

**CUSTOMER CONTRACT REQUIREMENTS**  
**Medium-To-Heavy Lift Helicopter (MHLH)**  
**CUSTOMER CONTRACT W8475-06HL01/001/MHLH**

**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

**PART 1.0 INTELLECTUAL PROPERTY**

**Article 1.1 Infringement**

- 1.1.1 Subject to sub-article 1.1.4, Seller shall indemnify and save harmless Buyer, Canada, and their servants and agents against any claim, action, suit or other proceeding for the payment of Royalties or for injunctive relief resulting from infringement of a third party's intellectual property rights and that results from or is alleged to result from carrying out of this contract by Seller or the use or disposal by Buyer or Canada of anything furnished under this contract, it being understood that this indemnity does not apply in respect to any design, goods or data supplied or specified by Canada.
- 1.1.2 Subject to sub-article 1.1.4, Buyer shall indemnify and save harmless Seller and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties or for injunctive relief, that alleges infringement of a third party's intellectual property rights in Canada or the United States or the European Union, and from or is alleged to result from:
- a) the use by Seller, in performing the Contract, of design, goods or data supplied or specified by Seller or Canada; or
  - b) the use by Buyer or Canada of non-infringing Deliverable End Items in combination with anything not supplied by Seller, where the claim, action, suit or other proceeding arises out of such combination.
- 1.1.3 Each Party shall give Notice to the other Party of any claim, action, suit or proceeding referred to in sub-articles 1.1.1 and 1.1.2 and the notified Party shall, at its own expense, have the sole control and the full authority of the claim and any negotiations for settlement of same, and the indemnified Party shall cooperate with the indemnifying Party to the extent reasonably necessary in such defense, it being understood that the indemnifying Party shall not be liable to indemnify or save harmless the other Party for payment of any settlement unless consented thereto.
- 1.1.4 Seller shall notify Buyer of all Royalties which it or any of its subcontractors will or may be obligated to pay in respect of carrying out this contract, and the basis thereof, and the parties to whom the same shall be paid and shall promptly advise Buyer of any and all claims which would or might result in further of difficulty by way of Royalties being made by Seller or any of its subcontractors.
- 1.1.5 Where and to the extent Buyer so directs, Seller shall not pay and shall direct subcontractors not to pay Royalties in respect of the carrying out of the Contract.
- 1.1.6 Upon such direction being complied with, Buyer shall indemnify Seller and such subcontractors from and against claims, actions, suits or proceedings for payment of the related Royalties and injunctive relief.
- 1.1.7 The Contract Price shall be reduced by an amount equivalent to the Royalties included in the Contract Price which are not to be paid by Seller or its subcontractors as a result of Buyer's direction.

**Article 1.2 Intellectual Property Rights****1.2.1 Interpretation**

In this Article:

