

CUSTOMER CONTRACT REQUIREMENTS
AEWC Collaborative Studies
CUSTOMER CONTRACT CASG/ASD/DEED187/2018

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

A. Definitions:

Approved Subcontractor means Boeing Defence Australia Ltd and Northrop Grumman Systems Corporation

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

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

- a. in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Deed or a Contract; and
- b. is embodied in, or attaches to, the Services, or is otherwise necessarily related to the functioning or operation of the Services.

Foreground IP means IP which is created under or otherwise in connection with the Deed or a Contract, other than Third Party IP.

Defence Purposes means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peacekeeping and emergency aid to the civil community, and purposes that are necessary or incidental to those purpose.

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

Moral Rights means:

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

Personal Information has the same meaning as in the *Privacy Act 1998* (Cth).

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

Prescribed Activities means:

1. the use, handling or storage of:
 - a. a prohibited carcinogen, restricted carcinogen or lead, each as defined in subregulation 5(1) of the Work Health and Safety Regulations 2011 (Cth); or
 - b. Hazardous Chemicals the use of which is restricted under regulation 382 of the Work Health and Safety Regulations 2011 (Cth) including polychlorinated biphenyls;
2. unless otherwise agreed by the Commonwealth, Hazardous Chemicals that are defined in the Work Health and Safety Regulations 2011 (Cth) as:
 - a. Schedule 11 hazardous chemicals exceeding manifest quantities; or

- b. Schedule 15 chemicals where the applicable State or Territory regulator has determined the storage facility to be a major hazard facility;
- 3. the use, handling or storage of ordnance;
- 4. high risk work as defined in subregulation 5(1) of the Work Health and Safety Regulations 2011 (Cth) that requires dedicated work plans;
- 5. electrical work on energized electrical equipment as contemplated by the work Health and Safety Regulations 2011 (Cth);
- 6. high risk construction work, demolition work or excavation work, each as defined in subregulation 5(1) of the Work Health and Safety Regulations 2011 (Cth);
- 7. work involving ACM as defined in subregulation 419(2) of the Work Health and Safety Regulations 2011 (Cth); or
- 8. work that requires a confined space entry permit in accordance with Work Health and Safety Regulations 2011 (Cth).

Problematic Substance means:

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

Services means the services and goods including Deliverables, Intellectual Property, and Technical Data/Information (scope of the Services defined in the Contract).

WHS Legislation means:

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

B. Authorizations

1. Seller shall and ensure that its subcontractors:

- a. obtain and maintain in full force all Authorizations required for the provision of the Services;
- b. provide a copy of any Authorizations to Buyer within 5 Working Days of request by Buyer; and
- c. ensure that the Services are provided in accordance with all Authorizations.

2. Seller shall notify Buyer within 7 Working Days after receiving notification of refusal to grant, or an intent to revoke or qualify, an Authorization required provision of the Services.

C. Intellectual Property License

1. Seller grants to Buyer and the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive license in respect of all Background IP (excluding the right to sublicense) and Foreground IP (including the right to sublicense) owned by Seller:

- a. to use, maintain, modify, develop and dispose of the Services for Defence Purposes and;
- b. to complete the Services upon termination of the Contract (unless terminated in accordance with the Termination for Convenience clause of the General Provisions, and
- c. to remedy defects or omissions in the Services in accordance with Warranty provisions in the Contract.

2. Subject to clause C.1, and any other limitation in the Contract, if during the term of the Contract, or after its expiration, the Buyer or Commonwealth requests Seller to grant to Buyer or the Commonwealth the right to sublicense Background IP under clause C.1 that is owned by the Contractor:

- a. to use, maintain and dispose of the Services; and
- b. to complete the Services upon termination of a Contract (unless terminated in accordance with the Termination for Convenience Article of the General Provisions);

then Seller shall enter into negotiations in good faith with Buyer and the Commonwealth to grant rights to sublicense to a third party on reasonable terms, including an appropriate license fee or royalty, to be negotiated between Buyer and the Commonwealth and Seller for Contract Background IP. Any license negotiated under this clause C.2. shall not include the right for a third party sub-licensee to further sublicense the Background IP.

In the event that either Buyer or the Commonwealth or a third party breaches a license or sublicense granted by virtue of this clause C.2, the license and sublicense immediately terminates.

3. For the avoidance of doubt, the Licenses granted hereunder in C.1 and the license that may be granted under clause C.2 are subject to limitations contained in export licenses and the IP Schedule, and do not permit Buyer or the Commonwealth or a person on behalf of the Commonwealth to commercialize the licensed IP.

