

# **TEXTRON SYSTEMS CORPORATION**

## **GENERAL PROVISIONS**

### **(FIXED PRICE SUBCONTRACTS)**

#### **TAPV Support Contract: W847L-100018/002/TAP**

#### **Canadian**

#### **Tactical Armored Patrol Vehicle (TAPV) Program**

The provisions set forth in the following listed sections are incorporated into this Subcontract/Purchase Order by reference. When used in these clauses, and unless otherwise directed by Buyer, the term “Prime Contract” shall mean the Canadian Government Contract to Textron Systems Canada Inc.; “Contract” shall mean the Order; “Contractor” shall mean the Seller; and the “Work” shall mean the “Products.” Where the provisions reference an obligation of the Contractor granted to “Canada,” “the Government of Canada,” “DND,” or “the Contracting Authority,” Seller shall comply with Buyer’s direction for the satisfaction of such obligation.

“Order” means the ordering document issued by Buyer (“Textron Systems Corporation”), including these Terms and Conditions for Purchase Orders and any referenced documents; “Seller” means the person or entity to which this Order is addressed and issued; “Products” means the goods or services furnished by Seller pursuant to this Order, including, without limitation, materials, drawings, data, media, information and other tangible and intangible property.

Where work was undertaken pursuant to another Purchase Order in support of the Prime Contract, the following provisions shall apply as though incorporated into such Purchase Orders, with such obligations being applicable to this Order.

## **FLOWDOWN TERMS AND CONDITIONS**

### **I. Industrial and Regional Benefits/Offset credits for Canadian Procurements**

- a) The Contract is subject to Canada's Industrial and Regional Benefits (IRB) Policy and the Contractor must achieve IRB valued at 100% of the contract value. The Seller acknowledges and agrees that where the Contract is to be amended, the IRB commitment must be correspondingly either increased or decreased to reflect this amendment. The Contractor must comply with the IRB requirements detailed in below.
- b) Industrial and Regional Benefits Requirement.
  1. This Contract is in support of the Buyer's Canadian Industrial and Regional Benefits program. Buyer represents that its business base consists, in part, of international orders, and that it must, from time to time, enter into international offset agreements to secure such orders. To the extent that the Products ordered hereunder are components of Buyer's products sold to Canada or concern or are non-recurring activities, tooling, equipment, engineering, etc. associated with Buyer's products sold to Canada or concern, and in recognition that such sale results, directly or indirectly, in business opportunities, sales or revenue for the Seller, the Seller agrees to cooperate with Buyer in the fulfillment of any Industrial and Regional Benefits/Offset program obligations that Buyer may be required to accept as a condition of such sale to Canada. Seller hereby commits to assume and discharge a proportionate share of said offset obligation(s) by engaging in such activities as subcontracting, co-production, co-development, technology transfers, research and development, investments, joint ventures, etc. for Buyer's Canadian program.
  2. Buyer expressly claims the right to all industrial benefits/offset credits arising with respect to any Products ordered hereunder, including any related subcontracts issued by the Seller to sources in the foreign customer's country. The Seller agrees to provide all necessary information in such form as may be required to enable Buyer to obtain the aforementioned industrial benefits/offset credits.
  3. The Seller must clearly identify the Canadian Content Value (CCV) for items utilized in performance of this Contract and any related subcontract that meet the definition of Canadian goods.
    - A good wholly manufactured or originating in Canada is considered a Canadian good.
    - A product containing imported components may also be considered Canadian for the purpose of this policy when it has undergone sufficient change in Canada, in a manner that satisfies the definition for originating goods as specified under the United States-Mexico-Canada Agreement (link below).

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>

4. CCV is measured in Canadian dollars and is the portion of the provided product or service that involves Canadian costs. The CCV of any transaction will be determined by either the net selling price method or the cost aggregate method. A definition and description of these CCV valuation methods is provided on the website of the Government of Canada's IRB authority – Innovation, Science and Economic Development Canada – at the following link:

<https://ised-isde.canada.ca/site/industrial-technological-benefits/en/key-references/model-terms-and-conditions#art9>

Example: An IRB contractor places a \$10,000 subcontract with a Canadian company and the CCV of the particular work package is 65 percent. The eligible CCV credit value is \$6,500.

