

CUSTOMER CONTRACT REQUIREMENTS

Airlift Capability Project (ACP – CANADA)

CUSTOMER CONTRACT W8475-07HA01

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. In all of the following clauses, “Contractor” means Seller, “Subcontractor” means Seller and/or Seller’s Subcontractors, and “Contract Authority” and “Canada” means Buyer or the Canadian Government, as appropriate.

1. CONTROLLED GOODS

- 1.1 As the Contract requires production of or access to controlled goods that are subject to the Defence Production Act, the Contractor 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:

<http://www.cgp.gc.ca>

- 1.2 When the Contractor and any Subcontractor who propose to examine, possess or transfer controlled goods are not registered, exempt or excluded under the CGP at time of Contract award, the Contractor and any Subcontractor shall, within seven 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 Contractor has provided proof, satisfactory to the Contract Authority, that the Contractor and any Subcontractor are registered, exempt or excluded under the CGP.

- 1.3 Failure of the Contractor to provide proof, satisfactory to the Contract Authority, that the Contractor and any Subcontractor are registered, exempt or excluded under the CGP, within 30 calendar days from the Effective Date of the Contract, 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.
- 1.4 The Contractor and any Subcontractor must maintain registration, exemption or exclusion under the CGP for the duration of the Contract and, in any event, for so long as they will examine, possess or transfer controlled goods.

2. COMPLIANCE WITH APPLICABLE LAWS

- 2.1 The Contractor shall comply with all laws applicable to the performance of the Work or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its Subcontractors. Evidence of compliance with such laws shall be furnished by the Contractor to the Contract Authority at such times the Contract Authority may reasonably request.

3. NOTICE OF LABOUR DISPUTES

- 3.1 Whenever the Contractor or any Subcontractor hereunder has knowledge that any actual or potential labour dispute is delaying or threatens to delay the timely performance of the Contract, the Contractor or the Subcontractor through the Contractor shall immediately give notice thereof, including all relevant information with respect thereto.

4. CONFLICT OF INTEREST

- 4.1 The Contractor agrees that it is a term of the Contract that no person who is not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service or the Defence Administrative Orders and Directives governing Conflict of Interest and Post-Employment, shall derive any direct benefit from the Contract.

5. NO BRIBE

- 5.1 The Contractor 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 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.

6. SURVIVAL

- 6.1 All of the Contractor's obligations of confidentiality and all of the Contractor's representations and warranties set out in the Contract as well as the provisions concerning definitions and interpretations, applicable laws, exclusion of liability, export licence, contractor's records, dispute resolution, price certification and discretionary audit and Intellectual Property Rights shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, pursuant to paragraph 6 of the "EXCUSABLE DELAY" Article or by mutual consent, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

7. SEVERABILITY

- 7.1 If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Contract and all other provisions of the Contract shall remain in full force and effect.

8. DEFAULT BY THE CONTRACTOR

- 8.1 Where the Contractor is in default in carrying out any of its obligations under the Contract, the Minister may, upon giving written notice to the Contractor, terminate for default the whole or any part of the Contract at the expiration of a cure period of at least 60 calendar days if the Contractor has not cured the default to the satisfaction of the Minister within that cure period. The waiver by a Party of a breach of any Article of the Contract shall not prevent the enforcement of that Article by that Party in the case of a subsequent breach, and shall not be deemed or construed as a waiver of any subsequent breach.
- 8.2 Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution

- passed for the winding up of the Contractor, the Minister may, to the extent permitted by the laws of the United States, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
- 8.3 After expiration of the cure period provided for in paragraph 1 or upon the giving of a notice provided for in paragraph 2 of this Article, the Contractor shall have no claim for further payment. The Contractor shall be liable to Canada for Milestone Payments paid to date and the cost of GSM, for those airplanes not already Accepted. Upon Canada's receipt of payment by the Contractor, Canada shall transfer title of the GSM, title of which can be transferred from Canada to the Contractor, and all materials, parts, work-in-process and finished work to the Contractor.
- 8.4 Upon termination of the Contract for default, Canada may acquire, reasonably promptly, under similar terms and conditions, airplane(s) that provide a capability similar to that of the terminated airplane(s), and the Contractor shall be liable to Canada for:
- i. all excess costs related to the re-procurement of the other off the shelf airplane(s) that provide equivalent capability; and
 - ii. the cost of leasing a similar capability during the re-procurement process.
- 8.5 Where, subsequent to issuance of a notice pursuant to paragraph 1 of this Article, the Minister is satisfied that grounds did not exist for a termination under this Article, the Minister may elect to cancel the notice or may deem it to be a notice of termination for convenience issued under paragraph 1 of the "TERMINATION FOR CONVENIENCE" Article.