4. Seller shall use reasonable endeavors, taking into account all relevant commercial, economic, and operational matters, to ensure that the Commonwealth is granted a license in respect of all Background IP and Foreground IP owned or licensed to an Approved Subcontractor on the same terms as in clause C. 1.

5. Seller shall use reasonable endeavors, taking into account all relevant commercial, economic and operational matters, to ensure that Buyer and the Commonwealth is granted a license to exercise all Third Party IP on commercial terms. Buyer and/or the Commonwealth will be required to pay any fees including but not limited to, any applicable royalties directly to the third party.

D. Moral Rights

1. Seller represents and warrants that the use of the Services for Defence Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of Seller or any subcontractors.

2. Without limiting paragraph a, Seller shall assist Buyer and the Commonwealth in defending any claim or proceeding by any of its officers, employees, or agents of Seller or its subcontractors.

E. Confidential Information

1. If in connection with the Contract, Confidential Information is provided or produced by one party and marked Confidential Information or equivalent and provided to the other party (recipient), the recipient shall ensure that it protects the confidential nature of the information except:

- a. if disclosure of the information is required by law or statutory or portfolio duties; or
- b. to the extent that the recipient would be prevented from exercising any of its IP rights under the Contract.

2. If it is necessary to disclose Confidential Information, provided or produced by or on behalf of the other party, to a third party, other than a legal adviser or Commonwealth Service Provider or for a purpose within an exception listed in clause E.1, the party wishing to make the disclosure must obtain the written consent of the other party to the Contract.

3. If it is necessary to disclose Confidential Information, provided or produced by or on behalf of the other party, to a third party, other than a legal adviser or for a purpose within an exception listed in clause E.1., the party wishing to make the disclosure must, if required by the other party, obtain either a;

- a. Non Disclosure Agreement in the form of Attachment K from the recipient, where the recipient is a company; or
- b. Non Disclosure Agreement in the form of Attachment L from the recipient, where the recipient is an individual.

4. Where Seller Personnel and subcontractor Personnel are not already covered by an overarching company confidentiality agreement (e.g. Terms of Employment), and if required by the Commonwealth, Buyer may require Seller or Seller's subcontractors engaged in the performance of a Contract to enter into a Non-Disclosure Agreement in Attachment K prior to the disclosure of Confidential Information. Seller shall provide a copy of the Non-Disclosure Agreement to Buyer.

5. Seller agrees to deliver to Buyer, as required by Buyer; all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth or Buyer on the earlier of:

- a. demand by Buyer; or
- b. the time the documents and other material are no longer required for the purposes of this Contract.

6. If Buyer makes a demand under this clause, and Seller has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then Seller shall provide full particulars of the whereabouts of the documents containing the Confidential Information of Buyer or Buyer's Customer, and the identity of the person in whose custody or control they lie.

7. Seller, when directed by Buyer in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information of Buyer or Buyer's Customer.

8. Return or destruction of the documents referred to in this clause E. does not release Seller from its obligations under the Contract.

F. Negation of Employment and Agency

1. Seller shall not represent itself, and shall ensure that Seller personnel or subcontractors or subcontractor Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
2. Seller or subcontractors shall not by virtue of the Deed or any Contract, be or for any purposes be deemed to be an employee, partner or agent of the Commonwealth.

G. Commonwealth Access

This clause applies if Seller is an Approved Subcontractor.

