

**CUSTOMER CONTRACT REQUIREMENTS
MEDIUM TO HEAVY LIFT HELICOPTER
CUSTOMER CONTRACT W8475-06HL01/001/MHLH**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

Customer Contract Requirements (Direct Commercial Sales)

In addition to the requirements set forth in the Boeing General Provisions and other terms and conditions in or attached to this Contract, the Goods to be delivered under this Contract may be common to items delivered to a U.S. Government customer. Accordingly, the following terms supporting technical conformance of the Goods apply to this Contract to the extent indicated below. In all of the following clauses, "Contractor" and "Offeror" mean Seller. Certain clauses below may be deemed inapplicable if the parts being purchased under this Contract previously had commercial item determinations (CIDs) completed and approved for identical parts.

52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018). In paragraph (c) (1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c) (2) to Buyer.

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020). Paragraph (b) is deleted and replaced with the following: "Seller is prohibited from providing Buyer with covered telecommunications equipment or services, or with any equipment, systems, or services that use covered equipment or services regardless of whether that use is in performance of work under a U.S. Government contract." Paragraph (c) is deleted in its entirety. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services provided to Buyer during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email."

52.211-5 Material Requirements (AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

52.209-7010 Critical Safety Items (AUG 2011). Delete the second sentence in paragraph (b) and substitute the following sentence in lieu thereof: Items delivered under the Contract are considered critical safety items if they have previously been designated as critical safety items under a prior contract. Delete paragraph (c) and insert the following in lieu thereof: Heightened quality assurance surveillance. Items considered critical safety items in accordance with paragraph (b) of this clause are subject to heightened, risk-based surveillance by Buyer and/or the Government.

52.223-7003 Change in Place of Performance-Ammunition and Explosives (DEC 1991). The clause is revised as follows: (a) Seller shall identify in their offer, the place of performance of all ammunition and explosives work that would be covered by 52.223-7002. Failure to furnish this information with the offer may result in rejection of the offer. (b) Seller agrees not to change the place of performance of any portion of the offer that would be covered by 52.223-7002 after the date set for receipt of offers without the written approval of the Contracting Officer, which shall be obtained through Buyer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance. (c) If a contract results from this offer, Seller agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer, which shall be obtained through Buyer.

252.223-7008 Prohibition of Hexavalent Chromium (JUN 2013). "Contracting Officer" shall mean Buyer.

252.225-7001 Buy American and Balance of Payments Program (DEC 2017). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies. (DEC 2018). This clause applies to items covered by the United States Munitions List or the 600 series of the Commerce Control List.

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (OCT 2014). Paragraphs (d) and (e) (1) of this clause are excluded. In paragraph (e) (2) "Government" means Buyer. Paragraph (c) (6) is revised as follows:

(c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

252.225-7011 Restriction on Acquisition of Supercomputers (JUN 2005).

252.225-7012 Preference for Certain Domestic Commodities (DEC 2017).

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (JUN 2005).

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (JUN 2011). This clause does not apply to contracts for commercial items or items that do not contain ball or roller bearings.

252.225-7025 Restriction on Acquisition of Forgings (DEC 2009). This clause applies if the Contract is for forging items or for other items that contain forging items.

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (DEC 2006).

252.225-7036 Buy American-Free Trade Agreements-Balance of Payments Program-Basic (DEC 2017). In paragraph (c), the phrase "in the Buy American-Free Trade Agreements-Balance of Payments Program Certificate-Basic provision of the solicitation" is deleted, and the word "certified" is deleted and replaced with the word "specified."

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c) (6), "Contracting Officer" means "Buyer." The introductory text at the beginning of the clause is deleted and only paragraphs (a) through (e) apply.

252.246-7008 Sources of Electronic Parts (MAY 2018). This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term "Contractor" means Seller and the term "subcontractor" means Seller's lower-tier suppliers. In paragraph (b) (3) (ii) (A), the term "Contracting Officer" means "Buyer's Authorized Procurement Representative." Seller's notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller's lower-tier supplier providing such electronic parts, Seller's rationale on acceptability of procuring such parts (including risk mitigation), and identification of the product using such parts (by lot or serial numbers).