9. TERMINATION FOR CONVENIENCE

- 9.1 Notwithstanding anything contained in the Contract, the Minister may, at any time prior to the completion of the Work, by giving notice to the Contractor (in this Article sometimes referred to as a "termination notice"), terminate the Contract as regards to all or any part of the Work not completed. Upon a termination notice being given, the Contractor shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The Minister may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.
- 9.2 Upon receipt of notice provided under paragraph 1 under this Article, the Contractor shall immediately consult with the Minister as to the most effective

- action to take, including completing contractual performance before selling the airplane(s) to another customer at the best price reasonably obtainable. The decision of the Minister shall be final in this respect.
- 9.3 In the event that a sale of the airplane(s) including the GSM is the preferred option, the Contractor shall, within 30 business days of the sale of the airplane to another customer, pay to the Minister an amount equal to the net sale proceeds, including costs of GSM. The Contractor shall keep the Minister informed of its remarketing efforts and progress.
- 9.4 For the purpose of this Article the term “net sale proceeds” shall mean the gross price, proceeds or other compensation received by or on behalf of the Contractor less the following:
- a. the balance of Milestone Payments, if any, remaining due to the Contractor in respect to the airplane after the date of termination under this Article;
 - b. all appropriate costs and expenses (on a full indemnity basis) reasonably incurred by the Contractor in relation to the disposal including, but not limited to, the cost of any delays or rescheduling of production.
- 9.5 In the event of a termination notice being given pursuant to paragraph 1 of this Article, and for those airplane(s) not being sold pursuant to paragraph 3, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Contractor has not already been so paid or reimbursed by Canada:
- a. on the basis of the Contract Price, for all completed work in accordance with the Contract and in compliance with the instructions contained in the termination notice;
 - b. the cost to the Contractor plus a fair and reasonable profit thereon, for all work terminated by the termination notice before completion, the cost to the Contractor being determined in accordance with paragraph c. below; and
 - c. all costs of and incidental to the termination of the Work or part thereof, including the cost of cancellation of obligations incurred by the Contractor with respect to the terminated Work or part thereof, the cost of and incidental to the taking of an inventory of materials, components, work-in-process and finished work on hand related to the Contract at the date of the termination, and the cost of preparation of

necessary accounts and statements with respect to work performed to the effective date of the termination and commitments made by the Contractor with respect to the terminated portions of the Work; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination except wages that the Contractor is obligated by statute to pay them and except for reasonable severance payments or damages paid to employees hired to perform the Contract whose hiring was expressly required by the Contract or approved in writing by the Minister for the purpose of the Contract.

- 9.6 The Minister may reduce the payment in respect of any of the Work to the extent that, upon inspection, it is deficient in meeting the requirements of the Contract.
- 9.7 Notwithstanding anything in paragraph 5 of this Article, the total of the amounts to which the Contractor is entitled under subparagraphs a. and b. of paragraph 5 to this Article inclusive, together with any amounts paid or due or becoming due to the Contractor under other provisions of the Contract, shall not exceed the Contract Price or the portion thereof that is applicable to the part of the Work that is terminated, and shall not exceed the proportion of the price quoted by the Contractor for all of the Work that is reasonably attributable to the proportion of the Work performed to the effective date of the termination.
- 9.8 In the procuring of materials and parts required for the performance of the Contract and in the subcontracting of any of the Work, the Contractor shall utilize its current procurement provisions to place purchase orders and subcontracts. The Contractor shall co-operate with the Minister and do everything reasonably within its power at all times to minimize the amount of Canada's obligations in the event of a termination under this Article.
- 9.9 Title to all materials, parts, plant, equipment, work-in-process and finished work in respect of which payment is made to the Contractor shall, upon such payment being made, pass to and vest in Canada unless already so vested under any other provision of the Contract, and such materials, parts, plant, equipment, work-in-process and finished work shall be delivered according to the order of the Minister, but Canada will not accept and will not pay for materials, parts, plant, equipment or work-in-process or finished work that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
- 9.10 The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the Minister under this Article, except to the extent that this Article expressly provides.