- a) "Background Information" means all Technical Information, that is not Foreground Information, and that or confidential information of Seller, its subcontractors or any other supplier of Seller;
- b) "Firmware" means any computer program stored in integrated circuits, read-only memory or other similar
- c) "Foreground Information" means any Invention first conceived, developed or reduced to practice as part of work funded under the Contract and all other Technical Information conceived, developed or produced as work funded under this contract;
- d) "Fund", "Funded", or "Funding" means within the scope of work set forth under this contract and either funded by Buyer or funded by Seller as a result of an overrun on this contract;
- e) "Intellectual Property Right" means any intellectual property right recognized by the law, including any intellectual property right protected through legislation (such as that governing patents, copyright, industrial design, circuit topography, or plant breeders' rights) or arising from protection of information as a trade secret or confidential information;
- f) "Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any useful improvement in any art, process, machine, manufacture or composition of matter;
- g) "Manuals and Other Instructional Materials" means Instructions for Continued Airworthiness, Aircraft Component Instructions/Manuals, System Support Plans, Maintenance Training courseware, Integrated Electronic Publications (IETPs), and the like that are delivered or required to be delivered under the Contract, and any Information as is necessary for inclusion in Canadian Forces Technical Orders, Standard Operating Procedures, Canadian Forces Administrative Orders, Defence Administrative Orders and Directives, and the like that fulfill its responsibilities for operation, maintenance, airworthiness related activities, repair or overhaul of MHLHWS, and for training (other than detailed manufacturing or process data);
- h) "Medium to Heavy Lift Helicopter" or "MHLH" means the helicopter to be supplied by the Buyer under Buyer's prime contract;
- i) "Medium to Heavy Lift Helicopter Weapon System" or "MHLHWS" means the MHLH/weapons combination, and all associated materials, facilities, equipment, capabilities and personnel required to sustain its operation as defined in Annex A (Statement of Work) Appendix 8 (Dictionary of Terms, Acronyms and Abbreviations);
- j) «Royalties» includes:
  - i. license fees, royalties and other amounts payable for the use or infringement of any registered industrial design, trade mark, copyrighted work, trade secret, or other Intellectual Property Rights as defined in sub-article 1.2; and
  - ii. any costs or expenses incurred as a result of the exercise by any person of moral rights in the Copyright Act of Canada.
- k) "Software" means any computer program in object code only (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, and includes any of the foregoing; and
- l) "Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, not subject to copyright, including but not limited to information related to any Inventions, designs, processes, techniques, know-how, models, prototypes, patterns, samples, schematics, experimental reports, drawings, plans, specifications, photographs, collections of information, manuals and any other documents and Software. Technical Information does not include data concerned with the administration of this contract or Buyer or Seller, such as internal financial or management information, unless it is a deliverable under the Contract.

### 1.2.2 Disclosure of Foreground Information

- a) Seller shall promptly report and fully disclose to Buyer all Foreground Information that results from the performance of the work set forth in this contract, no later than the time of completion of such work or such earlier time as mutually agreed or this contract may require.
- b) Seller shall, in each disclosure under this Article, provide to Buyer the names of subcontractors at any tier in which Intellectual Property Rights to any Foreground Information have vested or will vest.
- c) Before and until 60 months after final payment to Seller for the Goods, Buyer, or Canada through the authorized representative U.S. Governmental agencies, shall have the right to examine all records and supporting documents which Buyer or Canada reasonably deems pertinent to the identification of Foreground Information.

### 1.2.3 Intellectual Property Rights - Foreground Information

- a) Subject to Article 1.2, Intellectual Property Rights in the Foreground Information shall, upon their coming into existence, vest in and remain the property of Seller, or of its subcontractors at any tier as applicable.
- b) Intellectual Property Rights in any database or other compilation shall vest in Canada when the related Foreground Information cannot be exploited without the use of information or data supplied by Canada or person or entity as defined under paragraph c) below.
- c) If the work to be performed under this contract involves the collection of personal information as that term is defined in the Privacy Act (R.S.C., c. P-21), Intellectual Property Rights in and title to that personal information shall immediately upon the collection of it by Seller or its subcontractors, vest in Canada.

### 1.2.4 License to Canada - Foreground Information

- a) In consideration of Canada's contribution to the cost of development of the Foreground Information, Seller grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise its Intellectual Property Rights in the Foreground Information, including making copies, for the following purposes:
  - i. for the use, operation, maintenance, modification, repair, overhaul, maintenance of or other support of the MHLHWS, including any and all training activities relating thereto;
  - ii. for the purpose of manufacturing parts for maintenance, repair or overhaul of any MHLH for and by Canada if those parts are not in Buyer's reasonable opinion available from Seller on reasonable commercial terms and in such a way as to enable timely maintenance, repair or overhaul;
  - iii. for further development of or alteration of any part of the MHLHWS including the manufacture of parts therefor if such parts are not in Buyer's reasonable opinion available from Seller on reasonable commercial terms and in a timely way;
  - iv. for disclosure to other governments for governmental purposes only, and only in accordance with applicable export control laws and regulations, subject to such governments entering into an agreement with Canada;
  - v. to sublicense or otherwise disclose and authorize the use, to any person, juridical or natural person, who will either be bidding, contracting, subcontracting, working or participating in the In-Service Support and/or training activities of the MHLHWS, as and when deemed necessary or useful by Canada, and whether or not the contract or subcontract, at any tier, is awarded by Canada.
- b) If Canada, in exercising its rights under Paragraph 1.2.4(a), makes any change to the Foreground Information, or its authorized subcontractors, or makes derivative materials from such Foreground Information, that require the use of Canada or a third-party contractor to deviate from the Foreground Information (the original design and drawings licensed hereunder, Canada shall, or shall require such third-party contractor to, identify such part made in accordance with such change ("Unique Part") with a unique number different from the Seller or authorized subcontractor assigned part number. Canada has agreed that it assumes all responsibility and liability for any change it makes to Foreground Information and has agreed that it shall indemnify Seller and its subcontractors

