

**CUSTOMER CONTRACT REQUIREMENTS
AH MK1 THEATRE PACKAGE UPGRADES
CUSTOMER CONTRACT 45047**

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

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Unless otherwise stated below, "ATIL" shall mean Boeing, and "TBC" shall mean Seller.

CLAUSE 1 Taxes and Duties

1.1 ATIL shall bear all the costs of taxes and export and import duties, levied on the Goods and Technical Data by any UK national, or any international organisation of which the United Kingdom is or may become a member, including but not limited to sales tax, excise tax, customs duties, Value Added Tax, and other similar transfer tax, and all other fees or with holdings. If TBC is properly requested to and makes any payments pursuant to this Clause 8.1 , ATIL shall compensate TBC for any payments made within thirty (30) days of such payment.

1.2 TBC shall bear all costs of any taxes and export and import duties, other than those stated in Clause 8.1. Goods and Technical Data by national, state or local authorities or any international organisation of which the United States of America is or may become a member including but not limited to sales tax, use tax, personal property tax, income tax, consumption tax, customs duties, excise tax and any other similar transfer tax and all other fees or withholdings. Should any similar transfer tax be levied on Goods and Technical Data by the US federal, state or local authorities, they shall be paid by TBC. If ATIL is properly requested to and makes any payments pursuant to this Clause 8, TBC shall compensate ATIL in for any payments made within thirty (30) days of such payment. At the request of TBC, ATIL shall execute a Sales Tax Exemption Certificate, in order to certify that all Training Equipment procured under this Agreement is for use

outside the states of Missouri, USA, or Arizona, USA. TBe prices for the WAH-64 Training Equipment and Services do not contain any costs for Missouri or Arizona Sales Tax.

1.3 Each party shall bear, on its own, any costs including income taxes, wealth taxes, or any other levy imposed on salaries of its personnel working on the premises of the other party.

CLAUSE 2 Warranty

2.1.1 TBC warrants that at the time of Acceptance, material and workmanship comprised in the Goods and Services supplied under the terms of this Purchase Order, shall be such as to enable the Training Equipment to comply with the Specifications.

2.1.2 In the event of a breach of the warranty set forth herein TBC shall and at no increase in contract price, promptly repair, or replace at its election Goods and Services bearing defects that have been confirmed in accordance with the Warranty Claim Process set forth below. ATIL shall notify TBC in writing of any breach of the warranty within 12 months following successful completion of the final Acceptance Test.

2.1.3 Should ATIL require access and usage to any deliverable prior to successful final Acceptance as described, above TBC reserve the right to invoke the commencement of the warranty period from the point of use.

2.2 For the purpose of this Clause, Goods and Services shall mean all ECP parts, software and modifications supplied and incorporated into the Training Equipment.

2.3 Latent Defects Warranty

2.3.1 TBe warrants that, at the time of acceptance, the Goods and Services are free from Latent Defects .

2.3.2 In the event of a breach of the warranty contained herein, TBC shall at its election and at no increase in contract price, promptly repair, replace or otherwise remedy any Goods or Service bearing a Latent Defect that has been confirmed in accordance with the Warranty Claim Process set forth herein. ATIL shall notify TBC in writing of a breach of the warranty contained in this section within six (6) years after acceptance of the defective Training Equipment. Failure by ATIL to notify TBC of a breach within the time specified above constitutes a waiver of any remedies that ATIL might otherwise have for breach of warranty

2.4 Title and Risk of Loss or Damage

2.4.1 Risk of loss or damage to Training Equipment or components returned for repair to TBC under this Warranty shall transfer to the receiver party (ATIL or TBC) on receipt. TBC shall exercise reasonable care in respect of the custody of any such Training Equipment or components as if they were its own property. In the event that replacement parts are provided to ATIL in exchange for the defective Training Equipment or components, title and risk of loss or damage to Training Equipment or components will pass to ATIL when it takes possession of the replacement Training Equipment or components. Title to defective Training Equipment or components will pass to TBC upon receipt.

2.5 Warranty Claim Process

2.5.1 If ATIL notifies TBC in writing that any Training Equipment is, in its view defective, together with details of the alleged defect, then unless otherwise agreed, TBC will send a representative to the appropriate Land location to make an assessment of the warranty claim and provide disposition instructions to Alit. If Training Equipment or compoents are required to be shipped back to TBC, they shall be returned by ATIL intact, as practicable, in ccordance with approved packaging and transportation procedures and TBC shall compensate ATIL on demand for any costs incurred in respect of any such shipping (including without limitation insurance costs) where the components prove to be defective.

