

**CUSTOMER CONTRACT REQUIREMENTS**  
**In Service Support Contract**  
**CUSTOMER CONTRACT AEW-012**

**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. Deed of Confidentiality**

- (a) "Confidential Information" means all information including (without limitation) trade secrets, know-how, and any information comprised in Technical Information that:
- (i) is by its nature confidential, or
  - (ii) the receiving party knows or ought to know is confidential

But does not include information which:

- (i) is or becomes public knowledge other than by breach of an obligation of confidentiality;
- (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (iii) has been independently developed or acquired without obligation of confidentiality by the receiving party.

The term "Confidential Information" is not to be confused with the "Confidential" Dissemination Limiting Marker (DLM) or Security Classification.

- (b) "Technical Information" means all technical know-how and information reduced to material form produced, acquired, or used by Seller or its subcontractors in relation to this contract and includes all data, databases, Manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, in accordance with ITAR, software design data, in accordance with ITAR. Test results, software updates and other items describing or providing information relating to this contract. This includes data relating to training.
- (c) Seller shall require its personnel that have access to Confidential Information to enter into deeds of confidentiality for the protection of Confidential Information. A copy of the required deed of confidentiality is available from Buyer's Authorized Procurement Representative upon request.

**2. Negation of Employment and Agency**

- (a) Seller shall not represent itself, and shall ensure that its officers, employees, agents, and subcontractors do represent themselves, as being employees, partners, or agents of the Commonwealth of Australia.
- (b) Seller, its officers, employees, agents, and subcontractors shall not by virtue of this contract be, or for any purpose be deemed to be, an employee, partner, or agent of the Commonwealth of Australia.

**3. Seller's Acknowledgment of Buyer's Obligation**

Seller acknowledges that if this contract is terminated, repudiated, or rescinded, whether for breach of its terms or as a result of

bankruptcy, liquidation, or appointment of a receiver for Seller's property or business, Buyer is obligated to promptly notify the Commonwealth of Australia and to complete the subcontract work or subcontract the work to another subcontractor.

#### 4. Security

(This clause applies only if this contract requires Seller to have access to security classified information. Seller's communication with the Commonwealth Representative shall be through Buyer.)

- (a) If Seller requires access to any Commonwealth of Australia (Commonwealth) place, area or facility under the control or responsibility of the Department of Defence, or the Australian Defence Force (ADF), Seller shall:
  - (i) comply with any security requirements notified to Seller by the Commonwealth Representative from time to time; and
  - (ii) ensure that its officers, employees, agents and subcontractors are aware of and comply with the Commonwealth's security requirements.
- (b) Seller shall:
  - (i) ensure that its officers, employees, agents and subcontractors, undertake any security checks or clearances as required by the Commonwealth or US Government, as appropriate;
  - (ii) notify the Commonwealth of any changes to circumstances which may affect Seller's capacity to perform this contract in accordance with the Commonwealth's security requirements; and
  - (iii) if required, provide a written undertaking in respect of security or access to the Commonwealth place, area or facility in the form required by the Commonwealth.
  - (c) The security classification of work to be performed under this contract will be up to and including SECRET level.
  - (d) Seller shall possess a facility clearance at SECRET level for document storage, information systems, equipment and COMSEC, or equivalent, issued by the relevant government industrial security authority, and shall comply with the relevant government industrial security policy.
  - (e) Seller's personnel requiring physical access to the TOP SECRET facility within the 2 Squadron Headquarters shall possess a TOP SECRET (Negative Vet) clearance.
  - (f) Subject paragraph (p), below, Seller shall classify all information in its possession relating to the performance of this contract according to the Security Classification and Categorisation Guide Version 6.0 and shall ensure that such information is safeguarded and protected according to its level of security classification.
  - (g) All security classified information furnished or generated under this contract shall not be released to a third party, including a representative of a country other than Australia or the United States of America, without prior written approval of the originator through the Commonwealth Representative.
  - (h) Seller shall promptly report to the Commonwealth 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 unauthorised parties, including a representative of a country other than Australia or the United States of America.
  - (i) 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 Defence industrial security policy, as set out in Part I of the Defence Security Manual (DSM), as amended from time to time.
  - (j) All COMSEC material transmitted between the parties or a party and a subcontractor, in Australia, shall in addition to the terms of paragraph (i), above, be subject to the special security provisions of ACSI 53, as amended from time to time.
  - (k) 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.
  - (l) 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 Defence Signals Directorate (DSD), 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 DSD and to any

bilateral security instrument between Australia and the overseas country.

- (m) If there has been a breach by Seller or a subcontractor, or any of their officers, employees or agents, of this clause, Buyer may give Seller a notice requiring Seller to take action to remedy the breach or be considered in default.
- (n) Seller shall ensure that, where a subcontractor is required to have access to security classified information, the subcontractor possesses Defence Industrial Security Program accreditation of the appropriate type and level of classification, issued by the Defence Security and Vetting Service in the case of an Australian based Subcontractor or the relevant government industrial security authority in the case of an overseas based subcontractor where Australia has a bilateral security agreement in place.
- (o) Seller shall ensure the requirements of this clause are included in all subcontracts where the subcontractor requires access to security classified information in order to perform its obligations under the subcontract.

## 5. Policy Requirements

(a) Seller shall comply with and require its officers, employees, agents, and subcontractors to comply with the following Commonwealth of Australia policies of general application relevant or applicable to this contract\*:

(i) Conflicts of interest; Gifts, hospitality and sponsorship; Notification of post separation employment; Management and reporting of unacceptable behaviour; and Incident reporting and management policies as detailed in the DPPM, DI(G) PERS 25-6, DI(G) PERS 25-7, DI(G) PERS 25-4, DI(G) PERS 35-3 and Interim Defence Instruction ADMIN 45-2;

(ii) Unacceptable Behaviour as detailed in DI (G) PERS 35-3;

(iii) Not used;

(iv) Workplace Gender Equity policy as detailed in DDPM. Seller shall comply with its obligations under the Workplace Gender Equality Act 2012 (Cth) (WGE Act). If Seller becomes non-compliant with the WGE Act during the period of the Contract, Seller shall notify Buyer's Representative.;

(v) Defence Stocktaking policy and Assurance Checking policy as detailed in DEFLOGMAN Part 2: Volume 5;

(vi) Hazardous Substance policy as detailed in DPPM;

(vii) Not used;

(viii) Australian Privacy Principles of the *Privacy Act 1988*;

(ix) Not used;

(x) Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in DPPM;

(xi) Defence Environmental policy as detailed in the DPPM;

(xii) Company ScoreCard policy as detailed in the DPPM;

(xiii) Work Health and Safety Policy as detailed in the DPPM;

(xiv) Public Interest Disclosure policy as detailed in the DPPM;

(xv) Not used.

(b) If the SOW requires a higher standard than a policy mentioned in this articles, Seller shall comply with the SOW to the extent of the inconsistency.

(c) Without limiting any other provision of this Contract, Seller shall, and shall require all subcontractors to comply with Commonwealth policies referred to in this article where such policies are relevant or applicable to Seller or the subcontractor for the work to be conducted by Seller or the subcontractor, unless Buyer waives the requirement. Should Seller or a subcontractor refuse to accept inclusion of such policy, Seller shall notify Buyer seeking a waiver for such policy.