10. LICENSE TO INTELLECTUAL PROPERTY RIGHTS IN FOREGROUND INFORMATION

- 10.1 In consideration of Canada's contribution to the cost of development of the Foreground Information, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all Intellectual Property Rights in the Foreground Information that vest in the Contractor pursuant to the "CONTRACTOR TO OWN INTELLECTUAL PROPERTY RIGHTS IN FOREGROUND INFORMATION" Article, for any public purpose except Commercial Exploitation in Competition with the Contractor. Canada's license to the Intellectual Property Rights in the Foreground Information also includes the right to disclose in confidence the Foreground Information to other governments and NATO for governmental and defence purposes. Subject to the rights of the Contractor, the Intellectual Property Rights arising from any modification, improvement, development or translation of the Foreground Information that is effected by or for Canada in the exercise of this license shall vest in Canada, or in such person as Canada shall decide.
- 10.2 The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in paragraph 1 of this Article and that such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in the Foreground Information that vest in the Contractor pursuant to the "CONTRACTOR TO OWN INTELLECTUAL PROPERTY RIGHTS IN FOREGROUND INFORMATION" Article, includes the right to disclose the Foreground Information in confidence to Bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require the bidder or the contractor not to use or disclose any Foreground Information except as may be necessary to bid for or to carry out that contract.
- 10.3 For greater certainty and without limiting the generality of paragraphs 1 and 2 of this Article, Canada's right to modify, improve, translate, reproduce or further develop any Foreground Information pursuant to paragraphs 1 and 2 of this Article:
- a. applies to Foreground Information that is Software, notwithstanding any terms to the contrary delivered by the Contractor with any deliverable, including the wording on any shrink-wrapped license attached to any deliverable; and
 - b. subject to the Contractor's rights, 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.

- 10.4 Notwithstanding paragraphs 1, 2, and 3 of this Article, if any Foreground Information arises solely from correction by the Contractor of errors in Background Information that is Software, or from minor or customary modifications made by the Contractor to such Software, then the license set out in paragraphs 1, 2, and 3 of this Article shall not apply to that Foreground Information and, unless otherwise agreed, the license that applies to such Background Information shall apply to that Foreground Information.
- 10.5 Where the Intellectual Property Rights in any Foreground Information are or will be owned by a Subcontractor, the Contractor shall either obtain a license from that Subcontractor that permits compliance with paragraphs 1, 2, and 3 of this Article or arrange for the Subcontractor to convey directly to Canada the same rights.
- 10.6 If the Contractor wishes to make use of any Canada-owned information that was supplied for purposes of the Contract, for the commercial exploitation or further development of any of the Foreground Information, then the Contractor may make a written request for a license to exercise the required Intellectual Property Rights in that Canada-owned information, to the minister for whose department or agency the Delivery Activities is being or was carried out. The Contractor shall give that minister an explanation as to why such a license is required. That minister shall respond in writing to the request within a reasonable period of time. Should that minister agree to grant such a license, it shall be on terms and conditions to be negotiated between the Contractor and that minister. It is understood that those terms may include payment of compensation to Canada.
- 10.7 The Contractor may apply to the minister for whose department or agency the Delivery Activities is being or was carried out for a license to commercially exploit a translation of the Foreground Information which is effected by or for Canada, subject to the same restrictions and obligations as apply under the Contract to commercial exploitation of the Foreground Information that was translated. Any such license shall be on terms and conditions to be negotiated between the Contractor and that minister. It is understood that those terms may include payment of compensation to Canada.

