

CUSTOMER CONTRACT REQUIREMENTS
F-18
CUSTOMER CONTRACT P0056-FA18-SC-16-18243

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

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

1. Definitions

1.1 Buyer Furnished Data (BFD) means the data identified as 'Boeing Furnished Data' in:

- a. Appendix A; or
- b. the GFM section of an Approved S&Q Quote

1.2 Boeing Furnished Information (BFI): means the information identified as 'Boeing Furnished Information' in

- a. Appendix A; or
- b. the GFM section of an Approved S&Q Quote.

1.3 Boeing Furnished Material (BFM) means any material provided by Buyer to the Seller under this BOA(including BFD, BFE and BFI) and my include material that is the property of the Commonwealth or a third-party

1.4 Commonwealth means the Commonwealth of Australia, whether acting through the Department of Defence or otherwise.

1.5 Defence Purposes means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the Defence Act 1903 (Cth)) and the equivalents from other organizations on exchange to Defence.

1.6 Deliverables means any goods, services, information (including Technical Data), Intellectual Property, document (including report, manuals, designs, drawings and the like), hardware, software or other thing which is, or is required by this Contract or a Purchase Order to be, delivered or provided by the Seller or its agents to Boeing, the Commonwealth or their agents in the course of the performance of the Services.

1.7 Foreground IP means IP which is created by the Personnel of the Commonwealth, Buyer or the Seller under or otherwise in connection with the performance of this Contract or any Subcontract (or any combination of these).

1.8 Intellectual Property or 'IP' means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognized in domestic law anywhere in the world, and includes the right to register those rights.

1.9 Personal Information has the same meaning as in the Privacy Act.

1.10 Prime Contract means the contract (ASD/818/2016) as executed between Boeing Defence Australia (BDA) and the Commonwealth.

1.11 Source Code means the expression of software in human readable language which is necessary for the understanding, Maintaining, modifying, correction and enhancing of that software.

1.12 Security Interest means a property interest created by agreement or by operation of law over assets to secure the performance of an obligation. This includes security interest that grant preferential rights in the disposition of secured assets.

1.13 Services means services and goods including Deliverables, Intellectual Property and Technical Data required to be provided under this Contract and includes items acquired in order to be incorporated in the Services.

1.14 Software Design Data means data which describes the internal design and operation of a software program and its interface with the external software and hardware systems in which it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).

1.15 Software Updates means, in relation to software (including Software Design Data and Source Code):

- a. a new release of or change to that software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the software); or
- b. a new version of that software (which is designed to enhance or provide extra functionality to that software).

1.16 Technical Data means all technical know-how and information reduced to material form produced, acquired or used by the Seller in relation to the Deliverables and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, Training Materials, software, Source Code, Software Design Data, test results, Software Updates and other items describing or providing information relating to the Deliverables or their operations.

1.17 Training Equipment means any item of equipment required to perform Training.

1.18 Training Materials means material, including reference manuals and publications for the Material System that were principally developed for Training, necessary for a suitably qualified instructor to effectively and efficiently conduct a sequence of Training and/or assessment given a body of students who meet the defined entry requirements. This material includes lesson plans, lesson guides, presentation materials, assessment tools (including plans, exams and/or question sets, checklists and reporting sheets), Training aids and other Training Equipment, student précis, mass briefs, mission plans, and , if applicable, computer-based training software and manuals.

2. Provision and Management of BFM

This clause applies when BFM will be utilized in the performance of this Contract.

2.1. Buyer shall deliver or provide access to, and the Seller shall manage, BFM in accordance with this Contract.

2.2. The Seller acknowledges and agrees that:

- a) Buyer's obligations to provide BFM on the dates or at the times described in this contract are subject to the Supplier performing the Deliverables; and
- b) any delay of the Seller in meeting its obligations under this Contract may result in the Commonwealth, Buyer or a third-party not being able to provide BFM to Buyer in sufficient time to allow delivery of the BFM at the time the Seller requires delivery or access to that BFM.