against any injury or damage to Canada or any third party to the extent directly or indirectly caused by

- c) Canada has agreed that it shall ensure that all Unique Parts are marked in accordance with the following:
- Original Design Authority (CAGE) – Leave Blank
  - Current Design Authority (CAGE) – Government of Canada (appropriate location)
  - Manufacturer (CAGE) – Canada’s Supplier’s/Manufacturer’s Code
- d) Canada has agreed that it shall ensure that all Unique Parts will be further identified with the legend (on the part if not feasible, on the packaging) “FOR USE ON MILITARY AIRCRAFT ONLY.”
- e) Canada’s license does not cover the production of products that are not for end use by Canada.
- f) Canada’s license includes the right to modify, improve, translate, reproduce or further develop any Foreground Information and, for more certainty, this right:
- i. applies to Foreground Information that is Software, notwithstanding any terms to the contrary, that is delivered by Seller with any deliverable, including the wording on any shrink-wrapped license or on any other any deliverable; and
  - ii. includes the right to reproduce and use Foreground Information that is Software, or any improved or translated or further developed form of it, on any and all computer systems or operated by Canada anywhere in the world.
- g) Seller shall ensure that Canada’s rights under the above license can be exercised without any special consent, including where applicable a waiver of the attribution and integrity rights (also known as “moral rights”) under Article 6b of the Berne Convention, being required to be obtained by Canada.
- h) Intellectual Property rights arising from any modification, improvement, development or translation of the Foreground Information effected by or for Canada in the exercise of this license shall vest in Canada, or in such person as Canada shall decide.
- i) In the exercise of its rights under its license, Canada may award contracts under competitive or non-competitive processes. In that regard, Canada has the right to disclose the Foreground Information to bidders, including subcontractors and contractors for such contracts, and to sub-license or otherwise disclose and authorize the Foreground Information by such persons for the purpose of such contracts. Canada has agreed that it shall make reasonable efforts to disclose only those parts of the Foreground Information as is necessary to bid for such contracts and shall require bidders and contractors not to use or disclose any Foreground Information that is necessary to bid for or to carry out such contracts.
- j) Where the Intellectual Property Rights in any Foreground Information are or will be owned by a subcontractor, Seller shall use best efforts to either obtain a license that permits compliance with this Article, or obtain an agreement that the subcontractor involved conveys directly to Canada the same rights, or negotiate with the subcontractor an alternative arrangement acceptable to Buyer. In the first case, if such license is negotiated, Seller shall require the subcontractor to grant a license agreement to Buyer reasonably promptly after obtaining agreement with such subcontractor.
- k) Where a Canadian subcontractor develops any Foreground Information in the performance of the work for which it has received a subcontract from Seller pursuant to this Contract, Seller shall either:
- i. allow ownership to vest in the subcontractor and shall not, except as required by applicable law, security and export laws, regulations and requirements in this contract, impose restrictions on the subcontractor’s use, for commercial exploitation or otherwise, of the Foreground Information so developed; or
  - ii. grant to such subcontractor full use of the Foreground Information so developed, for commercial exploitation by the subcontractor.
- 1.2.4.1 Notwithstanding any other provision of this contract and notwithstanding that such items may contain Seller or subcontractor Foreground and Background Information, Seller grants to Canada the rights as set forth in sub-sections a) through i) in any Technical Information to be included in Manuals and Other Instructional Manuals.