1. Seller shall, on being given 20 Working Days or other period as agreed, written notice, permit the Commonwealth Representative or any person authorized by the Commonwealth Representative (Commonwealth Nominee) access to its premises, and access to any of its Records or Accounts relevant to the performance of work under the Deed or any Contract. This clause does not apply to any Record, Account or effort provided to Seller or an Approved Subcontractor by Boeing Commercial Airplanes under any Contract. The parties agree there will be no access rights to Boeing Commercial Airplanes financial records.
2. Finance-related Audits under the Contract are to be performed by the Commonwealth Nominee (either Defense Contract Audit Agency (DCAA), or an agreed third party auditor) for the United States of America components and CASG Financial Investigation Service (FIS) for the Australian components).
3. Seller acknowledges and agrees that there may be circumstances in which regulatory audits may be called and in such cases notice may not be practicable or appropriate, but without limiting any other rights of the Commonwealth, the Commonwealth must give Seller reasonable notice of access requirements where appropriate.
4. The purposes for which the Commonwealth Representative or the Commonwealth Nominee may require access under this clause are limited to:
 - a. inspecting GFI, attending, checking or conducting stocktakes of GFI, including viewing and assessing Seller's inventory control and stocktaking systems, or removing GFI that are no longer required for the performance of the Contract;
 - b. a review to assess the reliability, integrity, timeliness and accuracy of invoices, financial information and operating information relating to the Contract costs. Seller has in place regularly scheduled audits of systems to ensure adequate invoicing and the Contract will rely on these audits for compliance under this clause. For US components review and access to this information will be no greater than the type of information reviewed and accessed on other US contracts and such information shall only be related to the Contract costs;
 - c. examination of Seller's compliance with any applicable laws or applicable Commonwealth policy requirements relating to confidentiality, privacy, security in accordance with the Contract;
 - d. validating Seller's progress in meeting the Australian Industry Capability (AIC) Schedule in the Contract, if applicable
 - e. investigating the reasonableness of proposed prices or costs in relation to the Deed or any Contract. For the purpose of this investigation, Seller shall permit the Commonwealth Nominee to, or take all necessary steps to enable the Commonwealth Nominee to exercise its rights in this clause including to access Related Bodies' Corporate (who are Approved Subcontractors) Records relating to transfer pricing, cross-subsidisation with Related Bodies Corporate (who are Approved Subcontractors) and the allocation of overheads between Seller and the Related Bodies' Corporate (who are Approved Subcontractors) to the extent that such records relate to the CCP;
 - f. validating Seller's progress in meeting the Intellectual Property Schedule to the Contract, if applicable, and determining whether, and to what extent, steps should be taken to protect Commonwealth IP;
 - g. monitoring Seller's WHS and environmental compliance in connection with the provision of the Services for Australian based work;
 - h. other audits as agreed by the Commonwealth, Buyer, and Seller.
 - i. conducting audits under the Auditor-General Act 1997. For US components review and access to this information will be no greater than the type of information reviewed and accessed on other Contractor and US Approved Subcontractor USG contracts and such information shall only be related to costs incurred in connection with this Deed or any Contract.
5. The Commonwealth Nominee may recommend, through Buyer, and Seller may agree to comply with the actions (if any) required to be taken by Seller to rectify problems, weaknesses, deficiencies or non-compliance detected during an Audit under this clause. If Seller or an US Approved Subcontractor does not agree with the recommendations of the Commonwealth or Commonwealth Nominee then Buyer and Seller will negotiate in good faith to determine the actions (if any) required to be taken by Seller to rectify problems, weaknesses, deficiencies or non-compliance detected during an Audit. Seller shall comply with agreements made in accordance with this paragraph.
6. Seller will require US Approved Subcontractors to allow the Commonwealth Nominee to provide the Commonwealth with a report approved for release by the US Approved Subcontractor following an Audit. Seller will require the US Approved Subcontractor not withhold information required for review under USG contracts, noting that competition

sensitive information will not be disclosed in Audit reports.

7. The requirement to participate in an Audit shall not reduce Seller's responsibility to perform the work under the Contract, as long as such Audits are conducted so as not to unduly interrupt or delay the performance of Seller's or Approved Subcontractors' work or interfere with the conduct of their business, in accordance with the Contract.

8. Seller must and ensure that its US Approved Subcontractors comply with any request made by the Commonwealth Nominee for an Audit undertaken in accordance with this clause and answer within a reasonable time request for information as described in paragraph a of this clause. The Commonwealth will ensure that any Commonwealth Nominee used for the purpose of an Audit who is not a Commonwealth officer, enters into an appropriate deed of confidentiality before commencing an Audit.

9. If Seller has any concern regarding the identity by the Commonwealth to perform an Audit, other than financial Audits which will always be conducted by FIS for the Australian component and the Commonwealth Nominee for the US component of this Contract and of this Contract, Seller may raise the matter with the Commonwealth. In such a case the Commonwealth must consider whether, on the basis of the Contractor's concern, the Commonwealth should nominate a different person to perform the Audit. If the Commonwealth determines that it should nominate a different person, the Commonwealth will use its reasonable endeavors to comply with that determination.

10. The Commonwealth shall comply with, and shall require any delegate or person authorized by the Commonwealth Representative to comply with, any reasonable Seller or subcontractor safety and security requirements or codes of behavior for the premises.