(d) The parties acknowledge that the WHS Legislation does not apply when the provision of the Supplies and work performed under the contract/subcontract take place outside of Australia.

## 6. Privacy

(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 Contract subject to any applicable exceptions 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 Buyer or Commonwealth, would be a breach of the Australian Privacy Principles.

(b) Seller shall notify the Buyer Representative as soon as practicable if:

- i. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this article 6, 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 or by any individual to whom such Personal Information relates.

(c) Seller shall ensure that its officers, employees and agents, subcontractors or subcontractor Personnel who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this clause.

(d) Seller shall ensure that any subcontract entered into for the purposes of fulfilling its obligations under the Contract, contains provisions to ensure that the subcontractor complies with this clause.

(e) Paragraph d. does not apply to a subcontract where the work of the subcontractor under the Contract 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.

### **7. Condition as to Disclosure by Seller**

(a) Seller shall promptly notify and fully disclose to Buyer, in writing, any event or occurrence actual or impending during the performance of the Contract which may materially affect Seller's ability to perform any of its obligations under the Contract.

(b) Without limiting paragraph a, Seller:

- i. warrants that, to the best of its knowledge, as at the effective date of the Contract, no conflict of interest exists which is likely to affect the performance of its obligations under the Contract by itself or by any of its employees, officers, agents or subcontractors; and
- ii. shall notify Buyer in writing immediately upon it becoming aware the conflict of interest has arisen or is likely to arise.

(c) Within seven days after giving notice under paragraphs a. or b., Seller shall notify Buyer in writing of the steps Seller will take to resolve the issue. If Buyer considers those steps are inadequate, it may give reasonable direction to Seller to resolve the issue and Seller must comply with such direction.

(d) If Seller fails to notify Buyer in accordance with paragraphs a, b. ii., or c., or is unable or unwilling to resolve the issue in the required manner, Buyer may give Seller a notice of termination for default in accordance with the General Provisions.

(e) Seller shall include rights of Buyer equivalent to those contained in this article in all subcontracts.

### **8. Work Health and Safety**

(a) Buyer and Seller:

- i. shall, where applicable, comply with the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with Buyer or Seller (as the case may be) and any other person who, concurrently with the party, bears a work health and safety duty in relation to the same matter; and
- ii. acknowledge they have a duty under the WHS Legislation in carrying out work under the Contract to ensure, so far as is reasonably practicable, the health and safety of:

- (a) Buyer personnel;

(b) Seller personnel and subcontractor personnel; and

(c) other persons,

in connection with the Supplies; and

iii. to the extent that the work under the Contract involves design (as that term is defined in the WHS Legislation) activities, so far as reasonably practicable, comply with, and shall ensure that all subcontractors (where applicable) comply with, the applicable provisions of the WHS Legislation relating to design activities.

(b) Seller represents and warrants that:

i. it has given careful, prudent and comprehensive consideration to the work health and safety 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 work health and safety risks which complies with, all applicable legislation relating to work health and safety including the WHS Legislation.

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

i. provide the Supplies in such a way that Buyer, Buyer personnel, or Buyer's Customer are able to undertake any reasonably contemplated roles or obligations in connection with the Supplies (such as in relation to testing or auditing); and

ii. ensure that Buyer, Buyer personnel, and Buyer's Customer are able to make full use of the Supplies for the purposes for which they are intended (as contemplated by the Contract), and to maintain, support and develop them (as contemplated by the Contract),

without the Buyer, Buyer personnel, Buyer's Customer contravening any legislation relating to work health and safety including the WHS Legislation, any applicable standards relating to work health and safety or any Defence policy relating to work health and safety.

(d) Buyer must provide to Seller Representative in a timely manner:

i. any information or copies of documentation or access to such information or documentation reasonably requested by the Seller Representative and held by Buyer to enable Seller to comply with its obligations under the WHS Legislation in relation to the Contract; and

ii. information required by section 25 of the Work Health and Safety Act 2011 (Cth) where the Commonwealth is a "supplier" for the purposes of section 25(1) of the Work Health and Safety Act 2011 (Cth) in respect of the Contract.

(e) Without limiting Seller's rights or obligations under the Contract or at law, Seller shall:

i. provide, and shall use its reasonable endeavours (having regard to the obligations of the parties under the WHS Legislation) to ensure that a Identified Subcontractor provides, to the Buyer Representative within 8 Working Days of a request by the Buyer Representative any information or copies of documentation or access to such information or documentation reasonably requested by the Buyer Representative and held by Seller or a Subcontractor (as the case may be) to enable Buyer to comply with its obligations under the WHS Legislation in relation to the Contract;

ii. provide to the Buyer Representative information required by section 25 of the Work Health and Safety Act 2011 (Cth) where the Contractor is a "supplier for the purposes of section 25(1) of the Work Health and Safety Act 2011 (Cth) in respect of the Contract;

iii. without limiting paragraph 8(f), provide, and must use its reasonable endeavours (having regard to the obligations of the parties under the WHS Legislation) to ensure that a Identified Subcontractor provides, copies of:

(a) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the WHS Legislation to Seller or the subcontractor relating to work health and safety matters;

(b) all formal notices issued by a health and safety representative under or in compliance with the WHS Legislation; and

(c) all formal notices, written communications and undertakings given by Seller or the subcontractor (as the case may be) to the regulator or agent of the regulator under or in compliance with the WHS Legislation,

in connection with or related to the provision of the Supplies to the Buyer Representative within 10 Working Days (or longer period as agreed by the parties each acting reasonably) of receipt or submission of the notice, written

communication or undertaking by Seller or subcontractor (as the case may be); and

iv. provide, and must use its reasonable endeavors (having regard to the obligations of the parties under the WHS Legislation) to ensure that a Identified Subcontractor provides, to the Buyer Representative within 8 Working Days (or such longer period as agreed by the parties each acting reasonably) of a request by the Buyer Representative, written assurances specifying that to the best of Seller's or the Identified Subcontractor (as the case may be) knowledge that it and its officers, employees, agents and subcontractors are compliant with:

(a) the WHS Legislation; and

(b) any relevant or applicable standards or codes of practice under the Work Health and Safety Act 2011 (Cth) except where Seller complies with the WHS Legislation in a manner that is different from the relevant code of practice but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code of practice,

v. in respect of the Contract and that Seller or Identified Subcontractor (as the case may be) has made reasonable enquiries before providing the written assurances.

(f) If applicable, 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.

(g) 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 work health and safety, it shall immediately notify Buyer giving full particulars (so far as they are known to it).

(h) Without limiting any other provision of the Contract and subject to the relevant persons complying with the applicable Defence security requirements and Seller access controls, Seller, upon specific written request by the Buyer Representative and within a reasonable time must give and must use its reasonable endeavors (having regard to the obligations of the parties under the WHS Legislation) to ensure that a Identified Subcontractor gives, the Buyer Representative and any person authorized by the Buyer Representative access to:

i. premises to conduct site inspections for the purpose of monitoring Seller's or the subcontractor's (as the case may be) compliance with any applicable laws, Authorization or plans in connection with work health and safety in relation to the Contract or the Supplies; and

ii. all internal and third party audit results in relation to work health and safety in relation to the Contract or the Supplies.

