payable by the Seller to the Buyer on demand and the Buyer may at its election deduct those costs from any moneys which are due or may become due to the Contractor under this contract.

F. EARNED VALUE MANAGEMENT SYSTEM

(1) In order to qualify for Buyer/Commonwealth validation, the Seller shall provide documentary evidence that its EVM System has been validated by the Defense Contract Management Agency (DCMA) against ANSI/EIA standard 748, or other agreed standard.

(2) Six months after the Effective Date, the Seller shall be suitably prepared for, and submit to, an on-site Integrated Baseline Review by the Buyer/Commonwealth or its nominated representative using a mutually agreed format.

(3) Ongoing surveillance of the Boeing EVM System and Contractor Earned Value Management practices shall be conducted by DCMA. Where possible the Contractor shall allow Commonwealth staff to attend surveillance reviews of the Australian Hornet Upgrade Program.

(4) This Article 2. F. applies to those Subcontractors listed in Attachment M and said subcontractors shall have management systems that are compatible with the Buyer's EVM System, as defined in paragraph (1) above, to the satisfaction of the Commonwealth.

(5) The Seller shall permit the Project Authority real time access to the Australian Hornet Upgrade Program data, contained within the Boeing EVM System, to the team codes level to enable monitoring of the progress of the Contract.

(6) If the Project Authority or Buyer notifies the Seller on the basis of any EVMS data that it has failed to maintain satisfactory progress under the Contract, the Seller shall take such measures as are necessary to re-establish progress of the Contract to the satisfaction of the Project Authority or the Buyer. The Seller shall advise the Project Authority and Buyer of the measures taken and shall reflect the results of such measures in subsequent reports.

G. AUDIT RIGHTS

(1) If work under this contract is performed by an Australian Subcontractor, the Project Authority, the Commonwealth of Australia's Financial Consultancy and Investigation Services, or such independent agency as may be mutually agreed, access to its records to investigate the reasonableness of proposed Subcontractor costs or prices.

(2) If work under this contract is performed by a non-Australian Subcontractor, the DCAA shall have access on behalf of the Project Authority to the records and accounts of the Seller and if agreed by such non-Australian Subcontractors, similar access by DCAA (or other similar mutually agreed agency as may be applicable to non U.S. Subcontractors) in order to assist in the investigation of any aspect of a change proposal, including the determination of reasonableness of price and costs.

H. AUSTRALIAN TENDERS

For those tenders to Australian Subcontractors, the following clauses apply to the tender process.

(1) It is a condition of this tender that, solely for the purposes of cost investigation relevant to this tender and for no other purpose, the tenderer will permit and facilitate an audit of the tendered pricing basis by the Commonwealth of Australia's Financial Consultancy and Investigation Services, or other independent agency.

(2) It is a condition of this tender that the tenderer will allow access to the tender response to the Commonwealth of Australia, including its officers, servants and agents and will allow a copy of any resultant contract to be provided to the Commonwealth of Australia, including its officers, servants and agents.

The Commonwealth shall treat any information provided by the Contractor pursuant to paragraphs (1) and (2) above as Commercial-in-Confidence Information, subject to the provisions of Article 2. K.

I. AUSTRALIAN SUBCONTRACTORS

The following provision apply to Australian Subcontractors.

It is a condition of this contract that, solely for the purposes of cost investigation relevant to this contract and for no other purpose, the Seller/subcontractor will permit and facilitate an audit by the Commonwealth of Australia's Financial Consultancy and Investigation Services, or other independent agency, in order to assist in the investigation of any aspect of a change proposal, including the determination of reasonableness of price, and costing.

J. DEFENSE SECURITY

(1) The classification of work to be performed under this Contract will be up to and including a SECRET CLASSIFICATION. The Seller shall possess a facility clearance at a SECRET CLASSIFICATION for Document Storage/Information System and COMSEC, or equivalent, issued by the relevant government industrial security authority and shall comply with the relevant government industrial security regulations.

(2) The Seller shall classify all material in its possession relating to the performance of the Contract according to the Security Classification Grading Document for the Hornet Aircraft issue No. 6 dated 5

November 2001 and shall ensure that such information is safeguarded and protected according to its level of classification.