H. Contractor Access

This clause applies if Seller or Seller' subcontractor will require access to Commonwealth Premises for the purpose of performing the Contract.

1. The Commonwealth during the performance of any Contract shall allow Seller and subcontractors access to Commonwealth Premises for the purpose of performing the Contract.

2. Seller shall seek written permission from the Commonwealth Representative, through Buyer, at least 15 days prior to entry being required, for each person Seller wishes to have access to a Commonwealth Premise.

3. The Commonwealth Representative may grant such person or persons access to the Commonwealth place, area or facility, or may refuse to grant such access at its discretion. If access to any person specified by Seller is refused, Seller may request access for any other replacement person necessary for the performance of the Contract.

4. The Commonwealth Representative may, by notice to Seller, through Buyer, withdraw access rights to any Commonwealth place, area or facility at any time for any period

5. Seller shall comply with, and require persons afforded access under this clause to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behavior for the Commonwealth Premises.

6. The Commonwealth Representative may notify, through Buyer, Seller of, and Seller shall comply with, any special security or access terms that apply to a particular Commonwealth place, area or facility relevant to Seller.

7. Provided that reasonable notice has been given (having regard for other operational requirements of the Commonwealth place to which access is sought), should the Commonwealth be unable to give access to any Commonwealth place, area or facility to Seller when requested by Seller, Seller may be entitled to performance relief under any Contract in relation to the consequences of the lack of access.

I. Defence Security

This clause applies if Seller or Seller's subcontractor requires access to any Commonwealth place, area or facility, or to any security classified information, in order to perform the obligations of the Contract.

1. If Seller requires access to any Commonwealth premises, area, or facility under the control or responsibility of Department of Defence, or ADF, Seller shall:

a. comply with any security requirements (Including those contained in the DSM) notified to Seller by Buyer's Customer or Buyer from time to time; and

b. ensure that Seller Personnel, subcontractors, and subcontractor Personnel are aware of and comply with the Commonwealth's security requirements.

2. Seller shall:

a. ensure that Seller Personnel, subcontractors, and subcontractor Personnel, undertake any security checks, clearances or accreditations as required by the Commonwealth or National Industrial Security Program Operating Manual (NISPO), as applicable;

b. notify Buyer of any changes to circumstances which may affect Seller's capacity to provide Services in

- accordance with the Commonwealth's or NISPOM security requirements; as applicable; and
- c. provide any written undertakings in respect of security or access to the Commonwealth's place, area, or facility in the form required by the Commonwealth.
3. The security classification of work to be performed under the Contract will be up to and including SECRET Seller shall:
- a. possess a facility accreditation to meet the requirements of document storage, information systems, equipment and Communications Security (COMSEC), up to and including SECRET level.
- b. comply with the relevant government industry security policy.
4. For the purposes of this clause, accreditations shall be issued by the relevant overseas government security authority, and shall be verified by the Defence Security Authority (DSA) (through a bilateral security instrument or otherwise).
5. Seller and its subcontractors shall classify all information in its possession relating to the performance of the Contract according to the Commonwealth Security Classification and Categorisation Guide, or US Security Classification Guide Wedgetail 737 Airborne Early Warning & Control Australia Revision 3 dated 23 April 2018, or US Security Classification Guide (SCG), 737 Airborne Early Warning and Control Core US Security Classification Guide - Revision 2 dated 24 May 2017, as applicable and shall ensure that such information is safeguarded and protected according to its level of security classification. If information relating to the performance of the Contract is not covered for classification purposes or the US SCG referred to in this clause, Contractor performance is subject to clause I. 12.
6. With respect to security classified information, Seller shall:
- a. ensure that no security classified information furnished or generated under the Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through Buyer;
- b. promptly report to Buyer any instance in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorized parties, including a representative of another country other than Australia or the United States of America; and
- c. ensure that all security classified information transmitted between the parties or a party and a subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Part 2:33 of the DSM, as amended from time to time.
7. All security classified information transmitted between the parties or a party and a subcontractor located overseas whether generated in Australia or by another country shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
8. All Communications Security (COMSEC) material transmitted between the parties or a party and a subcontractor, in Australia, shall in addition to the provisions of clause I.6.c above, be subject to the special security provisions of Part 2:53 of the DSM, as amended from time to time.
9. Where COMSEC materiel is transmitted overseas, Seller shall ensure that:
- a. all COMSEC material transmitted between the parties or a party and a subcontractor located overseas shall be subject to approval in the first instance by the Director Australian Signals Directorate (ASD), in respect of Australian COMSEC material and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries; and
- b. once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director ASD and to any bilateral security instrument between Australia and the overseas country.
10. If there has been a breach by Seller, Seller personnel, a subcontractor, or subcontractor personnel, of this clause, Buyer may cancel the Contract for Default under the General Provisions.
11. Seller shall ensure the requirements of this clause are included in all subcontracts where the subcontractor requires access to any Commonwealth place, area or facility, or to any security classified information, in order to perform the obligations of the subcontract.
12. Seller may be entitled to postponement for any impact associated with paragraph I.5 of this clause, or changes to the DSM or NISPOM during Seller's performance of the Contract.