1.2.5 License to Canada - Background Information Not Falling Under 1.2.4.1

- a) Seller hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-exercise such of the Intellectual Property Rights, including making copies, in any Background Inform required to be provided under this contract, that is incorporated into the work to be performed unde or necessary for the performance of such work as may be required for the following purposes:
- i. For use, operation, maintenance, repair, overhaul, maintenance of airworthiness an the MHLHWS, including training requirements related thereto;
  - ii. For the manufacturing of spare parts in the event of an emergency situation in the extreme. I such situation, Seller will provide necessary Technical Information, as defined in Article 1, Canada to repair an aircraft on ground, provided that Seller is unable to provide the necess needed within a time appropriate to the circumstance. The subject part(s) will be manufact fabricated or repaired as a one-off event to provide the ability to return the aircraft to oper Any parts manufactured in this one-off fashion will be placed on the aircraft to the liability and Seller will not be responsible for the airworthiness of the part(s). Canada is not autho this Technical Information in any other regard beyond what is listed in this clause.
  - iii. Canada's license includes the right to disclose, in confidence, and authorize the use person, juridical or physical, who will be working or participating in the work as defined in Such disclosure shall not occur until Canada and such contractors have executed a Non-Dis Agreement which is at least as restrictive as this Article.
  - iv. Canada's license granted in 1.2.5 (a) (i) excludes the right to disclose Background I bidding purposes, and/or to sub-license.
  - v. Canada and Buyer agree to indemnify Seller, and hold Seller harmless, for any injury whatsoever arising out of or relating to Buyer's or Canada's modification or misuse of Back Information occasioned by Buyer's or Canada's negligence, gross negligence or wilful misc
  - vi. Under the license granted in 1.2.5(a)(ii) above, the additional rights, limited to the t contract only, to disclose in confidence the Background Information to bidders, including p bidders, contractors and subcontractors at any tier for such contracts as set forth in 1.2.5(a) to sub-license or otherwise authorize the use of the Background Information by such persc the purpose of such contracts, provided, however, that Canada and Buyer agree to indemn alternative will require such contractor to indemnify Seller, and hold Seller harmless, for an damage whatsoever arising out of or relating to Buyer's or Canada's or Seller's modificatio Background Information. Buyer or Canada shall disclose only those parts of the Backgrou as is necessary to bid or carry out the contracts and shall require bidders and contractors n disclose any Background Information except as may be necessary to bid for or to carry out contracts; and
  - vii. To modify, improve or further develop the Foreground Information for DND purp pertaining to the MHLHWS; and subject to applicable export laws and regulations, Seller a such Background Information (excluding, in the case of Software, source code) available to such purposes at no cost other than reasonable reproduction and administrative costs incur providing the Background Information.
- b) Canada's rights under sub-paragraph a) iv) above shall not include the right to reproduce the whole or par deliverable under this contract that does not incorporate Foreground Information, save that Canada n any drawings, plans, designs, or other Background Information that are subject to copyright or indust protection, for purposes of modification, improvement or further development of the Foreground Inf for Canada.
- c) Reserved
- d) Where the Intellectual Property Rights in any Background Information are or will be owned by a subcont tier, Seller's obligation shall be limited to using reasonable commercial efforts to obtain a license, pro following award of contract, that permits the granting by Seller of the license with as many as possib rights as provided above, or to obtain agreement that the subcontractor involved conveys directly to rights, or to negotiate with Buyer an alternative arrangement acceptable to Buyer. In the first case, if negotiated, Seller shall deliver such license agreement to Buyer reasonably promptly after obtaining a

such subcontractor.

- e) Notwithstanding sub-paragraph a) of this Article, the license set out therein shall not apply to any commercial Software or Software that is subject to detailed license conditions that are set out elsewhere in this Contract.
- f) Canada may need Background Information of Seller in addition to that provided for in paragraph 1.2.5 (a) source code form of the Software that is Background Information ("Additional Background Information") shall on request of Buyer, negotiate in good faith to grant Canada a license on commercially reasonable terms, including a reasonable royalty, in Additional Background Information. If requested, Seller shall also obtain for Canada similar rights from its subcontractors. Such negotiations are subject to Buyer and Seller agreeing on a fair and reasonable price for the applicable subcontractor royalty, if any.