2.5.2 TBC may conduct at its expense reasonable and necessary testing to confirm the existence of a defect, its root cause and verification that such defect is not the result of any condition expressly excluded under this Clause.

2.5.3 ATIL shall be appropriately advised of the date, time and location of any test and shall be entitled to observe such tests. A written disposition shall be provided to ATIL as appropriate.

2.6 Exclusions

2.6.1 TBe shall not be liable to ATIL to the extent that the defect results from the Training Equipment having been:

2.6.2 Improperly maintained or repaired by ATIL, or its Subcontractors (other than TBe); or

2.6.3 operated contrary to the technical manuals provided by TBC or other written instructions or restrictions which TBC has provided to ATIL; or

2.6.4 subjected to repair, adjustment, the modification or overhaul contrary to the approved technical manuals or other TBC written instructions or restrictions, or the use of any parts, not approved in writing by TBC; or

2.6.5 misused, neglected or suffered an accident, including combat damage; or

2.6.6 damaged by defects in other equipment other than Training Equipment; or

2.6.7 subjected to foreign object damage (FOD) including erosion wherein TBC erosion or FOD abatement procedures, treatment, protections or equipment have not been used or applied, improperly applied or improperly maintained; or

2.6.8 subject to acts of God, war, subversion, riots, vandalism, sabotage, fire or explosion induced by or originating from sources external to the warranted Training Equipment; or

2.6.9 improperly packaged, crated, handled, shipped or stored by any person except where undertaken by TBC or a Subcontractor of TBC; or

2.6.10 damaged by improperly maintained, repaired or operated AFI, except where undertaken by TBC or a Subcontractor of TBC, or by defective AFI.

2.7 The warranties and undertakings expressly conferred upon ATIL by this Agreement, are accepted by ATIL in place of all other warranties or conditions as to description, quality or fitness for purpose, express or implied by law, including but not limited to the Sale of Goods Act 1979 (as amended), or otherwise in regard to:

2.7.1 any defect in, Q(failure of, or unsuitability of Training Equipment supplied to ATIL by TBC under this Agreement; or

2.7.2 advice, instructions, Technical Data. Know How and Services rendered or done (or omitted to be given, rendered or done) by TBC, or any employee or agent of TBC in connection with this Agreement, and in particular, but without prejudice to the foregoing, TBC shall not be liable to ATIL for any consequential injury, loss or damage sustained or alleged to have been sustained.

2.8 In respect of any repaired original or replacement Training Equipment, ATIL shall be entitled to the balance of the original warranty period referred to above as applicable or six (6) months, whichever is the greater on delivery of the repair concerned. For the avoidance of doubt, nothing contained in this Clause shall affect any warranty offered by TBC pursuant to this Clause.

2.9 TBC will use reasonable endeavours (which shall not include any obligation to incur any additional expenditure) to procure warranties substantially the same to those detailed herein and make those terms transferable to the Authority or to any successor to ATIL it may appoint pursuant to the Prime Contract. If the Subcontractors will not accept the terms of this Clause, TBC will only be liable for the normal warranty provided by its Subcontractors. For the avoidance of doubt, the provisions of this Clause shall not derogate from TBC's obligations and warranties under this Agreement.

2.10 Save as expressly provided by the terms of this Agreement, no review of documentation, inspection of Training Equipment or approval of design documentation made or given by ATIL shall relieve TBC of any obligations under this Agreement.

2.11 Rights of either party under this Agreement may be waived only in writing and specifically. Delay in exercising or non-exercise of any such right is not a waiver of that right.

2.12 The warranties, conditions, representations, obligations and liabilities of TBC and remedies of ATIL set forth in this agreement, are exclusive and in substitution for, and ATIL hereby waives, releases and renounces all other warranties and other obligations and

liabilities of TBC, and any other rights, claims and remedies of ATIL against TBC, express or implied, arising by law or otherwise, with respect to any nonconformance or defect in any goods or services or other things provided under this agreement, including but not limited to:

- a. any implied warranty of merchantability or fitness;
- b. any implied warranty arising from course of performance, course of dealing or usage of trade;
- c. any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence of TBC; and
- d. any obligation, liability, right, claim or remedy for loss of or damage to any property of ATIL, including without limitation any goods or services as applicable.