J. Conflict of Interest

1. Seller:

- a. warrants that, to the best of its knowledge after making diligent inquiries at the date of Contract award, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or any Seller personnel, or subcontractors, or subcontractor personnel; and

- b. shall promptly notify Buyer in writing if such a conflict of interest arises, or appears likely to arise.
2. Within 5 working days after giving notice under paragraph 1, Seller shall notify Buyer, in writing, of the steps Seller will take to resolve the issue. If Buyer or the Commonwealth considers those steps are inadequate, it may direct Seller to resolve the issue in a manner proposed by Buyer or the Commonwealth.
3. If Seller fails to notify Buyer in accordance with this clause or is unable or unwilling to resolve the issue in the required manner, Buyer may terminate the Contract.

K. Post Defence Separation Employment

This clause applies if Seller is an Approved Subcontractor.

1. Except with the prior written approval of Buyer, Seller shall not permit any Defence Personnel or Defence Service Provider who, at any time during the preceding twelve (12) month period was engaged or involved in:
 - a. the preparation or management of the Prime Contract
 - b. the assessment or selection of Seller; or
 - c. the planning or performance of the procurement or any activity relevant or related to the Prime Contract;to perform or contribute to the performance of this Contract.
2. To avoid doubt, the twelve (12) month period referred to in this clause applies from the date which is twelve (12) months before the date on which Seller proposes that the person start performing or contributing to the performance of this Contract.
3. Buyer shall not unreasonably withhold approval of a person under this clause and, in making a decision, shall consider:
 - a. the character and duration of the engagement, services or work that was performed by the person during the relevant twelve (12) month period;
 - b. any information provided by Seller about the character and duration of the services proposed to be performed by the person under the Prime Contract;
 - c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of this Contract in the manner proposed under this clause, and the arrangements which Seller proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
 - d. any information provided by Seller concerning any significant effect that withholding approval will have on the person's employment or remuneration opportunities or the performance of this Contract; and
 - e. the policy requirements set out in DI(G)PERS 25-4, as applicable.
4. Seller shall include the substance of this clause in all Approved Subcontracts.

L. Policy and Law

1. Governing Law
 - a. Seller shall, in the performance of the Contract comply with and ensure subcontractors comply with the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the contract is to be carried out.
 - b. The parties recognize that Seller, in the performance or amendment of the Contract must comply with all applicable laws of the Commonwealth and of the United States relevant to such place of performance or amendment, and must obtain all necessary approvals from the appropriate agencies of the Commonwealth and the U.S. Government. The providing of Services by Seller under this Contract shall be subject to Seller obtaining required U.S. Government export licenses, as applicable.
 - c. After acceptance of the Contract but prior to obtaining the export license, any obligations in this Contract (other than those relating to the obtaining of export licenses) for Seller to disclose or provide technical data, defense services or defense articles (as those terms are defined in the U.S. International Traffic in Arms Regulations) which are contingent on those export licenses, shall not enter into force. For the avoidance of doubt, this clause does not prevent the Contractor from commencing its obligations under the Contract that are not contingent on an export license.
 - d. If there is an amendment to any law, or any legislation made, during performance of this Contract and compliance with that law (as amended) or legislation has a material effect on Seller's ability to perform its obligations, Seller shall be entitled to relief.
 - e. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

2. Policy Requirements

a. Seller shall comply with and require Seller personnel, subcontractors, and subcontractor personnel to comply with the following Commonwealth policies of general application where relevant or applicable to any Contract in the place of performance:

- i. Conflicts of Interest; Gifts, hospitality and sponsorship; Management and reporting of unacceptable behavior, and Incident reporting and management policies as detailed in DI(G) PERS 25-6, DI(G) PERS 25-7, DI(G) PERS 35-2 and Interim Defence Instruction 45-2;
- ii. Australian Defence Force alcohol policy as detailed in DI(G) PERS 15-1;
- iii. Public Interest Disclosure policy as detailed at (www.ombudsman.gov.au/about/making-a-disclosure);
- iv. Company Scorecard policy as detailed at (www.defence.gov.au/casg/doingbusiness/industry/industryprograms.comapnyscorecard); and
- v. Seller shall comply with its obligations under the Workplace Gender Equality Act 2012 (Cth) (WGE Act).
- vi. If Seller becomes non-compliant with the WGE Act during the Contract, Seller shall notify Buyer.