#### 1.2.6 Transfer of Rights in Foreground Information

- a) Until Seller completes the Work and discloses all of the Foreground Information in accordance with sub-article 1.2.2, Seller shall not, without prior written consent of Buyer, which shall not be unreasonably withheld, sell, assign or convey title to the Intellectual Property Rights in the Foreground Information.
- b) Should Buyer terminate this contract in whole or in part for default, or if Seller, after two consecutive and reasonable requests providing reasonable time to respond to each such request, fails to disclose any Foreground Information in accordance with sub-article 1.2.2, Buyer may, by Notice, within ninety (90) days from the date of termination, require Seller to convey to Canada, in the case of a royalty-free, worldwide, nonexclusive, irrevocable license to use, modify, reproduce, perform, display, distribute, or otherwise disclose the Foreground Information, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so, or, in the case of a failure to disclose, such license in the Intellectual Property Rights in the Foreground Information requested but not disclosed.
- c) Upon receipt of that Notice, Seller shall, at its own expenses and without delay, execute, or use best effort to have a subcontractor at any tier which owns the relevant Intellectual Property Rights execute, such conveyed documents relating to license of the Intellectual Property rights involved as Buyer may reasonably require.

#### 1.2.7 Sale, Assignment, Transfer or Licensing of Foreground Information

- a) In any sale, assignment or other transfer, or in any license, of Intellectual Property Rights in Foreground Information, except a sale or license for end use of a product based on Foreground Information, Seller shall impose on the transferee or licensee such conditions as will permit all of the rights of Canada and restrictions, if any, set out herein to the use or disposition of Intellectual Property Rights in Foreground Information to be exercised.
- b) Seller shall promptly notify Buyer of the name, address and other pertinent information in regard to any assignee or licensee referred to in paragraph a).
- c) Seller shall not charge, and shall require any transferee, assignee or licensee not to charge, a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of sale, assignment, transfer or other arrangement with Buyer or Canada.
- d) Seller shall mark or identify any confidential or trade secret information as follows:  
(Contractor's or Subcontractor's name) Proprietary. Permitted Government uses as defined in Public Works and Government Services Canada (PWGSC) Contract No. W8475-06HL01/001 and [insert subcontract number]
- e) Buyer shall not be liable for any unauthorized use or disclosure of information that could have been so marked if properly identified and was not. However, such marking is not to be considered as determinative of title; this shall be determined under the provisions of this contract relating to title.
- f) Nothing in this Article 1.2.8 shall be construed as limiting Canada's right to use information obtained from Seller to the extent that such information:
  - is or becomes in the public domain, or to the extent that Seller does not benefit from or ceases to benefit from intellectual property rights protection for such information under legislation or at law (other than under the Contract), for any reason including as a result of Canada's use or disclosure of deliverables under the Contract; for any purpose whatever that is not expressly excluded under the Contract;
  - is or becomes known to Canada from a source other than Seller, except from any source that is known to Seller under an obligation to Seller not to disclose the information; or

is independently developed by or for Canada.

#### 1.2.8 License to Contractor

- a) Seller may request from Buyer the issuance of a license permitting Seller to use DND-owned information Contract in order for Seller to commercially exploit or further develop any of the Foreground Information. Buyer shall respond within a reasonable time of receipt of such request and the reasons therefor. Should the request be refused, the response shall provide the reasons therefor. Should the request be accepted, the terms and conditions applicable to the license requested, including possible monetary compensation to Canada, will need to be agreed upon between the Minister of National Defence and Seller.

#### 1.2.9 Access

- a) In the event and to the extent that Canada does not have a license to Foreground and Background Information, Canada grants to Seller, and shall use best efforts to negotiate with its subcontractors to grant, view-only access to such information, in accordance with U.S. export laws and regulations, at such location as Seller or its subcontractors determine, for the purposes of the work described at 1.2.5 (a) (i) including for greater certainty and without diminishing the generality of that provision, the fulfillment of Canada's statutory responsibilities under the Aeronautics Act (R.S., 1985, c. A-2), and for technical and accident investigations. Canada shall be responsible for attending at any such location but otherwise such access shall be at no cost to Canada other than reasonable reproduction and administrative costs incurred by Seller or its subcontractor in providing such access. Such access will be granted in accordance with such of Seller's or its subcontractor's usual confidentiality arrangements as may require.