(i) Without limiting the Contract and to the extent not inconsistent with other express requirements of the Contract, the Buyer Representative may direct Seller to take specified measures that the Buyer Representative considers reasonably necessary to comply with the WHS Legislation in relation to the performance of the Contract or the provision of the Supplies. Seller shall comply with the direction unless Seller demonstrates to the reasonable satisfaction of the Buyer that it is already complying with the WHS Legislation in relation to the matter to which the direction relates to 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.

(j) Subject to paragraph 8.k. Seller shall not use Asbestos Containing Material (ACM) in providing the Supplies and shall not take any ACM onto Buyer or Commonwealth Premises in connection with providing the Supplies.

(k) Paragraph 8.(j) does not apply to the management, in accordance with the WHS Legislation, of in situ asbestos (as defined in the WHS Legislation) that was installed or fixed before 31 December 2003.

(l) Buyer must notify Seller in writing about ACM known to be within:

i. Commonwealth Premises comprising facilities which are occupied by Seller for the purposes of the performance of the Contract; or

- ii. where applicable, Products and any other Commonwealth assets that are provided to Seller (including GFE (where applicable)) under the Contract.
- (m) Seller may discover ACM in a Product (where applicable) or within Commonwealth Premises or Commonwealth assets that have been provided to Seller by Buyer under the Contract (including GFE (where applicable)) and in such circumstances, Seller must notify the Buyer Representative of that discovery as soon as practicable.
- (n) Notification under paragraphs l. and m. must, as a minimum, identify the condition (i.e. Friable, non-friable but likely to become Friable or non-friable).
- (o) Without limiting any other provisions of this Contract, where either party notifies the other party under paragraphs l. and m., and the ACM is Friable or likely to become Friable, the parties must, so far as is reasonably practicable, consult, co-operate and co-ordinate their activities to make the workplace safe and eliminate the risk of exposure to that ACM.
- (p) Where the Supplies include the supply of new high temperature and high friction components sourced from overseas, Seller must, where requested in writing by the Buyer Representative, provide the Buyer Representative with written assurance that there is no ACM in those components, supported by test results of a representative sample of such components, prepared to AS 4964-2004 (or equivalent) or other quantitative data acceptable to the Buyer Representative.
- (q) If a Notifiable Incident occurs in relation to work performed under the Contract, Seller shall assist the Buyer:
- i. after the Notifiable Incident, and in a manner that is consistent with obligations under applicable laws to preserve the incident site (including any non-disturbance notice issued by an inspector appointed under WHS Legislation), investigate the cause(s) and actual or potential adverse effects on health and safety in relation to the provision of the Supplies;
  - ii. immediately provide the Buyer Representative with a copy of the notice and/ or details of any oral notification that is required to be provided to the relevant Commonwealth, State or Territory regulator about the Notifiable Incident and such other information required by Buyer to notify Comcare of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Sentinel Event Report AE527 or other such WHS Reporting tool as amended from time to time);
  - iii. promptly provide the Buyer Representative with copies of any notice(s) or other documentation given by the relevant Commonwealth, State or Territory regulator in respect of the Notifiable Incident; and
  - iv. take all reasonably practicable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur; and
  - v. provide a written report to the Buyer Representative of the results of the investigation required by paragraph (q) i. and the action taken, or required to be taken, under paragraph (q) iv. within ten (10) Working Days (or such other period as otherwise agreed by the parties each acting reasonably) of the date of notification to the relevant Commonwealth, State or Territory regulator.
- (r) Seller shall immediately inform the Buyer Representative and the Buyer manager in respect of the relevant Commonwealth Premises on which the Notifiable Incident occurred (where applicable) of any Notifiable Incident involving Commonwealth personnel and then provide further information about that Notifiable Incident in accordance with paragraph (q).
- (s) If any Notifiable Incident occurs at Commonwealth Premises managed by Seller or a subcontractor or involves Commonwealth Personnel at Seller or subcontractor controlled premises, Seller shall report the incident in accordance with the applicable Defence policy (as amended from time to time).
- (t) Buyer must immediately inform the Seller Representative of any Notifiable Incident involving Seller personnel on Commonwealth Premises in relation to the provision of the Supplies of which it is aware, and provide the Seller Representative with a copy of the notice that is provided by the Commonwealth to the Commonwealth regulator about the Notifiable Incident.
- (u) The parties acknowledge that the WHS Legislation does not apply when the provision of the Supplies and work performed under a Contract, take place outside of Australia.
- (v) Seller will ensure subcontracts contains equivalent provisions to this clause.
- (w) Definitions
- i. Notifiable Incident has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth) or any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

## 9. Subcontracts

(a) Seller shall not enter into a subcontract under this Contract with a subcontractor named by the Workplace Gender Equality Agency as an employer not complying with the *Workplace Gender Equality Act 2012*.

(b) If any of Seller's subcontracts are terminated, repudiated or rescinded, whether in relation to its terms or as a result of any legislation relating to bankruptcy, liquidation or official management, Seller shall promptly notify the Buyer and shall complete the work under the Subcontract either itself or by engaging another Subcontractor.

## 10. Post Defence Separation Employment

(a) Except with the prior written approval of the Buyer Representative, Seller shall not permit any Defence Personnel or Defence Service Provider who at any time during the preceding 12 month period was engaged or involved in:

- i. the preparation or management of the Prime Contract;
- ii. the assessment or selection of Seller; or
- iii. the planning or performance of the procurement or any activity relevant or related to the Prime Contract,

to perform, contribute or advise in relation to the performance of the Contract.

(b) To avoid doubt, the 12 month period referred to in paragraph a. applies from the date which is 12 months before the date on which Seller proposes that the person start performing or contributing to the performance of the Contract.

(c) The Buyer Representative shall not unreasonably withhold approval of a person under clause paragraph a. and in making a decision shall consider:

- i. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;
- ii. any information provided by Seller about the character and duration of the services proposed to be performed by the person under the Contract;
- iii. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Contract in the manner proposed under 10.c.ii, and the arrangements which Seller proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
- iv. 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 the Contract; and
- v. the policy requirements set out in DMI (PERS) 1/2007 and DI(G)PERS 25-4, as applicable

(d) Seller shall include rights of the Buyer equivalent to those contained in article 10 in subcontracts.

## 11. Confidential Information

This clause applies in addition to the Confidential, Proprietary, and Trade Secret Information and Materials clause of the General Provisions.

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

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

(b) If it is necessary to disclose Confidential Information provided or produced by or on behalf of the other party to a subcontractor or a third party, other than a legal adviser, Commonwealth Nominee or FIS or for a purpose within an exception listed in clause 11.a., the party wishing to make the disclosure shall:

- i. obtain the written consent of the other party to the Contract; and
- ii. if required by the other party, obtain a deed of confidentiality from the subcontractor or a third party.

(c) Where Seller and subcontractor personnel are not already covered by an overarching company confidentiality requirement (e.g. Terms of Employment), Seller shall require that all personnel of Seller and subcontractors enter into deeds of confidentiality for the



protection of Confidential Information.

(d) Seller shall not, in marking information supplied to Buyer, misuse the term Confidential Information or Seller’s equivalent. The marking of information as Confidential Information shall not affect the legal nature and character of the information.