2.3. If at any time the Seller's requirement for the timing of delivery or access to BFM changes because of a delay by the Seller in meeting its obligations under this Contract, Buyer:

- a) shall use reasonable endeavors to accommodate changes to the Seller's requirements for delivery or access to BFM; and
- b) is only required to deliver or provide access to the BFM at the time it becomes available for use for the purposes of this Contract

2.4. To avoid doubt, clause 2.3 does not require Buyer to remove BFM from operational requirements, or to provide the Seller with BFM allocated to or available for other contracts.

2.5. The Seller shall be responsible for ensuring that the BFM does not adversely impact on the provision of the Deliverables.

2.6. The parties acknowledge that:

- a) the Buyer Furnished Information (BFI) is not furnished to the Seller for the purpose of either directing or guiding the Seller's task under this Contract; and
- b) Buyer does not warrant the suitability of such BFI or Buyer Furnished Data (BFD) for any particular use or application, nor does Buyer warrant the accuracy or precision of the BFI or BFD.

2.7. Except as otherwise provided in this clause 2, the Seller shall be responsible for the application or use of the BFI and any conclusions, assumptions or interpretations made by the Seller on the basis of the BFI, or its application or use of them.

3. BFM Ownership and Restrictions

This clause applies when BFM will be utilized in the performance of this Contract.

3.1. Subject to the IP rights notified to the Seller by Buyer in accordance with clause 3.3, BFM remains the property of Buyer as between the Supplier and Buyer. Buyer retains the right to reasonably identify BFM as its property (or the property of the Commonwealth or a third-party) and the Seller shall preserve any means of identification.

3.2. The Seller shall not:

a) without the prior written Approval of the Buyer Representative or express authorization set out in this Contract:

- i. use BFM other than for the purposes of this Contract;
- ii. modify BFM;
- iii. transfer possession or control of BFM to any other party;
- iv. move BFM from the location to which it was delivered; or
- v. communicate or divulge BFI or Buyer Furnished Data (BFD) to any other party; or

b) create or allow to be created any lien, charge, mortgage, Security Interest or encumbrance over any BFM.

3.3. The Buyer Representative shall notify the Seller of any IP rights applicable to the BFM and the Seller shall ensure that it uses the BFM strictly in accordance with those rights.

3.4. The Seller shall return all items of BFM that are required to be returned to the Commonwealth, or as otherwise specified in this Contract and its appendices.

4. Use of Commonwealth Property

This clause applies when Commonwealth property will be utilized in the performance of this Contract.

4.1. Without limiting clause 3.2, the Seller shall not, without the prior written approval of the Buyer:

- a) use Commonwealth property other than for the purposes of this Contract;
- b) modify Commonwealth property;
- c) transfer possession or control of Commonwealth property to any other person; or
- d) create or allow to be created any lien, charge, mortgage, Security Interest or encumbrance over any Commonwealth property.

5. Supplier Managed Commonwealth Assets (SMCA)

This clause applies when Supplier Managed Commonwealth Assets (SMCA) will be utilized in the performance of this Contract.

5.1. The Seller shall take all reasonable care of SMCA and shall provide Facilities to store and handle all SMCA as they are received.

5.2. The Seller shall, within five days of becoming aware that any SMCA is lost, destroyed, damaged, defective or deficient, notify the Buyer of the event in writing.

5.3. The Seller shall be liable for:

- a) in respect of SMCA (other than a Mission System):
 - i. loss or destruction of, or damage to, the SMCA occurring while the SMCA is in the care, custody or control of the Seller or any of its personnel,
 - ii. loss or destruction of, or damage to, or defects or deficiencies in, the SMCA while the SMCA is not in the care, custody or control of the Seller or any of its Personnel to the extent caused by any wilful misconduct, breach of contract or negligent act or omission of the Seller or any of its Personnel, except to the extent that the loss, destruction, damage, defects or deficiencies were a direct consequence of an Excepted Risk.
- b) in respect of a Mission System, loss or destruction of, or damage to, the Mission System to the extent such loss, destruction or damage is caused by the wilful misconduct, negligence or breach of contract of the Seller, its officers, employees, agents or Subcontractors, and only when such Mission System is lost, destroyed or damaged while in the care, custody or control of the Seller or any of its officers, employees, agents or Subcontractors.