11. LICENSE TO INTELLECTUAL PROPERTY RIGHTS IN BACKGROUND INFORMATION AND AIRCRAFT SOFTWARE

- 11.1 Without restricting the scope of any license or other right in the Background Information that Canada may otherwise hold, subject to the conditions set forth in

- paragraph 9 of this Article, at no increase in the price of the Contract, the Contractor agrees to grant to Canada in relation to the Aircraft, a non-exclusive, perpetual, worldwide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information, including Manuals and Other Instructional Materials, owned by the Contractor that is necessary and useful for the following purposes:
- a. for the operation, maintenance, repair, overhaul or certification of the Aircraft and the translation, into French, of any Contractor-owned Manuals and Other Instructional Materials (provided however, Canada shall indemnify the Contractor for all third party claims, damages and liabilities suffered by the Contractor caused by an error in such translation);
 - b. for the manufacturing of spare parts for operation, maintenance, repair or overhaul solely for the Aircraft by Canada provided, however: (i) those spare parts are necessary for Aircraft-On-Ground purposes or the airplane is in a Mission Limiting Condition; (ii) those spare parts are not available on reasonable commercial terms from the Contractor to enable timely maintenance, repair or overhaul; and (iii) Canada manufactures airplane spare parts, or have third parties do so, only in limited quantities in relation to the purpose of sub-paragraph (i); and
 - c. for disclosure on a confidential basis to any person or legal entity contracted by Canada (or Bidder for such a contract) to be used solely for a purpose set out in subparagraph a. or b. of this paragraph of this Article, but in the case of subparagraph b., only if the Contractor is unable or unwilling to provide the spare parts on reasonable commercial terms and within reasonable delivery times.
- 11.2 Subject to the conditions of paragraph 9 of this Article, the Contractor agrees to make a copy of any such Background Information in existence when such conditions are met promptly available to Canada for any of the purposes set out in subparagraphs a., b. or c. of paragraph 1 of this Article. Canada agrees to reimburse the Contractor for its reasonable costs in retrieving, reformatting (if any) and delivering such Background Information to Canada.
- 11.3 Notwithstanding paragraph 1 of this Article, the license set out therein shall not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Contract.
- 11.4 Canada may wish to award contracts to third party contractors under paragraph 1 of this Article, and such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in Background Information includes the right to disclose in confidence the Background Information to Bidders for such contracts, and to sublicense or

- otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract provided, however, that any contract with such third party contractors contains, in addition to any commercially reasonable terms agreed to by the Contractor and Canada, a reasonable insurance provision satisfying requirements established by the Contractor. Canada shall require Bidders and the successful third party contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
- 11.5 Subject to the conditions set forth in paragraph 9 of this Article, where the Intellectual Property Rights in any Manuals and Other Instructional Materials are owned by a Subcontractor, the Contractor shall use reasonable best efforts to ensure that Canada may use and have its Bidders and third party contractors use, such Manuals and Other Instructional Materials for the purposes set forth in paragraph 1, subparagraph a, of this Article or arrange for the Subcontractor to convey directly to Canada the same rights.
- 11.6 The Contractor grants Canada a non-exclusive, perpetual, worldwide, fully-paid and royalty-free license, to copy and use any Aircraft Software in the operation of the Aircraft.
- 11.7 Canada agrees that it shall not, nor shall authorize its contractors, agents or other third parties to, reverse engineer, decompile, disassemble, modify, or create derivative works of the Aircraft Software, in whole or in part, or attempt in any way to determine the related source code.
- 11.8 Canada may need access to Background Information of the Contractor in addition to that provided for in paragraph 1 or to the source code form of the Aircraft Software (“Additional Background Information”). Subject to the conditions set forth in paragraph 9 of this Article, at no increase in the price of the Contract, the Contractor shall on request of the Minister, negotiate in good faith to grant Canada a license on commercially reasonable terms, including a reasonable royalty, in Additional Background Information for the purposes of allowing Canada or a third party contractor acting on behalf of Canada to modify the Aircraft or Aircraft Software or to manufacture spare parts for the Aircraft (other than as conditionally provided in paragraph 1 of this Article). If requested, the Contractor shall also negotiate to obtain for Canada similar rights from its Subcontractors. Such negotiations are subject to any compensation demanded by the appropriate Subcontractor and the Minister and the Contractor agreeing on a fair and reasonable price for the Contractor’s efforts.
- 11.9 Any Background Information that may be disclosed to Canada under the Contract and Aircraft Software provided under the Contract, are the proprietary, confidential and/or trade secret information of the Contractor or its Subcontractors. Canada agrees to preserve and protect all such Background

