

**CUSTOMER CONTRACT REQUIREMENTS**  
**ARCS**  
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## 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

#### **ARCS . 3.2 Government Furnished Information**

3.2.1 The Buyer shall provide the information to the Seller (the "GFI").

3.2.2 The Commonwealth, through the Buyer, grants or shall procure a royalty-free, non-exclusive licence for the Seller to use, reproduce and adapt the GFI but only for the purposes of the Contract.

3.2.3 The Seller shall ensure that all GFI is used strictly in accordance with any conditions or restrictions set out at Attachment A, and any direction by the Buyer.

3.2.4 The parties acknowledge that the GFI is not furnished to the Seller for the purpose of either directing or guiding the Seller's performance of a Task Statement under the Contract. The Buyer does not warrant the suitability of such GFI for any particular use or application, nor does the Buyer warrant the accuracy or precision of the GFI.

3.2.5 The Seller shall be responsible for the application or use of the GFI and any conclusions, assumptions or interpretations made by the Seller on the basis of the GFI, or its application or use of them.

#### **4 Intellectual Property**

##### **4.1 Ownership of Intellectual Property**

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

4.1.2 Ownership of all Foreground IP created solely by the Seller vests on its creation in the Seller which has the exclusive right to apply for registration of that Foreground IP in all countries of the world.

##### **4.2 Intellectual Property Licence**

4.2.1 The Seller grants to the Buyer and/or the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Foreground IP and Background IP owned by the Seller and all Third Party IP, including the right to sub-licence to CEA Technologies Pty Ltd, Massachusetts Institute of Technology - Lincoln Labs, or any other entity as specifically authorised by the IP owner, acting reasonably, to review and evaluate prospects for improving radar performance shortfalls in order to assess the feasibility and risk associated with the implementation of the technical improvement options.

4.2.2 The Seller will secure all necessary rights to grant the licenses including in relation to Third Party IP in accordance with clause 4.2.1.

##### **4.3 Provision of Technical Data**

4.3.1 The Seller shall provide with the Services, all Technical Data (TD) necessary to allow the Buyer and/or the Commonwealth to exercise its IP rights as defined in this clause 4.

4.3.2 The Seller shall ensure that all TD provided to the Buyer and/or the Commonwealth under this clause 4 will enable a person reasonably skilled in performing the acts referred to in clause 4 to perform those acts efficiently and effectively.

##### **4.4 Intellectual Property Index**

4.4.1 The Seller shall prepare an index of the IP associated with the task. The IP index shall be included in the task report or implementation plan, as applicable, delivered to the Buyer and/or the Commonwealth, and shall include the following attributes:

- a. Title/Description of the IP;
- b. category (Foreground, Background, Third Party); and
- c. IP owner.

4.4.2 The Seller shall include in the IP Index, as a minimum, the TD provided under clause 4.3.1.

##### **4.5 Release to Third Parties**

4.5.1 If the Buyer and/or the Commonwealth makes available to another person any Technical Data containing Foreground or

Background IP owned by the Seller or Third Party IP, the Buyer and/or the Commonwealth shall obtain from that person a deed of confidentiality.

### 8.3 Commercial-in-Confidence Information

8.3.1 Where in connection with the Contract, Commercial-in-Confidence Information is provided or produced, the relevant party shall ensure that any person receiving or producing the information protects the confidential nature of the information, except:

- a. where disclosure of the information is required by law or statutory or portfolio duties; or
- b. to the extent that the Buyer would be prevented from exercising its Intellectual Property rights under the Contract.

8.3.2 The Buyer may at any time require the Seller to give and to arrange for its officers, employees, agents and Subcontractors engaged in performance of the Services to give written undertakings in a form required by the Buyer relating to the non-disclosure of specified material. The Seller shall promptly arrange for such undertakings to be given.

8.3.3 Where it is necessary to disclose Commercial-in-Confidence Information belonging to the other party, to a third party, other than a legal adviser or for a purpose within an exception listed in clause 8.3.1 the party wishing to make the disclosure shall obtain the written consent of the other party to the Contract.