5.4. Subject to clause 5.5, the Seller shall compensate Buyer for the loss or destruction of, or damage to or defects or deficiencies in, the

SMCA to the extent the Seller is liable under clause 5.3 and Buyer may recover an amount equivalent to the value of the compensation as a debt due to the Buyer.

5.5. If in the opinion of the Buyer Representative the Seller has the necessary capacity, the Buyer Representative may require the Seller, by notice in writing, to transport, dispose of or repair damaged, defective or deficient SMCA. If the Seller is liable under clause 5.3 for the damage, defect or deficiency, the work performed by the Seller under this clause 5.5 shall discharge or partially discharge the Seller's liability. If the Seller is not liable under clause 5.3 for the damage, defect or deficiency, the Seller shall, if the parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.

6. Intellectual Property

6.1. Background IP and Third Party IP - Ownership

6.1.1. Nothing in this Contract affects the ownership of Background IP or Third Party IP.

6.2. Intellectual Property - Ownership and Licensing

6.2.1. Ownership of all Foreground IP vests on its creation in the party set out below:

- Foreground IP (FGIP) created by the Seller vests in the Seller;
- FGIP created by an Approved Subcontractor vests in the Approved Subcontractor;
- FGIP created by the Commonwealth vests in the Commonwealth; and
- FGIP created by a Third Party provider vests in that provider.

6.2.2. If Foreground IP is created that is not set out in 6.2.1, ownership of that Foreground IP vests on its creation in the Commonwealth.

6.2.3. Without limitation to:

- a) any license previously granted to the Commonwealth, Boeing Defence Australia (BDA) or Buyer by the Seller, or any related entity (as that term is defined in the Corporations Act 2001 (Cth)) of the Seller, in any other contract; and
- b) the rights of the Commonwealth under its FMS arrangements with the U.S. Government, the Seller;
- c) grants to the Commonwealth a License to use the Seller's Foreground IP (including Background IP that is owned by the Seller that is imbedded in or incorporated with that Foreground IP) for Defence Purposes;
- d) shall ensure that the Commonwealth is granted a license in respect of all Third Party IP that is incorporated in Background IP that is owned by the Seller, Foreground IP that is owned by the Seller or other Deliverables provided to the Commonwealth by the Seller, on the best available commercial terms;
- e) grants to Buyer a license to use Foreground IP owned by the Seller and Background IP owned by the Seller for the purposes of executing the Prime Contract and this Contract; and
- f) grants to BDA and Buyer a license in respect of Third Party IP incorporated in IP owned by the Seller on the best available commercial terms.

6.2.4 By the Effective Date in respect of the Seller, the Seller shall execute the Approved Subcontractor IP Deed and provide the deed to the Commonwealth.

6.2.5. The Seller shall ensure that the licenses granted pursuant to clauses 6.2.3 include the rights of the Commonwealth, or a person on behalf of the Commonwealth, to exercise:

- a) any Foreground IP owned by the Seller;
- b) any Background IP that is owned by the Seller that is embedded in or incorporated with Foreground IP that is owned by the Seller; and
- c) any Third Party IP that is embedded in, or incorporated with, Foreground IP that is owned by the Seller (on the best available commercial terms), to:
 - d) properly use and support the Deliverables and Products throughout their Life-of-Type as envisaged by this Contract;
 - e) complete the provision of the Services if this Contract is terminated (except for convenience); and

f) remedy defects or omissions in the Deliverables and Products.