3. Work, Health and Safety

a. The Commonwealth, Buyer, and Seller acknowledge they have a duty under the WHS Legislation in carrying out work under the Contract to ensure, as far as is reasonably practicable, the health and safety of:

- i. Commonwealth Personnel
- ii. Buyer and Seller personnel, subcontractor personnel, and
- iii. Other Persons

in connection with the Services.

b. Seller represents and warrants that:

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

c. Without limiting Seller's obligations under the Contract, Seller shall so far as is reasonably practicable:

- i. provide the Services in such a way that Buyer, the Commonwealth and Commonwealth Personnel are able to undertake any reasonably contemplated roles or obligations in connection with the Services (such as in relation to testing or auditing); and
- ii. ensure that Buyer, the Commonwealth and Commonwealth Personnel are able to make full use of the Services for the purposes for which they are intended (as contemplated by the Contract), and to maintain, support and develop the Services (as contemplated by the Contract),

without Buyer, the Commonwealth or Commonwealth Personnel contravening any legislation relating to WHS including the applicable WHS Legislation, any applicable standards relating to WHS or any Defence policy relating to WHS.

d. Without limiting Seller's rights or obligations under the Contract or at law, Seller shall provide, and shall use its reasonable endeavors (having regard to the obligations of the parties under the WHS Legislation) to ensure that a subcontractor conducting Prescribed Activities provides, to Buyer within 10 Working Days (or such other period as agreed by the Buyer in writing) of a request by Buyer, any information or copies of documentation reasonably requested by Buyer, and held by Seller or a subcontractor (as the case may be) to enable Buyer and the Commonwealth to comply with its obligations under the WHS Legislation in relation to the Deed or any Contract.

e. To the extent not inconsistent with the express requirements of the Contract, Buyer may direct Seller to take specified measures that the Commonwealth or Buyer considers reasonably necessary to comply with the WHS Legislation in relation to the performance of the Contract or the provision of the Services. Seller shall comply with the direction unless Seller demonstrates to the reasonable satisfaction of Buyer that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation. Seller will not be entitled to performance relief merely because of compliance with the direction.

f. Unless Buyer otherwise agrees in writing, Seller shall:

- i. ensure that any deliverable provided to Buyer in connection with the Services does not contain a Problematic Substance; and
- ii. not use, handle or store a Problematic Substance on Buyer or Commonwealth Premises in connection with the Services.

g. Seller shall ensure that if the WHS Legislation requires that:

- i. A person (including a subcontractor):
 - a. be authorized or licensed (in accordance with the WHS Legislation) to carry out any works at the workplace, that person is so authorized or licensed and complies with any conditions of such authorization or license; and/or
 - b. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - ii. a workplace, plant or substance (or design), or work (or class of work) be authorized or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorized or licensed.
- h. If Seller becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an Authorization granted to Seller or subcontractor relating to WHS, it shall immediately notify Buyer, giving full particulars (so far as they are known to it).
- i. Seller will ensure an Approved Subcontract contains equivalent provisions to this clause.

M. Privacy

This clause applies if Seller or Seller's subcontractors will be performing work in Australia.

- a. Seller shall:
 - i. if it obtains Personal Information in the course of performing the Contract, use or disclose that Personal Information only for the purposes of the Deed or that Contract subject to any applicable exemptions in the Privacy Act 1988 (Cth);
 - ii. comply with its obligations under the Privacy Act 1988 (Cth); and
 - iii. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.
- b. Seller shall notify Buyer as soon as reasonably practicable if:
 - i. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause, whether by Seller, subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the Contract; or
 - ii. in relation to Personal Information obtained in the course of performing the Contract:
 - a. it becomes aware that a disclosure of such Personal Information may be required by law; or
 - b. it is approached by the Privacy Commissioner.
- c. Seller shall ensure that Seller Personnel who deal with Personal Information for the purposes of the Deed or any Contract are aware of, and comply with, this clause.
- d. Subject to paragraph e. of this clause, Seller shall ensure that subcontracts entered into for the purposes of fulfilling its obligation under the Contract contains provisions to ensure subcontractor complies with this clause.
- e. Paragraph d. does not apply to a subcontractor where the work of the subcontractor under the subcontract is wholly carried out outside Australia (which for this purpose includes the external Territories of Australia). For the avoidance of doubt, subcontracts where the work of the subcontractor under the subcontract is wholly carried out outside Australia shall comply with the relevant Privacy legislation from the country in which the work is carried out.