(e) Without limiting any rights of Buyer and Seller provided for elsewhere in the Contract, and in particular the Intellectual Property clause of the CCR and this clause 11, Seller grants to Buyer the right to disclose information relating to communication protocols, interface standards, message formats, or any other electrical, mechanical or optical interface or other requirements which may be required to be released by Buyer so as to allow software or equipment to connect to or communicate with anything provided to Buyer in the course of the Services.

(f)The parties agree that these terms and Attachments, or the parts of them, are Confidential Information to the relevant party as at the Effective Date.

**12A. Transitional Arrangements**

(a) Application of clause 12 (Technical Data, Software, and Contract Material)

i. Subject to clause 12A.a.ii, clause 12 applies to all IP in TD, Software, Contract Material or GFM delivered or required to be delivered under this Contract (including IP in TD, Software, Contract Material or GFM delivered under the Contract prior to 4 September 2018) (**Relevant IP**).

ii. The specified provisions of clause 12 in column (b) of Table 1 do not apply to the Relevant IP identified in column (c) of Table 1 to the extent detailed in column (d) of Table 1.

Item	Specified provisions	Relevant IP	Extent of exemption from application of clause 12
(a)	(b)	(c)	(d)
1.	Clause 12.c.iii.b	IP owned by the Seller or any of its Related Bodies Corporate in any TD or Software delivered under this Subcontract prior to 4 September 2018.	The specified provisions in column (b) do not apply to the IP identified in column (c), unless or until the: a. TD or Software is delivered under this Subcontract after 4 September 2018; or b. the Seller agrees in writing to those provisions applying to that IP.
2.	Clause 12	IP owned by an Existing Subcontractor in any TD, Software or Contract Material delivered under a Subcontract prior to 4 September 2018.	The specified provisions in column (b) do not apply to the IP identified in column (c), unless or until the: a. TD or Software is specified in the MTDI or Software List and the Existing Subcontractor has become a Relevant Subcontractor; b. TD, Software or Contract Material is delivered under this Subcontract or a Subcontract after the Existing Subcontractor has become a Relevant Subcontractor for the Subcontract under which the TD, Software or Contract Material was delivered; or C. the Seller agrees in writing to clause 12 applying to that IP.
3.	Clause 12.d.	IP in any Commercial TD or Commercial Software delivered under a Subcontract prior to 4 September 2018.	The specified provisions in column (b) do not apply to the IP identified in column (c), unless or until the: a. the Commercial TD or Commercial Software is delivered under this Subcontract or a Subcontract after 4 September 2018; or b. the Seller agrees in writing to clause

			12.d. applying to that IP.
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**Table 1 - Application of Clause 12**

iii. Subject to clause 12A.a.ii. and 12A.a.iv., Seller shall use its best endeavours to seek amendments to Existing Subcontracts or other supplier arrangements, or enter new Subcontracts with Existing Subcontractors, to ensure that, within twelve (12) months of 4 September 2018, clause 12 applies to all Relevant IP owned by Existing Subcontractors.

iv. Seller shall, within six (6) months after 4 September 2018, propose a strategy for the transition of each of the following Existing Subcontractors (and their Subcontractors) to the provisions of clause 12:

a. Northrop Grumman Systems Corporation;

v. Upon Buyer approval of Seller's proposal under clause 12A.a.iv. Seller shall use its best endeavours to implement the transition strategies agreed under clause 12A.a.iv. with the objective of maximizing the extent to which clause 12 applies to Relevant IP owned by the Existing Subcontractors referred to in clause 12A.a.iv.

(b) Relevant Subcontractors

i. A Subcontractor engaged directly by Buyer shall be taken to be a **Relevant Subcontractor** if the Subcontractor is engaged under a Subcontract entered into:

a. on or after 4 September 2018; or

b. prior to 4 September 2018, if the Subcontract is amended on or after 4 September 2018 as contemplated under clause 12A.a.iii. unless the parties agree otherwise.

ii. A Subcontractor engaged directly by another Subcontractor (**Head Subcontractor**) shall be taken to be a **Relevant Subcontractor** if the Subcontractor is engaged by the Head Subcontractor under a Subcontract entered into on or after the Head Subcontractor become a Relevant Subcontractor, unless the parties agree otherwise.

iii. A reference in clause 12 to a Subcontractor shall be taken to be a reference to a Relevant Subcontractor.

iv. A reference in clause 12.k.i. to the execution of a Subcontract shall be taken to be a reference to a Subcontractor becoming a Relevant Subcontractor in accordance with this clause 12A.b.

(c) Existing IP Arrangements

i. The terms of Existing ISSC Contracts/Subcontracts will continue to apply (and will be taken to form part of the Contract) in respect of Existing ISSC IP unless and until clause 12 applies to that IP in accordance with clause 12A.a.

**12. Technical Data, Software, And Contract Material**

(a) Ownership of Intellectual Property

i. Nothing in the Contract affects the ownership of IP, except as expressly provided for in this clause 12.

ii. Subject to the other provisions of this clause 12.a., the parties agree that all IP created on or after 4 September 2018, in respect of TD, Software, or Contract Material is assigned to the Seller (or its nominee) immediately upon its creation.

iii. The parties agree that all IP created on or after 4 September 2018, in respect of:

a. Commonwealth TD or Commonwealth Software; and

b. GFM expressly specified in the Contract as requiring ownership by the Commonwealth; and

that is delivered or required to be delivered to the Buyer or any other person under this Contract is assigned to the Commonwealth (or its nominee) immediately upon its creation.

(b) Highly Sensitive TD and Highly Sensitive Software

i. This clause 12.b. applies to all Highly Sensitive TD or Highly Sensitive Software delivered or required to be delivered to Buyer, Buyer's Customer, or any other person under this Contract.

ii. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a License in respect of all TD and all Software to which this clause 12.b. applies; to:

- a. Use the TD or Software for any Defence Purpose; and
- b. grant a Sublicense in accordance with clause 12.i. to Use the TD or Software, or to grant a further sublicense to USE the TD or Software.

Subject to the restrictions, specified in Annex A to the TDSR Schedule.

(c) TD and Software

i. This clause 12.c. applies to all TD and Software delivered or required to be delivered to the Buyer or Buyer's Customer, or any other person under this Subcontract, other than:

- a. Highly Sensitive TD or Highly Sensitive Software to which clause 12.b. applies;
- b. Commercial TD or Commercial Software to which clause 12.d. applies;
- c. Commonwealth TD or Commonwealth Software to the extent that clause 12.e. applies to that TD or Software; and
- d. TD or Software provided as, or as a part of, GFM where clause 12.f. applies to that GFM.

ii. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a License in respect of all TD and all Software to which this clause 12.c. applies, to

- a. Use the TD or Software for any Defence Purpose; and
- b. grant a Sublicense to the Commonwealth to Use the TD or Software for any Defence Purpose; and
- c. grant a Sublicense in accordance with clause 12.c.iii. and clause 12.i. to Use the TD or Software

iii. Buyer and Buyer's Customer may grant a Sublicense in respect of all TD and all Software to which this clause 12.c. applies, to:

- a. a Commonwealth Service Provider to Use the TD or Software to enable the Commonwealth Service Provider to perform its obligations, functions, or duties to the Commonwealth;
- b. any person to Use the TD or Software, or subject to clause 12.c.iv. to grant a further sublicense to Use the TD or Software to do any of the following:
  - (i) installing or configuring the Products Being Supported or the Supplier or Services;
  - (ii) physically integrating the Supplies or Services with the Products Being Supported;
  - (iii) operating or maintaining the Products Being Supported or the Supplies or Services;
  - (iv) rectifying any Defect in the Supplies or Services and any adverse effect of the Defect or the rectification on other Supplies or Products Being Supported where Seller has failed to comply with its obligations under the Contract in relation to the Defect;
  - (v) undertaking training in relation to the Products Being Supported or the Supplies or Services;
  - (vi) removing or uninstalling the Supplies or Services;
  - (vii) decommissioning or destroying the Products Being Supported or the Supplies or Services
  - (viii) for the person to respond to a request to be engaged for any of the above purposes; and
  - (ix) for any other purpose (including to modify and upgrade any of the Products Being Supported), but subject to any restrictions specified in Annex B to the TDSR Schedule; and

- c. any person for a purpose referred to in clause 11.

iv. Buyer shall notify Seller of any further sublicenses granted by Sublicenses under clause 12.c.iii.b over the preceding 12 month period.