6.2.6. The licenses granted under clause 6.2.3:

- a) do not permit the Commonwealth or Boeing, or a person on behalf of the Commonwealth or Boeing, to:
 - i. commercialize the licensed IP; or
 - ii. sub-license the Background IP that is owned by the Seller (other than Background IP that is embedded in or incorporated with Foreground IP that is owned by the Seller or which is provided to an 'Above The Line Contractor' provided that it may only be used by them exclusively for the purpose of assisting the Commonwealth in relation to the support of the Materiel System);
- b) do permit the Commonwealth and Boeing in all instances to sub-license the following IP to a third party for the purpose of that third party providing goods and services to the Commonwealth or Boeing for Defence Purposes:
 - i. Foreground IP that is owned by the Seller;
 - ii. any Background IP owned by the Seller that is:
 - 1. embedded in or incorporated with Foreground IP that is owned by the Seller; or
 - 2. otherwise licensed on terms which permit such sub-licensing; and
 - iii. any Third Party IP that is embedded in, or incorporated with, Foreground IP that is owned by the Seller (provided that the license of the Third Party IP need only be on the best available commercial terms).

6.2.7. The Seller warrants that the only IP embodied in the Deliverables that has not been vested in the Commonwealth, BDA or Buyer, or in respect of which the Commonwealth, BDA or Buyer has not been granted a License under clause 6.2.3, is Third Party IP.

6.2.8. Where it is permitted to do so under the Prime Contract, Buyer grants the Seller a sublicense to exercise Foreground IP owned by the Commonwealth or BDA, including a right to grant sub-licenses to its subcontractors, to the limited extent necessary to enable the Seller to perform this Contract.

6.2.9. The Seller shall provide Buyer all the same licenses as it provides the Commonwealth under this clause 6.2 for the purposes of Buyer fulfilling its obligations under this Contract and the Prime Contract with the Commonwealth.

6.3. Provision of Technical Data

6.3.1. The Seller shall deliver Technical Data to Buyer in accordance with this Contract.

6.3.2. If the Buyer requires additional Technical Data to enable the Commonwealth or Buyer's customer to fully exercise their respective IP rights under clause 6, the Seller shall deliver such Technical Data to the Buyer (subject to any export control limitations):

- a) if the Seller already has the Technical Data, within 10 Working Days; or
- b) if the Seller does not already have the Technical Data, within such reasonable period as the Boeing may require, and in any case no less than six months before the end of the Term.

6.3.3. The Commonwealth and Buyer may provide Technical Data to a third party to enable those parties to fully exercise their respective rights under this clause 6.

6.3.4. The Seller shall ensure that all Technical Data provided to the Commonwealth, Buyer and BDA will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by the Commonwealth, BDA or Buyer in the exercise of their respective IP rights under this clause 6.

6.4. Intellectual Property - Registration and Protection

6.4.1. For Foreground IP that vests in the Commonwealth, the Commonwealth has the exclusive right to apply for registration of the Foreground IP in all countries of the world. For Foreground IP that vests in Buyer, Buyer has the exclusive right to apply for registration of the Foreground IP in all countries around the world.

6.4.2. To facilitate the Commonwealth and Buyer registering or protecting the Foreground IP, the Seller shall:

- a) give the Commonwealth, BDA and Buyer access to all work carried out in the performance of this Contract, and to all records of such work as are reasonably required by the Commonwealth, BDA or Buyer;
- b) provide all information, execute all documents and do all acts and things reasonably necessary to enable the

Commonwealth, BDA and Buyer to:

- i. secure the adequate and timely preparation of the applications for registration or other protection by the Commonwealth, BDA or Buyer of Foreground IP; and
- ii. prosecute, maintain, enforce or defend such applications, registrations or other protection;
- c) refrain from publication, dissemination or other communication of any Confidential Information relating to the IP, and from any other action which might compromise the IP or threaten the subsistence, registration or exploitation of the IP; and
- d) on request by the Buyer, identify or mark relevant documents as copyright of the Commonwealth, BDA or Buyer.

6.4.3. In this clause 6.4, "Commonwealth" includes its patent attorney, other relevant advisers and other persons acting for or on behalf of the Commonwealth.

6.5. Supplier IP - Release to Third Parties by the Commonwealth

6.5.1. If the Commonwealth makes available to another person any Technical Data which embodies Foreground IP or Background IP which is owned by the Seller, Buyer shall, through the Prime Contract, require the Commonwealth to obtain from that person a Deed of Confidentiality.