N. Subcontracts

1. Without limiting Seller's obligations under the Contract, Seller and Approved Subcontractors are authorized to use their standard commercial procurement practices with all other subcontractors. Seller shall ensure that:
 - a. the requirements of clauses B., C.2., F., L.1., and M. are included in Approved Subcontractor Subcontracts;
 - b. each subcontractor that requires access to any Commonwealth Premises or to security classified information is subject to the requirements of clause I.;
 - c. the requirements of clauses H., and J., are included in Approved Subcontractor Subcontracts.
2. Seller shall not enter into a subcontract for any Contract with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
3. Seller, if requested by Buyer, shall provide Buyer with names of all subcontractors and a copy of any subcontract, which copy need not contain prices. Seller acknowledges and shall inform its subcontractors that the Commonwealth may be required to publicly disclose the subcontractors' participation in the performance of any Contract.

O. Insurance and Liability

1. Indemnity

a. Seller shall indemnify Buyer against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and expenses for loss of, or damage to, third party property, Buyer property, or Commonwealth property (other than Defence property) or damage to the extent arising out of or in connection with a default or unlawful or negligent act or omission on the part of Seller and Seller's subcontractors.

b. Seller's liability to indemnify the Buyer shall be reduced proportionally to the extent that any unlawful or negligent act or omission on the part of Buyer or the Commonwealth or any person through whom the Commonwealth is acting (but not including Seller and Seller's subcontractors) contributed to the liability, loss, damage, costs or expenses.

2. Insurance

a. Seller shall effect and maintain (or be insured under) the insurances for the times and in the manner specified in this clause, except to the extent that a particular risk is insured against under other insurance effected in compliance with this clause.

b. Seller shall use its reasonable endeavors to ensure that its subcontractors are insured as required by this clause, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were Seller.

c. (Workers Compensation) Seller shall effect and maintain workers compensation insurance or registrations as required by law, in respect of Seller's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Contract.

d. (Professional Indemnity) Seller shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than USD 10 Million per claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of Seller at general law arising from a negligent breach of duty owed in a professional capacity by reason of any act or omission of Seller or Seller's subcontractors. Such insurance shall:

- i. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by Seller and Seller's subcontractors under the Contract;
- ii. extend to cover claims related to software and IT risks;
- iii. extend to cover claims for unintentional breaches of intellectual property rights;
- iv. extend to cover claims for unintentional breaches of trade practices laws;
- v. have a retroactive date of no later than the earlier of the commencement of the work under the Contract or any earlier preparatory work by Seller and Seller's subcontractors; and
- vi. have worldwide territorial and jurisdictional limits.

e. The insurances and registrations referred to in:

i. the following clauses shall be effected before Seller commences work under the Contract, and thereafter be maintained until all work under the Contract is completed:

a. clause O.2.c. (workers compensation);

ii. clause O.2.d. (professional indemnity) shall be effected before Seller commences work under the Contract, and thereafter be maintained until the earlier of:

- a. 10 years following completion of the work under Contract; or
- b. 10 years following an earlier termination of the Contract

f. To the extent that Seller's insurances and registrations required by clause O.2. of this Deed are in fact written on a claims made basis (notwithstanding any requirements of this Contract for such insurances to be written on an occurrence basis) then Seller must maintain those insurances and registrations until the earlier of:

- i. 10 years following completion of the work under the Contract; or
- ii. 10 years following an earlier termination of the Contract

g. With the exception of statutory insurances, the insurances referred to in this clause O.2. shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognized rating agency), or an insurer approved by the Commonwealth, acting reasonably.

h. Seller shall, on request, produce evidence satisfactory to Buyer, acting reasonably, of the currency and terms of the insurances referred to in this clause O.2.