(3) All classified material furnished or generated pursuant to the Contract, shall not be released to an unauthorised party, including a representative of another country, without prior written approval of the Project Authority.

(4) The Seller shall promptly report to the Buyer/Project Authority any instance in which it is known or suspected that classified material furnished or generated pursuant to the Contract has been lost or disclosed to unauthorised parties, including a representative of another country.

(5) All matter of a classified nature transmitted between any two of the Commonwealth, the Buyer, the Seller and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the provisions of the Defence Industrial Security Manual - SECMAN 2, as amended from time to time.

(6) All Communications Security (COMSEC) material passing between any two of the Commonwealth, the Buyer, the Seller and a Subcontractor, in Australia, shall in addition to the provisions paragraph (5) above, be subject to the special security provisions of the Australian Department of Defence publication Communication Security Handbook Australian Communication Security Instruction 53 and the Defence Industrial Security Manual SECMAN 2, as amended from time to time.

(7) All matter of a classified nature transmitted between any two of the Commonwealth, the Buyer, the Seller and a Subcontractor, overseas, whether generated in Australia or overseas, shall be subject to the laws of the overseas country regarding the custody and protection of classified material, and to any bilateral security instrument between Australia and the overseas country.

(8) All Communications Security (COMSEC) material passing between any two of the Commonwealth, the Buyer, the Seller and a Subcontractor overseas, shall be subject to approval in the first instance by the Director Defence Signals Directorate, Department of Defence, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material of those countries. In such cases, the material shall be subject to the laws of the overseas countries regarding the custody and protection of COMSEC material.

(9) Where there has been a breach or non-observance of this Article 2. J. by the Seller, a Subcontractor, or any of their servants or agents, the Buyer may notify the Seller that in the opinion of the Buyer/Project Authority, the said breach or non-observance is of a fundamental nature and is incapable of being remedied by the Seller, whereupon the Buyer may by issue to the Seller of a notice of termination for default terminate the Contract in accordance with the terms and conditions of this contract.

(10) Where the Seller is required to have access to classified material, the Seller shall possess a facility clearance of the appropriate type and level of classification, issued by the Defence Security Authority (DSA) in the case of an Australian based Subcontractor or the relevant government industrial security authority in the case of an overseas based Subcontractor.

K. CONFIDENTIALITY OF INFORMATION

(1) The Seller acknowledges that recognition of parties' rights to confidentiality will be greatly complicated if indiscriminate marking of materials with "Commercial-in-Confidence" is practised. Consequently, the Seller shall appropriately apply "Commercial-in-Confidence" markings. The Seller's "Commercial-in-Confidence" markings shall specifically authorise use of the materials in accordance with the intellectual property provisions of this Contract. The following words shall be placed on Technical Information that is Commercial-in-Confidence Information provided under the Contract:

"_____ (Seller) proprietary rights are included in the information disclosed herein.

Recipient by accepting this document agrees that neither this document nor the information disclosed herein nor any part thereof shall be reproduced or transferred to other documents or used or disclosed to

others for manufacturing or for any other purposes except in accordance with clause 17.4 or clause 19 of Buyer's customer contract number CAPO C338399 or as specifically authorised in writing by the Seller."

(2) Where, in connection with the Contract, Commercial-in-Confidence Information is provided or produced, and it is reasonable to assume the other party would wish such Commercial-in-Confidence Information to be kept confidential, then the party receiving or producing the Commercial-in-Confidence Information as the case may be shall:

- a. observe the relevant obligation of confidentiality attached to such Commercial-in-Confidence Information;
- b. subject to any contrary provision in the Contract, not without the prior consent in writing of the other party disclose such Commercial-in-Confidence Information to anyone other than persons having a need to know and who are required to safeguard the Commercial-in-Confidence Information; and
- c. require its officers, servants and agents to observe the obligations referred to in this Article 2.K; except to the extent that those provisions would prevent the Commonwealth from exercising the Intellectual Property rights accorded it pursuant to Article 2. L. below, or otherwise.