### **Article 1.3 Data Derived from Operation and Support of MHLHWS**

- 1.3.1 Intellectual Property rights in all data derived from the operation and support of the MHLHWS captured, compiled by Canada, shall vest in Canada. Canada grants to Seller and its subcontractors a worldwide, irrevocable, nonexclusive, fully-paid and royalty-free license to use and disclose such Information to the extent necessary to support Canada's MHLHWS.

### **Article 1.4 Information Provided by Canada – Confidentiality**

- 1.4.1 Seller shall keep confidential all information provided to Seller by or on behalf of Canada in connection with the performance of this contract, including any information that is confidential or proprietary to third parties. All information conceived, developed or produced by Seller as part of such work where copyright or intellectual property rights in such information (except a licence) vests in Canada under this contract shall not be disclosed to any person without the written permission of Buyer, except that Seller may disclose to an authorized subcontractor information necessary for the performance of the subcontract on the condition that the subcontractor agrees that it will be used solely for the purposes of such subcontract and that such information provided to Seller on behalf of Canada shall be used solely for the purpose of this contract and shall remain the property of Canada or the third party, as the case may be. Seller shall, at Buyer's request, deliver to Buyer all information, together with every copy, draft, working paper and note thereof that contains such information no longer needed for the performance of the Work. All classified Government Furnished Information shall be provided to the Security Requirements of this contracts.
- 1.4.2 The obligations of Seller set out in this Article do not apply to any information where the same information
- a) is publicly available from a source other than Canada; or
  - b) is or becomes known to Seller from a source other than Canada or Buyer, except as to the extent that it is known to be under an obligation to Canada or Buyer not to disclose the information; or
  - c) is developed by Seller without use of the information of Canada or Buyer.

### Article 3.2 Security Requirement For United States Suppliers

- 3.2.1 All CLASSIFIED information/assets, furnished to the Seller or produced by the Seller, shall be safeguarded as follows:
- a) the recipient Seller shall not disclose the Government furnished CI information to a third party government, person or firm, or representative without the prior written consent of the Government of Canada. Such consent may be sought from the recipient's National Security Authority/Designated Authority (NSA/DSA). The DSA for industrial matters in Canada is the Director General of Industrial Security Sector (ISS), Public Works and Government Canada (PWGSC);
  - b) the recipient Seller shall provide the CLASSIFIED information with the same level of safeguarding no less stringent than that provided by the Government of Canada in accordance with national security regulations and as prescribed by the NSA/DSA;
  - c) the recipient Seller shall not use the Government furnished CI information/assets for any purpose other than for the performance of the Contract without the prior written approval of the Government of Canada. This approval may be obtained by contacting the Canadian DSA for industrial matters in Canada;
  - d) the recipient Seller personnel requiring access to COMSEC information/assets must have received COMSEC briefing and must hold Document Safeguarding at the level of Communication Security (COMSEC) CONFIDENTIAL granted by their respective National Security Agency;
  - e) such information/assets shall be released only to personnel, who have a need to know for the performance of the Contract and who have a security clearance appropriate to the classification of the information/assets, granted by the NSA/DSA; and
  - f) CLASSIFIED information/assets provided or generated pursuant to this Contract shall be transferred only through government-to-government channels (this is IISD/PWGSC) or as specified in writing by the NSA/DSA of the recipient government.
- 3.2.2 CLASSIFIED information/assets generated pursuant to this Contract, by the Government of Canada, shall be provided to the recipient Seller with its government's equivalent security classification.
- 3.2.3 All CLASSIFIED information/assets generated pursuant to this Contract shall be assigned a security classification in accordance with the security classification specifications provided on the Security Requirements Checklist (SRCL) attached at Annex H.
- 3.2.4 The Seller shall immediately report to its respective NSA/DSA all cases in which it is known or there is reason to suspect that CLASSIFIED information/assets furnished to or generated for pursuant this Contract have been disclosed to unauthorized persons.
- 3.2.5 Upon completion of the Work, the Seller shall return to the Government of Canada, via government-to-government channels, all CLASSIFIED information/assets furnished to the Seller pursuant to this Contract, including CLASSIFIED information/assets released to its subcontractors.
- 3.2.6 The Seller visiting government or industrial facilities, where CLASSIFIED information/assets are to be accessed, shall submit a Request for Visit form through their respective NSA/DSA.