## **II. Canadian Exemption**

- a) Utilization of the ITAR Canadian Defense Service Exemption under 126.5(c)(4) – The Canadian recipient of unclassified technical data exported by Buyer must adhere to:
  1. Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person; and
  2. Provide that any subcontract contain all the limitations of this section; and
  3. Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and
  4. Include a clause requiring that all documentation created from U.S. technical data contain the statement, "This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in 22 CFR 126.5 of the International Traffic In Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR."

## **III. Security Requirement for United States Suppliers [APPLICABLE ONLY TO SUPPLIERS RECEIVING OR GENERATING CLASSIFIED INFORMATION]**

- a) All CLASSIFIED information/assets furnished to the Contractor or produced by the Contractor must be safeguarded as follows:
  1. the recipient Contractor must not disclose the 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 must 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), PWGSC;
  2. the recipient Contractor must provide the 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 its NSA/DSA;

3. the recipient Contractor must not use the 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;
  4. such information/assets must 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 CLASSIFIED information/assets provided or generated pursuant to this Contract/Standing Offer 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.
- b) CLASSIFIED information/assets generated pursuant to this Contract, by the Government of Canada, must be marked by the recipient Contractor with its government's equivalent security classification.
  - c) All CLASSIFIED information/assets generated pursuant to this Contract must be assigned a security classification in accordance with the security classification specifications provided on the Security Requirements Check List (SRCL) attached at Annex A.
  - d) The Contractor must 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 lost or disclosed to unauthorized persons.
  - e) Upon completion of the Work, the Contractor must return to the Government of Canada, via government-to-government channels, all CLASSIFIED information/assets furnished to or produced by the Contractor pursuant to this Contract, including all CLASSIFIED information/assets released to or produced by its subcontractors.
  - f) The Contractor visiting government or industrial facilities will submit a Request for Visit form through their respective NSA/DSA.
  - g) Classified information/assets provided or generated pursuant to this Contract must not be further provided to another potential contractor or subcontractor unless:
    1. written assurance is obtained from the recipient's NSA/DSA to the effect that the potential contractor or subcontractor has been approved for access to CLASSIFIED information by the NSA/DSA; and
    2. written consent is obtained from the Contracting Authority (CISD/PWGSC) for the prime contract, if the potential subcontractor is located in a third country.
  - h) 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 regulations.
  - i) The Contractor must 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.
  - j) The recipient Contractor must also insert the above paragraphs in all subcontracts that involve access to CLASSIFIED information/assets provided or generated under this Contract.

U.S. TABLE OF EQUIVALENCY	
CANADA	U.S.
PROTECTED "A"	TO BE TREATED AS CONFIDENTIAL WHILE IN THE U.S.
SECRET	SECRET

#### **IV. Controlled Goods (for Work done in Canada)**

- a) As the Contract requires production of or access to controlled goods that are subject to the Defence Production Act, R.S. 1985, c. D-1, the Contractor and any subcontractor are 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>.
- b) When the Contractor and any subcontractor proposing 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 must, 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 must be performed until the Contractor has provided proof, satisfactory to the CA, that the Contractor and any subcontractor are registered, exempt or excluded under the CGP.
- c) Failure of the Contractor to provide proof, satisfactory to the CA, that the Contractor and any subcontractor are registered, exempt or excluded under the CGP, within thirty (30) calendar days from receipt of written notification of contract award, will be considered a default under the Contract except to the extent that Canada is responsible for the failure due to delay in processing the application.
- d) The Contractor 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.

#### **V. Priority Rating - Canadian Contractors**

- a) This Contract concerns a Canadian defence requirement and therefore is eligible to be assigned a "U.S. Priority Rating" for any materials/services imported from the United States, which may be required in the performance of the Work.

#### **VI. Notice of Labour Disputes**

- a) 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 this Contract, the Contractor or the subcontractor through the Contractor must immediately give notice thereof, including all relevant information and possible effect on the performance of the Work, to the Contracting Authority.

and shall indicate the nature of the problem and its possible effect on the conduct and performance of the Work.