6.6. Moral Rights

6.6.1. The Seller represents that the provision of the Services and use of the Deliverables for Defence Purposes or other purposes permitted by this Contract will not infringe the Moral Rights of the personnel of the Seller or its subcontractors.

6.6.2. The Seller shall assist the Commonwealth, BDA and Buyer in defending any claim by any of the Seller's personnel, its subcontractors or any of the subcontractor's personnel against the Commonwealth, Buyer, Commonwealth personnel or Buyer personnel for infringement of any of their Moral Rights.

6.7. Access to Boeing Technical Data in Extreme Scenarios

6.7.1. If a Triggering Event occurs, the Seller shall provide to the Commonwealth such Technical Data and other support as the Commonwealth reasonably requires in order to be able to continue to support, or have another party support, its Mission Systems.

6.7.2. A Triggering Event, as used in this clause 6.7.1, means any of the following:

- a) the exit by the Seller from the business of providing services and support in Australia, whether directly or through its subsidiaries, to the F/A-18F (Super Hornet) and EA-18G (Growler) variants used by the Australia Defence Force (Commonwealth F18 Platforms); or
- b) subsequent to the termination of the Prime Contract, the future refusal (on reasonable commercial terms), or inability (based on capability), by the Seller or any of its subsidiaries to respond to a request from the Commonwealth for sustainment support of the Commonwealth F18 Platforms in Australia; or
- c) a systematic failure by BDA to perform under the terms of the Prime Contract, as evidenced by:
 - i. BDA's Default and Commonwealth's issuance of three or more Default Notices within a 12 month period;
 - ii. at least two of the Default Notices are not remedied by Contractor of the Prime Contract; and
 - iii. those Defaults result in a material negative impact on Mission System availability and/or performance for a material period of time (which shall not be less than six months and which may take into account non-performance prior to the issuance of the Default Notice).

6.7.3. If a Triggering Event has occurred and the Prime Contract has ended or been terminated (for any lawful reason), then the Seller shall grant to the Commonwealth a license that:

- a) enables the Commonwealth to use all required Technical Data for Defence Purposes;
- b) is granted on commercially reasonable terms;
- c) allows the Commonwealth to sublicense the Technical Data to third parties, provided that such sublicense may only be utilized by those third parties for Defence Purposes and in support of the Commonwealth F18 Platforms;

d) does not require the Seller to provide Technical Data owned by third parties which are not related entities of the Seller or the Boeing;

e) does not require the Seller to provide Technical Data readily available to the Commonwealth from alternative sources; and

f) is based on reasonable commercial terms (which, if they cannot be agreed by the parties within 30 days, shall be referred for binding determination by a mutually agreed independent expert with appropriate skills and experience to undertake that determination).

6.7.4. The Seller shall not be required to grant the license specified in clause 6.7.3 if

the Commonwealth gives the contract for primary sustainment of the Commonwealth F18 Platforms to another contractor when Buyer, the Seller, or any Related Body Corporate of the Seller is still available to provide the required services and support on reasonable terms.

7. Privacy Indemnity

The Seller shall indemnify the Buyer, BDA and the Commonwealth against any loss, liability or expense suffered or incurred by the Commonwealth and/or Buyer and/or BDA which arises directly or indirectly from a breach of any of the Seller's or Subcontractor's obligations referred to in clause 11.

8. Defence Security

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

a) i. comply with any security requirements (including those contained in the electronic Defence Security Manual) notified to the Seller by the Buyer Representative 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.

8.2. The Seller shall:

a) ensure that Seller personnel, subcontractors and subcontractor personnel, undertake any security checks, clearances or accreditations as required by the Commonwealth;

b) promptly notify the Buyer Representative of any changes to circumstances which may affect the Seller's capacity to provide Deliverables in accordance with the Commonwealth's security requirements; and

c) provide a written undertaking in respect of security or access to the Commonwealth premises in the form required by Buyer.