(3) The provisions of paragraph (2) above shall not apply to the Commonwealth wherever the Commercial-in-Confidence Information:

- a. relates to the decision to award the Contract to the Buyer or Seller;
- b. is information or data that the Commonwealth is required by law to make public;
- c. is data or information in a material form in respect of which an interest whether by licence or otherwise in the Intellectual Property rights vest in or is assigned to the Commonwealth under the Contract or otherwise; or
- d. is required to be disclosed by a Court, Tribunal or Royal Commission.

L. FOREGROUND INTELLECTUAL PROPERTY

All rights or title to, or interest in, all Foreground IP shall be the sole and exclusive property of the Seller or a Subcontractor as the case may be.

M. GRANT OF LICENSE: SELLER TO COMMONWEALTH

(1) The Seller hereby grants to the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence, (including a right to sub-license) to exercise all Foreground IP which vests in the Seller and all Background IP, excluding registered and unregistered trade marks and service marks, which is or becomes vested in the Seller so as to enable the Commonwealth, or another person on behalf of the Commonwealth to:

- a. for purposes related to the Supplies that are Defence Purposes or for purposes related to the Supplies that are necessary or incidental to Defence Purposes:
 - (i) operate, maintain, modify, develop and manufacture the Supplies in accordance with the Intellectual Property Licence Schedule at Attachment Z of Buyer's customer contract number CAPO C338399;
 - (ii) operate, maintain, modify, develop and manufacture ground systems (including but not limited to the Integrated Avionics Software Support Facility, maintenance trainers, flight simulators and radar evaluation facilities);
 - (iii) dispose of the Supplies; and
- b. in the event of termination of the Contract, other than for convenience, complete the Supplies.

(2) Prior to any Subcontractor commencing work in respect of the Supplies the Seller shall:

- a. make best endeavors to make contractual arrangements so that the Commonwealth acquires:
 - (i) a license of all Foreground IP produced by that Subcontractor; and
 - (ii) a license of all Background IP, other than Third Party IP and excluding registered and unregistered trade marks and service marks, **which is, or becomes, the property of that Subcontractor and those arrangements shall be no less extensive and on terms no less favorable than the rights of the Commonwealth in relation to Foreground IP and Background IP pursuant paragraph (1) above; and**

- b. obtain from those Subcontractors nominated at Attachment M, and provide to the Commonwealth, an executed deed in a form substantially in accordance with that set out in Attachment P setting out the rights of the Commonwealth to the Intellectual Property described in subparagraph (2).a. above.
- (3) The Seller declares to the best of its knowledge and belief that the only IP in Supplies which is required for the Commonwealth's use of the Supplies and in respect of which the Commonwealth has not been granted a licence in the terms set out paragraphs (1) or (2) above is Third Party IP. In relation to Third Party IP the Seller shall obtain for the Commonwealth, with no increase in cost to the Commonwealth beyond that included in the Contract Price, a royalty free, irrevocable, worldwide, perpetual, non-exclusive, licence to use all Third Party IP solely for, or in relation to, the Commonwealth's use of the Supplies.
- (4) Where, pursuant to this Article 2. M. and subject to export authority, the Commonwealth makes available to another person any Intellectual Property (whether Foreground IP or Background IP) owned by the Seller or a Subcontractor ("the Rights"), the Commonwealth shall obtain from that person a deed of confidentiality substantially in accordance with that set out in Attachment Q of Buyer's customer contract number CAPO C338399 which deed shall:
- a. impose an obligation on such person to use the Rights solely for the purposes provided for in paragraph (1). above and to observe appropriate confidentiality requirements;
 - b. obtain an acknowledgment from such person that:
 - (i) the Rights belong to, and at all times remain the property of, the Seller or Subcontractor as the case may be; and
 - (ii) misuse of the Rights will cause harm to the owner of those Rights.
- (5) The Commonwealth will cooperate with the Seller or Subcontractor, as the case may be, in any reasonable action that they take to enforce their ownership of the Rights against a person to whom the Commonwealth makes the Rights available.
- (6) The parties agree that under the licences granted pursuant to this Article 2. M, the Commonwealth shall not commercially exploit the licensed Intellectual Property and Technical Information or commercially reproduce the Supplies for resale. Where a deed of confidentiality is obtained by the Commonwealth in relation to the IP licence granted under paragraph (1).a.(ii) above, the Commonwealth will notify the Seller.