## **VII. ISO 9001:2008 Quality Management Systems - Requirements (QAC Q)**

- a) In the performance of the Work described in the Contract, the Contractor must comply with the requirements of:
- b) ISO 9001:2008 - Quality management systems - Requirements, published by the International Organization for Standardization (ISO), current edition at date of submission of Contractor's bid.
  - 1. c) The Contractor's quality management system must address each requirement contained in the standard, however, the Contractor is not required to be registered to the applicable standard. Assistance for Government Quality Assurance (GQA)
  - 2. The Contractor must provide the Quality Assurance Representative (QAR) with the accommodation and facilities required for the proper accomplishment of GQA and must provide any assistance required by the QAR for evaluation, verification, validation, documentation or release of product.
  - 3. The QAR must have the right of access to any area of the Contractor's or subcontractor's facilities where any part of the Work is being performed. The QAR must be afforded unrestricted opportunity to evaluate and verify Contractor conformity with quality system procedures and to validate product conformity with the requirements of the Contract. The Contractor must make available for reasonable use by the QAR the equipment necessary for all validation purposes. Contractor personnel must be made available for operation of such equipment as required.
  - 4. When the QAR determines that GQA is required at a subcontractor's facilities, the Contractor must provide for this in the purchasing document and forward copies to the QAR, together with relevant technical data as the QAR may request.
  - 5. The Contractor must notify the QAR of non-conforming product received from a subcontractor when the product has been subject to GQA.
- c) For the design, development or maintenance of software, the Contractor must interpret the requirements of ISO 9001:2008 Quality management systems - Requirements, according to the guidelines of the latest issue (at contract date) of ISO/IEC 90003:2004 Software engineering - Guidelines for the application of ISO 9001:2000 to computer software.

## **VIII. Rights in Background Information**

- a) Interpretation
  - 1. "Intellectual Property" means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright; this includes but is not limited to any inventions, designs, methods, processes, techniques, know-how, show-how, trade secrets, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, manuals and any other documents, Software, and Firmware;

2. "Intellectual Property Right" means any intellectual property right recognized by law, including any intellectual property right protected by legislation such as patents, copyright, trademark, industrial design, integrated circuit topography, and plant breeders' rights, or subject to protection under the law as trade secrets and confidential information.
3. "Foreground Information" means all Intellectual Property first conceived, developed, produced or reduced to practice as part of the Work under the Contract;
4. "Firmware" means computer programs that are stored in integrated circuits, read-only memory or other similar devices within the hardware or other equipment;
5. "Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, including any modification.
6. "Background Information" means all Intellectual Property that is not Foreground Information and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other third party;
7. "Interface Control Documents (ICD)" means the documentation, including drawings, that describe the physical, functional, electrical, and logical interfaces between the TAPV systems, subsystems and major assemblies, training devices, simulators and Government Property.
8. "Provisioning Data" means the various data and documentation needed by DND to identify, catalogue, procure and distribute the repairable and consumable spares used in the maintenance done by DND. It includes the Provisioning Parts Breakdown, the Supplementary Provisioning Technical Documentation, and the Master Data and Transactional Data required for the Electronic Information Environment (EIE).
9. "Specific Software" means software that has been developed and integrated into the TAPV (e.g., for the RWS, Driver Visual Enhancement, HUMS, Vehicle Information Management System, etc.) which is required to be provided upon a request by Canada and required to be placed in escrow, for Canada's conduct of technical investigations. Commercial Off-the-Shelf (COTS) software such as Microsoft and software for COTS hardware such as engines and transmissions are excluded from this requirement. See also the Supplemental Terms attached to this Order for additional detail.
10. "Specific Technical Data" means technical data for all items developed and integrated into the TAPV (e.g., the RWS, Driver Visual Enhancement, HUMS, Vehicle Information Management System, etc.) which is required to be placed in escrow, for Canada's conduct of maintenance, including third and fourth level maintenance, as well as other Canada responsibilities such as Contract oversight, safety oversight, TAPV improvements, TAPV fleet management and TAPV operations. This includes engineering drawings and associated lists, parts lists, interface data, maintenance procedures, and other information relevant to TAPV design, configuration, and technical status. Commercial Off-the-Shelf (COTS) technical data for items such as engines and transmissions are excluded from this requirement. See also the Supplemental Terms attached to this Order for additional detail.
11. "Technical Publications" means the technical manuals, maintenance manuals, user's manuals and operator's manuals.

b) License to Intellectual Property Rights in Background Information

1. The Contractor grants to Canada a non-exclusive, perpetual, irrevocable, worldwide,

fully-paid and royalty-free license to use the Background Information included in the Interface Control Documents, Provisioning Data, Specific Software, Specific Technical Data and Technical Publications delivered or required to be provided under the TAPV Acquisition Contract and the TAPV Support Contract, for the use, operation, maintenance, repair or overhaul of the TAPV.