8.3.4 The Seller shall not, in marking information supplied to the Buyer, misuse the term "Commercial-in-Confidence" or the Seller's equivalent. The marking of information as "Commercial-in-Confidence" shall not affect the legal nature and character of the information.

### 8.5 Negation of Employment and Agency

8.5.1 The Seller shall not represent itself, and shall ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being employees, partners or agents of the Commonwealth.

8.5.2 Without limiting clause 8.5.1, the Seller shall clearly identify itself, and shall ensure that its officers, employees, agents and Subcontractors clearly identify themselves, as a Seller to the Buyer when communicating through telephone, facsimile, email or any other communication tool in the course of performing the Services.

8.5.3 The Seller, its officers, employees, agents and Subcontractors shall not by virtue of the Contract be, or for any purpose be deemed to be, an employee, partner or agent of the Buyer.

### 8.6 Buyer Access

8.6.1 During the performance of the Contract, the Seller shall permit any person authorised by the Buyer and the Seller, access to its premises, and access to any of its Records, or Accounts and supporting information Records, Accounts and supporting information relevant to or impacting on performance of work or proposals under the Contract.

8.6.2 The purposes for which any person authorised by the Buyer may require access under clause 8.6.1 are limited to:

- a. investigating the reasonableness of proposed prices or costs in any Contract Change Proposal (CCP) and of prices quoted or claimed for any Additional Level of Effort. For the purpose of this investigation, the Seller shall permit the Buyer's authorised representative to exercise its rights in this clause 8.6 to review and access information no greater than the type of information reviewed and accessed on other Seller and US Subcontractor USG contracts to the extent that such records relate to the CCP or the Additional Level of Effort;
- b. conducting audits under the Auditor-General Act 1997. For US components review and access to this information will be no greater than the type of information reviewed and accessed on other Seller and US Subcontractor USG contracts and such information shall only be related to the costs of this Contract; and
- c. Not used;
- d. Not used;
- e. examination of the Seller's compliance with any applicable laws and Buyer policy requirements relating to confidentiality, pricy, and security, in accordance with the Contract; and
- f. validating the Seller's progress in meeting the Baseline Level of Effort and any Additional Level of Effort under this Contract.

8.6.3 The Seller shall comply with, and shall require any delegate or person authorised by the Buyer to comply with, any reasonable Seller or Subcontractor safety and security requirements or codes of behaviour for the premises.

### 8.8 Subcontracts

8.8.3 The Seller shall not enter into a Subcontract under the Contract with a Subcontractor named by the Director of Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Equal Opportunity for Women in the Workplace Act 1999.

8.8.4 The Seller, if requested by the Buyer, shall provide the Buyer with names of all Subcontractors and a copy of any Subcontract, which copy need not contain prices. The Seller acknowledges and shall inform its Subcontractors that the Buyer may be required to publicly disclose the Subcontractors' participation in the performance of the Contract.

### 8.9 Defence Security

8.9.1 The Seller must comply with any security and safety requirements notified to the Seller by the Buyer or of which the Seller is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety

requirements.

8.9.2 The Seller shall ensure the requirements of clause 8.9 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to any security classified information in order to perform the obligations of the Subcontract.

#### 8.10 Seller Personnel

8.10.1 The Seller shall ensure that the Services are undertaken by personnel who:

- a. are suitably qualified, with appropriate skills and experience; and
- b. hold an appropriate current certificate, authorisation or accreditation at all times during the provision of the Services.

### 9 POLICY AND LAW

#### 9.3 Policy Requirements

9.3.1 The Seller shall comply with and require its officers, employees, agents and Subcontractors to comply with the following Buyer policies of general application relevant or applicable to the Contract:

- a. Defence Equity and Diversity policy as detailed in the Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour; DPI 1/2001; and DI(G) PERS 35-3;
- b. Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- c. Fraud Control policy as detailed in DI(G) FIN 12-1;
- d. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
- e. Freedom of Information policy as detailed in the DPPM;
- f. Hazardous Substances policy as detailed in the DPPM;
- g. Information Management policy as detailed in DIMPI 1/2004; DIMPI 5/2001; and DI(G) ADMIN 10-6;
- h. Information Privacy Principles and National Privacy Principles of the Privacy Act 1988;
- i. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM; and
- j. Ozone Depleting Substances Policy as detailed in the DPPM.