- i. In respect of each insurance referred to in this clause O.2., Seller shall:
 - i. promptly inform Buyer if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by Buyer against Seller) which could materially reduce the available limits of indemnity or which may involve Buyer or the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by Buyer; and
 - ii. do everything reasonably required by Buyer or the Commonwealth to enable Buyer or the Commonwealth to claim and to collect or recover monies due under any insurance policy.
- j. Seller shall be:
 - i. deemed compliant with the requirements of the following clauses:
 - a. clause O.2.a.;
 - b. clause O.2.c. (Workers Compensation);
 - c. clause O.2.d. (Professional Indemnity); and
 - d. clauses O.2.e., O.2.f. and O.2.g.; and
 - ii. relieved of its obligations under clauses O.2.h. and O.2.i.;
 - iii. in respect of a particular insurance listed in clause O.2.j.i. for any period during which Seller's insurance program holds ACIP status under CASG's centralized process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether Seller's ACIP status extends to that type of insurance). Seller shall advise Buyer within five Working Days if its ACIP status is withdrawn or suspended by the Commonwealth.

P. Provision of Technical Data

1. Seller shall deliver TD in accordance with the Contract.
2. Seller shall ensure that all TD delivered to Buyer will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by Buyer and the Commonwealth in the exercise of its IP rights under clause C.
3. For the avoidance of doubt, Buyer and the Commonwealth acknowledge that certain Technical Data may be refined under any Contract to support efforts related to AMS Airworthiness certification and that such data will be made available for viewing at a designated Seller location.
4. The Technical Data identified at clause P.3. is subject to the following conditions regarding access:
 - a. Seller will make arrangements for the viewing of this Technical Data following receipt of the appropriate export disclosure approval and Proprietary Information Agreements with Seller;
 - b. persons granted access to Airworthiness Information must be the AEW&C Design Acceptance Representative (DAR) or other specialist representatives as authorized by the DAR and as agreed between the parties;
 - c. Buyer and the Commonwealth Representative shall advise Seller of the name of each representative, whether they are a Buyer or Commonwealth employee or delegate, their areas of expertise, and the scope of their delegated authority;
 - d. representatives will only receive access to Technical Data within their areas of expertise and delegated authority;
 - e. representatives must be covered by a Proprietary Information Agreement with Seller, agreeing to hold all Technical Data in confidence and to protect it from unauthorized use or disclosure; and
 - f. Buyer or Commonwealth representatives granted access may view and examine, but not remove or copy, the Technical Data.
5. Buyer and the Commonwealth acknowledge that Buyer and the Commonwealth is required to treat data and information provided to it under clause P.3 in accordance with the provisions of clause C.
6. If Buyer or the Commonwealth makes available to another person any TD that are owned by Seller or an Approved Subcontractor and which is Background IP or Foreground IP, Buyer and the Commonwealth shall obtain from that person a Non Disclosure Agreement in the form set out in Attachment K or Attachment L, as applicable.

2.

Customer Contract Requirements (Direct Commercial Sales)

In addition to the requirements set forth in the Boeing General Provisions and other terms and conditions in or attached to this Contract, the Goods to be delivered under this Contract may be common to items delivered to a U.S. Government customer. Accordingly, the following terms supporting technical conformance of the Goods apply to this Contract to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018). In paragraph (c)(1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c)(2) to Buyer.

52.211-5 Material Requirements (AUG 2000)

Any notice will be given to Buyer rather than the Contracting Officer.

252.223-7008 Prohibition of Hexavalent Chromium (JUN 2013). "Contracting Officer" shall mean Buyer.

252.225-7001 Buy American and Balance of Payments Program (DEC 2017). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (OCT 2014). Paragraphs (d) and (e) (1) of this clause are excluded. In paragraph (d) (1) (i), "Contracting Officer" means Buyer. In paragraph (e)(2) "Government" means Buyer. Paragraph (c)(6) is revised as follows:

(c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

252.225-7012 Preference for Certain Domestic Commodities (DEC 2017).

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c)(6), "Contracting Officer" means "Buyer." The introductory text at the beginning of the clause is deleted and only paragraphs (a) through (e) apply.

252.246-7008 Sources of Electronic Parts (MAY 2018). This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term "Contractor" means Seller and the term "subcontractor" means Seller's lower-tier suppliers. In paragraph (b)(3)(ii)(A), the term "Contracting Officer" means "Buyer's Authorized Procurement Representative." Seller's notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller's lower-tier supplier providing such electronic parts, Seller's rationale on acceptability of procuring such parts (including risk mitigation), and identification of the product using such parts (by lot or serial numbers).