(d) Commercial TD and Commercial Software

- i. This clause 12.d. applies to all Commercial TD and Commercial Software delivered or required to be delivered to Buyer or any other person under this Contract.
- ii. Seller shall ensure that each Commercial Item (and related Commercial TD or Commercial Software) delivered or required to be delivered under this Contract is specified as a Key Commercial Item in Annex C to the TDSR Schedule, if the IP in the related Commercial TD or Commercial Software is owned by:
  - a. Seller
  - b. an Approved Subcontractor
  - c. a Related Body Corporate of Seller;unless otherwise agreed by Buyer in writing.
- iii. Seller shall ensure that Buyer and Buyer's Customer is granted a license in respect of all Commercial TD and all Commercial Software to which this clause 12.d. applies on the following terms:
  - a. For TD and Software relating to a Key Commercial Item, a license to Use the TD or Software, or to grant a sublicense to any person to Use the TD or Software, to perform any of the activities set out in clause 12.c.iii.(b)(i)-12.c.iii.(b)(viii) subject to any restrictions specified in Annex C to the TDSR Schedule for that item; and
  - b. for all other TD and Software, on the best commercial terms available to Seller.
- iv. Seller shall notify Buyer of any requirement of Buyer or Buyer's Customer to pay a Royalty or other fee in respect of Commercial TD and Commercial Software to which this clause 12.d. applies prior to such license being granted to Buyer or Buyer's Customer.

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(e) Commonwealth TD and Commonwealth Software

- i. This clause 12.e. applies to all Commonwealth TD and Commonwealth Software delivered or required to be delivered to the Commonwealth or any other person under this Contract, to the extent that the IP in that TD or Software is assigned to the Commonwealth under clause 12.a.iii.
- ii. Buyer grants to Seller a non-exclusive, Royalty-free licence in respect of the Commonwealth TD and Commonwealth Software to the extent that this clause 12.e. applies to:
  - a. Use the TD and Software for the purpose of enabling Seller to perform its obligations under this Contract;
  - b. grant a sublicense to a Subcontractor to Use the TD and Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
  - c. grant a sublicense to a person for a purpose referred to in clause 11;subject to any restrictions specified in Annex D to the TDSR Schedule or as otherwise notified by Buyer.
- iii. Seller shall ensure that any IP in Commonwealth TD or Commonwealth Software not assigned to the Commonwealth under clause 12.a.iii. is specified in Annex D to the TDSR Schedule and capable of being clearly distinguished from the IP assigned to the Commonwealth.

(f) GFM License

- i. This clause 12.f. applies to all TD or Software that is:
  - a. provided as, or as a part of, GFM; or
  - b. created under this Contract, in respect of GFM.Except to the extent that IP in the TD or Software is owned by Seller or a Subcontractor.
- ii. Buyer grants to Seller (or shall ensure Seller is granted), a non-exclusive, Royalty-free license in respect of the TD or Software to the extent that this clause 12.f. applies to:
  - a. Use the TD or Software for the purpose of enabling Seller to perform its obligations under the Contract;
  - b. grant a sublicense to a Subcontractor to Use the TD or Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and

- c. grant a sublicense to a person for a purpose referred to in a clause 11,  
subject to any restrictions specified in Attachment D to this Contract or as otherwise notified by Buyer.

iii. Without limiting any restrictions specified in the Contract or as otherwise notified by the Buyer under clause 12.f.ii., the Seller's right to grant a sublicense under clause 12.f.ii.b is subject to the following conditions:

- a. the sublicense shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to Seller;
- b. the rights granted under the sublicense shall be limited to the rights that are reasonably necessary to enable the sublicensee to Use the TD or Software to efficiently perform its obligations, functions or duties to the Seller;
- c. the rights granted under the sublicense shall expire when no longer required for the purposes referred to in clause 12.f.ii.b.; and
- d. any right of the sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 12.f.iii.

iv. The licence under clause 12.f.ii.a (and any sublicense granted under clause 12.f.ii.b) expires upon the expiry or termination (whichever is the earlier) of this Contract, or the relevant Subcontract.

(g) Contract Material

i. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a Licence in respect of all Contract Material to:

- a. Use the Contract Material for any Defence Purpose;
- b. grant a Sublicense in accordance with clause 12.i. to:
  - (i) the Commonwealth to Use the Contract Material for any Defence Purpose;
  - (ii) a Commonwealth Service Provider to Use the Contract Material to perform its obligations, functions or duties to the Commonwealth;
  - (iii) any person to Use the Contract Material, or to grant a further sublicense to Contract Material, provided that any related disclosure of Confidential Information in the Contract Material is provided with the written consent of the other party (and such consent may be subject to conditions); and
  - (iv) any person for a purpose referred to in clause 11.

(h) Required for Airworthiness Investigations

- i. This clause 12.h.applies to all TD that is made available to Buyer or Buyer's Customer for the purpose of an Airworthiness Investigation to the extent that IP in the TD is owned by or licensed to Seller or any of its Related Bodies Corporate.
- ii. The licences under clauses 12.b, 12.c., 12.d. and 12.g. shall not apply to any TD made available for the purpose of an Airworthiness Investigation.
- iii. Seller grants to Buyer and Buyer's Customer (or shall ensure Buyer and Buyer's Customer is granted) a Licence in respect of any TD to which this clause 12.h. applies, to use (or grant a Sublicense to the Commonwealth or a Commonwealth Service Provider in accordance with clause 12.i.) for the purpose of the relevant Airworthiness Investigation.

(i) Buyer Sublicenses

i. Buyer's and Buyer's Customer's right to grant a Sublicense to a person ("Sublicensee") in accordance with clause 12.b., 12.c. or 12.g. is subject to the following conditions:

- a. the Sublicense shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to Buyer ;
- b. the rights granted under the Sublicense shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD, Software and Contract Material (as applicable) to efficiently perform its obligations, functions or duties to Buyer or a Buyer Contractor;

- c. in the case of a Commonwealth Service Provider, the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD, Software and Contract Material (as applicable) to efficiently perform its obligations, functions or duties to the Commonwealth or a Commonwealth Contractor;
- d. the rights granted under the Sublicence shall expire when no longer required for the purposes referred to in clause 12.i.i.b. or c; and
- e. any right of the Sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 12.i.