Article 1.1 Infringement

1.1.1 Subject to sub-article 1.1.3, 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, that alleges infringement of a third party's intellectual property rights and that results from or is alleged to result from the carrying out of this contract by Seller or the use or disposal by Buyer or Canada of anything furnished by Seller 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 1.1.3, 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 that results 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 Canada; or
- b) the use by Buyer or Canada of non-infringing Deliverable End Items in combination with items 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 for the defense 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 notified Party shall not be liable to indemnify or save harmless the other Party for payment of any settlement unless it has 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 or propose to pay in respect of carrying out this contract, and the basis thereof, and the parties to whom the same are payable, and shall promptly advise Buyer of any and all claims which would or might result in further or different payments 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 all 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 will not 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 is proprietary 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 devices;
- c) "Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work Funded under the Contract and all other Technical Information conceived, developed or produced as part of the work funded under this contract;
- d) "Fund", "Funded", or "Funding" means within the scope of work set forth under this contract and either directly 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, integrated circuit topography, or plant breeders' rights) or arising from protection of information as a trade secret or as confidential information;
- f) "Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter;
- g) "Manuals and Other Instructional Materials" means Instructions for Continued Airworthiness, Aircraft Operating Instructions/ Manuals, System Support Plans, Maintenance Training courseware, Integrated Electronic Technical Publications (IETPs), and the like that are delivered or required to be delivered under the Contract, and Technical 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 for Canada to fulfill its responsibilities for operation, maintenance, airworthiness related activities, repair or overhaul of the 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 to Canada 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, training capabilities and personnel required to sustain its operation as defined in Annex A (MHLH 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 patent, 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, as defined 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 modifications to any of the foregoing; and
- l) "Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, whether or not subject to copyright, including but not limited to information related to any Inventions, designs, methods, processes, techniques, know-how, models, prototypes, patterns, samples, schematics, experimental or test data, 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 by Buyer or Seller.

such as internal financial or management information, unless it is a deliverable under this 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, if any, 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 data of Seller 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 personal information 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 the 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 airworthiness and 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 part of the 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 manufacturing 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 a confidentiality agreement with Canada;
 - v. to sublicense or otherwise disclose and authorize the use, to any person, juridical or physical, 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 to do so, 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 of Seller or its authorized subcontractors, or makes derivative materials from such Foreground Information, that require or cause Canada or a third-party contractor to deviate from the Foreground Information (the original design and specifications) 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 changes it makes to Foreground Information and has agreed that it shall indemnify Seller and its subcontractors from and against any injury or damage to Canada or any third party to the extent directly or indirectly caused by such changes.

- 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 or, 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 delivered by Seller with any deliverable, including the wording on any shrink-wrapped license attached to any deliverable; and
 - ii. includes the right to reproduce and use Foreground Information that is Software, or any modified or improved or translated or further developed form of it, on any and all computer systems owned, leased 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 or waiver, including where applicable a waiver of the attribution and integrity rights (also known as "moral rights") covered 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 potential bidders and contractors for such contracts, and to sub-license or otherwise disclose and authorize the use of the Foreground Information by such persons for the purpose of such contracts. Canada has agreed that it shall use reasonable efforts to disclose only those parts of the Foreground Information as is necessary to bid or carry out the contracts and shall require bidders and contractors not to use or disclose any Foreground Information except as may be 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 at any tier, Seller shall use best efforts to either obtain a license that permits compliance with this Article, or obtain agreement that the subcontractor involved conveys directly to Canada the same rights, or negotiate with Buyer an alternative arrangement acceptable to Buyer. In the first case, if such license is negotiated, Seller shall deliver such 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 he 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 security and export laws,