8.3. The security classification of work to be performed under this Contract will be up to and including SECRET (Negative Vetting Level 1). The Seller shall:

a. possess a facility accreditation and an ICT system accreditation to meet the requirements of document storage, information systems and equipment up to and including SECRET level.

8.4. The security classification of work to be performed under this Contract will be up to and including SECRET level. Seller Personnel shall possess a personnel security clearance up to SECRET (Negative Vetting Level 1) and shall comply with the requirements and procedures of Part 2:20 of the eDSM, as amended from time to time.

8.5. The Seller shall obtain and maintain membership of the Defence Industry Security Program in accordance with eDSM Part 2:42, as amended from time to time.

8.6. The Seller shall classify all information in its possession relating to the performance of this Contract according to the relevant Security Classification and Categorisation Guide applicable to the Program and shall ensure that such information is safeguarded and protected according to its level of security classification.

8.7. No security classified information furnished or generated under this Contract shall be released to a third party, including a representative of another country, without prior written consent of the originator, through the Buyer Representative.

8.8. The Seller shall promptly report to the Buyer Representative any instance in which it is known or suspected that security classified information furnished or generated under this Contract has been lost or disclosed to unauthorized parties, including a

representative of another country.

8.9. The Seller shall 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 eDSM, as amended from time to time.

8.10. The Seller shall ensure that all COMSEC material transmitted between the parties in Australia, or between a party and a Subcontractor located in Australia, shall, in addition to the terms of clause 13.13 above, be subject to the special security provisions of Part 2:53 of the eDSM as amended from time to time.

8.11. The Seller shall ensure that all security classified information transmitted between the parties outside of Australia, or between 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.

8.12. The Seller shall ensure that all COMSEC material transmitted between the parties outside of Australia, or between a party and a Subcontractor located overseas, shall be subject to approval in the first instance by the Director Australian Signals Directorate, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries. 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 Australian Signals Directorate and to any bilateral security instrument between Australia and the overseas country.

8.13. If there has been a breach by the Seller, a subcontractor, or any of their personnel, of clause 8, the Buyer Representative may give the Seller a notice of termination for default under this Contract.

8.14. The Seller shall ensure the requirements of clause 8 are included in all subcontracts under which the subcontractor requires access to any Commonwealth place, area or facility, or to security classified information, in order to perform the obligations of the subcontract.

8.15. Unless otherwise agreed in writing by Buyer, the Seller shall bear the cost of complying with the Commonwealth's security requirements under this Contract.

9. Policy Requirements

9.1. The Seller shall comply with and shall require the Seller personnel, subcontractors and subcontractor personnel to comply with the following Commonwealth policies of general application relevant or applicable to this Contract:

- a) Company Scorecard policy, as detailed in the Defence Company Scorecard Policy Statement;
- b) Defence Equity and Diversity policy, as detailed in the Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour; and DI(G) PERS 35-3;
- c) Conflicts of Interest; Gifts, Hospitality and Sponsorship; Notification of Post Separation Employment; Management and Reporting of Unacceptable Behaviour, the Reporting and Management of Notifiable Incidents and Ethical Relationship policies detailed in the DPPM, DI(G) PERS 25-6, DI(G) PERS 25-7, DI(G) PERS 25-4, DI(G) PERS 35-3, DI(G) ADMIN 45-2 and Defence and the Private Sector -An Ethical Relationship;
- d) Australian Defence Force alcohol policy detailed in DI(G) PERS 15-1;
- e) Defence Environmental, Hazardous Substances, Ozone Depleting Substances, Synthetic Greenhouse Gases, Work Health and Safety, Workplace Gender Equality and Public interest disclosure policies, as detailed in the DPPM; and
- f) Defence Stocktaking and Assurance Checking policy, as detailed in DEFLOGMAN Part 2: Volume 5.

9.2. The Seller shall comply with its obligations under the Workplace Gender Equality Act 2012 (Cth) (WGE Act).

9.3. If the Seller becomes non-compliant with the WGE Act during the period of this Contract, the Seller shall promptly notify the Buyer Representative.