(j) No Commercialization

- i. A Licence or Sublicence granted in accordance with this clause 12 does not permit Buyer or Buyer's Customer or its sublicensee to Commercialise any IP in the TD, Software or Contract Material.
- ii. For the avoidance of doubt, clause 12.j.i, does not prevent Buyer or Buyer's Customer from granting a sublicense in accordance with the rights granted in this clause 12 to a person for the purpose of the person providing goods or services to Buyer or Buyer's Customer for a Defence Purpose.

(k) Principal Subcontractor IP Deed

- i. Seller shall obtain and provide to the Buyer an IP Deed duly executed by a relevant Principal Subcontractor before any goods or services are provided by a relevant Principal Subcontractor and no later than 20 Working Days after executing the relevant Subcontract. A copy of the IP Deed is available upon request to Buyer's Authorized Procurement Representative.
- ii. For the purposes of this clause 12.k., "a relevant Principal Subcontractor" means a Principal Subcontractor identified, as being required to provide an IP Deed to the Buyer.

(l) Failure to Obtain IP Rights

- i. Seller shall promptly notify Buyer if Seller considers it will be unable to comply with any of its obligations under this clause 12 in respect of IP (an "IP Issue"), including if Seller is not able to ensure that Buyer or Buyer's Customer is:
  - a. assigned any IP as required under clause 12.a.iii.;
  - b. granted rights to TD, Software or Contract Material as required by this clause 12; or
  - c. provided with an IP Deed as required under clause 12.k.
- ii. Seller shall ensure that a notice under clause 12.l.i. includes details of:
  - a. the relevant IP Issue, including the steps taken by Seller to ensure compliance with this clause 12 or to mitigate the effects of the IP Issue;
  - b. the Products Being Supported or the Supplies or Services (and related TD, Software or Contract Material) to which the IP Issue relates;
  - c. the rights that Seller is able to ensure are granted to Buyer and Buyer's Customer in respect of the relevant TD, Software or Contract Material; and
  - d. options available to remedy, or mitigate the effects of, the IP Issue.
- iii. If Seller gives a notice of an IP Issue, or Buyer or Buyer's Customer considers that an IP Issue has occurred, the JMT shall promptly meet to consider strategies to minimize disruption to the Contract. Buyer may, taking into account any advice of the JMT or the JAB if applicable, by notice to Seller, without limiting any of its other rights under the Contract, do any one or more of the following:
  - a. require that the Seller:
    - (i) use alternative goods or services, or obtain the goods or services from another supplier, to ensure that Seller complies with the requirements of this clause 12; or
    - (ii) modify the Supplies, TD, Software or Contract Material to the extent necessary to ensure that Seller complies with the requirements of this clause 12;
  - b. agree to waive a requirement of this clause 12 on such conditions as the Buyer may determine;

c. reduce the scope of the Contract to exclude the Supplies, TD, Software or Contract Material to which the IP Issue relates; or

d. require the Seller to submit a SCP to amend the Contract to implement any of the actions required under this clause 12.1.iii. or any other option to remedy the IP Issue, or mitigate the effects of the IP Issue.

iv. Seller shall comply with a notice issued by Buyer under clause 12.1.iii.

v. Any notice issued by Buyer under clause 12.1.iii. is not an event or circumstance beyond the reasonable control of Seller for the purposes of the Force Majeure clause, unless otherwise agreed by the JMT, or the JAB if applicable.

(m) TDSR Schedule

i. Seller shall take all reasonable steps (including by submitting a SCP in accordance with the Contract) to ensure the TDSR Schedule is up to date and contains an accurate description of all restrictions applicable to Buyer's and Buyer's Customer's rights in respect of TD, Software and Contract Material, delivered or required to be delivered under the Contract.

ii. Buyer's rights and Buyer's Customer's rights in respect of TD, Software and Contract Material under this clause 12 are not subject to any restrictions, unless such restrictions are permitted under the Contract and expressly set out in the TDSR Schedule.

(n) TD and Software Required to be Delivered

i. Seller shall deliver all TD and Software required to be delivered under this Contract to the recipients at the times and locations, and in the manner, specified in the Contract.

ii. Without limiting the Seller's obligation under clause 12.n.1 (and subject to clause 12.n.iii.), if Buyer is not specified as a recipient of any item of TD listed in the MTDI, or any item of Software listed in the Approved Software List (if any), Buyer, may by notice to the Seller, require the delivery of the item to Buyer.

iii. Seller shall comply with a notice given under clause 12.n.ii. unless compliance with the notice would be inconsistent with any restricted delivery requirements specified in Annex A or B (as applicable) to the TDSR Schedule.

iv. If the time, location or manner of delivery of any item of TD or Software required to be delivered is not specified in the Contract, Seller shall deliver the relevant item in accordance with a notice given by Buyer.

v. Buyer shall act reasonably when giving a notice under clause 12.n.ii. or clause 12.n.iv. including in relation to specifying a time for delivery of the item of TD or Software.

vi. If a Contract is terminated, Seller shall, within the period set out in the notice of termination (which shall be a reasonable period), deliver to Buyer all TD and Software required to be delivered under that Contract, each in its then current state of development.

vii. An obligation under this clause 12.n. or any other provision under this Contract or a Contract that requires Seller to deliver TD or Software (other than under clause 12.n.vi.) includes an obligation to create, develop or acquire the TD or Software to enable the TD or Software to be delivered to Buyer at the times and in the manner required under this Contract or the relevant Contract.

viii. The MTDI and the Approved Software List (if any) do not operate to restrict the rights of Buyer in respect of IP in any TD or Software under this clause 12 or otherwise under this Contract.

ix. For the purposes of this clause 12, an item of TD, Software or Contract Material is not taken to have been delivered under this Contract if, at the time it is provided:

a. Seller identifies that the item is provided for the information of Buyer only; and

b. the item is not otherwise required to be delivered under the Contract.

(o) Electronic Delivery of TD, Software, and Contract Material

i. If an item of TD, Software or Contract Material is permitted by this Contract to be delivered in electronic form to Buyer, the item is deemed to have been delivered:

a. if the item is to be delivered by access to an information system of Seller - when all of the following requirements are met:

- (i) the item is present in the information system;
- (ii) Buyer has been notified that the item is present in the information system; and
- (iii) the item is accessible for use by Buyer in accordance with the SOW; or

b. if the item is to be delivered by an electronic communication or by transfer into an information system nominated by Buyer - when all of the following requirements are met:

- (i) the electronic communication or transferred item enters the information system, unless Seller receives notification within one Working Day that the electronic communication or transfer has not been successful; and
- (ii) Buyer has been notified that the item has been successfully sent or transferred to the information system.

(p) Markings

i. Where markings are used by Seller or a Subcontractor in relation to TD, Software or Contract Material, Seller:

- a. shall ensure that those markings accurately reflect the rights and obligations of Buyer, Buyer's Customer, Seller or any other person; and
- b. acknowledges that the markings are not determinative as to the rights and obligations of the parties.