regulations and requirements in this contract, impose restrictions on such 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 and subcontractor Foreground and Background Information, Seller grants to Canada the rights as set forth in sub-article 1.2.4 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-free license to exercise such of the Intellectual Property Rights, including making copies, in any Background Information that is required to be provided under this contract, that is incorporated into the work to be performed under this contract 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 and support of the MHLHWS, including training requirements related thereto;

ii. For the manufacturing of spare parts in the event of an emergency situation in the extreme. In the event of such situation, Seller will provide necessary Technical Information, as defined in Article 1, to allow Canada to repair an aircraft on ground, provided that Seller is unable to provide the necessary part(s) needed within a time appropriate to the circumstance. The subject part(s) will be manufactured, fabricated or repaired as a one-off event to provide the ability to return the aircraft to operational status. Any parts manufactured in this one-off fashion will be placed on the aircraft to the liability of Canada, and Seller will not be responsible for the airworthiness of the part(s). Canada is not authorized to use 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, to any person, juridical or physical, who will be working or participating in the work as defined in 1.2.5 (a) (i). Such disclosure shall not occur until Canada and such contractors have executed a Non-Disclosure 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 Information for bidding purposes, and/or to sub-license.

v. Canada and Buyer agree to indemnify Seller, and hold Seller harmless, for any injury or damage whatsoever arising out of or relating to Buyer's or Canada's modification or misuse of Background Information occasioned by Buyer's or Canada's negligence, gross negligence or wilful misconduct.

vi. Under the license granted in 1.2.5(a)(ii) above, the additional rights, limited to the term of this contract only, to disclose in confidence the Background Information to bidders, including potential bidders, contractors and subcontractors at any tier for such contracts as set forth in 1.2.5(a)(ii) above, and to sub-license or otherwise authorize the use of the Background Information by such persons solely for the purpose of such contracts, provided, however, that Canada and Buyer agree to indemnify, or in the alternative will require such contractor to indemnify Seller, and hold Seller harmless, for any injury or damage whatsoever arising out of or relating to Buyer's or Canada's or Seller's modification or misuse of Background Information. Buyer or Canada shall disclose only those parts of the Background Information as is necessary to bid or carry out the contracts and shall require bidders and contractors not to use or disclose any Background Information except as may be necessary to bid for or to carry out such contracts; and

vii. To modify, improve or further develop the Foreground Information for DND purposes pertaining to the MHLHWS; and subject to applicable export laws and regulations. Seller agrees to make such

Background Information (excluding, in the case of Software, source code) available to Canada for such purposes at no cost other than reasonable reproduction and administrative costs incurred in providing the Background Information.

b) Canada's rights under sub-paragraph a) iv) above shall not include the right to reproduce the whole or part of any deliverable under this contract that does not incorporate Foreground Information, save that Canada may reproduce any drawings, plans, designs, or other Background Information that are subject to copyright or industrial design protection, for purposes of modification, improvement or further development of the Foreground Information by or for Canada.

c) Reserved

d) Where the Intellectual Property Rights in any Background Information are or will be owned by a subcontractor at any tier, Seller's obligation shall be limited to using reasonable commercial efforts to obtain a license, promptly following award of contract, that permits the granting by Seller of the license with as many as possible of Canada's rights as provided above, or to obtain agreement that the subcontractor involved conveys directly to Canada such rights, or to negotiate with Buyer an alternative arrangement acceptable to Buyer. In the first case, if such license is negotiated, Seller shall deliver such license agreement to Buyer reasonably promptly after obtaining agreement with such subcontractor.

e) Notwithstanding sub-paragraph a) of this Article, the license set out therein shall not apply to any commercial off-the-shelf 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) or to the source code form of the Software that is Background Information ("Additional Background Information"). Seller 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 negotiate to 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 transfer 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 unsuccessful 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 or from the date Buyer learns of the failure to disclose, require Seller to convey to Canada, in the case of termination, a royalty-free, worldwide, nonexclusive, irrevocable license to use, modify, reproduce, perform, display, release, and 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 efforts to have the subcontractor at any tier which owns the relevant Intellectual Property Rights execute, such conveyances or other 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 other party such conditions as will permit all of the rights of Canada and restrictions, if any, set out hereunder pertaining 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 transferee, 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 Buyer or Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract 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 or 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 1.2.7 shall be construed as limiting Canada's right to use information obtained from Seller, to the extent that such information:
- i. is or becomes in the public domain, or to the extent that Seller does not benefit from or ceases to benefit from any intellectual property rights protection for such information under legislation or at law (other than under the terms of 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;
 - ii. is or becomes known to Canada from a source other than Seller,

except from any source that is known to Canada to be under an obligation to Seller not to disclose the information; or