2. The license cannot be restricted in any way by the Contractor providing any form of notice to the contrary, including the wording on any shrink-wrapped license attached to any deliverable.
3. For greater certainty, Canada's license in this Background Information includes, but is not limited to:
  - the right to use, reproduce, release, disclose or translate the Background Information within the Government of Canada, for the use, operation, maintenance, repair or overhaul of the TAPV;
  - the right to disclose the Weapon Effects Simulation (WES) system ICD delivered in accordance with CDRL TAPV-ACQ-SE-201 to the WES contractor, Cubic Defense Applications, Inc. of San Diego, California, hired by Canada for the purpose of integrating the WES system in the TAPV; and
  - the right to sublicense or otherwise authorize the use of the Background Information by a third party hired by Canada upon occurrence of any of the following events:
    - Canada terminates the Contract for default;
    - the Contractor or its supplier, as applicable, ceases to do business, 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
    - Canada requires support from the Contractor to operate, maintain, repair, modify or adapt the Work during their operational life and the Contractor is incapable or unwilling (for whatever reason) to provide the support for this purpose, on reasonable commercial terms commencing within thirty (30) days after a written request from the Minister. Canada will require these third parties not to use, reproduce or disclose that information except as may be necessary to support TAPV for Canada.
  - the right to disclose the TAPV ICDs related to Land Command Support System (LCSS) integration and delivered in accordance with the CDRL TAPV-ACQ-SE-201, to General Dynamics Canada and Thales Canada, hired by Canada for the purpose of supporting the TAPV Contractor's integration of LCSS equipment, and for integrating the Cryptographic Controlled Items onto the TAPV.

c) Contractor Rights to Grant the License

1. The Contractor represents and warrants that it has the right to grant to Canada the license and any other rights to use the Background Information. If the Intellectual Property Rights in any Background Information are or will be owned by a subcontractor or any other third party, the Contractor must have or obtain promptly a license from that subcontractor or third party that permits compliance with Article



VIII or arrange, without delay, for the subcontractor or third party to grant promptly any required license directly to Canada.

d) Delivery of the Specific Software and Specific Technical Data

1. The Contractor must provide portions of the Specific Software and Specific Technical Data to Canada within two (2) business days of a request by Canada, when required for Canada's responsibilities such as TAPV Contract oversight, safety oversight, TAPV Fleet management, and TAPV operations/maintenance.

**IX. Escrow Agreement**

- a) By the Full Operational Capability Support Readiness Verification (FOCSR) milestone, the Contractor must deliver the Specific Technical Data and the Specific Software source code and object code to an escrow agent approved by Canada, to be held in trust by that agent, for release to Canada upon the occurrence of any of the following events:
1. Canada or Buyer terminates the Contract for default;
  2. Canada or Buyer requires support from the Contractor to operate, maintain, repair, modify or adapt the Work during their operational life and the Contractor, is incapable or unwilling (for whatever reason) to provide the support for this purpose, on reasonable commercial terms commencing within thirty (30) days after a written request from the Minister or Buyer's procurement representative;
  3. the Contractor or its supplier ceases to do business, 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;
  4. a receiver is appointed for the Contractor or its supplier under a debt instrument, or a receiving order is made against the Contractor or its supplier;
  5. an order is made or a resolution passed for the winding up of the Contractor or its supplier; or
  6. the Contractor is in breach of its obligations pursuant to Article 3.2.4 of the Contract and has failed to rectify such breach within 30 days of receipt of written notification of the same from the Minister.
- b) The escrow agreement must be substantially in the form provided in Annex L, Escrow Agreement, but in any event, must be to the satisfaction of Canada. The Contractor must ensure that the data in the possession of the escrow agent is updated at least yearly to correspond with the most current version of the TAPV and associated software in the possession of Canada.
- c) The escrow agreement must remain in effect for the entire period of the Contract after receipt of the data.
- d) The source code and object code delivered by the Contractor to an escrow agent must contain a complete description of the operation of that software, in sufficient detail to enable a programmer, experienced in the programming language or languages in which the source code is written, to modify all aspects of that software without assistance from the Contractor.