(q) TD and Software Warranties

i. Seller warrants that:

- a. the rights granted to Buyer or Buyer's Customer in accordance with this clause 12 (including in relation to Commercial TD or Commercial Software) will not prevent the Products Being Supported or the Supplies from being used as provided for in the Contract;
- b. the rights granted to Buyer in accordance with clause 12.d.iii. a. in relation to a Key Commercial Item shall be on terms that are no less favourable than the best commercial terms available to Seller; and
- c. the TD listed in the MTDI includes (at a minimum) all of the TD used or generated by Seller and its Subcontractors in the performance of this Contract on and from 4 September 2018.

ii. Seller shall use its best endeavours to ensure that:

- a. all Software delivered or required to be delivered to Buyer under this Contract is free from Malware, at the time of delivery to Buyer; and
- b. no Malware will be installed on the Products Being Supported or the Supplies or any other Commonwealth or Buyer, or Buyer's Customer's system as a result of an act or omission of any of Seller Personnel.

(r) Intellectual Property Warranties

i. Seller warrants and shall ensure that, in respect of any IP assigned or licensed to Buyer under or in connection with this Contract, at all times:

- a. the relevant assignor or licensor (as applicable) has the right, title or authority to assign or license, and has been made aware of, the rights granted in respect of IP under this clause 12 or under an IP Deed; and
- b. Seller shall notify Buyer if Seller becomes aware of any challenge, claim or proceeding referred to in clause 12.r.iii. arising in respect of any IP after the relevant TD, Software or Contract Material is delivered to the Buyer.

ii. If Buyer, Buyer Personnel, Buyer's Customer or a sublicensee of Buyer infringes the IP or any Moral Rights of any third party as a consequence of:

- a. an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in this Contract (including in this clause 12); or
- b. a failure by Seller to grant (or ensure the grant) of a licence or assign (or ensure the assignment) of IP rights under or referred to in this Contract (including in this clause 12);

Seller shall, use its best endeavours to:

- c. modify the item in order to avoid continuing infringement and so that the Supplies meet the requirements of this



Contract with the modified item;

d. procure the rights or additional rights necessary to ensure that Buyer, Buyer Personnel, Buyer's Customer and sublicensees are entitled to exercise the rights under this clause 12 or an IP Deed in respect of the item; or

e. remove the item from the Supplies and modify the Supplies to the extent necessary to ensure that the Supplies meet the requirements of this Contract without the item.

iii. Seller warrants and shall ensure that, in respect of any IP in any TD, Software or Contract Material delivered or required to be delivered under this Contract, and as at the time of delivery to Buyer of the relevant TD, Software or Contract Material and after making diligent inquiries:

a. the IP is licenced to, or owned by, Buyer or Buyer's Customer as required by this clause 12;

b. Seller has no notice of any challenge to the validity or enforceability of any of the IP and has no knowledge of any actual or threatened claim or proceeding in relation to any of the IP;

c. neither Seller, nor any Approved Subcontractor is engaged in litigation, arbitration or other proceedings in relation to any of the IP; and

d. there are no proceedings threatened by or against Seller or any Approved Subcontractor in relation to any of the IP and there is nothing that is likely to give rise to any such proceedings.

iv. The warranty under clause 12.r.i. and the obligations under clause 12.r.ii. do not apply to the extent that the infringement arises from a failure by Buyer, Buyer Personnel, Buyer's Customer, or a sublicensee of Buyer to comply with a relevant restriction specified in the TDSR Schedule.

(s) Patents, Registrable Designs and Circuit Layouts

i. Seller warrants and shall ensure that a licence is granted or obtained under this Contract for Buyer and Buyer's Customer to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use or support the Supplies for the purposes provided for in this Contract.

ii. Seller warrants and shall ensure that any restriction on a right referred to in clause 12.s.i. is specified in Annex F to the TDSR Schedule.

(t) Export Approvals

i. Nothing in this clause 12 affects the obligations of either party to comply with any export control laws or the terms of any Export Approval that is binding on it (including the International Traffic In Arms Regulations of the United States of America and any other similar Australian or United States of America legislation or subordinate legislation).

(u) Existing IP Licences

i. The licences, rights and obligations under this clause 12 are in addition to, and do not affect, any other licences, rights or obligations relating to IP under any other contracts between the parties, unless expressly stated otherwise for the purposes of this clause.

(v) Notice of Sublicence Infringement

i. Subject to clause 12.v.ii. , each party agrees to use their best endeavours to notify the other party if it becomes aware of an act or omission of a sublicensee that is an infringement of, and could not have been authorised by the party under, a sublicense granted in accordance with this clause 12 (a Sublicence Infringement).

ii. The parties agree that:

a. clause 12.v.i. does not require a party give a notice if to do so would breach an obligation of confidence, a contract or deed, a statutory requirement or a Commonwealth policy applicable to it; and

b. a failure to provide a notice under clause 12.v.i. does not affect the party's other rights or obligations under this Contract or constitute an act of authorisation for the purposes of the Copyright Act 1968.

### 13. Defence Security

This clause applies if Seller or Seller's subcontractor requires access to security classified information in order to perform its obligations under the Contract/Subcontract.

- (a) If Seller requires access to any Commonwealth place, area or Facility under the control or responsibility of the Department of Defence, or the ADF, Seller shall:
- i. comply with any security requirements notified to Seller by Buyer from time to time; and
  - ii. ensure that its officers, employees, agents and subcontractors are aware of and comply with the Commonwealth's security requirements.
- (b) Seller shall:
- i. ensure that its officers, employees, agents and subcontractors, undertake any security checks or clearances as required by the Commonwealth or US Government, as appropriate;
  - ii. notify Buyer of any changes to circumstances which may affect Seller's capacity to provide Services in accordance with the Commonwealth's security requirements; and
  - iii. if required, provide a written undertaking in respect of security or access to the Commonwealth place, area or facility in the form required by Buyer.
- (c) The security classification of work to be performed under this Contract will be up to and including SECRET level.
- (d) Seller shall possess a facility clearance at SECRET level for document storage, information systems, equipment and COMSEC, or equivalent, issued by the relevant government industrial security authority, and shall comply with the relevant government industrial security policy.
- (e) Seller Personnel requiring physical access to the TOP SECRET facility within the 2 Squadron Headquarters shall possess a TOP SECRET (Negative Vet) clearance.
- (f) Subject to clause 13.p., Seller shall classify all information in its possession relating to the performance of the Subcontract according to the Security Classification and Categorisation Guide Version 6.0 and shall ensure that such information is safeguarded and protected according to its level of security classification.
- (g) All security classified information furnished or generated under the Contract, shall not be released to a third party, including a representative of a country other than Australia or the United States of America, without prior written approval of the originator through Buyer.
- (h) Seller shall promptly report to Buyer any instance in which it is known or suspected that security classified information furnished or generated under Contract has been lost or disclosed to unauthorised parties, including a representative of a country other than Australia or the United States of America.
- (i) 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 Defence industrial security policy, as set out in Part I of the DSM, as amended from time to time.
- (j) All COMSEC material transmitted between the parties or a party and a Subcontractor, in Australia, shall in addition to the terms of clause 13.i. above, be subject to the special security provisions of ACSI 53, as amended from time to time.
- (k) 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.
- (l) All COMSEC material transmitted between the parties or a party and subcontractor located overseas, shall be subject to approval in the first instance by the Director Defence Signals Directorate (DSD), 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 DSD and to any bilateral security instrument between Australia and the overseas country.
- (m) If there has been a breach by Seller, a subcontractor, or any of their officers, employees or agents, of this clause 13, Buyer may give Seller a notice requiring the Seller to take action to remedy the breach.
- (n) Seller shall ensure that, where a subcontractor is required to have access to security classified information, the subcontractor possesses Defence Industrial Security Program accreditation of the appropriate type and level of classification, issued by the Defence Security and Vetting Service in the case of an Australian based subcontractor or the relevant government industrial security authority in the case of an overseas based subcontractor where Australia has a bilateral security agreement in place.