N. OTHER PRIME CONTRACT REQUIREMENTS

The following provisions apply to this contract to the extent indicated.

- (1) Equal Opportunity for Women in the Workplace
- a. The Seller shall comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999(Cth)* ("the Act").
 - b. The Seller shall not enter into a Subcontract under the Contract with a Subcontractor named by the Director of Affirmative Action as an employer currently not complying with the Act.
- (2) Maximizing Employment Opportunities for Aboriginals and Torres Strait Islanders
- The Seller shall use its best endeavors to provide employment opportunities to Aboriginal and Torres Strait Islander people. The Seller shall not contract out of this obligation.
- (3) Hazardous Substances
- a. The Seller shall not provide Supplies containing Hazardous Substances listed in Attachment W of Buyer's customer contract number CAPO C338399 (for the purposes of this paragraph (3). called "specified substances"). Currently, there are no substances listed in Attachment W of the prime contract. The Seller may include in the Supplies the specified substances, subject to any conditions set out in Attachment W, if any. Accordingly, the Seller shall ensure in respect of the Supplies that:
 - (i) full details of the specified substances (including location, protective covering provided etc.) incorporated into the Supplies are provided to the Project Authority;

- (ii) all documentation supporting the Supplies, including that relating to assembly, maintenance, operation etc. is to be endorsed to identify the nature of the hazard;
 - (iii) all Supplies containing the specified substance are to bear appropriate labels which clearly identify the nature of the substance and its associated hazards; and
 - (iv) the Seller is responsible for all materials used by Subcontractors in respect of this condition.
 - b. The Seller shall promptly (and no later than 7 days after discovery) advise the Project Authority if, at any time during the production of the Supplies, it becomes aware of a non-Hazardous Substance which could be substituted for the specified substance content without significant detriment to the performance of the Supplies.
 - c. All Supplies for delivery under the Contract shall conform to all laws relating to any Hazardous Substances included therein which apply in the country of manufacture, during transit and within the Commonwealth. To the extent consistent with their function, the Supplies shall not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to personnel, the environment or the operation of other equipment.
- (4) Ozone Depleting Substances
- a. The Seller shall not provide Supplies containing a substance which is proscribed by the *Ozone Protection Act* (1989).
 - b. Supplies containing an unauthorized Ozone Depleting Substance may be rejected by the Commonwealth.
- (5) Occupational Health and Safety (OH&S)
- a. The Seller acknowledges and agrees to comply with its obligations under the Occupational Health and Safety (Commonwealth Employment) Act 1991 (Commonwealth) including any regulations made thereunder and any regulations imposing obligations on the Seller in relation to work to be performed under the Contract. The Seller hereby agrees to indemnify and keep indemnified the Commonwealth, its servants and agents in respect of any costs, losses, damages, expenses, judgements, claims and liabilities whatsoever (including costs and expenses involved in defending or denying the same) arising out of or in respect of any failure by the Seller to comply with its obligations.**
 - b. The Seller further acknowledges any additional information imparted by the Commonwealth with respect to agency OH&S procedures and agrees to abide by them to the extent below:**
 - (i) the Seller shall comply with the requirements of the Defence Instruction (General) PERS 19-20 Occupational Health and Safety - Contractor Safety Management;
 - (ii) the Seller shall take notice of, and comply with, to the fullest extent possible, all other Defence Occupational Health and Safety policy documents.
- (6) Value Management Incentive Program
- a. Notwithstanding any other provisions of the Contract, the Commonwealth or the Seller may propose variations to the Contract in the form of Value Management Change Proposals (VMCP) in implementing the Value Management Incentive Program (VMIP) as detailed in the Defence publication known as "Value Management Incentive Contracting- A Guide for Contractors" (DPUBS: 2524/94) Edition No 2 ("the Guide") as amended from time-to-time.
 - b. VMCPs may be initiated by the Commonwealth or lodged by the Seller with the Commonwealth in respect of the performance of any aspect of the Contract and not only the specified task or work under the Contract.
 - c. The procedures for preparing, lodging and processing a VMCP are set out in the Guide.
 - d. The Contractor is encouraged to enter into an arrangement with its Subcontractors enabling the Subcontractors to participate in the VMIP under a Seller sponsored VMCP.
 - e. The Commonwealth's acknowledgment of the receipt of a VMCP lodged by the Seller shall not imply acceptance of the VMCP. Acceptance of a VMCP shall occur only upon the issue of a Contract variation by the Commonwealth.
 - f. For the purpose of this paragraph (6):