**X. General Safety Program - Environmental Health and Safety Management System**  
**[APPLICABLE TO SUPPLIERS CONDUCTING ACTIVITIES IN CANADA]**

- a) The Contractor's and his Subcontractor's activities under the TAPV Acquisition Contract and Support Contract shall fully comply with the *Canadian Environmental Protection Act* (latest) and the following environmental statutes and their regulations whenever and wherever the activities are conducted in Canada:

1. The Canadian Environmental Protection Act, 1999;
2. The Canada Wildlife Act;
3. The Migratory Birds Convention Act, 1994;
4. The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act;
5. The Antarctic Environmental Protection Act;
6. The International River Improvements Act;
7. The Canada National Parks Act;
8. The Canada National Marine Conservation Areas Act; and
9. The Saguenay-St. Lawrence Marine Park Act.

## **XI. 2035 11 (2008-05-12) Inspection and Acceptance of the Work**

- a) All the Work is subject to inspection and acceptance by Canada. Inspection and acceptance of the Work by Canada do not relieve the Contractor of its responsibility for defects or other failures to meet the requirements of the Contract. Canada will have the right to reject any work that is not in accordance with the requirements of the Contract and require its correction or replacement at the Contractor's expense
- b) The Contractor must provide representatives of Canada access to all locations where any part of the Work is being performed at any time during working hours. Representatives of Canada may make examinations and such tests of the Work as they may think fit. The Contractor must provide all assistance and facilities, test pieces, samples and documentation that the representatives of Canada may reasonably require for the carrying out of the inspection. The Contractor must forward such test pieces and samples to such person or location as Canada specifies.
- c) The Contractor must inspect and approve any part of the Work before submitting it for acceptance or delivering it to Canada. The Contractor must keep accurate and complete inspection records that must be made available to Canada on request. Representatives of Canada may make copies and take extracts of the records during the performance of the Contract and for up to three (3) years after the end of the Contract.

## **XII. 2035 21 (2008-05-12) Confidentiality**

- a) The Contractor must keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to Canada under the Contract. The Contractor must not disclose any such information without the written permission of Canada. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.
- b) The Contractor agrees to use any information provided to the Contractor by or on behalf of Canada only for the purpose of the Contract. The Contractor acknowledges that all this information remains the property of Canada or the third party, as the case may be. Unless provided otherwise in the Contract, the Contractor must deliver to Canada all such information, together with every copy, draft, working paper and note that contains such information, upon completion or termination of the Contract or at such earlier time as Canada may require.
- c) Subject to the *Access to Information Act*, R.S.C. 1985, c. A-1, and to any right of Canada under the Contract to release or disclose, Canada must not release or disclose outside the Government of

Canada any information delivered to Canada under the Contract that is proprietary to the Contractor or a subcontractor.

- d) The obligations of the Parties set out in this section do not apply to any information if the information:
1. is publicly available from a source other than the other Party; or
  2. is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information; or
  3. is developed by a Party without use of the information of the other Party.
- e) Wherever possible, the Contractor must mark or identify any proprietary information delivered to Canada under the Contract as "Property of (Contractor's name), permitted Government uses defined under Public Works and Government Services (PWGSC) Contract No. (fill in Contract Number)". Canada will not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
- f) If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Contractor must at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the PWGSC Industrial Security Manual and its supplements and any other instructions issued by Canada.
- g) If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED, by Canada, representatives of Canada are entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract. The Contractor must comply with, and ensure that any subcontractor complies with, all written instructions issued by Canada dealing with the material so identified, including any requirement that employees of the Contractor or of any subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

### **XIII. 2035 23 (2008-05-12) Liability**

The Contractor is liable for any damage caused by the Contractor, its employees, subcontractors, or agents to Canada or any third party. Canada is liable for any damage caused by Canada, its employees or agents to the Contractor or any third party. The Parties agree that no limitation of liability or indemnity provision applies to the Contract unless it is specifically incorporated in full text in the Articles of Agreement. Damage includes any injury to persons (including injury resulting in death) or loss of or damage to property (including real property) caused as a result of or during the performance of the Contract.