(o) Seller shall ensure the requirements of this clause 13 are included in all subcontracts where the subcontractor requires access to security classified information in order to perform its obligations under the subcontract.

(p) Buyer acknowledges that the Target Cost is based on the Seller complying with Security Classification Grading Document Issue 1.0. If Seller's Allowable Costs in complying with the Security Classification and Categorisation Guide Version 6.0 are greater than the Allowable Costs in complying with Issue 1.0, then Seller shall raise a SCP in accordance with the Contract to increase the Target Cost and Fee to reflect the additional Allowable Costs. If Buyer rejects the SCP in accordance with the Contract, then Seller's obligations under clause 13.f. shall apply to Security Classification Grading Document Issue 1.0.

#### 14. Definitions

**Circuit Layout-** means a circuit layout that is protected under the *Circuit Layouts Act 1989* (Cth) or the corresponding laws of any other jurisdiction.

**Commercial Item** - means an item that is:

- a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and
- b. able to be used for its intended purpose under the relevant Contract without development or modification (except for any minor modification or reconfiguration)

**Commercial Software**-means Software that is:

- a. a Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item under the standard commercial terms applicable to that item; or
- c. Free and Open Source Software.

**Commercial TD:** means TD that is:

- a. a Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that Item or Software.

**Commercialise:** means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in TD, Contract Material or Software in return for payment of a Royalty or a commercial return to the Commonwealth or the sublicensee.

**Commonwealth Service Provider:** means a person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth, including a person engaged to provide:

- a. professional, administrative, contract management or project management services to Defence; or
- b. technical management or assurance services, including verification and validation, safety, certification, security or capability development,

but does not include a person specified in Annex E to the TDSR Schedule.

**Commonwealth Software:** means:

- a. any Software of the type described in Annex D to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and
- b. any developments, modifications or improvements to that Software.

**Commonwealth TD:** means:

- a. any TD of the type described in Annex D to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and
- b. any developments, modifications or improvements to that TD.

**Contract Material:** means information, other than TD or Software, reduced to a material form (whether stored electronically or otherwise) that is delivered or required to be delivered to the Buyer under this Subcontract.

**Copyright:** means any existing or future copyright as defined under the *Copyright Act 1968* (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.

**Customer Contract:** means a contract or similar arrangement between the Seller, or any of its Related Bodies Corporate, for the

procurement, modification or upgrade of a system. Unless where identified in Table 1 of Clause 9.13 a Customer Contract is limited to AEW&C customers.

**Defence Purposes:** means a purpose related to any of the following:

- a. the defence and defence interests of Australia;
- b. the national security of Australia;
- c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and
- d. peacekeeping or peace enforcement activities.

**Existing ISSC:** means the contract between the parties for the support of the AEW&C System identified as Subcontract No. AEW-012, in force immediately prior to 4 September 2018.

**Existing ISSC IP:** means any Foreground IP, Background IP or Third Party IP, as each of those terms are defined under the Existing ISSC.

**Existing ISSC Subcontractor:** means a Subcontractor for the purposes of the Existing ISSC immediately prior to 4 September 2018; and "Existing ISSC Subcontract" has a corresponding meaning.

**Existing Subcontract:** means an Existing ISSC Subcontract.

**Existing Subcontractor:** means an Existing ISSC Subcontractor.

**Export Approval:** means an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of the Supplies or Services.

**Free and Open Source Software:** means Software that:

- a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and
- b. may be used, modified, developed or adapted by any person subject to specified conditions,

and includes open source software, public domain software, shareware, community source software and freeware.

**Highly Sensitive Software:** means Software listed in Annex A to the TDSR Schedule.

**Highly Sensitive TD:** means TD listed in Annex A to the TDSR Schedule.

**Intellectual Property (IP):** means all present and future rights conferred by law in or in relation to any of the following:

- a. Copyright;
- b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); and
- c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised

**Intellectual Property (IP) Deed:** means a deed substantially in the form set out at Annex A to Attachment I.

**Key Commercial Item:** means a Commercial Item listed (or required to be listed) in Annex C to the TDSR Schedule.

**Licence:** means a non-exclusive licence of IP in respect of TD, Software or Contract Material, being a licence that:

- a. is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee;
- b. cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term;
- c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;
- d. operates on a world-wide basis; and
- e. binds each successor in title to the owner of the IP in respect of the TD, Software or Contract Material.

**Malware:** means Software or Source Code the intent or effect of which is malicious, i.e., software that may appear to be dormant or perform a useful or desirable function, but that actually gains unauthorised access to system resources or induces the user to execute other malicious logic. Malware is a generic term for a number of different types of malicious code including adware, spyware, bots, ransomware, rootkits, trojans, viruses and worms.

**Moral Rights:** means any of the following:

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

**Patent:** means the rights and interests in any registered, pending, or restored standard or innovation patent under the *Patents Act 1990* (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.

**Products Being Supported:** means, in respect of a Sustainment Contract, the Products identified in Annex A to the SOW for the Sustainment Contract together with other Products identified in that SOW and include, where applicable, subordinate components.

**Request:** for clause 12 of the CCR, means a request for tender, proposal, quotation or information or similar request for the provision of goods or services to the Commonwealth.

**Royalty:** means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use, any IP, however calculated.

**Software (SW):** means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result, (including using a computer programming language to control a computer or its peripheral devices) and includes computer programs, firmware and applications, but excludes Source Code.

**Software List:** means a list of that name required by MGT-1100.

**Source Code:** means the expression of Software in human readable form which is necessary to understand, maintain, modify, correct and enhance that Software.

**Subcontractor:** means any person, other than the Commonwealth or the Buyer that for the purposes of the Subcontract, furnishes Supplies or Services directly to the Seller or indirectly to the Seller through another person and includes Principal Subcontractors.

**Sub-licence:** in respect of a Licence of IP granted to the Buyer in accordance with clauses 12.b, 12.c and 12.g of the CCR, means a sublicense of that IP on terms that comply with the requirements of clause 12.i of the CCR .

**Sublicensee:** means a sublicensee to whom the Buyer grants a Sublicence in accordance with clauses 12.b, 12.c and 12.g of the CCR.

**Technical Data:** means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to the Materiel System, and includes calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, training materials, test results and writings, and includes Source Code.

**Technical Data and Software Rights (TDSR) Schedule:** means the TDSR this Contract.

**Technical Information (TI):** means Technical Data.

**Trade Mark:** means a trade mark protected under the *Trade Marks Act 1995* (Cth) or corresponding laws of any other jurisdiction.

**Use:** means, in relation to a licence of any TD, Software or Contract Material granted to a licensee, to:

- a. use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence; and
- b. disclose, transmit and communicate the TD, Software or Contract Material:

- (i) to the licensee's employees, officers and agents; and
- (ii) to a sublicensee under a sublicense granted in accordance with the licence.