10. Work Health and Safety

10.1. Subject to clause 16.4, the Seller shall to the extent applicable to the Deliverables:

- a) comply with, and shall ensure that all subcontractors comply with, the applicable WHS Legislation when providing the Deliverables including the obligations under the WHS Legislation to consult, co-operate and co-ordinate activities with Buyer, BDA, the Commonwealth and any other person who, concurrently with the Seller, bears a work health and safety duty in

relation to the same matter; and

b) in carrying out work under this Contract ensure, so far as is reasonably practicable, the health and safety of:

- i. Buyer, BDA and Commonwealth personnel;
- ii. Seller personnel and subcontractor personnel; and
- iii. other persons, in connection with the Deliverables.

10.2. Subject to clause 16.4 and without limiting the Seller's obligations under this Contract or at law, the Seller shall:

a) provide to the Buyer Representative within 6 Working Days of a request by the Buyer Representative any information or copies of documentation requested by the Buyer Representative and held by the Seller to enable Buyer to comply with its obligations under the WHS Legislation in relation to this Contract;

b) provide copies of:

- i. all notices and communications issued by a regulator, agent of the regulator or a health and safety representative to the Seller relating to work health and safety matters; and
- ii. all notices, communications and undertakings given by the Seller to the regulator, agent of the regulator or a health and safety representative, in connection with or related to the Deliverables to the Buyer Representative within 6 Working Days of receipt or submission of the notice, communication or undertaking by the Seller (as the case may be);

c) provide to the Buyer Representative within 8 Working Days of a request by the Buyer Representative written assurances specifying that to the best of the Seller's knowledge that it and its officers, employees, agents and subcontractors are compliant with:

- i. the WHS Legislation; and
- ii. any relevant or applicable standards or codes of practice relating to work health and safety, and that the Seller has made reasonable enquiries before providing the written assurances.

10.3. Subject to clause 10.4, the Seller shall ensure that if the WHS Legislation requires that:

a) a person (including a Subcontractor):

- i. 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
- ii. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

b) 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.

10.4. For the avoidance of doubt:

The Seller shall conduct the activities to be performed under this Contract in compliance with the applicable work, health and safety legislation in the country in which the activities are being performed and acknowledges that the WHS Legislation and associated Codes of Practice made under it do not apply to work performed outside Australia. The Seller shall ensure that any Deliverables (including any directions, procedures, methodologies etc.) provided by the Seller under this Contract do not put the Commonwealth or Buyer in breach of their respective obligations under WHS Legislation, or applicable Commonwealth policies.

11. Privacy

11.1. The Seller shall:

- a) if it obtains Personal Information in the course of performing this Contract, use or disclose that Personal Information only for the purposes of this Contract subject to any applicable exceptions in the Privacy Act 1988 (Cth);
- b) comply with its obligations under the Privacy Act 1988 (Cth), and
- c) as a contracted service provider, not do any practice which, if done or engaged in by Buyer, BDA or the Commonwealth, would be a breach of the Australian Privacy Principles.

11.2. The Seller shall notify the Buyer Representative as soon as practical if:

a) it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in clause 11, whether by the Seller, subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of this Contract; or

b) in relation to Personal Information obtained in the course of performing this Contract:

i. it becomes aware that a disclosure of such Personal Information may be required by law; or

ii. it is approached by the Privacy Commissioner or by any individual to whom such Personal Information relates.

11.3. The Seller shall ensure that its personnel who deal with Personal Information for the purposes of this Contract are aware of, and comply with, this clause 11.

11.4. The Seller shall ensure that any subcontract entered into for the purposes of fulfilling its obligations under this Contract, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Seller has under this clause 11, including the requirement in this clause 11.4 in relation to Subcontracts.

12. Drug and Alcohol Testing

12.1 .1. The Seller will ensure that its On-Site Supplier Personnel:

a) acknowledge they have read and understood the Drug and Alcohol Management Plan (DAMP) published on www.boeing.com.au/suppliers;

b) comply with the terms of the DAMP, including but not limited to the right for Buyer, BDA and the Commonwealth to conduct random testing and other forms of testing based on reasonable grounds of suspicion;