### **XIV. 2035 24 (2008-05-12) Intellectual Property Infringement and Royalties**

1. The Contractor represents and warrants that, to the best of its knowledge, neither it nor Canada will infringe any third party's intellectual property rights in performing or using the Work, and that Canada will have no obligation to pay royalties of any kind to anyone in connection with the Work.

2. If anyone makes a claim against Canada or the Contractor concerning intellectual property

Infringement or royalties related to the Work, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against Canada, according to *Department of Justice Act*, R.S. 1985, c. J-2, the Attorney General of Canada must have the regulation and conduct of all litigation for or against Canada, but the Attorney General may request that the Contractor defend Canada against the claim. In either case, the Contractor agrees to participate fully in the defence and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.

3. The Contractor has no obligation regarding claims that were only made because:

- (a) Canada modified the Work or part of the Work without the Contractor's consent or used the Work or part of the Work without following a requirement of the Contract; or
- (b) Canada used the Work or part of the Work with a product that the Contractor did not supply under the Contract (unless that use is described in the Contract or the manufacturer's specifications); or
- (c) the Contractor used equipment, drawings, specifications or other information supplied to the Contractor by Canada (or by someone authorized by Canada); or
- (d) the Contractor used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Contractor has included the following language in its own contract with the supplier of that equipment or software: "[Supplier name] acknowledges that the purchased items will be used by the Government of Canada. If a third party claims that equipment or software supplied under this contract infringes any intellectual property right, [supplier name], if requested to do so by either [Contractor name] or Canada, will defend both [Contractor name] and Canada against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Contractor's responsibility and, if the Contractor does not do so, it will be responsible to Canada for the claim.

4. If anyone claims that, as a result of the Work, the Contractor or Canada is infringing its intellectual property rights, the Contractor must immediately do one of the following:

- (a) take whatever steps are necessary to allow Canada to continue to use the allegedly infringing part of the Work; or
- (b) modify or replace the Work to avoid intellectual property infringement, while ensuring that the Work continues to meet all the requirements of the Contract; or
- (c) take back the Work and refund any part of the Contract Price that Canada has already paid.

If the Contractor determines that none of these alternatives can reasonably be achieved, or if the Contractor fails to take any of these steps within a reasonable amount of time, Canada may choose either to require the Contractor to do (c), or to take whatever steps are necessary to acquire the rights to use the allegedly infringing part(s) of the Work itself, in which case the Contractor must reimburse Canada for all the costs it incurs to do so.

### **XIII. 2035 30 (2008-05-12) Accounts and Audit**

1. The Contractor must keep proper accounts and records of the cost of performing the Work and of all expenditures or commitments made by the Contractor in connection with the Work, including all invoices, receipts and vouchers. The Contractor must retain records, including bills of lading and other evidence of transportation or delivery, for all deliveries made under the Contract.
2. If the Contract includes payment for time spent by the Contractor, its employees, representatives, agents or subcontractors performing the Work, the Contractor must keep a record of the actual time spent each day by each individual performing any part of the Work.
3. Unless Canada has consented in writing to its disposal, the Contractor must retain all the information described in this section for six (6) years after it receives the final payment under the Contract, or until the settlement of all outstanding claims and disputes, whichever is later. During this time, the Contractor must make this information available for audit, inspection and examination by the representatives of Canada, who may make copies and take extracts. The Contractor must provide all reasonably required facilities for any audit and inspection and must furnish all the information as the representatives of Canada may from time to time require to perform a complete audit of the Contract.

#### **XIV.39 (2010-01-11) International Sanctions**

- (a) Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions(<http://www.international.gc.ca/sanctions/index.aspx?lang=eng>).
- (b) The Contractor must not supply to the Government of Canada any goods or services which are subject to economic sanctions.
- (c) The Contractor must comply with changes to the regulations imposed during the period of the Contract. The Contractor must immediately advise Canada if it is unable to perform the Work as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services.