“Net Savings” means the savings in the Seller’s cost under the Contract arising from VMCP less the monetary equivalent Resourced by each of the parties; and

“Resourced” means the provision of moneys, labor, plant, machinery and software, and includes all direct and indirect costs associated with the development and implementation of a VMCP; and

“Resources” has a corresponding meaning.

g. Unless otherwise negotiated, the Seller and the Commonwealth shall share the Net Savings which have been determined as a result of a VMCP as follows:

(i) the Seller shall be entitled to 50 percent of the Net Savings arising from a VMCP which is wholly Resourced by the Seller; and

(ii) where the VMCP is Resourced jointly by the Commonwealth and the Seller, the Seller shall be entitled to half the pro-rata part of the Net Savings calculated on the basis of its contribution towards the Resources; that is the amount calculated according to the formula:

$$CS = NS \times \frac{CC}{R}$$

2R

where:

“CS” means the Seller’s share of the Net Saving

“NS” means the total Net Savings;

“CC” means the Seller’s contribution towards the Resources; and

“R” means the total Resources:

provided however that the Commonwealth pays the Seller 10 % of the Contract Price (as the Contract Price is varied in accordance with the Contract the date the VMCP is implemented).

h. Notwithstanding any other Intellectual Property provision in the Contract;

(i) where Intellectual Property developed for a VMCP is wholly developed and Resourced by the Seller, the Intellectual Property shall be owned by the Seller;

(ii) where Intellectual Property developed for a VMCP is jointly developed and Resourced by the Commonwealth and the Seller, the Intellectual Property shall be owned by one party or the other as provided in the VMCP; and

(iii) the owner of the Intellectual Property in the VMCP shall grant to the other party a licence to use the Intellectual Property on such terms as are provided in the VMCP.

g. The Guide shall have effect only to the extent that the Guide is consistent with the Contract.

h. The Commonwealth reserves the right to undertake financial investigation of any VMCP. The Commonwealth’s “Standard Conditions for the Determination of the Costs of Contracts” May 1984 issue, shall serve as guide for such investigations. Upon the request of the Project Authority, the Seller shall give DCAA access to its records to verify the reasonableness of the proposed prices or costs.

(7) Workplace Equity and Diversity

a. The Seller shall in its dealings with Defence personnel, comply with its obligations under Commonwealth and State anti-discrimination legislation and the Defence equity and diversity policy as contained in the Defence Workplace Equity and Diversity Plan , 1998-2001, including the dispute resolution procedures.

b. The Seller shall ensure that its employees, agents and Subcontractors, in their dealings with Defence personnel, are aware of and comply with their obligations under Commonwealth and State anti-discrimination legislation and the Defence equity and diversity policy as contained in the Defence Workplace Equity and Diversity Plan 1998-2001, including the dispute resolution procedures.

O. SUBCONTRACT COPIES

The Seller, if requested by the Project Authority, and subject to Subcontractor concurrence, shall provide a copy of any Subcontract, which copy need not contain prices. Subject to the provisions of Article 2. K., the Commonwealth shall treat such information as Commercial-in-Confidence Information.

P. ATTACHMENT M SUBCONTRACTORS

The current suppliers identified in Attachment M of the customer's contract are: (1) Northrop Grumman Canada Corporation, (2) Kaiser Electronics, (3) Northrop Grumman, and (4) BAL.