9.3.2 Without limiting any other provision of this Contract, the Seller shall require all Subcontractors to comply with Buyer policies referred to in clause 9.3.1 where such policies are relevant or applicable to the Subcontractor or the work to be conducted by the Subcontractor unless the Buyer waives the requirement. Should a Subcontractor refuse to accept inclusion of such policy in the Subcontract, the Seller shall notify the Buyer seeking a waiver for such policy.

#### 9.4 Occupational Health and Safety

9.4.1 The Seller shall perform its obligations under the Contract in such a way that:

- a. Buyer employees are able to participate in any necessary inspections of work in progress and tests and evaluations of the Services without the Buyer being in breach of; and
- b. the Buyer is, as from delivery of the Services, or any part of the Services, to the satisfaction of the Buyer, able to maintain and to make full use of the Services for the purposes for which they are intended without being in breach of, any Occupational Health and Safety statutory requirements which apply to the Services.

#### 9.6 Privacy

9.6.1 The Seller shall:

- a. use or disclose Personal Information obtained during the course of providing Services under the Contract, only for the purposes of the Contract;
- b. not do any act, or engage in any practice that would breach an Information Privacy Principle contained in section 14 of the Privacy Act 1988, which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
- c. not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the Privacy Act 1988, or a National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:
  - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
  - (ii) in the case of a National Privacy Principle or an Approved Privacy Code - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Contract, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;
- d. notify individuals whose Personal Information is held by the Seller or Subcontractor, as the case may be, of the complaints mechanism outlined in the Act that may apply to the Seller;
- e. disclose in writing to any person who asks, the content of the provisions of the Contract (if any) that are inconsistent with a National Privacy Principle or an Approved Privacy Code, binding a party to the Contract;
- f. carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Act; and
- g. ensure that any employee or agent of the Seller who is required to deal with Personal Information for the purposes of the Contract, is made aware of the obligations of the Seller as set out in this clause 9.6.

9.6.2 The Seller shall promptly notify the Buyer where:

- a. it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in clause 9.6, whether by the Seller or Subcontractor;
- b. it becomes aware that a disclosure of Personal Information may be required by law; or
- c. it is approached by the Privacy Commissioner, or by any individual to whom any Personal Information relates.

9.6.3 The 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 has the same awareness and obligations as the Seller has under this clause, including the requirement in relation to Subcontracts.

### 10.3 Right of Buyer to Recover Money

10.3.1 Without limiting the Buyer's rights under the Contract, where the Seller owes any debt to the Buyer in relation to the Additional Level of Effort, the Buyer may at its discretion exercise one or both of the following:

- a. deduct the amount of the debt from payment of any claim; or
- b. provide the Seller with written notice of the existence of a debt recoverable which shall be paid by the Seller within 30 days of receipt of notice.

10.3.2 Where any sum of money owed to the Buyer in relation to clause 10.3.1 is not received by its due date for payment, the Seller shall pay to the Buyer interest at the Department of Finance and Administration sourced overdraft rate current at the date the payment was due for each day the payment is late.

10.3.3 Nothing in clause 10.3 shall affect the right of the Buyer to recover from the Seller the whole of any debt owed by the Seller in relation to clause 10.3.1, or any balance that remains owing after deduction.

### Key Definitions:

"Additional Level of Effort" means the Services to be provided under clause 3.4 of this Contract.

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

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

"Commercial-in-Confidence Information" means information including trade secrets, know-how and any information comprised in Technical Data that:

- a. is by its nature confidential; or
  - b. the receiving party knows or ought to know is confidential;
- but does not include information which:
- c. is or becomes public knowledge other than by breach of the Contract;
  - d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
  - e. has been independently developed or acquired by the receiving party.

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

"In-Kind Services" means any Services provided under this Contract as in-kind work or additional supplies for the purposes of a Settlement Deed.

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

"Third Party IP" means that IP which is owned by a party other than the Commonwealth or the Contractor and is embodied in the Services, or attaches to the Services or is otherwise necessarily related to the performance of the Services.