- 3.2.7 Classified information/assets provided or generated pursuant to this Contract shall not be further provided to a potential Seller or subcontractor unless:
  - a) written assurance is obtained from the recipient’s NSA/DSA to the effect that the potential Seller or subcontractor has been approved for access to CLASSIFIED information by the NSA/DSA.
  - b) written consent is obtained from the Contracting Authority (CISD/PWGSC) for the contract, if the potential subcontractor is located in a third country.
- 3.2.8 All CLASSIFIED information/assets provided or generated under this Contract will continue to be safeguarded in the event of withdrawal by the recipient party or upon termination of the Contract, in accordance with national and international regulations.
- 3.2.9 The Seller shall contact their Industrial Security Authority in order to comply with the provisions of the Final Canadian-United States Industrial Security Memorandum of Understanding signed with Canada in relation to equivalencies for handling of CLASSIFIED Information and/or assets.
- 3.2.10 The recipient Seller shall also insert the above paragraphs in all subcontracts that involve access to CLASSIFIED information/assets provided or generated under this Contract.
- 3.2.11 The Seller personnel requiring access to PROTECTED/CLASSIFIED or NATO CLASSIFIED information/assets must bear the caveat “Canadian/U.S. Eyes Only” must be citizens of Canada or the United States.

**NOTE:** Keying material and associated devices bearing (or intended to bear) the caveat, “CRYPTO”, are subject to the same safeguards at all times, whether: in bulk storage; in custody at user locations; in current use; or awaiting destruction. Keying Material must be stored in a locked, approved security container, in an area protected by security guards or by an intrusion- detection system when left unattended by COMSEC account personnel or other authorized users.

CANADA	U.S.
PROTECTED “A”	TO BE TREATED AS CONFIDENTIAL
PROTECTED “B”	WHILE IN THE U.S.
CONFIDENTIAL	CONFIDENTIAL
SECRET	SECRET

**Article 4.10 Controlled Goods**

- 4.10.1 As this Contract requires production of or access to controlled goods that are subject to the Defence Production Act, the Seller and any subcontractor are hereby advised that, within Canada, only persons who are registered or exempted under the Controlled Goods Program (CGP) are lawfully entitled to examine, possess or transfer controlled goods. Details on how to register under the CGP are available at: <http://www.cgd.gc.ca>.
- 4.10.2 When the Seller and any subcontractor proposed to examine, possess or transfer controlled goods are not registered or exempted under the CGP at time of contract award, the Seller and any subcontractor shall, within (7) working days from receipt of written notification of the contract award, ensure that the required applications for registration or exemption are submitted to the CGP. No examination, possession or transfer of controlled goods shall be performed until the Seller has provided proof, satisfactory to the Contract Authority, that the Seller and any subcontractor are registered, exempt or excluded under the CGP.
- 4.10.3 Failure of the Seller to provide proof, satisfactory to the Contracting Authority, that the Seller and any subcontractor are registered, exempt or excluded under the CGP, within thirty (30) days from receipt of written notification of the contract award, shall be a default under the Contract except to the extent that Canada is responsible for the delay due to delay in processing the application.
- 4.10.4 The Seller and any subcontractor must maintain registration, exemption or exclusion from the CGP for the duration of the Contract and in any event for so long as they will examine, possess or transfer controlled goods.

**Article 4.12 Immigration Requirements**

- 4.12.1 The Seller shall be responsible for compliance with all immigration requirements applicable to non-permanent entering Canada to work on a temporary basis in fulfilment of the Contract. The Seller shall be responsible for the costs incurred as a result of the non-compliance with the immigration requirements, and as a result of Work resulting therefrom.