- iii. 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 related to the 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, Seller grants to Canada, 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 subcontractor may 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 bear all costs of 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 they 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, recorded or compiled by Canada, shall vest in Canada. Canada grants to Seller and its subcontractors a worldwide, perpetual, irrevocable, nonexclusive, fully-paid and royalty-free license to use and disclose such Information solely 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 work to be performed under this contract, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by Seller as part of such work where copyright or any other intellectual property rights in such information (except a licence) vests in Canada under this contract. Seller shall not disclose any such information 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. 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 such information, together with every copy, draft, working paper and note thereof that contains such information when no longer needed for the performance of the Work. All classified Government Furnished Information will be subject to the Security Requirements of this contract(s).

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 any source that 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 CANADA PROTECTED/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 CANADA PROTECTED/CLASSIFIED information to a third party government, person or firm, or representative thereof, without the prior written consent of the Government of Canada. Such consent shall be sought from the recipient's National Security Authority/ Designated Security Authority (NSA/DSA). The DSA for industrial matters in Canada is the Director General of Industrial Security Sector (ISS), Public Works and Government Services Canada (PWGSC);
- b) the recipient Seller shall provide the CANADA PROTECTED/ CLASSIFIED information a degree of safeguarding no less stringent than that provided by the Government of Canada in accordance with national security regulations and as prescribed by the Seller's NSA/ DSA;
- c) the recipient Seller shall not use the Government furnished CANADA PROTECTED/CLASSIFIED 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 must 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 undergone a COMSEC briefing and must hold Document Safeguarding at the level of Communications-Electronic 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 at a level appropriate to the classification of the information/assets, granted by their respective NSA/DSA; and
- f) CANADA PROTECTED/CLASSIFIED information/assets provided or generated pursuant to this Contract shall

be transferred only through government-to-government channels (in Canada, this is IISD/PWGSC) or as specified in writing by the NSA/DSA of the concerned government.

3.2.2 CANADA PROTECTED/CLASSIFIED information/assets generated pursuant to this Contract, by the Government of Canada, shall be marked by 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 Check List (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 CANADA PROTECTED/CLASSIFIED information/assets furnished to or generated for pursuant this Contract have been lost or 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 CANADA PROTECTED/CLASSIFIED information/assets furnished to the Seller pursuant to this Contract, including all CANADA PROTECTED/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, will 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 another 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; and
- b) written consent is obtained from the Contracting Authority (CISD/PWGSC) for the prime contract, if the potential subcontractor is located in a third country.

3.2.8 All CANADA PROTECTED/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 regulations.

3.2.9 The Seller shall contact their Industrial Security Authority in order to comply with the provisions of the Bilateral Industrial Security Memorandum of Understanding signed with Canada in relation to equivalencies for 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 bearing 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 special 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 authorized users.

U.S. TABLE OF EQUIVALENCY	
CANADA	U.S.
PROTECTED "A" PROTECTED "B"	TO BE TREATED AS CONFIDENTIAL 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, exempt or excluded 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: <https://www.tpsgc-pwgsc.gc.ca/pmc-cgp/index-eng.html>.

4.10.2 When the Seller and any subcontractor proposed to examine, possess or transfer controlled goods are not registered, exempt or excluded under the CGP at time of contract award, the Seller and any subcontractor shall, within seven (7) working days from receipt of written notification of the contract award, ensure that the required application(s) 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 contract award, shall be a default under the Contract except to the extent that Canada is responsible for the failure 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 residents entering Canada to work on a temporary basis in fulfilment of the Contract. The Seller shall be responsible for all costs incurred as a result of the non-compliance with the immigration requirements, and as a result of delays in the Work resulting therefrom.