2.13 TBC shall have no obligation or liability, whether arising in contract (including warranty), tort (whether or not arising from the negligence of TBC), or otherwise, for loss or use, revenue or profit or for any other incidental or consequential damages with respect to any nonconformance or defect in any goods or services or other things provided under this agreement.

CLAUSE 3 Security Requirements

3.1 To the extent that Technical Data to be disclosed under this Agreement or subcontracts, is assigned a security classification, each party shall prior to transfer obtain whatever the appropriate government approvals it requires to disclose or as appropriate to receive Technical Data and shall safeguard such classified Technical Data and maintain a system of security control within their own organisations in accordance with applicable UKG and USG regulations.

3.2 The parties and their employees shall not disclose any Technical Data or transfer title to, or possession of any Training Equipment furnished, or supply or transfer Training Equipment delivered hereunder, or supply services in any manner contrary to the laws of the United States of America or England or contrary to the regulations of the USG or UKG, or any agency thereof, including, but not limited to, the International Traffic in Arms Regulations of the US Department of State, and the National Industrial Security Program Operating Manual of the US Department of Defense.

3.3 Employees of both parties shall obey all pertinent rules and regulations of the other while on the premises of the other party, including those relating to the safeguarding of classified Technical Data. The number and identity of visiting personnel shall be agreed between the parties in advance of any visit. If classified visits are required, each party shall arrange in advance of visits and through the official channels, the necessary security clearance for its personnel according to the relevant government regulations. The host party shall provide, when necessary, suitable and adequate working facilities for visiting personnel as required by this Agreement.

3.4 The following provisions of the USG National Industrial Security Program Operating Manual shall apply:

3.4.1 All classified information or material furnished or generated pursuant to this Agreement shall be protected as follows:

3.4.1.1 The parties shall not release such information or material to a third-country government, person, or firm without the prior written approval of the releasing government;

3.4.1.2 The parties shall afford such information or material a degree of protection equivalent to that afforded it by the releasing government; and

3.4.1.3 The parties shall not use such information and material for a purpose other than that for which it was furnished or generated without the prior written consent of the releasing government.

3.4.2 Classified information or material furnished or generated pursuant to this Agreement shall be transferred through government channels or other channels specified in writing by the Governments of the United States and the United Kingdom, and only to persons who have an appropriate security clearance and an official need for access to such information or material in order to perform this Agreement.

3.4.3 The recipient with its government's equivalent security classification markings shall re-mark classified information or material furnished under this Agreement.

3.4.4 Classified information or material generated under this Agreement shall be assigned a security classification as specified by the USG National Industrial Security Program Operating Manual.

3.4.5 All cases in which it is known or there is a reason to believe that classified information or material furnished or generated pursuant to this Agreement has been lost or disclosed to unauthorised persons by **TBC or ATIL** shall be reported promptly and fully by the cognizant Party to its government's security authorities.

3.4.6 Classified information or material furnished or generated pursuant to this Agreement shall not be further provided to another potential contractor or Subcontractor unless:

3.4.6.1 such potential contractor or Subcontractor located in the United States or the United Kingdom has been approved for access to classified information or material by the US or UK security authorities; and

3.4.6.2 such potential contractor or Subcontractor not located in the US or UK has been granted prior written consent from the USG.

3.4.7 Upon completion of this Agreement, all classified material furnished or generated pursuant to this Agreement shall (i) be destroyed (ii) if furnished, be returned to the party furnishing it, or (iii) if generated, become **TBC** property. This paragraph does not apply to classified material that (i) will reside on the training devices, and (ii) is required for full operational of the training devices. Classified information that resides on the Training Equipment after delivery will be protected in accordance with conditions of this Clause.

3.4.8 The parties shall insert terms that substantially conform to this Article in all subcontracts pursuant to this Agreement that involve access to classified information or material furnished or generated under this Agreement.

CLAUSE 4 Corrupt Gifts and Payments

4.1 **TBC** shall not do and warrants that in entering this Agreement it has not done, any of the following (hereafter referred to as "prohibited acts"):

4.1.1 offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:

4.1.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any contract with the Crown; or

4.1.3 for showing or not showing favour or disfavour to any person in relation to this or any contract with the Crown.

4.1.4 enter into this Agreement or any contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on his behalf, or to his knowledge, unless before the relevant contract is made particulars of any such commission and of the terms and conditions of any such agreement or payment there of have been disclosed in writing to **ATIL**.

TBD NOTIFICATION OF DEBARMENT/SUSPENSION AND EXPORT DATA CONTROL (AUG 2009). Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this contract.

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the or lawfully admitted to the for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).