**Article 4.20 Dangerous and Hazardous Materials**

**This clause applies only if Seller delivers hazardous material under this contract.**

- 4.20.1 This Article applies only to shipments to, from or within Canada.
- 4.20.2 For Canadian suppliers only – material which is classed as dangerous/hazardous shall be marked by the Supplier as follows:
- a) product packaging (Means of Containment), marking, labelling to be in compliance with the Hazardous Materials Transportation of Dangerous Act, 1992; and
  - b) in accordance with the Hazardous Products Act.
- 4.20.3 For U.S. suppliers only – material which is classed as dangerous/hazardous shall be prepared and marked in accordance with 49 CFR (Code of Federal Regulations), in accordance with the Hazardous Products Act and USC Acquisition Regulation (FAR):
- a) "Hazardous Material Identification and Material Safety Data" (52.223-03);
  - b) "Hazardous Warning Labels" (252.223-7001)
  - c) "Safety Precautions for Ammunition and Explosives" (252.223-7002);
  - d) "Change in Place of Performance-Ammunition and Explosives" (252.223-7003);
  - e) "Prohibition on Storage and Disposal of Toxic and Hazardous Material" (252.223-7004);
  - f) "Safeguarding Sensitive Conventional Arms, Ammunition and Explosives" (252.223-7005);
  - g) "Elimination of Use of Class I Ozone Depleting Substances" (5352.223-9000).
- 4.20.4 When dangerous or hazardous goods are to be shipped, the Seller shall provide a Material Safety Data Sheet only as detailed below. Material Safety Data Sheets from Canadian suppliers shall be provided in both the official languages of Canada. The NATO Stock Number shall be included, where applicable.
- a) one (1) hard copy to be enclosed with the shipment, and
  - b) one (1) hard copy to be mailed to:  
  
National Defence Headquarters  
MGen George R. Pearkes Building  
101 Colonel By Drive,  
Ottawa, Ontario, Canada K1A 0K2  
Attn: DMMD 2-3-4
  - c) one (1) soft copy in ASCII, Rich Text Format (RTF) or common word processing (Microsoft Word or WordPerfect) shall be mailed to the address provided at paragraph b).
- 4.20.5 Buyer shall not be held liable for any damages caused by the Seller's improper packaging, labelling or carriage of dangerous or hazardous goods.
- 4.20.6 The Seller shall notify the consignee at least 48 hours prior to shipping any dangerous or hazardous goods, and shall make arrangements with the consignee respecting receiving and handling of the same.

**Article 4.21 Hazardous Waste Disposal**

- 4.21.1 The Seller must dispose of any hazardous waste removed or uncovered in the performance of the Work in with the requirements of the Contract and any applicable law.

#### **Article 11.14 International Sanctions**

- 11.14.1 Persons in Canada and Canadians outside of Canada are bound by economic sanctions imposed by Canada. Buyer cannot accept delivery of goods or services that originate, either directly or indirectly, from the persons subject to economic sanctions. Details on existing sanctions can be found at: <http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>
- 11.14.2 It is a condition of the Contract that the Seller not supply to Buyer any goods or services which are subject to economic sanctions as set out in sub-article 11.14.1.
- 11.14.3 By law, the Seller must comply with changes to the regulations imposed during the life of the Contract. If the performance of the Contract should be affected by the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the affected Work will be treated by the Parties as a partial termination pursuant to Article 11.9, Termination for Convenience. The Seller shall forthwith inform Buyer of the situation; the procedures applicable to termination shall then apply.

#### **Article 11.15 No Bribe**

- 11.15.1 The Seller represents and covenants that no bribe, gift, benefit, or other inducement has been or will be promised or offered directly or indirectly to any official or employee of Buyer or Canada or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.

#### **Article 14.3 Condition of Materiel**

- 14.3.1 Unless otherwise specified in the Contract, materiel supplied shall be new and conform to the requirements of the Contract. New as used in this article, means previously unused or composed of previously unused materiel. New may include Seller's unused residual inventory. Unused parts and materials are those which have never been shipped, titled transferred or otherwise conveyed or delivered to another operator, or used for any purpose other than the manufacturing of new MHLH aircraft. New parts and materials may have been used for a reasonable amount of time for the purpose of inspection and testing activities.

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