Article 4.15 Government Site Regulations

4.15.1 The Seller shall comply with all standing orders or other regulations in force on the Canadian Government sites where any portion of the Work is being performed, including those relating to the safety of persons on the site or the protection of property against loss or damage.

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:
- a) product packaging (Means of Containment), marking, labelling to be in compliance with the 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 by the Seller per 49 CFR (Code of Federal Regulations), in accordance with the Hazardous Products Act and USG Federal 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" (252.223-7006);
 - f) "Safeguarding Sensitive Conventional Arms, Ammunition and Explosives" (252.223-7007); and
 - 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 Sheets in English only as detailed below. Material Safety Data Sheets from Canadian suppliers shall be provided in both 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) soft copy in
ASCII, Rich Text Format (RTF) or
common word processing format
(i.e. MS Word or WordPerfect) shall
be e-mailed to the Buyer. Soft copy
shall include:
 - i. Product, Part Number or company name in the e-mail's subject field;
 - ii. One product or company per request;
 - iii. NATO Stock Number (when available); and
 - iv. Canadian supplier (when applicable).
- 4.20.5 Buyer shall not be held liable for any damages caused by the Seller's improper packaging, labelling or carriage of any such 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 receipt of 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 accordance with the requirements of the Contract and any applicable law.

PART 6.0 FINANCIAL PROVISIONS**Article 6.15 Price Certification**

6.15.1 Canadian Sellers are required to quote prices in accordance with 1031-2 Contract Cost Principles (*SACC Manual* clause [1031-2](#) (2012-07-16) Contract Cost Principles)

6.15.2 In regards to audit, inspection or examination of records to determine costs incurred by Canadian suppliers, the representative of the Minister, or its appointed representative will be the audit authority.

Article 11.14 International Sanctions

11.14.1 Persons in Canada and Canadians outside of Canada are bound by economic sanctions imposed by Canada. As a result, Buyer cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions. Details on existing sanctions can be found at:

<https://www.international.gc.ca/world-monde/international-relations-relations-internationales/sanctions/current-actuelles.aspx?lang=eng>

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. During the performance of the Contract should the imposition of sanctions against a country or person or the additions of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Seller, the affected Work will be treated by the Parties as a partial termination pursuant to the Termination for Convenience Article of this contract. The Seller shall forthwith inform Buyer of the situation; the procedures applicable to the Termination for Convenience Article 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 paid, given, 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 materials and may include Seller's unused residual inventory. Unused parts and materials are those which have never been sold, 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.

During ISS and if authorized specifically in writing by the Buyer, the Seller may utilize remanufactured, refurbished and/or overhauled components including the use of new, used and repaired raw material in the repair or manufacturing of MHLH components in accordance with their standard material repair practices and as acceptable to the TAA.

Article 20.10 Obsolescence

20.10.1 The Seller is responsible for notifying Buyer of current or upcoming obsolescence

issues. Seller' responsibility shall include recommending; lifetime buys, alternate parts or equipment of equivalent capabilities to the obsolete part or system, and alternate vendors.

20.10.2 Reserved

20.10.3 Reserved.

20.10.4 Catastrophic obsolescence rectification, which includes environmental regulatory changes or rulings that impact processes or material usage, as well as acts of nature beyond the control of the Seller, are excluded from the Obsolescence contract requirements. In the event such an exclusion occurs, the Seller shall notify Buyer by submittal of a technical description of the change required and will provide a rough order of magnitude (ROM) proposal.

20.10.5 In the event the obsolete or diminishing manufacturing source component for parts requires redesign or re-qualification, the Seller shall notify Buyer by submittal of a technical description of the change required and will provide a rough order of magnitude (ROM) proposal.

20.10.6 Reserved.