- Information and Aircraft Software clearly indicated as such and to reproduce and use (i) Background Information solely for the internal purposes of review and evaluation in connection with the Contract and (ii) Aircraft Software solely for purposes set forth in paragraph 5 of this Article. Upon request of the Contractor or when no longer needed for such internal purposes, whichever comes first, Canada shall return to the Contractor all Background Information disclosed to Canada under the Contract.
- 11.10 Nothing in the Contract shall obligate the Contractor to furnish the Background Information to which a license has been conditionally granted under paragraph 1 of this Article, or Additional Background Information or rights therein under the Contract unless (i) Canada does not receive, for whatever reason, post-delivery support of the Aircraft under Contractor's FMS contract with the USG (GSP: FA8614-04-C-2004) or a successor FMS contract with the Contractor or with a subsidiary of the Contractor or related company, and (ii) the USG approves such delivery and the grant of the rights set forth in this Article.
- 11.11 When the conditions set forth in paragraph 9 are satisfied, the licenses contemplated by paragraphs 1 and 7 of this Article shall be set forth in separate license agreements notwithstanding any expiration of the Contract. The agreement for the license of paragraph 1 shall contain the terms set forth above in paragraph 1 and any other commercially reasonable terms mutually agreed upon by Contractor and Canada. The licenses of paragraphs 1 and 5 shall not be revocable unless there is a material breach by Canada and Canada does not cure such breach within 90 calendar days after reasonable notice from the Contractor of such breach. Upon execution of a separate license for either Background Information or Additional Background Information, the Contractor shall, if requested, and in accordance with the terms of the license, furnish to the Minister, or to any other Bidder or third party contractor with whom Canada may wish to place or has placed contracts for the licensed purposes, a copy of the Background Information of paragraph 1 or the Additional Background Information of paragraph 7, as applicable. The Contractor shall be reimbursed for its reasonable costs in retrieving, copying, and furnishing such Background Information or Additional Background Information and for any reformatting of such Background Information or Additional Background Information that may be made at the request of Canada.

12. TRANSFER OF INTELLECTUAL PROPERTY RIGHTS IN FOREGROUND INFORMATION

- 12.1 Until the Contractor completes the Delivery Activities and discloses all of the Foreground Information in accordance with the "DISCLOSURE OF FOREGROUND INFORMATION" Article, the Contractor shall not, without the prior written permission of the Minister, sell, assign or otherwise transfer title to

- the Intellectual Property Rights in any Foreground Information, or license or otherwise authorize the use of the Intellectual Property Rights in any of the Foreground Information by any person in any way that will interfere with the rights of Canada.
- 12.2 If Canada terminates the Contract in whole or in part for default, or if the Contractor fails to disclose any Foreground Information in accordance with the “DISCLOSURE OF FOREGROUND INFORMATION” Article, the Minister may, by notice given not later than 90 calendar days from the date of termination or from the date Canada learns of the failure to disclose, as the case may be, require the Contractor to convey to Canada all of the Intellectual Property Rights in the Foreground Information or, in the case of a notice based on failure to disclose, all of the Intellectual Property Rights in the Foreground Information not disclosed. In the case of either notice, the rights to be conveyed shall include the Intellectual Property Rights in any Foreground Information that have vested or are to vest in a Subcontractor. In the case of Intellectual Property Rights in Foreground Information which have been sold or assigned to a party other than a Subcontractor, the Contractor shall not be obligated to convey rights to Canada in accordance with this paragraph, but shall pay to Canada on demand an amount equal to the consideration which the Contractor received from the sale or assignment of the Intellectual Property Rights in that Foreground Information or, in the case of a sale or assignment that was not at arm's length, the fair market value of the Intellectual Property Rights in that Foreground Information, in each case including the value of future royalties or license fees.
- 12.3 In the event of the issuance by the Minister of a notice under paragraph 2 of this Article, the Contractor shall, at its own expense and without delay, execute such conveyances or other documents relating to title to the Intellectual Property Rights as the minister for whose department or agency the Delivery Activities is being or was carried out may require, and the Contractor shall, at Canada's expense, afford that minister all reasonable assistance in the preparation of applications and in the prosecution of any applications for, or any registration of, any Intellectual Property Right in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.